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Ghazala Hashmi

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SAFE AT HOME: ADDRESSING VIRGINIA'S HOUSING
POLICY CONCERNS IN A PANDEMIC

*Senator Ghazala Hashmi, PhD.**

* Ghazala Hashmi, PhD, serves as State Senator in the Virginia General Assembly and represents the 10th Senatorial District (Richmond City, Chesterfield County, and Powhatan County). Prior to her election in November 2019, Senator Hashmi had a long career in higher education in Virginia. She holds a doctorate in American literature from Emory University.

“It is hard to argue that housing is not a fundamental human need. Decent, affordable housing should be a basic right for everybody in this country. The reason is simple: without stable shelter, everything else falls apart.”

— Matthew Desmond
Evicted: Poverty and Profit in the American City

ABSTRACT

This article examines the crisis of eviction that exists in the Commonwealth of Virginia and the ways in which the COVID-19 pandemic highlighted the particular vulnerability of low-income and minority communities. Zoning policies, financing practices, limitations on tenants’ rights, and other legal structures built into the Virginia Code underscore issues of systemic racism that exacerbate the lack of affordable housing and instability of rental opportunities. The article provides a highlight of recent legislation passed by the Virginia General Assembly that seeks to address some of these concerns.

INTRODUCTION

As the emerging pandemic moved across the global stage in the early months of 2020, its concurrent crises became quickly visible: in-person public education ground to a halt;¹ the closure of workplaces resulted in the loss of jobs, with a disproportionate impact on low-income communities and communities of color;² telework options for some but not for others increased disparities³; and access to healthcare resources such as protective equipment, treatment, and vaccines generally corresponded to levels of financial security.⁴ The Governor of Virginia issued Executive Order 55 on March 30, 2020, declaring, “All individuals in Virginia shall remain at their place of residence,” with few exceptions, such as when needing to seek essential

¹ Press Release, Va. Governor Ralph Northam, Governor Northam Orders All Virginia K-12 Schools Closed for Minimum of Two Weeks (Mar. 13, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-854442-en.html#:~:text=RICHMOND%E2%80%94Governor%20Ralph%20Northam%20today>.

² Mark Hugo Lopez et al., *Financial and health impacts of COVID-19 vary widely by race and ethnicity*, PEW RSCH. CTR. (May 5, 2020), <https://www.pewresearch.org/fact-tank/2020/05/05/financial-and-health-impacts-of-covid-19-vary-widely-by-race-and-ethnicity/>.

³ See VICTORIA H. HALL, MONTGOMERY CNTY., MD. OFF. OF LEGIS. OVERSIGHT, COVID-19 RECOVERY OUTLOOK: DISPARITIES IN TELEWORK BY RACE AND ETHNICITY (2020), <https://www.montgomerycountymd.gov/OLO/Resources/Files/2020%20Reports/COVID-19Recovery-DisparitiesTeleworkRaceEthnicity.pdf>.

⁴ Cf. *Health Equity Considerations & Racial & Ethnic Minority Groups*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 19, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

assistance or to obtain food or supplies.⁵ For thousands of families in Virginia, this executive order contradicted the direct realities of their personal situation. Required to “stay at home,” these families confronted the precarious identity of *home* itself. What did it mean to be “safe at home,” when such sanctuary was not recognized as a fundamental human right but was instead subject to the complexities of systemic racism, the stresses of an economy that pooled wealth at the top, and now, the unpredictable nature of a health epidemic? If the government mandated a requirement to shelter in place, it logically followed that the government bore some responsibility to support or provide such shelter. The looming housing crisis was inextricably intertwined with the spreading viral crisis, and legislative action and new policy measures were the essential responses to both.

However, to understand the pandemic’s impact on vulnerable and unstable housing within the Commonwealth, one must acknowledge the legacies of racist systems deeply ingrained in Virginia. Some of these legacies include restrictions on tenants’ rights, longstanding financial industry practices that limited opportunity for minority communities, zoning regulations built on racial and economic bias, and other discriminatory housing policies. These policies and practices have all contributed to the uneasy footing that thousands in Virginia have when it comes to consistent, affordable, and equitable housing.⁶ The intersectionality of viral disease spread, generational poverty, and financial instability was readily apparent from the earliest days of the pandemic.

This paper examines Virginia’s housing situation in its broad contexts. Section I evaluates the existing housing and eviction crisis within the Commonwealth. In Section II, the intersection of discriminatory policies and their impacts on housing opportunities is discussed. Section III highlights key, recent legislative efforts, and Section IV projects future legislative opportunities.

⁵ COMMONWEALTH OF VA. OFF. OF THE GOVERNOR, EXECUTIVE ORDER NUMBER FIFTY-FIVE: TEMPORARY STAY AT HOME ORDER DUE TO NOVEL CORONAVIRUS (COVID-19) (2020), [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-55-Temporary-Stay-at-Home-Order-Due-to-Novel-Coronavirus-(COVID-19).pdf).

⁶ Brad Plumer & Nadja Popovich, *How Decades of Racist Housing Policy Left Neighborhoods Sweltering*, N.Y. TIMES (Aug. 24, 2020), <https://www.nytimes.com/interactive/2020/08/24/climate/racism-redlining-cities-global-warming.html>.

I. VIRGINIA'S EXISTING HOUSING AND EVICTION CRISIS

A. *Virginia Leads the Country with Five Localities with the Highest Eviction Rates*

The Commonwealth of Virginia leads the country in the number of households living in precarious housing situations.⁷ A synthesis of current literature identifies precarious housing as the following:

- 1) unaffordable when high housing costs are not in proportion to income;
- 2) when the housing is unsuitable due to conditions of being overcrowded or unsafe; or
- 3) when housing is insecure because its tenure type is such that it leads to forced moves.⁸

Individuals who have experienced more than one of these concerns concurrently are classified as facing precarious housing, a situation that is familiar to many across Virginia.⁹ Five of the top ten cities in the United States with the highest eviction rates are located in the Commonwealth.¹⁰ Of those five cities, Richmond, Roanoke, and Hampton Roads rank in the top three within the state.¹¹ Disproportionately, the high eviction rates fall within minority communities as 60% of all majority African American tracts face eviction rates that exceed 10%.¹² The lack of affordable housing options has both literally and figuratively marginalized communities, isolating low-income populations in areas with limited access to public transportation, scarcity of resources such as grocery and quality retail stores, healthcare services, and so much more.¹³

B. *Disproportionate Share of Income Directed Towards Housing*

Housing is one of the most central concerns for low-income communities, demanding disproportionate slices of monthly income from those with fewer resources, in contrast to middle-income and wealthy individuals. The reality for most low-income families is that at least half of the household income is spent on housing costs, while one in four of these families may spend over

⁷ Based on 2016 eviction data, five of the top ten highest rate evicting large cities in the United States are located in Virginia. See *Eviction Rankings*, EVICTION LAB, <https://evictionlab.org/rankings/#/evictions?r=United%20States&a=0&d=evictionRate&lang=en> (last visited Nov. 14, 2021).

⁸ SHELLEY MALLETT, ET AL., PRECARIOUS HOUSING AND HEALTH INEQUALITIES: WHAT ARE THE LINKS? SUMMARY REPORT 4 (2011).

⁹ *Id.*

¹⁰ *Eviction Rankings*, *supra* note 7.

¹¹ *Id.*

¹² *Id.*

¹³ KATHRYN HOWELL, EVICTION AND THE RENTAL HOUSING MARKET 3–5, <https://cura.vcu.edu/media/cura/pdfs/cura-documents/EvictionandtheRentalHousingMarketintheCommonwealth.pdf>.

70% of that household income on rent and utilities.¹⁴ Indeed, the rental price for most basic, two-bedroom apartments are out of reach for individuals working full-time minimum wage jobs in any state in the country, according to the National Low Income Housing Coalition's annual "Out of Reach" report.¹⁵ Moreover, in 93% of U.S. counties, these same minimum wage workers cannot afford a modest one-bedroom.¹⁶ When affordability is defined as the hourly wage a full-time worker must earn in order to spend no more than 30% of their income on rent, workers in most parts of the country need to earn \$24.90 per hour for a two-bedroom rental and \$20.40 per hour for a one-bedroom rental.¹⁷ While the minimum wage increases in many states, the average minimum wage still hovers below the requisite levels necessary for affordable housing.¹⁸

C. Segmentation of Housing Markets

In addition to consuming a majority of monthly income, housing options for low-income individuals are segmented into communities that tend to perpetuate instability and lead to further decline in options.¹⁹ In its most basic terms, a housing market is identified and defined based on supply and demand, typically within a specific geographic region.²⁰ Housing submarket boundaries may similarly be identified by geographic determinants such as those that are naturally occurring or artificial such as roads.²¹ However, submarkets are also created by concentrations of demographics or by socioeconomic factors. Researchers make the compelling argument that eviction itself has become a "formative institution of housing submarkets."²² That is, eviction plays a role in creating and maintaining submarkets and "targeted housing scarcity for specific groups of tenants."²³ Segmented housing markets restrict minority and low-income communities to those housing options that are

¹⁴ See Josh Boak, *1-in-4 US renters spend half their pay on rent and utilities*, INSIDER (May 1, 2015), <https://www.businessinsider.com/personal-finance/1-in-4-us-renters-spend-half-their-pay-on-rent-and-utilities-2015-5>.

¹⁵ Andrew Aurand et al., *Out of Reach: the High Cost of Housing*, NAT'L LOW INCOME HOUSING COAL. (2021).

¹⁶ Alicia Adamczyk, *Full-Time Minimum Wage Workers Can't Afford Rent Anywhere in the US, According to a New Report*, CNBC (July 14, 2021), <https://www.cnbc.com/2021/07/14/full-time-minimum-wage-workers-cant-afford-rent-anywhere-in-the-us.html>.

¹⁷ *Id.*

¹⁸ See Andrew Soergel & Sara Clarke, *24 U.S. States Will See a Minimum Wage Increase in 2021*, U.S. NEWS (Aug. 2, 2021), <https://www.usnews.com/news/articles/best-states/minimum-wage-by-state>.

¹⁹ See Benjamin F. Teresa & Kathryn L. Howell, Abstract, *Eviction and Segmented Housing Markets in Richmond, Virginia*, 31 HOUS. POL'Y DEBATE, 627, 627 (2021).

²⁰ Kazi Saiful Islam & Yasushi Asami, *Housing Market Segmentation: A Review*, 21 REV. OF URB. AND REG'L DEV. STUD., 93, 93 (2010).

²¹ Teresa & Howell, *supra* note 19 at 629.

²² *Id.*

²³ *Id.* at 627.

of the worst quality and riddled with the greatest instability.²⁴ Segmentation continues to push these vulnerable households further in poorer quality sub-markets.²⁵ The ensuing eviction records and declining credit scores are the legal means by which these families are shut out of the private rental market.²⁶ The decline of stable housing inevitably leaves such vulnerable families and individuals with fewer and fewer options, leading to short-term rentals in motels, temporary shelter with family or friends, or homelessness.²⁷

D. Penalties For Late Rent Payments Lead To Evictions

Virginia's high eviction rates are attributable to structures that often penalize tenants for infractions that result from living paycheck to paycheck.²⁸ For example, prior to 2021, tenants who missed one month's payment could be required to provide full rent within five days or be subject to eviction proceedings.²⁹ This issue was addressed through legislation in 2021 and is detailed in Section III. While such missed rental payments rest on numerous factors, one issue is the disconnect between most workers' pay cycles and the established structure of monthly rent payments. According to the Bureau of Labor Statistics, over 76% of Americans were on a biweekly or weekly pay period in 2020.³⁰ The misalignment between monthly rent and biweekly or weekly pay cycles leads to challenges as families balance the need to save for rent while also allocating for other and more immediate household expenses. Understanding and addressing such structural concerns help to offset the rate of evictions in Virginia and have immense consequences for the families who are provided opportunities to adjust payment schedules around the realities of their financial resources.³¹

²⁴ *Id.* at 631.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 628.

²⁸ See Noah Robertson, *A National Model? How Virginia is Improving Landlord-Tenant Relations*, CHRISTIAN SCI. MONITOR (Sept. 20, 2021) <https://www.csmonitor.com/USA/Politics/2021/0920/A-national-model-How-Virginia-is-improving-landlord-tenant-relations>.

²⁹ VA. CODE ANN. § 55.1-1245 (Lexis through 2021 Reg. Sess.).

³⁰ *Length of Pay Periods in the Current Employment Statistics Survey*, U.S. BUREAU OF LAB. STAT. (May 3, 2021) <https://www.bls.gov/ces/publications/length-pay-period.htm>.

³¹ Lillian Leung et al., *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, 100 SOC. FORCES 316, 318, 339 (2021).

E. The Problems of Language Access

Additionally, archaic legal terminology often confuses tenants who may receive eviction notices that refer to an “unlawful detainer,” the official legal term for a court’s ruling of guilt for nonpayment of rent.³² For non-native speakers of English, the issues of language are compounded even further. The lack of language access negatively impacts immigrant communities for whom English is a second language and who have limited resources for full and appropriate interpretation of rental agreements and eviction proceedings.³³ Lack of language access and the misunderstanding of legal paperwork can, in particular, have long-lasting effects on the outcomes of low-income and immigrant communities.³⁴ The ramifications of deficient language accommodations for individuals and families can extend well beyond the eviction itself. Because evictions stay on a tenant’s record for about seven years, tenants are left with even fewer housing options after an eviction.³⁵

F. The Impacts of Federal Poverty Level (“FPL”) Regulations

A lack of access to legal support, financial assistance, and social service resources similarly compounds the issue for most low-income tenants.³⁶ Many may not qualify for assistance such as rent relief or legal aid because they are slightly above the threshold of the established federal poverty level (“FPL”) or do not have children.³⁷ The problematic nature of determining the FPL often exacerbates, rather than helps, low-income families. Most researchers and agencies assisting the poor agree that the federal government’s delineation of the “poverty line” is an outdated and rather arbitrary method of assessment of poverty.³⁸ Developed in the mid-1960s, the FPL is determined by calculating the amount of money it costs to buy essential food items, such as milk, eggs, and bread, multiplying that amount by three, adjusting for inflation, and taking into account the number of adults and

³² See VA. CODE ANN. § 8.01-126 (2021); Jaelyn Barton & Patricia Cason, *Evictions, a Focus of Concern, Fall 14% in Virginia*, VA. MERCURY (Dec. 17, 2019), <https://www.virginiamercury.com/2019/12/17/evictions-a-focus-of-concern-fall-14-in-virginia/>.

³³ *Language Access*, NATIONAL HOUSING LAW PROJECT, <https://www.nhlp.org/initiatives/fair-housing-housing-for-people-with-disabilities/language-access/>.

³⁴ *Id.*

³⁵ See generally VA. CODE ANN. § 8.01-130.01 (2021); Jennifer White, *How Long Does an Eviction Stay on Your Record*, EXPERIAN (Sept. 29, 2020), <https://www.experian.com/blogs/ask-experian/how-long-does-eviction-stay-on-report/>.

³⁶ Barton & Cason, *supra* note 32; see also *The Project*, EQUAL JUSTICE WORKS, <https://www.equaljusticeworks.org/programs/housing-justice-program/> (last visited Feb. 23, 2022).

³⁷ *HHS Poverty Guidelines for 2021*, ASPE, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines> (last visited on Nov. 9, 2021).

³⁸ Rourke L. O’Brien & David S. Pedulla, *Beyond the Poverty Line*, STAN. SOC. INNOV. REV. (2010), https://ssir.org/articles/entry/beyond_the_poverty_line#.

children within the household.³⁹ The FPL has an impact on low-income communities in multiple ways as it is used to determine individual and family eligibility for assistance, as well as appropriations for federal, state, and local funding.⁴⁰ These determinants affect eligibility for food stamps, Temporary Assistance for Needy Families (“TANF”), and Medicaid.⁴¹ Currently, for a family or household of four living in one of the 48 contiguous states or the District of Columbia, the federal poverty guideline for 2021 is \$26,500.⁴²

The reality is that poverty itself is the cause of most evictions in Virginia, specifically the level of poverty that skirts the threshold of available assistance programs.⁴³ Further, while resources may be available such as the Eviction Diversion Pilot Program in Richmond or legal assistance through the Legal Aid Justice Center may be available, most tenants are unaware of such resources or how to access them.⁴⁴ As a result, many tenants “self-evict,” leaving rental property rather than facing the court system.⁴⁵

II. DISCRIMINATORY POLICIES AND THEIR IMPACTS ON HOUSING

The paucity of quality housing options, most especially in urban settings, and the continuing struggles to maintain stable housing are invariably rooted in centuries-old systems that are racially biased and unjust.⁴⁶ Urban poverty is the result of historical processes that segregated poor and minority communities within spaces that decoupled where workers lived and the jobs available to them.⁴⁷

A. Racial Covenants in Property Deeds

These barriers were grounded in legally recognized housing discrimination policies. One example of such discriminatory policies that remained current in legal documents, despite the 1968 Fair Housing Act, was the racial

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² DEP’T OF HEALTH AND HUM. SERVS., *Comment Letter on 2021 Federal Poverty Level Standards* (Mar. 18, 2021), <https://www.medicaid.gov/federal-policy-guidance/downloads/cib031821.pdf>.

⁴³ *See* Va. Law Found., *Eviction Diversion*, GREATER RICH. BAR FOUND., <https://grbf.org/programs/eviction-diversion/> (last visited Nov. 14, 2021).

⁴⁴ *See id.*; *see also* Barton & Cason, *supra* note 32.

⁴⁵ Ned Oliver, *Pandemic Eviction Protections Could Expire This Summer*, VA. MERCURY (May 6, 2021), <https://www.virginiamercury.com/blog-va/pandemic-eviction-protections-could-expire-this-summer/>; *see also* Rachel Siegel & Jonathan O’Connell, *The Feared Eviction ‘Tsunami’ Has Not Yet Happened. Experts are Conflicted on Why*, WASH. POST (Sept. 28, 2021), <https://www.washingtonpost.com/business/2021/09/28/eviction-cliff-moratorium-rental-assistance/>.

⁴⁶ Michael B. Teitz & Karen Chapple, *The Cause of Inner-City Poverty: Eight Hypotheses in Search of Reality*, 3 CITYSCAPE: J. OF POL’Y DEV. & RSCH. 33 (1998).

⁴⁷ *Id.* at 36.

covenants embedded in property deeds in certain localities.⁴⁸ These covenants were designed to prevent non-white families from purchasing homes and property in specific neighborhoods.⁴⁹ In Richmond, neighborhoods such as Lakeside had racial covenants outlined in deeds of sale.⁵⁰ Not until July 2020, through HB 788, were these covenants actually outlawed from property deeds in Virginia.⁵¹ The legislation prohibits a deed containing a restrictive covenant from being recorded on or after July 1, 2020, and also provides the form for a *Certificate of Release of Certain Prohibited Covenants* to be recorded to remove any such restrictive covenant from earlier deeds.⁵²

B. Hazardous Neighborhoods

Like racially-based covenants, the well-established practice of “redlining” was another discriminatory process by which the federal Home Owners’ Loan Corporation (“HOLC”) drew literal red lines around maps of “hazardous neighborhoods” in the 1930s, deliberately targeting low-income minority communities.⁵³ Financial institutions used the term “hazardous neighborhoods” in order to identify communities as high risk simply because they were minority neighborhoods.⁵⁴ Redlining enabled lending institutions to deny access to capital investments and financial resources that could have improved residents’ housing and economic opportunity.⁵⁵ The National Community Reinvestment Coalition estimates that 3 out of 4 people who live in neighborhoods that HOLC graded as high-risk or “hazardous” eighty years ago are low-to-moderate income (“LMI”) today.⁵⁶ The gap of 40% in the value of property owned by Blacks and whites is attributable to HOLC maps alone.⁵⁷

⁴⁸ Mark Robinson, *Report: Virginia’s Land Use Policies Promoted Racial Segregation, Contributed to Wealth Gap*, RICH. TIMES-DISPATCH (Feb. 14, 2021), https://richmond.com/news/report-virginias-land-use-policies-promoted-racial-segregation-contributed-to-wealth-gap/article_0a82f062-c6e5-56fe-bdab-9875330c51a2.html.

⁴⁹ *Id.*

⁵⁰ Catherine Komp, *Mapping Projects Show Lasting Impact of Redlining, Racial Covenants in Virginia*, VA. PUB. MEDIA (July 29, 2019), <https://vpm.org/radio/news/mapping-projects-show-lasting-impact-of-redlining-racial-covenants-in-virginia>.

⁵¹ H.B. 788, 2020 Gen. Assemb., Reg. Sess. (Va. 2020).

⁵² *Id.*

⁵³ BRUCE C. MITCHELL ET. AL., NAT’L CMTY. REINVESTMENT COAL., REDLINING AND NEIGHBORHOOD HEALTH, https://ncrc.org/holc-health/#_ftn5.

⁵⁴ Candace Jackson, *What is Redlining?*, N.Y. TIMES (Aug. 17, 2021), <https://www.nytimes.com/2021/08/17/realestate/what-is-redlining.html>.

⁵⁵ BRUCE MITCHELL & JUAN FRANCO, NAT’L CMTY. REINVESTMENT COAL., HOLC “REDLINING” MAPS: THE PERSISTENT STRUCTURE OF SEGREGATION AND ECONOMIC INEQUALITY 4 https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf.

⁵⁶ *Id.*

⁵⁷ *Id.* at 14.

C. Zoning Regulations

In the latter part of the 20th century, zoning regulations such as single-family zoning became the more popular method, rather than race-based zoning, for local governments to maintain segregated communities.⁵⁸ These zoning policies tend to prohibit the construction of apartment buildings and multi-family units in certain neighborhoods or even entire localities, and such zoning restrictions ensure that only those who can afford single-family homes are able to purchase and live within those communities, thus maintaining the continuity of racially-segregated neighborhoods.⁵⁹

Additional zoning restrictions for commercial industrial use have concentrated low-income and minority communities near sites of manufacturing or pollution, resulting in areas of dense poverty.⁶⁰ Oftentimes, commercial industrial zones also exposed vulnerable communities to dangerous environmental hazards.⁶¹ Other restrictions such as redlining and market segmentation, maintained well into the 1960s, prevented Black families from buying homes in the suburbs.⁶² Barriers such as highways were constructed to physically separate African American communities, and these barriers largely remain intact across the country; these barriers now serve to perpetuate racial segregation, concentration of higher eviction rates, and the protection of “white enclaves.”⁶³ These patterns continue to be reflected in the current built environment.⁶⁴ These factors may also be the dimensions along which segmented housing markets are defined and through which they operate to produce differential housing outcomes for tenants.⁶⁵

⁵⁸ Danyelle Solomon, et al., *Systemic Inequality: Displacement, Exclusion, and Segregation*, CTR. FOR AM. PROGRESS (Aug. 7, 2019), <https://www.americanprogress.org/article/systemic-inequality-displacement-exclusion-segregation/>.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Kimberly Quick & Richard D. Kahlenberg, *Attacking the Black-White Opportunity Gap That Comes from Residential Segregation*, THE CENTURY FOUND. (June 25, 2019), <https://tcf.org/content/report/attacking-black-white-opportunity-gap-comes-residential-segregation/>.

⁶³ Teresa & Howell, *supra* note 19 at 2 (citing Edward G. Goetz, et al., *Racially Concentrated Areas of Affluence: A Preliminary Investigation*, 21 CITYSCAPE: J. POL'Y DEV. & RES. 99, 102 (2019)); EDWARD G. GOETZ, *NEW DEAL RUINS* 123 (Cornell Univ. Press 2013); KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* 293 (Oxford Univ. Press 1987); RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 8–9 (Liveright Publishing Corp. 2017).

⁶⁴ Teresa & Howell, *supra* note 19 at 2; GOETZ, *supra* note 63 at 123; JACKSON, *supra* note 63 at 293; ROTHSTEIN, *supra* note 63 at 8–9.

⁶⁵ Teresa & Howell, *supra* note 19 at 2; GOETZ, *supra* note 63 at 123; JACKSON, *supra* note 63 at 293; ROTHSTEIN, *supra* note 63 at 8–9.

D. The Role of Subprime Mortgages

Most recently, the issues of subprime mortgage lending practices disproportionately targeted low-income and minority communities, resulting in increased financial loss and impacting the accumulation of generational wealth in families.⁶⁶ A subprime mortgage, a loan that carries a higher interest rate than prime mortgages, is designed for borrowers with flawed credit histories.⁶⁷ With its higher interest rate, a subprime mortgage is intended to pay the lender for taking on a risky borrower.⁶⁸ The popularity of subprime mortgages among lending institutions grew in the early 2000s because of deregulation. This deregulation occurred through the Gramm-Leach-Bliley Act of 1999, also known as the Financial Services Modernization Act, which repealed the Glass-Steagall Act of 1933.⁶⁹ Glass-Steagall had previously prohibited retail banks from using depositors' funds for risky investments.⁷⁰ This deregulation, along with the Commodity Futures Modernization Act that passed the following year, enabled financial institutions to engage in more risky behavior than ever before.⁷¹

Subprime mortgages specifically targeted low-income, minority communities and Black women in particular.⁷² The ready availability of these subprime mortgages made homeownership possible for many families for the first time in generations.⁷³ The family home is typically the sole point of accumulation of a family's wealth.⁷⁴ The loss of a home due to foreclosure, as was experienced by so many families during the 2008 Great Recession, often triggers the loss of other accumulated financial resources such as savings, stock shares, and retirement accounts.⁷⁵ This loss of wealth during the Great Recession of 2008 disproportionately impacted Black homeownership.⁷⁶ African American and Hispanic families lost a larger percentage of their wealth than white families (47.6 and 44.3% versus 26.2%) with an overall reduction

⁶⁶ Michael Neal & Alanna McCargo, *How Economic Crises and Sudden Disasters Increase Racial Disparities in Homeownership*, URBAN INST. (June 2020), <https://www.urban.org/sites/default/files/publication/102320/how-economic-crises-and-sudden-disasters-increase-racial-disparities-in-homeownership.pdf>.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Paul G. Mahoney, *Deregulation and the Subprime Crisis*, 104 VA. L. REV. 235, 237 (2018).

⁷⁰ Gramm-Leach-Bliley Act, Pub. L. No. 106-102 (1999).

⁷¹ Commodity Futures Modernization Act, Pub. L. No. 106-554 (2000).

⁷² Nathalie Baptiste, *Staggering Loss of Black Wealth Due to Subprime Scandal Continues Unabated*, AM. PROSPECT (Oct. 13, 2014), <https://prospect.org/justice/staggering-loss-black-wealth-due-subprime-scandal-continues-unabated/>.

⁷³ *See id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

of 28.5%.⁷⁷ Additionally, this loss of wealth accumulation held generational implications for Black and white families: the existing wealth gap that was rooted in slavery and exacerbated by decades-long systemic racism widened even further in the Great Recession.⁷⁸ As reported by the Urban Institute, the growing wealth gap was visible almost immediately as the median wealth for white families in 2010 was \$124,000, versus Black families' median of only \$16,000.⁷⁹

The reality of racial targeting of subprime mortgages is evident in the disproportionate number of families of color that were directed toward these lending practices rather than toward conventional loans.⁸⁰ Foreclosures on these properties, in turn, scarred the financial records of many Black families and made options for future mortgages even more limited.⁸¹

E. Addressing Discriminatory Policies

While overt racial discrimination policies such as redlining may not be readily visible, discriminatory practices continue, and their impacts are identifiable by their consequences, including largely homogeneous neighborhoods, segregated schools, and zoning restrictions that prevent the development of multi-family units.⁸² By identifying discriminatory policies and acknowledging their impact on wealth accumulation, educational opportunities, health disparities, and other essential gaps, the Virginia General Assembly began to address several concerns through legislation detailed in Section III.

III. RECENT POLICY EFFORTS IN VIRGINIA

In the 2021 General Assembly, legislators moved to enact policy changes that directly address long-standing discriminatory structures and tackle the housing and eviction crisis by establishing protections for tenants, requiring more transparent communications from landlords, and prohibiting

⁷⁷ SIGNE-MARY MCKERNAN, ET AL., URBAN INST., IMPACT OF THE GREAT RECESSION AND BEYOND: DISPARITIES IN WEALTH BUILDING BY GENERATION AND RACE 2 (2014), <https://www.urban.org/sites/default/files/alfresco/publication-pdfs/413102-Impact-of-the-Great-Recession-and-Beyond.PDF>.

⁷⁸ *Id.* at 1–2.

⁷⁹ SIGNE-MARY MCKERNAN, ET AL., LESS THAN EQUAL: RACIAL DISPARITIES IN WEALTH ACCUMULATION 6 (2013), <http://www.urban.org/sites/default/files/publication/23536/412802-less-than-equal-racial-disparities-in-wealth-accumulation.pdf>.

⁸⁰ Justin P. Steil et al., *The Social Structure of Mortgage Discrimination*, NAT'L CTR. FOR BIOTECHNOLOGY INFO. (Nov. 3, 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6084476/>.

⁸¹ *Id.*

⁸² Teresa & Howell, *supra* note 19.

discriminatory policies.⁸³ Further, the budgetary language to develop and deploy a robust Rent and Mortgage Relief Payment Plan has now placed a national spotlight on the Commonwealth because of its successes.⁸⁴

A. *The Rent Relief Payment Plan*

In an attempt to stave off the anticipated eviction “tsunami” that threatened tenants in the midst of the pandemic, the Virginia Rent Relief Program (“RRP”) was implemented by the General Assembly in 2020 in order to support and ensure housing stability across the Commonwealth.⁸⁵ The program was designed to provide financial assistance for rent payments past due beginning April 1, 2020, and onward, with the opportunity for renewal based on funding availability and the household’s need for additional assistance and continued eligibility.⁸⁶ Virginia’s program became a model for other states, both in its design and its delivery of support.⁸⁷ In the summer of 2021, California Representative Maxine Waters introduced legislation that followed Virginia’s model, allowing landlords to apply without tenant approval for federal aid to cover back rent they are owed.⁸⁸

By July 2021, Virginia led the nation in delivering rent relief as it distributed more than 50% of funds received from the federal government.⁸⁹ The RRP had given away almost half of the \$524 million provided to the state in the form of federal rent relief funds—more than any other state, according to the U.S. Treasury—helping between 6,000 and 9,000 families each month in the first half of 2021.⁹⁰ The program's unique structure enabled both landlords

⁸³ Sarah Rankin & Ben Finley, *In Democrats' Budget: Eviction Protection, Utility Relief*, U.S. NEWS (Aug. 4, 2021), <https://www.usnews.com/news/best-states/virginia/articles/2021-08-04/in-democrats-budget-eviction-protection-utility-relief>.

⁸⁴ Eugene Daniel, *US Treasury Data Shows Virginia's Success in Distributing Rental Relief Money*, 13 NEWS NOW (Sept. 29, 2021), <https://www.13newsnow.com/article/news/health/coronavirus/virginia-rental-assistance-federal/291-2c316d72-e60a-4e68-9c6b-c2e551b5f6e5>.

⁸⁵ *Virginia Rent Relief Program (RRP)*, VA. DEP’T HOUS. & CMTY. DEV., <https://www.dhcd.virginia.gov/rmrp> (last visited Nov. 14, 2021).

⁸⁶ *Id.*

⁸⁷ Jill R. Shah, *Virginia has Delivered More Rent Relief Than any Other State*, BLOOMBERG (Sept. 9, 2021), <https://www.bloomberg.com/news/articles/2021-09-09/virginia-winning-race-for-rental-aid-disbursement-n-y-lagging>.

⁸⁸ Kristian Hernandez, *Congress Might Allow Frustrated Landlords to Seek Rent Relief*, PEW CHARITABLE TRS. (Sept. 17, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/state-line/2021/09/17/congress-might-allow-frustrated-landlords-to-seek-rent-relief>.

⁸⁹ Shah, *supra* note 87.

⁹⁰ Ned Oliver, *Virginia Leads Nation in Distribution of Federal Rent Relief*, VA. MERCURY (Sept. 7, 2021), <https://www.virginiamercury.com/2021/09/07/virginia-leads-nation-in-distribution-of-federal-rent-relief/>.

and tenants to apply for relief, and rental payments went directly to the landlord.⁹¹

Virginia's RRP sought to prevent evictions on the basis of nonpayment of rent by ensuring that landlords continued to receive their monthly rental payments.⁹² The program effectively aligned with the eviction moratorium that was in place through the federal government and which was based on Centers for Disease Control and Prevention ("CDC") guidelines.⁹³ Virginia's RRP was more comprehensive than the CDC eviction moratorium, which prohibited evictions only for nonpayment of rent and related fees, not other causes, and did not prohibit landlords from charging fees or penalties, nor forgive unpaid rent amounts.⁹⁴ The CDC order provided penalties for landlords who violated the order and a penalty of perjury for tenants who falsely declared eligibility.⁹⁵ The CDC eviction moratorium ended on July 31, 2021, but it extended a portion of the protections for areas where COVID-19 transmissions are high until October 3, 2021.⁹⁶ By August 2021, however, the CDC-directed eviction moratorium had been challenged in state courts.⁹⁷ A case brought by the Alabama Association of Realtors was heard in the U.S. Supreme Court.⁹⁸ The Supreme Court vacated the CDC's latest eviction moratorium.⁹⁹

Virginia's pandemic-related eviction moratorium will stay in effect until July 2022.¹⁰⁰ Landlords are still required to follow the RRP guidelines to inform tenants about rental assistance or to apply on their behalf.¹⁰¹ Evictions may proceed only if the tenant is denied from the program, not approved within 45 days of a completed action, or 14 days after any subsequent action,

⁹¹ *The Virginia Rent Relief Program*, VA. HOUS. (2019), <https://www.vhda.com/BusinessPartners/PropertyOwnersManagers/Pages/rentrelief.aspx> (last visited Nov. 11, 2021).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ MAGGIE MCCARTY, ET AL., CONGRESSIONAL RESEARCH SERVICE, *THE CDC'S FEDERAL EVICTION MORATORIUM 2* (2021).

⁹⁵ *Id.*

⁹⁶ CDC, *CDC ISSUES EVICTION MORATORIUM ORDER IN AREAS OF SUBSTANTIAL AND HIGH TRANSMISSION 1* (2021).

⁹⁷ Marissa J. Lang, *The National Eviction Moratorium is Officially Dead. In Some Parts of the Country, It Has Been For a While*, WASH. POST (Aug. 26, 2021), <https://www.washingtonpost.com/dc-md-va/2021/08/26/evictions-are-increasing-judges-grow-tired-national-moratorium/>.

⁹⁸ *Ala. Ass'n of Realtors v. Dep't of Health and Hum. Servs.*, 141 S.Ct. 2485, 2488 (2021) (per curiam).

⁹⁹ *Id.* at 2490.

¹⁰⁰ Tamica Jean-Charles, *Virginia Extended its COVID-19 Eviction Protections Until June 2022*, PROGRESS-INDEX (Aug. 17, 2020), <https://www.progress-index.com/story/news/2021/08/17/virginia-eviction-protection-extended-next-summer-whos-eligible/8160245002/>.

¹⁰¹ *Id.*

or if the relief program runs out of money.¹⁰² The 60-day postponement, in which renters can postpone an eviction case with proof of reduced income for up to two months, expired on September 30, 2021.¹⁰³

B. Adjustments to the Virginia Residential Landlord and Tenant Act

Five separate items of legislation addressed the Virginia Residential Landlord and Tenant Act, providing protection for tenants from rental barriers, exclusions from the rental property, and protections during emergencies such as the ongoing pandemic.¹⁰⁴ Each bill (HB 1889, HB 1981, HB 2014, HB 2229, and HB 2249) revised essential elements of the Virginia Residential Landlord and Tenant Act in order to better prevent evictions.¹⁰⁵

HB 1889 extended the number of days, from 5 to 14, that a small landlord, classified as a landlord owning four or fewer rental properties, must wait after serving written notice of the intention to terminate the rental agreement for nonpayment of rent.¹⁰⁶ Larger landlords are now required to serve written notice informing the tenant of the total amount due and owed.¹⁰⁷ They must also offer the tenant a payment plan under which the tenant must pay the total amount in equal monthly installments within either six months or the time remaining under the rental agreement, whichever is the lesser of the two.¹⁰⁸ The legislation also clarified that a tenant is not precluded from participating in any other rent relief programs available to the tenant through a nonprofit organization or under the provisions of a federal, state, or local law, regulation, or action.¹⁰⁹ The extensions of time following an eviction notice and the opportunity to enter into a payment plan or to seek rent relief assistance have been essential for tenants, giving them additional opportunities to locate aid agencies, file paperwork, and obtain financial support.¹¹⁰

In an effort to address concerns about the spread of communicable disease, HB 1981 granted tenants reasonable justification for declining to permit a

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ H.D. 1889, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021); H.D. 1981, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021); H.D. 2014, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021); H.D. 2229, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021); H.D. 2249, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021).

¹⁰⁵ H.D. 1889, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021); H.D. 1981, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021); H.D. 2014, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021); H.D. 2229, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021); H.D. 2249, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021).

¹⁰⁶ H.D. 1889, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021).

¹⁰⁷ H.D. 5064, 2020 Gen. Assemb., 1st Spec. Sess. (Va. 2020).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *How to Put Off the Eviction Process If You Need More Time*, LSJNLAW, <https://www.lsnjlaw.org/Housing/Landlord-Tenant/Evictions/Pages/Put-Off-Eviction.aspx> (last visited Nov. 14, 2021).

landlord or managing agent to exhibit the rental property for sale or lease if the tenant identified concerns for their own health or the health of any authorized occupant.¹¹¹ This allowance is available only in the midst of a state of emergency declared by the Governor in response to the public health threat of communicable diseases.¹¹² The bill also gives tenants the ability to decline access to the property for non-emergency repairs or services.¹¹³ The tenant is required to provide written notice to the landlord when such concerns exist and also to provide a video tour of the rental property, should it be for sale or lease.¹¹⁴ The landlord maintains rights to access the unit in emergency situations, or in cases of non-emergency repairs and maintenance, by providing at least seven days' written notice and by wearing appropriate personal protective equipment as required by state law.¹¹⁵ Prior to the passage of this legislation, tenants had limited control over the ability to shelter safely in their homes.¹¹⁶

Unless the reasons for eviction are other than the nonpayment of rent, HB 2014 prohibits a landlord from accepting full payment of rent from a tenant and then continuing to proceed with an eviction.¹¹⁷ This prohibition also includes the collection of damages, money judgment, award of attorney fees, and court costs.¹¹⁸ Prior to the bill's passage, a landlord could both accept full or partial payment of all rent and also receive an order of possession pursuant to an unlawful detainer action and proceed with eviction.¹¹⁹ The legislation protects tenants who successfully address their debt.

Another legislative action, HB 2229, serves to protect tenant rights in cases of foreclosure upon the landlord.¹²⁰ This legislation provides that if a dwelling unit used as a single-family residence is foreclosed upon and is occupied by a tenant on the date of the foreclosure sale, the rental agreement terminates only if the new owner intends to occupy that unit as his primary residence.¹²¹ The tenant would then be required to vacate on a date not less than 90 days after receiving written notice.¹²² However, if the new owner acquires the unit for any other purpose, the owner of the property is subject to the existing

¹¹¹ H.D. 1981, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021)

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ H.D. 2014, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ H.D. 2229, 2021 Gen. Assemb., 1st Spec. Sess. (Va 2021).

¹²¹ *Id.*

¹²² *Id.*

rental agreement and is required to permit the tenant to remain in occupancy for the remainder of the term of the lease.¹²³ Prior to the bill's passage, the foreclosure sale also served as a termination of the rental agreement by the owner, but the tenant was permitted to remain in possession of the unit as a month-to-month tenant on the terms of the terminated rental agreement and until the new owner gave a notice of termination for that month-to-month tenancy.¹²⁴ This legislation ensures that tenants do not suffer loss of shelter because of a landlord's failure to make mortgage payments.

For low-income communities, the initial costs of acquiring a rental property are extremely prohibitive and serve to keep many families out of stable housing opportunities.¹²⁵ HB 2249 now prohibits a landlord from requiring a tenant to pay a security deposit, insurance premiums for damage insurance, and insurance premiums for renter's insurance prior to the start of the tenancy that exceed the amount of two months' periodic rent.¹²⁶ However, a landlord is still permitted to add a monthly amount as additional rent to recover additional costs of the renter's insurance premiums.¹²⁷ Additionally, tenants who provide damage insurance in lieu of a security deposit are no longer restricted to a narrow parameter of acceptable insurance.¹²⁸ This legislation expands housing opportunities for low-income renters by alleviating prohibitive fees prior to the start of the rental agreement.

C. Additional Housing Bills

Protections for the disabled were also a part of the 2021 General Assembly's focus. HB 1971 provides that for the purposes of the Virginia Fair Housing Law, landlords who receive a request for accessible parking to accommodate a disability shall treat such requests as requests for reasonable accommodation.¹²⁹ Prior to this bill's passage, reasonable accommodations were limited to the rental property itself.

HB 2175 / SB 1327 provides protections for individuals living in manufactured home parks.¹³⁰ These protections include restricting the circumstances under which a court may order a person's primary residence to be sold

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *See generally* PEW CHARITABLE TRUSTS., AMERICAN FAMILIES FACE A GROWING RENT BURDEN (2018) (discussing the financial burdens of initial renting and owning a home).

¹²⁶ H.D. 2249, 2021 Gen. Assemb., 1st Spec. Sess. (Va. 2021).

¹²⁷ H.D. 2249, 2021 Gen. Assemb., 1st Spec. Sess. (Va. 2021).

¹²⁸ *Id.*

¹²⁹ H.D. 1971, 2021 Gen. Assemb., 1st Spec. Sess. (Va. 2021).

¹³⁰ *See generally* H.D. 2175, 2021 Gen. Assemb., Reg. Sess. (Va. 2021); S. 1327, 2021 Spec. Sess. (Va. 2021).

in order to enforce a judgment lien.¹³¹ The legislation also requires localities to incorporate strategies to promote manufactured housing as a source of affordable housing into their comprehensive plans.¹³² Additionally, the Director of Housing and Community Development is now required to develop a statement of tenant rights and responsibilities explaining, in plain language, tenants' rights and responsibilities under the Virginia Manufactured Home Lot Rental Act.¹³³ The Department of Housing and Community Development is also required to convene a stakeholder group to assist in the development of the statement of tenant rights and responsibilities.¹³⁴

This new legislation also now prohibits a trustee from selling a property in a foreclosure sale without receiving an affidavit signed by the party that provided the notice that confirms that the notice was sent to the owner, along with a copy of that notice attached to the affidavit.¹³⁵ It increases the notice period for a foreclosure sale from 14 to 60 days and requires such notice to be accompanied by information regarding housing counseling.¹³⁶ Landlords of manufactured home parks are now required to provide those tenants who own their manufactured home with information about housing assistance and legal aid organizations.¹³⁷ This legislation elevates the responsibilities of state and local agencies in establishing regulations and stability for manufactured home parks, which are often a vital source of affordable housing.

In an attempt to address and alleviate housing shortages in burgeoning population centers, HB 2053 directs the Department of Housing and Community Development to convene a stakeholder advisory group to evaluate the construction of internal, attached, and detached accessory housing units.¹³⁸ The work of the stakeholder advisory group is a strategy for addressing Virginia's growing demand for affordable and market-rate housing.¹³⁹ The stakeholder advisory group is expected to report its findings and recommendations, including any legislative recommendations, to the Director of the Department, the Secretary of Commerce and Trade, the Commissioners of the Virginia Housing Development Authority, and the Virginia Housing Commission by November 1, 2021, with the expectation that its recommendations be used to develop necessary policy or legislation to address housing

¹³¹ H.D. 2175, 2021 Gen. Assemb., Reg. Sess. (Va. 2021); S. 1327, 2021 Spec. Sess. (Va. 2021).

¹³² H.D. 2175, 2021 Gen. Assemb., Reg. Sess. (Va. 2021); S. 1327, 2021 Spec. Sess. (Va. 2021).

¹³³ H.D. 2175, 2021 Gen. Assemb., Reg. Sess. (Va. 2021); S. 1327, 2021 Spec. Sess. (Va. 2021).

¹³⁴ H.D. 2175, 2021 Gen. Assemb., Reg. Sess. (Va. 2021); S. 1327, 2021 Spec. Sess. (Va. 2021).

¹³⁵ H.D. 2175, 2021 Gen. Assemb., Reg. Sess. (Va. 2021); S. 1327, 2021 Spec. Sess. (Va. 2021).

¹³⁶ H.D. 2175, 2021 Gen. Assemb., Reg. Sess. (Va. 2021).

¹³⁷ *Id.*

¹³⁸ H.D. 2053, 2021 Gen. Assemb., 2021 Sess. (Va. 2021).

¹³⁹ *Id.*

shortages.¹⁴⁰ This legislation helps Virginia to proceed more deliberately and strategically as agencies evaluate housing shortages in fast-growing localities.

HB 2072 requires the Virginia Housing Development Authority to report recommendations to the Governor, the Chairs of the House Committee on General Laws and the Senate Committee on General Laws and Technology, and the Virginia Housing Commission for the creation of a Virginia Good Neighbor Next Door program, similar to the Good Neighbor Next Door program administered by the U.S. Department of Housing and Urban Development.¹⁴¹ This program will provide financial incentives for law-enforcement officers, firefighters, emergency medical services personnel, and teachers to purchase homes within designated revitalization areas in the localities in which they are employed.¹⁴²

In SB 1197, a Virginia housing opportunity tax credit was established, equal to the amount of the federal low-income housing tax credit allocated or allowed by the Virginia Housing Development Authority, to a low-income building that is eligible for the federal credit.¹⁴³ The credit is nonrefundable and can be carried forward for up to five years.¹⁴⁴ The federal program, administered in Virginia by Virginia Housing, encourages the development of affordable rental housing by providing owners a federal income tax credit.¹⁴⁵ It also provides an incentive for private investors to participate in the construction and rehabilitation of housing for low-income families.¹⁴⁶ The new state program known as the Virginia Opportunity Tax Credit Program is a low-income housing tax credit (“LIHTC”) that contributes an amount to a qualified project that is equal to the amount received from the federal LIHTC program.¹⁴⁷ According to the National Low Income Housing Coalition, the Virginia Opportunity Tax Credit Program is designed to address an acute lack of affordable housing in the state which was, in 2018, facing a shortage of 400,000 units.¹⁴⁸ Through this program, Virginia joins 18 other states that

¹⁴⁰ H.D. 2053, 2021 Gen. Assemb., 2021 Sess. (Va. 2021).

¹⁴¹ H.D. 2072, 2021 Gen. Assemb., 1st Spec. Sess. (Va. 2021).

¹⁴² *Id.*

¹⁴³ S. 1197, 2021 Gen. Assemb., 1st Spec. Sess. (Va. 2021).

¹⁴⁴ *Id.*

¹⁴⁵ *Low Income Housing Tax Credit Program*, VA. HOUS.,

<https://www.vhda.com/BusinessPartners/MFDevelopers/LIHTCProgram/Pages/LIHTCProgram.aspx> (last visited Nov. 11, 2021).

¹⁴⁶ *Id.*

¹⁴⁷ Alyssa Carducci, et al., *New Virginia Opportunity Tax Credit Program*, JDSUPRA (Apr. 5, 2021), <https://www.jdsupra.com/legalnews/new-virginia-opportunity-tax-credit-9623372/>.

¹⁴⁸ *Id.*

have enacted similar low-income tax credit programs to alleviate the housing shortage crisis.¹⁴⁹

D. Virginia Fair Housing Law

Other housing bills addressed ongoing concerns with discrimination, affordability, and community building. Under the Virginia Fair Housing Law, HB 2046 prohibits any locality, its employees, or its appointed commissions from discriminating in the application of local land use ordinances or guidelines, or in the permitting of housing developments, on the basis of race, color, religion, national origin, sex, elderly age, familial status, source of funds, sexual orientation, gender identity, military status, or disability.¹⁵⁰ The legislation also prohibits discrimination in the granting of permits for housing developments when those developments contain or are expected to contain, affordable housing units. In this context, affordable housing units are identified as those intended for the occupancy of families or individuals whose incomes are at or below 80% of the median income of the area where the housing development is located.¹⁵¹ The bill provides that it shall not be a violation of the Virginia Fair Housing Law if land use decisions or decisions relating to the permitting of housing developments are based upon considerations of limiting high concentrations of affordable housing.¹⁵² The bill also requires the Fair Housing Board, after determining the existence of an unlawful discriminatory housing practice and after consultation with the Attorney General, to immediately refer the matter to the Attorney General for civil action.¹⁵³

The items of recent legislation collectively seek to unwind the damage of discriminatory policies, the exploitation of poverty, and the need for expansion of affordable housing opportunities. While the pandemic exposed critical areas of housing instability and the various vulnerabilities of low-income tenants, the presence of targeted structural discrimination and its accumulating impacts existed long before the need to “shelter at home” highlighted the cracks within the systems of housing in Virginia.

IV. CONTINUED LEGISLATIVE NEEDS

As the General Assembly continues to examine ongoing and emerging housing needs in the Commonwealth, additional policy and legislative changes are expected. While the pandemic spurred action around issues such

¹⁴⁹ *Id.*

¹⁵⁰ H.D. 2046, 2021 Gen. Assemb., 1st Spec. Sess. (Va. 2021).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

as rental assistance programs, it also exposed areas of significant vulnerability. Critical among these areas of vulnerability are the lack of full language access, tenants' limitations on effective legal counsel, the systemic structures of racist policies long embedded in legal codes, and the challenges of affordable housing, particularly in areas of high need.

Language access emerged as a point of crisis for many vulnerable communities that faced challenges in identifying and using available resources. Without access to information about rental assistance programs, tenants' rights, and eviction prevention options, marginalized communities have been disproportionately affected by increasingly restrictive housing options. Solutions for increasing language access will likely be a part of several legislative proposals.

Affordable housing is similarly an important point of crisis in several localities throughout Virginia. As competition for a limited housing market soared during the pandemic, rental rates and property prices restricted affordable options even further and widened existing disparities. Addressing the scarcity of affordable housing continues to be a legislative challenge.

These and other housing concerns will be central to discussions within the Virginia General Assembly. As research and data demonstrate, housing is intrinsically linked to all other elements of economic security and growth, health, education, public safety, and meaningful access to necessary resources. Addressing issues of economic disparities, as well as the policies and practices of discrimination, begins—literally—at home.

