

1990 EDITION - FIRST AMENDMENT
EFFECTIVE MARCH 1, 1993

VIRGINIA UNIFORM STATEWIDE BUILDING CODE

VOLUME II BUILDING MAINTENANCE CODE



COMMONWEALTH OF VIRGINIA
BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

\$3.00

1990 EDITION - FIRST AMENDMENT

**VIRGINIA UNIFORM STATEWIDE BUILDING CODE
VOLUME II - BUILDING MAINTENANCE CODE**

VR 394-01-22

Adopted by the State

Board of Housing and Community Development

Effective March 1, 1993

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and Community Development**

**Issued by the
Division of Building Regulation
Department of Housing and Community Development
501 North Second Street
Richmond, Virginia 23219-1321**

PREFACE

The Code of Virginia directs the Board of Housing and Community Development to adopt and promulgate a Uniform Statewide Building Code (USBC) to provide mandatory, statewide, uniform regulations for the construction, maintenance, and use of buildings and structures. To satisfy this mandate the Board has developed two volumes of the USBC; Volume I regulates new construction, and Volume II regulates the maintenance of existing buildings and structures. Volume I must be complied with when a building or structure is constructed, altered, enlarged, repaired or converted to another use. Volume II requires that all existing buildings and structures be properly maintained to protect the occupants from the health and safety hazards that might arise from improper maintenance or use of the building.

The Code of Virginia also requires that the Board adopt several other regulations to address specific forms of construction. Each of these regulations, and their relationship to the USBC, are listed below.

- Virginia Industrialized Building and Manufactured Home Safety Regulations (IBR): Supersedes the USBC for the design and construction of industrialized buildings and manufactured homes. The USBC regulates the placement of these structures at the site, such as utility connections, certificates of occupancy, building permits, etc.
- Virginia Amusement Device Regulations (VADR): Provides for the administration and enforcement of uniform, statewide standards for the construction, maintenance, operation, and inspection of portable and fixed amusement devices. The VADR is intended to supplement those provisions of the USBC which are applicable to the regulation of amusement devices.
- Virginia Liquefied Petroleum Gas Regulations (LPGR): The LPGR is a mandatory, statewide, uniform regulation that must be complied with in the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck or tank trailer, and utilizing LP gases for fuel purposes, and for odorization of LP gases. Any provisions of the USBC which are applicable to this issue supersede the LPGR.

The Code of Virginia also requires the Board to adopt a mandatory Statewide Fire Prevention Code (SFPC). The SFPC provides statewide standards to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems and structures, and the unsafe storage, handling and use of substances, materials and devices, including explosives and blasting agents. Local governments are authorized to adopt fire prevention regulations that are more restrictive or more extensive in scope than the SFPC provided such regulations do not affect the manner of construction, or the materials to be used in the erection, alteration, repair, or use of a building or structure. Any provision of the SFPC which is in conflict with the USBC (Volume I or II), or any other applicable laws of the Commonwealth, is invalid.

The Code of Virginia mandates local government to enforce Volume I of the USBC and the VADR. Enforcement of Volume II and the SFPC by local governments is optional. The IBR is administered by the Department of Housing and Community Development. Local government regulates the placement of industrialized buildings and manufactured homes through enforcement of the USBC. The State Fire Marshal is authorized to enforce the SFPC in those jurisdictions in which the local governments do not enforce the code. All of the regulations contain enforcement procedures that must be used by the enforcing agency. An administrative appeals system is also established in each regulation to resolve any disagreements that may occur between the enforcing agency and the aggrieved party.

The technical requirements of Volume I, Volume II and the SFPC are based on the appropriate national model code published by the Building Officials and Code Administrators, International (BOCA). For example, the technical provisions of the USBC Volume I are based on the BOCA National Building Code. Provisions are made for modifications to the model codes or standards when alternate means will provide an equivalent level of compliance.

USE OF NATIONALLY RECOGNIZED MODEL CODES AND STANDARDS

The Board bases the technical requirements of the USBC on nationally accepted model codes and standards. It makes as few amendments as

possible. The purpose is to benefit the citizens of Virginia by promoting efficiency in the building industry, many aspects of which are interstate in nature. For this reason, the Board encourages anyone who believes that a technical amendment is needed to submit the proposal directly to the organization which publishes the affected model code or standard. Amendments made by such organizations will then be considered for inclusion in future editions of the USBC. Information on how to present proposals to the model code and standards organization is available from:

Code Development Office
Department of Housing and Community Development
501 North Second Street
Richmond, Virginia 23219-1321
Tel. (804) 371-7170

FUTURE EDITIONS

State law requires the Board of Housing and Community Development to keep the USBC up-to-date. The Board plans to do this by updating the USBC every three years when new editions of the model codes become publicly available. Suggestions for improvements are invited at any time. They should be addressed to the Board of Housing and Community Development in care of the Code Development Office.

INTERPRETATIONS

In case of doubt as to the meaning of any specific provision of the Building Maintenance Code, a request for an interpretation may be made to the State Building Code Technical Review Board. Request forms are available from:

Code Development Office
Department of Housing and Community Development
501 North Second Street
Richmond, Virginia 23219-1321
Telephone (804) 371-7170

USER ASSISTANCE

Enforcement of the Virginia USBC is the responsibility of local government. The local building department should be consulted for information and assistance. Further information may also be available from:

Code Development Office
Department of Housing and Community Development
501 North Second Street
Richmond, Virginia 23219
Telephone (804) 371-7170

Copies of the model codes and standards referenced by the Building Maintenance Code are available for public inspection in the Code Enforcement Office. They may be purchased through:

Building Officials and Code Administrators International, Inc.
4051 West Flossmoor Road
Country Club Hills, Illinois 60478-5795
Telephone (708) 799-2300

NOTE TO UNIFORM STATEWIDE BUILDING CODE USERS

This edition of the USBC contains, for the benefit and convenience of code users, a broken vertical line in the outside margins of some pages.

The line indicates amendments effective March 1, 1993.

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ARTICLE 1.
ADOPTION, ADMINISTRATION AND ENFORCEMENT.

SECTION 100.0. GENERAL.

100.1. Title: These regulations shall be known as Volume II - Building Maintenance Code of the 1990 Edition of the Virginia Uniform Statewide Building Code (USBC). Except as otherwise indicated, Building Maintenance Code or code, shall mean Volume II - Building Maintenance Code of the 1990 Edition of the USBC.

Note: See Volume I - New Construction Code of the USBC for regulations applicable to new construction.

100.2. Authority: The Building Maintenance Code is adopted according to regulatory authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6, Title 36, Code of Virginia.

100.3. Adoption: The Building Maintenance Code was adopted by order of the Board of Housing and Community Development on November 19, 1990. This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

100.4. Effective date: The Building Maintenance Code shall become effective on March 1, 1991.

100.5. Effect on other codes: The Building Maintenance Code shall apply to all buildings and structures as defined in the Uniform Statewide Building Code Law, Chapter 6, Title 36 of the Code of Virginia. The Building Maintenance Code supersedes all building maintenance codes and regulations of the counties, municipalities, political subdivisions and state agencies that have been or may be enacted or adopted, except as modified by Section 100.6, below.

Note: This will not prevent adoption in accordance with Chapter 1 of Title 15.1 of the Code of Virginia or other special or general legislation, or other requirements by local governments which do not affect the manner of construction or materials to be used in the erection, alteration, repair, maintenance or use of a building or

structure.

100.6. Application to pre-USBC buildings: Buildings or portions thereof constructed, altered, converted or repaired before the effective date of the initial edition of the USBC shall be maintained in compliance with the Building Maintenance Code. No provisions of the Building Maintenance Code shall require alterations to buildings or equipment unless an unsafe or unhealthy condition exists.

100.6.1. Hotels and motels: Pre-USBC hotels and motels shall also comply with applicable provisions of Section 109.0.

100.6.2. Nursing Homes and Homes for Adults: Pre-USBC nursing homes licensed by the Virginia Department of Health, and pre-USBC Homes for Adults licensed by the Virginia Department of Social Services shall also comply with applicable provisions of Section 109.0.

100.7. Application to post-USBC buildings: Buildings or portions thereof that were subject to the USBC when constructed, altered, converted or repaired shall be maintained in compliance with the Building Maintenance Code and with the edition of the USBC that was in effect at that time.

100.7.1. Hotels and motels: Post-USBC hotels and motels shall also comply with applicable provisions of Section 109.0.

100.7.2. Nursing homes and Homes for Adults: Post-USBC nursing homes licensed by the Virginia Department of Health, and post-USBC Homes for Adults licensed by the Virginia Department of Social Services shall also comply with applicable provisions of Section 109.0.

100.8. Exemptions for certain equipment: The provisions of the Building Maintenance Code shall not apply to equipment installed by a provider of publicly regulated utility services, or to electrical equipment used for radio and television transmission. The exempt equipment shall be under the exclusive control of the public service agency and located on property by established rights.

Exception: Buildings or service equipment associated with the exempt equipment.

100.9. Exemptions for farm structures: Farm structures not used for residential purposes shall be exempt from the provisions of the Building Maintenance Code.

Exception: Farm structures lying within a flood plain or in a mudslide-prone area shall be subject to floodproofing regulations or mudslide regulations, as applicable.

100.10. Purpose: The purpose of the Building Maintenance Code is to ensure public safety, health and welfare through proper building maintenance and use and continued compliance with minimum standards of building construction, energy conservation, water conservation, and physically handicapped and aged accessibility. Proper building maintenance shall be deemed to include the maintenance and inspection of building equipment defined by § 36-97(13) of the Code of Virginia.

SECTION 101.0. REQUIREMENTS.

101.1. Adoption of model code: The following model code, as amended by Sections 101.2 and 101.3, is hereby adopted and incorporated in the Building Maintenance Code.

THE BOCA NATIONAL PROPERTY MAINTENANCE CODE/1990
EDITION

Published by:

Building Officials and Code Administrators International, Inc.
4051 West Flossmoor Road
Country Club Hills, Illinois 60478-5795

101.2. Administrative and enforcement amendments to the referenced model code: All requirements of the referenced model code and of standards referenced therein that relate to administrative and enforcement matters are deleted and replaced by Article 1 of the Building Maintenance Code.

101.3. Other amendments to the referenced model code: The amendments noted in Addendum 1 shall be made to the specified

articles and sections of the BOCA National Property Maintenance Code/1990 Edition for use as part of this code.

101.4. Limitation of application of model code: No provision of the model code may be used to require alterations to the design or equipment of any portion of a building that was subject to the USBC when constructed, altered or converted as to use group, and which is occupied in accordance with the certificate of occupancy issued under the applicable edition of the USBC. In the application of the model code to other buildings, no requirement of the current edition of Volume I, New Construction Code of the USBC shall be exceeded.

SECTION 102.0. LOCAL ENFORCING AGENCY.

102.1. Enforcement by local governments: Any local government may, after official action, enforce the Building Maintenance Code, or any portion of the code. The local governing body may assign responsibility for enforcement of the Building Maintenance Code, or any portion thereof, to a local agency or agencies of its choice. The terms "enforcing agency" and "code official" are intended to apply to the agency or agencies to which responsibility for enforcement has been assigned. The terms "building official" or "building department" apply only to the local building official or building department.

102.2. Right of inspection: The local governing body may inspect existing buildings to enforce the Building Maintenance Code, as authorized by § 36-105 of the Code of Virginia.

102.3. Interagency coordination: When enforcement of any portion of the Building Maintenance Code is assigned to an agency other than the building department, that agency shall coordinate its reports of inspection with the building department. All required alterations, repairs, installations or construction shall be subject to the building permit and certificate of use and occupancy provisions of Volume I of the USBC.

102.4. Code official: Each local enforcing agency shall have an executive official in charge, hereinafter referred to as the code official.

102.4.1. Appointment: The code official shall be appointed by the local

government.

102.5. Qualifications of local enforcing agency personnel: The local government shall establish qualifications for the code official and technical assistants adequate to insure proper administration and enforcement of the Building Maintenance Code.

Note: It is recommended that the code official have at least five years of building maintenance related experience. Consideration should be given to the use of certification programs offered by the Department of Housing and Community Development.

102.6. Relief from personal responsibility: The local enforcing agency personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees. The code official or the code official's subordinates shall not be personally liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of the USBC as a result of any act required or permitted in the discharge of official duties while assigned to the enforcing agency as employees, whether or not said costs are covered by insurance. Any suit instituted against any officer or employee because of an act performed by such officer or employee in the discharge of official duties and under the provisions of the Building Maintenance Code may be defended by the enforcing agency's legal representative.

102.7. Control of conflict of interest: The minimum standards of conduct for officials and employees of the enforcing agency shall be in accordance with the provisions of the Virginia Comprehensive Conflict of Interest Act.

102.8. Assistance by State: Upon notification of appointment of a code official, the Professional Services Office shall advise the official of all services offered and will keep the official continually informed of developments affecting the code and its interpretation and administration.

SECTION 103.0. DUTIES AND POWERS OF THE CODE OFFICIAL.

103.1. General: The code official shall enforce the provisions of the Building Maintenance Code as provided herein and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

Note: Section 36-105 of the Code of Virginia provides that fees may be levied by the local governing body in order to defray the cost of enforcement and appeals.

103.2. Notices and orders: The code official shall issue all necessary notices or orders to ensure compliance with the requirements of this code for the health, safety and general welfare of the public.

103.3. Delegation of duties and powers: The code official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible that any powers and duties delegated are carried out in accordance with the code.

103.4. Modifications: The code official may grant modifications to any of the provisions of this code upon application by the owner or the owner's agent provided the spirit and intent of the Building Maintenance Code are observed and public health, welfare, and safety are assured. A copy of the application for a modification and a copy of the final decision of the code official shall be kept in the permanent records of the enforcing agency.

103.5. Unsafe conditions not related to maintenance: When the code official finds a condition that constitutes a serious and dangerous hazard to life or health in a building which was constructed, altered, converted, or repaired before the effective date of the initial edition of the USBC, and when such condition was not caused by faulty maintenance, or by failure to comply with the applicable state and local regulations that were in effect at the time, the official may order the minimum changes needed to remedy the hazardous condition.

Note: The Building Maintenance Code does not generally provide for retrofitting existing buildings. However, conditions may exist in older buildings, because of faulty design or equipment, that constitute

such serious and dangerous hazards that correction is necessary to protect life and health. It is not the intent of this section that such changes comply fully with the requirements of the current edition of the USBC. Only those changes that are needed to remedy the serious and dangerous hazards to life or health may be required by the code official. Reference is also made to Section 103.2 of the administrative provisions of Volume 1 of the USBC, which provides authority for modifications to be issued for alternate means to be used that provide the same level of safety.

103.6. Enforcing agency records: The code official shall keep records of reports of inspections, notices and orders issued and such other matters as directed by the local government. Records may be disposed of in accordance with the provisions of the Virginia Public Records Act, (a) after one year in the case of buildings under 1,000 square feet in area and one and two family dwellings of any area, and (b) after three years in the case of all other buildings.

SECTION 104.0. VIOLATIONS.

104.1. Code violations prohibited: Buildings and equipment in violation of the provisions of this code shall not be used except as approved by the code official.

104.2. Notice of violation: The code official shall serve a notice of violation on the person responsible for maintenance or use of a building in violation of the provisions of this code. Such order shall reference the code section that serves as a basis for the violation and specify a time limit for the discontinuance or abatement of the violation. Such notice of violation shall be in writing, and be served by either delivering a copy of the notice to such person by mail to the last known post office address, delivered in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place at the entrance door or accessway if such person cannot be found on the premises.

104.3. Prosecution of violation: If the notice of violation is not complied with, the code official shall request, in writing, the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation; or to require the removal or

termination of the use of the building in violation of the provisions of this code.

104.4. Violation penalties: Violations of this code are a misdemeanor in accordance with § 36-106 of the Code of Virginia, and upon conviction, may be punished by a fine of not more than \$2,500.

104.5. Abatement of violation: Conviction of a violation of this code shall not preclude the institution of appropriate legal action to require correction or abatement of the violation or to prevent other violations or recurring violations of this code relating to maintenance and use of the building or premises.

104.6. Suspension or revocation of certificate of occupancy: The code official may suspend or revoke the certificate of occupancy for failure to correct repeated violations in apparent disregard for the provisions of the USBC.

SECTION 105.0. UNSAFE BUILDINGS.

105.1. General: This section shall apply to buildings and their equipment that fail to comply with the Building Maintenance Code through damage, deterioration, infestation, improper maintenance, or for other reasons, and thereby become unsafe, unsanitary, or deficient in adequate exit facilities, or which constitute a hazard or public nuisance, or are otherwise dangerous to human life, health or safety, or the public welfare. All such buildings or other structures declared by the code official to be a public nuisance or unfit for human habitation shall either be: made safe through compliance with this code, or be vacated and secured against public entry, or taken down and removed as determined by the code official. A vacant building, unsecured or open at door or window, may be deemed a fire hazard and unsafe within the meaning of this section.

105.2. Inspection of unsafe buildings: The code official shall examine any building reported as unsafe, and shall prepare a report to be filed in the records of the enforcing agency. In addition to a description of unsafe conditions found, the report shall include the use of the building, and nature and extent of damages, if any, caused by a collapse or failure.

105.3. Notice of unsafe buildings: If a building is found to be unsafe, the code official shall serve a notice to the owner, the owner's agent or person in control of the unsafe building. The notice shall specify the required repairs or improvements to be made to the building, or require the unsafe building, or portion of the building to be taken down and removed within a stipulated time. Such notice shall require the person notified to declare to the designated official without delay acceptance or rejection of the terms of the notice.

Note: Whenever possible, the notice of unsafe building should also be given to the tenants of the unsafe building.

105.4. Posting of unsafe building notice: If the person named in the notice of an unsafe building cannot be found, the notice shall be sent by registered or certified mail to the last known address of such person. A copy of the notice shall be posted in a conspicuous place on the premises. Such procedure shall be deemed the equivalent of personal notice.

105.5. Disregard of notice: If the person served with a notice of unsafe building refuses or neglects to comply with requirements of the notice to abate the unsafe condition, the code official may revoke the certificate of occupancy. In the case of a vacant building, including one vacated through revocation of the certificate of occupancy, the code official may cause the building to be closed through any available means.

105.6. Authority to vacate building: When in the opinion of the code official, there is actual and immediate danger of failure or collapse of a building or any part of a building which would endanger life; or when any building or part of a building has fallen and life is endangered by occupancy of the building; or when any other hazardous condition poses an immediate and serious threat to life; or when a building or other structure is declared a public nuisance, or unfit for human habitation, the code official may order the occupants to vacate the building. The code official shall post a notice at each entrance to such building that reads: "THIS STRUCTURE IS UNSAFE OR UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL". Upon the posting of the notice, no person shall enter such a building except upon authorization of the code

official for one of the following purposes: (i) to make the required repairs; (ii) to take the building down and remove it; or (iii) to make inspections.

105.7. Temporary safeguards and emergency repairs: When, in the opinion of the code official, there is immediate danger of collapse or failure of a building or any part of a building which would endanger life, or when a violation of this code results in a hazard that creates an immediate, serious and imminent threat to the life and safety of the occupants, the code official shall have the necessary work done to the extent permitted by the local government to make such building or part of the building temporarily safe, whether or not legal action to force compliance has begun.

105.8. Abatement or removal: Whenever the owner of a building or structure that has been deemed to be a public nuisance pursuant to Section 105.1 fails to comply with the requirements of the notice to abate, the code official may cause the building to be razed or removed.

Note: A local governing body may, after official action pursuant to § 15.1-29.21 or 15.1-11.2 of the Code of Virginia, maintain an action to compel a responsible party to abate, raze, or remove a public nuisance. If the public nuisance presents an imminent and immediate threat to life or property, then the governing body of the county, city or town may abate, raze, or remove such public nuisance, and a county, city or town may bring an action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance.

SECTION 106.0. APPEAL TO THE LOCAL BOARD OF BUILDING CODE APPEALS.

106.1. Grounds for appeal: The owner of a building or the owner's agent may appeal from a decision of the code official to the local Building Code Board of Appeals established under Volume I of the USBC within 21 calendar days after the notice is served when it is claimed that:

1. The code official has refused to grant a modification of the provisions of the code;

2. The true intent of this code has been incorrectly interpreted;
3. The provisions of this code do not fully apply;
4. The use of a form of compliance that is equal to or better than that specified in this code has been denied.

106.2. Form of application: Applications for appeals shall be submitted in writing to the Local Building Code Board of Appeals.

106.3. Notice of meeting: The board shall meet upon notice of the chairman or at stated periodic meetings if warranted by the volume of work. The board shall meet within 30 calendar days of the filing of an appeal.

106.4. Hearing open to public: All hearings shall be public in accordance with the Virginia Freedom of Information Act. The appellant, the appellant's representative, the code official of the jurisdiction and any other person whose interest may be affected by the matter on appeal, shall be given an opportunity to be heard.

106.5. Postponement of hearing: A quorum shall be more than 50% of the board. When a quorum of the board, as represented by members or alternates, is not present to consider a specific appeal, either the appellant, the building official or their representatives may, prior to the start of the hearing, request a single postponement of the hearing of up to 14 calendar days. A vote equivalent to a majority of the quorum of the board is required to reverse or modify the decision of the building official.

106.6. Form of decision, notification: Every action of the board on an appeal shall be by resolution. Certified copies shall be furnished to the appellant, to the building official, and to the code official.

106.7. Enforcement of decision: The code official shall take immediate action in accordance with the decision of the board.

SECTION 107.0. APPEAL TO THE STATE BUILDING CODE TECHNICAL REVIEW BOARD.

107.1. Appeal to the State Building Code Technical Review Board: Any person aggrieved by a decision of the local Board of Building Code

Appeals, who was a party to the appeal, may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 21 calendar days of receipt of the decision of the local appeals board by the aggrieved party.

107.2. Enforcement of decision: Upon receipt of the written decision of the State Building Code Technical Review Board, the code official shall take immediate action in accordance with the decision.

107.3. Court review: Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board shall be to the circuit court of original jurisdiction in accordance with the provisions of the Administrative Process Act, Article 4 of Chapter 1.1:1 of Title 9 of the Code of Virginia.

SECTION 108.0. DEMOLITION OF BUILDINGS.

108.1. Procedures for demolition: Whenever a building is to be demolished pursuant to any provision of this code, the work shall be carried out in compliance with the requirements of Volume I of the USBC.

SECTION 109.0. SPECIAL PROVISIONS.

109.1. General: The provisions of this section contain requirements for improving the safety of certain buildings by requiring the installation of materials or equipment not originally required. Unless otherwise noted, these provisions shall apply equally to both pre- and post-USBC buildings.

109.2. Hotels and motels: Existing hotels and motels shall comply with the provisions of this section.

109.2.1. Fire sprinkler system: An automatic sprinkler system meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment (effective date March 1, 1990), for Use Group R-1, shall be installed throughout existing hotels and motels by either March 1, 1997, or within seven years of the date upon which an adequate water supply

is made available to meet the needs of the suppression system, whichever is later.

Exceptions

1. Hotels and motels that are equipped throughout with an automatic sprinkler system.
2. Hotels and motels which are three stories or less in height.

109.2.2. Single and multiple station smoke detectors: Single and multiple station smoke detectors meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment, for Use Group R-1, shall be installed in existing hotels and motels by March 1, 1993.

Exception: Hotels and motels that are equipped throughout with single and multiple station smoke detectors.

109.3. Nursing homes and nursing facilities: Existing nursing homes and nursing facilities licensed by the Virginia Department of Health shall comply with the provisions of this section.

109.3.1. Automatic sprinkler system: An automatic sprinkler system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment (effective date October 1, 1990), for Use Group I-2, shall be installed in existing nursing homes and nursing facilities by January 1, 1993 as follows:

1. NFPA 13D Standard for one story buildings.
2. NFPA 13R Standard for buildings two or three stories in height.
3. NFPA 13 Standard for buildings four or more stories in height.

Exceptions

1. Nursing homes and nursing facilities which are equipped throughout with an automatic sprinkler system.
2. Nursing facilities consisting of certified long-term care beds located on the ground floor of general hospitals.

109.3.1.1. Quick response sprinklers: Quick response sprinklers shall be installed in patient sleeping rooms of buildings subject to Section 109.3.1.

109.3.1.2. Exceptions provided for: Buildings equipped throughout with an automatic fire sprinkler system meeting the requirements of NFPA 13 shall be permitted to use the exceptions provided in the USBC, Volume I, 1987 Edition, Third Amendment including, but not limited to, the following:

1. Section 502.3 (Area Increase)
2. Section 503.1 (Height Increase)
3. Section 610 (Use Group I-2 Areas)
4. Section 807 (Types and Location of Means of Egress)
5. Section 808 (Capacity of Egress Components)
6. Section 809 (Number of Exits)
7. Section 810 (Exit Access Passageways and Corridors)
8. Section 921 (Firestopping and Draftstopping)

109.3.2. Fire protective signaling system: A fire protective signaling system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, for Use Group I-2, shall be installed in existing nursing homes and nursing facilities by August 1, 1994.

Exception: Nursing homes and nursing facilities that are equipped throughout with an automatic fire protective signaling system.

109.3.3. Fire detection system: An automatic fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, for Use Group I-2, shall be installed in existing nursing homes and nursing facilities by August 1, 1994.

109.3.3.1. Fire detection system in existing sprinklered facilities: Nursing homes and nursing facilities that are exempt from Section 109.3.1 because of an existing automatic sprinkler system shall install a fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment, for Use Group I-2.

109.4. Homes for Adults: Existing Homes for Adults licensed by the Virginia Department of Social Services shall comply with this section.

109.4.1. Fire protective signaling system and fire detection system: A fire protective signaling system and an automatic fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in Homes for Adults by August 1, 1994.

Exception: Homes for Adults that are equipped throughout with a fire protective signaling system and an automatic fire detection system.

109.4.2. Single and multiple station smoke detectors: Battery or AC-powered single and multiple station smoke detectors meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in Homes for Adults by August 1, 1994.

Exception: Homes for adults that are equipped throughout with single and multiple station smoke detectors.

109.5. Identification of handicapped parking spaces: All spaces reserved for the use of handicapped persons shall be identified by an above grade sign with the bottom edge no lower than four feet nor higher than seven feet above the parking surface. Such signs shall be installed in accordance with applicable provisions of the current edition of Volume I of the USBC by January 1, 1993.

ADDENDUM 1.

AMENDMENTS TO THE BOCA NATIONAL PROPERTY MAINTENANCE CODE/1990 EDITION.

As provided in Section 101.3 of Volume II - Building Maintenance Code of the 1990 Edition of the USBC, the amendments noted in this Addendum shall be made to the BOCA National Property Maintenance Code/1990 Edition for use as part of the Building Maintenance Code.

ARTICLE 1. ADMINISTRATION AND ENFORCEMENT.

(A) Article 1, Administration and Enforcement, is deleted in its entirety and replaced with Article 1 of the Building Maintenance Code.

ARTICLE 3. ENVIRONMENTAL REQUIREMENTS.

- (A) Delete Section PM-301.1.
- (B) Delete Section PM-301.4.
- (C) Delete Section PM-301.5.
- (D) Delete Section PM-301.8.

Note: The above sections of this code have been deleted because the agency's Attorney General representative advises that they cannot be interpreted as building regulations under the current language of § 36-97(7) of the Code of Virginia.

(E) Change Section PM-302.1 to read:

PM-302.1. General: The exterior of all structures, occupied, vacant or otherwise, shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

(F) Change Section PM-302.12 to read:

PM-302.12. Insect screens: During the period from April 1 to December

1 every door, window and other outside opening required for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device in good working condition.

Exception: Screen doors shall not be required for out-swinging doors or other types of openings which make screening impractical, provided other approved means, such as air curtains or insect repellent fans are employed.

(G) Change Section PM-303.4 to read as follows:

PM-303.4. Lead-based paint: Interior and exterior painted surfaces of dwellings, child and day care facilities, including fences and outbuildings, that contain in excess of 0.5% lead by weight shall be removed or covered in an approved manner.

ARTICLE 4.

LIGHT, VENTILATION AND SPACE REQUIREMENTS.

(A) Change Section PM-401.1 to read:

PM-401.1. Habitable spaces: Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total window area, measured between stops, for every habitable space shall be 4.0% of the floor area of such room, except in kitchens when artificial light may be provided in accordance with the provisions of the building code. Whenever walls or other portions of a structure face a window of any other room and such obstructions are located less than three feet (914 mm) from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as contributing to the required minimum total window area for the room.

(B) Delete Section PM-403.10.

ARTICLE 6.
MECHANICAL AND ELECTRICAL REQUIREMENTS.

(A) Change Section PM-601.1 to read:

PM-601.1. Residential buildings: Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guest room on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C) in all habitable rooms, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less than 60°F (16°C) during other hours. The temperature shall be measured at a point 3 feet (914 mm) above the floor and 3 feet (914 mm) from the exterior walls. When the outdoor temperature is below the outdoor design temperature required for the locality by the mechanical code listed in Appendix A, the owner or operator shall not be required to maintain the minimum room temperatures, provided the heating system is operating at full capacity, with supply valves and dampers in a full open position.

(B) Change Section PM-601.2 to read:

PM-601.2. Nonresidential structures: Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C) during all working hours. The temperature shall be measured at a point 3 feet (914 mm) above the floor and 3 feet (914 mm) from the exterior walls.

Exceptions

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

(C) Add new Section PM-603.3 to read:

PM-603.3. Inspection: Routine and periodic inspections shall be

performed in accordance with Part X of ASME A-17.1 listed in Appendix A.

**ARTICLE 7.
FIRE SAFETY REQUIREMENTS.**

(A) Add new Section PM-704.5.2:

PM-704.5.2. Visual and audible alarms: Visual and audible alarms meeting the requirements of ANSI/UL Standard 1638 and ANSI/NFPA 72G shall be provided in occupancies housing the hard of hearing as required by § 36-99.5 of the Code of Virginia; however, all visual alarms shall provide a minimum intensity of 100 candela. Portable alarms meeting these requirements shall be accepted.

**ARTICLE 8.
RESPONSIBILITIES OF PERSONS.**

(A) Delete Section PM-801.2.

(B) Delete Section PM-801.3.

**ARTICLE 9.
HAZARD ABATEMENT IN EXISTING BUILDINGS.**

(A) Delete Article 9.

APPENDIX A - REFERENCED STANDARDS.

(A) Change Appendix A as follows:

1. Delete standard reference number BOCA NBC-90, BOCA National Building Code and substitute the Virginia Uniform Statewide Building Code, Volume I/1990 Edition.
2. Delete standard reference number BOCA NFPC-90, BOCA National Fire Prevention Code and substitute the Virginia Statewide Fire Prevention Code/1990 Edition.

ADDENDUM 2.

RELATED LAWS. (Excerpts from the Code of Virginia)

CHAPTER 6.

UNIFORM STATEWIDE BUILDING CODE.

ARTICLE 1.

General Provisions.

§ 36-97. **Definitions.** - As used in this chapter, unless the context or subject matter requires otherwise, the following words or terms shall have the meaning herein ascribed to them, respectively:

(1) "Board" means the Board of Housing and Community Development.

(2), (3) [Repealed.]

(4) "Review Board" means the State Building Code Technical Review Board.

(5) "Building Code" means the Uniform Statewide Building Code.

(6) "Code provisions" means the provisions of the Uniform Statewide Building Code as adopted and promulgated by the Board, and the amendments thereof as adopted and promulgated by such Board from time to time.

(7) "Building regulations" means any law, rule, resolution, regulation, ordinance or code, general or special, or compilation thereof, heretofore or hereafter enacted or adopted by the Commonwealth or any county or municipality, including departments, boards, bureaus, commissions, or other agencies thereof, relating to construction, reconstruction, alteration, conversion, repair, maintenance, or use of structures and buildings and installation of equipment therein. The term does not include zoning ordinances or other land use controls that do not affect the manner of construction or materials to be used in the erection, alteration or repair of a building or structure.

(8) "Municipality" means any city or town in this Commonwealth.

(9) "Local governing body" means the governing body of any city, county or town in this Commonwealth.

(10) "Local building department" means the agency or agencies of any local governing body charged with the administration, supervision, or enforcement of building codes and regulations, approval of plans, inspection of buildings, or issuance of permits, licenses, certificates or similar documents prescribed or required by state or local building regulations.

(11) "State agency" means any state department, board, bureau, commission, or agency of this Commonwealth.

(12) "Building" means a combination of any materials, whether portable or fixed, having a roof to form a structure for the use or occupancy by persons, or property; however, farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees shall be exempt from the provisions of the Uniform Statewide Building Code, but such buildings

lying within flood plain or in a mudslide-prone area shall be subject to flood proofing regulations or mudslide regulations, as applicable. The word "building" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

(13) "Equipment" means plumbing, heating, electrical, ventilating, air-conditioning and refrigeration equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(14) "Construction" means the construction, reconstruction, alteration, repair or conversion of buildings.

(15) "Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a building.

(16) [Repealed.]

(17) "Director" means the Director of the Department of Housing and Community Development.

(18) "Structure" means an assembly of materials forming a construction for occupancy or use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature but excluding water wells. Farm structures not used for residential purposes shall be exempt from the provisions of the Uniform Statewide Building Code, but such structures lying within a flood plain or in a mudslide-prone area shall be subject to flood proofing regulations or mudslide regulations, as applicable. The word "structure" shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

(19) "Department" means the Department of Housing and Community Development. (1972, c. 829; 1974, cc. 622, 668; 1975, c. 394; 1977, cc. 423, 613; 1978, c. 703; 1986, c. 401.)

§ 36-98. Board to promulgate Statewide Code; other codes and regulations superseded; exceptions. - The Board is hereby directed and empowered to adopt and promulgate a Uniform Statewide Building Code. Such building code shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies. However, such Code shall not supersede the regulations of other state agencies which require and govern the functional design and operation of building related activities not covered by the Uniform Statewide Building Code including but not limited to: (1) public water supply systems, (2) waste water treatment and disposal systems, and (3) solid waste facilities. Nor shall state agencies be prevented from requiring, pursuant to other state law, that buildings and equipment be maintained in accordance with provisions of the Uniform Statewide Building Code. (1972, c. 829; 1977, c. 613; 1979, c. 718; 1980, c. 104; 1982, c. 267.)

§ 36-98.01. Mechanics lien agent included on building permit for residential property at request of applicant. - In addition to any information required by the Uniform Statewide Building Code, a building permit issued for any one- or two-family residential dwelling unit shall at the time of issuance contain, at the request of the applicant, the name, mailing address, and telephone number of the mechanics' lien agent as defined by the applicant, the building permit shall at the time of issuance state that none has been designated with the words "None Designated." (1992, cc. 779, 787.)

Effective date. This section is effective June 1, 1992.

§ 36-98.1. State buildings. - The Building Code shall be applicable to all state-owned buildings and structures, with the exception that §§ 2.1-514 through 2.1-521.1 shall provide the standards for ready access to and use of state-owned buildings by the physically handicapped.

Any state-owned building or structure for which preliminary plans were prepared or on which construction commenced after the initial effective date of the Uniform Statewide Building Code, shall remain subject to the provisions of the Uniform Statewide Building Code that were in effect at the time such plans were completed or such construction commenced. Subsequent reconstruction, renovation or demolition of such building or structure shall be subject to the pertinent provisions of the Building Code.

Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for state-owned buildings. The Department shall review and approve plans and specifications, grant modifications, and establish such rules and regulations as may be necessary to implement this section. It shall provide for the inspection of state-owned buildings and enforcement of the Building Code and standards for access by the physically handicapped by delegating inspection and Building Code enforcement duties to the State Fire Marshal's Office, to other appropriate state agencies having needed expertise, and to local building departments, all of which shall provide such assistance within a reasonable time and in the manner requested. State agencies and institutions occupying buildings shall pay to the local building department the same fees as would be paid by a private citizen for the services rendered when such services are requested by the Department of General Services. The Department of General Services may alter or overrule any decision of the local building department after having first considered the local building department's report or other rationale given for its decision. When altering or overruling any decision of a local building department, the Department of General Services shall provide the local building department with a written summary of its reasons for doing so. (1981, c. 325; 1982, c. 97; 1986, c. 133.)

§ 36-98.2. Appeals from decision of Building Official regarding state-owned buildings. - Appeals by the involved state agency from the decision of the Building Official for state-owned buildings shall be made directly to the State Building Code

Technical Review Board. (1982, c. 97.)

§ 36-98.3. Amusement devices. - A. The Board shall have the power and duty to promulgate regulations pertaining to the construction, maintenance, operation and inspection of amusement devices. Amusement device means (i) a device or structure open to the public by which persons are conveyed or moved in an unusual manner for diversion and (ii) passenger tramways. A "passenger tramway" means a device used to transport passengers uphill, and suspended in the air by the use of steel cables, chains or belts, or by ropes, and usually supported by trestles or towers with one or more spans. Regulations promulgated hereunder shall include provisions for the following:

1. The issuance of certificates of inspection prior to the operation of an amusement device;
2. The demonstration of financial responsibility of the owner or operator of the amusement device prior to the operation of an amusement device;
3. Maintenance inspections of existing amusement devices;
4. Reporting of accidents resulting in serious injury or death;
5. Immediate investigative inspections following accidents involving an amusement device that result in serious injury or death;
6. Certification of amusement device inspectors;
7. Qualifications of amusement device operators;
8. Notification by amusement device owners or operators of an intent to operate at a location within the Commonwealth; and
9. A timely reconsideration of the decision of the local building department when an amusement device owner or operator is aggrieved by such a decision.

B. In promulgating regulations, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations. Where appropriate, the Board shall establish separate standards for mobile amusement devices and for amusement devices permanently affixed to a site.

C. To assist the Board in the administration of this section, the Board shall appoint an Amusement Device Technical Advisory Committee, which shall be composed of five members who, by virtue of their education, training or employment, have demonstrated adequate knowledge of amusement devices or the amusement industry. The Board shall determine the terms of the Amusement Device Technical Advisory Committee members. The Amusement Device Technical Advisory Committee shall recommend standards for the construction, maintenance, operation and inspection of amusement devices, including the qualifications of amusement device operators and the certification of inspectors, and otherwise perform advisory functions as the Board may require.

D. Inspections required by this section shall be performed by persons certified by the Board pursuant to subdivision 7 of § 36-137 of the Code of Virginia as competent to inspect amusement devices. The provisions of § 36-105 of the Code of Virginia notwithstanding, the local governing body shall enforce the regulations promulgated by the Board for existing amusement devices. Nothing in this section shall be construed to prohibit the local governing body from authorizing inspections

to be performed by persons who are not employees of the local governing body, provided those inspectors are certified by the Board as provided herein. The Board is authorized to conduct or cause to be conducted any inspection required by this section, provided that the person performing the inspection on behalf of the Board is certified by the Board as provided herein.

E. To the extent they are not superseded by the provisions of this section and the regulations promulgated hereunder, the provisions of this chapter and the Uniform Statewide Building Code shall apply to amusement devices. (1986, c. 427; 1991, c. 152.)

§ 36-99. Provisions of Code. - The Building Code prescribe building regulations to be complied with in the construction of buildings and structures, and the equipment therein as defined in § 36-97, and shall prescribe regulations to insure that such regulations are properly maintained, and shall also prescribe procedures for the administration and enforcement of such regulations. The provisions thereof shall be such as to protect the health, safety and welfare of the residents of this Commonwealth, provided that buildings and structures should be permitted to be constructed at the least possible cost consistent with recognized standards of health, safety, energy conservation and water conservation and barrier-free provisions for the physically handicapped and aged. Such regulations shall be reasonable and appropriate to the objectives of this chapter.

In formulating the Code provisions, the Board shall have due regard for generally accepted standards as recommended by nationally recognized organizations, including, but not limited to, the standards of the Southern Building Code Congress, the Building Officials Conference of America and the National Fire Protection Association.

Where practical, the Code provisions shall be stated in terms of required level of performance, so as to facilitate the prompt acceptance of new building materials and methods. When generally recognized standards of performance are not available, such provisions shall provide for acceptance of materials and methods whose performance has been found by the Board, on the basis of reliable test and evaluation data, presented by the proponent, to be substantially equal in safety to those specified. (1972, c. 829; 1974, c. 433; 1975, c. 394; 1977, cc. 423, 613; 1978, c. 581; 9181, c. 2; 1982, c. 267.)

§ 36-99.1 Certification of electrical, plumbing and building related mechanical workers. - No electrical worker or plumbing worker or building related mechanical worker shall be required to be examined or certified by the Board or by the locality at the direction of the Board if such person was certified or licensed prior to July 1, 1978, in accordance with provisions made by any local governing body, provision required of any local governing body or provision made by the Commonwealth. (1974, c. 437; 1977, c. 613; 1978, cc. 268, 751; 1979, c. 352; 1982, c. 314.)

§ 36-99.2. Standards for replacement glass. - Any replacement glass installed in buildings constructed prior to the effective date of the Uniform Statewide

Building Code shall meet the quality and installation standards for glass installed in new buildings as are in effect at the time of installation. (1976, c. 137.)

§ 36-99.3. Smoke detectors in colleges and universities. - College or university buildings containing dormitories for sleeping purposes shall be provided with battery or AC powered smoke detector devices installed therein in accordance with the Uniform Statewide Building Code. After January 1, 1984, all college and university dormitories shall have installed and use due diligence in maintaining in good working order such detectors regardless of when the building was constructed.

The chief administrative office of the college or university shall obtain a certificate of compliance from the building official of the locality in which the college or university is located or in the case of state-owned buildings, from the Director of the Department of General Services.

The provisions of this section shall not apply to any dormitory at a state-supported military college or university which is patrolled twenty-four hours a day by military guards. (1982, c. 357.)

§ 36-99.4 Smoke detectors in certain juvenile care facilities. - Battery or AC-powered smoke detector devices shall be installed in all local and regional detention homes, group homes, and other residential care facilities for children or juveniles which are operated by or under the auspices of the Department of Youth and Family Services, regardless of when the building was constructed, in accordance with the provision of the Uniform Statewide Building Code by July 1, 1986. Administrators of such homes and facilities shall be responsible for the installation and maintenance of the smoke detector devices. (1984, c. 179; 1989, c. 733.)

§ 36-99.5. Smoke detectors for the deaf and hearing-impaired. - Smoke detectors providing an effective intensity of not less than 100 candela to warn a deaf or hearing-impaired individual shall be provided, upon request by the occupant to the landlord or proprietor, to any deaf or hearing-impaired occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than twenty individuals;
2. All multiple-family dwellings have more than two dwelling units, including all dormitories, boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or
3. All buildings arranged for use of one-family or two-family dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke detector in the tenant's unit.

A hotel or motel shall have available no fewer than one such smoke detector for each seventy units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than thirty-five units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke detectors for the hearing-impaired. Visual detectors shall be provided for all meeting rooms for which an

advance request has been made.

The proprietor or landlord may require a refundable deposit for a smoke detector, not to exceed the original cost or replacement cost, whichever is greater, of the smoke detector. Rental fees shall not be increased as compensation for this requirement.

Landlords shall notify hearing-impaired tenants of the availability of special smoke detectors; however, no landlord shall be civilly or criminally liable for failure to so notify. New tenants shall be asked, in writing, at the time of rental, whether visual smoke detectors will be needed.

Failure to comply with the provisions of this section within a reasonable time shall be punishable as a Class 3 misdemeanor.

This law shall have no effect upon existing local law or regulation which exceeds the provisions prescribed herein. (1984, c. 753; 1988, c. 183.)

§ 36-99.5:1. Smoke detectors in homes for adults, adult day care centers and nursing homes and facilities - A. Battery or AC-powered smoke detector devices shall be installed in all homes for adults and adult day care centers licensed by the Department of Social Services, regardless of when the building was constructed. The location and installation of the smoke detectors shall be determined by the Uniform Statewide Building Code.

The licensee shall obtain a certificate of compliance from the building official of the locality in which the home or center is located, or in the case of state-owned buildings, from the Department of General Services.

The licensee shall maintain the smoke detector devices in good working order.

B. The Board of Housing and Community Development shall promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) establishing standards for requiring smoke detectors in nursing homes and nursing facilities. All nursing homes and nursing facilities which are already equipped with sprinkler systems shall comply with these regulations. (1988, c. 55; 1990, cc. 448, 703; 1992, c. 356.)

§ 36-99.6 Underground storage tank inspections. - A. The Board of Housing and Community Development is authorized to incorporate, as part of the Building Code, regulations developed by the State Water Control Board governing the installation and closure of underground storage tanks.

B. The Board is also authorized to incorporate, as part of the Building Code, regulations developed by the State Water Control Board pursuant to § 62.1-44.34:15.1 governing aboveground storage tanks.

C. Inspections undertaken pursuant to such regulations shall be done by employees of the local building department or another individual authorized by the local building department. (1987, c. 528. 1992, c.456.)

§ 36-99.6:1. Aboveground storage tanks. - Aboveground storage tank systems located at commercial, industrial, governmental or manufacturing establishments for motor fuels, aviation fuels and heating fuels shall comply with National Fire

Protection Association (NFIPA) standards. (1990, c. 589.)

§ 36-99.7. Asbestos inspection in buildings to be renovated or demolished; exceptions. -A. After January 1, 1989, a local building department shall not issue a building permit allowing a building built prior to 1978 to be renovated or demolished until the local building department receives certification from the owner or his agent that the building has been inspected for asbestos in accordance with standards developed pursuant to subdivision 1 of subsection A of § 2.1-526.14:1 and that response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR 61, Subpart M), the management standards for asbestos-containing materials prepared by the Department of General Services in accordance with § 2.1-526.14:2, and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.58).

B. To meet the inspection requirements of subsection A except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floorcovering, or siding materials may be satisfied by:

1. A statement that the materials to be repaired or replaced are assumed to contain asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor or a licensed RFS contractor; or

2. A certification by the owner that sampling of the material to be renovated was accomplished by an RFS inspector as defined in § 54.1-500 and analysis of the sample showed no asbestos to be present.

C. The provisions of this section shall not apply to single-family dwellings, residential housing with four or fewer units, farm buildings, buildings with less than 3,500 square feet and buildings with no central heating system, or to public utilities required by law to give notification to the Commonwealth of Virginia and to the United States Environmental Protection Agency prior to removing asbestos in connection with the renovation or demolition of a building.

D. The Board of Housing and Community Development may amend the standards for inspections and management for renovation and demolition of buildings subject to this section, in accordance with the requirements of the Virginia Administrative Process Act (§ 9-6.14:1 et seq.). (1987, c. 656, 1988, c. 723; 1989, c. 398; 1990, c. 823.)

§ 36-99.8 Skirting. - Manufactured homes installed or relocated pursuant to the Building Code shall have skirting installed within sixty days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures, and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to minimize susceptibility to wind damage, and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of eighteen inches in any dimension and not less than

three square feet in area. The access panel or door shall not be fastened in a manner requiring the use of a special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of the Building Code.

As used in this section, "skirting" means a weather-resistant material used to enclose the space from the bottom of the manufactured home to grade. (1990, c. 593.)

§ 36-99.9. Standards for fire suppression systems in certain facilities. - The Board of Housing and Community Development shall promulgate regulations by October 1, 1990, in accordance with the Administrative Process Act, Chapter 1.1:1 (§§ 9-6.14:1 et seq.) of Title 9, establishing standards for fire suppression systems in nursing facilities and nursing homes, regardless of when such facilities or institutions were constructed. In the development of these standards, the Board shall seek input from relevant state agencies.

Units consisting of certified long-term care beds described in this section and § 32.1-126.2 located on the ground floor of general hospitals shall be exempt from the requirements of this section. (1990, c. 804.)

§ 36-99.10. Standards for water saving conservation. - The Board of Housing and Community Development shall promulgate standards that provide for the installation of water conservation devices and low consumption fixtures in construction as part of the Building Code. Such standards shall provide for implementation at the option of the local governing body, and may be applied to all or a portion of their local government based upon the lack of present or future water supply to serve citizens of that local government. (1992, c. 515.)

§ 36-99.11 Identification of handicapped parking spaces by above grade signage. - A. All parking spaces reserved for the use of handicapped persons shall be identified by above grade signs, regardless of whether identification of such spaces by above grade signs was required when any particular space was reserved for the use of handicapped persons. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. Any parking space not identified by an above grade sign shall not be a parking space reserved for the handicapped within the meaning of this section.

B. All above grade handicapped parking space signs shall have the bottom edge of the sign no lower than four feet nor higher than seven feet above the parking surface. Such signs shall be designed and constructed in accordance with the provisions of the Uniform Statewide Building Code.

C. Building owners shall install above grade signs identifying all parking spaces reserved for the use of handicapped persons in accordance with this section and the applicable provisions of the Uniform Statewide Building Code by January 1, 1993. (1992, cc. 753, 764.)

§ 36-100. Notice and hearings on adoption of Code, amendments and repeals. -

The Board shall adopt, amend, or repeal any Code provisions in accordance with the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9. Before any such action, the Board shall hold at least one public hearing. In addition to the notice requirement contained therein, the Board shall notify in writing the building official or, where none, the local governing body of every city or county in the Commonwealth. At any such hearing all persons desiring to do so shall be afforded an opportunity to present their views. (1972, c. 829; 1977, c. 613; 1991, c. 49.)

§ 36-101. Effective date of Code; when local codes may remain in effect. - No Code provisions shall be made effective prior to January 1, 1973, or later than September 1, 1973; provided that the initial Building Code shall not become effective earlier than 180 days after the publication thereof.

It is further provided that where, in the opinion of the Review Board, local codes are in substantial conformity with the State Code and local code may, with the concurrence of the Review Board remain in effect for two years from the effective day of the State Code for transition to implementation of the State Code. (1972, c. 829.)

§ 36-102. Modification, amendment or repeal of Code provisions. - The Board may modify, amend or repeal any Code provisions from time to time as the public interest requires, after notice and hearing as provided in § 36-100 of this chapter. No such modification or amendment shall be made effective earlier than thirty days from the adoption thereof. (1972, c. 829; 1977, c. 613.)

§ 36-103. Buildings, etc., existing or projected before effective date of Code. - Any building or structure, for which a building permit has been issued or on which construction has commenced, or for which working drawings have been prepared in the year prior to the effective date of the Building Code, shall remain subject to the building regulations in effect at the time of such issuance or commencement of construction. However, the Board may adopt and promulgate as part of the Building Code, minimum building regulations for existing buildings to ensure the protection of public health, safety and welfare. Subsequent reconstruction, renovation, repair or demolition of such buildings or structures shall be subject to the pertinent provisions of the Building Code. The provisions of this section shall be applicable to equipment. However, building owners may elect to install partial or full fire alarms or other safety equipment that was not required by the Building Code in effect at the time a building was constructed without meeting current Building Code requirements, provided the installation does not create a hazardous condition. Permits for installation shall be obtained in accordance with the Uniform Statewide Building Code. (1972, c. 829; 1976, c. 638; 1982, c. 267; 1986, c. 32.)

§ 36-104. Code to be printed and furnished on request; true copy. - The Department shall have printed from time to time and keep available in pamphlet form all Code provisions. Such pamphlets shall be furnished upon request to members of the public. A true copy of all such provisions adopted and in force shall

be kept in the office of the Department, accessible to the public. The Department may charge a reasonable fee for distribution of the Building Code based on production and distribution costs. (1972, c. 829; 1974, c. 298; 1977, c. 613.)

§ 36-105. Enforcement of Code; appeals from decisions of local department; inspection of buildings. - Enforcement of the Building Code shall be the responsibility of the local building department. There shall be established within each local building department a local board of Building Code appeals whose composition, duties and responsibilities shall be prescribed in the Building Code. Appeals from the local building department concerning application of the Building Code or refusal to grant a modification to the provisions of the Code covering the manner of construction or materials to be used in the erection, alteration or repair of a building or structure shall first lie to the local board of Building Code appeals. No appeal to the State Building Code Technical Review Board shall lie prior to a final determination by the local board of Building Code appeals. Whenever a county or a municipality does not have such a building department or board of Building Code appeals, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by the Department for such enforcement and appeals resulting therefrom. For the purposes of this section, towns with a population of less than 3,500 may elect to administer and enforce the Building Code for the town. In the event such town is situated in two or more counties, those counties shall administer and enforce the Building Code for that portion of the town which is situated within their respective boundaries. Fees may be levied by the local governing body in order to defray the cost of such enforcement and appeals.

Any building may be inspected at any time before completion, and shall not be deemed in compliance until approved by the inspecting authority. Where the construction cost is less than \$1,000, however, the building inspection may, in the discretion of the inspecting authority, be waived. A local governing body may provide that buildings and structures, permanent or temporary, which are used to store hazardous materials, or occupied or to be used by twenty or more persons who are employed, lodged, housed, assembled, served, entertained or instructed therein, or the common areas of residential structures containing four or more units, including buildings owned by the Commonwealth or by any of its political subdivisions and the equipment therein, be inspected periodically after completion to insure that the Building Code regulations are properly maintained. The building official shall coordinate all reports with inspections for compliance of the Building Code, from fire and health officials delegated such authority, prior to issuance of an occupancy permit.

The local governing body may inspect and enforce the building regulations promulgated by the Board for existing buildings. Such enforcement shall be carried out by an agency or department designated by the governing body. (1972, c. 829; 1974, c. 433; 1977, cc. 423, 613; 1978, c. 578; 1981, c. 498; 1982, c. 267; 1992, c. 73.)

§ 36-105.1. Inspection and review of plans of buildings under construction. - Inspections of buildings other than state-owned buildings under construction and the review and approval of building plans for these structures for enforcement of the Uniform Statewide Building Code shall be the sole responsibility of the appropriate local building inspectors. Upon completion of such structures, responsibility for fire safety protection shall pass to the State Fire Marshal pursuant to the Statewide Fire Prevention Code in those localities which do not enforce the Statewide Fire Prevention Code (§ 27-94 et seq.). (1989, c. 258.)

§ 36-106. Violation a misdemeanor. - A. It shall be unlawful for any owner or any other person, firm or corporation, on or after the effective date of any Code provisions, to violate any such provisions. Any such violation shall be deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than \$2,500; additionally, if the violation concerns a residential unit and if the violation remains uncorrected at the time of conviction, the court shall order the violator to abate or remedy the violation within six months of the date of conviction.

B. Any owner or any other person, firm or corporation violating any Code provisions relating to the removal or the covering of lead-base paint which poses a hazard to the health of pregnant women and children under the age of six years who occupy the premises shall, upon conviction, be guilty of a misdemeanor and shall be subject to a fine of not more than \$2,500. If the court convicts pursuant to this subsection and sets a time by which such hazard must be abated, each day the hazard remains unabated after the time set for the abatement has expired shall constitute a separate violation of the Uniform Statewide Building Code. Upon a reasonable showing to the court by a landlord as defined in § 55-248.4, that such landlord is financially unable to abate the lead-base paint hazard, the court shall order any rental agreement related to the affected premises terminated effective thirty days from the entry of the court order. For the purposes of the preceding sentence, termination of the rental agreement shall not be deemed noncompliance by the landlord pursuant to § 55-248.21.

C. Any prosecution under this section shall be commenced within two years as provided in § 19.2-8. (1972, c. 829; 1975, c. 367; 1991, c. 655; 1992, cc. 435, 650.)

§ 36-107. Employment of personnel for administration of chapter. - Subject to the provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1 of the Code of Virginia, the Director may employ such permanent and temporary clerical, technical and other assistants as are necessary or advisable for the proper administration of the provision of this chapter. (1972, c. 829; 1974, c. 668; 1977, c. 613.)

ARTICLE 2.

State Building Code Technical Review Board.

§ 36-107.1. Sale of residential structure with lead-based paint levels exceeding Code standards; penalty. - Whenever any property owner has been notified by local building officials or representatives of local health departments that any residential premise has levels of lead-based paint in violation of the Uniform Statewide Building Code (§ 36-97 et seq.), such property owner shall notify prospective purchasers in writing of the presence of unacceptable levels of lead-based paint in such premises and the requirements concerning the removal of the same. Such notification shall include a copy of any notice the property owner received from local building officials or representatives of local health departments advising of the presence of unacceptable levels of lead-based paint in such premises.

The notice required herein shall be provided to prospective purchasers prior to the signing of a purchase and sales agreement or, if there is no purchase or sales agreement, prior to the signing of a deed. The requirements shall not apply to purchase and sales agreements or deeds signed prior to July 1, 1991. Transactions in which sellers have accepted written offers prior to July 1, 1991, but have not signed a purchase or sales agreement or a deed prior to July 1, 1991, shall be subject to the notice requirements.

Any person who fails to comply with the provisions of this section shall be liable for all damages caused by his failure to comply and shall, in addition, be liable for a civil penalty not to exceed \$1,000. (1991, c. 266.)

§ 36-108. Board continued; members. - There is hereby continued, in the Department, the State Building Code Technical Review Board, consisting of seven members, appointed by the Governor subject to confirmation by the General Assembly. The members shall include one member who is a registered architect, selected from a slate presented by the Virginia Society of the American Institute of Architects; one member who is a professional engineer in private practice, selected from a slate presented by the Virginia Society of Professional Engineers; one member who is a residential builder selected from a slate presented by the Home Builders Association of Virginia; one member who is a general contractor selected from a slate presented by the Virginia Branch, Associated General Contractors of America; one member who has had experience in the field of enforcement of building regulations, selected from a slate presented by the Virginia Building Officials Conference; one member who is employed by a public agency as a fire prevention officer selected from a slate presented by the Virginia Fire Chiefs' Association; and one member from the Commonwealth at large who may be a member of a local governing body. The members shall serve at the pleasure of the Governor. (1972, c. 829; 1974, c. 668; 1976, c. 484; 1977, cc. 92, 613.)

§ 36-109. Officers; secretary. - The Review Board, under rules adopted by itself, shall elect one of its members as chairman, for a term of two years, and may elect one of its members as vice-chairman. The Review Board may also elect a secretary, who may be a nonmember. (1972, c. 829.)

§ 36-110: Repealed by Acts 1980, c. 728.

§ 36-111. **Oath and bonds** - Before entering upon the discharge of his duties, each member of the Review Board shall take an oath that he will faithfully and honestly execute the duties of his office during his continuance therein; and shall give bond with corporate surety in such penalty as may be fixed by the Governor, conditioned upon the faithful discharge of his duties. The premiums on such bonds shall be paid for as other expenses of the Department are paid. (1972, c. 829; 1974, c. 668; 1977, c. 613.)

§ 36-112. **Meetings** - The Review Board shall meet at the call of the chairman, or at the written request of at least three of its members; provided that it shall act within thirty days following receipt of any appeal made under the provisions of this chapter. (1972, c. 829.)

§ 36-113. **Offices** - The Review Board shall be furnished adequate space and quarters in the suite of offices of the Department, and such Board's main office shall be therein. (1972, c. 829; 1974, c. 668; 1977, c. 613.)

36-114. **Board to hear appeals from decisions under Building Code, Fire Prevention Code, and Industrialized Building Safety Law** - The Review Board shall have the power and duty to hear all appeals from decisions arising under application of the Building Code, the Fire Prevention Code adopted under the Statewide Fire Prevention Code Act (§ 27-94 et seq.), and the Industrialized Building Safety Law (§ 36-70 et seq.), and to render its decision on any such appeal, which decision shall be final if no appeal is made therefrom. Proceedings of the Review Board shall be governed by the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). (1972, c. 829; 1977, c. 423; 1986, cc. 37, 429.)

§ 36-115. **Subpoenas; witnesses; designation of subordinates** - In any matter before it on appeal for hearing and determination, the Review Board, or its designated subordinates, may compel the attendance of all needed witnesses in like manner as a circuit court, save the Review Board shall not have the power of imprisonment. In taking evidence, the chairman or any member of the Review Board, or its designated subordinates, shall have the power to administer oaths to witnesses. Where a designated subordinate or the Review Board presides over hearings on appeals, such subordinate shall submit recommended findings and a decision to the Review Board pursuant to § 9-6.14:12 of the Code of Virginia. (1972, c. 829; 1977, c. 423.)

§ 36-116: Repealed by Acts 1977, c. 613.

§ 36-117. **Record of decisions** - A record of all decisions of the Review Board, properly indexed, shall be kept in the office of such Board. Such record shall be open to public inspection at all times during business hours. (1972, c. 829.)

§ 36-118. **Interpretation of Code; recommendation of modifications** - The

Review Board shall interpret the provisions of the Building Code, and the Fire Prevention Code, and shall make such recommendations, which it deems appropriate, to the Board for modification, amendment or repeal of any of such provisions. A record of all such recommendations, and of the Board's actions thereon, shall be kept in the office of the Review Board. Such record shall be open to public inspection at all times during business hours. (1972, c. 829; 1977, c. 613, 1986, c. 429.)

§ 36-119. Rules and regulations under § 36-73 not superseded. - This chapter shall not amend, supersede, or repeal the rules and regulations prescribing standards to be complied with, in industrialized building units and mobile homes promulgated under § 36-73 of the Code of Virginia. (1972, c. 829.)

§ 36-119.1. Existing buildings. - This chapter shall not supersede provisions of the Fire Prevention Code promulgated by the Board under § 27-97, that prescribe standards to be complied with in existing buildings or structures, provided that such regulations shall not impose requirements that are more restrictive than those of the Uniform Statewide Building Code under which the buildings or structures were constructed. Subsequent alteration, enlargement, repair, or conversion of the occupancy classification of such buildings and structures shall be subject to the Building Code. (1986, c. 429; 1988, c. 199.)

CHAPTER 8.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT.

§ 36-137. Powers and duties of Board. - The Board shall exercise the following powers and duties, and such others as may be provided by law:

1. Provide a means of citizen access to the Department.
2. Provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities.
3. Monitor the policies and activities of the Department and have the right of access to departmental information.
4. Advise the Governor and the Director on matters relating to housing and community development.
5. Make such rules and regulations as may be necessary to carry out its responsibilities and repeal or amend such rules when necessary.
6. Issue a certificate of competence concerning the content, application, and intent of specified subject areas of the Uniform Statewide Building Code to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections pursuant to Chapter 6 (§ 36-97 et seq.) of this title and any regulations adopted thereunder, who have completed training

programs or in other ways demonstrated adequate knowledge.

7. Levy by regulation up to one percent of building permit fees authorized pursuant to § 36-105 to support training programs of the Building Code Academy established pursuant to § 36-139. Local building departments shall collect such levy and transmit it quarterly to the Department of Housing and Community Development. Localities which maintain, individual or regional, training academies accredited by the Department of Housing and Community Development shall retain such levy. However, such localities may send employees to training programs of the Building Code Academy upon payment of a fee calculated to cover the cost of such training. Any unspent balance shall be reappropriated each year for the continued operation of the Building Code Academy. Annual collections of such levy in excess of \$500,000 or any unobligated fund balance greater than one-third of that year's collections shall be credited against the levy to be collected in the next fiscal year.

8. Establish general policies, procedures, and programs for the Virginia Housing Partnership Revolving Fund established in Chapter 9 (§ 36-141 et seq.) of this title.

9. Determine the categories of housing programs, housing sponsors and persons and families of low and moderate income eligible to participate in grant or loan programs of the Virginia Housing Partnership Revolving Fund and designate the proportion of such grants or loans to be made available in each category.

10. Advise the Director of the Department on the program guidelines required to accomplish the policies and procedures of the Virginia Housing Partnership Revolving Fund.

11. Advise the Virginia Housing Development Authority on matters relating to the administration and management of loans and grants from the Virginia Housing Partnership Revolving Fund.

12. Establish the amount of the low-income housing credit, the terms and conditions for qualifying for such credit, and the terms and conditions for computing any credit recapture amount for the Virginia income tax return.

13. Serve in an advisory capacity to the Center for Housing Research established by § 23-135.7:14.

14. Advise the Department in the development of the Comprehensive Housing Affordability Strategy to guide and coordinate the housing programs of the Department, the Virginia Housing Development Authority, and other state agencies and instrumentalities. (1977, c. 613; 1978, c. 751; 1980, c. 107; 1981, c. 309; 1984, c. 720; 1986, c. 427; 1988, c. 687; 1989, c. 279; 1992, c. 754.)

§ 36-139. Powers and duties of Director. - The Director of the Department of Housing and Community Development shall have the following responsibilities.

1. Collecting from the governmental subdivisions of the Commonwealth information relevant to their planning and development activities, boundary changes, changes of forms and status of government, intergovernmental agreements and arrangements, and such other information as he may deem necessary.

2. Making information available to communities, planning district commissions, service districts and governmental subdivisions of the Commonwealth.

3. Providing professional and technical assistance to, and cooperating with, any planning agency, planning district commission, service district, and governmental subdivision engaged in the preparation of development plans and programs, service district plans, or consolidation agreements.

4. Assisting the Governor in the providing of such state financial aid as may be appropriated by the General Assembly in accordance with § 15.1-1412.

5. Administering federal grant assistance programs, including funds from the Appalachian Regional Commission, the Economic Development Administration and other such federal agencies, directed at promoting the development of the Commonwealth's communities and regions.

6. Developing state community development policies, goals, plans and programs for the consideration and adoption of the Board with the ultimate authority for adoption to rest with the Governor and the General Assembly.

7. Developing a Comprehensive Housing Affordability Strategy to guide the development and implementation of housing programs in the Commonwealth for the purpose of meeting the housing needs of the Commonwealth and, in particular, those of low-income and moderate-income persons and families.

8. Determining present and future housing requirements of the Commonwealth on an annual basis and revising the Comprehensive Housing Affordability Strategy, as necessary to coordinate the elements of housing production to ensure the availability of housing where and when needed.

9. Assuming administrative coordination of the various state housing programs and cooperating with the various state agencies in their programs as they relate to housing.

10. Establishing public information and educational programs relating to housing; devising and administering programs to inform all citizens about housing and housing-related programs that are available on all levels of government; designing and administering educational programs to prepare families for home ownership and counseling them during their first years as homeowners; and promoting educational programs to assist sponsors in the development of low and moderate income housing as well as programs to lessen the problems of rental housing management.

11. Administering the provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).

12. Administering the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

13. Administering the provisions of the Statewide Fire Prevention Code (§ 27-94 et seq.).

14. Establishing and operating a Building Code Academy for the training of personnel in building regulations promulgated by the Board of Housing and Community Development.

15. Administering, in conjunction with the federal government, and promulgating any necessary regulations regarding energy standards for existing buildings as may be required pursuant to federal law.

16. Identifying and disseminating information to local governments about the

availability and utilization of federal and state resources.

17. Administering, with the cooperation of the Department of Health, state assistance programs for public water supply systems.

18. Advising the Board on matters relating to policies and programs of the Virginia Housing Partnership Revolving Fund.

19. Designing and establishing program guidelines to meet the purposes of the Virginia Housing Partnership Revolving Fund and to carry out the policies and procedures established by the Board.

20. Preparing agreements and documents for loans and grants to be made from the Virginia Housing Partnership Revolving Fund; soliciting, receiving, reviewing and selecting the applications for which loans and grants are to be made from such Fund; directing the Virginia Housing Development Authority as to the closing and disbursing of such loans and grants and as to the servicing and collection of such loans; directing the Virginia Housing Development Authority as to the regulation and monitoring of the ownership, occupancy and operation of the housing developments and residential housing financed or assisted by such loans and grants; and providing direction and guidance to the Virginia Housing Development Authority as to the investment of moneys in such Fund.

21. Advising the Board on matters relating to policies for the low-income housing credit and administering the approval of low-income housing credits as provided in §36-55.63.

22. Carrying out such other duties as may be necessary and convenient to the exercise of powers granted to the Department. (1977, c. 613; 1978, cc. 737, 751; 1981, cc. 309, 315; 1982, c. 36; 1986, c. 427; 1988, c. 687; 1989, cc. 258, 279; 1992, c. 754.)

CHAPTER 1.1:1

ADMINISTRATIVE PROCESS ACT.

ARTICLE 1.

General Provisions.

§ 9-6.14:4. Definitions. - As used in this chapter:

A. "Agency" means any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.

B. "Agency action" means either an agency's regulation or case decision or both, any violation, compliance, or noncompliance with which could be a basis for the imposition of injunctive orders, penal or civil sanctions of any kind, or the grant or denial of relief or of a license, right, or benefit by any agency or court.

C. "Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth of Virginia authorizing an agency to make

regulations or decide cases or containing procedural requirements therefor.

D. "Case" or "case decision" means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit.

E. "Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 9-6.14:7.1 and 9-6.14:11 of this chapter and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 9-6.14:8 of this chapter in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 9-6.14:12 hereof in connection with case decisions.

F. "Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws.

G. "Subordinate" means (i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf.

H. [Repealed.] (1975, c. 503; 1977, cc. 377, 381; 1979, c. 613; 1984, c. 187; 1985, cc. 67, 602.)

ARTICLE 2.

Regulations.

§ 9-6.14:7.1. Public participation; informational proceedings; effect of noncompliance. - A. Public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted and utilized by each agency pursuant to the provisions of this chapter. Such guidelines shall not only be utilized prior to the formation and drafting of the proposed regulation, but shall also be utilized during the entire formation, promulgation and final adoption process of a regulation. The guidelines shall set out methods for the identification and notification of interested parties, specific means of seeking input from interested persons or groups and, whenever appropriate, may provide for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency.

B. In formulating any regulation, including but not limited to those in public assistance programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency or its specially designated subordinate.

C. In the case of all regulations, except those regulations exempted by § 9-

6.14:4.1, the proposed regulation and general notice of opportunity for oral or written submittals as to that regulation shall be published in the Virginia Register of Regulations in accordance with the provisions of subsection B of § 9-6.14:22 and such notice shall be published in a newspaper of general circulation published at the state capital and, in addition, as the agency may determine, it may be similarly published in newspapers in localities particularly affected, as well as publicized through press releases and such other media as will best serve the purpose and subject involved. The Register and newspaper publication shall be made at least sixty days in advance of the last date prescribed in the notice for such submittals. All notices, written submittals, and transcripts, summaries or notations of oral presentations, as well as any agency action thereon, shall be matters of public record in the custody of the agency.

The Registrar shall develop the format for the proper advertisement of proposed regulations in newspapers. The Registrar shall also be responsible for the publication of the newspaper advertising pertaining to proposed regulations. As used in this chapter "Registrar" means the Registrar of Regulations appointed as provided in § 9-6.17.

Before promulgating any regulation under consideration, the agency shall deliver a copy of that regulation to the Registrar together with a summary and separate and concise statement of the basis, purpose, substance, issues and the estimated impact of that regulation with respect to the number of persons affected and the projected costs for the implementation and compliance thereof. The summary and the statement of the basis, purpose, substance, issues and estimated impact shall be published in the Virginia Register of Regulations, together with the notice of hearing required above. However, only the summary shall be printed in the newspapers unless the agency requests publication of the statement of basis, purpose, substance, issues and estimated impact.

D. When an agency formulating regulations in public assistance programs cannot comply with the public comment requirements of subsection C of this section due to time limitations imposed by state or federal laws or regulations for the adoption of such regulation, the Secretary of Health and Human Resources may shorten the time requirements of subsection C. If, in the Secretary's sole discretion, such time limitations reasonably preclude any advance published notice, he may waive the requirements of subsection C. However, the agency shall, as soon as practicable after the adoption of the regulation in a manner consistent with the requirements of subsection C, publish notice of the promulgation of the regulation and afford an opportunity for public comment. The precise factual basis for the Secretary's determination shall be stated in the published notice.

E. For the purpose of this article, public assistance programs shall consist of those specified in § 63.1-87 of the Code.

F. In no event shall the failure to comply with the requirements of subsection C of this section be deemed mere harmless error for the purposes of § 9-6.14:17.

G. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations. (1984, c. 5; 1985, c. 602; 1989, c. 71; 1991, c. 488.)

§ 9-6.14:8. Evidential hearings. - Where an agency proposes to consider the exercise of authority to promulgate a regulation, it may conduct or give interested persons an opportunity to participate in a public evidential proceeding; and the agency shall always do so where the basic law requires a hearing. Such evidential hearings may be limited to the trial of factual issues directly relevant to the legal validity of the proposed regulation in any of the relevant respects outlined in § 9-6.14:17 of this chapter.

General notice of such proceedings shall be published as prescribed in § 9-6.14:7.1. In addition, where the proposed regulation is to be addressed to named persons, the latter shall also be given the same notice individually by mail or otherwise if acknowledged in writing. The proceedings may be conducted separately from, and in any event the record thereof shall be separate from, any other or additional proceedings the agency may choose or be required to conduct for the reception of general data, views, and argument pursuant to § 9-6.14:7.1 or otherwise. Any probative evidence may be received except that the agency shall as a matter of efficiency exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, and may in its discretion deny rebuttal, or cross-examination. Testimony may be admitted in written form provided those who have prepared it are made available for examination in person. There shall preside at the taking of such evidence the agency or one or more of its subordinates specially designated for the purpose, who may administer oaths and affirmations. The proceedings shall be recorded verbatim and the record thereof shall be made available to interested persons for transcription at their expense or, if transcribed by or for the agency, for inspection or purchase at cost.

Where subordinates preside at the reception of the evidence, they shall make a report with recommendations and proposed findings and conclusions which shall be made available upon request to the participants in the taking of evidence as well as other interested persons and serve as a basis for exceptions, briefs, or oral argument to the agency itself. Whether or not subordinates take the evidence, after opportunity for the submittal of briefs on request and such oral argument as may be scheduled in its discretion, the agency may settle the terms of the regulation and shall promulgate it only upon (i) its findings of fact based upon the record of evidence made pursuant to this section and facts of which judicial notice may be taken, (ii) statements of basis and purpose as well as comment upon data received in any informational proceedings held under § 9-6.14:7.1 and (iii) the conclusion or conclusions required by the terms of the basic law under which the agency is operating. (1975, c. 503; 1985, c. 602.)

§ 9-6.14:9. Adoption; effective date; filing; emergency regulations; duties of Registrar of Regulations. - A. Not set out.

B. Subject to the provisions of §§ 9-6.14:9.1 and 9-6.14:9.2, all regulations, including those as to which agencies pursuant to § 9-6.14:4.1 may elect to dispense with the public procedures provided by §§ 9-6.14:7.1 and 9-7.14:8, may be formally and finally adopted by the signed order of the agency so stating. No regulation

except an emergency regulation shall be effective until the expiration of the applicable period as provided in § 9-6.14:9.3. In the case of an emergency regulation filed in accordance with subdivision C 5 of § 9-6.14:4.1, the regulation shall become operative upon its adoption and filing with the of Regulations, unless a later date is specified. The originals of all regulations shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies. They, or facsimiles thereof, shall be made available by the agency for public inspection or copying. Full and true copies shall also be additionally filed, registered, published, or otherwise made publicly available as may be required by other laws.

Emergency regulations shall be published as soon as practicable in the Register.

C. Prior to the publication for hearing of a proposed regulation, copies of the regulation and copies of the summary and statement as to the basis, purpose, substance, issues and impact of the regulation and the agency's comments thereon as required by § 9-6.14:7.1 shall be transmitted to the Registrar of Regulations, who shall retain these documents..

D. All regulations adopted pursuant to this chapter shall contain a citation to the section of the Code of Virginia that authorizes or requires such regulations and, where such regulations must conform to federal law or regulation in order to be valid, a citation to the specific federal law or regulation to which conformity is required.

E. Immediately upon the adoption by any agency of any regulation in final form, a copy of (i) the regulation, (ii) a then current summary and statement as to the basis, purpose, substance, issues, and impact of the regulation, and (iii) the agency's summary description of the nature of the oral and written data, views, or arguments presented during the public proceedings and the agency's comments thereon shall be transmitted to the Registrar of Regulations, who shall retain these documents as permanent records. (1975, c. 503; 1977, cc. 450, 459; 1981, c. 387; 1982, c. 425; 1983, c. 295; 1984, c. 5; 1989, c. 71; 1992, c. 829.)

§ 9-6.14:9.1. Executive review of proposed regulations; substantial changes. -

A. The Governor shall adopt procedures by executive order for review of all proposed regulations governed by this chapter. The procedures shall include (i) review by the Attorney General to ensure statutory authority for the proposed regulations; (ii) examination by the Governor to determine if the proposed regulations are necessary to protect the public health, safety and welfare; and (iii) examination by the Governor to determine if the proposed regulations are clearly written and easily understandable. The procedures may also include review of the proposed regulation by the appropriate Cabinet Secretary.

The Governor's review of a proposed regulation shall begin upon the publication of that proposed regulation in the Register. The Governor shall transmit his comments on that proposed regulation to the Registrar and the agency prior to the completion of the public comment period provided for in § 9-6.14:7.1. The Governor may recommend amendments or modifications to any regulation which would bring that regulation into conformity with statutory authority or state or

federal laws, regulations or judicial decisions.

Upon receipt of the Governor's comments on the proposed regulation, the agency (i) may adopt the proposed regulation if the Governor has no objection to the regulation; (ii) may modify and adopt the proposed regulation after considering and incorporating the Governor's objections or suggestions; or (iii) may adopt the regulation without changes despite the Governor's recommendations for change.

B. Upon final adoption of the regulation, the agency shall forward a copy of the regulation to the Registrar of Regulations for publication as soon as practicable in the Register. Substantial changes to the proposed regulation shall be highlighted and explained in the final regulation.

C. If the Governor finds that changes made to the proposed regulation are substantial, he may suspend the regulatory process for thirty days to require the promulgating agency to solicit additional public comment on the substantial changes. An additional public comment period shall not be required if the Governor determines that the substantial changes were made in response to public comment.

D. A thirty-day final adoption period for regulations shall commence upon the publication of the final regulation in the Register. The Governor shall review the final regulation during this thirty-day final adoption period and if he objects to any portion or all of a regulation he shall forward his objections to the Registrar and agency prior to the conclusion of the thirty-day final adoption period. The Governor shall be deemed to have acquiesced in a promulgated regulation if he fails to object to it during the thirty-day final adoption period. The Governor's objection shall be published in the Register.

A regulation shall become effective as provided in § 9-6.14:9.3.

E. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations. (1984, c. 5.)

§ 9-6.14:9.2. Legislative review of proposed regulation. - After the legislative members have received copies of the Register pursuant to § 9-6.14:24, the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable may meet and, during the promulgation or final adoption process, file with the Registrar and the promulgating agency an objection to a proposed or final adopted regulation. The Registrar shall publish any such objection received by him as soon as practicable in the Register. Within twenty-one days after the receipt by the promulgating agency of a legislative objection, that agency shall file a response with the Registrar, the objecting legislative committee and the Governor. If a legislative objection is filed within the final adoption period, paragraph 1 of § 9-6.14:9.3 shall govern.

A regulation shall become effective as provided in § 9-6.14:9.3.

This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations. (1984, c. 5.)

§ 9-6.14:9.3. Effective date of regulation. - A regulation adopted in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) and the Virginia Register Act (§ 9-6.15 et seq.), shall become effective at the conclusion of the thirty-day final

adoption period provided for in subsection D of § 9-6.14:9.1, or any other later date specified by the promulgating agency, unless:

1. A legislative objection has been filed in accordance with § 9-6.14:9.2, in which event the regulation, unless withdrawn by the promulgating agency, shall become effective on a date specified by the promulgating agency which shall be after the expiration of the applicable twenty-one-day extension period provided for in § 9-6.14:9.2; or

2. The Governor has exercised his authority in accordance with § 9-6.14:9.1 to suspend the regulatory process for solicitation of additional public comment on substantial changes to the proposed regulation, in which event the regulation, unless withdrawn by the promulgating agency, shall become effective on a date specified by the promulgating agency which shall be after the period for which the Governor has suspended the regulatory process.

This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations. (1984, c. 5.)

ADDENDUM 3.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT.

The Honorable James W.
Robinson, Chairman
Box 187
Pound, Virginia 24279

Ms. Margaret W. DeMallie
Vice Chairman
Post Office Box 2555
Charlottesville, VA 22902

Mr. Frederic J. Betz
803 Corn Tassel Trail
Martinsville, Virginia 24115

Mr. Steven D. Eanes
County of Henry
Post Office Box 7
Collinsville, Virginia 24078

Mr. Jules L. Elliott
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Mr. Francis H. Fife
Post Office Box 557
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Dr. John H. Foster
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Ms. Edith R. Jones
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Mr. Robert J. Leipertz, Jr.
7913 Stiles Road
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Richmond, Virginia 23219

Ms. Nikki P. Nicholau
Virginia Employment
Commission
703 East Main Street
Richmond, VA 23219

Mr. Jimmy L. Reamy
1537 Swiftwood Drive
Powhatan, Virginia 23139

Mr. John Ritchie, Jr., Executive
Director
Virginia Housing Development
Authority
601 South Belvidere Street
Richmond, Virginia 23220

Secretary (Non-member)
Neal J. Barber, Director
Dept. of Housing and
Community Development
501 North Second Street
Richmond, Virginia 23219-
1321

ADDENDUM 4.

STATE BUILDING CODE TECHNICAL REVIEW BOARD.

Curtis R. Jennings, Jr.,
Chairman
305 South Jefferson Street
Roanoke, VA 24011-2000

Stanley C. Harris
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Ronald E. Ponzo
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Newport News, Virginia 23601

Secretary (Non-member)
Jack A. Proctor
Deputy Director
Division of Building
Regulation, DHCD
501 North Second Street
Richmond, Virginia 23219-
1321

ADDENDUM 5.

FORMS AVAILABLE.

The Code Development Office has prepared certain forms for the assistance of users of building, fire and related regulations promulgated by the Board of Housing and Community Development. Copies of these forms may be obtained free-of-charge in reasonable quantities from:

Code Development Office
Department of Housing and Community Development
501 North Second Street - Second Floor
Richmond, Virginia 23219-1321
Telephone (804) 371-7170
Facsimile (804) 371-7092

Forms available at this time include:

- * Request for Interpretation to the State Building Code Technical Review Board
- * Application for Appeal to the State Building Code Technical Review Board
- * Proposed Changes to:
 - USBC, Vol. I, New Construction Code
 - USBC, Vol. II, Building Maintenance Code
 - Virginia Statewide Fire Prevention Code
 - Virginia Amusement Device Regulations
 - Virginia Industrialized Building & Manufactured Home Safety Regulations
 - Virginia Liquefied Petroleum Gas Regulations
 - Virginia Certification Standards for Building and Amusement Device Inspectors, Blasters and Tradesmen

