



## Virginia Local Government Law

### Help with Transfer of Development Rights has Arrived!

**By: Andrew McRoberts. *This was posted Thursday, January 7th, 2010***

Transfers of Development Rights (TDRs) have long been seen by Virginia localities as a tool for good planning and to achieve the local future land use plan. But for a long time, Virginia localities had no authority to permit TDRs. *See* Opinion to the Honorable Robert T. Andrews, 1985-86 Va. A.G. op. 112 (Loudoun County TDR program).

In 2007, this changed, but the statutes approved that year (Virginia Code sections 15.2-2316.1 and 15.2-2316.2) had some significant limitations, perhaps most significantly the requirement that the separation of the rights from the “sending” property be immediately “attached” to the receiving property. In 2009, the statutes were significantly amended to correct this and other perceived barriers to localities and landowners using TDRs. [2009 Va Acts of Assembly ch. 413](#).

To assist localities and landowners alike in pursuing a TDR program, a group of stakeholders gathered at the Virginia Association of Counties (VACo) office for many months in 2009 to create a “model ordinance” and associated forms. I blogged about this last Fall in an article entitled, [“Transfer of Development Rights are on the Way”](#). Now, the help has arrived!

Here is the official announcement from VACo:

” A copy of a model transfer of development rights (TDR) ordinance has been posted on [VACo website](#) at this location:  
<http://www.vaco.org/LegislativeNews/LegPubs/Model%20TDR%20Ordinance.pdf>

“The ordinance, which is the product of a work group representing broad stakeholder interests meeting over the past four months, also includes commentaries, model deeds and suggested references.

“The initiative for the model ordinance was the extensive changes to the TDR statute enacted by the 2009 General Assembly ([Ch. 413, 2009 Va. Acts](#)). Because of those

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legislative amendments, which included local taxation of the severed rights during the time they are unattached to a specific land parcel, several stakeholders felt that a usable model ordinance was needed to encourage localities' adoption of TDR provisions.

“The work group that produced the model ordinance included local government representatives, attorneys and lobbyist, planners, developers, appraisers and other real estate professionals, state officials, and other agriculture interest groups.

“As with any model ordinance localities are reminded that local conditions and concerns may require modifications before adoption.”

Any locality hoping to start a TDR program, or to revamp an existing one, would do well to review the work of the group, which includes extensive commentary and issues to consider, as well as the model ordinance itself. The group discussed many issues, some particularly thorny, which localities should address in any TDR ordinance, whether based upon the model or not. Some issues arise from the wording of the statutes, and others from the creation of a new class of taxable real estate — the “floating” development right.

I and the whole [Local Government Team at Sands Anderson Marks and Miller](#) would be excited and proud to assist anyone with legal issues surrounding TDRs, which hold so much promise as a local government planning and land use tool, as well as an estate or financial planning tool for landowners.

My thanks to VACo for including me on the team that prepared this document, to Chip Dicks for his excellent work in Chairing the group, to Ted McCormack for his working in arranging and coordinating the group, and to all those on the team for the good work, cooperative spirit and helpful work product that emerged.

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