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HOUSE BILL NO. 1446

Offered January 18, 2024

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.

Patrons—Coyner, Runion and Cousins

Referred to Committee on Finance

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.

"Owner" means the owner of record of the real property and the owner's agent, except that for purposes of subdivision B 6, "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. 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 shall only use the income approach as provided herein.

1. The duly authorized real estate assessor shall first determine whether the property to be assessed is encumbered by short-term leases at rents that are reflective of market conditions. If the property is so encumbered, the duly authorized real estate assessor shall use the direct capitalization technique to arrive at the property's assessment. If the property is encumbered by leases with contract rents that differ from market rents, the duly authorized real estate assessor may use the yield capitalization technique to arrive at the property's assessment.

2. In using the income approach to arrive at assessments of affordable rental housing properties, the duly authorized real estate assessor shall:

a. Collect, verify, and analyze (i) such rental data of comparable affordable rental housing properties as is available to the duly authorized real estate assessor in the normal course of business and (ii) the potential earnings capacity of the real property as is necessary and appropriate to estimate the gross income potential of the real property. Federal or state income tax credits with respect to affordable housing rental property shall not be considered real property or income attributable to the real property;

b. Collect, verify, and analyze (i) such operating expense data of comparable affordable rental housing properties as is available to the duly authorized real estate assessor in the normal course of business and (ii) the actual operating expense data for the real property as is necessary and appropriate to estimate the operating expenses of the real property;

c. Base projections of future income potential and operating expenses for the real property on reasonably clear and appropriate evidence;

d. Weigh historical information and trends, current supply and demand factors, and anticipated events such as competition from developments under construction when developing or reconstructing income and expense statements and cash flow projections for the real property;

59 *e. Collect, verify, and analyze occupancy rates for comparable affordable rental housing properties as*
 60 *are available to the duly authorized real estate assessor in the normal course of business and as are*
 61 *necessary and appropriate to estimate the stabilized occupancy of the real property;*

62 *f. Collect, verify, and analyze replacement reserves for comparable affordable rental housing properties*
 63 *as are available to the duly authorized real estate assessor in the normal course of business and as are*
 64 *necessary and appropriate to estimate the costs to repair or replace buildings or make other improvements to*
 65 *meet governing regulatory requirements;*

66 *g. Collect, verify, and analyze such data as is available to the duly authorized real estate assessor in the*
 67 *normal course of business and as is necessary and appropriate to estimate rates of capitalization or rates of*
 68 *discount for use in an income approach to assess the real property. In collecting, verifying, and analyzing*
 69 *such data, the duly authorized real estate assessor shall analyze and account for the influence of the real*
 70 *property's locational characteristics, condition, occupancy, rate of cash flow, and related factors on the fair*
 71 *market value of the real property. In estimating rates of capitalization, the duly authorized real estate*
 72 *assessor shall give preference to the use of the band of investment technique. To the extent the duly*
 73 *authorized real estate assessor collects, verifies, and analyzes capitalization rates extracted from market*
 74 *sales transactions, the properties that are the subject of the sale transactions shall be highly comparable to*
 75 *the real property, including comparability of property type, remaining economic life, operating expense*
 76 *ratios, physical condition, ratios of land-to-improvements as proportions of total property value, income*
 77 *streams, terms of sale, types of financing, types of buyers, and market conditions at the time of sale and time*
 78 *of assessment. The use of national or regional surveys of capitalization rates of sales of conventional market-*
 79 *rate properties and the use of capitalization rates extracted from sales of conventional market-rate properties*
 80 *to value affordable rental housing properties is prohibited. The use of capitalization rates extracted from*
 81 *sales of affordable rental housing properties in urban or metropolitan areas to value affordable rental*
 82 *housing properties in rural areas is prohibited; and*

83 *h. Notwithstanding any other provision of this section, the duly authorized real estate assessor shall*
 84 *collect, verify, and analyze other potential influences on the fair market value of the real property, including*
 85 *the real property's current use, the real property's income restrictions, preservation agreements governing or*
 86 *applicable to the real property, physical needs assessments and inspections of the real property by regulatory*
 87 *agencies, and restrictions on the transfer of title to the real property or other restraints on alienation of the*
 88 *real property.*

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

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

100 ~~B.~~ *5. The owner of real property that is operated in whole or in part as affordable rental housing in*
 101 *accordance with the definition of affordable rental housing established by ordinance or resolution of the*
 102 *locality in which the real property is located may make an application to the locality duly authorized real*
 103 *estate assessor to have the real property assessed pursuant to this section. Notwithstanding the exception in §*
 104 *58.1-3294 for an owner of four or fewer residential units, upon* *Upon* *application by such an owner, the duly*
 105 *authorized real estate assessor may require the owner to furnish to such assessor, board, or department*
 106 *statements of the income and expenses attributable over a specified period of time to each such parcel of real*
 107 *estate in the manner required by § 58.1-3294 and to comply with all provisions of § 58.1-3294 applicable to*
 108 *properties with more than four rental dwelling units provide income and expense statements for the duly*
 109 *authorized real estate assessor's use in arriving at the assessment of the real property. A duly authorized real*
 110 *estate assessor's request for income and expense statements under this subsection shall be limited to such*
 111 *information for the time periods that are necessary and appropriate to the performance of an income*
 112 *approach in accordance with generally accepted appraisal practices, procedures, rules, and standards as*
 113 *prescribed by nationally recognized professional appraisal organizations and Virginia law relating to the*
 114 *valuation of real property. The application shall be granted by the locality duly authorized real estate*
 115 *assessor if (i) the owner charges rents at levels that meet the locality's definition of affordable housing and*
 116 *(ii) the real property does not have any pending building code violations at the time of the application.*

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

119 ~~C.~~ *Federal or state income tax credits with respect to affordable housing rental property within the*

120 purview of subsection A shall not be considered real property or income attributable to real property.
121 D. For property where only a portion of the units are operated as affordable housing, as defined in § 42 of
122 the Internal Revenue Code or as required by state law or applicable local ordinance, only the portion
123 determined to be affordable housing shall be subject to this section.
124 E. Notwithstanding any other provision in this section or other law, the real property governed by this
125 section that is generating income as affordable housing shall be assessed using the income approach based
126 on: the property's current use, income restrictions, provisions of any arm's-length contract including but not
127 limited to restrictions on the transfer of title or other restraints on alienation of the real property, the
128 requirements of subsection B, and all other provisions of this section.
129 6. a. *The duly authorized real estate assessor shall understand the various affordable rental housing*
130 *subsidy programs, affordable rental housing definitions, the various restrictions, risks, and benefits*
131 *associated with ownership of affordable rental housing properties, relevant tax considerations related to*
132 *affordable housing, local market conditions affecting affordable rental housing properties, and anticipated*
133 *changes in the market for affordable rental housing properties that may affect the quality, quantity, or*
134 *durability of the various restrictions, risks, and benefits associated with ownership of affordable rental*
135 *housing properties.*
136 b. *The duly authorized real estate assessor shall maintain and provide the owner or its agent of affordable*
137 *rental housing with prompt access to all the materials collected, verified, or analyzed in arriving at the*
138 *owners' assessments. If the duly authorized real estate assessor fails or refuses to provide the owner or its*
139 *agent with prompt access to all the materials collected, verified, or analyzed in defending an assessment*
140 *against a property owner's assessment, the locality will be prohibited from using any of the materials that*
141 *may have been collected, verified, or analyzed in defending an assessment against a property owner's*
142 *assessment.*
143 c. *If the duly authorized real estate assessor fails or refuses to make appropriate efforts in accordance*
144 *with generally accepted appraisal practices, procedures, rules, and standards prescribed by nationally*
145 *recognized professional appraisal organizations to obtain the materials necessary to arrive at assessments of*
146 *affordable rental housing properties in accordance with the provisions of this section, (i) the resulting*
147 *assessment will not be entitled to a presumption of correctness, and upon appeal of the affected assessment to*
148 *a board of review, board of equalization, or circuit court, the property owner will only need to prove that the*
149 *assessment is in excess of the subject property's fair market value or that the assessment is not uniform in its*
150 *application in order to prevail in the appeal and (ii) if the owner prevails in its appeal to a board of review,*
151 *board of equalization, or circuit court, the locality shall reimburse the owner for its reasonable attorney fees*
152 *and costs incurred in bringing and prosecuting the appeal.*
153 7. *For any provision of this section that is in direct conflict with any other section in this title, the*
154 *provisions of this section control.*