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HOUSE BILL NO. 1446

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Finance

on February 7, 2024)

(Patron Prior to Substitute—Delegate Coyner)

A BILL to amend and reenact § 58.1-3295 of the Code of Virginia, relating to real property tax; assessment of real property used for affordable housing.

Be it enacted by the General Assembly of Virginia:

1. That § 58.1-3295 of the Code of Virginia is amended and reenacted as follows:

§ 58.1-3295. Assessment of real property; affordable housing.

A. For purposes of this section:

"Income and expense statements" means profit and loss statements and rent rolls.

"Normal course of business" means any operation or action that represents a daily and common action, carried out on a reasonable and professional basis, in conformity with the actions of other appraisers who have expertise and competency in a similar type of assignment and by the expectations of parties who are regularly intended users for similar assignments.

"Owner" means the owner of record of the real property and the owner's agent, except that for purposes of subdivision B 5, "owner" means the owner of record of the real property and any person assessed with local taxes who is aggrieved by the assessments in issue.

"Prompt" means within 10 business days.

"Short-term lease" means a rental lease agreement of two years or less.

B. 1. Notwithstanding any other provision of law, in determining the fair market value of real property operated in whole or in part as affordable rental housing, in accordance with the provisions of (i) 26 U.S.C. § 42, 26 U.S.C. § 142(d), 24 C.F.R. § 983, 24 C.F.R. § 236, 24 C.F.R. § 241(f), 24 C.F.R. § 221(d)(3), the federal Rental Assistance Demonstration program established under the Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55), or any successors thereto; ~~(ii) applicable state law; or (iii) local ordinances adopted by the locality wherein such real property is located,~~ the duly authorized real estate assessor shall consider:

1. The contract rent and the impact of applicable rent restrictions;

2. Restrictions on the transfer of title or other restraints on alienation of the real property; and

3. The actual operating expenses and expenditures and the impact of any such additional expenses or expenditures. If an owner has two or more units of real property that (i) are operated in whole or in part as affordable rental housing and (ii) are controlled by a single restrictive use agreement regulating income and rent restrictions; and the owner has expenses and expenditures common to two or more such units; and such expenses and expenditures cannot practicably be attributed to a particular unit; then the owner has a right to have the assessor make a pro rata apportionment of such expenses and expenditures to each such unit based on each unit's assessed value as a percentage of the total assessed value of all such units. The provisions of this subdivision apply whether or not the units are in one tax parcel or multiple tax parcels only use the income approach, and in using the income approach, shall comply fully and completely with Standards Rule 1-4(c) of the Uniform Standards of Professional Appraisal Practice.

2. In performing the income approach, the duly authorized real estate assessor shall collect, verify, and analyze such data as is available to the duly authorized real estate assessor in the normal course of business and as is necessary and appropriate to estimate rates of capitalization or rates of discount. In collecting, verifying, and analyzing such data, the duly authorized real estate assessor shall analyze and account for the influence of the real property's locational characteristics, condition, occupancy, rate of cash flow, and related factors on the fair market value of the real property. In estimating rates of capitalization, the duly authorized real estate assessor shall give preference to the use of the band of investment technique. To the extent the duly authorized real estate assessor collects, verifies, and analyzes capitalization rates extracted from market sales transactions, the properties that are the subject of the sale transactions shall be highly comparable to the real property, including comparability of property type, remaining economic life, operating expense ratios, physical condition, ratios of land-to-improvements as proportions of total property value, income streams with the same characteristics of risk, timing, stability, and income projection pattern, terms of sale, types of financing, types of buyers, including those with motivations the same as the most probable type of buyer for the subject property, and market conditions at the time of sale and time of assessment. The use of national or regional surveys of capitalization rates of sales of conventional market-rate properties and the use of capitalization rates extracted from sales of conventional market-rate properties to value affordable rental housing properties is prohibited. The use of capitalization rates extracted from sales of affordable rental housing properties in urban or metropolitan areas to value affordable rental housing properties in rural areas is prohibited.

60 Notwithstanding any other provision of this section, the duly authorized real estate assessor shall collect,
61 verify, and analyze other potential influences on the fair market value of the real property, including the real
62 property's current use, the real property's actual income and operating expenses, the real property's income
63 restrictions, preservation agreements governing or applicable to the real property, physical needs
64 assessments and inspections of the real property by regulatory agencies, and restrictions on the transfer of
65 title to the real property or other restraints on alienation of the real property. Federal or state income tax
66 credits with respect to affordable housing rental property shall not be considered real property or income
67 attributable to the real property.

68 3. Use of mass appraisal techniques to assess the fair market value of affordable rental housing
69 properties is prohibited for those affordable rental housing properties whose owners provide income and
70 expense statements attributable to such properties within the timeframe requested by the duly authorized real
71 estate assessor pursuant to § 58.1-3294. A duly authorized real estate assessor's request for income and
72 expense statements under this section shall be limited to such information for the time periods that are
73 necessary and appropriate to the performance of an income approach in accordance with generally accepted
74 appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional
75 appraisal organizations and Virginia law relating to the valuation of real property.

76 4. Boards of equalization and boards of review hearing appeals of assessments of affordable rental
77 housing properties shall arrive at the assessments of real property operated in whole or in part as affordable
78 rental housing in accordance with the provisions of this section.

79 5. a. The duly authorized real estate assessor shall understand the various affordable rental housing
80 subsidy programs, affordable rental housing definitions, the various restrictions, risks, and benefits
81 associated with ownership of affordable rental housing properties, relevant tax considerations related to
82 affordable housing, local market conditions affecting affordable rental housing properties, and anticipated
83 changes in the market for affordable rental housing properties that may affect the quality, quantity, or
84 durability of the various restrictions, risks, and benefits associated with ownership of affordable rental
85 housing properties.

86 b. The duly authorized real estate assessor shall maintain and provide the owner or its agent with prompt
87 access to all the materials collected, verified, or analyzed in arriving at the owners' assessments. If the duly
88 authorized real estate assessor fails or refuses to provide the owner or its agent with prompt access to all the
89 materials collected, verified, or analyzed in arriving at the assessment of the real property, the locality will
90 be prohibited from using any of the materials that may have been collected, verified, or analyzed in defending
91 an assessment against a property owner's assessment appeal.

92 c. If the duly authorized real estate assessor fails or refuses to make appropriate efforts in accordance
93 with generally accepted appraisal practices, procedures, rules, and standards prescribed by nationally
94 recognized professional appraisal organizations to obtain the materials necessary to arrive at assessments of
95 affordable rental housing properties in accordance with the provisions of this section, and if the owner
96 prevails in its appeal to a board of review, board of equalization, or circuit court, the locality shall reimburse
97 the owner for its reasonable attorney fees and costs incurred in bringing and prosecuting the appeal.

98 B. The owner of real property that is operated in whole or in part as affordable rental housing in
99 accordance with the definition of affordable rental housing established by ordinance or resolution of the
100 locality in which the real property is located may make an application to the locality to have the real property
101 assessed pursuant to this section. Notwithstanding the exception in § 58.1-3294 for an owner of four or fewer
102 residential units, upon application by such an owner, the duly authorized real estate assessor may require the
103 owner to furnish to such assessor, board, or department statements of the income and expenses attributable
104 over a specified period of time to each such parcel of real estate in the manner required by § 58.1-3294 and to
105 comply with all provisions of § 58.1-3294 applicable to properties with more than four rental dwelling units.
106 The application shall be granted by the locality if (i) the owner charges rents at levels that meet the locality's
107 definition of affordable housing and (ii) the real property does not have any pending building code violations
108 at the time of the application.

109 The duly authorized real estate assessor shall also consider evidence presented by the property owner of
110 other restrictions imposed by law that impact the variables set forth in this subsection.

111 C. Federal or state income tax credits with respect to affordable housing rental property within the
112 purview of subsection A shall not be considered real property or income attributable to real property.

113 D. For property where only a portion of the units are operated as affordable housing, as defined in § 42 of
114 the Internal Revenue Code or as required by state law or applicable local ordinance, only the portion
115 determined to be affordable housing shall be subject to this section.

116 E. Notwithstanding any other provision in this section or other law, the real property governed by this
117 section that is generating income as affordable housing shall be assessed using the income approach based
118 on: the property's current use, income restrictions, provisions of any arm's-length contract including but not
119 limited to restrictions on the transfer of title or other restraints on alienation of the real property, the
120 requirements of subsection B, and all other provisions of this section.