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COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX



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JEFFREY C. MCKAY
LEE DISTRICT SUPERVISOR

Joint Board Matter

Supervisor McKay
Supervisor Hudgins

September 14, 2009

The County has witnessed a steady increase in foreclosures on its stock of affordable dwelling units (ADUs). Often, foreclosures by lenders who have provided first trust purchase money loans to ADU owners may be able to sell the properties at foreclosure free of the ADU restrictions if certain requirements are met. Although the County Zoning Ordinance provides that the County is entitled to share in the foreclosure proceeds above the maximum control price, the unit is lost as affordable housing. In addition, a number of ADU purchasers have obtained loans in excess of the maximum control price for their units. Although no lender should be permitted to sell any of these properties at foreclosure for amounts in excess of the maximum control price, the present Virginia foreclosure statute does not adequately address this situation. The result has been confusion and uncertainty in virtually every foreclosure involving an ADU where a lender has provided financing in excess of the maximum control price.

In recognition of the inadequacy of the current foreclosure procedures set out in the Code of Virginia to fairly and adequately deal with ADUs, I move that the Board refer this matter to the Board's Legislative Committee and direct staff to consider legislation that would amend the state foreclosure statute to permit a redevelopment and housing authority, or local governing body where no such authority exists, to purchase any ADU at foreclosure during the control period for the maximum control price in order to preserve affordable housing. Such legislation would permit lenders to realize a fair return on their loans up to the full value of the ADU, and would ensure that the affordable dwelling unit could be retained as part of the locality's affordable housing stock.