

# VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

## CHAPTER 353

*An Act to amend and reenact §§ 6.1-194.69, 6.1-194.136, 8.2-103, 8.2-202, 8.2A-103, 8.2A-501, 8.2A-518, 8.2A-519, 8.2A-527, 8.2A-528, 8.3A-103, 8.4-104, 8.4A-105, 8.4A-106, 8.4A-204, 8.5A-102, 8.5A-103, 8.6A-102, 8.7-102, 8.8A-102, 8.9A-102, 8.10-104, 15.2-4908, 15.2-6612, 55-70.1, 59.1-207.19, 59.1-352.2, 59.1-353, 59.1-481, 59.1-494, and 59.1-501.2 of the Code of Virginia, to amend the Code of Virginia by adding a title numbered 8.1A, consisting of sections numbered 8.1A-101 through 8.1A-310; and to repeal Title 8.1 (§§ 8.1-101 through 8.1-208) and §§ 8.2-208 and 8.2A-207 of the Code of Virginia, relating to the Uniform Commercial Code; general provisions.*

[H 1778]

Approved March 16, 2003

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

**1. That §§ 6.1-194.69, 6.1-194.136, 8.2-103, 8.2-202, 8.2A-103, 8.2A-501, 8.2A-518, 8.2A-519, 8.2A-527, 8.2A-528, 8.3A-103, 8.4-104, 8.4A-105, 8.4A-106, 8.4A-204, 8.5A-102, 8.5A-103, 8.6A-102, 8.7-102, 8.8A-102, 8.9A-102, 8.10-104, 15.2-4908, 15.2-6612, 55-70.1, 59.1-207.19, 59.1-352.2, 59.1-353, 59.1-481, 59.1-494, and 59.1-501.2 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a title numbered 8.1A, consisting of sections numbered 8.1A-101 through 8.1A-310, as follows:**

§ 6.1-194.69. General investment authority.

Subject to the powers and limitations set forth in § 6.1-194.62, the assets of a state association may be invested only in the following ways:

1. In real and personal property necessary for the conduct of its business and in real estate to be held for its future accommodation. Such association may invest in an office building or buildings and appurtenances for the transaction of such association's business, or for the transaction of such business and for rental. No such investment may be made without the prior approval of the Commissioner if the total amount of the investment exceeds ~~forty~~ 50 percent of capital stock paid-in and unimpaired and ~~forty~~ 50 percent of unimpaired combined surplus and undivided profits, or, in the case of a mutual association, ~~forty~~ 50 percent of general reserve and surplus.

2. In stock and other securities or obligations of a service corporation or corporations. Such service corporation or corporations may charge and collect such finance charges, fees and interest rates as are authorized to state associations. Such service corporation or corporations, directly or indirectly, may engage in providing real estate brokerage services for property owned by an association owning capital stock in the service corporation, by the service corporation, or a joint venture in which the service corporation is a participant, but no service corporation or corporations, state association or holding company which has control, as defined in § 6.1-381, over a state association may engage directly or indirectly in providing real estate brokerage services for property owned by third parties; provided that any such holding company may consummate the acquisition of, and thereafter own, a corporation that engages in providing real estate brokerage services for property owned by third parties if, on or before January 23, 1989, it filed an application with the State Corporation Commission with respect to such acquisition and if the Commission subsequently approves such acquisition. The Commission shall approve or disapprove such an acquisition on its merits before or after July 1, 1989, without regard to the prohibition contained in this section and, for purposes of the preceding sentence, any application submitted to the Commission on or before January 23, 1989, shall be deemed filed as of the date of submission, without regard to any subsequent amendment, rescission or withdrawal of any regulation of the Commission. Nothing herein shall prohibit a holding company that has control over a state association from engaging in third party real estate brokerage in any state, other than the Commonwealth of Virginia, that permits such activities by its state chartered savings institutions, or their affiliates or holding companies.

3. In the purchase of real estate for the purpose of producing income or for inventory and sale or for improvement including the erection of buildings thereon, for sale or rental purposes, and such an association may hold, sell, lease, operate or otherwise exercise the rights of an owner of any such property.

4. Unless specifically authorized by the Commissioner, a state association shall not invest more than ~~ten~~ 10 percent, in the aggregate, of its assets in the investments specified in subdivisions 2 and 3 of this section.

5. In obligations which are fully guaranteed as to principal and interest by the United States or the Commonwealth; in stock or obligations of any Federal Home Loan Bank or Banks; in stock or obligations of Federal Reserve Banks; in obligations of, or issued by, any other state, territory or possession of the United States or political subdivision thereof, so long as such obligations continue to

hold one of the four highest national investment grade ratings; in obligations of, or issued by, any city, town, county, district or other municipal corporation or political subdivision of the Commonwealth, or any public instrumentality or public authority created by act of the General Assembly, so long as such obligations continue to hold one of the four highest national investment grade ratings; in deposits in banks for savings and loan associations; in stock, obligations or other instruments of the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or any successor or successors thereto; in obligations of, or guaranteed as to principal and interest by, Canada or any province thereof, provided that the principal and interest of any such obligations are payable in United States funds; in demand, time, or savings deposits, shares or accounts, or other obligations of any financial institution the accounts of which are insured by a federal agency or other insurer approved by the Commissioner; in bankers' acceptances which are eligible for purchase by Federal Reserve Banks.

6. In loans to individuals for personal, family or household purposes and loans reasonably incident thereto, to include loans to dealers in consumer goods for purposes of financing inventory and floor planning. Such loans may be evidenced by installment consumer paper which is transferred to an association by an endorser or guarantor, provided that such paper shall carry a full or limited endorsement or guarantee of the person, partnership, association or corporation transferring the same and the association shall have a certificate of a responsible officer designated by its board for that purpose stating that the responsibility of the maker of such obligation has been evaluated and the association is relying primarily upon such maker for the payment of such obligation.

7. In loans secured by savings accounts of the association.

8. An association may issue credit cards, extend credit in connection therewith and otherwise engage in or participate in credit card operations.

9. In unsecured single payment personal loans to individuals with a term of not more than ~~twelve~~ 12 months.

10. In personal property, which term as used herein shall include fixtures, acquired upon the specific request of and for lease to a customer, subject to the following limitations:

a. The rentals receivable by the association under the initial lease of any item of personal property shall at least equal the cost to the association of such item of personal property;

b. The association shall have a certificate of a responsible officer designated by its board for that purpose stating that the responsibility of the lessee has been evaluated and approved by such officer;

c. Upon the expiration of any lease, whether by virtue of the lease agreement or by virtue of the retaking of possession by the association, such personal property shall be relet, sold or otherwise disposed of, or charged off within one year from the time of expiration of such lease.

11. In secured or unsecured credit to cover payment of checks, drafts or other fund transfer orders in excess of the available balance of an account on which they are drawn, provided that such extensions of credit must be paid off within ~~thirty~~ 30 days after the extension of credit is made. The ~~thirty~~ 30-day limitation on repayment shall apply only to inadvertent overdrafts by the account owner, and shall not apply to extensions of credit, agreed upon in writing, whereby the borrower is permitted to access the line of credit by check, draft or other fund transfer order.

12. In loans for commercial, corporate, business or agricultural purposes. Unless specifically authorized by the Commissioner, a state association shall not invest more than ~~ten~~ 10 percent of its assets in loans for commercial, corporate, business or agricultural purposes. The percentage-of-assets limitation in this subdivision shall not apply to overdraft loans, commercial real estate loans, loans to a service corporation the stock of which is owned by the association, or loans to dealers in consumer goods for inventory or floor planning financing.

13. A state association may issue commercial and standby letters of credit in conformance with the Uniform Commercial Code (§ ~~8.1-101~~ 8.1A-101 et seq.) or the Uniform Customs and Practice for Documentary Credits and may pledge collateral to secure its obligations thereunder, subject to the following requirements:

a. Each letter of credit shall conspicuously state that it is a letter of credit;

b. The issuer's undertaking shall contain a specified expiration date or be for a definite term, and shall be limited in amount;

c. The issuer's obligation to pay shall be solely dependent upon the presentation of conforming documents as specified in the letter of credit, and not upon the factual performance or nonperformance by the parties to the underlying transaction; and

d. The account party shall have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

14. In commercial paper rated in the highest or second highest categories as of the date of purchase, as shown by the most recently published rating by at least two nationally recognized investment rating services; in corporate debt securities, including corporate debt securities convertible into stock, that may be sold with reasonable promptness at a price that corresponds reasonably to their fair market value, and that are rated in at least the third highest category by a nationally recognized investment rating service in its most recently published ratings before the date of purchase of the security; and in shares in

open-end management investment companies.

15. A state association may invest in any other obligations, instruments or investments which are specifically approved by the Commissioner.

16. The Commission may promulgate such rules and regulations as may be required to prevent excessive aggregate amounts of lending by an association to any one individual or entity.

§ 6.1-194.136. General investment authority.

The assets of a state savings bank may be invested only in the following ways:

1. In real and personal property necessary for the conduct of its business and in real estate to be held for its future accommodation. Such savings bank may invest in an office building or buildings and appurtenances for the transaction of such savings bank's business, or for the transaction of such business and for rental. No such investment may be made without the prior approval of the Commissioner if the total amount of the investment exceeds the aggregate amount of the savings bank's unimpaired capital funds.

2. In stock and other securities or obligations of a service corporation or corporations. Such service corporation or corporations may charge and collect such finance charges, fees and interest rates as are authorized to state savings banks, and shall be subject to state and local taxation in the same manner as are state savings banks. Unless specifically authorized by the Commissioner, a state savings bank shall not invest more than ~~ten~~ 10 percent, in the aggregate, of its assets in a service corporation or corporations. Such service corporation or corporations, directly or indirectly, may engage in providing real estate brokerage services for property owned by a savings bank owning capital stock in the service corporation, by the service corporation, or by a joint venture in which the service corporation is a participant, but no such service corporation or corporations, state savings bank or holding company which has control, as control is defined in § 6.1-381, over a state savings bank may engage directly or indirectly in providing real estate brokerage services for property owned by third parties. Nothing in this subdivision shall prohibit a state savings bank or its affiliates or a holding company that has control over a state savings bank from engaging in third party real estate brokerage in any state, territory or district, other than the Commonwealth, that permits such activities by its state chartered savings institutions, or their affiliates or holding companies.

3. In obligations which are fully guaranteed as to principal and interest by the United States or the Commonwealth; in stock or obligations of any Federal Home Loan Bank or Banks; in stock or obligations of the Federal Deposit Insurance Corporation; in stock or obligations of Federal Reserve Banks; in obligations of, or issued by, any other state, territory or possession of the United States or political subdivision thereof, so long as such obligations continue to hold one of the four highest national investment grade ratings; in obligations of, or issued by, any city, town, county, district or other municipal corporation or political subdivision of the Commonwealth, or any public instrumentality or public authority created by act of the General Assembly, so long as such obligations continue to hold one of the four highest national investment grade ratings; in stock, obligations or other instruments of the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or any successor or successors thereto; in obligations of, or guaranteed as to principal and interest by, the Dominion of Canada or any province thereof, provided that the principal and interest of any such obligations are payable in United States funds; in demand, time, or savings deposits, shares or accounts, or other obligations of any financial institution the accounts of which are insured by a federal agency; or in bankers' acceptances and commercial paper which are eligible for purchase by Federal Reserve Banks.

4. In loans to individuals for personal, family or household purposes and loans reasonably incident thereto, to include loans to dealers in consumer goods for purposes of financing inventory and floor planning. Such loans may be evidenced by installment consumer paper which is transferred to the savings bank by an endorser or guarantor, provided that such paper shall carry a full or limited endorsement or guarantee of the person, partnership, association or corporation transferring the same and the savings bank shall have a certificate of a responsible officer designated by its board for that purpose stating that the responsibility of the maker of such obligation has been evaluated and the savings bank is relying primarily upon such maker for the payment of such obligation.

5. In loans secured by savings accounts of the savings bank.

6. In loans secured by real estate.

7. A savings bank may issue credit cards, extend credit in connection therewith and otherwise engage in or participate in credit card operations.

8. In unsecured single payment loans to individuals with a maturity of not more than ~~twelve~~ 12 months.

9. In personal property, which term as used herein shall include fixtures acquired upon the specific request of and for lease to a customer, subject to the following limitations:

a. The rentals receivable by the savings bank under the initial lease of any item of personal property shall at least equal the cost to the savings bank of such item of personal property;

b. The savings bank shall have a certificate of a responsible officer designated by its board for that purpose stating that the responsibility of the lessee has been evaluated and approved by such officer; and

c. Upon the expiration of any lease, whether by virtue of the lease agreement or by virtue of the retaking of possession by the savings bank, such personal property shall be relet, sold or otherwise disposed of, or charged off within one year from the time of expiration of such lease.

10. In secured or unsecured credit to cover payment of checks, drafts or other fund transfer orders in excess of the available balance of an account on which they are drawn, provided that such extensions of credit must be paid off within ~~thirty~~ 30 days after the extension of credit is made. The ~~thirty~~ 30-day limitation on repayment shall apply only to inadvertent overdrafts by the account owner and shall not apply to extensions of credit, agreed upon in writing, whereby the borrower is permitted to access the line of credit by check, draft or other fund transfer order.

11. In secured or unsecured loans for commercial, corporate, business or agricultural purposes. Unless specifically authorized by the Commission, a state savings bank shall not invest more than ~~twenty~~ 20 percent of its assets in loans for commercial, corporate, business or agricultural purposes. The percentage-of-assets limitations provided by the preceding sentence shall not apply to overdraft loans, commercial real estate loans, loans to a service corporation the stock of which is owned by the savings bank, or loans to dealers in consumer goods for inventory or floor planning financing. A state savings bank shall not invest more than ~~twenty~~ 20 percent of its assets in loans the primary security for which is nonresidential real estate.

12. A state savings bank may issue commercial and standby letters of credit in conformance with the Uniform Commercial Code (§ ~~8-1-101~~ 8.1A-101 et seq.) or the Uniform Customs and Practice for Documentary Credits and may pledge collateral to secure its obligations thereunder, subject to the following requirements:

- a. Each letter of credit shall conspicuously state that it is a letter of credit;
- b. The issuer's undertaking shall contain a specified expiration date or be for a definite term, and shall be limited in amount;
- c. The issuer's obligation to pay shall be solely dependent upon the presentation of conforming documents as specified in the letter of credit, and not upon the factual performance or nonperformance by the parties to the underlying transaction; and
- d. The account party shall have an unqualified obligation to reimburse the issuer for payments made under the letter of credit.

13. In commercial paper rated in the highest or second highest categories as of the date of purchase, as shown by the most recently published rating by at least two nationally recognized investment rating services; in corporate debt securities, including corporate debt securities convertible into stock, that may be sold with reasonable promptness at a price that corresponds reasonably to their fair market value, and that are rated in at least the third highest category by a nationally recognized investment rating service in its most recently published ratings before the date of purchase of the security; and in shares in open-end management investment companies.

14. A state savings bank may invest in any other obligations, instruments or investments which are specifically approved by the Commissioner.

15. A state savings bank shall conform to the loans-to-one-borrower limitations contained in § 6.1-61.

16. A state savings bank shall have the same powers, and shall be subject to the same limitations, as provided for state associations by §§ 6.1-194.5 and 6.1-194.62.

#### TITLE 8.1A.

### UNIFORM COMMERCIAL CODE — GENERAL PROVISIONS.

#### PART 1.

#### GENERAL PROVISIONS.

§ 8.1A-101. *Short titles.*

(a) *Titles 8.1A through 8.9A may be cited as the Uniform Commercial Code.*

(b) *This title may be cited as Uniform Commercial Code — General Provisions.*

§ 8.1A-102. *Scope of title.*

*This title applies to a transaction to the extent that it is governed by another title of the Uniform Commercial Code.*

§ 8.1A-103. *Construction of Uniform Commercial Code to promote its purposes and policies; applicability of supplemental principles of law.*

(a) *The Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies, which are:*

- (1) *to simplify, clarify, and modernize the law governing commercial transactions;*
- (2) *to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and*
- (3) *to make uniform the law among the various jurisdictions.*

(b) *Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.*

§ 8.1A-104. *Construction against implied repeal.*

*The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.*

*§ 8.1A-105. Severability.*

*If any provision or clause of the Uniform Commercial Code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Uniform Commercial Code that can be given effect without the invalid provision or application, and to this end the provisions of the Uniform Commercial Code are severable.*

*§ 8.1A-106. Use of singular and plural; gender.*

*In the Uniform Commercial Code, unless the statutory context otherwise requires:*

*(1) words in the singular number include the plural, and those in the plural include the singular; and*

*(2) words of any gender also refer to any other gender.*

*§ 8.1A-107. Section captions.*

*Section captions are part of the Uniform Commercial Code.*

*§ 8.1A-108. Relation to Electronic Signatures in Global and National Commerce Act.*

*This title modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., except that nothing in this title modifies, limits, or supersedes § 7001(c) of that Act or authorizes electronic delivery of any of the notices described in § 7003(b) of that Act.*

**PART 2.**

**GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.**

*§ 8.1A-201. General Definitions.*

*(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other titles of the Uniform Commercial Code that apply to particular titles or parts thereof, have the meanings stated.*

*(b) Subject to definitions contained in other titles of the Uniform Commercial Code that apply to particular titles or parts thereof:*

*(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.*

*(2) "Aggrieved party" means a party entitled to pursue a remedy.*

*(3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in § 8.1A-303.*

*(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.*

*(5) "Bearer" means a person in possession of a negotiable instrument, document of title, or certificated security that is payable to bearer or indorsed in blank.*

*(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods.*

*(7) "Branch" includes a separately incorporated foreign branch of a bank.*

*(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.*

*(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Title 8.2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.*

*(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:*

*(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and*

*(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.*

*(11) "Consumer" means an individual who enters into a transaction primarily for personal, family,*

or household purposes.

(12) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by the Uniform Commercial Code as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery," with respect to an instrument, document of title, or chattel paper, means voluntary transfer of possession.

(16) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt, or order for the delivery of goods, and also any other document that in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers. To be a document of title, a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession that are either identified or are fungible portions of an identified mass.

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith" means honesty in fact in the conduct or transaction concerned.

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) the person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession.

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) "Organization" means a person other than an individual.

(26) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Title 8.9A. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under § 8.2-401, but a buyer may also acquire a

"security interest" by complying with Title 8.9A. Except as otherwise provided in § 8.2-505, the right of a seller or lessor of goods under Title 8.2 or Title 8.2A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Title 8.9A. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under § 8.2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to § 8.1A-203.

(36) "Send" in connection with a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

§ 8.1A-202. Notice; knowledge.

(a) Subject to subsection (f), a person has "notice" of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover," "learn," or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person "receives" a notice or notification when:

(1) it comes to that person's attention; or

(2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

§ 8.1A-203. Lease distinguished from security interest.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

§ 8.1A-204. Value.

Except as otherwise provided in Titles 8.3A, 8.4, 8.5A, and 8.6A, a person gives value for rights if the person acquires them:

(1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) as security for, or in total or partial satisfaction of, a preexisting claim;

(3) by accepting delivery under a preexisting contract for purchase; or

(4) in return for any consideration sufficient to support a simple contract.

§ 8.1A-205. Reasonable time; seasonableness.

(a) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

§ 8.1A-206. Presumptions.

Whenever the Uniform Commercial Code creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

### PART 3.

#### TERRITORIAL APPLICABILITY AND GENERAL RULES.

§ 8.1A-301. Territorial applicability; parties' power to choose applicable law.

(a) This section applies to a transaction to the extent that it is governed by another title of the Uniform Commercial Code.

(b) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or such other state or nation shall govern their rights and duties.

(c) In the absence of an agreement effective under subsection (b), the rights and obligations of the parties are determined by the law that would be selected by application of this State's conflict of laws principles.

(d) To the extent that the Uniform Commercial Code governs a transaction, if one of the following provisions of the Uniform Commercial Code specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

(1) Rights of creditors against sold goods. § 8.2-402;

(2) Applicability of the title on leases. §§ 8.2A-105 and 8.2A-106;

(3) Applicability of the title on bank deposits and collections. § 8.4-102;

(4) Applicability of the title on funds transfers. § 8.4A-507;

(5) Letters of credit. § 8.5A-116;



- (6) Bulk transfers subject to the title on bulk sales. § 8.6A-103;
- (7) Applicability of the title on investment securities. § 8.8A-110;
- (8) Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. §§ 8.9A-301 through 8.9A-307.

§ 8.1A-302. Variation by agreement.

(a) Except as otherwise provided in subsection (b) or elsewhere in the Uniform Commercial Code, the effect of provisions of the Uniform Commercial Code may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever the Uniform Commercial Code requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of the Uniform Commercial Code of the phrase "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

§ 8.1A-303. Course of performance, course of dealing, and usage of trade.

(a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to § 8.2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

§ 8.1A-304. Obligation of good faith.

Every contract or duty within the Uniform Commercial Code imposes an obligation of good faith in its performance and enforcement.

§ 8.1A-305. Remedies to be liberally administered.

(a) The remedies provided by the Uniform Commercial Code shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in the Uniform Commercial Code or by other rule of law.

(b) Any right or obligation declared by the Uniform Commercial Code is enforceable by action unless the provision declaring it specifies a different and limited effect.

§ 8.1A-306. Waiver or renunciation of claim or right after breach.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

§ 8.1A-307. Prima facie evidence by third-party documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

§ 8.1A-308. *Performance or acceptance under reservation of rights.*

(a) *A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.*

(b) *Subsection (a) does not apply to an accord and satisfaction.*

§ 8.1A-309. *Option to accelerate at will.*

*A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.*

§ 8.1A-310. *Subordinated obligations.*

*An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.*

§ 8.2-103. *Definitions and index of definitions.*

(1) *In this title unless the context otherwise requires:*

(a) *"Buyer" means a person who buys or contracts to buy goods.*

(b) *"Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.*

(c) *"Receipt" of goods means taking physical possession of them.*

(d) *"Seller" means a person who sells or contracts to sell goods.*

(2) *Other definitions applying to this title or to specified parts thereof, and the sections in which they appear are:*

*"Acceptance." § 8.2-606.*

*"Banker's credit." § 8.2-325.*

*"Between merchants." § 8.2-104.*

*"Cancellation." § 8.2-106 (4).*

*"Commercial unit." § 8.2-105.*

*"Confirmed credit." § 8.2-325.*

*"Conforming to contract." § 8.2-106.*

*"Contract for sale." § 8.2-106.*

*"Cover." § 8.2-712.*

*"Entrusting." § 8.2-403.*

*"Financing agency." § 8.2-104.*

*"Future goods." § 8.2-105.*

*"Goods." § 8.2-105.*

*"Identification." § 8.2-501.*

*"Installment contract." § 8.2-612.*

*"Letter of credit." § 8.2-325.*

*"Lot." § 8.2-105.*

*"Merchant." § 8.2-104.*

*"Overseas." § 8.2-323.*

*"Person in position of seller." § 8.2-707.*

*"Present sale." § 8.2-106.*

*"Sale." § 8.2-106.*

*"Sale on approval." § 8.2-326.*

*"Sale or return." § 8.2-326.*

*"Termination." § 8.2-106.*

(3) *The following definitions in other titles apply to this title:*

*"Check." § 8.3A-104.*

*"Consignee." § 8.7-102.*

*"Consignor." § 8.7-102.*

*"Consumer goods." § 8.9A-102.*

*"Dishonor." § 8.3A-502.*

*"Draft." § 8.3A-104.*

(4) *In addition Title 8-4 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.*

§ 8.2-202. *Final written expression; parol or extrinsic evidence.*

*Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented*

(a) by *course of performance*, course of dealing or usage of trade (§ ~~8.1-205~~ 8.1A-303) ~~or by course of performance (§ 8.2-208)~~; and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

§ 8.2A-103. Definitions and index of definitions.

(1) In this title unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) One of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this title to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (§ 8.2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this title and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this title and the sections in which they appear are:

"Accessions" § 8.2A-310 (1).

"Construction mortgage" § 8.2A-309 (1) (d).

"Encumbrance" § 8.2A-309 (1) (e).

"Fixtures" § 8.2A-309 (1) (a).

"Fixture filing" § 8.2A-309 (1) (b).

"Purchase money lease" § 8.2A-309 (1) (c).

(3) The following definitions in other titles apply to this title:

"Account" § 8.9A-102 (a) (2).

"Between merchants" § 8.2-104 (3).

"Buyer" § 8.2-103 (1) (a).

"Chattel paper" § 8.9A-102 (a) (11).

"Consumer goods" § 8.9A-102 (a) (23).

"Document" § 8.9A-102 (a) (30).

"Entrusting" § 8.2-403 (3).

"General intangible" § 8.9A-102 (a) (42).

"Good faith" § 8.2-103 (1) (b).

"Instrument" § 8.9A-102 (a) (47).

"Merchant" § 8.2-104 (1).

"Mortgage" § 8.9A-102 (a) (55).

"Pursuant to commitment" § 8.9A-102 (a) (68).

"Receipt" § 8.2-103 (1) (c).

"Sale" § 8.2-106 (1).

"Sale on approval" § 8.2-326.

"Sale or return" § 8.2-326.

"Seller" § 8.2-103 (1) (d).

(4) In addition, Title 8.1A contains general definitions and principles of construction and

interpretation applicable throughout this title.

§ 8.2A-501. Default; procedure.

(1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this title.

(2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this title and, except as limited by this title, as provided in the lease agreement.

(3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this title.

(4) Except as otherwise provided in subsection (4 a) of § ~~8.1-106~~ 8.1A-305 or this title or the lease agreement, the rights and remedies referred to in subsections (2) and (3) of this section are cumulative.

(5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

§ 8.2A-518. Cover; substitute goods.

(1) After default by a lessor under the lease contract of the type described in subsection (1) of § 8.2A-508, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 8.2A-504) or otherwise determined pursuant to agreement of the parties (~~subsection (3) of § 8.1-102~~ §§ 8.1A-302 and § 8.2A-503), if a lessee's cover is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages less expenses saved in consequence of the lessor's default.

(3) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and § 8.2A-519 governs.

§ 8.2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 8.2A-504) or otherwise determined pursuant to agreement of the parties (~~subsection (3) of § 8.1-102~~ §§ 8.1A-302 and § 8.2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under subsection (2) of § 8.2A-518, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(2) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(3) Except as otherwise agreed, the lessee has accepted goods and given notification (subsection (3) of § 8.2A-516), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(4) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

§ 8.2A-527. Lessor's rights to dispose of goods.

(1) After a default by a lessee under the lease contract of the type described in subsection (1) of § 8.2A-523 or subsection (3) (a) of § 8.2A-523 or after the lessor refuses to deliver or takes possession of goods (§ 8.2A-525 or § 8.2A-526), or, it agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 8.2A-504) or otherwise determined pursuant to agreement of the parties (~~subsection (3) of § 8.1-102~~

§§ 8.1A-302 and §-8.2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under § 8.2A-530, less expenses saved in consequence of the lessee's default.

(3) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and § 8.2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this title.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (subsection (5) of § 8.2A-508).

§ 8.2A-528. Lessor's damages for nonacceptance or repudiation.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 8.2A-504) or otherwise determined pursuant to agreement of the parties (~~subsection (3) of § 8.1-102~~ §§ 8.1A-302 and §-8.2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2) of § 8.2A-527, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in subsection (1) of § 8.2A-523 or subdivision (3) (a) of § 8.2A-523, or, if agreed, for other default of the lessee (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods or, if the lessee has taken possession of the goods, as of the date the lessor repossessed the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under § 8.2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under § 8.2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

§ 8.3A-103. Definitions.

(a) In this title:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) "Drawee" means a person ordered in a draft to make payment.

(3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(5) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(6) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(7) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this title or Title 8.4.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the burden of establishing the fact (~~§ 8.1-201 (8)~~ 8.1A-201(b)(8)).

(11) "Remitter" means a person who purchases an instrument from its issuer if the instrument is

payable to an identified person other than the purchaser.

(b) Other definitions applying to this title and the sections in which they appear are:

"Acceptance," § 8.3A-409.  
 "Accommodated party," § 8.3A-419.  
 "Accommodation party," § 8.3A-419.  
 "Alteration," § 8.3A-407.  
 "Anomalous indorsement," § 8.3A-205.  
 "Blank indorsement," § 8.3A-205.  
 "Cashier's check," § 8.3A-104.  
 "Certificate of deposit," § 8.3A-104.  
 "Certified check," § 8.3A-409.  
 "Check," § 8.3A-104.  
 "Consideration," § 8.3A-303.  
 "Draft," § 8.3A-104.  
 "Holder in due course," § 8.3A-302.  
 "Incomplete instrument," § 8.3A-115.  
 "Indorsement," § 8.3A-204.  
 "Indorser," § 8.3A-204.  
 "Instrument," § 8.3A-104.  
 "Issue," § 8.3A-105.  
 "Issuer," § 8.3A-105.  
 "Negotiable instrument," § 8.3A-104.  
 "Negotiation," § 8.3A-201.  
 "Note," § 8.3A-104.  
 "Payable at a definite time," § 8.3A-108.  
 "Payable on demand," § 8.3A-108.  
 "Payable to bearer," § 8.3A-109.  
 "Payable to order," § 8.3A-109.  
 "Payment," § 8.3A-602.  
 "Person entitled to enforce," § 8.3A-301.  
 "Presentment," § 8.3A-501.  
 "Reacquisition," § 8.3A-207.  
 "Special indorsement," § 8.3A-205.  
 "Teller's check," § 8.3A-104.  
 "Transfer of instrument," § 8.3A-203.  
 "Traveler's check," § 8.3A-104.  
 "Value," § 8.3A-303.

(c) The following definitions in other titles apply to this title:

"Bank," § 8.4-105.  
 "Banking day," § 8.4-104.  
 "Clearing house," § 8.4-104.  
 "Collecting bank," § 8.4-105.  
 "Depository bank," § 8.4-105.  
 "Documentary draft," § 8.4-104.  
 "Intermediary bank," § 8.4-105.  
 "Item," § 8.4-104.  
 "Payor bank," § 8.4-105.  
 "Suspends payments," § 8.4-104.

(d) In addition, Title ~~8.4~~ 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

§ 8.4-104. Definitions and index of definitions.

(a) In this title, unless the context otherwise requires:

- (1) "Account" means any deposit or credit account with a bank including demand, time savings passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;
- (2) "Afternoon" means the period of a day between noon and midnight;
- (3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions, but shall not include Saturday, Sunday or a legal holiday;
- (4) "Clearing house" means an association of banks or other payors regularly clearing items;
- (5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;
- (6) "Documentary draft" means any negotiable or nonnegotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft; or a draft to be presented for acceptance or payment if specified documents, certificated securities (§ 8.8A-102) or instructions for uncertified securities (§ 8.8A-102), or other certificates, statements, or the like are to be received by the

drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in § 8.3A-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this title and the sections in which they appear are:

"Agreement for electronic presentment" § 8.4-110.

"Bank" § 8.4-105.

"Collecting bank" § 8.4-105.

"Depository bank" § 8.4-105.

"Intermediary bank" § 8.4-105.

"Payor bank" § 8.4-105.

"Presenting bank" § 8.4-105.

"Presentment notice" § 8.4-110.

(c) The following definitions in other titles apply to this title:

"Acceptance" § 8.3A-409.

"Alteration" § 8.3A-407.

"Cashier's check" § 8.3A-104.

"Certificate of deposit" § 8.3A-104.

"Certified check" § 8.3A-409.

"Check" § 8.3A-104.

"Draft" § 8.3A-104.

"Good faith" § 8.3A-103.

"Holder in due course" § 8.3A-302.

"Instrument" § 8.3A-104.

"Notice of dishonor" § 8.3A-503.

"Order" § 8.3A-103.

"Ordinary care" § 8.3A-103.

"Person entitled to enforce" § 8.3A-301.

"Presentment" § 8.3A-501.

"Promise" § 8.3A-103.

"Prove" § 8.3A-103.

"Teller's check" § 8.3A-104.

"Unauthorized signature" § 8.3A-403.

(d) In addition Title ~~8.4~~ 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

§ 8.4A-105. Other definitions.

(a) In this title:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment orders issued by the customer to the bank. If a customer does so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this title.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds-transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of



fair dealing.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact as provided in ~~subdivision (8) of § 8.1-201~~ § 8.1A-201(b)(8).

(b) Other definitions applying to this title and the sections in which they appear are:

"Acceptance" § 8.4A-209.

"Beneficiary" § 8.4A-103.

"Beneficiary's bank" § 8.4A-103.

"Executed" § 8.4A-301.

"Execution date" § 8.4A-301.

"Funds transfer" § 8.4A-104.

"Funds-transfer system rule" § 8.4A-501.

"Intermediary bank" § 8.4A-104.

"Originator" § 8.4A-104.

"Originator's bank" § 8.4A-104.

"Payment by beneficiary's bank to beneficiary" § 8.4A-405.

"Payment by originator to beneficiary" § 8.4A-406.

"Payment by sender to receiving bank" § 8.4A-403.

"Payment date" § 8.4A-401.

"Payment order" § 8.4A-103.

"Receiving bank" § 8.4A-103.

"Security procedure" § 8.4A-201.

"Sender" § 8.4A-103.

(c) The following definitions in Title 8.4 apply to this title:

"Clearinghouse" § 8.4-104.

"Item" § 8.4-104.

"Suspends payments" § 8.4-104.

(d) In addition, Title ~~8.1~~ 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

§ 8.4A-106. Time payment order is received.

(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in ~~subdivision (27) of § 8.1-201~~ § 8.1A-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this title refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this title.

§ 8.4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under § 8.4A-202, or (ii) not enforceable, in whole or in part, against the customer under § 8.4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ~~ninety~~ 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) of this section may be fixed by agreement as stated in subsection ~~(4 b)~~ of § ~~8.1-204~~ 8.1A-302, but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement.

§ 8.5A-102. Definitions.

(a) In this title:

(1) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser,

notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(2) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(4) "Confirmor" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(5) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(6) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in § 8.5A-108(e) and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

(7) "Good faith" means honesty in fact in the conduct or transaction concerned.

(8) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(i) upon payment;

(ii) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(iii) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(9) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(10) "Letter of credit" means a definite undertaking that satisfies the requirements of § 8.5A-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(11) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(12) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(13) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(14) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(b) Definitions in other titles applying to this title and the sections in which they appear are:

"Accept" or "Acceptance" - § 8.3A-409.

"Value" - §§ 8.3A-303 and 8.4A-211.

(c) Title ~~8.4~~ 8.1A contains certain additional general definitions and principles of construction and interpretation applicable throughout this title.

§ 8.5A-103. Scope.

(a) This title applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this title does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this title.

(c) With the exception of this subsection, subsections (a) and (d), §§ 8.5A-102(a) (9) and (10), 8.5A-106(d), and 8.5A-114(d), and except to the extent prohibited in §§ ~~8.4-102(3)~~ 8.1A-302 and 8.5A-117(d), the effect of this title may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this title.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

§ 8.6A-102. Definitions and index of definitions.

(1) In this title, unless the context otherwise requires:

(a) "Assets" means the inventory that is the subject of a bulk sale and any tangible and intangible personal property used or held for use primarily in or arising from the seller's business and sold in connection with that inventory, but the term does not include:

(i) Fixtures as described in subdivision (a) (41) of § 8.9A-102, other than readily removable factory and office machines;

(ii) The lessee's interest in a lease of real property; or

(iii) Property to the extent it is generally exempt from creditor process under nonbankruptcy law.

(b) "Auctioneer" means a person whom the seller engages to direct, conduct, control, or be responsible for a sale by auction.

(c) "Bulk sale" means:

(i) In the case of a sale by auction or a sale or series of sales conducted by a liquidator on the seller's behalf, a sale or series of sales not in the ordinary course of the seller's business of more than half of the seller's inventory as measured by value on the date of the bulk sale agreement, if on that date the auctioneer or liquidator has notice, or after reasonable inquiry would have had notice, that the seller will not continue to operate the same or a similar kind of business after the sale or series of sales; and

(ii) In all other cases, a sale not in the ordinary course of the seller's business of more than half the seller's inventory, as measured by value on the date of the bulk-sale agreement, if on that date the buyer has notice, or after reasonable inquiry would have had notice, that the seller will not continue to operate the same or a similar kind of business after the sale.

(d) "Claim" means a right to payment from the seller, whether or not the right is reduced to judgment, liquidated, fixed, matured, disputed, secured, legal, or equitable. The term includes costs of collection and attorney's fees only to the extent that the laws of this state permit the holder of the claim to recover them in an action against the obligor.

(e) "Claimant" means a person holding a claim incurred in the seller's business other than:

(i) An unsecured and unmatured claim for employment compensation and benefits, including commissions and vacation, severance, and sick leave pay;

(ii) A claim for injury to an individual or to property, or for breach of warranty, unless:

(A) A right of action for the claim has accrued;

(B) The claim has been asserted against the seller; and

(C) The seller knows the identity of the person asserting the claim and the basis upon which the person has asserted it; and

(iii) A claim for taxes owing to a governmental unit.

(f) "Creditor" means a claimant or other person holding a claim.

(g) "Date of the bulk sale" means:

(A) If the sale is by auction or is conducted by a liquidator on the seller's behalf, the date on which more than ~~ten~~ 10 percent of the net proceeds is paid to or for the benefit of the seller; and

(B) In all other cases, the later of the date on which:

(i) More than ~~ten~~ 10 percent of the net contract price is paid to or for the benefit of the seller; or

(ii) More than ~~ten~~ 10 percent of the assets, as measured by value, are transferred to the buyer.

(iii) For purposes of this subsection:

(A) Delivery of a negotiable instrument (§ 8.3A-104 (a)) to or for the benefit of the seller in exchange for assets constitutes payment of the contract price pro tanto;

(B) To the extent that the contract price is deposited in an escrow account, the contract price is paid to or for the benefit of the seller when the seller acquires the unconditional right to receive the deposit or when the deposit is delivered to the seller or for the benefit of the seller, whichever is earlier; and

(C) An asset is transferred when a person holding an unsecured claim can no longer obtain through judicial proceedings rights to the asset that are superior to those of the buyer arising as a result of the bulk sale. A person holding an unsecured claim can obtain those superior rights to a tangible asset at least until the buyer has an unconditional right, under the bulk sale agreement, to possess the asset, and a person holding an unsecured claim can obtain those superior rights to an intangible asset at least until the buyer has an unconditional right, under the bulk sale agreement, to use the asset.

(h) "Date of the bulk sale agreement" means:

(i) In the case of a sale by auction or conducted by a liquidator (subsection (c) (i)), the date on which the seller engages the auctioneer or liquidator; and

(ii) In all other cases, the date on which a bulk sale agreement becomes enforceable between the buyer and the seller.

(i) "Debt" means liability on a claim.

(j) "Liquidator" means a person who is regularly engaged in the business of disposing of assets for businesses contemplating liquidation or dissolution.

(k) "Net contract price" means the new consideration the buyer is obligated to pay for the assets less:

(i) The amount of any proceeds of the sale of an asset to the extent that the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and

(ii) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(l) "Net proceeds" means the new consideration received for assets sold at a sale by auction or a sale conducted by a liquidator on the seller's behalf less:

(i) Commissions and reasonable expenses of the sale;

(ii) The amount of any proceeds of the sale of an asset, to the extent that the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and

(iii) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(m) A sale is "in the ordinary course of the seller's business" if the sale comports with usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices.

(n) "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(o) "Value" means fair market value.

(p) "Verified" means signed and sworn to or affirmed.

(2) The following definitions in other titles apply to this title:

(a) "Buyer" - § 8.2-103 (1) (a);

(b) "Equipment" - § 8.9A-102 (a) (33);

(c) "Inventory" - § 8.9A-102 (a) (48);

(d) "Sale" - § 8.2-106 (1);

(e) "Seller" - § 8.2-103 (1) (d).

(3) In addition, Title ~~8.1~~ 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

§ 8.7-102. Definitions and index of definitions.

(1) In this title, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in Title ~~8.1~~ 8.1A (§ ~~8.1-201~~ 8.1A-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this title or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate." § 8.7-501.

"Person entitled under the document." § 8.7-403(4).

(3) Definitions in other titles applying to this title and the sections in which they appear are:

"Contract for sale." § 8.2-106.

"Overseas." § 8.2-323.

"Receipt" of goods. § 8.2-103.

(4) In addition Title ~~8.1~~ 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

§ 8.8A-102. Definitions.

(a) In this title:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and

that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(i) a person that is registered as a "clearing agency" under the federal securities laws;

(ii) a federal reserve bank; or

(iii) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(i) send a signed writing; or

(ii) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of § 8.8A-501 (b) (2) or (3), that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) "Financial asset," except as otherwise provided in § 8.8A-103, means:

(i) a security;

(ii) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this title.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this title, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form," as applied to a certificated security, means a form in which:

(i) the security certificate specifies a person entitled to the security; and

(ii) a transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(i) a clearing corporation; or

(ii) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security," except as otherwise provided in § 8.8A-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) which:

(A) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) is a medium for investment and by its terms expressly provides that it is a security governed by this title.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

(18) "Uncertificated security" means a security that is not represented by a certificate.

(b) Other definitions applying to this title and the sections in which they appear are:

Appropriate person § 8.8A-107

Control § 8.8A-106

Delivery § 8.8A-301

Investment company security § 8.8A-103

Issuer § 8.8A-201

Overissue § 8.8A-210

Protected purchaser § 8.8A-303

Securities account § 8.8A-501

(c) In addition, Title 8.1 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

(d) The characterization of a person, business, or transaction for purposes of this title does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

§ 8.9A-102. Definitions and index of definitions.

(a) Title 8.9A definitions. In this title:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than ~~thirty-five~~ 35 days earlier or ~~thirty-five~~ 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) which secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) which is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a

security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

- (A) proceeds to which a security interest attaches;
- (B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

- (A) the claimant is an organization; or
- (B) the claimant is an individual and the claim:
  - (i) arose in the course of the claimant's business or profession; and
  - (ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
- (B) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

- (A) is registered as a futures commission merchant under federal commodities law; or
- (B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

- (A) to send a written or other tangible record;
  - (B) to transmit a record by any means agreed upon by the persons sending and receiving the record;
- or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

- (A) the merchant:
  - (i) deals in goods of that kind under a name other than the name of the person making delivery;
  - (ii) is not an auctioneer; and
  - (iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;
- (B) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

- (A) an individual incurs an obligation primarily for personal, family, or household purposes; and
- (B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and  
 (B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in subdivision (2) of § 8.7-201.

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to subsection (a) of § 8.9A-519.

(37) "Filing office" means an office designated in § 8.9A-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to § 8.9A-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subsections (a) and (b) of § 8.9A-502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the



payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

- (A) are leased by a person as lessor;
- (B) are held by a person for sale or lease or to be furnished under a contract of service;
- (C) are furnished by a person under a contract of service; or
- (D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

- (A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (B) an assignee for benefit of creditors from the time of assignment;
- (C) a trustee in bankruptcy from the date of the filing of the petition; or
- (D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or ~~forty~~ 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

- (A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
- (B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under § 8.9A-203 (d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor," except as used in subsection (c) of § 8.9A-310, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subsection (d) of § 8.9A-203.

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

- (A) the spouse of the individual;
- (B) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) an ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

- (A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

- (B) an officer or director of, or a person performing similar functions with respect to, the organization;
- (C) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);
- (D) the spouse of an individual described in subparagraph (A), (B), or (C); or
- (E) an individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.
- (64) "Proceeds," except as used in subsection (b) of § 8.9A-609, means the following property:
  - (A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
  - (B) whatever is collected on, or distributed on account of, collateral;
  - (C) rights arising out of collateral;
  - (D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
  - (E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.
- (65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.
- (66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to §§ 8.9A-620, 8.9A-621, and 8.9A-622.
- (67) "Public-finance transaction" means a secured transaction in connection with which:
  - (A) debt securities are issued;
  - (B) all or a portion of the securities issued have an initial stated maturity of at least ~~twenty~~ 20 years; and
  - (C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.
- (68) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.
- (69) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.
- (70) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.
- (71) "Secondary obligor" means an obligor to the extent that:
  - (A) the obligor's obligation is secondary; or
  - (B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.
- (72) "Secured party" means:
  - (A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
  - (B) a person that holds an agricultural lien;
  - (C) a consignor;
  - (D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
  - (E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
  - (F) a person that holds a security interest arising under §§ 8.2-401, 8.2-505, 8.2-711 (3), 8.2A-508 (5), 8.4-210, or § 8.5A-118.
- (73) "Security agreement" means an agreement that creates or provides for a security interest.
- (74) "Send," in connection with a record or notification, means:
  - (A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
  - (B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).
- (75) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(76) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(77) "Supporting obligation" means a letter of credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(78) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(79) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(80) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) Definitions in other titles. The following definitions in other titles apply to this title:

"Applicant" § 8.5A-102.

"Beneficiary" § 8.5A-102.

"Broker" § 8.8A-102.

"Certificated security" § 8.8A-102.

"Check" § 8.3A-104.

"Clearing corporation" § 8.8A-102.

"Contract for sale" § 8.2-106.

"Customer" § 8.4-104.

"Entitlement holder" § 8.8A-102.

"Financial asset" § 8.8A-102.

"Holder in due course" § 8.3A-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right) § 8.5A-102.

"Issuer" (with respect to a security) § 8.8A-201.

"Lease" § 8.2A-103.

"Lease agreement" § 8.2A-103.

"Lease contract" § 8.2A-103.

"Leasehold interest" § 8.2A-103.

"Lessee" § 8.2A-103.

"Lessee in ordinary course of business" § 8.2A-103.

"Lessor" § 8.2A-103.

"Lessor's residual interest" § 8.2A-103.

"Letter of credit" § 8.5A-102.

"Merchant" § 8.2-104.

"Negotiable instrument" § 8.3A-104.

"Nominated person" § 8.5A-102.

"Note" § 8.3A-104.

"Proceeds of a letter of credit" § 8.5A-114.

"Prove" § 8.3A-103.

"Sale" § 8.2-106.

"Securities account" § 8.8A-501.

"Securities intermediary" § 8.8A-102.

"Security" § 8.8A-102.

"Security certificate" § 8.8A-102.

"Security entitlement" § 8.8A-102.

"Uncertificated security" § 8.8A-102.

(c) Title ~~8.1~~ 8.1A definitions and principles. Title ~~8.1~~ 8.1A contains general definitions and principles of construction and interpretation applicable throughout this title.

§ 8.10-104. Laws not repealed.

(1) The title on documents of title (Title 8.7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (§ ~~8.1-201~~ 8.1A-201).

§ 15.2-4908. Issuance of bonds, notes and other obligations of authority.

A. Subject to the limitations of Chapter 50 (§ 15.2-5000 et seq.) of this title, the authority may issue bonds from time to time in its discretion, for any of its purposes, including the payment of all or any

part of the cost of authority facilities and including the payment or retirement of bonds previously issued by it. All bonds issued by the authority shall be payable solely from the revenues and receipts derived from the leasing or sale by the authority of its facilities or any part thereof or from payments received by the authority in connection with its loans, and the authority may issue such types of bonds as it may determine, including, without limiting the generality of the foregoing, bonds payable, both as to principal and interest: (i) from its revenues and receipts generally; (ii) exclusively from the revenues and receipts of a particular facility or loan; or (iii) exclusively from the revenues and receipts of certain designated facilities or loans whether or not they are financed in whole or in part from the proceeds of such bonds. Unless otherwise provided in the proceeding authorizing the issuance of the bonds, or in the trust indenture securing the bonds, all bonds shall be payable solely and exclusively from the revenues and receipts of a particular facility or loan. Bonds may be executed and delivered by the authority at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding ~~forty~~ 40 years from the date thereof, may be payable at such place or places whether within or outside the Commonwealth, may bear interest at such rate or rates, may be payable at such time or times, may be evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided and specified by the board of directors in authorizing each particular bond issue. If deemed advisable by the board of directors, there may be retained in the proceedings under which any bonds of the authority are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to confer on the authority any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued. Any bonds of the authority may be sold at public or private sale in such manner and from time to time as may be determined by the board of directors of the authority to be most advantageous, and the authority may pay all costs, premiums and commissions which its board of directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facility or any other facility, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the authority at any time outstanding may from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as the board of directors may deem necessary, but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any costs, premiums or commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby, with the consent of the holders of the bonds so to be refunded, and regardless of whether the bonds to be refunded were issued in connection with the same facilities or separate facilities, and regardless of whether the bonds proposed to be refunded are payable on the same date or on different dates or are due serially or otherwise.

B. All bonds shall be signed by the chairman or vice chairman of the authority or shall bear his facsimile signature, and the corporate seal of the authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the signature of the secretary (or the secretary-treasurer) or the assistant secretary (or assistant secretary-treasurer) of the authority or shall bear his facsimile signature, and any coupons attached thereto shall bear the facsimile signature of the chairman. In case any officer whose signature or a facsimile signature appears on any bonds or coupons ceases to be an officer before delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. When the signatures of both the chairman or the vice chairman and the secretary (or the secretary-treasurer) or the assistant secretary (or the assistant secretary-treasurer) are facsimiles, the bonds shall be authenticated by a corporate trustee or other authenticating agent approved by the authority.

C. If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, are less than the cost of the authority facilities for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements or enlargements of the authority facilities for which such bonds shall have been issued.

D. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when

such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which are mutilated, destroyed or lost. Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter; however, nothing contained in this chapter shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

E. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of and shall be and are hereby made negotiable instruments under the Uniform Commercial Code of Virginia (§ ~~8-1-404~~ 8.1A-101 et seq.), subject only to provisions respecting registration of the bonds.

F. In addition to all other powers granted to the authority by this chapter, the authority may issue, from time to time, notes or other obligations of the authority for any of its authorized purposes. The provisions of this chapter which relate to bonds or revenue bonds shall apply to such notes or other obligations insofar as such provisions may be appropriate.

§ 15.2-6612. Authority to issue bonds.

The Authority shall have the power to issue bonds from time to time in its discretion, for any of its purposes, including the payment of all or any part of the cost of Authority facilities and including the payment or retirement of bonds previously issued by it. The Authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds payable, both as to principal and interest: (i) from its revenues and receipts generally and (ii) exclusively from the revenues and receipts of certain designated facilities or loans whether or not they are financed in whole or in part from the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any grant or contribution from a participating political subdivision, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, co-partnership, association, or individual, as such participating political subdivision, or other entities, may be authorized to make under general law or by pledge of any income or revenues of the Authority or by mortgage or encumbrance of any property or facilities of the Authority. Unless otherwise provided in the proceeding authorizing the issuance of the bonds, or in the trust indenture securing the same, all bonds shall be payable solely and exclusively from the revenues and receipts of a particular facility or loan. Bonds may be executed and delivered by the Authority at any time and from time to time may be in such form and denominations and of such terms and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding ~~forty~~ 40 years from the date thereof, may be payable at such place or places whether within or without the Commonwealth, may bear interest at such rate or rates, may be payable at such time or times and at such places, may be evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided and specified by the board of directors in authorizing each particular bond issue.

If deemed advisable by the board of directors, there may be retained in the proceedings under which any bonds of the Authority are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to confer on the Authority any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued. Any bonds of the Authority may be sold at public or private sale in such manner and from time to time as may be determined by the board of directors of the Authority to be most advantageous, and the Authority may pay all costs, premiums, and commissions that its board of directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the Authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facility or any other facility, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the Authority at any time outstanding may from time to time be refunded by the Authority by the issuance of its refunding bonds in such amount as the board of directors may deem necessary, but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any costs, premiums, or commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby, with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same facilities or separate facilities, and regardless of whether or not the bonds proposed to be refunded shall be payable on the same date or on different dates or shall be due serially or otherwise.

All bonds shall be signed by the chairman or vice chairman of the Authority or shall bear his facsimile signature, and the corporate seal of the Authority or a facsimile thereof shall be impressed or

imprinted thereon and attested by the signature of the secretary (or the secretary-treasurer) or the assistant secretary (or assistant secretary-treasurer) of the Authority or shall bear his facsimile signature, and any coupons attached thereto shall bear the facsimile signature of said chairman. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be an officer before delivery of such bonds, such signature, or such facsimile, shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. When the signatures of both the chairman or the vice chairman and the secretary (or the secretary-treasurer) or the assistant secretary (or the assistant secretary-treasurer) are facsimiles, the bonds must be authenticated by a corporate trustee or other authenticating agent approved by the Authority.

If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, shall be less than the cost of the Authority facilities for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements, or enlargements of the Authority facilities for which such bonds shall have been issued.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds that shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this act without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions, or things that are specifically required by this act; provided, however, that nothing contained in this act shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

All bonds issued under the provisions of this act shall have and are hereby declared to have all the qualities and incidents of and shall be and are hereby made negotiable instruments under the Uniform Commercial Code of Virginia (§ ~~8.1-401~~ 8.1A-101 et seq.), subject only to provisions respecting registration of the bonds.

In addition to all other powers granted to the Authority by this act, the Authority is authorized to provide for the issuance, from time to time of notes or other obligations of the Authority for any of its authorized purposes. All of the provisions of this act that relate to bonds or revenue bonds shall apply to such notes or other obligations insofar as such provisions may be appropriate.

#### § 55-70.1. Implied warranties on new homes.

A. In every contract for the sale of a new dwelling, the vendor shall be held to warrant to the vendee that, at the time of the transfer of record title or the vendee's taking possession, whichever occurs first, the dwelling with all its fixtures is, to the best of the actual knowledge of the vendor or his agents, sufficiently (i) free from structural defects, so as to pass without objection in the trade, and (ii) constructed in a workmanlike manner, so as to pass without objection in the trade.

B. In addition, in every contract for the sale of a new dwelling, the vendor, if he is in the business of building or selling such dwellings, shall be held to warrant to the vendee that, at the time of transfer of record title or the vendee's taking possession, whichever occurs first, the dwelling together with all its fixtures is sufficiently (i) free from structural defects, so as to pass without objection in the trade, (ii) constructed in a workmanlike manner, so as to pass without objection in the trade, and (iii) fit for habitation.

C. The above warranties implied in the contract for sale shall be held to survive the transfer of title. Such warranties are in addition to, and not in lieu of, any other express or implied warranties pertaining to the dwelling, its materials or fixtures. A contract for sale may waive, modify or exclude any or all express and implied warranties and sell a new home "as is" only if the words used to waive, modify or exclude such warranties are ~~conspicuously~~ *conspicuous* (as defined by subdivision (10) of § ~~8.1-204~~ 8.1A-201), set forth on the face of such contract in capital letters which are at least two points larger than the other type in the contract and only if the words used to waive, modify or exclude the warranties state with specificity the warranty or warranties that are being waived, modified or excluded. If all warranties are waived or excluded, a contract must specifically set forth in capital letters which are at least two points larger than the other type in the contract that the dwelling is being sold "as is".

D. If there is a breach of warranty under this section, the vendee, or his heirs or personal representatives in case of his death, shall have a cause of action against his vendor for damages; provided, however, for any defect discovered after July 1, 2002, such vendee shall first provide the vendor, by registered or certified mail at his last known address, a written notice stating the nature of the warranty claim. After such notice, the vendor shall have a reasonable period of time, not to exceed six months, to cure the defect ~~which~~ *that* is the subject of the warranty claim.

E. The warranty shall extend for a period of one year from the date of transfer of record title or the

vendee's taking possession, whichever occurs first, except that the warranty pursuant to subdivision (i) of subsection B for the foundation of new dwellings shall extend for a period of five years from the date of transfer of record title or the vendee's taking possession, whichever occurs first. Any action for its breach shall be brought within two years after the breach thereof. As used in this section, the term "new dwelling" shall mean a dwelling or house which has not previously been occupied for a period of more than ~~sixty~~ 60 days by anyone other than the vendor or the vendee or which has not been occupied by the original vendor or subsequent vendor for a cumulative period of more than ~~twelve~~ 12 months excluding dwellings constructed solely for lease. The term "new dwelling" shall not include a condominium or condominium units created pursuant to Chapter 4.2 (§ 55-79.39 et seq.) of this title.

F. The term "structural defects," as used in this section, shall mean a defect or defects ~~which~~ *that* reduce the stability or safety of the structure below accepted standards or ~~which~~ *that* restrict the normal use thereof.

G. In the case of new dwellings where fire-retardant treated plywood sheathing or other roof sheathing materials are used in lieu of fire-retardant treated plywood the vendor shall be deemed to have assigned the manufacturer's warranty, at settlement, to the vendee. The vendee shall have a direct cause of action against the manufacturer of such roof sheathing for any breach of such warranty. To the extent any such manufacturer's warranty purports to limit the right of third parties or prohibit assignment, said provision shall be unenforceable and of no effect.

§ 59.1-207.19. Inapplicability of other laws; exempted transactions.

A. Lease-purchase agreements ~~which~~ *that* comply with this chapter are not governed by the laws relating to:

1. A home solicitation sale as defined in § 59.1-21.1;
2. A consumer transaction as discussed in § 6.1-330.77; or
3. A security interest as defined in subdivision (37 35) of § ~~8.1-201~~ 8.1A-201.

B. This chapter does not apply to the following:

1. Lease-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;
2. A lease of a safe deposit box;
3. A lease or bailment of personal property which is incidental to the lease of real property, and which provides that the consumer has no option to purchase the leased property; or
4. A lease of an automobile.

§ 59.1-352.2. Usage of trade.

The terms "utility" and "industrial," when used to refer to equipment, implements, machinery, attachments, or repair parts, shall have the meaning commonly used and understood among dealers and suppliers of farm equipment as a usage of trade in accordance with ~~paragraph 2 of § 8.1-205~~ 8.1A-303(c).

§ 59.1-353. Chapter title; definitions.

This chapter may be cited as the "Heavy Equipment Dealer Act." As used in this chapter unless the context requires otherwise:

"Agreement" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a supplier and a dealer pursuant to which the dealer has been authorized to distribute one or more of the supplier's heavy equipment products, and attachments and repair parts therefor, and in connection therewith to use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.

"Dealer" means a person in Virginia (i) engaged in the business of selling or leasing heavy equipment at retail, (ii) who customarily maintains a total inventory, valued at over \$250,000, of new heavy equipment and attachments and repair parts therefor, and (iii) who provides repair services for the heavy equipment sold.

"Heavy equipment" means self-propelled, self-powered or pull-type equipment and machinery, including engines, weighing 5000 pounds or more, primarily employed for construction, industrial, maritime, mining and forestry uses, as such terms are commonly used and understood as a usage of trade in accordance with § ~~8.1-205 (2)~~ 8.1A-303(c). The term "heavy equipment" shall not include (i) motor vehicles requiring registration and certificates of title in accordance with § 46.2-600, (ii) farm machinery, equipment and implements sold or leased pursuant to dealer agreements with suppliers subject to the provisions of Chapter 27.1 (§ 59.1-352.1 et seq.) of this title, or (iii) equipment that is "consumer goods" within the meaning of § 8.9A-102.

"Person" means a natural person, corporation, partnership, trust, agency or other entity as well as the individual officers, directors or other persons in active control of the activities of each such entity. "Person" also includes heirs, assigns, personal representatives, guardians and conservators.

"Supplier" means every person, including any agent of such person, or any authorized broker acting on behalf of that person, that enters into an "agreement" with a dealer.

§ 59.1-481. Scope.

(a) Except as otherwise provided in subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts; and

(2) Title ~~8.1~~ 8.1A except §§ ~~8.1-107 and 8.1-206~~ 8.1A-306, Title 8.3A, Title 8.4, Title 8.4A, Title 8.5A, Title 8.6A, Title 8.7, Title 8.8A, Title 8.9A, Title 8.10, and Title 8.11.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection (b) to the extent it is governed by law other than those specified in subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

§ 59.1-494. Transferable records.

(a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under Title 8.3A or a document under Title 8.7 if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in ~~paragraphs~~ subdivisions (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in § ~~8.1-201 (20)~~ 8.1A-201 (21), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under Titles ~~8.1~~ 8.1A through 8.11, including, if the applicable statutory requirements under §§ 8.3A-302 (a), 8.7-501, or § 8.9A-330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under Titles ~~8.1~~ 8.1A through 8.11.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

§ 59.1-501.2. Definitions.

(a) As used in this chapter:

(1) "Access contract" means a contract to obtain by electronic means access to, or information from, an information processing system of another person, or the equivalent of such access.

(2) "Access material" means any information or material, such as a document, address, or access code, that is necessary to obtain authorized access to information or control or possession of a copy.

(3) "Aggrieved party" means a party entitled to a remedy for breach of contract.

(4) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of performance, course of dealing, and usage of trade as provided in this chapter.

(5) "Attribution procedure" means a procedure to verify that an electronic authentication, display, message, record, or performance is that of a particular person or to detect changes or errors in information. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment.

(6) "Authenticate" means (i) to sign or (ii) with the intent to sign a record, to execute or adopt an electronic symbol, sound, message, or process referring to, attached to, included in, or logically associated or linked with, that record.

(7) "Automated transaction" means a transaction in which a contract is formed in whole or part by



electronic actions of one or both parties ~~which~~ *that* are not previously reviewed by an individual in the ordinary course.

(8) "Cancellation" means the ending of a contract by a party because of breach of contract by another party.

(9) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(10) "Computer information" means information in electronic form ~~which~~ *that* is obtained from or through the use of a computer or ~~which~~ *that* is in a form capable of being processed by a computer. The term includes a copy of the information and any documentation or packaging associated with the copy.

(11) "Computer information transaction" means an agreement or the performance of it to create, modify, transfer, or license computer information or informational rights in computer information. The term includes a support contract under § 59.1-506.12. The term does not include a transaction merely because the parties' agreement provides that their communications about the transaction will be in the form of computer information.

(12) "Computer program" means a set of statements or instructions to be used directly or indirectly in a computer to bring about a certain result. The term does not include separately identifiable informational content.

(13) "Consequential damages" resulting from breach of contract includes (i) any loss resulting from general or particular requirements and needs of which the breaching party at the time of contracting had reason to know and which could not reasonably be prevented, and (ii) any injury to an individual or damage to property other than the subject matter of the transaction proximately resulting from breach of warranty. The term does not include direct damages or incidental damages.

(14) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. A term in an electronic record intended to evoke a response by an electronic agent is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react to it without review of the record by an individual. With respect to a person, conspicuous terms include (i) a heading in capitals in a size equal to or greater than, or in contrasting type, font, or color to, the surrounding text, (ii) language in the body of a record or display in larger or other contrasting type, font, or color or set off from the surrounding text by symbols or other marks that draw attention to the language, and (iii) a term prominently referenced in an electronic record or display which is readily accessible or reviewable from the record or display. With respect to a person or an electronic agent, conspicuous terms include a term, or reference to a term, that is so placed in a record or display that the person or electronic agent cannot proceed without taking action with respect to the particular term or reference.

(15) "Consumer" means an individual who is a licensee of information or informational rights that the individual at the time of contracting intended to be used primarily for personal, family, or household purposes. The term does not include an individual who is a licensee primarily for professional or commercial purposes, including agriculture, business management, and investment management other than management of the individual's personal or family investments.

(16) "Consumer contract" means a contract between a merchant licensor and a consumer.

(17) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

(18) "Contract fee" means the price, fee, rent, or royalty payable in a contract under this chapter or any part of the amount payable.

(19) "Contractual use term" means an enforceable term that defines or limits the use, disclosure of, or access to licensed information or informational rights, including a term that defines the scope of a license.

(20) "Copy" means the medium on which information is fixed on a temporary or permanent basis and from which it can be perceived, reproduced, used, or communicated, either directly or with the aid of a machine or device.

(21) "Course of dealing" means a sequence of previous conduct between the parties to a particular transaction which establishes a common basis of understanding for interpreting their expressions and other conduct.

(22) "Course of performance" means repeated performances, under a contract that involves repeated occasions for performance, which are accepted or acquiesced in without objection by a party having knowledge of the nature of the performance and an opportunity to object to it.

(23) "Court" includes an arbitration or other dispute-resolution forum if the parties have agreed to use of that forum or its use is required by law.

(24) "Delivery," with respect to a copy, means the voluntary physical or electronic transfer of possession or control.

(25) "Direct damages" means compensation for losses measured by § 59.1-508.8 (b) (1) or § 59.1-508.9 (a) (1). The term does not include consequential damages or incidental damages.

(26) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,

electromagnetic, or similar capabilities.

(27) "Electronic agent" means a computer program, or electronic or other automated means, used independently to initiate an action, or to respond to electronic messages or performances, on the person's behalf without review or action by an individual at the time of the action or response to the message or performance.

(28) "Electronic message" means a record or display that is stored, generated, or transmitted by electronic means for the purpose of communication to another person or electronic agent.

(29) "Financial accommodation contract" means an agreement under which a person extends a financial accommodation to a licensee and which does not create a security interest governed by Title 8.9A. The agreement may be in any form, including a license or lease.

(30) "Financial services transaction" means an agreement that provides for, or a transaction that is, or entails access to, use, transfer, clearance, settlement, or processing of:

(A) a deposit, loan, funds, or monetary value represented in electronic form and stored or capable of storage by electronic means and retrievable and transferable by electronic means, or other right to payment to or from a person;

(B) an instrument or other item;

(C) a payment order, credit card transaction, debit card transaction, funds transfer, automated clearing house transfer, or similar wholesale or retail transfer of funds;

(D) a letter of credit, document of title, financial asset, investment property, or similar asset held in a fiduciary or agency capacity; or

(E) related identifying, verifying, access-enabling, authorizing, or monitoring information.

(31) "Financier" means a person that provides a financial accommodation to a licensee under a financial accommodation contract and either (i) becomes a licensee for the purpose of transferring or sublicensing the license to the party to which the financial accommodation is provided or (ii) obtains a contractual right under the financial accommodation contract to preclude the licensee's use of the information or informational rights under a license in the event of breach of the financial accommodation contract. The term does not include a person that selects, creates, or supplies the information that is the subject of the license, owns the informational rights in the information, or provides support for, modifications to, or maintenance of the information.

(32) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(33) "Goods" means all things that are movable at the time relevant to the computer information transaction. The term includes the unborn young of animals, growing crops, and other identified things to be severed from realty which are covered by § 8.2-107. The term does not include computer information, money, the subject matter of foreign exchange transactions, documents, letters of credit, letter-of-credit rights, instruments, investment property, accounts, chattel paper, deposit accounts, or general intangibles.

(34) "Incidental damages" resulting from breach of contract:

(A) means compensation for any commercially reasonable charges, expenses, or commissions reasonably incurred by an aggrieved party with respect to (i) inspection, receipt, transmission, transportation, care, or custody of identified copies or information that is the subject of the breach; (ii) stopping delivery, shipment, or transmission; (iii) effecting cover or retransfer of copies or information after the breach; (iv) other efforts after the breach to minimize or avoid loss resulting from the breach; and (v) matters otherwise incident to the breach; and

(B) does not include consequential damages or direct damages.

(35) "Information" means data, text, images, sounds, mask works, or computer programs, including collections and compilations of them.

(36) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(37) "Informational content" means information that is intended to be communicated to or perceived by an individual in the ordinary use of the information, or the equivalent of that information.

(38) "Informational rights" include all rights in information created under laws governing patents, copyrights, mask works, trade secrets, trademarks, publicity rights, or any other law that gives a person, independently of contract, a right to control or preclude another person's use of or access to the information on the basis of the rights holder's interest in the information.

(39) "Knowledge," with respect to a fact, means actual knowledge of the fact.

(40) "License" means a contract that authorizes access to, or use, distribution, performance, modification, or reproduction of, information or informational rights, but expressly limits the access or uses authorized or expressly grants fewer than all rights in the information, whether or not the transferee has title to a licensed copy. The term includes an access contract, a lease of a computer program, and a consignment of a copy. The term does not include a reservation or creation of a security interest to the extent the interest is governed by Title 8.9A.

(41) "Licensee" means a person entitled by agreement to acquire or exercise rights in, or to have access to or use of, computer information under an agreement to which this chapter applies. A licensor

is not a licensee with respect to rights reserved to it under the agreement.

(42) "Licensor" means a person obligated by agreement to transfer or create rights in, or to give access to or use of, computer information or informational rights in it under an agreement to which this chapter applies. Between the provider of access and a provider of the informational content to be accessed, the provider of content is the licensor. In an exchange of information or informational rights, each party is a licensor with respect to the information, informational rights, or access it gives.

(43) "Mass-market license" means a standard form used in a mass-market transaction.

(44) "Mass-market transaction" means a transaction that is:

(A) a consumer contract; or

(B) any other transaction with an end-user licensee if:

(i) the transaction is for information or informational rights directed to the general public as a whole, including consumers, under substantially the same terms for the same information;

(ii) the licensee acquires the information or informational rights in a retail transaction under terms consistent with an ordinary transaction in a retail market; and

(iii) the transaction is not (a) a contract for redistribution or for public performance or public display of a copyrighted work; (b) a transaction in which the information is customized or otherwise specially prepared by the licensor for the licensee, other than minor customization using a capability of the information intended for that purpose; (c) a site license; or (d) an access contract.

(45) "Merchant" means a person:

(A) who deals in information or informational rights of the kind involved in the transaction;

(B) who by the person's occupation holds himself out as having knowledge or skill peculiar to the relevant aspect of the business practices or information involved in the transaction; or

(C) to whom the knowledge or skill peculiar to the practices or information involved in the transaction may be attributed by the person's employment of an agent or broker or other intermediary who by his occupation holds himself out as having the knowledge or skill.

(46) "Nonexclusive license" means a license that does not preclude the licensor from transferring to other licensees the same information, informational rights, or contractual rights within the same scope. The term includes a consignment of a copy.

(47) "Notice" of a fact means knowledge of the fact, receipt of notification of the fact, or reason to know the fact exists.

(48) "Notify" or "give notice" means to take such steps as may be reasonably required to inform the other person in the ordinary course, whether or not the other person actually comes to know of it.

(49) "Party" means a person that engages in a transaction or makes an agreement under this chapter.

(50) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental subdivision, instrumentality, or agency, public corporation, or any other legal or commercial entity.

(51) "Published informational content" means informational content prepared for or made available to recipients generally, or to a class of recipients, in substantially the same form. The term does not include informational content that is (i) customized for a particular recipient by one or more individuals acting as or on behalf of the licensor, using judgment or expertise or (ii) provided in a special relationship of reliance between the provider and the recipient.

(52) "Receipt" means:

(A) with respect to a copy, taking delivery; or

(B) with respect to a notice:

(i) coming to a person's attention; or

(ii) being delivered to and available at a location or system designated by agreement for that purpose or, in the absence of an agreed location or system: (a) being delivered at the person's residence, or the person's place of business through which the contract was made, or at any other place held out by the person as a place for receipt of communications of the kind; or (b) in the case of an electronic notice, coming into existence in an information processing system or at an address in that system in a form capable of being processed by or perceived from a system of that type by a recipient, if the recipient uses, or otherwise has designated or holds out, that place or system for receipt of notices of the kind to be given and the sender does not know that the notice cannot be accessed from that place.

(53) "Receive" means to take receipt.

(54) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(55) "Release" means an agreement by a party not to object to, or exercise any rights or pursue any remedies to limit, the use of information or informational rights which agreement does not require an affirmative act by the party to enable or support the other party's use of the information or informational rights. The term includes a waiver of informational rights.

(56) "Return," with respect to a record containing contractual terms that were rejected, refers only to the computer information and means:

(A) in the case of a licensee that rejects a record regarding a single information product transferred for a single contract fee, a right to reimbursement of the contract fee paid from the person to which it

was paid or from another person that offers to reimburse that fee, on (i) submission of proof of purchase and (ii) proper redelivery of the computer information and all copies within a reasonable time after initial delivery of the information to the licensee;

(B) in the case of a licensee that rejects a record regarding an information product provided as part of multiple information products integrated into and transferred as a bundled whole but retaining their separate identity:

1. a right to reimbursement of any portion of the aggregate contract fee identified by the licensor in the initial transaction as charged to the licensee for all bundled information products which was actually paid, on (i) rejection of the record before or during the initial use of the bundled product; (ii) proper redelivery of all computer information products in the bundled whole and all copies of them within a reasonable time after initial delivery of the information to the licensee; and (iii) submission of proof of purchase; or

2. a right to reimbursement of any separate contract fee identified by the licensor in the initial transaction as charged to the licensee for the separate information product to which the rejected record applies, on (i) submission of proof of purchase and (ii) proper redelivery of that computer information product and all copies within a reasonable time after initial delivery of the information to the licensee; or

(C) in the case of a licensor that rejects a record proposed by the licensee, a right to proper redelivery of the computer information and all copies from the licensee, to stop delivery or access to the information by the licensee, and to reimbursement from the licensee of amounts paid by the licensor with respect to the rejected record, on reimbursement to the licensee of contract fees that it paid with respect to the rejected record, subject to recoupment and setoff.

(57) "Scope," with respect to terms of a license, means:

(A) the licensed copies, information, or informational rights involved;

(B) the use or access authorized, prohibited, or controlled;

(C) the geographic area, market, or location; or

(D) the duration of the license.

(58) "Seasonable," with respect to an act, means taken within the time agreed or, if no time is agreed, within a reasonable time.

(59) "Send" means, with any costs provided for and properly addressed or directed as reasonable under the circumstances or as otherwise agreed, to deposit a record in the mail or with a commercially reasonable carrier, to deliver a record for transmission to or re-creation in another location or information processing system, or to take the steps necessary to initiate transmission to or re-creation of a record in another location or information processing system. In addition, with respect to an electronic message, the message must be in a form capable of being processed by or perceived from a system of the type the recipient uses or otherwise has designated or held out as a place for the receipt of communications of the kind sent. Receipt within the time in which it would have arrived if properly sent, has the effect of a proper sending.

(60) "Standard form" means a record or a group of related records containing terms prepared for repeated use in transactions and so used in a transaction in which there was no negotiated change of terms by individuals except to set the price, quantity, method of payment, selection among standard options, or time or method of delivery.

(61) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(62) "Term," with respect to an agreement, means that portion of the agreement which relates to a particular matter.

(63) "Termination" means the ending of a contract by a party pursuant to a power created by agreement or law otherwise than because of breach of contract.

(64) "Transfer":

(A) with respect to a contractual interest, includes an assignment of the contract, but does not include an agreement merely to perform a contractual obligation or to exercise contractual rights through a delegate or sublicensee; and

(B) with respect to computer information, includes a sale, license, or lease of a copy of the computer information and a license or assignment of informational rights in computer information.

(65) "Usage of trade" means any practice or method of dealing that has such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question.

(b) The following definitions in other titles apply to this chapter:

(1) "Burden of establishing" § ~~8.1-204~~ 8.1A-201.

(2) "Document of title" § ~~8.1-204~~ 8.1A-201.

(3) "Financial asset" § 8.8A-102.

(4) "Funds transfer" § 8.4A-104.

(5) "Identification" to the contract § 8.2-501.

- (6) "Instrument" § 8.9A-102.
- (7) "Investment property" § 8.9A-102.
- (8) "Item" § 8.4-104.
- (9) "Letter of credit" § 8.5A-102.
- (10) "Payment order" § 8.4A-103.
- (11) "Sale" § 8.2-106.

**2. That Title 8.1 (§§ 8.1-101 through 8.1-208) and §§ 8.2-208 and 8.2A-207 of the Code of Virginia are repealed.**