

**Priority Legislative Issues  
For  
Berkeley, Jefferson and Morgan Counties**

**Funding for Regional Jail Costs**

- Between Berkeley, Jefferson and Morgan counties in excess of \$4.1 million goes to cover regional jail costs.
- The counties are carrying an excessive financial burden.
  - ***Legislative options include:***
    1. *Direct the one third property transfer tax which currently goes to the state be directed toward the local regional jail; and/or,*
    2. *Ensure that all governmental entities, including municipal governments need to pay their fair share of the regional jail costs through charging under municipal laws and ordinances and not state laws under which the county is responsible; and/or,*
    3. *Increase certain fees collected for purposes of regional jail partial reimbursement fund in order to increase the reimbursement to the counties; and/or,*
    4. *Improve mechanisms to permit defendants to post bond through 24 hour availability of magistrates on call; and/or,*
    5. *Ear mark funds through the Marcellus shale program to assist in the offset of regional jail costs by counties or direct funds from this severance fund to the partial jail reimbursement fund; and/or,*
    6. *Tax all beer, wine, and liquor sales of on-site consumption in a region and direct these monies toward the local regional jail.*

## Home Owners Association Issues

- The recession has exposed several deficiencies in legislation as it pertains to home owners associations. Berkeley county is seeing this both from the perspective of the residents in the HOA's and the county's appropriate response to protect the homeowners in the event of a developer declaring bankruptcy. Three areas are of particular concern. These are:
  - The county needs legislation drafted in order to establish what its rights are when a developer has filed bankruptcy and has not completed a subdivision. The following language is recommended for amendment of West Virginia code 8a-6-3(a), by adding subsections (4) (5) and (6) thereto:
    - *8a-6-3 (a)(4) provide, by regulation or ordinance, for demand or call of such guarantee upon the bankruptcy of the principal however designated on any bond, letter of credit, or other form of guarantee required by the governing body.*
    - *8a-6-3 (a)(5) provide, by regulation or ordinance, that upon the declarant's bankruptcy or other default resulting in a halt in the progress of the subdivision, any allocation of common property described in the declaration shall be allocated in any deed conveyed by the declarant or any successor to the declarant including banks, bankruptcy trustees, assigns, heirs, representatives, or agents. In all such cases, the planning commission or its staff shall review each subsequent deed of conveyance and shall append its letter of approval to such deed prior to its recordation at the office of the clerk of the county commission/council.*
    - *8a-6-3 (a)(6) provide, by regulation or ordinance, that a declarant, upon collection of homeowners' annual dues, fees, and assessments, shall deposit the same in his/her/its bank, into an account held in trust in the name of the subject subdivision homeowners' association and payable by signature of the declarant. Copies of all bank statements with regard to this trust account shall be made available by the declarant to each homeowner upon request. Declarant must designate the bank to hold such trust account and must notify the planning commission, in writing, of such designation.*
    - *The county shall further provide, by regulation or ordinance, that upon the declarant's bankruptcy or abandonment of the subdivision*

*development, evidenced by 12 consecutive months of non-building activity at the site, the planning commission shall, by operation of law, transfer the responsibilities of the homeowners' association to such duly organized association and shall order declarant's bank to transfer to the homeowners' association all funds held by declarant in trust for such homeowners' association. Such order delivered to the declarant's bank shall be acted upon by said bank within 15 days. Proof of transfer of such funds to the homeowners' association shall be submitted to the planning commission by the bank. Such submission of proof shall act as a full release to the bank. Provided, that, no such transfer shall be effected if the declarant has transferred his special rights as set forth in West Virginia code 36b-3-104 (c) and (d).*

Legislation is needed which would require any bank foreclosing on unit(s) and/or lot(s) situate in § 36b subdivisions with attendant homeowners' associations, to protect any lien filed by the subject homeowners' association pertinent to the subject property by adding the full amount of such lien to the minimum sale price of the property and to disburse the same at the time of sale of such property, by adding to West Virginia code § 8a-6-3 (a) another sub-section to be § 8a-6-3 (a) (7), as follows:

*Additionally, the county shall provide, by regulation or ordinance, that upon a foreclosure, by any bank or other lender, of any unit(s) and/or lot(s) situate in a § 36b subdivision, with an attendant homeowners' association, such bank or lender shall protect any lien filed by the subject homeowners' association pertinent to the subject property by adding the full amount of such lien to the minimum sale price of the property and by disbursing the same at the time of sale of such property.*

- There are associated issues regarding common property taxation. Legislation is needed requiring the declarant in all subdivision developments constructed pursuant to West Virginia code chapter 36b to provide the assessor a copy of each deed of conveyance, which deed will show the conveyance of a certain interest in the common property to the grantee, at the time of conveyance. These common properties are generally areas not to be developed, which are located within subdivisions, such as open, green lots, playgrounds, and storm water management lots. The assessor is currently taxing many of these properties as aggregate properties to the declarant or to homeowners' associations to whom such common properties have not been deeded and when the taxes are not paid, the properties are placed for sale and sold at a tax auction. If the HOA does not purchase these back from the county, then they are sold to persons other than those who should maintain ownership of these lots, therefore, creating an issue as to what rights the property owners located within the subdivision have and what rights, if any, the tax sale purchasers have. Chapter 36b should, also, provide that any allocation of common property described in the declaration shall be allocated in any deed conveyed by the declarant or any

successor to the declarant including banks, bankruptcy trustees, assigns, heirs, representatives, or agents. Additionally, West Virginia code 11a should be amended to provide that for any common property for which the taxes due have not been paid, the sheriff may not sell such property at tax sale, notwithstanding any other provision of the code. In such case, the sheriff shall forthwith bring suit against the tax payer, who is delinquent. If, a judgment is awarded but, is not collectable, the sheriff shall seek authority from the circuit court to sell the taxpayer's delinquent land, including the taxpayer's interest in the subdivision common property, and take the taxes from the proceeds of the sale. The clerk of the county commission, then, shall convey the property to the new owner, according to law. We recommend the following language be adopted to amend the code sections noted:

- *36b-1-105 (e) in all cases, at the time of conveyance from the declarant or grantor to a grantee, the grantor/declarant shall provide to the assessor of the county a copy of the deed of conveyance showing both the unit/lot granted and the common property interest granted.*
- *36b-1-105 (f) every deed of conveyance of units or lots within a common interest community shall set forth, in addition to the unit(s)/lot(s) conveyed, the exact interest in common property conveyed to the grantee. All subsequent conveyances shall, likewise, set forth the interest conveyed in common property, which with the unit(s)/lot(s) conveyed comprise the entirety of the interest conveyed to the grantee, whether the same is real property or, in the case of a cooperative, may be personal property.*
- *11a-3-5 (c) notwithstanding anything in this chapter or this code to the contrary, the sheriff may not sell any interest in common property situate in a common interest community, at tax sale, unless such interest has been allocated and is to be sold as a part of lot(s) or unit(s) being sold as a result of a tax delinquency.*

Legislation is needed regarding bond releases on subdivisions making final bond release contingent upon the developer turning over everything to the HOA. Bond releases should not be given until such time as the subdivision is turned over to the homeowners to ensure that the developer has completed all required work pursuant to the final plat. This will help to make sure that the homeowners are not left "holding the bag" so to speak and to make sure that they do not have to pay to finish work that the developer should have completed. Currently, the subdivisions can be turned over to the HOA's once a certain percentage of the lots have been completed even though one or more bonds may still be in effect for work not completed. This tends to give the developer the idea that they do not have to complete the work, so they may drag their heels and not have any type of time frame to get the work completed in a timely fashion. This leaves homeowners living in subdivisions that may not be completed for extended periods of time. We recommend

the following language be adopted to amend West Virginia code 8a-6-3 by adding thereto subsection (c):

- *No bond may be released or reduced below 15% of the original bonding amount until the homeowners' association responsibilities and rights and all common properties have been turned over to the homeowners' association and all streets have been dedicated to public use or deeded to the homeowners' association. Nor, may any declarant turn over the common properties, including streets, or transfer homeowners' association responsibilities prior to completion of all required infrastructure and improvements, pursuant to the final plat.*
- *During the construction of the subdivision development and immediately following sale of the first lot in such subdivision, the declarant must provide to each lot owner, at no less than six month intervals, an accounting of revenue and expenditures of homeowner fees. At the time of transfer of responsibility to the homeowners' association, declarant must provide to the homeowners' association a complete and comprehensive accounting and audit of the fiscal affairs of the homeowners' association. Any declarant who does not, at the time of transfer, provide such comprehensive accounting and audit shall forfeit the remaining bond amount to the county and the same shall be transferred by the county to the homeowners' association.*
- Caps on HOA dues: *legislation is needed which will assure that there is sufficient funding of homeowners' associations to maintain all stormwater management and sediment and erosion control systems as well as streets, provide for insurance premium payments and other required liabilities. The following language is recommended to amend chapter 36b in order to accomplish this.*
  - *36b-1-203 (2) provides, in its declaration, that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed one thousand dollars as adjusted pursuant to section 1-1*

## **Effect of Citations Related to Real Property Conditions**

(Discussed under Homeowners Association Issues)

The following language is recommended to the legislature for adoption in order to prevent persons from conveying property which has been cited by the DEP, a county building code official, litter control officer or other citing authority, requiring specific action be taken to cure the violation for which a citation was issued. Some violators will convey the property rather than clean it up or rehabilitate it, leaving the county to start the process over again with the new

owner. In some cases, the conveyance has been made to non-existent grantees, in order to thwart the process. We recommend that the language be a new section of article 3, chapter 36 of the West Virginia code, to be designated § 36-3-11.

*In any case in which the title owner of real property has been cited by a government agency for violation of the West Virginia building code or any ordinance, law or regulation dealing with the upkeep and maintenance of that particular real property, such property may not be conveyed until said violation is cured or until a purchaser signs an agreement with the citing authority obligating himself/herself/itself to cure the violation within 90 days of purchase. Every deed shall include the following language immediately prior to the signature(s) of the grantor(s): “grantor swears or affirms that no citations regarding the maintenance and upkeep of the property herein conveyed are outstanding as of the day and date of this conveyance. Proof provided within one year of this conveyance that a citation was in effect at the time shall act to invalidate the conveyance ab initio.”*

Furthermore, to prevent the conveyance of property to a non-existent person or entity, for the purpose of deceiving the governing agencies of the state or county, the following language is recommended. We recommend that the language be a new sub-section of article 11, chapter 37, section 2 of the West Virginia code, to be designated § 37-11-2 ( c ).

*At the time of recordation of any deed of conveyance of real property in the office of the clerk of county commission/council, grantee must present proof of identification and current address, which proof matches the name of the grantee in the deed to be recorded.*

To help defend against those persons who attempt to deceive a public body by paying taxes on real property for the true owner, in order to continue the deception that the true owner no longer holds title to the land, we recommend that the following language be a new paragraph added to the existing § 11a-1-9.

*At the time of payment of any ad valorem tax to the sheriff of any county, if such payment is made with cash, by other than the taxpayer named on the tax ticket, such person shall provide proof of identification including, at least, one form of identification containing a picture and current address for copying and filing by the sheriff.*

## **911/Central Dispatch Issues**

- The eastern panhandle counties oppose all efforts to further reduce the wireless 911 fees distributed to counties for other public safety related state projects.
- Wireless phones continue to be a growing source of 911 fee revenue while the landline fees continue to reduce.
- Wireless usage increases the call volume given the fact that 911 centers are besieged by callers reporting the same incident which over whelms 911 centers and staff busy responding to the initial call report.
- Staffing, training, equipment and spatial needs must be paid for through the use of 911 fees and as landline fees continue to decline, the wireless fees will become a critical funding source to county 911 centers.
- Should the state wish to redirect wireless 911 fees to other state projects, we request the wireless 911 fees be increased for that purpose so that the funding levels to the county remain untouched.
- Request that proposed 311 operations remain in 911 centers statewide as many counties have limited state police detachments and call centers are regional centers with limited knowledge of county specific information.
- Modify WV state code 24-6-6b(d) to eliminate the 3% billing paid to CMRs providers for processing of the wireless enhanced 911 fee monies collected.
- Convert quarterly wireless fee distribution by the public service commission to monthly disbursements to the counties in order to provide more consistent and even cash flow to county 911 operations.