

# VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

## CHAPTER 239

*An Act to amend and reenact §§ 6.2-1047 and 6.2-1059 of the Code of Virginia, relating to banks; trust subsidiaries.*

[H 155]

Approved March 10, 2020

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 6.2-1047 and 6.2-1059 of the Code of Virginia are amended and reenacted as follows:**

**§ 6.2-1047. Definitions.**

As used in this article, unless the context requires a different meaning:

"Affiliate bank" with respect to a trust subsidiary means (i) a bank of which more than 50 percent of the shares are owned directly or indirectly through a subsidiary by the same Virginia bank holding company that owns directly or indirectly through a subsidiary all the shares, except directors' qualifying shares, of a trust subsidiary or a subsidiary bank or (ii) a bank that owns some or all of the shares of a trust subsidiary or a subsidiary bank.

"Bank" has the meaning assigned to it in § 6.2-800.

"Bank holding company" has the meaning assigned to it in § 6.2-800.

"Bank under common ownership" means a bank of which 80 percent or more of its common stock is owned, directly or indirectly through a subsidiary, by the same Virginia bank holding company as owns, directly or indirectly through a subsidiary, at least 80 percent of the stock of the subsidiary bank substituted as fiduciary.

"Fiduciary capacity" means every capacity in which a trust institution is granted the right to act pursuant to § 6.2-1002 and every other capacity in which a bank acts, or may act, through its trust department, including, without limitation, trusteeship with respect to common trust funds.

"Main office" is the place designated in the articles of incorporation or articles of association as the main office of the bank or trust subsidiary at which the principal functions of the bank or trust subsidiary are to be conducted.

"Owning bank" means a bank owning 10 percent or more of the shares of a trust subsidiary.

"Subsidiary bank" means a bank authorized to exercise trust powers, at least 80 percent of the outstanding shares of which are owned directly or indirectly through a subsidiary by a Virginia bank holding company.

"Trust office" means, with regard to a trust subsidiary or a bank having trust powers, an office for trust purposes only, at which the trust subsidiary or bank holds itself out as dealing with the public in the solicitation and conduct of its trust business.

*"Trust subsidiary under common ownership" means a trust subsidiary at least 80 percent or more of which is owned, directly or indirectly through a subsidiary, by the same Virginia bank holding company as owns, directly or indirectly through a subsidiary, at least 80 percent of the stock of the subsidiary bank substituted as fiduciary.*

"Virginia bank holding company" means a bank holding company that, directly or indirectly through a subsidiary, owns or controls a bank the main office of which is located in the Commonwealth.

**§ 6.2-1059. Substitution of subsidiary bank as fiduciary.**

A. Upon obtaining permission to engage in the trust business, a subsidiary bank may file an application in the circuit court of the jurisdiction in which its main office is located requesting that it be substituted, except as may be specified in such application, in every fiduciary capacity for a bank under common ownership *or a trust subsidiary under common ownership*.

B. Upon a finding that (i) the subsidiary bank has been granted such permission to engage in the trust business by the Commission or the Comptroller of the Currency and (ii) the unimpaired capital and surplus of such subsidiary bank is sufficient as prescribed in § 6.2-1003, or bond with corporate surety has been posted for any excess, or has been validly waived, the court shall enter an order substituting the subsidiary bank in every fiduciary capacity for each of the specified banks *or trust subsidiaries* under common ownership, except as may be otherwise specified in the application.

C. Upon entry of such order, such subsidiary bank shall, without further act, be substituted in every such fiduciary capacity. The substitution shall be evidenced by filing a copy of the order with the clerk of any circuit court in the Commonwealth. The order shall be indexed in each index in the records of such court in which substitutions of fiduciaries are otherwise indexed. The application may be made *ex parte* and need not list the fiduciary capacities in which substitution is made. If a bank *or trust subsidiary* under common ownership with the subsidiary bank shall already have qualified in any fiduciary capacity and given bond, without surety, then if the order of substitution shall so provide, which it may provide only if the fiduciary for which there is to be substitution consents, the predecessor

fiduciary shall remain liable on its bond for the acts of its named successor, and no security or corporate surety shall be required of the successor fiduciary on its bond.

D. Any bond, with corporate surety, posted under this section or under § 6.2-1056 may be a blanket bond conditioned as otherwise contemplated by law.

E. Each designation in a will or other instrument heretofore or hereafter executed of a bank *or trust subsidiary* as fiduciary shall be deemed a designation of the subsidiary bank ~~under common ownership~~ substituted for such bank *or trust subsidiary* pursuant to this section except when the instrument is executed after such substitution and expressly negates the application of this section. No waiver of surety with respect to any fiduciary bond shall be effective except in such case when the bond would be otherwise sufficient as contemplated by § 6.2-1056 or this section. Any grant in such an instrument of any discretionary power shall be deemed conferred upon the fiduciary deemed to have been nominated hereunder.

F. A bank *or trust subsidiary* shall account jointly with the subsidiary bank that has been substituted as fiduciary for such bank *or trust subsidiary* pursuant to this section for the accounting period during which the subsidiary bank is initially so substituted. Upon substitution pursuant to this section, the bank *or trust subsidiary* shall deliver to the substituted subsidiary bank ~~under common ownership~~ all assets held by the bank *or trust subsidiary* as fiduciary, except assets held for accounts to which there has been no substitution. Upon such substitution, all such assets shall become the property of the subsidiary bank as fiduciary without the necessity of any instrument of transfer or conveyance.