Alan D. Albert
AAlbert@ohaganmeyer.com

Direct: 757.348.8590
Office Main: 804.403.7100
Direct fax: 804.403.7110

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BY E-MAIL

The Honorable Michael J. Webert
House of Delegates
Commonwealth of Virginia
900 East Main Street, Room E418
Richmond, VA 23219

Re: House Bill 996

Dear Delegate Webert:

I write on behalf of the Treasurers Association of Virginia ("TAV" or the "Association"), which represents Virginia's city, county and town treasurers, to advise you of concerns we have regarding House Bill 996. I believe that many of these concerns are shared by our friends in the Commissioners of the Revenue Association of Virginia, but anticipate that the Commissioners will be reaching out to you directly and I accordingly won't try to speak for them.

It is my understanding that the bill was suggested by the Piedmont Environmental Council ("PEC"), which was kind enough to share a draft of the bill with us (via the Virginia Association of Counties) just before the legislative session opened. We provided a summary of these concerns to PEC, and it may be that they have already been passed along to you; if so, forgive any repetition.

My understanding is that the purpose of the bill is to deal with concerns regarding property that has passed down, through inheritance, to multiple owners, who do not now agree (or cannot be located to determine whether they agree) upon the placement or continuation of the property in land use taxation. Land use taxation, of course, results in a significantly lower current tax bill than would be the case if the property were assessed at a "highest and best use" other than agricultural, horticultural, forest or open space use.

PEC has advised us that the goal of the bill is to permit inherited property to be placed or maintained in land use taxation even if some of the owners disagree with this action. PEC suggests that, absent the creation of this kind of "majority rule," the owners of such property are in danger of losing it to tax sales because they are unable to pay the (higher) taxes assessed on the basis of highest and best use. To address this concern, the bill permits a owners representing a majority interest in the property to place it into land use taxation, and states that any rollback taxes assessed if and when the property comes out of land use will be assessed against the majority.

Treasurers certainly appreciate the problem and understand the desire to do something about it. Nevertheless, the remedy proposed is an unprecedented one (setting aside the common law rule that multiple owners must be unanimous in order to take actions with respect to the property they own), and creates a number of difficult administrative problems, which I will try to summarize as succinctly as possible.

Virginia law, following the English tradition, provides a judicial remedy when multiple owners of undivided interests real property cannot agree: an action for partition of the property pursuant to the statutes set out in Chapter 3, Article 9 of Title 8.01 (Code § 8.01-81 *et seq.*). In a partition action, all parties with an interest in the property are brought before the court, and the court determines their interests and fashions a remedy. Oftentimes, the point of a partition action is to divide the (presently undivided) interests of the parties, either by permitting one or more parties to buy out others, or placing the property up for judicially-supervised sale. The Court does what the multiple owners have not been able to do, settle on a disposition of the property.

HB 996, though surely well-intentioned, really amounts in practice to an "end run" around partition by permitting majority rule to resolve disputes among owners of undivided interests. Moreover, and of great concern to treasurers (and commissioners, I understand), the process of ascertaining who constitutes the "majority" is .not judicially supervised, but rather would be dropped in the laps of commissioners (at the "front end" of the process, in evaluating the application for land use status) and treasurers (at the "back end" of the process, when it comes time to collect what can be significant rollback taxes when the property comes out of land use). As we said to PEC, commissioners and treasurers are not courts. They do not have the benefit of judicial authority, service of process, or the other tools of litigation. They have neither the tools nor the experience to determine who has an interest in the property and the extent of those interest. They frankly are ill-equipped to

become the arbiters of what constitutes a "majority" and how interests may have changed, in intervening years, when rollback taxes come due.

Too, the bill as drafted would apply globally to all multiple-owner properties, regardless whether there were actual heirs' property issues or not. As an example, the bill would apply to a $1 million family farm inherited by three affluent, but warring, siblings, where two want to maintain the farm and one wants to turn it into a subdivision. Those are problems best solved by partition, not by treasurers and commissioners.

The reality of situations in which undivided interests have arisen through inheritance (sometimes over multiple, or even many, generations) is that the intervention of a court is often required to determine who the owners are, and the proportions in which they own. I have some personal experience with this, as a co-owner of a parcel in Montgomery County that has passed through intestate succession for more than 140 years; a years-long court case, and the appointment of a special commissioner, was required to sort out the interests of literally hundreds of heirs. (My ownership interest was adjudicated to be 1/360th – and it was five times larger than the smallest interests!)

While it certainly sounds attractive to avoid judicial proceedings (let alone the kind of massive proceeding I described above), I would respectfully say that doing so is likely to create more problems than it solves. Courts adjudicate property rights, and decide disputes between people who are joined in ownership but cannot agree on disposition. The local finance officers do not.

I might also add that, in speaking with treasurers about the concerns the bill is intended to address, I have not been able to find any evidence that this problem occurs with any regularity and that taxpayers are actually losing properties as a result. Treasurers, as you may know, have authority to enter into installment agreements to help delinquent taxpayers address their obligations, and routinely do so. The Treasurers Association worked with the Governor's Commission on Racial Inequity in Virginia Law last session to extend the permissible timeframes for installment payments by an additional two years, specifically to help those dealing with inherited properties. See 2021 Sp. Sess. I Acts of Assembly, c. 116 (amending Code § 8.01-3965). For treasurers, a sale of tax-delinquent property is an absolute last resort, something done only when all other efforts to address the delinquency have failed. It may be that the best way to help folks in the situation described by the bill's advocates is to put them in touch with their local treasurer.

If you and your colleagues determine that legislation is needed, I would respectfully suggest that the involvement of the circuit court is essential. I have enclosed a proposed substitute for the present bill that is much narrower than the bill as proposed, and would bring the circuit court into the mix. In particular, it would permit the court to enter an order permitting what this bill seeks to have the commissioner and treasurer do administratively, and do so with all parties being on notice. I would be happy to discuss this further with you and with committee staff.

I appreciate your consideration of these points, and look forward to the opportunity to speak at greater length about them in the near future.

Sincerely yours,

Alan D. Albert

Enclosure: proposed substitute

cc: The Honorable Ronald Williams, Sr., TAV Legislative Chair
The Honorable Page Johnson, Commissioners Association Legislative Co-Chair
Josh Kaplan, Esquire
Dan Holmes, Director of State Policy, Piedmont Environmental Council