

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act to amend and reenact §§ 8.4-105, 19.2-10.1, 36-55.33:1, 36-96.20, 57-60, and 59.1-207.19 of the Code of Virginia; to amend the Code of Virginia by adding a title numbered 6.2, containing Subtitle I, consisting of chapters numbered 1 through 5, containing sections numbered 6.2-100 through 6.2-513, Subtitle II, consisting of chapters numbered 6 through 13, containing sections numbered 6.2-600 through 6.2-1380, Subtitle III, consisting of chapters numbered 14 through 21, containing sections numbered 6.2-1400 through 6.2-2111, and Subtitle IV, consisting of chapters numbered 22 through 24, containing sections numbered 6.2-2200 through 6.2-2405; by adding a section numbered 17.1-626.1; by adding in Chapter 1 of Title 26 a section numbered 26-7.5; and by adding in Title 55 a chapter numbered 27.1, consisting of sections numbered 55-525.1 through 55-525.8, and a chapter numbered 27.2, consisting of sections numbered 55-525.9 through 55-525.25; and to repeal Title 6.1 (§§ 6.1-1 through 6.1-479), Chapter 6 (§§ 11-30 through 11-34) of Title 11, and Chapter 2.3 (§§ 59.1-21.19 through 59.1-21.28) of Title 59.1 of the Code of Virginia, relating to revising and recodifying the laws pertaining to financial institutions and services.

[S 295]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.4-105, 19.2-10.1, 36-55.33:1, 36-96.20, 57-60, and 59.1-207.19 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a title numbered 6.2, containing Subtitle I, consisting of chapters numbered 1 through 5, containing sections numbered 6.2-100 through 6.2-513, Subtitle II, consisting of chapters numbered 6 through 13, containing sections numbered 6.2-600 through 6.2-1380, Subtitle III, consisting of chapters numbered 14 through 21, containing sections numbered 6.2-1400 through 6.2-2111, and Subtitle IV, consisting of chapters numbered 22 through 24, containing sections numbered 6.2-2200 through 6.2-2405; by adding a section numbered 17.1-626.1; by adding in Chapter 1 of Title 26 a section numbered 26-7.5; and by adding in Title 55 a chapter numbered 27.1, consisting of sections numbered 55-525.1 through 55-525.8, and a chapter numbered 27.2, consisting of sections numbered 55-525.9 through 55-525.25, as follows:

TITLE 6.2.  
FINANCIAL INSTITUTIONS AND SERVICES.  
SUBTITLE I.  
GENERAL PROVISIONS.  
CHAPTER 1.  
DEFINITIONS AND GENERAL PROVISIONS.  
Article 1.  
Definitions.

§ 6.2-100. Definitions.

As used in this title, unless the context otherwise requires:

- "Bureau" means the Bureau of Financial Institutions, a division of the Commission.
- "Commission" means the State Corporation Commission.
- "Commissioner" means the Commissioner of Financial Institutions.
- "Commission's Rules" means the rules of practice and procedure prescribed by the Commission pursuant to § 12.1-25.
- "Entity" means any corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or other legal or commercial entity.
- "Finance charge" has the meaning assigned to it in Federal Reserve Board Regulation Z, 12 C.F.R. § 226.4, as amended.
- "Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, or credit union.
- "Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or other legal or commercial entity.

Article 2.

General Provisions.

§ 6.2-101. Confidentiality of information.

A. Except as otherwise provided in this title or § 12.1-19, the following shall not be disclosed by the Commission or any of its employees: (i) a report of examination of any person subject to this title,

57 including any contents thereof; (ii) any information furnished to or obtained by the Bureau, the  
58 disclosure of which, in the opinion of the Commissioner, could endanger the safety and soundness of a  
59 bank, savings institution, or credit union; or (iii) any personal financial information furnished to, or  
60 obtained by the Bureau.

61 B. Any reports and information described in subsection A may be provided to:

62 1. Members and employees of the Commission in the performance of their duties;

63 2. In the case of an entity, directors and officers thereof and such other persons as may be  
64 authorized by resolution of the entity's board of directors;

65 3. Such governmental officers, instrumentalities, or agencies as the Commissioner may determine, in  
66 his discretion, to be proper recipients of such reports or information;

67 4. Any persons pursuant to lawful process and, if necessary to protect the confidentiality of the  
68 reports and information, an appropriate protective order issued by or under the authority of any  
69 appropriate court;

70 5. Other persons pursuant to grand jury subpoenas; or

71 6. Any other persons with the consent of the person to whom the report or information pertains.

72 § 6.2-102. Use of funds collected under this title.

73 A. All fees assessed under any provision of this title and paid into the state treasury shall be  
74 deposited to a special fund designated "Financial Institutions Special Fund - State Corporation  
75 Commission," and out of such special fund and the unexpended balance thereof shall be appropriated  
76 the sums necessary for the regulation, supervision, and examination of all entities subject to regulation  
77 under this title. The Commission shall have the authority to maintain a reasonable margin in the nature  
78 of a reserve in the Financial Institutions Special Fund for the expenses of operating the Bureau.

79 B. In order to provide additional funds for the operation of the Bureau, the Commission is  
80 authorized to increase the fees and assessments for the examination and supervision of banks, trust  
81 companies, savings institutions, industrial loan associations, credit unions, consumer finance licensees,  
82 mortgage lenders, and mortgage brokers by an amount not to exceed 50 percent of the fees and  
83 assessments provided for in §§ 6.2-908, 6.2-1033, 6.2-1202, 6.2-1310, 6.2-1414, 6.2-1532, and 6.2-1612.

84 § 6.2-103. Financial institutions to furnish certain information to fiduciaries.

85 The provisions of this title and any other provisions of law notwithstanding, any financial institution  
86 subject to the provisions of this title shall make available to any fiduciary, upon request, all information  
87 concerning assets or liabilities in which his decedent or ward had or has any interest.

88 § 6.2-104. Directors to serve only one institution.

89 A. No officer or director of any financial institution, other than a consumer finance company or  
90 credit union domiciled in the Commonwealth, shall at the same time serve as an officer or director of  
91 any other financial institution unless both such institutions are within a single financial institution  
92 holding company.

93 B. Notwithstanding the provisions of subsection A, the Commission, upon petition brought on behalf  
94 of an individual, may permit him to serve on the boards of more than one such institution if the  
95 Commission finds that the financial institutions are not in competition with each other or that one or  
96 both of the institutions might otherwise be denied capable management or direction from an individual  
97 residing in or employed in the locality served by an institution.

98 § 6.2-105. Reclassification or conversion of banking institution shares.

99 A. As used in this section, unless the context requires otherwise:

100 "Banking institution" means a corporation that is organized under the Virginia Stock Corporation  
101 Act (§ 13.1-601 et seq.) and that is a (i) bank, (ii) savings institution, (iii) bank holding company as  
102 defined in 12 U.S.C. § 1841 or § 6.2-800, (iv) savings and loan holding company, or (v) multiple or  
103 diversified savings and loan holding company as defined in 12 U.S.C. § 1467a.

104 "Issuer" means a banking institution required to file periodic reports under § 13(a) or 15(d) of the  
105 Securities Exchange Act of 1934 (15 U.S.C. § 78m or 78o(d)).

106 B. A banking institution may adopt an amendment to its articles of incorporation to reclassify or  
107 convert a portion of its issued and outstanding shares of common stock into a class or series of  
108 preferred stock for the purpose of ceasing to be, or avoiding the status of, an issuer, provided (i) such  
109 reclassification or conversion is authorized by the banking institution's original or amended articles of  
110 incorporation and (ii) the reclassified or converted shares continue to be a part of the equity capital of  
111 the corporation.

112 C. A reclassification or conversion of shares pursuant to this section shall not be subject to the  
113 provisions of Article 15 (§ 13.1-729 et seq.) of the Virginia Stock Corporation Act, notwithstanding that  
114 such shares are being reclassified or converted and other shares of the same class or series are not  
115 being reclassified or converted, if:

116 1. The board of directors of the banking institution has recommended to the shareholders approval  
117 of the amendment to reclassify or convert such shares;

- 118 2. The shareholders of the corporation approve the amendment;
- 119 3. All affected shares are reclassified or converted on the same terms; and
- 120 4. Articles of amendment are filed in accordance with § 13.1-710.

121 § 6.2-106. Payment of civil penalties.

122 Civil penalties paid pursuant to this title, when collected, shall be paid by the Commission into the  
123 treasury of Virginia, in the manner provided for judgments collected as set forth in § 12.1-35.

124 CHAPTER 2.

125 MONEY AND CURRENCY.

126 Article 1.

127 Money of Account.

128 § 6.2-200. Money of account.

129 A. The money of account of the Commonwealth shall be the dollar, cent, and mill. All accounts by  
130 public officers shall be kept in accordance with such monetary units.

131 B. No writing shall be invalid, nor shall the force of any account or entry be impaired, because a  
132 sum of money is expressed in other monetary units.

133 § 6.2-201. Ascertaining value in money of account for money expressed in foreign currency.

134 A. In any suit for a sum of money expressed in any foreign currency or otherwise than in the money  
135 of account of the Commonwealth, the jury or the court shall ascertain the value in the money of account  
136 of the sum so expressed, including an appropriate allowance for the difference of exchange. The  
137 judgment or order may be for either the amount so ascertained, or for the amount of money so  
138 expressed, and the judgment or order shall be discharged by an amount so ascertained.

139 B. In any such suit involving an instrument to which § 8.3A-107 is applicable, the provisions of that  
140 section shall apply.

141 Article 2.

142 Currency Issuance and Circulation.

143 § 6.2-202. Issuance of currency and related prohibited acts.

144 A. No individual or entity, unless authorized by law, shall:

145 1. Issue any note, bill, scrip, or other paper or thing with intent that the same be circulated as  
146 currency; or

147 2. Otherwise deal, trade, or carry on business as a bank of circulation.

148 B. All contracts made for forming any entity to engage in any activity prohibited by subsection A  
149 shall be void.

150 § 6.2-203. Contracts and securities from illegal currency dealing void; recovery of payments.

151 A. All contracts and securities that originate from, or are made or obtained in whole or in part by  
152 means of any illegal currency dealing, trade, or business, shall be void.

153 B. If any person pays any money or other valuable consideration on account of any contract or  
154 security originating from, or made or obtained in whole or in part by means of, any illegal currency  
155 dealing, trade, or business, such person or his representative or assignee may recover the amount or  
156 value of such payment from the person to whom, or to whose use, the payment was made, by bringing  
157 suit within one year after such payment.

158 § 6.2-204. Capital stock of certain entities vested in Commonwealth; proceedings to recover stock;  
159 liability.

160 A. The capital stock of every entity formed to engage in any activity prohibited by subsection A of  
161 § 6.2-202, whether paid up or merely subscribed, shall belong to the Commonwealth. The Attorney  
162 General, whenever informed of the existence of any such entity, shall institute a suit in the Circuit Court  
163 of the City of Richmond, for the purpose of recovering such capital stock. In such suit, all or any of the  
164 members of such entity, and any of its officers, agents, or managers, may be made defendants, and  
165 compelled to exhibit all their books and papers, and an account of everything necessary to enable the  
166 court to enter a proper order.

167 B. No disclosure made by a defendant in such suit, and no book or paper exhibited by him in answer  
168 to the bill, or under the order of the court, shall be used as evidence against him in any case at law.

169 C. Every member of any entity formed to engage in any activity prohibited by subsection A of  
170 § 6.2-202 who is made defendant in any such suit, shall be held liable to the Commonwealth for his  
171 proportion of the capital stock in such entity held by him, or for his use or benefit, at the institution of  
172 such suit, or at the time of the order. Such order against any defendant shall be a bar to a proceeding  
173 against him for any act done in violation of subsection A of § 6.2-202.

174 CHAPTER 3.

175 INTEREST AND USURY.

176 Article 1.

177 Definitions.

178 § 6.2-300. Definitions.

179 As used in this chapter, unless the context otherwise requires:

180 "Bank" means any national bank, any bank organized under Chapter 8 (§ 6.2-800 et seq.), or any  
181 bank incorporated and organized under the laws of another state.

182 "Credit union" means any credit union organized under Chapter 13 (§ 6.2-1300 et seq.) or any credit  
183 union incorporated and organized under the laws of another state. "Credit union" shall not include any  
184 federal credit union.

185 "First deed of trust" or "first mortgage" includes all deeds of trust and mortgages, and amendments  
186 thereto, that are made by the same grantor or mortgagor, secure notes held by the same holder, convey  
187 substantially the same real estate, and are superior to all other deeds of trust or mortgages on the real  
188 estate.

189 "Grantor" or "mortgagor" includes an owner of real estate, and spouse, who has assumed  
190 responsibility for the obligation secured by a mortgage or deed of trust encumbering the real estate.

191 "Loan" means a loan or forbearance of money.

192 "Open-end credit" or "open-end credit plan" means consumer credit extended by a creditor under a  
193 plan in which: (i) the creditor reasonably contemplates repeated transactions; (ii) the creditor may  
194 impose a finance charge from time to time on an outstanding unpaid balance; and (iii) the amount of  
195 credit that may be extended to the consumer during the term of the plan, up to any limit set by the  
196 creditor, is generally made available to the extent that any outstanding balance is repaid.

197 "Savings institution" means any savings institution, as defined in § 6.2-1100, incorporated and  
198 organized under the laws of the United States, the Commonwealth, or another state.

199 "Subordinate mortgage or deed of trust" means a mortgage or deed of trust that is subject to a prior  
200 mortgage or deed of trust in existence at the time of the making of the loan secured by such subordinate  
201 mortgage or deed of trust.

## 202 Article 2.

### 203 Legal, Judgment, and Contract Rates of Interest.

204 § 6.2-301. Legal rate of interest; when legal rate implied.

205 A. The legal rate of interest shall be an annual rate of six percent.

206 B. Except as provided in subsection (b) of § 8.3A-112 and § 6.2-302, the legal rate of interest shall  
207 be implied when there is an obligation to pay interest and no express contract to pay interest at a  
208 specified rate.

209 C. The seller or provider of goods sold or services provided on an open account shall be entitled to,  
210 and may collect, interest at the legal rate upon the unpaid balance if (i) there exists no written  
211 agreement for closed-end credit under § 6.2-311 or open-end credit plan under § 6.2-312 and (ii) the  
212 purchaser or recipient of the goods or services fails to make payment in full within 60 days after  
213 mailing or presentation of a billing statement or invoice. Such interest shall begin to accrue on the day  
214 following such 60-day period.

215 § 6.2-302. Judgment rate of interest.

216 A. The judgment rate of interest shall be an annual rate of six percent, except that a money  
217 judgment entered in an action arising from a contract shall carry interest at the rate lawfully charged  
218 on such contract, or at six percent annually, whichever is higher.

219 B. If the contract or other instrument does not fix an interest rate, the court shall apply the judgment  
220 rate of six percent to calculate prejudgment interest pursuant to § 8.01-382 and to calculate  
221 post-judgment interest.

222 C. The rate of interest for a judgment shall be the judgment rate of interest in effect at the time of  
223 entry of the judgment and shall not be affected by any subsequent changes to the rate of interest stated  
224 in this section.

225 § 6.2-303. Contracts for more than legal rate of interest.

226 A. Except as otherwise permitted by law, no contract shall be made for the payment of interest on a  
227 loan at a rate that exceeds 12 percent per year.

228 B. Laws that permit payment of interest at a rate that exceeds 12 percent per year are set out,  
229 without limitation, in:

230 1. Article 4 (§ 6.2-309 et seq.) of this chapter;

231 2. Chapter 15 (§ 6.2-1500 et seq.), relating to powers of consumer finance companies;

232 3. Chapter 18 (§ 6.2-1800 et seq.), relating to payday lenders;

233 4. § 36-55.31, relating to loans by the Virginia Housing Development Authority;

234 5. § 38.2-1806, relating to interest chargeable by insurance agents;

235 6. Chapter 47 (§ 38.2-4700 et seq.) of Title 38.2, relating to interest chargeable by premium finance  
236 companies;

237 7. § 54.1-4008, relating to interest chargeable by pawnbrokers; and

238 8. § 58.1-3018, relating to interest and origination fees payable under third-party tax payment  
239 agreements.

240 C. In the case of any loan upon which a person is not permitted to plead usury, interest and other  
241 charges may be imposed and collected as agreed by the parties.

242 D. Any provision of this chapter that provides that a loan or extension of credit may be enforced as  
243 agreed in the contract of indebtedness, shall not be construed to preclude the charging or collecting of  
244 other loan fees and charges permitted by law, in addition to the stated interest rate. Such other loan  
245 fees and charges need not be included in the rate of interest stated in the contract of indebtedness.

246 Article 3.

247 Usury.

248 § 6.2-304. Plea of usury; judgment.

249 Any borrower may plead in general terms that the contract on which the action is brought was for  
250 the payment of interest greater than is allowed by statute. If the court determines that the contract is  
251 usurious, judgment shall be rendered only for the principal sum.

252 § 6.2-305. Recovery of twice total usurious interest paid; limitation of action; injunction to prevent  
253 sale of property pending action; effect of errors in computation.

254 A. If interest in excess of that permitted by an applicable statute is paid upon any loan, the person  
255 paying may bring an action within two years from the first to occur of: (i) the date of the last scheduled  
256 loan payment or (ii) the date of payment of the loan in full, to recover from the person taking or  
257 receiving such payments:

258 1. The total amount of the interest paid to such person in excess of that permitted by the applicable  
259 statute;

260 2. Twice the total amount of interest paid to such person during the two years immediately preceding  
261 the date of the filing of the action; and

262 3. Court costs and reasonable attorney fees.

263 B. If the sale of property in which an interest has been conveyed to secure the payment of the debt is  
264 scheduled or anticipated, an injunction may be granted to prevent such sale pending the completion of  
265 an action brought pursuant to subsection A.

266 C. Any creditor who proves that interest or other charges in excess of those permitted by law were  
267 imposed or collected as a result of a bona fide error in computation or similar mistake shall not be  
268 liable for the penalties prescribed in this section. In such event, the creditor shall only be liable to  
269 return to the borrower the amount of interest or other charges collected in excess of the amount  
270 permitted by applicable statute.

271 § 6.2-306. Waiver of rights violative of public policy.

272 A. Any agreement or contract in which the borrower waives the benefits of this chapter or releases  
273 any rights he may have acquired under this chapter shall be deemed to be against public policy and  
274 void.

275 B. The provisions of subsection A shall not apply to a waiver of benefits or release of rights made  
276 subsequent to a loan as part of a settlement of potential or pending claims by a borrower involving  
277 such loan.

278 § 6.2-307. Assertion of defenses or claims by borrowers; effect of assignment.

279 As to any loan to which the provisions of §§ 6.2-327 and 6.2-328 are applicable, the borrower may  
280 assert any defense or claim he may have under §§ 6.2-304 and 6.2-305 against any assignee or  
281 transferee of the contract of indebtedness.

282 § 6.2-308. Entities not permitted to plead usury.

283 A. No (i) corporation, (ii) partnership that is required to file a certificate pursuant to Chapter 2.1  
284 (§ 50-73.1 et seq.) of Title 50 or was required to file a certificate pursuant to former Chapter 2 (§ 50-44  
285 et seq.) or Chapter 3 (§ 50-74 et seq.) of Title 50 or that is formed under laws other than those of the  
286 Commonwealth, (iii) limited liability company, (iv) business trust, or (v) joint venture organized for the  
287 purpose of holding, developing, and managing real estate for profit, shall, by way of defense or  
288 otherwise, avail itself of any of the provisions of this chapter or any other statutory or case law relating  
289 to usury or compounding of interest to avoid or defeat the payment of any interest or any other sum  
290 that it has contracted to pay.

291 B. Nothing contained in this chapter or any other statutory or case law relating to usury or  
292 compounding of interest shall be construed to prevent the recovery of interest or any other sum that an  
293 entity described in subsection A has contracted to pay, regardless of whether it is more than the  
294 contract rate of interest and the fact appears on the face of the contract.

295 Article 4.

296 Loans Exempt from Limit on Contract Rate of Interest.

297 § 6.2-309. Charges by banks and savings institutions on installment loans.

298 Notwithstanding any statutory or case law, a bank or savings institution making a loan payable in  
299 installments may impose finance charges and other charges and fees at such rates and in such amounts  
300 and manner as the borrower has agreed.

301 § 6.2-310. Rate of interest chargeable by state banks and savings institutions.

302 In addition to the permissible interest rates and charges specifically granted to banks and savings  
303 institutions by this title, state banks and savings institutions may take, receive, reserve, and charge on  
304 any loan, any rate of interest, finance charge, or other loan charge permitted to any other lender under  
305 the laws of the Commonwealth, other than those rates or charges permitted to consumer finance  
306 companies under § 6.2-1520.

307 § 6.2-311. Closed-end installment loans by sellers of goods or services.

308 A. Any seller of goods or services who extends credit under a closed-end installment credit plan or  
309 arrangement may impose finance charges at such rate or rates as the seller and the purchaser have  
310 agreed. Deferrals and extensions of the time for payment, if allowed by a seller of goods or services  
311 who extends credit under a closed-end installment credit plan or his assignee, may be subject to a  
312 finance charge if agreed to in the original contract or at the time of the renewal or extension. No  
313 additional finance charge shall be made for the extension of credit under such a plan or arrangement. If  
314 the total finance charge on the transaction is precomputed according to the actuarial method, the  
315 finance charge shall be calculated on the assumption that all scheduled payments will be made when  
316 due. The balance on which such finance charge may be imposed may include the deferred portion of the  
317 sales price, costs and charges incidental to the transaction, including (i) any insurance premium  
318 financed in connection therewith and (ii) the amount actually paid or to be paid by the seller to  
319 discharge a security interest or lien on the property traded in. The payment by a lessor to discharge a  
320 security interest or lien on the property traded in may be included in the gross capitalized cost of the  
321 goods leased and, for purposes of this chapter and Chapter 6 (§ 55-106 et seq.) of Title 55, shall not  
322 constitute a loan.

323 B. The debtor shall have the right to prepay in full on precomputed transactions and receive a  
324 rebate of unearned finance charge determined in accordance with the Rule of 78, as illustrated in  
325 § 6.2-403, or other method elected by the seller under which the finance charge imposed does not  
326 exceed the amount that results from application of the Rule of 78 on extensions of credit with an initial  
327 maturity of 61 months or less. On extensions of credit with an initial maturity of more than 61 months,  
328 the debtor shall receive a rebate computed under a method at least as favorable to the debtor as the  
329 actuarial method. The seller may also condition such rebate upon receiving a minimum of \$25 in  
330 finance charges. This amount, to the extent not earned, may be withheld from the rebate required  
331 hereunder.

332 C. In connection with such a credit plan, the seller may also:

333 1. Impose a late charge pursuant to § 6.2-400; and

334 2. Charge and collect a document fee as may be agreed upon by the seller and purchaser in  
335 connection with such credit plan. The document fee shall (i) be for the preparation, handling, and  
336 processing of documents relating to the goods or services and to the closing of the transaction and (ii)  
337 not be considered a finance charge for the purposes of this chapter.

338 D. Premiums for credit life insurance and credit accident and health insurance purchased by the  
339 debtor shall not be construed as an additional charge for the extension of credit if such insurance  
340 coverage is purchased voluntarily by the debtor. Premiums for property insurance on the goods  
341 purchased or leased, including vendor's single interest insurance on such goods, shall not be construed  
342 as additional charges for the extension of credit if a clear and conspicuous statement in writing is  
343 furnished by the seller or lessor to the buyer or lessee setting forth the cost of the insurance if obtained  
344 from or through the seller or lessor and stating that the buyer or lessee may choose the person through  
345 which the insurance is to be obtained.

346 § 6.2-312. Open-end credit plans.

347 A. Notwithstanding any provision of this chapter other than § 6.2-327, and except as provided in  
348 subsection C, a seller or lender engaged in extending credit under an open-end credit plan may impose,  
349 on credit extended under the plan, finance charges and other charges and fees at such rates and in such  
350 amounts and manner as may be agreed upon by the creditor and the obligor, if under the plan a  
351 finance charge is imposed upon the obligor if payment in full of the unpaid balance is not received at  
352 the place designated by the creditor prior to the next billing date, which shall be at least 25 days later  
353 than the prior billing date.

354 B. Notwithstanding the provisions of § 6.2-327 and subject to the provisions of § 8.9A-204.1, any  
355 loan made under this section may be secured in whole or in part by a subordinate mortgage or deed of  
356 trust on residential real estate improved by the construction thereon of housing consisting of one- to  
357 four-family dwelling units.

358 C. Except as provided in subsection D, (i) a licensee, as defined in § 6.2-1800, shall not engage in  
359 the extension of credit under an open-end credit plan described in this section and (ii) a third party  
360 shall not engage in the extension of credit under an open-end credit plan described in this section at  
361 any office, suite, room, or place of business where a licensee conducts the business of making payday

362 loans. In addition to any other remedies or penalties provided for a violation of this section, any such  
 363 extension of credit made by a licensee or third party in violation of this subsection shall be  
 364 unenforceable against the borrower.

365 D. No prohibition in subsection C shall apply to an extension of credit under an open-end credit  
 366 plan that is secured by a security interest in a motor vehicle, as such term is defined in § 46.2-100.

367 E. If a licensee, as defined in § 6.2-1800, surrenders its license under Chapter 18 (§ 6.2-1800 et  
 368 seq.) or has its license revoked, and if following such surrender or revocation of its license the former  
 369 licensee engages in the extension of credit under an open-end credit plan as described in this section,  
 370 then the Commission shall not issue to such former licensee, or to any affiliate of the former licensee, a  
 371 license under Chapter 18 (§ 6.2-1800 et seq.) for a period of 10 years from the date such license is  
 372 surrendered or revoked. As used in this subsection, "affiliate of the former licensee" means a business  
 373 entity that owns or controls, is owned or controlled by, or is under common ownership or control with,  
 374 the former licensee.

375 § 6.2-313. Open-end credit extended by banks or savings institutions.

376 A. Notwithstanding any statutory or case law, any bank or savings institution may impose finance  
 377 charges and other charges and fees at such rates and in such amounts and manner as may be agreed  
 378 by the borrower under an open-end credit plan.

379 B. In the event of the extension of credit by a bank or savings institution hereunder to be effected by  
 380 the use of a credit card for the purchase of merchandise or services, no finance charge shall be  
 381 imposed upon the cardholder or borrower on such extension of credit if payment in full of the unpaid  
 382 balance owing for all extensions of credit under the open-end credit plan is received at the place  
 383 designated by the creditor prior to the next billing date, which shall be at least 25 days later than the  
 384 prior billing date.

385 § 6.2-314. Motor vehicle purchase loans by subsidiaries and affiliates of banks and savings  
 386 institutions.

387 Notwithstanding any statutory or case law, a subsidiary or affiliate of a bank or savings institution  
 388 that is not a licensee under the provisions of Chapter 15 (§ 6.2-1500 et seq.) may impose finance  
 389 charges and other charges and fees at such rates and in such amounts and manner as the borrower has  
 390 agreed on loans payable in installments for the purpose of financing the purchase of a motor vehicle.

391 § 6.2-315. Loans by certain financial institutions or brokers payable on demand or having a term up  
 392 to one year.

393 Any bank, savings institution, broker duly licensed to transact business as a stockbroker, or  
 394 broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures  
 395 Trading Commission, may loan money or discount bonds, bills, notes or other paper, whether payable  
 396 on demand or for periods up to one year. Such a loan or discounting may be lawfully enforced as  
 397 agreed in the contract of indebtedness. An interest rate charged in advance upon the entire amount of  
 398 the loan or discount shall be lawful.

399 § 6.2-316. Loans of \$5,000 or more made by certain financial institutions.

400 No person shall, by way of defense or otherwise, avail himself of the provisions of this chapter or  
 401 any other section relating to usury to avoid or defeat the payment of interest, or any other sum, upon a  
 402 loan made to a person by a bank, savings institution, industrial loan association, or credit union, if the  
 403 initial principal amount of the loan is \$5,000 or more.

404 § 6.2-317. Loans of \$5,000 or more for business or investment purposes.

405 A. For purposes of this section:

406 1. A loan shall be deemed to be for business or investment purposes if it is not for personal, family,  
 407 or household purposes; and

408 2. Personal, family, or household purposes do not include a passive or active investment.

409 B. No person shall, by way of defense or otherwise, avail himself of the provisions of this chapter, or  
 410 any other statutory or case law relating to usury or compounding of interest, to avoid or defeat the  
 411 payment of interest, or any other sum, in connection with a loan made to a person for business or  
 412 investment purposes, if the initial amount of the loan is \$5,000 or more.

413 § 6.2-318. Loans by credit unions.

414 A. As used in this section, "average daily balance" means, for any billing period, that amount which  
 415 is the sum of the actual amounts outstanding each day during the billing period divided by the number  
 416 of days in the billing period.

417 B. Notwithstanding any other statute or provision relating to interest or usury, any credit union may  
 418 charge interest as agreed by the borrower provided such interest is not charged in advance.

419 C. Any open-end credit plan offered by a credit union shall provide:

420 1. For computation of any finance charges by application of a rate, at the option of the credit union,  
 421 to:

422 a. The average daily balance for the period ending on the billing date;

423 *b. The balance existing on the billing date of the month; or*  
424 *c. Any other balance which does not result in the credit union charging or receiving any sum in*  
425 *excess of what would be charged or received under subdivision a or b;*

426 *2. That no finance charge shall be imposed unless the bill is mailed not later than eight days,*  
427 *excluding Saturdays, Sundays and holidays, after the billing date, except that such time limitation shall*  
428 *not apply in any case where the credit union has been prevented, delayed, or hindered in mailing or*  
429 *delivering the bill within such time period because of an act of God, war, civil disorder, natural*  
430 *disaster, strike, or other excusable or justifiable cause; and*

431 *3. That in the event of the extension of open-end credit by a credit union to be effected by the use of*  
432 *a credit card for the purchase of merchandise or services, no finance charge shall be imposed upon the*  
433 *member or cardholder on such extension of credit if payment in full of the unpaid balance owing for*  
434 *extensions of credit for merchandise or services is received at the place designated by the credit union*  
435 *prior to the next billing date, which shall be at least 25 days later than the prior billing date.*

436 *D. Notwithstanding any provision of this chapter other than § 6.2-327, a credit union engaged in*  
437 *extending credit under an open-end credit plan may impose, on credit extended under the plan, finance*  
438 *charges and other charges and fees at such rates and in such amounts and manner as may be agreed*  
439 *upon by the credit union and the obligor, if under the plan a finance charge is imposed upon the*  
440 *obligor if payment in full of the unpaid balance is not received at the place designated by the creditor*  
441 *prior to the next billing date, which shall be at least 25 days later than the prior billing date.*

442 *§ 6.2-319. Loans by pension plans to participants.*

443 *A. As used in this section, "pension plan" includes an "employee pension benefit plan" or "pension*  
444 *plan" as defined in § 3 (2) of the federal Employee Retirement Income Security Act of 1974 (P.L.*  
445 *93-406, 88 Stat. 829).*

446 *B. Loans by a pension plan to an individual participating in the pension plan shall be lawfully*  
447 *enforced as agreed in the contract of indebtedness. No such participating individual, by way of defense*  
448 *or otherwise, shall avail himself of the provisions of this chapter, or any other law relating to interest*  
449 *or usury, to avoid or defeat the payment of interest or any other sum on any loan made by the pension*  
450 *plan. Nothing contained in any law relating to interest or usury shall be construed to prevent the*  
451 *recovery of such interest or other sum though it is more than otherwise lawful interest and though that*  
452 *fact appears on the face of the contract.*

453 *§ 6.2-320. Loans by industrial loan associations.*

454 *A. Notwithstanding any statutory or case law relating to interest or usury, loans made by an*  
455 *industrial loan association payable in weekly, monthly, or other periodic installments may be enforced*  
456 *as agreed in the contract of indebtedness. In addition, such association may charge or collect in*  
457 *advance from the borrower on such loans a loan fee not exceeding two percent of the principal amount*  
458 *of the loan. An interest rate charged in advance upon the entire amount of the loan or pursuant to a*  
459 *written modification agreement shall be lawful.*

460 *B. An industrial loan association may charge interest at an annual rate not exceeding 18 percent on*  
461 *loans payable on demand or in a single payment. In addition, such association may charge or collect in*  
462 *advance from the borrower on such loans a loan fee not exceeding two percent of the principal amount*  
463 *of the loan.*

464 *§ 6.2-321. Loans pursuant to stock option financing programs.*

465 *A. As used in this section, "stock option financing program loan" means a loan pursuant to which a*  
466 *lender finances the option holder's exercise of the option to purchase stock, which exercise is financed*  
467 *through such means as purchasing the stock on margin, selling sufficient shares of the stock to cover*  
468 *the total exercise cost, or selling the full quantity of stock to cover the total exercise cost.*

469 *B. No person shall, by way of defense or otherwise, avail himself of the provisions of this chapter, or*  
470 *any other statutory or case law relating to usury or compounding of interest, to avoid or defeat the*  
471 *payment of interest, or any other sum, in connection with a loan made to a person pursuant to a stock*  
472 *option financing program loan.*

473 *§ 6.2-322. Extensions of credit on pledged securities.*

474 *A broker-dealer licensed by the Commission and registered with the Securities Exchange Commission*  
475 *who extends credit to a customer on pledged securities as permitted under the provisions of the*  
476 *Securities Exchange Act of 1934, may charge the customer, on his debit balances that are payable on*  
477 *demand, interest at a annual rate that does not exceed one and three-quarters percent above the higher*  
478 *of:*

479 *1. The interest rate charged such broker-dealer by a bank doing business in the Commonwealth on*  
480 *loans collateralized by securities; or*

481 *2. The interest rate charged such broker-dealer by a bank doing business in the Commonwealth on*  
482 *loans for business purposes.*

483 *§ 6.2-323. Educational loans by banks or savings institutions.*

484 Notwithstanding any statutory or case law relating to interest or usury, including the deferral and  
 485 capitalization of interest, any loan made by a bank or savings institution to defray educational expenses,  
 486 including tuition, fees, books, supplies, room, board, and personal expenses, shall be lawfully enforced  
 487 as agreed in the contract of indebtedness.

488 § 6.2-324. Educational loans by private college or university.

489 A. As used in this section, "private college or university" means a private, accredited and nonprofit  
 490 institution of collegiate education in the Commonwealth whose primary purpose is to provide collegiate  
 491 or graduate education.

492 B. Loans made by a private college or university in the Commonwealth to defray educational  
 493 expenses of its students, including tuition, fees, books, supplies, room, board, and personal expenses,  
 494 may be enforced as agreed in the contract of indebtedness.

495 § 6.2-325. Certain loans secured by first deed of trust or mortgage.

496 A. As used in this section, "real estate" includes a leasehold estate of not less than 25 years.

497 B. Notwithstanding the provisions of any law relating to interest or usury, contracts made for the  
 498 loan of money, secured or to be secured by a first deed of trust or first mortgage on real estate, or by a  
 499 first priority security interest in the stock of a residential cooperative housing corporation, may be  
 500 enforced as agreed in the contract of indebtedness or other agreement signed by the borrower.

501 C. For the purpose of this section, an interest rate which varies in accordance with any exterior  
 502 standard, or which cannot be ascertained from the contract without reference to any exterior  
 503 circumstances or documents, shall be enforceable as agreed in the contract of indebtedness or other  
 504 signed agreement.

505 D. Disclosure of charges in a disclosure given to the borrower pursuant to federal disclosure laws  
 506 or regulations and acceptance of the loan proceeds by the borrower shall be deemed an agreement  
 507 signed by the borrower within the meaning of this section.

508 § 6.2-326. Fees and charges in connection with loans by real estate lenders.

509 A. A lender engaged in making real estate mortgage or deed of trust loans, other than loans subject  
 510 to the provisions of §§ 6.2-327 and 6.2-328, may:

511 1. Charge or collect in advance from the borrower a loan fee as agreed between the parties; and

512 2. Require the borrower to pay the reasonable and necessary charges in connection with making the  
 513 loan, including the cost of title examination, title insurance, recording and filing fees, taxes, insurance,  
 514 including mortgage guaranty insurance, appraisals, credit reports, surveys, drawing of papers, and  
 515 closing the loan.

516 B. The fees and charges permitted by this section and other sections of this chapter are in addition  
 517 to those permitted by § 6.2-325 and may be added to the principal of the loan, and shall not be  
 518 considered in determining whether a loan contract is usurious.

519 § 6.2-327. Certain loans secured by a subordinate deed of trust or mortgage.

520 A. As used in this section:

521 "Exempt subordinate mortgage lender" means (i) a bank, savings institution, industrial loan  
 522 association, or credit union or (ii) a seller in a real estate sales transaction who takes a subordinate  
 523 mortgage or deed of trust on such real estate.

524 "New money" means money advanced in excess of the outstanding principal balance at the time a  
 525 new advance is made.

526 "Real estate" includes a leasehold estate of not less than 25 years.

527 "Residential real estate" means real estate improved by the construction thereon of housing  
 528 consisting of one- to four-family dwelling units.

529 B. An add-on interest loan shall be subject to the following provisions:

530 1. Any person may charge add-on interest that results in an annual yield of not more than 18  
 531 percent upon loans secured in whole or in part by a subordinate mortgage or deed of trust on  
 532 residential real estate;

533 2. An add-on interest loan may be made only under this subsection and shall not exceed a period of  
 534 five years and one month; and

535 3. The lender may also impose a loan fee not exceeding two percent of the principal amount of the  
 536 loan provided that such loan fee shall not be imposed more often than once each 18 months except to  
 537 the extent that new money is advanced within such 18-month period by a renewal or additional loan.  
 538 New money shall be money advanced in excess of the outstanding principal balance at the time such  
 539 new advance is made. These provisions shall apply whether such loan fee is payable directly to the  
 540 lender or to a third party in connection with such loan.

541 C. No charge, other than actual costs documented to the applicant and expended for a credit report  
 542 and an appraisal of the real estate conducted in connection with the loan application, may be made if a  
 543 loan secured by a subordinate mortgage or deed of trust is not made. Such charge:

544 1. Shall not exceed one percent of the amount of the loan applied for; but in no event shall such

545 charge exceed \$50 or one-half of such costs, whichever is less; and

546 2. May be made only if the lender commits to make the loan. Such commitment shall be in writing  
547 and signed by the lender or a person who the lender has authorized to execute such documents.

548 D. Any loan secured by a subordinate mortgage or deed of trust on residential real estate upon  
549 which the interest is charged at an annual interest rate on the unpaid balance thereof shall be subject  
550 to the following provisions:

551 1. Such a loan may be lawfully enforced at the annual interest rate stated in the contract of  
552 indebtedness on the principal amount of the loan. Such annual interest rate may vary in accordance  
553 with an exterior standard;

554 2. In addition to the annual interest rate permitted by subdivision 1, the lender may charge the  
555 borrower a loan fee not exceeding five percent of the principal amount of the loan, provided that such  
556 loan fee shall not be imposed more often than once each 18 months except to the extent that new money  
557 is advanced within such 18-month period by a renewal or additional loan. Such loan fee may only be  
558 reimposed by the lender upon a borrower in connection with the refinancing of a loan made pursuant to  
559 this subsection; and

560 3. The lender may charge the borrower with the actual costs of the loan as permitted by § 6.2-328.

561 E. The rates, charges and other provisions permitted or required by this section or by § 6.2-328  
562 shall apply to all loans secured by a subordinate mortgage or deed of trust, including, without  
563 limitation, (i) single maturity loans, (ii) amortizing loans, and (iii) loans secured by a credit line deed of  
564 trust as permitted by § 55-58.2.

565 F. Except for the loan fee permitted in this section, no discount, initial interest, points or charges by  
566 any other name may be collected, charged or added to a loan secured by a subordinate mortgage or  
567 deed of trust upon residential real estate.

568 G. The provisions of this section shall not apply to any loan by an exempt subordinate mortgage  
569 lender.

570 H. For the purpose of this section, an interest rate that varies in accordance with any exterior  
571 standard, or that cannot be ascertained from the contract without reference to any exterior  
572 circumstances or documents, shall be enforceable as agreed in the contract of indebtedness or other  
573 signed agreement.

574 I. The borrower under any loan to which the provisions of this section apply may assert any defense  
575 or claim he may have under §§ 6.2-304 and 6.2-305 against any assignee or transferee of the contract  
576 of indebtedness.

577 § 6.2-328. Charges allowed on loan secured by subordinate mortgage.

578 A. Any lender making a loan secured by a subordinate mortgage or deed of trust may require the  
579 borrower to pay, in addition to the loan fee and interest permitted by § 6.2-327, the actual cost of a  
580 credit report, title examination, title insurance, mortgage guaranty insurance, recording fees, surveys,  
581 attorney fees, appraisal fees, and a fee to determine if the property securing the loan is located in a  
582 special flood hazard area. No other charges of any kind shall be imposed on or be payable by the  
583 borrower either to the lender or any other party in connection with such loan other than:

584 1. A fee charged by the settlement agent as defined in § 55-525.9;

585 2. Late charges in the amount specified in § 6.2-400 and a prepayment penalty permitted under  
586 § 6.2-423 that are contracted for; and

587 3. Upon default, court costs, attorney fees, trustee's commission, and other expenses of collection to  
588 which the borrower may be subject as otherwise permitted by law.

589 B. Broker's or finder's fees may be paid by the lender from the loan fee or interest permitted under  
590 § 6.2-327. A broker's fee, finder's fee, or commission not to exceed five percent of the principal amount  
591 of the loan may be paid by the borrower if the total of the loan fee permitted under § 6.2-327 and the  
592 broker's fee, finder's fee, or commission does not exceed five percent of the principal amount of the  
593 loan.

594 C. The premium for any insurance required or provided pursuant to § 6.2-411 shall not be  
595 considered a charge imposed on or payable by the borrower in connection with the loan.

596 D. No charge may be imposed or collected, except as permitted by § 6.2-327, if the loan is not  
597 made.

598 E. This section shall not apply to any loan made by (i) a bank, savings institution, industrial loan  
599 association, or credit union or (ii) a seller in a real estate sales transaction who takes a subordinate  
600 mortgage or deed of trust on such real estate.

601 F. The borrower under any loan to which the provisions of this section apply may assert any defense  
602 or claim he may have under §§ 6.2-304 and 6.2-305 against any assignee or transferee of the contract  
603 of indebtedness.

604 § 6.2-329. Loans insured or guaranteed by certain governmental agencies.

605 A. No person shall, by way of defense or otherwise, avail himself of any of the provisions of this

606 chapter or any other law relating to usury or any statutory or case law relating to compounding of  
607 interest to avoid or defeat the payment of any interest or any other sum which he has contracted to pay  
608 on any loan:

609 1. Insured by the Federal Housing Administration, pursuant to the provisions of the National  
610 Housing Act (12 U.S.C. § 1701 et seq.);

611 2. Guaranteed by the Veterans Administration, pursuant to Title 38 of the United States Code; or

612 3. Insured or guaranteed by any similar federal governmental agency or organization, or made  
613 directly or indirectly by the Virginia Housing Development Authority pursuant to the provisions of  
614 Chapter 1.2 (§ 36-55.24 et seq.) of Title 36.

615 B. Nothing contained in this chapter shall be construed to prevent the recovery of such interest or  
616 any other sum from any person who has contracted to pay the same in connection with any loan  
617 described in this section.

618 CHAPTER 4.  
619 CERTAIN LENDING PRACTICES.

620 Article 1.

621 Late Charges and Rebates of Unearned Interest.

622 § 6.2-400. Amount of late charge; when charge can be made.

623 A. As used in this section:

624 "Late charges" does not include charges imposed upon acceleration of the entire debt or costs of  
625 collection and attorney fees as otherwise permitted by law by reason of a default by the debtor.

626 "Timely payment" means a payment made by the date fixed for payment or within a period of seven  
627 calendar days after such due date.

628 B. Any lender or seller may impose a late charge for failure to make timely payment of any  
629 installment due on a debt, whether installment or single maturity, provided that such late charge does  
630 not exceed five percent of the amount of such installment payment and that the charge is specified in the  
631 contract between the lender or seller and the debtor.

632 C. If any federal governmental agency or organization shall adopt any rules or regulations dealing  
633 with the application of late penalties as to loans insured or guaranteed by such federal agency or  
634 organization, then such rules and regulations shall control as to such loans insured or guaranteed by  
635 them.

636 D. Any provision for late charges in excess of the amount permitted by this section shall be void as  
637 to such excess but shall not otherwise affect the validity of the obligation.

638 § 6.2-401. Acceleration clause in note evidencing installment loan; effect of acceleration.

639 A. Any note or other contract evidencing an installment loan or other installment sales obligation  
640 with add-on interest may provide that the entire unpaid loan balance, at the option of the holder, shall  
641 become due and payable upon default in payment of any installment without impairing the negotiability  
642 of the note, if otherwise negotiable.

643 B. Upon such acceleration, the holder of the contract of indebtedness shall not be entitled to  
644 judgment for unearned interest, but the balance owing shall be computed as follows:

645 1. On loans payable in equal periodic installments with an initial maturity and corresponding  
646 amortization period not exceeding 61 months, the accelerated balance shall be calculated as if the  
647 borrower had made a voluntary prepayment and obtained as of the date of acceleration an interest  
648 credit based upon the Rule of 78 rebate method as defined in § 6.2-403; and

649 2. On other loans, the accelerated balance shall be calculated under a method at least as favorable  
650 to the borrower as the actuarial method.

651 C. The accelerated balance shall bear interest at the rate shown, or that should have been shown as  
652 the annual percentage rate under a truth in lending disclosure pursuant to federal law if the transaction  
653 was a consumer credit transaction.

654 § 6.2-402. Notice of use of Rule of 78 rebate method.

655 Where any loan or sale on credit contains a provision that a rebate of unearned interest shall be  
656 calculated in accordance with the Rule of 78 rebate method as defined in § 6.2-403, the note or other  
657 instrument evidencing the loan or sale on credit shall contain a notice advising the borrower of the  
658 effect of the interest calculation. The notice shall be in all capital letters and in 10-point type, and shall  
659 be substantially as follows:

660 NOTICE: IF YOU PAY THIS LOAN OR SALE ON CREDIT PARTIALLY OR IN FULL BEFORE ITS  
661 DUE DATE, THE AMOUNT OF INTEREST YOU PAY WILL BE GREATER THAN THE AMOUNT OF  
662 INTEREST YOU WOULD PAY FOR A SIMPLE INTEREST LOAN OF THE SAME PRINCIPAL  
663 AMOUNT.

664 § 6.2-403. The Rule of 78.

665 A. The Rule of 78 is so named because the integers one through 12 added together total 78.

666 B. The amount of the rebate of unearned interest to be credited upon the acceleration or anticipation

667 of a loan on which such rebate is required to be calculated under the Rule of 78 shall be calculated as  
 668 follows:

669 1. Determine the denominator of the fraction, to be used as provided in subdivision 3, by adding the  
 670 integers corresponding to the number of months over which the loan is to be repaid according to its  
 671 terms, which in the example of a four-year loan would be the sum obtained by adding all of the integers  
 672 in the series one through 48.

673 2. Determine the numerator of the fraction, to be used as provided in subdivision 3, by adding in  
 674 inverse sequence the integers corresponding to the number of months remaining on the loan after  
 675 payment is anticipated, which in the example of a four-year loan anticipated after the third month,  
 676 would be the sum obtained by adding all of the integers in the series 45 through one.

677 3. Multiply the original amount of interest that would have been paid over the life of the loan by a  
 678 fraction that has as its denominator the number determined as in subdivision 1 and as its numerator the  
 679 number determined as in subdivision 2. The product is the amount of unearned interest to be rebated  
 680 under the Rule of 78.

681 C. Payment anticipated between scheduled payment dates shall not be considered but instead the  
 682 succeeding scheduled payment date shall be used in determining the amount of unearned interest to be  
 683 rebated under the Rule of 78 pursuant to this section.

684 § 6.2-404. When use of Rule of 78 prohibited or permitted.

685 A. The Rule of 78 shall not be used to determine the amount of unearned interest to be rebated if  
 686 payment of the debt is anticipated on any (i) loan of money made after January 1, 1991, with an initial  
 687 maturity of more than 61 months; or (ii) sales contract made after January 1, 1991, that necessitates a  
 688 loan as described in clause (i).

689 B. On any loan of money made with an initial maturity and corresponding amortization period of 61  
 690 months or less and that is payable in equal periodic installments, the Rule of 78 may be used to  
 691 determine the amount of unearned interest to be rebated if payment of the debt is anticipated on the  
 692 loan or contract.

693 § 6.2-405. References to sections regulating rebates of unearned interest and prepayment penalties.

694 A. This article does not affect the application of §§ 6.2-420 through 6.2-423 regarding the imposition  
 695 of prepayment penalties or rebates of unearned interest on certain loans secured by a lien on real  
 696 estate.

697 B. This article does not affect the application of § 6.2-1409 regarding the imposition of prepayment  
 698 penalties or rebates of unearned interest on loans made by an industrial loan association.

699 Article 2.

700 Loans Secured by Lien on Real Estate.

701 § 6.2-406. Disclosure of terms of mortgage application.

702 A. Any lender making, or broker arranging, loans secured by a first mortgage or first deed of trust  
 703 on owner occupied residential real estate consisting of one- to four-family dwelling units shall provide,  
 704 at the time an application for such a loan is submitted by a loan applicant, to the loan applicant a  
 705 written statement that:

706 1. Describes when, if ever, the interest, points, and fees quoted will be locked in;

707 2. States that all the loan terms not legally locked in are subject to change until settlement, which  
 708 shall be initialed by the loan applicant and lender or broker; and

709 3. Provides a good faith estimate of the processing time required for the loan. The estimate shall  
 710 take into account the time needed for the performance of any local government inspections or other  
 711 functions necessary to close the loan.

712 B. The requirements of subsection A shall not apply to any lender making 10 or fewer loans secured  
 713 by a first mortgage or first deed of trust on such owner occupied residential real estate in any 12-month  
 714 period.

715 § 6.2-407. Lenders to furnish borrower with copy of appraisal.

716 Any lender that requires a borrower or prospective borrower to pay for an appraisal of residential  
 717 real estate made in connection with a loan or application for a loan secured by the real estate shall,  
 718 upon request by the borrower or prospective borrower, furnish free of charge the borrower or  
 719 prospective borrower with a copy of the written appraisal or, if no written appraisal exists, with a  
 720 statement of the appraised value within 10 business days of the receipt of such request.

721 § 6.2-408. Priority of interest on debts secured by mortgage or deed of trust.

722 Interest that is charged pursuant to a written agreement, whether or not recorded, shall be of equal  
 723 priority with the principal debt secured by the mortgage or deed of trust and shall have priority as to  
 724 third parties as provided in Title 55.

725 § 6.2-409. Addition of unpaid interest to principal balance.

726 A. For the purpose of this section:

727 "First deed of trust" or "first mortgage" includes all deeds of trust and mortgages, and amendments

728 *thereto, that are made by the same grantor or mortgagor, secure notes held by the same holder, convey*  
 729 *substantially the same real estate, and are superior to all other deeds of trust or mortgages on the real*  
 730 *estate.*

731 *"Grantor" or "mortgagor" includes an owner of real estate, and spouse, who has assumed*  
 732 *responsibility for the obligation secured by such deed of trust or mortgage encumbering the real estate.*

733 *"Real estate" includes a leasehold estate of not less than 25 years.*

734 *B. Notwithstanding any other statutory or case law relating to compounding of interest, if regularly*  
 735 *scheduled periodic payments on an obligation secured by a first mortgage or first deed of trust on real*  
 736 *estate are insufficient to pay currently accruing interest on the then principal balance, an agreement in*  
 737 *the contract of indebtedness, or other agreement signed by the borrower, providing for the addition of*  
 738 *such unpaid interest to the principal balance and the future accrual of interest on such balances, shall*  
 739 *be enforceable as written.*

740 *C. Disclosure of charges in a disclosure given to the borrower pursuant to federal disclosure laws or*  
 741 *regulations and acceptance of the loan proceeds by the borrower shall be deemed an agreement signed*  
 742 *by the borrower within the meaning of this section.*

743 *§ 6.2-410. Borrowers not to be required to employ particular professionals.*

744 *In the case of loans secured by deeds of trust or mortgages on one- to four-family dwelling units, the*  
 745 *lender may not require the borrower to use the services of a particular attorney, surveyor, or insurer.*  
 746 *The lender shall have the right to approve any attorney, surveyor, or insurer selected by the borrower,*  
 747 *provided such approval is not unreasonably withheld.*

748 *§ 6.2-411. Requirements relating to insurance.*

749 *A. Any lender making a loan secured by a subordinate mortgage or deed of trust, as defined in*  
 750 *§ 6.2-300, may require the borrower to provide:*

751 *1. Evidence of flood insurance if the security property is located in a special flood hazard area;*

752 *2. Evidence of fire and extended coverage insurance; and*

753 *3. Decreasing term life insurance, in an amount not exceeding the amount of the loan and for a*  
 754 *period not exceeding the term of the loan.*

755 *B. At the option of the borrower, accident and health insurance and involuntary unemployment*  
 756 *insurance may be provided by the lender.*

757 *C. Proof of all insurance issued in connection with loans subject to this chapter shall be furnished to*  
 758 *the borrower within 10 days from the date the loan is closed.*

759 *§ 6.2-412. Fire insurance coverage under certain loans not to exceed replacement value of*  
 760 *improvements.*

761 *A. As used in this section, "property insurance coverage" means insurance against losses or damages*  
 762 *caused by perils that commonly are covered in insurance policies described with terms similar to*  
 763 *"standard fire" or "standard fire with extended coverage."*

764 *B. No lender shall require a borrower, as a condition to receiving or maintaining a loan secured by*  
 765 *any mortgage or deed of trust, to provide or purchase property insurance coverage against risks to any*  
 766 *improvements on any real property in an amount exceeding the replacement value of the improvements*  
 767 *on the real property.*

768 *C. In determining the replacement value of the improvements on any real property, the lender may:*

769 *1. Accept the value placed on the improvements by the insurer; or*

770 *2. Use the value placed on the improvements that is determined by the lender's appraisal of the real*  
 771 *property.*

772 *D. A violation of this section shall not affect the validity of the mortgage or deed of trust securing*  
 773 *the loan.*

774 *§ 6.2-413. Obligation of lender to reimburse unused mortgage guaranty insurance premiums.*

775 *Any lender that requires, as a prerequisite to its lending money for the purchase of real property,*  
 776 *that private mortgage insurance be secured to insure a certain amount of the lender's interest in the*  
 777 *property shall return to the person who paid the premium, or other person entitled thereto, any portion*  
 778 *of the premium for such insurance that is not used to secure insurance for the lender's interest in the*  
 779 *property.*

780 *§ 6.2-414. Obligation of person maintaining escrow account to pay taxes and insurance; penalties.*

781 *Any lender or other person maintaining escrow accounts for the payment of taxes or insurance, who*  
 782 *on receipt of notice thereof, fails to make timely payment therefor, and incurs a penalty or late charge*  
 783 *thereon or a cancellation for nonpayment if there are sufficient funds in such escrow account at least*  
 784 *five days before such due date to make such payment, shall be liable for the penalty or late charge*  
 785 *assessed for late payment and for any loss as a result of the property being uninsured for nonpayment.*  
 786 *The lender or other person shall give written notice to any obligor of the payment of such penalty or*  
 787 *late charge within five days after such payment is made.*

788 *§ 6.2-415. Lender not to cancel insurance policy at time of refinancing under certain circumstances.*

789 A. No lender shall require a borrower or debtor, for the protection of property securing the credit or  
790 lien, to cancel an existing insurance policy on such property at the time of a refinancing solely to  
791 change the effective dates of coverage under the policy, unless the expiration date of such policy is  
792 within four months of the date of the closing.

793 B. The provision of subsection A shall not prevent a lender from requesting a new policy when the  
794 coverage under the existing policy is inadequate or there is reasonable concern over the soundness or  
795 services of the insurer.

796 § 6.2-416. Certain mortgages not to prohibit further encumbrance of real property.

797 Where any loan is secured by a mortgage or deed of trust on real property comprised of one- to  
798 four-family residential dwelling units, the note, or mortgage or deed of trust evidencing such loan shall  
799 in no way prohibit the further encumbrance of the real property.

800 § 6.2-417. Mortgage or deed of trust to contain notice that debt is subject to call or modification on  
801 conveyance of property.

802 Where any loan is secured by a mortgage or deed of trust on real property comprised of one- to  
803 four-family residential dwelling units, and the note or mortgage or deed of trust evidencing or securing  
804 the loan contains a provision that the holder of the note secured by such mortgage or deed of trust may  
805 accelerate payment of or renegotiate the terms of such loan upon sale or conveyance of the security  
806 property or part thereof, then the mortgage or deed of trust shall contain in the body or on the margin  
807 thereof a statement, either in capital letters or underlined, that advises the borrower as follows: "Notice  
808 - The debt secured hereby is subject to call in full or the terms thereof being modified in the event of  
809 sale or conveyance of the property conveyed."

810 § 6.2-418. Property owner entitled to written statement of payoff amount.

811 A. If an obligation is secured by the lien of a deed of trust or mortgage on real estate, and the  
812 owner of the real estate is entitled to prepay the obligation secured by the deed of trust or mortgage,  
813 the owner shall be entitled to receive from the holder of the obligation a written statement setting forth  
814 the total amount to be paid as of a particular date in order to obtain a release of the deed of trust or  
815 mortgage.

816 B. The holder of the obligation secured by the deed of trust or mortgage shall mail or deliver such  
817 written statement of the payoff amount to the property owner or his designee within 10 business days of  
818 the receipt of a written request for such payoff information from the property owner or his designee if  
819 the request contains the loan number and the address or other description of the location of the subject  
820 premises.

821 C. Upon payment in full of the obligation, the holder shall promptly cause the cancelled loan  
822 documents to be forwarded to the owner or his designee.

823 D. An inadvertent error made in the calculation of the payoff amount shall neither release the  
824 obligor from the requirement to pay the full amount due under the contract of indebtedness, nor release  
825 the holder of the contract of indebtedness from the requirement to return any overpayment to the  
826 obligor or his designee.

827 E. A request for payoff information under this section may be made one time within a 12-month  
828 period without charge, and a fee not exceeding \$15 may be charged for each additional request made  
829 within such period.

830 § 6.2-419. Disclosure of terms of assumption.

831 A. An owner of residential real estate that is improved by the construction thereon of housing  
832 consisting of four or fewer dwelling units and encumbered by a mortgage or deed of trust shall have the  
833 right, upon written request to any holder of the obligation secured by the mortgage or deed of trust, to  
834 receive a written disclosure of whether the holder will permit a qualified purchaser to assume the  
835 mortgage or deed of trust. If the answer is in the affirmative, the holder shall disclose the following  
836 information regarding the terms of such assumption:

837 1. The rate of interest to be assumed, which may vary with an exterior standard;

838 2. The balance of the escrow account, if any;

839 3. Any fees and charges to be assessed by the holder against the seller and buyer in connection with  
840 the assumption;

841 4. Usual limitations or requirements placed on the assumption; and

842 5. Other terms and conditions of the assumption deemed pertinent by the holder.

843 B. The holder shall state the time period during which the terms disclosed pursuant to subsection A  
844 shall be valid, together with any limitations thereon.

845 C. Any holder receiving such a written request from an owner shall respond in writing within 10  
846 business days of the receipt of the request.

847 D. Any holder receiving a second or subsequent written request with respect to the same mortgage  
848 or deed of trust within any 12-month period may charge a fee, not to exceed \$15, for each additional  
849 request. The fee shall be paid in advance.

850 § 6.2-420. Prepayment penalty not to be collected in certain circumstances.

851 No lender shall collect or receive any prepayment penalty on loans secured by real property  
852 comprised of one- to four-family residential dwelling units if the prepayment results from the  
853 enforcement of the right to call the loan upon the sale of the real property that secures the loan. If the  
854 loan is prepaid because of sale to a person who the lender has refused to approve for purposes of  
855 assuming the loan or failed to approve within 15 days after receipt by it of written request for approval,  
856 the prepayment shall be presumed to result from enforcement of the right to call the loan.

857 § 6.2-421. Certain contracts to permit prepayment; amount of prepayment penalty.

858 A. For the purpose of this section:

859 1. "First deed of trust" or "first mortgage" includes all deeds of trust and mortgages, and  
860 amendments thereto, that are made by the same grantor or mortgagor, secure notes held by the same  
861 holder, convey substantially the same real estate, and are superior to all other deeds of trust or  
862 mortgages on the real estate; and

863 2. "Real estate" includes a leasehold estate of not less than 25 years.

864 B. Every loan contract, except as provided in subsection D, that is secured by a first deed of trust or  
865 first mortgage on real estate if the principal amount of the loan is less than \$75,000, shall:

866 1. Permit the prepayment of the unpaid principal at any time; and

867 2. Not provide for a prepayment penalty in excess of one percent of the unpaid principal balance.

868 C. Any prepayment penalty provision in violation of subdivision B 2 shall be unenforceable as to the  
869 amount in excess of one percent of such balance.

870 D. The provisions of:

871 1. Subsections B and C shall not apply to secured or unsecured notes evidencing installment sales  
872 contracts; and

873 2. Subdivision B 2 and subsection C shall not apply to any loan contract that is (i) subject to  
874 § 6.2-422 or 6.2-1409 or (ii) governmentally regulated as to prepayment privilege.

875 § 6.2-422. Prepayment penalty for loan secured by home occupied by borrower.

876 The prepayment penalty in the case of a loan secured by a mortgage or deed of trust on a home that  
877 is occupied or to be occupied in whole or in part by a borrower shall not exceed two percent of the  
878 amount of such prepayment.

879 § 6.2-423. Prepayment of loans secured by certain subordinate mortgages or deeds of trust; rebates  
880 for unearned interest.

881 A. Any borrower under any loan secured by a subordinate mortgage or deed of trust on residential  
882 real estate, which loan is subject to the provisions of § 6.2-327, shall have the right to anticipate  
883 payment of his debt in whole or in part at any time. If agreed to by the borrower, a lender may  
884 contract for a penalty for prepayment of the full amount of the loan if the prepayment penalty shall not  
885 exceed two percent of the principal amount prepaid, but no prepayment penalty shall be imposed if:

886 1. The loan is refinanced or consolidated with the same lender or a subsequent noteholder;

887 2. The loan is accelerated due to default;

888 3. A partial prepayment is made; or

889 4. In the case of an open-end credit plan, as defined in § 6.2-300, where there is a payment of the  
890 outstanding balance without a demand to release the subordinate deed of trust or mortgage.

891 B. If interest has been added to the face amount of a note payable in installments, the borrower  
892 shall have the right to a rebate of any unearned interest. On loans with an initial maturity and  
893 corresponding amortization period of 61 or fewer months that are payable in equal periodic  
894 installments, the rebate shall be computed in accordance with the Rule of 78 as illustrated in § 6.2-403.  
895 On loans with an initial maturity of more than 61 months, the rebate shall be computed under a method  
896 at least as favorable to the borrower as the actuarial method.

897 C. The provisions of this section shall not apply to any loan made by (i) a bank, savings institution,  
898 industrial loan association, or credit union or (ii) a seller in a real estate sales transaction who takes a  
899 subordinate mortgage or deed of trust on such real estate.

900 Article 3.  
901 Credit Cards.

902 § 6.2-424. Definitions.

903 As used in this article, unless the context otherwise requires:

904 "Cardholder" means the person or organization named on the face of a credit card to whom or for  
905 whose benefit the credit card was issued by an issuer.

906 "Credit card" means any instrument or device, whether known as a credit card, credit plate, or by  
907 any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining  
908 money, goods, services, or any other thing of value.

909 "Issuer" means the business organization or financial institution or its duly authorized agent that  
910 issues a credit card.

911 "Payment device" means any credit card, any "accepted card or other means of access" as defined in  
 912 15 U.S.C. § 1693a(1), or any card that enables a person to pay for transactions through the use of  
 913 value stored on the card itself.

914 § 6.2-425. Cardholder not liable in absence of request for, consent to issuance of, or use of card.

915 A. A cardholder who receives a credit card from an issuer, which card the cardholder has not  
 916 requested nor consented to the issuance of in writing, nor used, shall not be liable for any amount  
 917 owing because of a use of the credit card.

918 B. The failure to destroy or return an unsolicited credit card shall neither:

919 1. Be evidence of a cardholder's request for or consent to the issuance of the credit card, nor

920 2. Constitute negligence on the part of the cardholder.

921 C. Use by an authorized agent of the cardholder shall be the equivalent of use by the cardholder.

922 The burden of proving the authority of an agent shall be upon the issuer.

923 § 6.2-426. When request, consent, or use not condition precedent to liability.

924 The request, consent, or use required in § 6.2-425 as a condition precedent to liability shall not be  
 925 necessary in any instance:

926 1. Of a credit card that is a renewal of a credit card previously held and used by the cardholder or  
 927 his authorized agent within 12 months of the renewal date; or

928 2. Where the card is issued to a customer who has previously established credit with the issuer and  
 929 has used such credit within 12 months prior to the issuance of the card.

930 § 6.2-427. Costs and attorney fee in suit on card; evidence of request or consent.

931 A. In any suit arising out of the use of a credit card, where the request, consent, or use as required  
 932 by § 6.2-425 is denied and is not proved, and judgment shall be for the defendant, the court shall assess  
 933 against the issuer all court costs and shall award the defendant a reasonable attorney fee.

934 B. For purposes of subsection A, a certified copy of the request or consent shall be admissible as  
 935 evidence that such request or consent was obtained.

936 § 6.2-428. Production of credit card number as condition of check cashing or acceptance prohibited.

937 A. Except as otherwise provided in subsection D, no person shall, as a means of identification or for  
 938 any other purpose:

939 1. Require that a person produce a credit card number for recordation; or

940 2. Record a credit card number in connection with (i) a sale of goods or services in which a  
 941 purchaser pays by check or (ii) the acceptance of a check.

942 B. A person aggrieved by a violation of this section shall be entitled to institute an action to recover  
 943 his actual damages or \$100, whichever is greater, and to injunctive relief against any person who has  
 944 engaged, is engaged, or is about to engage in any act in violation of this section. Such action shall be  
 945 brought in the general district or circuit court, whichever is appropriate, of any county or city wherein  
 946 the defendant resides or has a place of business. In the event the aggrieved party prevails, he may be  
 947 awarded reasonable attorney fees and court costs in addition to any damages awarded.

948 C. This section shall not be construed to (i) impose liability on any employee or agent of a person,  
 949 where that employee or agent has acted in accordance with the directions of his employer, (ii) prohibit  
 950 a person from requesting a purchaser to display a credit card as an indication of creditworthiness or  
 951 financial responsibility or as identification, and in these instances the type, the issuer, and the expiration  
 952 date of the credit card may be recorded, or (iii) require acceptance of a check, whether or not a credit  
 953 card is presented.

954 D. A person may require production of and may record a credit card number as a condition for  
 955 cashing a check only where (i) the person requesting the card number has agreed with the issuer to  
 956 cash checks as a service to the issuer's cardholders, (ii) the issuer has agreed to guarantee cardholder  
 957 checks cashed by that person, and (iii) the cardholder has given actual, apparent, or implied authority  
 958 for use of his card number in this manner and for this purpose.

959 § 6.2-429. Improper use of payment device numbers.

960 A. No person that accepts payment devices for any purpose shall print on any receipt provided to the  
 961 holder of the payment device (i) more than the last four digits of the payment device number or (ii) the  
 962 expiration date.

963 B. For transactions in which the sole means of recording the person's payment device number is by  
 964 handwriting or by an imprint or copy of the payment device, no receipt, other than the one original,  
 965 shall display the information prohibited in subsection A. Returning all copies, including carbons, that do  
 966 not comply with this section, to the payment device holder or authorized user or destroying such copies  
 967 and carbons in front of the payment device holder or authorized user shall constitute compliance with  
 968 this section.

969 C. The provisions of this section shall apply to all cash registers or other machines or devices that  
 970 electronically print receipts for payment device transactions that are placed in service on or after July  
 971 1, 2003.

972 D. For all cash registers or other machines or devices that electronically print receipts for payment  
973 device transactions in service prior to July 1, 2003, the provisions of this subsection shall not apply  
974 until July 1, 2005.

975 E. Any person violating this section (i) shall be liable to the payment device holder and the issuer  
976 for any damages or expenses, or both, including attorney fees, that the payment device holder incurs  
977 due to the use of the payment device without the permission of the payment device holder and (ii) may  
978 be compelled, in a proceeding instituted in any appropriate court by the attorney for the  
979 Commonwealth, to comply with this section by injunction, mandamus, or other appropriate remedy.  
980 Without limiting the remedies authorized by this section in a proceeding instituted by the attorney for  
981 the Commonwealth, any person failing, neglecting, or refusing to obey any injunction, mandamus, or  
982 other remedy obtained pursuant to this section, shall be subject, in the discretion of the court, to a civil  
983 penalty not to exceed \$1,000 for each violation.

984 § 6.2-430. Place where transaction occurred; federal Fair Credit Billing Act.

985 Solely for the purpose of a buyer asserting claims and defenses pursuant to 15 U.S.C. § 1666i, a  
986 transaction shall be presumed to have occurred at the mailing address most recently provided by the  
987 cardholder to the card issuer, without regard to the location where the last act necessary for the  
988 formation of the contract between the cardholder and the party honoring the card took place.

989 § 6.2-431. Certain cards excepted.

990 Except as set forth in § 6.2-428, the provisions of §§ 6.2-424 through 6.2-430 shall not apply to any  
991 credit card issued by any telephone company that is subject to supervision or regulation by the  
992 Commission.

993 § 6.2-432. Credit card account disclosures.

994 Any application form or preapproved written solicitation for an open-end credit card account to be  
995 used for personal, family, or household purposes that is mailed to a consumer residing in the  
996 Commonwealth by or on behalf of a creditor, whether or not the creditor is located in the  
997 Commonwealth, other than an application form or solicitation included in a magazine, newspaper, or  
998 other publication distributed by someone other than the creditor, shall contain or be accompanied by a  
999 disclosure that satisfies the initial disclosure requirements of Federal Reserve Board Regulation Z (12  
1000 C.F.R. Part 226).

1001 Article 4.

1002 Open-End Credit Plans.

1003 § 6.2-433. Amendment to open-end credit contract or plan by bank or savings institution.

1004 A. Any open-end credit plan, as defined in § 6.2-300, by a bank or savings institution may be  
1005 amended in any respect by the bank or savings institution at any time and from time to time to modify  
1006 or delete terms, or to add new terms, which new or modified terms and amendment need not be of a  
1007 kind previously included in or contemplated by such contract or plan, or of a kind integral to the  
1008 relationship of the parties, by following the procedures, if any, set forth in the contract or plan for  
1009 effecting changes in the terms thereof, subject to the bank's or savings institution's complying with any  
1010 applicable notice requirements under the Truth in Lending Act (15 U.S.C. § 1601 et seq.) and  
1011 regulations promulgated thereunder, as in effect from time to time.

1012 B. Unless the contract or plan referred to in subsection A otherwise expressly provides, a bank or  
1013 savings institution may amend such contract or plan in any respect at any time and from time to time,  
1014 whether or not the amendment or the subject of the amendment was originally contemplated or  
1015 addressed by the parties or is integral to the relationship between the parties. Without limiting the  
1016 foregoing, such amendment may change terms by the addition of new terms or by the deletion or  
1017 modification of existing terms, whether relating to plan benefits or features, the periodic rate or rates  
1018 used to calculate finance charges, the manner of calculating periodic rate finance charges or  
1019 outstanding unpaid indebtedness, variable schedules or formulas, finance charges other than periodic  
1020 rate finance charges, other charges or fees, collateral requirements, methods for obtaining or repaying  
1021 extensions of credit, attorney fees, plan termination, the manner for amending the terms of the contract  
1022 or plan, arbitration or other alternative dispute resolution mechanisms, or other matters of any kind  
1023 whatsoever. Unless the contract or plan otherwise expressly provides, any amendment may, on and after  
1024 the date upon which it becomes effective as to a particular borrower, apply to all then outstanding  
1025 unpaid indebtedness in the borrower's account under the contract or plan, including any such  
1026 indebtedness that arose prior to the effective date of the amendment. A contract or plan may be  
1027 amended pursuant to this subsection regardless of whether the contract or plan is active or inactive or  
1028 whether additional borrowings are available thereunder. Any such amendment may become effective as  
1029 determined by the bank or savings institution, subject to compliance by the bank or savings institution  
1030 with any applicable provisions under the Truth in Lending Act (15 U.S.C. § 1601 et seq.) and the  
1031 regulations promulgated thereunder, as in effect from time to time. Any notice of an amendment sent by  
1032 the bank or savings institution may be included in the same envelope with a periodic statement or as

1033 part of the periodic statement or in other materials sent to the borrower.

1034 § 6.2-434. Law governing open-end credit contract or plan by bank or savings institution.

1035 An open-end credit plan, as defined in § 6.2-300, between a bank or savings institution and an  
 1036 obligor, or any plan which permits an obligor to avail himself of the credit so established, shall be  
 1037 governed solely by federal law, and by the laws of the Commonwealth, unless otherwise expressly  
 1038 agreed in writing by the parties.

1039 § 6.2-435. Law governing open-end credit contract or plan by seller or lender.

1040 An open-end credit plan as defined in § 6.2-300, between a seller or lender and an obligor shall be  
 1041 governed solely by federal law, and by the laws of the Commonwealth, unless otherwise expressly  
 1042 agreed in writing by the parties.

1043 Article 5.

1044 Additional Provisions Applicable to Consumer Credit.

1045 § 6.2-436. Compliance with federal law.

1046 Every person subject to the provisions of 15 U.S.C. § 1601 et seq. and Federal Reserve Board  
 1047 Regulation Z (12 C.F.R. Part 226) shall comply with such statutes and regulations when offering or  
 1048 extending consumer credit as defined therein. A lender who fails to comply with this section shall not be  
 1049 subject to any liability or penalty beyond those imposed by such federal statutes and regulations.

1050 § 6.2-437. Right of buyer of consumer goods to refinance certain payments; agreements as to  
 1051 fluctuation in schedule of payments.

1052 A. In any sales transaction, except one pursuant to an open-end account, involving exclusively  
 1053 consumer goods as defined in subdivision (a)(23) of § 8.9A-102 in which credit is extended and a  
 1054 security interest in consumer goods is taken, any installment payment, other than a down payment made  
 1055 prior to or contemporaneously with the execution of an agreement evidencing the transaction, that is  
 1056 more than 10 percent greater than the regular or recurring installment payments, shall be subject to the  
 1057 buyer's right to refinance such a payment on the basis of an extended period of time. Such additional  
 1058 payments shall be in amounts that shall allow the unpaid balance to be paid in as few periodic  
 1059 payments, not more than 10 percent greater than the regularly scheduled installment payments, as are  
 1060 required to pay such balance. Such additional payments shall be considered and treated as part of the  
 1061 original transaction.

1062 B. The parties may agree in a separate writing that one or more payments or the intervals between  
 1063 one or more payments shall be reduced or expanded in accordance with the desires or needs of the  
 1064 buyer, if such fluctuations in the schedule of payments are expressly arranged to coincide with the  
 1065 anticipated fluctuations in the buyer's capability to make such payments.

1066 C. No seller who has refused to refinance in compliance with the provisions of this section shall be  
 1067 entitled (i) to the return or repossession of the goods involved in the transaction or (ii) to a judgment  
 1068 for the unpaid balance involved in the transaction at the time of his failure to do so.

1069 CHAPTER 5.

1070 EQUAL CREDIT OPPORTUNITIES.

1071 § 6.2-500. Definitions.

1072 As used in this chapter, unless the context requires a different meaning:

1073 "Adverse action" means a denial or revocation of credit, a change in the terms of an existing credit  
 1074 arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms  
 1075 requested. The term does not include a refusal to extend additional credit under an existing credit  
 1076 arrangement where the applicant is delinquent or otherwise in default, or where such additional credit  
 1077 would exceed a previously established credit limit.

1078 "Applicant" means any person who applies to a creditor directly for an extension, renewal, or  
 1079 continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount  
 1080 exceeding the previously established credit limit.

1081 "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt  
 1082 and defer its payment or to purchase property or services and defer payment therefor.

1083 "Creditor" means any person who regularly extends, renews, or continues credit; any person who  
 1084 regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original  
 1085 creditor who participates in the decision to extend, renew, or continue credit.

1086 § 6.2-501. Prohibited discrimination.

1087 A. It shall be unlawful for any creditor to discriminate against any applicant, with respect to any  
 1088 aspect of a credit transaction:

1089 1. On the basis of race, color, religion, national origin, sex or marital status, or age, provided the  
 1090 applicant has the capacity to contract; or

1091 2. Because all or part of the applicant's income derives from any public assistance or social services  
 1092 program.

1093 B. It shall not constitute discrimination for purposes of this chapter for a creditor:

1094 1. To make an inquiry of marital status if such inquiry is for the purpose of ascertaining the  
 1095 creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in  
 1096 a determination of creditworthiness;

1097 2. To make an inquiry of the applicant's age or of whether the applicant's income derives from any  
 1098 public assistance or social services program if such inquiry is for the purpose of determining the  
 1099 amount and probable continuance of income levels, credit history, or other pertinent element of  
 1100 creditworthiness as provided in regulations of the Commission;

1101 3. To use any empirically derived credit system which considers age if such system is demonstrably  
 1102 and statistically sound in accordance with regulations of the Commission, except that in the operation of  
 1103 such system the age of an elderly applicant may not be assigned a negative factor or value; or

1104 4. To make an inquiry or to consider the age of an elderly applicant when the age of such applicant  
 1105 is to be used by the creditor in the extension of credit in favor of such applicant.

1106 C. It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to:

1107 1. Any credit assistance program expressly authorized by law for an economically disadvantaged  
 1108 class of persons;

1109 2. Any credit assistance program administered by a nonprofit organization for its members or an  
 1110 economically disadvantaged class of persons; or

1111 3. Any special purpose credit program offered by a profit-making organization to meet special social  
 1112 needs which meets standards prescribed in regulations by the Commission, if such refusal is required by  
 1113 or made pursuant to such program.

1114 § 6.2-502. Notification of action on credit application.

1115 Within 30 days, or such longer reasonable time as specified in regulations of the Commission for  
 1116 any class of credit transaction, after receipt of a completed application for credit, a creditor shall notify  
 1117 the applicant of its action on the application.

1118 § 6.2-503. Statement of reasons for adverse action.

1119 A. Each applicant against whom adverse action is taken shall be entitled to a statement of reasons  
 1120 for the action on the application from the creditor. A creditor shall satisfy this obligation by:

1121 1. Providing statement of reasons in writing as a matter of course to applicants against whom  
 1122 adverse action is taken; or

1123 2. Giving written notification of adverse action that discloses (i) the applicant's right to a statement  
 1124 of reasons within 30 days after receipt by the creditor of a request made within 60 days after such  
 1125 notification and (ii) the identity of the person or office from which such statement may be obtained. The  
 1126 statement may be given orally if the written notification advises the applicant of his right to have the  
 1127 statement of reasons confirmed in writing on written request.

1128 B. A statement of reasons meets the requirements of this section only if it contains the specific  
 1129 reasons for the adverse action taken.

1130 C. Where a creditor has been requested by a third party to make a specific extension of credit  
 1131 directly or indirectly to an applicant, the notification and statement of reasons required by this section  
 1132 may be made directly by such creditor, or indirectly through the third party, provided in either case that  
 1133 the identity of the creditor is disclosed.

1134 D. The requirements of subsections A, B, and C may be satisfied by oral statements or notifications  
 1135 in the case of any creditor who did not act on more than 150 applications during the calendar year  
 1136 preceding the calendar year in which the adverse action is taken, as determined under regulations of the  
 1137 Commission.

1138 § 6.2-504. Requirement of signatures of both parties to a marriage not discriminatory in a secured  
 1139 transaction.

1140 For the purposes of a secured transaction, a request for the signature of both parties to a marriage  
 1141 for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or  
 1142 assigning earnings, shall not constitute discrimination under this chapter. This provision shall not be  
 1143 construed to permit a creditor to take sex or marital status into account in connection with the  
 1144 evaluation of creditworthiness of any applicant.

1145 § 6.2-505. Remedies for violation.

1146 A. Any creditor who fails to comply with any requirement imposed under this chapter shall be liable  
 1147 to the aggrieved applicant in an amount equal to the sum of any actual damages sustained by such  
 1148 applicant.

1149 B. Any creditor, other than the federal or state government or any political subdivision or agency of  
 1150 such government, who fails to comply with any requirement imposed under this chapter shall be liable  
 1151 to the aggrieved applicant for punitive damages in an amount not greater than \$10,000, as determined  
 1152 by the court, in addition to any actual damages provided in subsection A.

1153 C. Upon application by an aggrieved applicant, an appropriate court may grant such equitable and  
 1154 declaratory relief as is necessary to enforce the requirements imposed under this chapter.

1155 *D. In the case of any successful action to enforce the foregoing liability, the costs of the action,*  
 1156 *together with the reasonable attorney fee as determined by the court, shall be added to any damages*  
 1157 *awarded by the court under the provisions of subsections A, B, and C.*

1158 *E. Any action under this chapter may be brought in an appropriate court within two years from the*  
 1159 *date of the occurrence of the violation.*

1160 § 6.2-506. *Commission regulations.*

1161 *The Commission shall adopt regulations to effectuate the purposes of this chapter provided that such*  
 1162 *regulations conform to and are no broader in scope than regulations, and amendments thereto, adopted*  
 1163 *by the Board of Governors of the Federal Reserve System under the federal Equal Credit Opportunity*  
 1164 *Act (15 U.S.C. § 1691 et seq.). Such conforming regulations shall exempt from the coverage of this*  
 1165 *chapter any class of transactions which may be exempted from time to time from the federal Equal*  
 1166 *Credit Opportunity Act (15 U.S.C. § 1691 et seq.), by regulations of the Federal Reserve System.*

1167 § 6.2-507. *Limitation on liability.*

1168 *No provision of this chapter imposing any liability shall apply to any act done or omitted in good*  
 1169 *faith in conformity with any rule, regulation, or interpretation thereof by the Commission or by the*  
 1170 *Federal Reserve Board or officer or employee duly authorized by the Board to issue such interpretation*  
 1171 *or approvals under the comparable provisions of the federal Equal Credit Opportunity Act, (15 U.S.C.*  
 1172 *§ 1691 et seq.), and regulations thereunder, notwithstanding that after such act or omission has*  
 1173 *occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or*  
 1174 *other authority to be invalid for any reason.*

1175 § 6.2-508. *Compliance with Equal Credit Opportunity Act constitutes compliance with chapter.*

1176 *Compliance with the federal Equal Credit Opportunity Act, (15 U.S.C. § 1691 et seq.), as amended,*  
 1177 *and regulations issued by the Federal Reserve Board thereunder, constitutes compliance with this*  
 1178 *chapter.*

1179 § 6.2-509. *Public to be informed of rights under chapter.*

1180 *The Commission shall use any methods available to it to inform the public of the rights created by*  
 1181 *this chapter. Notice given pursuant to the federal Equal Credit Opportunity Act, (15 U.S.C. § 1691 et*  
 1182 *seq.), and regulations promulgated thereto, shall satisfy the requirements of this section.*

1183 § 6.2-510. *Commission to investigate complaints; records to be open to public.*

1184 *The Commission shall receive, investigate, and mediate complaints of violations of this chapter and*  
 1185 *shall keep all records pertaining to such complaints, investigations, and mediations open to the public.*  
 1186 *Nothing in this section shall toll the operation of subsection E of § 6.2-505.*

1187 § 6.2-511. *Credit standards discoverable.*

1188 *Nothing in this chapter shall be construed to prohibit the discovery of a creditor's standards for*  
 1189 *granting credit, which discovery shall be under appropriate discovery procedures in the court in which*  
 1190 *an action is brought.*

1191 § 6.2-512. *Election of remedies.*

1192 *Where the same act or omission constitutes a violation of this chapter and of applicable federal law,*  
 1193 *a person aggrieved by such conduct may bring a legal action to recover monetary damages either under*  
 1194 *this chapter or under federal law, but not both. This election of remedies shall not apply to court*  
 1195 *actions in which the relief sought does not include monetary damages or to administrative actions.*

1196 § 6.2-513. *Authority of Attorney General.*

1197 *Notwithstanding any other provisions of the law to the contrary, the Attorney General may*  
 1198 *investigate and bring an action in the name of the Commonwealth to enjoin any violation of this*  
 1199 *chapter.*

1200

## SUBTITLE II.

1201

### DEPOSITORY INSTITUTIONS AND TRUST ORGANIZATIONS.

1202

#### CHAPTER 6.

1203

#### DEPOSITS AND ACCOUNTS.

1204

##### Article 1.

1205

##### General Provisions.

1206 § 6.2-600. *Checks on consumer deposit accounts to show date account was opened.*

1207 *A. For purposes of this section, "consumer deposit account" means a demand or other similar*  
 1208 *deposit account established and maintained by an individual with a financial institution and operated*  
 1209 *primarily for personal, family, or household purposes.*

1210 *B. All checks, drafts, or similar negotiable or nonnegotiable instruments or orders of withdrawal*  
 1211 *which are drawn against funds held by a financial institution located in the Commonwealth in a*  
 1212 *consumer deposit account opened after December 31, 1981, shall clearly display on the face thereof the*  
 1213 *month and year in which the account was opened.*

1214 *C. This section does not apply to:*

1215 *1. Temporary checks, drafts, or similar negotiable or nonnegotiable instruments or orders of*

1216 withdrawal; or

1217 2. Any consumer deposit account where the applicant either (i) demonstrates through the production  
1218 of monthly statements or (ii) represents in a writing that states it is made under penalties of perjury,  
1219 that, for 12 months immediately preceding his application, he has had an account at the same or  
1220 another financial institution.

1221 D. No liability or penalty shall be imposed on any depositor, financial institution, or printer for an  
1222 unintentional failure to comply with this section.

1223 § 6.2-601. Federal insurance of deposits required for all banks or savings institutions.

1224 Notwithstanding any other provisions contained in this title, no bank or savings institution doing  
1225 business in the Commonwealth shall accept deposits unless its deposit accounts are insured by the  
1226 Federal Deposit Insurance Corporation or other federal insurance agency, up to the limits of the  
1227 insurance provided thereby. No bank or savings institution shall solicit deposits in the Commonwealth,  
1228 nor shall any other person solicit or accept deposits in the Commonwealth on behalf of a bank or  
1229 savings institution, unless the deposit accounts of such bank or savings institution are insured by the  
1230 Federal Deposit Insurance Corporation or other federal insurance agency, up to the limits of the  
1231 insurance provided thereby.

1232 § 6.2-602. Adverse claims to accounts.

1233 A. Notice to any financial institution doing business in the Commonwealth of an adverse claim to  
1234 funds in an account with such institution shall not require the institution to recognize the adverse claim  
1235 unless the adverse claimant shall either:

1236 1. Procure a restraining order, injunction, or other appropriate order against the financial institution  
1237 from an appropriate court; or

1238 2. Execute to such financial institution, in form and with sureties acceptable to it, a bond  
1239 indemnifying the institution from any and all liability, loss, damage, costs, and expenses, for and on  
1240 account of the payment or recognition of such adverse claim, or the dishonor of, or failure to pay, any  
1241 check, or failure to comply with any other order, of the person to whose credit the account is held.

1242 B. This section shall not affect the provisions of Article 2 (§ 6.2-604 et seq.) of this chapter  
1243 governing multiple-party accounts, and any claim by a party to such account shall be determined in  
1244 accordance with the provisions therein.

1245 C. This section shall not affect any notice of lien pursuant to § 8.01-502, any order of an  
1246 appropriate court, or the issuance of a notice or other action issued by a state or federal governmental  
1247 agency.

1248 § 6.2-603. Medical savings accounts and health savings accounts.

1249 To the extent allowed by federal law, a bank, insured savings institution, or credit union may act as  
1250 a trustee or custodian of health savings accounts established with financial institutions under § 223 of  
1251 the United States Internal Revenue Code of 1986, as amended from time to time, and medical savings  
1252 accounts established with financial institutions under § 220 of the United States Internal Revenue Code  
1253 of 1986, as amended from time to time. Contributions may be accepted and interest thereon retained by  
1254 such institution pursuant to forms provided by it and may be invested in accounts of the institution in  
1255 accordance with the terms upon which such contributions were accepted. The financial institution shall  
1256 administer such accounts in accordance with the requirements of federal law.

#### 1257 Article 2.

#### 1258 Multiple-party Accounts.

1259 § 6.2-604. Definitions.

1260 As used in this article, unless the context requires a different meaning:

1261 "Account" means a contract of deposit of funds between a depositor and a financial institution, and  
1262 includes a checking account, savings account, certificate of deposit, share account, and other similar  
1263 arrangements.

1264 "Beneficiary" means a person named in a trust account as one for whom a party to the account is  
1265 named as trustee.

1266 "Financial institution" means any entity authorized to do business under state or federal laws  
1267 relating to financial institutions that is authorized to establish accounts, including, without limitation,  
1268 banks, trust companies, savings institutions, and credit unions.

1269 "Joint account" means an account payable on request to one or more of two or more parties whether  
1270 or not mention is made of any right of survivorship.

1271 "Multiple-party account" means any of the following types of account: (i) a joint account, (ii) a  
1272 P.O.D. account, or (iii) a trust account. The term does not include accounts established for deposit of  
1273 funds of a partnership, joint venture, or other association for business purposes, or accounts controlled  
1274 by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated  
1275 association, charitable or civic organization, or a regular fiduciary or trust account where the  
1276 relationship is established other than by deposit agreement.

1277 "Net contribution" of a party to a joint account as of any given time is the sum of all deposits  
 1278 thereto made by or for him, less all withdrawals made by or for him which have not been paid to or  
 1279 applied to the use of any other party, plus a pro rata share of any interest or any dividends included in  
 1280 the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the  
 1281 account by reason of the death of the party whose net contribution is in question.

1282 "Party" means a person who, by the terms of the account, has a present right, subject to request, to  
 1283 payment from a multiple-party account. The term includes a P.O.D. payee or beneficiary of a trust  
 1284 account only after the account becomes payable to him by reason of his surviving the original payee or  
 1285 trustee. The term includes a guardian, conservator, personal representative, or assignee, including an  
 1286 attaching creditor, of a party. The term also includes a person identified as a trustee of an account for  
 1287 another whether or not a beneficiary is named, but it does not include any named beneficiary unless he  
 1288 has a present right of withdrawal.

1289 "Payment," with respect to sums on deposit, includes withdrawal, payment on check or other  
 1290 directive of a party, and any pledge of sums on deposit by a party and any setoff, or reduction or other  
 1291 disposition of all or part of an account pursuant to a pledge.

1292 "P.O.D. account" means an account payable on request to one person during his lifetime and on his  
 1293 death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death  
 1294 of all of them to one or more P.O.D. payees.

1295 "P.O.D. payee" means a person designated on a P.O.D. account as one to whom the account is  
 1296 payable on request after the death of one or more persons.

1297 "Proof of death" includes a death certificate; a certificate of qualification upon a decedent's estate;  
 1298 or an authenticated copy of any record or report of a governmental agency, domestic or foreign, that a  
 1299 person is dead.

1300 "Request" means a proper request for withdrawal, or a check or order for payment, that complies  
 1301 with all conditions of the account, including special requirements concerning necessary signatures and  
 1302 regulations of the financial institution. If the financial institution conditions withdrawal or payment on  
 1303 advance notice, for purposes of this article the request for withdrawal or payment is treated as  
 1304 immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

1305 "Sums on deposit" means the balance payable on a multiple-party account including interest,  
 1306 dividends, and in addition any deposit life insurance proceeds added to the account by reason of the  
 1307 death of a party.

1308 "Trust account" means an account in the name of one or more parties as trustee for one or more  
 1309 beneficiaries where the relationship is established by the form of the account and the deposit agreement  
 1310 with the financial institution and there is no subject of the trust other than the sums on deposit in the  
 1311 account, without regard to whether payment to the beneficiary is mentioned in the deposit agreement.  
 1312 The term does not include (i) a regular trust account under a testamentary trust or a trust agreement  
 1313 that has significance apart from the account or (ii) a fiduciary account arising from a fiduciary  
 1314 relationship such as an attorney-client relationship.

1315 "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

1316 § 6.2-605. Applicability.

1317 A. The provisions of §§ 6.2-606, 6.2-607, and 6.2-608 concerning beneficial ownership as between  
 1318 parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are  
 1319 relevant only to controversies between these persons and their creditors and other successors, and have  
 1320 no bearing on the power of withdrawal of these persons as determined by the terms of account  
 1321 contracts.

1322 B. The provisions of §§ 6.2-612 through 6.2-617 govern the liability of financial institutions that  
 1323 make payments pursuant thereto, and their set-off rights.

1324 § 6.2-606. Ownership during lifetime; garnishment, attachment, or levy.

1325 A. A joint account belongs, during the lifetimes of all parties, to the parties in proportion to the net  
 1326 contributions by each to the sums on deposit, except that a joint account between persons married to  
 1327 each other shall belong to them equally, and unless, in either case, there is clear and convincing  
 1328 evidence of a different intent.

1329 B. A P.O.D. account belongs to the original payee during his lifetime and not to any P.O.D. payee.  
 1330 If two or more parties are named as original payees, during their lifetimes rights as between them are  
 1331 governed by subsection A.

1332 C. Unless (i) a contrary intent is manifested by the terms of the account or the deposit agreement or  
 1333 (ii) there is other clear and convincing evidence of an irrevocable trust, a trust account belongs  
 1334 beneficially and absolutely to the trustee during his lifetime. If two or more parties are named as trustee  
 1335 on the account, during their lifetimes beneficial rights as between them are governed by subsection A. If  
 1336 there is an irrevocable trust, the account belongs beneficially to the beneficiary.

1337 D. Upon an order of garnishment, attachment, or other levy addressed to a party to a joint account

1338 as mentioned in subsection A, or a trust account as mentioned in subsection C, the financial institution  
1339 shall:

1340 1. File an answer setting forth the form of account, whether it has funds responsive to the process,  
1341 and such information as it has as to the names and addresses of the parties to the account;

1342 2. Send a copy of such answer by first class mail to the petitioning creditor or counsel of record;

1343 3. From the time of service of such garnishment, attachment or levy, hold the amount subject to such  
1344 garnishment, attachment or levy, or such lesser amount or sum as it may have, which amount shall be  
1345 set forth in its answer; and

1346 4. Not permit any person to draw against such amount whether by check against such account or  
1347 otherwise.

1348 E. If the petitioning creditor shall desire to pursue the question of ownership of such funds held  
1349 subject to the claim of two or more parties to the deposit account, it shall (i) provide the clerk of the  
1350 court that issued the order of garnishment, attachment, or other levy with a copy of the documents  
1351 originally served on the original defendants or judgment defendants and (ii) request the clerk to issue a  
1352 summons accompanied by such copy with a copy of a notice to co-depositors containing substantially  
1353 the following information: "Attached is a copy of the documents served on a financial institution to  
1354 cause it to withhold money from an account in which you may have an interest. If you wish to protect  
1355 your interests, you or your attorney should take appropriate legal action promptly."

1356 F. Upon payment of the appropriate fees, the clerk shall issue such summons to be served on any  
1357 other party having an interest or apparent interest in such account. Service on a party to the account  
1358 made at the address on record at the financial institution shall be presumed to be proper service for the  
1359 purposes of this section. In addition, a copy of such summons and notice shall be issued and served on  
1360 or mailed to both the financial institution and the original defendant or judgment debtor. If such  
1361 summons is received either by certified or registered mail or acknowledged in writing within 21 days on  
1362 or by such financial institution, it shall continue to hold such funds pending further order of the court.  
1363 If such financial institution is not served with, or does not acknowledge, such an order within 21 days  
1364 from the filing of such answer, it may treat the garnishment, attachment or levy, insofar as it relates to  
1365 such joint or trust accounts, as terminated on the twenty-second day and being of no further force or  
1366 effect.

1367 G. The court shall allow the financial institution its reasonable expenses in responding to discovery  
1368 of its records and may condition any such discovery upon prepayment of such expenses.

1369 H. Orders to withhold and deliver issued by the Department of Social Services shall be complied  
1370 with as provided in §§ 63.2-1929 and 63.2-1931.

1371 § 6.2-607. Effect of divorce.

1372 Upon the entry of a decree of divorce, either a mensa et thoro or a vinculo matrimonii, all rights of  
1373 either consort in any multiple-party account then existing between them, including the right of  
1374 survivorship, shall be extinguished; and any joint account then existing between the consorts shall  
1375 thereupon be converted into a tenancy in common, in the proportions provided in subsection A of  
1376 § 6.2-606, unless otherwise ordered by the court.

1377 § 6.2-608. Right of survivorship.

1378 A. Sums remaining on deposit at the death of a party to a joint account belong to the surviving party  
1379 as against the estate of the decedent unless there is clear and convincing evidence of a different  
1380 intention at the time the account is created. If there are two or more surviving parties, their respective  
1381 ownerships during their lifetime shall be in proportion to their previous ownership interests under  
1382 § 6.2-606 augmented by an equal share for each survivor of any interest the decedent may have owned  
1383 in the account immediately before his death; and the right of survivorship continues between the  
1384 surviving parties.

1385 B. If the account is a P.O.D. account:

1386 1. On the death of one of two or more original payees, the rights to any sums remaining on deposit  
1387 are governed by subsection A;

1388 2. On the death of the sole original payee or of the survivor of two or more original payees, any  
1389 sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them  
1390 if one or more die before the original payee. If two or more P.O.D. payees survive, there is no right of  
1391 survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or  
1392 deposit agreement expressly provide for survivorship between them.

1393 C. If the account is a trust account:

1394 1. On the death of one of two or more trustees, the rights to any sums remaining on deposit are  
1395 governed by subsection A;

1396 2. On the death of the sole trustee or the survivor of two or more trustees, any sums remaining on  
1397 deposit belong to the persons named as beneficiaries, if surviving, or to the survivor of them if one or  
1398 more die before the trustee, unless there is clear evidence of a contrary intent. If two or more

1399 beneficiaries survive the death of the sole trustee or the last survivor of two or more trustees, there is  
1400 no right of survivorship in the event of death of any beneficiary thereafter unless the terms of the  
1401 account or deposit agreement expressly provide for survivorship between them.

1402 D. In other cases, the death of any party to a multiple-party account has no effect on beneficial  
1403 ownership of the account other than to transfer the rights of the decedent as part of his estate. If the  
1404 terms of the account clearly indicate that there is no right of survivorship, the estate of a decedent party  
1405 shall succeed to the rights of decedent in such account.

1406 E. A right of survivorship arising from the express terms of the account or under this section, a  
1407 beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

1408 § 6.2-609. Change of form of account upon written order to financial institution.

1409 The provisions of § 6.2-608 as to rights of survivorship are determined by the form of the account at  
1410 the death of a party. This form may be altered by written order given by a party to the financial  
1411 institution to change the form of the account or to stop or vary payment under the terms of the account.  
1412 The order or request shall be signed by a party, received by the financial institution during the party's  
1413 lifetime, and not countermanded by other written order of the same party during his lifetime.

1414 § 6.2-610. Transfers arising from right of survivorship nontestamentary.

1415 Any transfers resulting from the application of § 6.2-608 are effective by reason of the account  
1416 contracts involved and this article and are not to be considered as testamentary or subject to Chapter 3  
1417 (§ 64.1-45 et seq.) of Title 64.1.

1418 § 6.2-611. Liability of surviving party for debts and other liabilities of decedent's estate.

1419 A. If the assets of a deceased party's estate, other than the assets in a multiple-party account, are  
1420 not sufficient to pay the debts, taxes, and expenses of estate administration, including statutory  
1421 allowances to the surviving spouse, minor children, and dependent children, no transfer of account  
1422 funds, to which the deceased party was beneficially entitled immediately before his death, shall be  
1423 effective, by virtue of a party's survivorship of the decedent, against the estate of such deceased party to  
1424 the extent such funds are needed to pay such liabilities of the estate.

1425 B. A surviving party, P.O.D. payee, or beneficiary who receives payment from a multiple-party  
1426 account after the death of a deceased party shall be liable to account to his personal representative for  
1427 amounts the decedent owned beneficially immediately before his death to the extent necessary to  
1428 discharge the claims and charges described in subsection A that remain unpaid after application of the  
1429 decedent's estate. No proceeding to assert this liability shall be commenced (i) unless the personal  
1430 representative has received a written demand by a surviving spouse, a creditor, or one acting for a  
1431 minor or dependent child of the decedent and (ii) later than two years following the death of the  
1432 decedent. Sums recovered by the personal representative shall be administered as part of the decedent's  
1433 estate.

1434 C. This section shall not affect the right of a financial institution to make payment on multiple-party  
1435 accounts according to the terms thereof, or make it liable to the estate of a deceased party unless,  
1436 before payment, the institution has been served with process in a proceeding by the personal  
1437 representative.

1438 § 6.2-612. Financial institution duties; multiple-party accounts.

1439 Financial institutions may enter into multiple-party accounts to the same extent that they may enter  
1440 into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of  
1441 the parties. A financial institution shall not be required to inquire as to the source of funds received for  
1442 deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn  
1443 from an account, for purposes of establishing net contributions.

1444 § 6.2-613. Payment of sums in joint account.

1445 Any sums in a joint account may be paid, on request, to any party without regard to whether any  
1446 other party is incapacitated or deceased at the time the payment is demanded. Payment may not be  
1447 made to the personal representative or heirs of a deceased party unless (i) proof of death is presented  
1448 to the financial institution showing that the decedent was the last surviving party or (ii) there is no right  
1449 of survivorship under § 6.2-608.

1450 § 6.2-614. Payment of P.O.D. account.

1451 Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be  
1452 made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D.  
1453 payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee  
1454 survived all persons named as original payees. Payment may be made to the personal representative or  
1455 heirs of a deceased original payee if proof of death is presented to the financial institution showing that  
1456 his decedent was the survivor of all other persons named on the account either as an original payee or  
1457 as P.O.D. payee.

1458 § 6.2-615. Payment of trust account.

1459 Any trust account may be paid, on request, to any trustee. Unless the financial institution has

1460 received written notice that the beneficiary has a vested interest not dependent upon his surviving the  
 1461 trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of  
 1462 death is presented to the financial institution showing that his decedent was the survivor of all other  
 1463 persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the  
 1464 beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary  
 1465 or beneficiaries survived all persons named as trustees.

1466 § 6.2-616. Discharge of financial institution upon payment.

1467 A. Payment made pursuant to §§ 6.2-612 through 6.2-615 discharges the financial institution from all  
 1468 claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of  
 1469 the account as between parties, P.O.D. payees, or beneficiaries, or their successors.

1470 B. The discharge provided by subsection A does not extend to payments made after a financial  
 1471 institution has received written notice from any party able to request present payment to the effect that  
 1472 withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is  
 1473 withdrawn by the person giving it, or the successor of any deceased party has concurred in any demand  
 1474 for withdrawal, a discharge provided by subsection A shall not apply to withdrawals permitted by the  
 1475 financial institution.

1476 C. No other notice or any other information shown to have been available to a financial institution  
 1477 shall affect its right to the discharge provided by subsection A. The discharge provided by subsection A  
 1478 shall have no bearing on the rights of parties in disputes between themselves or their successors  
 1479 concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

1480 D. If any party, or the personal representative of any party, notifies the financial institution in  
 1481 writing not to permit withdrawals by any party, the financial institution may refuse, without liability, to  
 1482 allow any withdrawal pending the determination of the rights of the parties.

1483 § 6.2-617. Setoff by financial institution against account.

1484 Without qualifying any other statutory right to setoff or lien, and subject to any contractual  
 1485 provision, if a party to a multiple-party account is indebted to a financial institution, the financial  
 1486 institution has a right to setoff against the account in which the party has or had immediately before his  
 1487 death a present right of withdrawal. The amount of the account subject to setoff is that proportion to  
 1488 which the debtor is, or was immediately before his death, beneficially entitled, and in the absence of  
 1489 proof of net contributions, to an equal share with all parties having present rights of withdrawal.

1490 § 6.2-618. Identification of joint accounts.

1491 A. Every financial institution in the Commonwealth offering joint accounts to its depositors shall  
 1492 either:

1493 1. Maintain two separate forms for the creation of joint accounts, one of which shall be clearly  
 1494 labeled "JOINT ACCOUNT WITH SURVIVORSHIP" and the other of which shall be clearly labeled  
 1495 "JOINT ACCOUNT - NO SURVIVORSHIP," both of which shall be made available to all persons  
 1496 opening joint accounts; or

1497 2. Maintain one form for the creation of such accounts that shall contain the two labels "JOINT  
 1498 ACCOUNT WITH SURVIVORSHIP" and "JOINT ACCOUNT - NO SURVIVORSHIP," with appropriate  
 1499 blank space or lines beside such labels for the parties to sign in order to indicate the type of account  
 1500 desired, which signature requirement shall be in addition to any signature verification form.

1501 B. The forms provided for in subdivision A 1 may be identical in all respects except for the labels  
 1502 therein specified. This section shall not be construed to prevent any financial institution from changing  
 1503 from one method of identification to the other method of identification at any time, nor to require a  
 1504 financial institution making such a change to make any changes to the forms of its existing accounts.

1505 C. The forms described in subsection A shall include disclosures to inform persons opening joint  
 1506 accounts of the disposition of such accounts upon a party's death. Disclosures in a form substantially  
 1507 similar to the following shall satisfy the requirements of this section:

1508 Joint Account With Survivorship - On the death of a party to the account, the deceased party's  
 1509 ownership in the account passes to the surviving party or parties to the account.

1510 Joint Account - No Survivorship - On the death of a party to the account, the deceased party's  
 1511 ownership in the account passes as a part of the party's estate under the party's will, trust, or by  
 1512 intestacy.

1513 D. This section is not applicable to joint accounts created before July 1, 1980.

1514 § 6.2-619. Certain duties of parties to joint accounts in financial institutions.

1515 A. Parties to a joint account in a financial institution occupy the relation of principal and agent as  
 1516 to each other, with each standing as a principal in regard to his ownership interest in the joint account  
 1517 and as agent in regard to the ownership interest of the other party. The provisions of §§ 11-9.6 and  
 1518 37.2-1018 shall apply to such principal/agent relationships.

1519 B. For the purposes of this section, the ownership interest of the parties to the joint account shall be  
 1520 determined in accordance with the provisions of this article.

1521 § 6.2-620. Application of article to accounts existing on July 1, 1980.

1522 A. Unless otherwise provided in this article, the provisions of this article shall be applicable to all  
1523 multiple-party accounts in every financial institution in the Commonwealth on July 1, 1980, regardless  
1524 of when such multiple-party accounts might have been opened or created.

1525 B. Nothing in this article shall affect the common-law presumption of convenience now existing  
1526 between persons not married to each other in joint accounts that were created prior to July 1, 1980,  
1527 insofar as the ownership of the funds, whenever deposited, during their joint lifetime or their right of  
1528 survivorship therein are concerned. Issues regarding ownership of such funds shall continue to be  
1529 decided pursuant to the precedents of the Virginia Supreme Court.

#### 1530 CHAPTER 7.

#### 1531 ACQUISITIONS OF INTERESTS IN FINANCIAL INSTITUTIONS.

1532 § 6.2-700. Definitions.

1533 As used in this chapter, unless the context requires a different meaning:

1534 "Acquire" means:

1535 1. The merger or consolidation of one bank holding company with another bank holding company;

1536 2. The acquisition by a bank holding company of direct or indirect ownership or control of voting  
1537 shares of another bank holding company or a bank, if, after such acquisition, the bank holding company  
1538 making the acquisition will directly or indirectly own or control more than five percent of any class of  
1539 voting shares of the other bank holding company or the bank;

1540 3. The direct or indirect acquisition by a bank holding company of all or substantially all of the  
1541 assets of another bank holding company or of a bank; or

1542 4. Any other action that would result in direct or indirect control by a bank holding company of  
1543 another bank holding company or a bank.

1544 "Bank" has the same meaning assigned to it in 12 U.S.C. § 1841(c).

1545 "Bank holding company" has the meaning assigned to it in 12 U.S.C. § 1841(a)(1).

1546 "Financial institution" shall not include any consumer finance company or savings institution.

1547 "Financial institution holding company" means any person that has control over any financial  
1548 institution or that has control over any person that controls any financial institution.

1549 "Home state" means:

1550 1. With respect to a national bank, the state in which the main office is located;

1551 2. With respect to a state bank, the state by which the bank is chartered; and

1552 3. With respect to a bank holding company, the state in which the total deposits of all banking  
1553 subsidiaries of such company are the largest on the later of (i) July 1, 1966, or (ii) the date on which  
1554 the company becomes a bank holding company under the federal Bank Holding Company Act (12 U.S.C.  
1555 § 1841ff).

1556 "Out-of-state bank holding company" means a bank holding company that has as its home state a  
1557 state other than the Commonwealth.

1558 "Subsidiary" means an entity over which another person has control. With respect to a bank,

1559 "subsidiary" means:

1560 1. Any entity 25 percent or more of whose voting shares, excluding shares owned by the United  
1561 States or by any company wholly owned by the United States, are directly or indirectly owned or  
1562 controlled by such bank holding company, or held by it with power to vote;

1563 2. Any company the election of a majority of whose directors is controlled in any manner by such  
1564 bank holding company; or

1565 3. Any company with respect to the management or policies of which such bank holding company  
1566 has the power, directly or indirectly, to exercise a controlling influence, as determined by the  
1567 Commission, after notice and opportunity for hearing.

1568 "Virginia bank" means a bank that is organized under the laws of the Commonwealth or of the  
1569 United States and that has the Commonwealth as its home state.

1570 "Virginia bank holding company" means a bank holding company that has the Commonwealth as its  
1571 home state and is not controlled by a bank holding company other than a Virginia bank holding  
1572 company.

1573 "Virginia financial institution" means a financial institution authorized to do business in the  
1574 Commonwealth.

1575 "Virginia financial institution holding company" means any person that has control over any  
1576 financial institution authorized to do business in the Commonwealth or has control over a person that  
1577 controls any such financial institution.

1578 § 6.2-701. Presumptions regarding control of entities, ownership of shares, and activities of  
1579 subsidiaries or other entities.

1580 A. A person shall be deemed to control another entity if:

1581 1. It owns 25 percent or more of the voting shares of the entity;

1582 2. The person is presumed to control the entity under the Bank Holding Company Act of 1956 (12  
1583 U.S.C. § 1841 et seq.), as amended, or under Section 10 of the Home Owners' Loan Act (§ 12 U.S.C.  
1584 § 1467a), as amended; or

1585 3. A determination has been made by the Commission that the person exercises a controlling  
1586 influence over the management and policies of the entity.

1587 B. A financial institution holding company shall be deemed to own shares owned by a subsidiary.

1588 C. A financial institution holding company shall be deemed to engage in activities engaged in by its  
1589 subsidiary or by any other entity of which it owns five percent or more of the voting shares.

1590 § 6.2-702. Registration; authority to transact business.

1591 Every person that controls one or more Virginia financial institutions (i) shall register with the  
1592 Commission in accordance with procedures established by the Commission within 180 days after the  
1593 date the person acquires control of a Virginia financial institution, unless the Commission allows  
1594 additional time, and (ii) unless such person is a corporation chartered under the laws of Virginia, shall  
1595 obtain a certificate of authority to transact business in the Commonwealth in accordance with  
1596 § 13.1-757.

1597 § 6.2-703. Acquisition of interest in entity other than financial institution by financial institutions.

1598 No financial institution shall acquire more than five percent of the voting shares or otherwise gain  
1599 control of any entity other than a financial institution without prior notice to the Commission.

1600 § 6.2-704. Acquisition of interests in financial institutions and financial institution holding  
1601 companies; application; notice; Commission approval required.

1602 A. Except as provided in this chapter, no person shall acquire or make any public offer to acquire,  
1603 directly or indirectly, control of a Virginia financial institution or a Virginia financial institution holding  
1604 company, and no Virginia financial institution holding company shall acquire more than five percent of  
1605 the voting shares of any Virginia financial institution or of any other Virginia financial institution  
1606 holding company, unless it first shall:

1607 1. File with the Commission an application in such form as the Commission may prescribe from time  
1608 to time;

1609 2. Deliver to the Commission such other information as the Commission may require with such  
1610 certification of financial information and such verification by oath or affirmation of other data as the  
1611 Commission may deem appropriate;

1612 3. Pay such application fee as the Commission may prescribe from time to time; and

1613 4. Except in the case of an entity that is a domestic corporation or a foreign corporation qualified to  
1614 do business in the Commonwealth, deliver to the Commission a written consent to service of process in  
1615 any action or suit arising out of or in connection with said proposed acquisition through service of  
1616 process on the Secretary of the Commonwealth.

1617 B. Upon receipt of an application, the Commission shall notify the affected Virginia financial  
1618 institution or Virginia financial institution holding company, and shall solicit the views of the affected  
1619 Virginia financial institution or Virginia financial institution holding company. The application and all  
1620 other information required by the Commission under this section, except such additional information as  
1621 the Commission determines should be kept confidential, shall be held as part of the public records and  
1622 made available to the public.

1623 C. An out-of-state bank holding company may acquire a Virginia bank holding company or a  
1624 Virginia bank if: (i) the out-of-state bank holding company complies with the application requirements  
1625 of subsection A and (ii) the Commission does not disapprove the application, after the investigation  
1626 prescribed by § 6.2-705.

1627 § 6.2-705. Investigation of application.

1628 A. For 60 days following receipt of a complete application with the required information, fee, and  
1629 consent as provided in subsection A of § 6.2-704, the Commission may conduct an investigation for the  
1630 purpose of determining whether:

1631 1. The proposed acquisition would be detrimental to the safety and soundness of the applicant or of  
1632 the Virginia financial institution or Virginia financial institution holding company that the applicant  
1633 seeks to control or the stock of which is to be acquired;

1634 2. The applicant, its directors and officers, if applicable, and any proposed new directors and  
1635 officers of the Virginia financial institution or Virginia financial institution holding company that the  
1636 applicant seeks to control or the stock of which is to be acquired, are qualified by character,  
1637 experience, and financial responsibility to control and operate a Virginia financial institution;

1638 3. The proposed acquisition would be prejudicial to the interests of the depositors, creditors,  
1639 beneficiaries of fiduciary accounts, or shareholders of the applicant or of the Virginia financial  
1640 institution holding company or any Virginia financial institution that the applicant seeks to control or  
1641 the stock of which is to be acquired; and

1642 4. The acquisition is in the public interest.

1643 *B. The 60-day investigation period may be:*

1644 *1. Shortened or waived by the Commission, as it deems appropriate, if the Commission finds that it*  
 1645 *must act immediately in order to prevent the probable failure of a Virginia financial institution involved;*  
 1646 *or*

1647 *2. Extended only if the Commission determines that the applicant has not furnished all the*  
 1648 *information required by subsection A of § 6.2-704 or that the information submitted is substantially*  
 1649 *inaccurate or misleading.*

1650 *C. Within the prescribed investigation period, and upon request of the applicant or the Virginia*  
 1651 *financial institution or Virginia financial institution holding company that the applicant seeks to control*  
 1652 *or the stock of which is to be acquired, the Commission may order a hearing concerning the proposed*  
 1653 *acquisition.*

1654 *D. Within the prescribed investigation period, the Commission, by giving written notice of its*  
 1655 *decision and the reasons therefor to the applicant and to the Virginia financial institution or Virginia*  
 1656 *financial institution holding company that the applicant seeks to control or the stock of which is to be*  
 1657 *acquired, may (i) disapprove the application or (ii) impose such conditions on the acquisition as the*  
 1658 *Commission may deem advisable to effectuate the purposes of this chapter.*

1659 *E. If the Commission (i) takes no action within the prescribed investigation period or (ii) issues*  
 1660 *notice within the prescribed investigation period of its intent not to disapprove the application, the*  
 1661 *acquisition may be completed by the applicant.*

1662 *F. Any party in interest aggrieved by any decision of the Commission, as a matter of right, may*  
 1663 *appeal to the Supreme Court of Virginia in the manner provided by law.*

1664 *G. The provisions of this section shall not apply:*

1665 *1. To mergers or acquisitions of assets authorized by the Commission pursuant to the provisions of*  
 1666 *§ 6.2-914;*

1667 *2. If the acquisition or merger is arranged by the Commission or other supervisory authority in*  
 1668 *order to prevent the insolvency or closing of the institution; or*

1669 *3. If a financial institution itself forms a corporation for the purpose of acquiring and holding the*  
 1670 *stock of such financial institution and it is proposed that the shareholders of the financial institution will*  
 1671 *become the shareholders of the financial institution holding company being organized. This exclusion*  
 1672 *shall apply regardless of the fact that some shareholders of the financial institution may dissent from the*  
 1673 *proposal.*

1674 *§ 6.2-706. Cooperative agreements with other regulatory authorities.*

1675 *Prior to approving the acquisition of any Virginia bank or Virginia bank holding company by any*  
 1676 *out-of-state bank holding company, or the acquisition of any out-of-state bank or out-of-state bank*  
 1677 *holding company by any Virginia bank holding company, the Commission shall enter into cooperative*  
 1678 *agreements with the appropriate regulatory authorities for the periodic examination of any out-of-state*  
 1679 *bank holding company that has a Virginia bank subsidiary, or any subsidiary of such holding company.*  
 1680 *The Commission may accept reports of examination and other records from such authorities in lieu of*  
 1681 *conducting its own examinations.*

1682 *§ 6.2-707. Reports and examinations.*

1683 *The Commission may require any financial institution holding company that controls a Virginia*  
 1684 *financial institution to furnish such reports as it deems appropriate to the proper supervision of such*  
 1685 *holding companies. Unless the Commission determines otherwise, reports prepared for federal*  
 1686 *authorities may be submitted by such holding company in satisfaction of the requirements of this section.*  
 1687 *If, in the judgment of the Commission, such information and reports are inadequate for the*  
 1688 *Commission's intended purposes, the Commission may examine any such financial institution holding*  
 1689 *company and any subsidiary doing business in the Commonwealth.*

1690 *§ 6.2-708. Unsafe or unsound practices; cease and desist orders.*

1691 *Upon finding that any activity of a financial institution holding company, including the control of an*  
 1692 *entity other than a Virginia financial institution, is or may be detrimental to the safety or soundness of*  
 1693 *a financial institution that is subject to regulation under the laws of the Commonwealth, the*  
 1694 *Commission, after reasonable notice to the financial institution holding company and an opportunity for*  
 1695 *it to be heard, shall have authority to order it to cease and desist from such activity.*

1696 *§ 6.2-709. Conformity with federal forms.*

1697 *To the maximum extent consistent with the effective discharge of the Commission's responsibilities,*  
 1698 *the forms prescribed by the Commission under this chapter for registration, reports, or any other forms*  
 1699 *shall conform with those established by regulation adopted pursuant to the Bank Holding Company Act*  
 1700 *of 1956 (12 U.S.C. § 1841 et seq.) or Section 10 of the Home Owners' Loan Act (12 U.S.C. § 1467a et*  
 1701 *seq.).*

1702 *§ 6.2-710. Regulations excluding financial institution holding companies from this chapter.*

1703 *The Commission may adopt regulations excluding financial institution holding companies from the*

1704 provisions of this chapter, under conditions comparable to those provided in either the Bank Holding  
 1705 Company Act of 1956 (12 U.S.C. § 1841 et seq.) or Section 10 of the Home Owners' Loan Act (12  
 1706 U.S.C. § 1467a et seq.), when control of a Virginia financial institution arises (i) out of the acquisition  
 1707 of shares in a fiduciary capacity, (ii) in connection with an underwriting of securities or proxy  
 1708 solicitation, or (iii) in connection with securing or collecting a debt.

1709 § 6.2-711. Civil penalties; injunction.

1710 A. To the extent provided for therein, the Commission may impose a civil penalty of not less than  
 1711 \$100 but not exceeding \$1,000 per day for each day of noncompliance upon financial institution holding  
 1712 companies subject to the laws of the Commonwealth that fail to comply with any of the provisions of  
 1713 § 6.2-707 for a period of longer than 30 days, after being called upon by the Commission for a  
 1714 statement, or to do such other act as is therein provided. The Commission may impose a civil penalty of  
 1715 not less than \$25 but not exceeding \$100 per day for each day of noncompliance upon any officer of  
 1716 any such financial institution holding company, who shall refuse to give any examiner the information  
 1717 or refuse to be sworn, as required by this title.

1718 B. The Commission (i) may impose a civil penalty not exceeding \$10,000 against any financial  
 1719 institution holding company subject to the laws of the Commonwealth or against any of its directors,  
 1720 officers, or employees for violating any lawful order of the Commission and (ii) may remove from office  
 1721 any director or officer who a second time violates any such order. In all cases the defendant shall have  
 1722 an opportunity to be heard and to introduce evidence, and the right to appeal as provided by law.

1723 C. Any person violating any provision of this chapter or any regulation adopted thereunder shall be  
 1724 subject to injunction by the Commission or by an appropriate court on motion of any party in interest.  
 1725 In addition, the Commission may impose a civil penalty of not more than \$1,000 per day for each day  
 1726 the violation continues upon any person violating any provision of this chapter or any regulation  
 1727 adopted thereunder.

1728 § 6.2-712. A savings institution holding company seeking to acquire a bank or bank holding company  
 1729 deemed a bank holding company.

1730 For purposes of this chapter, any savings institution holding company seeking to acquire a bank or  
 1731 bank holding company, shall be deemed to be a bank holding company, for purposes of determining  
 1732 whether such savings institution holding company is permitted to acquire the bank or bank holding  
 1733 company in question.

1734 § 6.2-713. Applicable laws and regulations.

1735 A. Any Virginia bank that is controlled by a bank holding company that is not a Virginia bank  
 1736 holding company shall be subject to all laws of the Commonwealth and all regulations under such laws  
 1737 that are applicable to Virginia banks controlled by Virginia bank holding companies.

1738 B. The Commission shall adopt such regulations, including the imposition of reasonable application  
 1739 and administration fees, as it finds necessary to implement and effect the provisions of this chapter.

1740 § 6.2-714. Examinations of out-of-state bank holding companies and subsidiaries; reports; joint  
 1741 actions.

1742 A. The Commission shall have the authority to examine any out-of-state bank holding company  
 1743 owning a Virginia bank and each of its Virginia or non-Virginia bank or nonbank subsidiaries.

1744 B. The Commission shall require reports of each out-of-state bank holding company subject to this  
 1745 chapter. Such reports shall be filed under oath with such frequency and in such scope and detail as may  
 1746 be appropriate for the purpose of assuring continuing compliance with the provisions of this chapter.

1747 C. The Commission may enter into joint actions with other regulatory authorities having concurrent  
 1748 jurisdiction over any out-of-state bank holding company that has a Virginia bank subsidiary or may take  
 1749 such actions independently to carry out its responsibilities under this chapter, assure the safety and  
 1750 soundness of any Virginia banks, and assure compliance with the provisions of this chapter and the  
 1751 applicable banking laws of the Commonwealth.

1752 § 6.2-715. Notice of intent to acquire out-of-state bank.

1753 A Virginia bank holding company or an out-of-state bank holding company that controls a Virginia  
 1754 bank shall file with the Commission (i) notice of its intention to acquire a bank outside Virginia and (ii)  
 1755 such information as the Commission shall request. The Commission shall within 30 days, or an extended  
 1756 period not exceeding 15 days, disapprove such acquisition if it determines that the acquisition could  
 1757 affect detrimentally the safety or soundness of a Virginia bank. It shall approve such acquisition within  
 1758 45 days if it determines that the acquisition will not affect detrimentally the safety or soundness of such  
 1759 Virginia bank.

## 1760 CHAPTER 8.

### 1761 BANKS.

#### 1762 Article 1.

#### 1763 General Provisions.

1764 § 6.2-800. Definitions.

1765 As used in this chapter, unless the context requires a different meaning:

1766 "Bank" means a corporation authorized by statute to accept deposits and to hold itself out to the  
1767 public as engaged in the banking business in the Commonwealth.

1768 "Bankers' bank" means a bank whose shares are owned exclusively by either (i) financial institutions  
1769 that have or are eligible for insurance of deposits by a federal agency or (ii) financial institution  
1770 holding companies as defined in § 6.2-700 or savings institution holding companies as defined in  
1771 § 6.2-1100 owning any financial institution described in clause (i), provided that no such financial  
1772 institution or holding company owns, directly or indirectly, more than five percent of the issued and  
1773 outstanding voting shares of any bankers' bank.

1774 "Bank holding company" means any corporation (i) that directly or indirectly owns, controls, or  
1775 holds with power to vote, 25 percent or more of the voting shares of one or more banks or of a  
1776 corporation that is or becomes a bank holding company by virtue of this definition, (ii) that controls in  
1777 any manner the election of a majority of the directors of one or more banks, or (iii) for the benefit of  
1778 whose shareholders or members 25 percent or more of the voting shares of one or more banks or bank  
1779 holding companies is held by trustees. For the purpose of this definition, any successor to any such  
1780 corporation shall be deemed to be a bank holding company from the date as of which such successor  
1781 corporation becomes a bank holding company. Notwithstanding the foregoing, (a) a bank shall not be a  
1782 bank holding company by virtue of its ownership or control of shares in a fiduciary capacity except  
1783 where such shares are held for the benefit of the shareholders of such banks, (b) a corporation shall not  
1784 be a bank holding company by virtue of its ownership or control of its shares acquired by it in  
1785 connection with its underwriting of securities and which are held only for such period of time as will  
1786 permit the sale thereof upon a reasonable basis, (c) a corporation formed for the sole purpose of  
1787 participating in a proxy solicitation shall not be a bank holding company by virtue of its control of  
1788 voting rights or shares acquired in the course of such solicitation, and (d) a corporation shall not be a  
1789 bank holding company if at least 80 percent of its total assets are composed of holdings in the field of  
1790 agriculture.

1791 "FDIC" means the Federal Deposit Insurance Corporation.

1792 "International banking facility" means a set of assets and liability accounts segregated on the books  
1793 and records of the bank, or an adjacent or other subsidiary that includes only international banking  
1794 facility time deposits and international banking facility extensions of credit. The facility may either be  
1795 located within Virginia or outside the territorial United States. "International banking facility" has the  
1796 meaning assigned to it by the laws of the United States or the regulations of the Board of Governors for  
1797 the Federal Reserve System.

1798 "State bank" means a bank incorporated under the laws of the Commonwealth and that has its  
1799 principal place of business in the Commonwealth.

1800 "Trust business" has the meaning assigned to it in § 6.2-1000.

1801 "Trust company" has the meaning assigned to it in § 6.2-1000.

1802 § 6.2-801. Application of chapter.

1803 The provisions of this chapter shall apply to all state banks, and so far as constitutionally  
1804 permissible, to all banks organized under the laws of the United States doing business in Virginia.

1805 § 6.2-802. Effect of chapter on certain banks.

1806 A. Nothing in this chapter shall be construed to change or affect any privilege granted by charter to  
1807 any bank incorporated before June 15, 1910, nor to affect the legality of any investment made or  
1808 transaction had prior to June 18, 1928, pursuant to any provisions of law in force when such investment  
1809 was made or transaction occurred.

1810 B. No provision of this chapter other than § 6.2-803 shall apply to any bank chartered prior to June  
1811 15, 1910, under the laws of the Commonwealth but having no place of business within the  
1812 Commonwealth and conducting its entire business outside of the Commonwealth.

1813 § 6.2-803. Entities authorized to engage in banking business.

1814 A. No person, except (i) corporations duly chartered and already conducting banking business in the  
1815 Commonwealth under authority of the laws of the Commonwealth or the United States, (ii) corporations  
1816 that shall hereafter be incorporated under, and authorized to conduct banking business in the  
1817 Commonwealth under authority of, the laws of the Commonwealth, (iii) corporations that shall hereafter  
1818 be authorized to do business in the Commonwealth under the banking laws of the United States, and (iv)  
1819 banks authorized, after July 1, 1995, to establish and operate one or more branches in the  
1820 Commonwealth under Article 6 (§ 6.2-836 et seq.) or Article 7 (§ 6.2-849 et seq.) of this chapter, shall  
1821 engage in the banking business in the Commonwealth. No foreign corporation, except as permitted in  
1822 Chapter 7 (§ 6.2-700 et seq.), shall engage in a banking business in the Commonwealth.

1823 B. Nothing in this chapter shall prevent:

1824 1. An individual from qualifying and acting as trustee, personal representative, guardian,  
1825 conservator, committee or in any other fiduciary capacity;

1826 2. Any person from (i) lending money on real estate and personal security or collateral, (ii)  
 1827 guaranteeing the payment of bonds, notes, bills and other obligations, or (iii) purchasing or selling  
 1828 stocks and bonds;

1829 3. Any bank organized under the laws of the Commonwealth from qualifying and acting in another  
 1830 state as trustee, personal representative, guardian of a minor, conservator, or committee or in any other  
 1831 fiduciary capacity, when permitted so to do by the laws of such other state; or

1832 4. An incorporated association that is authorized to sell burial association group life insurance  
 1833 certificates in the Commonwealth, as described in the definition of limited burial insurance authority in  
 1834 § 38.2-1800, the principal purpose of which is to assist its members in (i) financial planning for their  
 1835 funerals and burials and (ii) obtaining insurance for the payment, in whole or in part, for funeral,  
 1836 burial, and related expenses, from serving as trustee of a trust established pursuant to § 54.1-2822.

1837 C. Nothing in this section shall be construed:

1838 1. To prevent banks organized in the Commonwealth and chartered under the laws of the United  
 1839 States from transacting business in the Commonwealth; or

1840 2. To prevent a real estate broker as defined in § 54.1-2100 from owning or operating a bank  
 1841 provided that the requirements of this chapter are met.

1842 § 6.2-804. Amendment of powers of state banks by regulation of the Commission.

1843 A. In addition to the powers specifically granted to banks by the provisions of this chapter, the  
 1844 Commission may by regulation amend the powers of state banks so as to allow such state banks to  
 1845 engage in any activity in which a bank subject to the jurisdiction of the federal government may be  
 1846 authorized by federal legislation or regulation to engage.

1847 B. The Commission, by regulation, may specify the activities that are permitted to be conducted at a  
 1848 location that is not authorized as a branch under § 6.2-831, in order to allow a state bank to engage in  
 1849 any activity in which a bank subject to the jurisdiction of the federal government may engage at a  
 1850 location other than a branch.

1851 C. Regulations authorized by this section shall be adopted as provided in the Commission's Rules.

1852 § 6.2-805. Commission authorized to confer on state banks power to make charges comparable to  
 1853 those permitted to national banking associations.

1854 In addition to the permissible interest rates and charges that banks specifically, and lenders  
 1855 generally, are granted the power to charge by this title, the Commission may, by order, from time to  
 1856 time confer upon state banks the power to take, receive, reserve, and charge on any loan or discount  
 1857 made, at a rate of one per centum in excess of the discount rate on 90-day commercial paper in effect  
 1858 at the Federal Reserve Bank for the fifth Federal Reserve District. The Commission may thereby confer  
 1859 upon state banks the power to make charges that are comparable to those permitted under any federal  
 1860 statute or regulation to any national banking association.

1861 § 6.2-806. Saturday closing of banks.

1862 Any bank, including national banking associations and federal reserve banks, may permit any one or  
 1863 more or all of its offices to remain closed on any one or more or all Saturdays, as the bank, by  
 1864 resolution of its board of directors, may from time to time determine. Any Saturday on which an office  
 1865 of a bank remains closed, as herein permitted, shall constitute a legal holiday as to such office. Any act  
 1866 authorized, required or permitted to be performed at, by or with respect to any such office on a  
 1867 Saturday on which the office is so closed may be performed on the next succeeding business day. No  
 1868 liability or loss of rights of any kind shall result from such delay.

1869 § 6.2-807. Discoverability or admissibility of compliance review committee documents.

1870 A. As used in this section, "compliance review committee" means a committee appointed by the  
 1871 board of directors of a bank for the purpose of evaluating and improving the bank's compliance with  
 1872 federal and state laws and adherence to its own established ethical and financial standards, and  
 1873 includes any other person when that person acts in an investigatory capacity at the direction of a  
 1874 compliance review committee.

1875 B. Any records, reports, or other documents created by a compliance review committee are  
 1876 confidential and shall not be discoverable or admissible in evidence in any civil action unless, upon  
 1877 motion, the trial court determines in its discretion that there has been an abuse of the provisions of this  
 1878 section.

1879 C. Any records, reports, or other documents produced by a compliance review committee and  
 1880 delivered to a federal or state governmental agency remain confidential and shall not be discoverable or  
 1881 admissible in evidence in any civil action, except to the extent that applicable law provides that such  
 1882 records, reports or other documents are not protected from disclosure.

1883 D. In no event shall the existence of or any action by a compliance review committee serve as a  
 1884 basis or justification for delay of, or limit upon, the discovery process set forth in state or federal rules.

1885 E. The work product created by any person acting in an investigatory capacity at the direction of a  
 1886 compliance review committee prior to his participation in the work of the compliance review committee

1887 or at the direction of the compliance review committee shall be subject to the rules governing discovery  
 1888 in accordance with the Rules of the Virginia Supreme Court.

1889 F. This section shall not be construed to limit the discovery or admissibility:

1890 1. In any civil action of any records, reports or other documents that are not created by a  
 1891 compliance review committee; or

1892 2. Of any factual information which may be reviewed by a compliance review committee.

1893 Article 2.

1894 Incorporation and Powers.

1895 § 6.2-808. Incorporation; corporate powers.

1896 A. A bank may be incorporated under the Virginia Stock Corporation Act (§ 13.1-601 et seq.), but  
 1897 need not comply with the provisions of subsection A of § 13.1-630.

1898 B. Except as otherwise provided in this chapter, a bank shall:

1899 1. Have all the powers conferred on corporations, and be subject to all restrictions imposed on  
 1900 corporations, by the Virginia Stock Corporation Act;

1901 2. Not issue its shares for any consideration except money at least equal in amount to the par value  
 1902 of its shares; and

1903 3. Not issue no-par stock.

1904 § 6.2-809. Bankers' banks.

1905 A. A bank may be incorporated as provided in § 6.2-808 for the purpose of becoming a bankers'  
 1906 bank.

1907 B. Except as specifically provided in this section or by regulation or order of the Commission, a  
 1908 bankers' bank shall be vested with all of the powers and subject to all of the restrictions imposed upon  
 1909 a bank.

1910 C. Notwithstanding any other provision in this title to the contrary, a bankers' bank shall only accept  
 1911 deposits from or make loans to (i) a financial institution which has or is eligible for insurance of  
 1912 deposits by a federal agency, (ii) a bank in organization that has applied for insurance of deposits by a  
 1913 federal agency, (iii) a financial institution holding company as defined in § 6.2-700 or a savings  
 1914 institution holding company as defined in § 6.2-1100 owning an entity described in clause (i) or (ii), (iv)  
 1915 the officers, directors and employees of any such financial institution, bank in organization or holding  
 1916 company, (v) any person referred to a bankers' bank by a financial institution or by a bank in  
 1917 organization that has applied for insurance of deposits by a federal agency, or (vi), with the prior  
 1918 approval of the Commissioner and subject to such conditions as the Commissioner may impose, other  
 1919 persons.

1920 D. A bankers' bank may form a bank holding company upon compliance with the provisions of  
 1921 Chapter 7 (§ 6.2-700 et seq.) and any applicable federal law.

1922 E. A bankers' bank may purchase investments or securities of governments or private corporations  
 1923 which are traded on the open market such as are authorized to any other bank organized under the  
 1924 provisions of this chapter.

1925 § 6.2-810. Effect of chapter on charter powers.

1926 The powers, privileges, duties and restrictions conferred and imposed upon any bank existing and  
 1927 doing business under the laws of the Commonwealth are abridged, enlarged or modified, as each  
 1928 particular case may require, to conform to the provisions of this chapter.

1929 § 6.2-811. Membership in Federal Reserve Bank System or Federal Home Loan Bank System.

1930 Any bank that has been or is hereafter incorporated under the laws of the Commonwealth, at its  
 1931 election, may become a member bank of the Federal Reserve Bank System, subject to the provisions of  
 1932 the Federal Reserve Act (P.L. 63-43, 38 Stat. 251) as it may be amended to permit a bank to become a  
 1933 member, or the Federal Home Loan Bank System, subject to the provisions of the Federal Home Loan  
 1934 Bank Act (P.L. 72-304, 47 Stat. 785) as it may be amended to permit a bank to become a member, or  
 1935 both. Upon becoming a member of either system, the bank shall be vested with all powers conferred  
 1936 upon state member banks of such systems by the terms of such acts. The powers shall be exercised  
 1937 subject to all restrictions and limitations imposed by the Federal Reserve Act or the Federal Home Loan  
 1938 Bank Act, or by regulations of the Federal Reserve Board or the Federal Housing Finance Board,  
 1939 respectively, adopted pursuant to such acts. The right is expressly reserved to revoke or amend the  
 1940 powers conferred pursuant to this section. The Commission may disclose to the Federal Reserve Board,  
 1941 or to examiners duly appointed by it, all information in reference to the affairs of any bank which has  
 1942 become, or desires to become a member of the system.

1943 § 6.2-812. Inspection of records, reports, and information of insured banks.

1944 A. As used in this section, "insured bank" has the meaning assigned to it in § 12-B of the Federal  
 1945 Reserve Act (12 U.S.C. § 1813(h)), as amended.

1946 B. All records, reports, reports of examinations, and information relating to insured banks shall be  
 1947 open to the inspection of, and made available to, the officers and duly accredited agents of the Federal

1948 *Deposit Insurance Corporation so long as like records, reports, and information in the possession or*  
 1949 *under the control of the Federal Deposit Insurance Corporation are, by federal statute, made available*  
 1950 *and subject to inspection by the Commission.*

1951 § 6.2-813. *Participation by banks in school thrift or savings plans.*

1952 *A bank may contract with the principal of any elementary or secondary school, if authorized to do*  
 1953 *so by the school board in any locality where the bank has a location, for the bank to participate in a*  
 1954 *school thrift or savings plan. A participating bank may accept deposits at the school either by its own*  
 1955 *collector or by any representative of the school who becomes the agent of the bank for such purpose.*

1956 § 6.2-814. *Powers of banks.*

1957 *A. Every bank shall have power to exercise, by its board of directors or duly authorized officers or*  
 1958 *agents, subject to law, all incidental powers that are necessary to carry on the business of banking, by:*

1959 *1. Discounting and negotiating bills of exchange, promissory notes, drafts, and other evidences of*  
 1960 *debt;*

1961 *2. Receiving deposits;*

1962 *3. Buying and selling exchange, coin, and bullion;*

1963 *4. Lending money on real property, personal property, security, or collateral;*

1964 *5. Guaranteeing the payment of bonds, bills, notes and other obligations that have six months or*  
 1965 *fewer until maturity;*

1966 *6. Rediscounting paper;*

1967 *7. Purchasing and selling bonds;*

1968 *8. Acting as agent in the sale of insurance and annuities;*

1969 *9. Dealing in or making a market in securities;*

1970 *10. Providing financial, investment, or economic advisory services;*

1971 *11. Providing other products and services deemed by the Commission to be financial in nature;*

1972 *12. Engaging directly in those activities in which a controlled subsidiary corporation of a bank is*  
 1973 *authorized to engage pursuant to §§ 6.2-885 and 6.2-888 in accordance with the requirements of such*  
 1974 *sections, provided that a bank, or a controlled subsidiary corporation of a bank, that transacts business*  
 1975 *as a real estate brokerage firm shall be subject to the provisions of § 6.2-888;*

1976 *13. Establishing an international banking facility, either as a division of the bank or as a separate*  
 1977 *corporate entity under § 6.2-885; and*

1978 *14. Utilizing armored vehicles or other vehicles to provide adequate protection for the funds*  
 1979 *transported for receipt of deposits of its customers or to deliver currency and coin.*

1980 *B. In addition to the permissible business authorized by subsection A, the Commission may, upon the*  
 1981 *Commission's finding that an emergency exists, confer by order upon banks such temporary powers as*  
 1982 *the Commission may determine to be in the public interest. Such powers as are conferred may be (i)*  
 1983 *authorized for a limited period of time, (ii) granted selectively to fewer than all banks, and (iii) revoked*  
 1984 *by further order of the Commission.*

1985 § 6.2-815. *Suspension of business during emergency.*

1986 *Every bank doing business in the Commonwealth is authorized temporarily to suspend its usual*  
 1987 *business during a period of actual or threatened enemy attack, civil insurrection or riot, affecting the*  
 1988 *community in which such institution is doing business or other emergency justifying temporary closing*  
 1989 *such as fire, flood, or hurricane.*

1990 § 6.2-816. *Banks to obtain certificate of authority.*

1991 *Before any bank shall begin business it shall obtain from the Commission a certificate of authority*  
 1992 *authorizing it to do so. Prior to the issuance of such certificate, the Commission shall ascertain:*

1993 *1. That all of the provisions of law have been complied with;*

1994 *2. That financially responsible individuals have subscribed for capital stock and surplus in an*  
 1995 *amount deemed by the Commission to be sufficient to warrant successful operation. The amount of*  
 1996 *capital stock shall not be less than \$2 million, except that the capital stock shall not be less than*  
 1997 *\$500,000 for any trust company incorporated for the sole purpose of exercising fiduciary powers*  
 1998 *authorized by the provisions of Article 3 (§ 6.2-819 et seq.) of this chapter. The minimum capital stock*  
 1999 *requirement under this subdivision (i) shall apply when a bank is being organized to begin business and*  
 2000 *(ii) shall not apply when this section is referred to or used in connection with the conversion of an*  
 2001 *operating savings institution or national bank to a state bank or the reorganization of an operating*  
 2002 *bank under a holding company;*

2003 *3. That oaths of all the directors have been taken and filed in accordance with the provisions of*  
 2004 *§ 6.2-863;*

2005 *4. That, in its opinion, the public interest will be served by banking facilities or additional banking*  
 2006 *facilities, as the case may be, in the community where the bank is proposed. The addition of such*  
 2007 *facilities shall be deemed in the public interest if, based on all relevant evidence and information,*  
 2008 *advantages such as, but not limited to, increased competition, additional convenience, or gains in*

2009 *efficiency outweigh possible adverse effects such as, but not limited to, diminished or unfair competition,*  
 2010 *undue concentration of resources, conflicts of interests, or unsafe or unsound practices;*

2011 *5. That the corporation is formed for no other reason than a legitimate banking business;*

2012 *6. That the moral fitness, financial responsibility, and business qualifications of individuals named as*  
 2013 *officers and directors of the proposed bank are sufficient to command the confidence of the community*  
 2014 *where the bank is proposed;*

2015 *7. That the bank's deposits are to be insured by a federal agency up to the limits of the insurance*  
 2016 *provided thereby; and*

2017 *8. Anything else deemed pertinent.*

2018 *§ 6.2-817. Capital stock subscriptions.*

2019 *A. Subscriptions to the capital stock of a bank shall be paid in money at not less than par. No bank*  
 2020 *shall begin business until the amounts specified in its certificate of authority to commence business have*  
 2021 *been received by the bank.*

2022 *B. All money received for subscriptions to or for purchases of stock of a bank before it opens for*  
 2023 *business shall be deposited in an escrow account in an insured financial institution or invested in*  
 2024 *United States government obligations, under the joint control of two organizing directors of the bank,*  
 2025 *both of whom shall be bonded for an amount equal to the total amount of the money to be collected.*  
 2026 *Such funds, together with any income thereon, shall be remitted to the bank on the day it opens for*  
 2027 *business. If the bank is denied a certificate of authority or is refused insurance of accounts, or it*  
 2028 *otherwise is determined that the bank will not open for business, such funds, after payment of any*  
 2029 *amount owing for expenses in connection with such attempted organization, including reasonable*  
 2030 *consulting fees, attorney fees, salaries, filing fees, and other expenses, shall be refunded to subscribers*  
 2031 *or shareholders.*

2032 *C. The requirement that capital stock be paid in money shall not be construed to prohibit the*  
 2033 *establishment, as otherwise authorized by law, of stock option plans and stock purchase plans, and the*  
 2034 *issuance of stock pursuant to such plans. Such plans shall be established only after the bank has opened*  
 2035 *for business, and shall be approved by a majority vote of the bank's shareholders. In no event shall any*  
 2036 *stock option be granted at a price which is less than 100 percent of the book value per share of the*  
 2037 *stock as shown by the bank's last published statement prior to the granting of the option.*

2038 *§ 6.2-818. Commissions or other compensation for sale of stock not permitted.*

2039 *The Commission shall not issue a certificate of authority to any bank to commence business if*  
 2040 *commissions, fees, brokerage, or other compensation, have been paid or contracted to be paid by the*  
 2041 *bank, or by anyone in its behalf, either directly or indirectly, to any person for the sale of stock in the*  
 2042 *bank.*

2043 *Article 3.*

2044 *Conduct of Trust Business by Banks.*

2045 *§ 6.2-819. Authority to engage in trust business; permission of Commission required.*

2046 *A. A bank shall not engage in the trust business unless its articles of incorporation state that one of*  
 2047 *its purposes is to engage in the trust business.*

2048 *B. A bank shall not commence to engage in the trust business without first obtaining permission from*  
 2049 *the Commission. The Commission shall not grant such permission unless it finds that:*

2050 *1. The bank's capital structure is sufficiently strong to support such additional undertaking;*

2051 *2. The personnel who will direct the proposed trust department have adequate experience and*  
 2052 *training, and will devote sufficient time to its affairs to insure compliance with the law and to protect*  
 2053 *the bank against surcharge; and*

2054 *3. The granting of trust powers to the bank will be in the public interest.*

2055 *C. Notwithstanding the provisions of subsection B, any bank actively engaged in the trust business on*  
 2056 *January 1, 1966, may continue in the trust business without the Commission's permission.*

2057 *D. A bank authorized to do a trust business shall conduct such business in accordance with the*  
 2058 *applicable provisions of Chapter 10 (§ 6.2-1000 et seq.).*

2059 *§ 6.2-820. Powers of national banks as fiduciaries.*

2060 *All national banks that have been, or hereafter may be, permitted by law to act as trustee and in*  
 2061 *other fiduciary capacities, shall have the rights, powers, privileges, and immunities conferred upon trust*  
 2062 *companies by Chapter 10 (§ 6.2-1000 et seq.).*

2063 *§ 6.2-821. Separation of banking and trust functions; establishment of trust department.*

2064 *Every state bank that obtains permission from the Commission to engage in trust business shall*  
 2065 *establish a separate trust department. Such department shall be established before such institution*  
 2066 *undertakes to act in any fiduciary capacity and shall be placed under the management of an officer or*  
 2067 *officers whose duties shall be prescribed by the board of directors of the institution or by either an*  
 2068 *amendment to the bylaws of the institution or by a resolution duly entered in the minutes of the board*  
 2069 *of directors.*

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Article 4.

Bank Mergers and Conversions.

§ 6.2-822. Merger and share exchange by state banks.

A. Virginia banks as defined in § 6.2-849 may merge upon compliance with the provisions of Article 12 (§ 13.1-715.1 et seq.) of the Virginia Stock Corporation Act. The provisions of:

1. Section 13.1-716 that relate to a merger with a foreign corporation as foreign eligible entity shall not apply, except that the provisions of § 13.1-716 relating to merger shall apply to the merger of a state and a national bank if the national bank is engaged in business in Virginia, and if the state bank is to be the surviving bank; and

2. Section 13.1-730 shall not apply to a merger under this section.

B. A national bank shall be treated as if it were a foreign corporation and as if the United States were the state where it is organized. A bank may enter into a share exchange, as permitted by § 13.1-717, provided there is also compliance with Chapter 7 (§ 6.2-700 et seq.). The exclusion in subdivision G 3 of § 6.2-705 shall not apply in the case of such an exchange of shares.

C. In the event of a merger authorized by subsection A or B, the merged corporation, whether it be one of merging banks, or a new bank formed by means of such merger, shall without further act or deed succeed to, and be vested with all offices, rights, obligations and relations of trust or of a fiduciary nature, including appointments, designations and nominations, existing immediately prior to the time at which such merger became effective, or then belonging or pertaining to any one or more of the banks, parties to such merger, or which would then inure to any one or more of such banks.

D. No state bank resulting from any merger shall do business in the Commonwealth until it shall have obtained from the Commission a certificate of authority authorizing it to do so. The provisions of § 6.2-816 shall apply to the issuance, or refusal of the Commission to issue, the certificate herein provided for, to the same extent as if the merged bank were a new bank.

E. In the case of a merger heretofore or hereafter effected, the surviving or new bank shall be deemed to have been in actual operation for the period during which the oldest of the banks involved in the merger has been in actual operation.

§ 6.2-823. Conversion of national banking association to state bank; certificate of authority.

A. A national banking association, organized under the laws of the United States and doing business in the Commonwealth, may be converted into and become a state bank by the following procedure:

1. The directors of the national banking association shall cause to be incorporated under the laws of the Commonwealth a corporation authorized by its certificate of incorporation to conduct the business of banking as the successor of the national banking association. With regard to such incorporation:

a. The certificate of incorporation of the corporation shall conform as nearly as may be legally permissible to that of the national banking association;

b. The principal office of the corporation shall be in the county or city wherein the national banking association has its principal office; and

c. The amount of the capital stock of the corporation, its division into shares, the par value of shares, their classification and preferences, if any, shall conform to those of the national banking association, and the minimum capital of the state bank shall comply with that required for a bank under § 6.2-816.

2. The national banking association shall effect its conversion to a state bank in accordance with the procedure prescribed by Subchapter XV of Chapter 2 of Title 12 of the United States Code (12 U.S.C. § 214 et seq.), as it now exists or as it may hereafter be amended.

3. Upon completion of the procedures required by subdivision 2, the president of the national banking association and the official having custody of its records shall execute, under the seal of the association, a certificate showing in detail the procedures followed, the number of shares of each class of stock of the national banking association issued and outstanding, and the vote of each class of stockholders in favor of the plan of conversion. The national banking association shall then file the certificate with the Commission.

B. The Commission shall examine the certificate filed pursuant to subdivision A 3. If from such examination it appears that the procedure required by subdivision A 2 has been followed and that the conversion has been approved by the stockholders of the national banking association in the manner and by the percentage vote required by federal law, the Commission may issue to the newly incorporated state bank a certificate of authority to do business as a bank, in accordance with the provisions of § 6.2-816. Upon the issue of such certificate, the conversion of the national banking association into a state bank shall become effective and be automatically completed.

§ 6.2-824. Status of converted bank.

Upon the conversion of a national banking association to a state bank as provided in § 6.2-823, the state bank shall be considered to be the same business and corporate entity as the former national banking association, except that the state bank shall have the rights, powers, and duties as prescribed

2131 by state law. Any reference to the former national banking association in any contract, will, or  
 2132 document shall be deemed to be a reference to the state bank if not inconsistent with the provisions of  
 2133 the contract, will, or document or with applicable law.

2134 § 6.2-825. State bank becoming national bank; notice required; effect on liabilities.

2135 A. Any bank incorporated under the laws of the Commonwealth may, upon compliance with federal  
 2136 law, be converted into a national banking association.

2137 B. When any state bank becomes a corporation for carrying on the business of banking under federal  
 2138 law, it shall notify the Commission of such fact and file with the Commission a copy of its authorization  
 2139 as a national banking association certified by the Comptroller of the Currency. Such bank shall  
 2140 thereupon cease to be a corporation under the laws of the Commonwealth, except that, for a period not  
 2141 exceeding three years thereafter, its corporate existence shall be deemed to continue for the purposes of  
 2142 (i) prosecuting or defending suits by or against it and (ii) enabling it to settle and close its affairs, to  
 2143 dispose of and convey its property, and to divide its capital, but not for the purpose of continuing the  
 2144 business for which such bank was established.

2145 C. A conversion from a state to a national bank shall not release the state bank from its obligations  
 2146 to pay and discharge (i) all the liabilities created by law or incurred by it before becoming a national  
 2147 banking association, (ii) any tax imposed by the laws of the Commonwealth up to the date of its  
 2148 becoming such national banking association in proportion to the time which has elapsed since the next  
 2149 preceding payment therefor, or (iii) any assessment, penalty, or forfeiture imposed or incurred under the  
 2150 laws of the Commonwealth up to the date it became a national banking association.

2151 § 6.2-826. Effect of conversion of state bank to national bank.

2152 A. When a conversion of a state bank into a national banking association under the authority  
 2153 granted by § 6.2-825 becomes effective, all the property of the former state bank, including all its right,  
 2154 title, and interest in and to all property of every kind, whether real, personal, or mixed, and things in  
 2155 action, and every right, privilege, interest, and asset of any conceivable value or benefit then existing,  
 2156 belonging, or pertaining to it, or which would inure to it, shall immediately, by act of law and without  
 2157 any conveyance or transfer, and without any further act or deed, be vested in and become the property  
 2158 of such national bank. The national bank shall have, hold, and enjoy the same in its own right as fully  
 2159 and to the same extent as if the same were possessed, held, or enjoyed by the state bank. The national  
 2160 bank shall be deemed to be a continuation of the entity and identity of the state banking corporation  
 2161 that is operated under and pursuant to federal law.

2162 B. All the rights, obligations, and relations of the converted state bank to or in respect to (i) any  
 2163 person, estate, creditor, depositor, trustee, or beneficiary of any trust and (ii) any executorship or  
 2164 trusteeship or other trust or fiduciary function, including appointments, designations, and nominations,  
 2165 shall remain unimpaired. The national bank, as of the beginning of its corporate existence, shall, by  
 2166 operation of this section, succeed to all such rights, obligations, relations, and trusts, including  
 2167 appointments, designations, and nominations, and the duties and liabilities connected therewith. The  
 2168 national bank shall execute and perform each and every such trust and relation in the same manner as  
 2169 if such national bank had itself assumed the trust or relation, including the obligations and liabilities  
 2170 connected therewith.

2171 C. If the state banking corporation is acting as administrator, coadministrator, executor, coexecutor,  
 2172 trustee, or cotrustee of, or in respect to, any estate or trust being administered under the laws of the  
 2173 Commonwealth, such relation, as well as any other or similar fiduciary relation, and all rights,  
 2174 privileges, duties, and obligations connected therewith, shall remain unimpaired and shall continue in  
 2175 such national bank from and as of the beginning of its corporate existence, irrespective of (i) the date  
 2176 when any such relation may have been created or established, (ii) the date of any trust agreement  
 2177 relating thereto, or (iii) the date of the death of any testator or decedent whose estate is being so  
 2178 administered.

2179 D. Nothing done in connection with a conversion from a state to a national bank, in respect to any  
 2180 such executorship, trusteeship, or similar fiduciary relation, shall (i) be deemed to be or to effect, under  
 2181 the laws of the Commonwealth, a renunciation or revocation of any letters of administration or letters  
 2182 testamentary pertaining to such relation or a removal or resignation from any such executorship or  
 2183 trusteeship or (ii) be deemed to be of the same effect as if the executor or trustee had died or otherwise  
 2184 become incompetent to act. Nothing in this section shall in any way affect any provisions of law if a  
 2185 national bank becomes a state bank.

2186 § 6.2-827. Rights of national bank stockholders dissenting from conversion.

2187 The rights of stockholders of a national banking association who dissent from the approval by the  
 2188 stockholders of the conversion of the national banking corporation into a state bank shall be governed  
 2189 by the provisions of 12 U.S.C. § 214a(b), as now existing or as hereafter amended.

2190 § 6.2-828. Conversion of state bank to federal savings institution.

2191 A. A state bank may convert into a federal savings institution as follows:

2192 1. At any meeting of the stockholders called and held in accordance with the Virginia Stock  
 2193 Corporation Act (§ 13.1-601 et seq.) or the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) to  
 2194 consider such action, the stockholders, by an affirmative vote of those holding and voting two-thirds of  
 2195 the votes present in person or by proxy, may resolve to convert the bank into a federal savings  
 2196 institution;

2197 2. A copy of the minutes of the meeting duly certified by the president or vice-president and the  
 2198 secretary or assistant secretary of the state bank shall be transmitted to the Commission;

2199 3. Thereafter, the state bank shall take such action as is necessary under federal law to make it a  
 2200 federal savings institution; and

2201 4. The bank shall file with the Commission a certified copy of the charter issued to it by the federal  
 2202 chartering authority, or a certificate of that authority showing the organization of the bank as a federal  
 2203 savings institution.

2204 B. Upon the filing of the certified copy of a charter or certificate of authority as provided in  
 2205 subdivision A 4, the bank shall cease to be a state bank.

2206 C. No state bank shall convert into a federal savings institution until it has been in operation as a  
 2207 state bank for a period of at least five years.

2208 D. When a conversion of a state bank into federal savings institution becomes effective, the state  
 2209 bank shall cease to be a Virginia corporation and all its property, by operation of law and without any  
 2210 further act or deed, shall continue to be vested in it under its new name as a federal savings institution  
 2211 and under its federal charter. The federal savings institution shall have, hold and enjoy the same in its  
 2212 own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a state  
 2213 bank. The federal savings institution, at the time of the taking effect of the conversion, shall become and  
 2214 continue to be responsible for all of the obligations of the state bank including taxes and other  
 2215 liabilities created by law or incurred by it before becoming a federal savings institution to the same  
 2216 extent as though the conversion had not taken place.

2217 § 6.2-829. Conversion from state savings bank to state bank; conversion from state bank to state  
 2218 savings bank.

2219 A. A state savings bank may be converted into a state bank upon compliance with the procedure set  
 2220 forth in subsection A of § 6.2-1144.

2221 B. A state bank may be converted into a state savings bank by the amendment of its articles of  
 2222 incorporation in compliance with the procedure established by Title 13.1, provided that such conversion  
 2223 is approved in advance by the Commission. Prior to approving or disapproving a conversion, the  
 2224 Commission shall investigate the application to convert as if it were an application for a certificate of  
 2225 authority to begin a savings bank, and approval shall not be granted unless the applicant meets the  
 2226 standards established by § 6.2-1118. Within one year of the date of the conversion, the resulting state  
 2227 savings bank shall conform its assets and operations to the provisions of law regulating the operation of  
 2228 state savings banks. The Commission may grant such resulting state savings bank additional one-year  
 2229 periods, not to exceed a total of four additional years, in which to conform its assets and operations to  
 2230 the provisions of law regulating the operation of state savings banks.

2231 § 6.2-830. Conversion from stock association to bank; conversion from bank to stock association.

2232 A. A state stock association may be converted into a bank upon compliance with the procedure set  
 2233 forth in § 6.2-1144.

2234 B. A bank may be converted into a stock association by the amendment of its articles of  
 2235 incorporation in compliance with the procedure established by Title 13.1, provided that such conversion  
 2236 is approved in advance by the Commission. Prior to approving or disapproving a conversion, the  
 2237 Commission shall investigate the application to convert as if it was an application for a certificate of  
 2238 authority to begin a savings and loan business, and approval shall not be granted unless the applicant  
 2239 meets the standards established by § 6.2-1118. Within one year of the date of the conversion, the  
 2240 resulting stock association shall conform its assets and operations to the provisions of law regulating  
 2241 the operation of savings and loan associations. The Commission may grant such resulting stock  
 2242 association additional one-year periods, not to exceed a total of four additional years, in which to  
 2243 conform its assets and operations to the provisions of law regulating the operation of savings and loan  
 2244 associations.

2245 Article 5.

2246 Branches and Facilities.

2247 § 6.2-831. Establishment of branch banks; redesignation of main office.

2248 A. A bank may establish and operate one or more branch offices, and a bank may relocate a main  
 2249 or branch office, provided the bank applies to the Commission for authority to establish or relocate any  
 2250 such office. Applications shall be made in writing on a form prescribed by the Commission and shall be  
 2251 accompanied by the fee established pursuant to § 6.2-908.

2252 B. The Commission shall have 30 days from the date it receives a complete application in which to

2253 review a branch proposal or a proposed relocation. The review period may be extended for an  
2254 additional 30 days. The Commission may deny such an application if the Commission finds that a  
2255 proposal would have a detrimental effect on the applicant bank's safety and soundness or that it is  
2256 otherwise not in the public interest. A branch office that has been denied shall not be established and a  
2257 relocation that has been denied shall not be carried out. If the Commission does not issue a denial of a  
2258 branch proposal or a proposed relocation within 30 days, or 60 days if the review period is extended,  
2259 the proposed branch office or offices, or the proposed relocation, shall be authorized, and the branch or  
2260 branches may be established and operated, or the relocation may be completed.

2261 C. The office at which a bank begins business shall be designated initially as its main office.  
2262 Thereafter, the board of directors may redesignate as the main office any authorized office of the bank  
2263 in the Commonwealth. The bank shall notify the Commission of any such redesignation not later than 30  
2264 days before its effective date and confirm the redesignation to the Commission within 10 days of its  
2265 occurrence.

2266 D. A bank shall be subject to the prohibition in § 6.2-842 against establishing or maintaining a  
2267 branch in the Commonwealth on the premises or property of an affiliate if the affiliate engages in  
2268 commercial activities.

2269 E. The Commission may impose a civil penalty not exceeding \$2,000 upon any bank that it  
2270 determines, in proceedings commenced in accordance with the Commission's Rules, has violated the  
2271 provisions of this section.

2272 § 6.2-832. Establishment of electronic terminals.

2273 A. A bank may establish and operate electronic, computer, or similar terminals and may otherwise  
2274 provide for electronic fund transfers by its customers, provided (i) the bank complies with the Electronic  
2275 Fund Transfer Act (15 U.S.C. § 1693 et seq.) and Regulation E of the Federal Reserve Board and (ii) in  
2276 the case of any proposed terminal at which deposits are received or recorded or loan proceeds  
2277 disbursed, the bank files prior written notice of the proposal with the Commission on forms prescribed  
2278 by the Commission and pays a fee not to exceed \$350 per terminal.

2279 B. The Commission shall have 25 days from receipt of the notice to review the proposal. The  
2280 Commission may deny the proposal on grounds that the bank has failed to comply with federal  
2281 electronic fund transfer laws or regulations, the bank lacks the resources to operate the proposed  
2282 facilities successfully, or the proposal is not in the public interest. If the Commission does not issue a  
2283 denial within 25 days, the bank may establish the terminal or terminals.

2284 C. The notice required by clause (ii) of subsection A need not be given if (i) the terminal is on bank  
2285 premises or premises properly considered part of an authorized office of the bank or (ii) the terminal  
2286 does not receive or record deposits or disburse loan proceeds.

2287 D. An out-of-state bank, as defined in § 6.2-836, may establish and operate electronic terminals in  
2288 the Commonwealth, provided (i) the bank complies with all home state and federal laws applicable to  
2289 such terminals and (ii) in the case of any proposed terminal at which deposits are received or recorded  
2290 or loan proceeds disbursed, the bank furnishes to the Commission a copy of any notice or application  
2291 filed with the bank's home state supervisor or responsible federal banking agency, at the time such  
2292 notice or application is filed. The Commission may adopt regulations affecting electronic fund transfers  
2293 by banks if it finds such regulations necessary for the protection of the public interest.

2294 § 6.2-833. Bank agent for depository institution.

2295 A bank may act as the agent of any other depository institution in receiving deposits and providing  
2296 other services without being deemed a branch of such other depository institution.

2297 § 6.2-834. Operation of branch office under different name; civil penalty.

2298 A. No branch office shall be operated or advertised under any other name than that of the identical  
2299 name of the bank, unless (i) permission is first obtained from the Commission and (ii) the different name  
2300 shall contain or have added thereto language clearly indicating that it is a branch office and of which  
2301 bank it is an office.

2302 B. The Commission may impose a civil penalty not exceeding \$2,000 upon any bank that it  
2303 determines, in proceedings commenced in accordance with the Commission's Rules, has violated the  
2304 provisions of this section.

2305 § 6.2-835. Banking facilities in certain hospitals or federal areas.

2306 A. The Commission, when in its discretion banking facilities are required (i) for patients in, students  
2307 at, or employees of hospitals operated by the Veterans Administration or by the Commonwealth or (ii)  
2308 for members of the armed forces at any military or naval federal area in the Commonwealth, may  
2309 permit any bank that is authorized to do business in the Commonwealth to establish and operate such  
2310 banking facilities as are required in any such hospital or federal area.

2311 B. The banking facilities so established shall be operated in accordance with the laws of the  
2312 Commonwealth relating thereto. The Commission may permit only certain specified services to be  
2313 established and operated.

Article 6.  
Interstate Branching.

2314

2315

2316 § 6.2-836. Definitions.

2317 *As used in this article, unless a different meaning is required:*2318 "Acquisition of a branch" means the acquisition of a branch located in a host state, without  
2319 acquiring the bank of such branch.2320 "Affiliate" has the meaning assigned to it in 12 U.S.C. § 1841(k) of the Bank Holding Company Act  
2321 of 1956 (12 U.S.C. § 1841 et seq.), as amended.2322 "Bank" has the meaning assigned to it in 12 U.S.C. § 1813(a)(1) of the Federal Deposit Insurance  
2323 Company Act of 1956 (12 U.S.C. § 1811 et seq.), as amended.2324 "Bank holding company" has the meaning assigned to it in 12 U.S.C. § 1841(a) of the Bank Holding  
2325 Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended.2326 "Commercial activities" means activities in which a bank holding company, a financial holding  
2327 company, a national bank, or a national bank financial subsidiary may not engage under federal law.2328 "De novo branch" means a branch of a bank located in a host state which (i) is originally  
2329 established by the bank as a branch and (ii) does not become a branch of the bank as a result of the  
2330 acquisition of another bank or a branch of another bank, or the merger, consolidation, or conversion of  
2331 any such bank or branch.2332 "Financial holding company" has the meaning assigned to it in 12 U.S.C. § 1841(p) of the Bank  
2333 Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended.

2334 "Home state" means:

2335 1. With respect to a national bank, the state in which the main office of the bank is located;

2336 2. With respect to a state bank, the state by which the bank is chartered;

2337 3. With respect to a foreign bank, the state determined to be the home state of such foreign bank  
2338 under 12 U.S.C. § 3103(c).2339 "Host state" means a state, other than the home state of a bank, in which the bank maintains, or  
2340 seeks to establish and maintain, a branch.

2341 "Out-of-state bank" means a bank whose home state is a state other than the Commonwealth.

2342 "Out-of-state state bank" means a bank chartered under the laws of any state other than the  
2343 Commonwealth.

2344 "Virginia state bank" means a bank chartered under the laws of Virginia.

2345 § 6.2-837. Interstate branching by Virginia state banks.

2346 A. With the prior approval of the Commission, any Virginia state bank may establish and maintain a  
2347 de novo branch or acquire a branch in a state other than the Commonwealth.2348 B. A Virginia state bank desiring to establish and maintain a branch in another state under this  
2349 section shall file an application on a form prescribed by the Commission and pay the branch  
2350 application fee set forth in § 6.2-908. If the Commission finds that the applicant has the financial  
2351 resources sufficient to undertake the proposed expansion without adversely affecting its soundness and  
2352 that the laws of the host state permit the establishment of the branch, it may approve the application. In  
2353 acting on the application, the Commission shall consider the views of the state bank supervisor of the  
2354 host state where the branch is proposed to be located. The bank may establish the branch when it has  
2355 received the written approval of the Commission.

2356 § 6.2-838. Interstate branching.

2357 An out-of-state bank that does not already maintain a branch in the Commonwealth and that meets  
2358 the requirements of this article may establish and maintain a de novo branch in the Commonwealth.

2359 § 6.2-839. Interstate branching through the acquisition of a branch.

2360 An out-of-state bank that does not already maintain a branch in the Commonwealth and that meets  
2361 the requirements of this article may establish and maintain a branch in the Commonwealth through the  
2362 acquisition of a branch.

2363 § 6.2-840. Filing requirements.

2364 An out-of-state bank desiring to establish and maintain a de novo branch or to acquire a branch in  
2365 the Commonwealth shall submit to the Commission a copy of the application it files with its home state  
2366 supervisor or the responsible federal banking agency to establish or acquire such branch. Such  
2367 submission shall be made at the same time the application is filed by the out-of-state bank with such  
2368 home state supervisor or responsible federal banking agency. The out-of-state bank shall also comply  
2369 with the requirements of Article 17 (§ 13.1-757 et seq.) of the Virginia Stock Corporation Act and pay  
2370 any filing fee required by the Commission.

2371 § 6.2-841. Conditions for approval.

2372 No branch of an out-of-state bank may be established under this article unless:

2373 1. In the case of a de novo branch, the laws of the home state of the out-of-state bank permit  
2374 Virginia banks to establish and maintain de novo branches in that state under substantially the same

2375 *terms as set forth in this article.*

2376 2. *In the case of a branch to be established through the acquisition of a branch, the laws of the*  
2377 *out-of-state bank permit Virginia banks to establish and maintain branches in that state through the*  
2378 *acquisition of branches under substantially the same terms as set forth in this article.*

2379 § 6.2-842. *Powers.*

2380 A. *An out-of-state state bank that establishes and maintains one or more branches in the*  
2381 *Commonwealth under this article may conduct the same activities at such branch or branches that are*  
2382 *authorized under Virginia law for Virginia state banks, except to the extent such activities may be*  
2383 *prohibited by other laws, regulations, or orders applicable to the out-of-state state bank.*

2384 B. *A Virginia state bank may conduct the same activities at a branch outside the Commonwealth that*  
2385 *are permissible for a bank chartered by the host state where the branch is located, except to the extent*  
2386 *such activities are expressly prohibited by other laws, regulations, or orders applicable to the Virginia*  
2387 *state bank.*

2388 C. *A bank shall not establish or maintain a branch in the Commonwealth on the premises or*  
2389 *property of an affiliate if the affiliate engages in commercial activities.*

2390 § 6.2-843. *Examination; periodic reports; cooperative agreements; assessment of fees.*

2391 A. *The Commission may make such examinations of any branch established under this article by an*  
2392 *out-of-state state bank as the Commission may deem necessary to determine whether the branch is*  
2393 *operating in compliance with the laws of the Commonwealth and to ensure that the branch is being*  
2394 *operated in a safe and sound manner. The provisions of § 6.2-901 shall apply to such examinations.*

2395 B. *The Commission may require periodic reports from any out-of-state bank that maintains a branch*  
2396 *in the Commonwealth to the extent such reporting requirements (i) apply equally to similarly situated*  
2397 *banks having the Commonwealth as their home state and (ii) are not preempted by federal law. Such*  
2398 *reports shall be filed under oath with such frequency and in such scope and detail as may be*  
2399 *appropriate for the purpose of assuring continuing compliance with the provisions of this article.*

2400 C. *The Commission may enter into cooperative agreements with the appropriate state bank*  
2401 *supervisors and federal banking agencies for the periodic examination of any branch in the*  
2402 *Commonwealth of an out-of-state state bank, or any branch of a Virginia state bank in any host state,*  
2403 *and may accept such agencies' reports of examination and reports of investigation in lieu of conducting*  
2404 *its own examinations or investigations. The Commission may enter into joint enforcement actions with*  
2405 *other state bank supervisors and federal banking agencies having concurrent jurisdiction over any*  
2406 *branch of an out-of-state state bank or any branch of a Virginia state bank, or may take such actions*  
2407 *independently to carry out its responsibilities under this article and to assure compliance with the laws*  
2408 *of the Commonwealth.*

2409 D. *Out-of-state state banks may be assessed and, if assessed, shall pay supervisory and examination*  
2410 *fees in accordance with the laws of the Commonwealth and regulations of the Commission. Such fees*  
2411 *may be shared with other state and federal regulators in accordance with agreements between them and*  
2412 *the Commission.*

2413 § 6.2-844. *Enforcement.*

2414 *If the Commission determines that there is any violation of any law of the Commonwealth in the*  
2415 *operation of a branch of an out-of-state state bank, or that such branch is being operated in an unsafe*  
2416 *and unsound manner, the Commission shall have the authority to undertake such enforcement actions as*  
2417 *it would be permitted to take if the branch were a Virginia state bank.*

2418 § 6.2-845. *Additional branches.*

2419 *An out-of-state bank that has established or acquired a branch in the Commonwealth under this*  
2420 *article may establish or acquire additional branches in the Commonwealth to the same extent that any*  
2421 *bank, whose home state is the Commonwealth, may establish or acquire a branch in the Commonwealth*  
2422 *under applicable federal and state law.*

2423 § 6.2-846. *Regulations; fees.*

2424 *The Commission may adopt such regulations and may provide for the payment of such reasonable*  
2425 *application and administration fees as it finds necessary and appropriate in order to implement the*  
2426 *provisions of this article.*

2427 § 6.2-847. *Notice of subsequent merger or other transaction.*

2428 *An out-of-state state bank that maintains a branch in the Commonwealth under this article shall give*  
2429 *30 days' prior written notice of any merger, consolidation, or other transaction involving the bank*  
2430 *which would cause the Virginia branch to be maintained by another bank.*

2431 § 6.2-848. *Nonseverability.*

2432 *If any provision of this article is held to be invalid for any reason by a final order of any*  
2433 *appropriate Virginia or federal court, the invalidity shall cause the entire article to be invalid. Any*  
2434 *transaction that has been lawfully consummated pursuant to this article prior to a determination of*  
2435 *invalidity shall be unaffected by such determination.*

Article 7.  
Interstate Bank Mergers.

2436

2437

§ 6.2-849. Definitions.

2438

2439

As used in this article, unless a different meaning is required:

2440

"Bank" has the meaning assigned to it in 12 U.S.C. § 1813(a)(1) of the Federal Deposit Insurance Company Act of 1956 (12 U.S.C. § 1811 et seq.), as amended.

2441

"Home state" has the meaning assigned to it in § 6.2-836.

2442

"Host state" has the meaning assigned to it in § 6.2-836.

2443

"Interstate merger transaction" means:

2444

1. The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation to branches of the resulting bank; or

2445

2. The purchase of all, or substantially all, of the assets of a bank whose home state is different than the home state of the acquiring bank.

2446

"Out-of-state bank" has the meaning assigned to it in § 6.2-836.

2447

"Out-of-state state bank" has the meaning assigned to it in § 6.2-836.

2448

"Resulting bank" means a bank that has resulted from an interstate merger transaction under this article.

2449

"Virginia bank" means a bank whose home state is Virginia.

2450

"Virginia state bank" has the meaning assigned to it in § 6.2-836.

2451

§ 6.2-850. Authority to branch outside the Commonwealth by merger.

2452

A. With the prior approval of the Commission, any Virginia state bank may maintain and operate one or more branches in a state other than the Commonwealth pursuant to an interstate merger transaction in which the Virginia state bank is the resulting bank.

2453

B. The Virginia state bank shall file an application on a form prescribed by the Commission, pay the merger fee prescribed by § 6.2-908, and comply with the applicable provisions of Article 12 (§ 13.1-715.1 et seq.) of the Virginia Stock Corporation Act. If the Commission finds that (i) the proposed transaction will not be detrimental to the safety and soundness of the applicant, (ii) any new officers and directors of the resulting bank are qualified by character, experience, and financial responsibility to direct and manage the resulting bank, and (iii) the proposed merger is in the public interest, it may approve the interstate merger transaction and the operation of branches outside Virginia by the Virginia state bank.

2454

C. Such an interstate merger transaction may be consummated only after the applicant has received the Commission's written approval.

2455

§ 6.2-851. Interstate merger transactions and branching permitted.

2456

Virginia banks may merge with out-of-state banks under this article, and an out-of-state bank resulting from such an interstate merger transaction may maintain and operate the branches in the Commonwealth of a merged Virginia bank, provided the requirements of this article are met.

2457

§ 6.2-852. Filing requirements.

2458

Any out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Virginia bank shall submit to the Commission a copy of the application it files with the responsible federal banking agency to engage in the interstate merger transaction. Such submission shall be made at the same time the application is filed by the out-of-state bank with the responsible federal banking agency. All banks which are parties to any interstate merger transaction involving a Virginia bank shall comply with Article 12 (§ 13.1-715.1 et seq.) of the Virginia Stock Corporation Act, as applicable, and with other applicable state and federal laws. Any out-of-state bank resulting from an interstate merger transaction shall comply with Article 17 (§ 13.1-757 et seq.) of the Virginia Stock Corporation Act. The out-of-state bank shall pay any filing fee required by the Commission.

2459

§ 6.2-853. Conditions for interstate merger.

2460

An interstate merger transaction involving a Virginia bank shall not be consummated, and any out-of-state bank resulting from such a merger shall not operate any branch in the Commonwealth, if the Commission finds that the laws of the home state of any out-of-state bank involved in the interstate merger transaction do not permit interstate merger transactions or finds that the resulting out-of-state bank has not complied with all applicable requirements of any law of the Commonwealth.

2461

§ 6.2-854. Powers.

2462

A. An out-of-state state bank that establishes and maintains one or more branches in Virginia under this article may conduct the same activities at such branch or branches that are authorized under Virginia law for Virginia state banks, except to the extent such activities may be prohibited by other laws, regulations, or orders applicable to the out-of-state state bank.

2463

B. A Virginia state bank may conduct any activities at any branch outside the Commonwealth that are permissible for a bank chartered by the host state where the branch is located, except to the extent such activities are expressly prohibited by other laws, regulations, or orders applicable to the Virginia

2464

2465

2466

2497 *state bank.*

2498 § 6.2-855. *Examinations and periodic reports.*

2499 A. *The Commission may make such examinations of any branch of an out-of-state state bank located*  
 2500 *in the Commonwealth as the Commission may deem necessary to determine whether the branch is*  
 2501 *operating in compliance with the laws of the Commonwealth and to ensure that the branch is being*  
 2502 *operated in a safe and sound manner. The provisions of § 6.2-901 shall apply to such examinations.*

2503 B. *The Commission may require periodic reports from any out-of-state bank that maintains a branch*  
 2504 *in the Commonwealth to the extent such reporting requirements (i) apply equally to similarly situated*  
 2505 *banks having the Commonwealth as their home state and (ii) are not preempted by federal law. Such*  
 2506 *reports shall be filed under oath with such frequency and in such scope and detail as may be*  
 2507 *appropriate for the purpose of assuring continuing compliance with the provisions of this article.*

2508 § 6.2-856. *Cooperative agreements; assessment of fees.*

2509 A. *The Commission may enter into cooperative agreements with the appropriate state bank*  
 2510 *supervisors and federal banking agencies for the examination of any branch in the Commonwealth of an*  
 2511 *out-of-state state bank, or any branch of a Virginia state bank in any host state, and may accept such*  
 2512 *agencies' reports of examination and reports of investigation in lieu of conducting its own examinations*  
 2513 *or investigations. The Commission may enter into joint actions with other state bank supervisors and*  
 2514 *federal banking agencies having concurrent jurisdiction over any branch of an out-of-state state bank or*  
 2515 *any branch of a Virginia state bank, or may take such actions independently to carry out its*  
 2516 *responsibilities under this article and to assure compliance with the laws of the Commonwealth.*

2517 B. *Out-of-state state banks may be assessed and, if assessed, shall pay supervisory and examination*  
 2518 *fees in accordance with the laws of the Commonwealth and regulations of the Commission. Such fees*  
 2519 *may be shared with other state and federal regulators in accordance with agreements between them and*  
 2520 *the Commission.*

2521 § 6.2-857. *Enforcement.*

2522 *If the Commission determines that there is any violation of any law of the Commonwealth in the*  
 2523 *operation of a branch of an out-of-state state bank, or that such branch is being operated in an unsafe*  
 2524 *and unsound manner, the Commission shall have the authority to undertake such enforcement actions as*  
 2525 *it would be permitted to take if the branch were a Virginia state bank.*

2526 § 6.2-858. *Regulations; fees.*

2527 *The Commission may adopt such regulations, and may provide for the payment of such reasonable*  
 2528 *application and administration fees, as it finds necessary and appropriate in order to implement the*  
 2529 *provisions of this article.*

2530 § 6.2-859. *Notice of subsequent merger.*

2531 *An out-of-state state bank that maintains a branch in the Commonwealth under this article shall give*  
 2532 *30 days' prior written notice of any merger, consolidation, or other transaction involving the bank that*  
 2533 *would cause the branch in the Commonwealth to be maintained by another bank.*

2534 *Article 8.*

2535 *Directors and Officers; Dividends.*

2536 § 6.2-860. *Bank to be managed by board of directors; number of directors.*

2537 *The affairs of every bank incorporated under the laws of the Commonwealth shall be managed by a*  
 2538 *board of directors. The board shall consist of not less than five individuals.*

2539 § 6.2-861. *Application of Virginia Stock Corporation Act.*

2540 *The provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.) relating to officers of a*  
 2541 *corporation shall apply to banks except that, if a bank shall not appoint a secretary, the cashier of a*  
 2542 *bank shall be deemed to be the secretary of the corporation.*

2543 § 6.2-862. *Directors to own stock in bank.*

2544 A. *As used in this section, "bank holding company" means (i) a bank holding company as defined in*  
 2545 *§ 6.2-800 or (ii) any corporation organized under the laws of the Commonwealth and doing business in*  
 2546 *the Commonwealth that owns all of the capital stock of one bank, except those shares issued as*  
 2547 *directors' qualifying shares, and at least 66 and two-thirds percent of the assets of the holding company,*  
 2548 *computed on a consolidated basis, consists of assets held by such bank and controlled subsidiaries of*  
 2549 *such bank.*

2550 B. *Every director of a bank incorporated under the laws of the Commonwealth shall be the sole*  
 2551 *owner of, and have in his personal possession or control, shares of stock in such bank having a book*  
 2552 *value of not less than \$5,000, calculated as of the last business day of the calendar year immediately*  
 2553 *preceding the election of the director. So long as a director shall successively be reelected, there shall*  
 2554 *be no requirement to increase the shares of stock owned according to this section. Such stock shall be*  
 2555 *unpledged and unencumbered at the time such director becomes a director and during the whole of his*  
 2556 *term as such.*

2557 C. *When a bank is controlled by a bank holding company, a director may comply with the*

2558 requirements of subsection B for each bank of which he is a director by ownership, in similar manner,  
 2559 of shares of capital stock of the bank holding company having an aggregate book value equal to the  
 2560 book value of shares of bank stock that he would be obligated to own under subsection B.

2561 D. A director of a bankers' bank shall not be required to own or control any shares of stock of such  
 2562 bankers' bank or any shares of stock of a bank holding company that controls such bankers' bank.

2563 E. Any director violating the provisions of this section shall, immediately, vacate his office.

2564 F. The requirements of this section shall not apply to any person duly elected a director of a bank  
 2565 prior to July 1, 1995, or so long as such person shall successively be reelected a director, and as to  
 2566 such person the requirements of the law prior to such date shall apply.

2567 § 6.2-863. Oaths of directors.

2568 A. Every director of a bank incorporated under the laws of the Commonwealth shall, within 30 days  
 2569 after his election or reelection, take and subscribe to an oath that:

2570 1. He will diligently and honestly perform his duties as director; and

2571 2. He is the owner and has in his personal possession or control, standing in his sole name on the  
 2572 books of the bank or bank holding company as defined in subsection A of § 6.2-862, unpledged and  
 2573 unencumbered in any way, shares of stock of the bank of which he is a director or, if a bank is  
 2574 controlled by a bank holding company as defined in § 6.2-800, shares of stock of the bank holding  
 2575 company, having a par value of not less than the amounts respectively prescribed by § 6.2-862, and, in  
 2576 case of reelection or reappointment, that during the whole of his immediate previous term as a director,  
 2577 the stock was not at any time pledged or in any other manner encumbered or hypothecated to secure a  
 2578 loan.

2579 B. The oath subscribed to by such director, certified by the officer before whom it is taken, shall be  
 2580 transmitted by the cashier of such bank to the Commission. Any director who fails for a period of 30  
 2581 days after his election or appointment to take the oath as required by this section shall automatically  
 2582 forfeit his office.

2583 § 6.2-864. Report to Commission of election of director.

2584 Within 60 days following the election or reelection of any person as a director of a bank, the bank  
 2585 shall furnish to the Commission such information as the Commission shall from time to time prescribe  
 2586 regarding the director's personal character, integrity, financial condition, and personal and business  
 2587 background. The report shall be signed under oath by the director and a designated officer of the bank.  
 2588 Any person knowingly making a false statement in such a report is guilty of perjury and punishable as  
 2589 provided in § 18.2-434.

2590 § 6.2-865. Removal of director or officer; appeals; penalty.

2591 A. Whenever any director or officer of a bank doing business in the Commonwealth shall continue (i)  
 2592 to violate any law relating to such bank or (ii) unsafe or unsound practices in conducting the business  
 2593 of such bank, after the director or officer, and the board of directors of the bank of which he is a  
 2594 director or officer, have been warned in writing by the Commissioner to discontinue such violation of  
 2595 law or such unsafe or unsound practices, the Commissioner shall certify the facts to the Commission.  
 2596 The Commission shall thereupon enter an order requiring such director or officer to appear before the  
 2597 Commission, within not less than 10 days, to show cause why he should not be removed from office and  
 2598 thereafter restrained from participating in any manner in the management of such bank. Such order  
 2599 shall contain a brief statement of the facts certified to the Commission by the Commissioner. A copy of  
 2600 such order shall be served upon such director or officer, and a copy thereof shall be sent by registered  
 2601 mail to each director of the bank affected.

2602 B. If, after granting the accused director or officer a reasonable opportunity to be heard, the  
 2603 Commission shall find that he has continued to violate any law relating to such bank or has continued  
 2604 unsafe or unsound practices in conducting the business of such bank after he and the board of directors  
 2605 of the bank of which he is a director or officer have been warned as provided in subsection A, the  
 2606 Commission shall enter an order removing such director or officer from office and restraining such  
 2607 director or officer from thereafter participating in any manner in the management of such bank. A copy  
 2608 of such order shall be served upon such director or officer. A copy of such order shall also be served  
 2609 upon the bank of which he is a director or officer. Upon such removal, the director or officer shall  
 2610 cease to be a director or officer of such bank and thereafter shall cease to participate in any manner in  
 2611 the management of such bank.

2612 C. Any director or officer aggrieved by (i) an order of the Commission entered under subsection B  
 2613 or (ii) an order refusing to remove another director or officer from office and to restrain him from  
 2614 participating in the management of the bank, shall have, of right, an appeal to the Supreme Court of  
 2615 Virginia within 60 days from the date of the order.

2616 D. Any director or officer removed and restrained under the provisions of subsection B from  
 2617 participating in any manner in the management of any bank of which he is a director or officer, and  
 2618 who thereafter participates in any manner in the management of such bank except as a stockholder

2619 *therein, is guilty of a Class 6 felony.*

2620 *§ 6.2-866. Meetings of board of directors.*

2621 *The board of directors of every bank shall hold meetings at least once in each calendar month. At*  
 2622 *each meeting of the board, a majority of the whole board shall be necessary for the lawful transaction*  
 2623 *of business. Notwithstanding the foregoing, (i) the shareholders, by bylaw, may fix any number not less*  
 2624 *than five as a quorum and (ii) the Commission may allow less frequent meetings, but not less often than*  
 2625 *quarterly.*

2626 *§ 6.2-867. Discount by officer, director, or employee of paper refused by bank.*

2627 *No officer, director, or employee of a bank may purchase or discount any note or paper at a rate of*  
 2628 *interest in excess of what such bank might charge knowing that such bank has refused to purchase or*  
 2629 *discount such paper.*

2630 *§ 6.2-868. Bonds required of officers and employees; blanket bond.*

2631 *A. The board of directors of every bank shall require bonds from all of the active officials and*  
 2632 *employees of such corporation. In lieu of such bonds, the board may obtain one or more blanket bonds.*  
 2633 *A bank holding company may obtain a blanket bond covering all affiliate banks within the holding*  
 2634 *company. The surety on every bond shall be a bonding or surety company authorized to transact*  
 2635 *business in the Commonwealth. The penalty of any such bond shall be increased whenever in the*  
 2636 *opinion of the Commission it is necessary for the protection of the public interest.*

2637 *B. If a bank is unable to obtain the bond required by this section, it shall immediately notify the*  
 2638 *Commission, which may then direct the bank to have an audit performed at its expense by an*  
 2639 *independent certified public accounting firm. The bank shall obtain blanket bond coverage as soon as*  
 2640 *such coverage is available. Failure to obtain blanket bond coverage may be cause for action by the*  
 2641 *Commission as provided by § 6.2-906.*

2642 *§ 6.2-869. Dividends; surplus; undivided profits.*

2643 *A. The board of directors of any bank may declare a dividend of so much as the board shall judge*  
 2644 *expedient of the net undivided profits of the bank, after providing for all expenses, losses, interest and*  
 2645 *taxes accrued, or due by such bank. Before any such dividend is declared, any deficit in capital funds*  
 2646 *originally paid in shall have been restored by earnings to their initial level, and no dividend shall be*  
 2647 *declared or paid by any bank which would impair the paid-in capital of the bank.*

2648 *B. To ascertain the net undivided profits before any dividend shall be declared, all debts due to such*  
 2649 *bank on which interest is past due and unpaid for a period of 12 months, unless the same are well*  
 2650 *secured and in process of collection by law, shall be deducted from the undivided profits in addition to*  
 2651 *all expenses, losses, interest and taxes accrued, and the balance shall be deemed to be the net undivided*  
 2652 *profits.*

2653 *C. Notwithstanding the foregoing provisions of this section, the Commission may limit or approve the*  
 2654 *payment of dividends by the board of directors of any bank when the Commission determines that such*  
 2655 *limitation or approval is warranted by the financial condition of the bank.*

2656 *Article 9.*

2657 *Investments and Loans.*

2658 *§ 6.2-870. Limitation of amount invested in bank premises.*

2659 *A. No bank, without the approval of the Commission, shall invest in its bank building and premises,*  
 2660 *property held for future accommodation, or in stock or other obligations of any corporation holding title*  
 2661 *to premises of the bank, if the aggregate of such investments and loans, together with the amount of any*  
 2662 *indebtedness of such corporation, 50 percent or more of the stock of which is owned by the bank, will*  
 2663 *exceed the greater of (i) 50 percent of the capital stock, surplus, and undivided profits of the bank or*  
 2664 *(ii) 100 percent of the capital stock of the bank. If, subsequent to any investment or loan, the surplus or*  
 2665 *undivided profits of any such bank are diminished by losses so that the investments or loans amount to*  
 2666 *more than the greater of (a) 50 percent of its paid-in capital stock and its remaining surplus and*  
 2667 *undivided profits or (b) 100 percent of the capital stock, the bank shall not pay dividends without the*  
 2668 *permission of the Commission until such investments or loans are equal to or less than the greater of 50*  
 2669 *percent of the capital stock, surplus, and undivided profits, or 100 percent of the capital stock of the*  
 2670 *bank.*

2671 *B. In computing the bank's investment in depreciable property, the initial price or cost may be*  
 2672 *reduced by reasonable depreciation.*

2673 *C. The Commission shall not in any event approve investments and loans in excess of the foregoing*  
 2674 *if the aggregate amount thereof would exceed 60 percent of the bank's capital stock, surplus, and*  
 2675 *undivided profits. The Commission in approving such excess investments may impose, as a condition of*  
 2676 *such approval, restrictions upon dividends or other restrictions upon the bank. The restrictions shall*  
 2677 *expire automatically when the investment of the bank in building premises shall no longer exceed the*  
 2678 *greater of (i) 50 percent of the capital stock, surplus, and undivided profits of the bank or (ii) 100*  
 2679 *percent of the capital stock.*

- 2680 § 6.2-871. *Investment in stock or securities of bank service corporations.*
- 2681 A. *As used in this section, "bank service corporation" means a corporation engaged primarily in*
- 2682 *rendering services, other than the renting of the bank premises or the furnishing of furniture or fixtures,*
- 2683 *to two or more banks.*
- 2684 B. *A bank may acquire, own, and hold the stock and other securities or obligations of a bank service*
- 2685 *corporation in an amount not to exceed 10 percent of the bank's capital stock and permanent surplus. A*
- 2686 *bank may not invest in any bank service corporation unless it uses or intends to use the services of the*
- 2687 *bank service corporation. A bank may not invest in more than one bank service corporation without the*
- 2688 *consent of the Commission.*
- 2689 C. *Stock in a Federal Reserve Bank shall not be considered stock of a bank service corporation*
- 2690 *within the meaning of this section.*
- 2691 § 6.2-872. *For what purpose banks may purchase, hold, and convey real estate.*
- 2692 A. *In addition to the authority provided in § 6.2-873, every bank incorporated under the laws of the*
- 2693 *Commonwealth may purchase, hold, and convey the following real estate for the purposes stated and for*
- 2694 *no other:*
- 2695 1. *Real estate that is desirable and prudent for its present or future accommodation in the*
- 2696 *transaction of its business;*
- 2697 2. *Real estate that is mortgaged or otherwise encumbered to it in good faith by way of security for*
- 2698 *debts contracted;*
- 2699 3. *Real estate that is conveyed to it in satisfaction of debts previously contracted in the course of its*
- 2700 *dealings; and*
- 2701 4. *Real estate it purchased at sales under judgments, decrees, mortgages, or deeds of trust held by it,*
- 2702 *in whole or in part, or purchased to secure debts due to it. No bank shall possess any real estate that is*
- 2703 *encumbered by a mortgage or other encumbrance, or hold the title to and possess any real estate*
- 2704 *conveyed to it in satisfaction of debt or purchased by it for the protection of obligations secured*
- 2705 *thereby, for a longer period than 10 years without the written approval of the Commission. If within*
- 2706 *such 10-year period, a bank shall have reduced upon its books the asset value of such mortgage, deed*
- 2707 *of trust, or real estate to the nominal sum of one dollar, it may thereafter continue to hold and own the*
- 2708 *same indefinitely without the approval of the Commission.*
- 2709 B. *Nothing in this section shall affect the validity of the title to any such real estate conveyed or*
- 2710 *transferred by a bank.*
- 2711 § 6.2-873. *Additional permissible investments in real estate.*
- 2712 A. *In addition to the ownership of real estate permitted in § 6.2-872, a bank may invest:*
- 2713 1. *In real estate (i) for the purpose of producing income or for inventory and sale or (ii) for*
- 2714 *improvement, including the erection of buildings thereon, for sale or rental purposes. The bank may*
- 2715 *hold, sell, lease, operate, or otherwise exercise the rights of an owner of any such property; and*
- 2716 2. *In the stock or other securities or obligations of a controlled subsidiary corporation under*
- 2717 *§ 6.2-885 or 6.2-886 formed or utilized for the purposes in subdivision 1.*
- 2718 B. *Unless specifically authorized by the Commissioner:*
- 2719 1. *A bank shall not invest more than five percent in the aggregate of its assets in the investments*
- 2720 *authorized in subdivisions A 1 and A 2.*
- 2721 2. *A bank shall not invest and lend in any one project an amount in excess of the loan limit to one*
- 2722 *borrower as provided in § 6.2-875.*
- 2723 § 6.2-874. *Prohibited uses of bank's own stock; other investments or loans.*
- 2724 A. *No bank shall:*
- 2725 1. *Acquire or own its own stock except to protect itself against loss from debts previously contracted,*
- 2726 *in which case the stock shall be disposed of within 12 months after it is acquired, and except as herein*
- 2727 *permitted;*
- 2728 2. *Make loans collaterally secured by the stock of the bank, except that this section shall not affect*
- 2729 *the validity of any such security agreement between the bank and its borrower; or*
- 2730 3. *Invest any of its funds in:*
- 2731 a. *Shares of stock of any other corporation;*
- 2732 b. *Any security of a limited liability company; or*
- 2733 c. *Any notes or other obligations that are secured by real estate on which the bank is prohibited by*
- 2734 *§ 6.2-878 from making any loans secured thereby.*
- 2735 B. *The prohibitions in subsection A shall not prevent any bank from:*
- 2736 1. *Acquiring any such stock, notes, or other obligations to protect itself or any fund in its custody or*
- 2737 *possession against loss from debts theretofore contracted;*
- 2738 2. *Acquiring, owning, and holding stock of a building corporation or security of a limited liability*
- 2739 *company of the character and to the amount provided by § 6.2-870;*
- 2740 3. *Acquiring, owning, and holding stock of an agricultural credit corporation organized under the*

2741 laws of the Commonwealth, provided that the total amount of such stock shall not exceed 20 percent of  
 2742 the amount of the capital stock of the bank actually paid in and unimpaired, plus the amount of its  
 2743 unimpaired surplus fund;

2744 4. Acquiring, owning, and holding stock of the Federal National Mortgage Association, the  
 2745 Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

2746 5. Acquiring, holding, and owning stock in any corporations or securities of limited liability  
 2747 companies which have as their purpose the operation of parking lots or parking garages, provided that  
 2748 no bank shall own, at any one time, stock in such corporations exceeding two percent of the amount of  
 2749 the capital stock of such bank actually paid in and unimpaired, plus the amount of its unimpaired  
 2750 surplus fund;

2751 6. Acquiring, owning, and holding stock of a small business investment company as defined by the  
 2752 Federal Small Business Investment Act of 1958;

2753 7. Acquiring, owning, and holding stock of an industrial development company organized under the  
 2754 provisions of the Virginia Industrial Development Corporation Act (§ 13.1-981 et seq.);

2755 8. Acquiring, owning, and holding stock of a bank service corporation or security of a controlled  
 2756 subsidiary corporation, subject to § 6.2-871 or 6.2-885, or from investing in a limited liability company,  
 2757 provided such investment conforms to § 6.2-871 or 6.2-885;

2758 9. Acquiring, owning, and holding stock of the Student Loan Marketing Association, a corporation  
 2759 organized under the Higher Education Act of 1965, as amended;

2760 10. Acquiring, owning, and holding stock of a "clearing corporation" as defined in § 8.8A-102;

2761 11. Acquiring, owning, and holding stock of a trust subsidiary as defined in § 6.2-1000;

2762 12. Investing up to four percent of its capital and surplus, including undivided profits, in shares of  
 2763 any bankers' bank organized under § 6.2-809 or in any bank holding company wherein the ownership of  
 2764 shares in such bank holding company is restricted to (i) financial institutions which have or are eligible  
 2765 for insurance of deposits by a federal agency or (ii) a financial institution holding company as defined  
 2766 in § 6.2-700 or a savings institution holding company as defined in § 6.2-1100;

2767 13. Acquiring its own stock, with the book value of all such stock held not to exceed in the  
 2768 aggregate five percent of the book value of all shares issued and outstanding, including capital, surplus,  
 2769 and undivided profits as of the time of the purchase being made. In computing such capital surplus and  
 2770 undivided profits for purposes of this section, amounts received for resale of any repurchased stock shall  
 2771 be added back to capital, surplus, and undivided profits for purposes of computation of the five percent  
 2772 limitation. Such purchase may be without the written consent of the Commission, unless the Commission  
 2773 or Commissioner has previously notified the bank in writing that it may not utilize this subdivision until  
 2774 further notice. The Commission may further allow purchases of such stock in excess of such five percent  
 2775 criterion if the Commission finds that the purchase (i) will not impair the safety and solvency of the  
 2776 bank and (ii) is otherwise appropriate. The Commission may require the divestiture of any shares held if  
 2777 deemed necessary and appropriate;

2778 14. Acquiring, owning, and holding, subject to such conditions as the Commissioner may prescribe,  
 2779 shares of investment companies;

2780 15. Acquiring, owning, and holding, subject to such conditions as the Commissioner may prescribe,  
 2781 shares of stock in a community development corporation;

2782 16. Acquiring, owning, and holding shares of the Federal Agricultural Mortgage Corporation; or

2783 17. Acquiring, owning, and holding shares of a Federal Home Loan Bank.

2784 C. The provisions of this section shall not be construed to require a bank to dispose of any preferred  
 2785 stocks lawfully acquired as an investment prior to January 1, 1940.

2786 § 6.2-875. Limitations on obligations of borrowers.

2787 A. As used in this section:

2788 "Installment consumer paper" shall include installment notes of up to 10 years' duration for the  
 2789 purchase of unimproved real property.

2790 "Obligation" means the direct liability of the maker or acceptor of the paper discounted with or sold  
 2791 to a bank and the liability of the endorser, drawer, or guarantor who obtains a loan from or discounts  
 2792 paper with or sells paper under his guaranty to such bank. "Obligation" shall include:

2793 1. In the case of obligations of a corporation or a limited liability company, all obligations of all  
 2794 subsidiaries thereof in which the corporation or limited liability company owns or controls a majority  
 2795 interest; and

2796 2. Any liability of the bank under a letter of credit, other than a letter of credit arising out of  
 2797 transactions involving the importation or exportation of goods or the domestic shipment of goods, except  
 2798 to the extent (i) the bank has a binding participation of another bank, organized under the laws of the  
 2799 Commonwealth or another state or the United States, or a written commitment by another such bank to  
 2800 assume primary liability therefor or (ii) such bank issuing the letter of credit has in its possession  
 2801 money on deposit to the credit of such customer or securities or assets readily convertible into cash with

2802 which to honor such letter of credit.

2803 B. Subject to the exceptions set forth in subsections D, E, F, and I, the total obligations of any  
2804 person, including, with respect to a partnership, as provided in subsection C, the partners having a five  
2805 percent or greater interest in either the income or capital of a partnership other than limited partners,  
2806 to any bank shall at no time exceed 15 percent of the sum of the capital, surplus, and loan loss reserve  
2807 of such bank.

2808 C. For the purposes of this section:

2809 1. The obligation of partners in the partnership and the partnership shall not be combined with each  
2810 other except if (i) the purpose for which the obligation of any partner was incurred or utilized relates to  
2811 the partnership or the purposes of the partnership, including acquisition of an interest in the  
2812 partnership, such obligation shall be combined with the obligation of the partnership or (ii) the primary  
2813 source of repayment of a partner's individual obligation is the partnership or funds therefrom, the  
2814 obligation of the partnership shall be combined with the obligation of such partner, other than a limited  
2815 partner or partner with less than five percent interest, and the limitation specified herein shall apply to  
2816 the combined obligations of each such partner and the partnership. Except in the two instances specified  
2817 in clauses (i) and (ii), the individual liability of the partner shall not be treated as an obligation of the  
2818 individual, and the obligations of partner as individual guarantor on partnership obligations shall not  
2819 be treated as an obligation of the individual for purposes of computation hereunder when, in either  
2820 case, the bank has a certificate of a responsible officer, designated by the board of directors for this  
2821 purpose, stating that the responsibility of the partnership for each obligation has been evaluated and the  
2822 bank is relying primarily upon such partnership for the payment of such indebtedness; and

2823 2. There may be counted as part of the surplus (i) the undivided profits as of the date of the most  
2824 recent call statement and (ii) capital notes and debentures, the issuance of which has been approved by  
2825 the Commission, outstanding as of said date, and consisting of debt obligations subordinate to all other  
2826 contractual liabilities of the bank.

2827 D. The following kinds of obligations shall not be subject to any limitation, except as expressly  
2828 stated in subdivision 20:

2829 1. Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing  
2830 values;

2831 2. Obligations arising out of the discount of commercial or business paper actually owned by the  
2832 person, partnership, association, limited liability company, or corporation negotiating the same;

2833 3. Obligations drawn in good faith against actually existing values and secured by goods or  
2834 commodities in process of shipment;

2835 4. Obligations in the form of banker's acceptances of other banks of the kind described in section  
2836 thirteen of the Federal Reserve Act;

2837 5. Obligations of the United States, the Commonwealth, or any political subdivision of the  
2838 Commonwealth, including sanitary or public facilities districts;

2839 6. Obligations fully guaranteed or insured by a state or by a state authority for the payment of the  
2840 obligation of which the faith and credit of the state is pledged;

2841 7. First mortgage real estate loans that are insured by the Federal Housing Administrator;

2842 8. Obligations guaranteed as to principal and interest by the United States;

2843 9. Loans in which the Small Business Administration or a federal reserve bank has definitely agreed  
2844 or committed itself to participate, to the extent of such participation;

2845 10. Obligations guaranteed by the Small Business Administration or Farmers Home Administration,  
2846 to the extent of such guaranty;

2847 11. Loans that the Federal Commodity Credit Corporation has definitely agreed to purchase;

2848 12. Direct obligations of, and obligations guaranteed by, the Export-Import Bank;

2849 13. Loans guaranteed by a federal guaranteeing agency pursuant to the Defense Production Act of  
2850 1950;

2851 14. Bonds and notes of the Federal National Mortgage Association;

2852 15. Bonds, debentures, and other similar obligations of Federal Land Banks, Federal Intermediate  
2853 Credit Banks, or Banks for Cooperatives issues pursuant to acts of Congress;

2854 16. Obligations of the Federal Financing Bank, the Student Loan Marketing Association, the Federal  
2855 Home Loan Mortgage Corporation, the National Credit Union Administration, Farm Credit Banks, the  
2856 Government National Mortgage Association, or the Commodity Credit Corporation;

2857 17. Time deposits in, or obligations issued by, a Federal Home Loan Bank;

2858 18. Repurchase agreements of obligations authorized by this subsection;

2859 19. Obligations of any person, secured by not less than a like amount of bonds or notes or other  
2860 evidences of indebtedness of the United States or of the Commonwealth;

2861 20. Obligations as endorser or guarantor of installment consumer paper that carry a full or limited  
2862 endorsement or guarantee of the person transferring the same when the bank has a certificate of a

2863 responsible officer, designated by its board of directors for that purpose, stating that the responsibility  
2864 of the maker of such obligation has been evaluated and the bank is relying primarily upon such maker  
2865 for the payment of such obligation. In such case the limitations of this section as to the obligations of  
2866 the maker shall be the sole applicable loan limitation; and

2867 21. Obligations secured by the pledge or assignment of certificates of deposit or saving certificates  
2868 of the lending bank, to the extent of the principal amount of such certificates so pledged or assigned.

2869 E. The following kinds of obligations shall be subject to a limitation of 30 percent of such capital  
2870 and surplus:

2871 1. Obligations as endorser or guarantor of notes, other than commercial or business paper excepted  
2872 under subdivision D 2 having a maturity of not more than six months, and owned by the person  
2873 endorsing and negotiating the same;

2874 2. Obligations of any person in the form of notes or drafts secured by shipping documents or  
2875 instruments (i) transferring or securing title covering livestock or (ii) giving a lien on livestock when the  
2876 market value of the livestock securing the obligations is not at any time less than 115 percent of the  
2877 amount by which the obligations exceed 15 percent of such capital and surplus; and

2878 3. Obligations secured by bonds or notes of the United States, or bonds of the Commonwealth or any  
2879 of its political subdivisions, if the face value thereof is at least equal to the excess of the obligations  
2880 over 15 percent of such capital and surplus.

2881 F. Nonrenewable obligations having not more than 10 months to run consisting of notes or drafts  
2882 secured by shipping documents, warehouse receipts, or similar documents creating a security interest in  
2883 readily marketable, nonperishable, staple commodities, insured to the extent that insurance is  
2884 customarily required, shall be subject to a sliding scale limitation up to 50 percent of such capital,  
2885 surplus, and undivided profits. The sliding scale limitation shall require that when the face amount of  
2886 the obligation exceeds 15 percent of such capital and surplus by any number of percentage points up to  
2887 35, the market value of the security for the obligation shall exceed the face amount of the obligation by  
2888 at least the same number of percentage points.

2889 G. The Commission shall adopt necessary regulations to require entities that would otherwise be  
2890 treated as separate entities to be treated as related for the purposes of compelling reporting not more  
2891 frequently than quarterly, to the Commission of the aggregate obligations of such parties to the bank.  
2892 For the purposes of this subsection:

2893 1. The Commission may treat as related parties individuals that are in the same household or that  
2894 are the parents, grandparents, children, or grandchildren of each other whether or not in the same  
2895 household;

2896 2. Any person owning as much as 34 percent of stock of a corporation or being an officer or  
2897 director of such corporation may be treated as related to such corporation;

2898 3. Any person entitled to a share of the profits and losses of or distributions from a limited liability  
2899 company, or who is a manager of a manager-managed limited liability company or a member of a  
2900 member-managed limited liability company, may be treated as related to the limited liability company;  
2901 and

2902 4. Any person having an interest in income or capital of a partnership may be treated as a related  
2903 party.

2904 H. All loans made by a bank in excess of 15 percent of its capital and surplus shall be approved by  
2905 the board of directors or the executive committee of the bank by resolution recorded in the bank's  
2906 minute book.

2907 I. Notwithstanding the limitations in this section, the Commission may by regulation authorize state  
2908 banks to make loans to one borrower in such amounts as may be authorized under any lending limit  
2909 laws applicable to national banks.

2910 § 6.2-876. Loans to executive officers or directors.

2911 A. The maximum amount of loans and other extensions of credit a bank may make to any of its  
2912 executive officers or directors, and the conditions and procedures for approval of such extensions of  
2913 credit, shall be governed by Federal Reserve Board Regulation O, 12 C.F.R. Part 215, whether or not  
2914 the bank is a member of the Federal Reserve System.

2915 B. The aggregate amount of a bank's extensions of credit to its executive officers or directors, and  
2916 their interests, shall not be excessive. The Commission shall adopt such regulations as may be required  
2917 to prevent excessive aggregate amounts of extensions of credit by a bank to such persons and their  
2918 interests.

2919 § 6.2-877. Overdrafts by bank officer or director.

2920 No bank shall pay an overdraft of an executive officer or director of the bank on an account at the  
2921 bank unless the payment of funds is made in accordance with (i) a written, preauthorized,  
2922 interest-bearing extension of credit plan that specifies a method of repayment or (ii) a written,  
2923 preauthorized transfer of funds from another account of the account holder at the bank. This prohibition

2924 does not apply to the payment of inadvertent overdrafts on an account in an aggregate amount of  
 2925 \$1,000 or less if (a) the account is not overdrawn for more than five business days and (b) the member  
 2926 bank charges the executive officer or director the same fee charged any other customer of the bank in  
 2927 similar circumstances.

2928 § 6.2-878. Loans secured by real estate generally.

2929 A. As used in this section, "loan secured by real estate" means an obligation executed or assumed by  
 2930 the borrower that is secured by mortgage, deed of trust, or similar instrument, encumbering real estate  
 2931 that is owned by the borrower and upon which the bank relies as the principal security for the loan.

2932 B. No bank shall make any loan secured by real estate when such loan, together with all prior liens  
 2933 or encumbrances on such real estate, exceeds 90 percent of the appraised value of the real estate  
 2934 securing such loan.

2935 C. The appraisals necessitated by this section shall be required if the loan shall equal or exceed an  
 2936 amount established from time to time by the Commissioner. In establishing such amount, the  
 2937 Commissioner shall take into consideration the requirements imposed on banks under applicable federal  
 2938 regulations. Such appraisals shall be in writing, signed by the appraisers, and shall be retained in the  
 2939 files of the bank, subject to examination of bank examiners. The appraisers so appointed shall be  
 2940 experienced persons competent to appraise real estate in the locality where the real estate is located.

2941 D. Any bank may make loans secured by real estate that do not comply with the limitations and  
 2942 restrictions in this section if the total unpaid amount of such loans, exclusive of the loans that  
 2943 subsequently comply with such limitations and restrictions, does not exceed 10 percent of the total  
 2944 amount of loans secured by real estate.

2945 E. The provisions of this section relating to ratio of loan to appraised value and appraisal shall not  
 2946 apply if:

2947 1. The real estate security is taken solely as an abundance of caution on terms which are not more  
 2948 favorable than they would be in absence of such a lien on real estate;

2949 2. A real estate security conveyance is taken by or ancillary to the assignment of lease obligations  
 2950 upon which the bank is relying primarily and prudently;

2951 3. A subsequent transaction results from an existing extension of credit providing (i) that the  
 2952 borrower has performed satisfactorily, (ii) there is no advance of new money, except as formerly agreed,  
 2953 (iii) the credit standing of the borrower is not deteriorating, and (iv) there is no obvious and noticeable  
 2954 deterioration of marketing conditions or the physical assets which provide collateral security to the  
 2955 bank; or

2956 4. A lien upon real estate is taken to secure a prior advance which was not secured by such real  
 2957 estate.

2958 F. In cases where an appraisal by a state-certified or state-licensed appraiser is not required, under  
 2959 this section or other sections of this chapter in a real estate-related financial transaction, the bank as a  
 2960 matter of prudence may take and preserve a reasonable appraisal, valuation, or analysis of real estate  
 2961 or real property in connection with such transaction.

2962 G. The Commission may by order or regulation eliminate loans or specific categories of loans from  
 2963 the requirements of this section.

2964 H. The provisions of this section shall not be construed to prohibit any bank from accepting, as  
 2965 security for a loan that it had made in good faith without security or upon security since found to be  
 2966 inadequate, an obligation or obligations secured by mortgage, deed of trust, or other such instrument  
 2967 upon real estate.

2968 § 6.2-879. Certain loans not considered loans secured by real estate.

2969 A. If the bank reasonably and prudently relies upon factors other than or in addition to the real  
 2970 estate security, such as general credit standing, guarantees, commitments, or tangible or intangible  
 2971 personal property security, and enters in its records a written statement of the factors it relies on, the  
 2972 loan does not constitute a loan secured by real estate within the meaning of § 6.2-878, except that if the  
 2973 terms of the transaction shall be more favorable than in the absence of a lien, an appraisal shall be  
 2974 required as provided under § 6.2-878.

2975 B. Loans made to homeowners for maintenance, repair, landscaping, modernization, alteration,  
 2976 improvement to, and furnishings and equipment for, their homes, whether or not secured, shall not be  
 2977 considered as loans secured by real estate within the meaning of § 6.2-878, provided each such loan  
 2978 shall (i) be payable in approximately equal monthly installments, (ii) not be for a term longer than 12  
 2979 years, and (iii) not exceed an amount specified in accordance with subsection C of § 6.2-878. Such  
 2980 home loans may otherwise be made under the provisions of § 6.2-878 or 6.2-880. If such loan is in  
 2981 excess of the amount specified under subsection C of § 6.2-878, unless the taking of real estate security  
 2982 is solely in the abundance of caution and the terms are not more favorable than in the absence of such  
 2983 a real estate lien, an appraisal as required by § 6.2-878 or 6.2-880 shall be required by the bank.

2984 § 6.2-880. Construction loans.

2985 A. As used in this section, "construction loan" means a loan (i) made to finance the construction of a  
 2986 building or otherwise to improve real estate and (ii) with a maturity not exceeding 60 months.

2987 B. A construction loan that is accompanied by a valid and binding agreement to advance an amount  
 2988 equal to or greater than the construction loan upon the completion of the building or improvement,  
 2989 which agreement is entered into by an individual or entity acceptable to the bank or the bank itself,  
 2990 whether or not secured by a mortgage or similar lien on the real estate upon which the building or  
 2991 improvement is being constructed, shall not be considered as a loan secured by real estate within the  
 2992 meaning of § 6.2-878, but shall be classed as an ordinary commercial loan, unless the terms of the  
 2993 transaction shall be more favorable than in the absence of a lien, in which case an appraisal shall be  
 2994 required as provided under § 6.2-878.

2995 C. No bank shall invest in, or be liable in, construction loans in an aggregate amount in excess of  
 2996 100 percent of its capital and surplus, except that any such loans supported by an executed agreement  
 2997 for permanent financing shall not be included in such aggregate amount.

2998 D. Loans to finance construction of buildings or otherwise to improve real estate may be made under  
 2999 this section or under the provisions of § 6.2-878.

3000 E. Loans made under subsection H of § 6.2-878 or subsection A of § 6-2-879 shall not be treated as  
 3001 construction loans for purposes of the limitations of this section.

3002 § 6.2-881. Investment in reverse annuity mortgages.

3003 A bank may invest in reverse annuity mortgages to the extent and in the manner that may be  
 3004 provided in regulations adopted by the Commission.

3005 § 6.2-882. Bank borrowing money or rediscounting its notes.

3006 A. Any bank borrowing money or rediscounting any of its notes shall at all times show on its books  
 3007 and accounts and in its reports the amount of such borrowed money or rediscounts.

3008 B. No officer, director, or employee of any bank shall issue the note of such bank for borrowed  
 3009 money or rediscount any note or pledge any of the assets of such bank, except when authorized by  
 3010 resolution of the board of directors of such bank previously made and entered upon the minutes of such  
 3011 bank, under such regulations and in such form as may be adopted by the Commission.

3012 § 6.2-883. Acceptance of drafts or bills of exchange; issuance of letters of credit.

3013 A. Any bank doing business in the Commonwealth, subject to conditions, limitations, and restrictions  
 3014 imposed by the Commission, may (i) accept for payment at a future date drafts or bills of exchange  
 3015 drawn upon it by its customers on time not exceeding six months and (ii) issue letters of credit, upon  
 3016 such terms and conditions and of such duration as may be deemed appropriate by such bank, that  
 3017 authorize the holders thereof to draw drafts upon it or its correspondent, which drafts may be payable  
 3018 at sight or may be accepted for payment from the date of presentment on time not exceeding six months.

3019 B. The Commission, in adopting conditions, limitations, and restrictions with respect to such  
 3020 acceptances or letters of credit, shall use as a standard or guide the respective conditions, limitations,  
 3021 and restrictions, if any, imposed from time to time by federal statute or by the Federal Reserve Board  
 3022 on its member banks.

3023 § 6.2-884. Ownership and lease of personal property.

3024 A. As used in this section, "personal property" includes fixtures.

3025 B. A bank may become the owner and lessor of personal property, subject to the following  
 3026 limitations:

3027 1. Except in the case of short-term leases where a subsequent sale or reletting is anticipated, the  
 3028 rentals receivable by the bank under the initial lease of any item of personal property shall equal at  
 3029 least the cost to the bank of such item of personal property;

3030 2. Any leasing or rental obligations to any bank of any person shall be treated as obligations subject  
 3031 to the limitations imposed by § 6.2-875; and

3032 3. Upon the expiration of any lease whether by virtue of the lease agreement or by virtue of the  
 3033 retaking of possession by the bank, the personal property shall be sold or otherwise disposed of, or  
 3034 charged off within one year from the time of expiration of such lease unless it is held for the purpose of  
 3035 reletting.

3036 C. No personal property acquired pursuant to this section shall be included in computable investment  
 3037 in fixed assets under § 6.2-870.

3038 § 6.2-885. Investment in stock or securities of controlled subsidiary corporations.

3039 A. As used in this section and §§ 6.2-886, 6.2-887, and 6.2-888:

3040 "Control" has the meaning assigned to it in § 2 of the Bank Holding Company Act of 1956 (12  
 3041 U.S.C. § 1841 et seq.).

3042 "Controlled subsidiary corporation" means a corporation that is controlled by a bank organized  
 3043 under the laws of the Commonwealth, or by more than one bank, at least one of which is organized  
 3044 under the laws of the Commonwealth.

3045 B. A bank may acquire, own, and hold the stock, securities, or obligations of one or more controlled

3046 subsidiary corporations. Such investment in stock, securities, or obligations, together with any  
 3047 investment of the bank in stock, securities, or obligations of a bank service corporation, shall not exceed  
 3048 in the aggregate 50 percent of the bank's capital stock and permanent surplus, without the permission of  
 3049 the Commission, which limit on investment shall not include, but shall be in addition to, investment in  
 3050 (i) a real estate subsidiary as provided in § 6.2-873, (ii) the stock, securities, or obligations of a  
 3051 building corporation under § 6.2-870, and (iii) controlled subsidiary corporations that are wholly owned  
 3052 by the bank.

3053 C. A controlled subsidiary corporation shall not be authorized to (i) receive deposits except as  
 3054 hereafter provided; (ii) engage in the trust business; or (iii) conduct any business that is required under  
 3055 § 13.1-620 to be specifically stated in the articles of incorporation, except a controlled subsidiary  
 3056 corporation may engage in the business of credit card operations, leasing, safe deposit, factoring, credit  
 3057 bureaus, mortgage brokerage or servicing, data processing, international banking and finance, and any  
 3058 other function or business activity in which a bank might engage, except the receipt of deposits, or the  
 3059 trust business. Subject to the foregoing limitations on the businesses that a controlled subsidiary  
 3060 corporation is authorized to conduct, and with the prior approval of the Commission and subject to  
 3061 such conditions as the Commission may impose, a controlled subsidiary corporation may also engage in  
 3062 any business that is authorized by statute, regulation, or official interpretation for a subsidiary of a  
 3063 national bank or an out-of-state state bank as defined in § 6.2-836 to the extent such activity is financial  
 3064 in nature, or incidental or complimentary to a financial activity, and is not otherwise prohibited by state  
 3065 law. A controlled subsidiary corporation transacting business as a real estate brokerage firm shall be  
 3066 governed by § 6.2-888 and be subject to the provisions of this section. A controlled subsidiary  
 3067 corporation may charge and collect such finance charges and fees or interest rates as are authorized to  
 3068 banks by the laws of the Commonwealth or as otherwise authorized by Chapter 3 (§ 6.2-300 et seq.).

3069 D. A controlled subsidiary corporation engaged solely in the business of international banking and  
 3070 finance, and subject to the regulation and supervision by the Board of Governors of the Federal Reserve  
 3071 System, shall not be prohibited from receiving deposits or from taking any other action that any such  
 3072 regulated international banking and finance institution is permitted to take.

3073 E. The provisions of § 6.2-874 relating to investment of funds in shares of stock of another  
 3074 corporation shall be applicable to controlled subsidiary corporations, except that a controlled subsidiary  
 3075 corporation may acquire, own, and hold stock in a subsidiary corporation if a bank would be permitted  
 3076 to directly acquire, own, or hold the stock hereunder. The provisions of § 6.2-876 relating to loans to  
 3077 officers, directors, or employees of the bank shall be applicable both to loans by the subsidiary to  
 3078 officers, directors, or employees of the bank and to loans by the bank to officers, directors, or  
 3079 employees of the subsidiary, with the approval of the board of directors of the bank only being required  
 3080 for purposes of § 6.2-876. The limitations of §§ 6.2-878 through 6.2-881 as they relate to appraisal  
 3081 value, maximum term, and amortization on loans secured by real estate shall be applicable to controlled  
 3082 subsidiary corporations. Notwithstanding any provisions of this subsection to the contrary, the  
 3083 restrictions set out in §§ 6.2-874 through 6.2-881 shall not be imposed upon any controlled subsidiary  
 3084 that has no state banks as shareholders.

3085 F. The provisions of § 6.2-875 relating to limitations upon obligations of any one borrower shall  
 3086 apply to the total obligations of any borrower in the aggregate to the subsidiary corporation and to any  
 3087 bank or bank holding company owning stock securities or obligations of such subsidiary corporation.  
 3088 The loan limit of the subsidiary shall be computed by attributing to the subsidiary a pro rata share of  
 3089 the lending limit of each bank stockholder prorated in accordance with the percentage of stock owned  
 3090 by such bank. However, in the case of a subsidiary, any of the stock, securities, or other obligations of  
 3091 which are owned by a bank holding company, the loan limits of the subsidiary shall be computed by  
 3092 attributing to the subsidiary a pro rata share of the lending limits of all bank subsidiaries of such  
 3093 holding company, which share shall be prorated based on the percentage of stock owned by the holding  
 3094 company and all subsidiary banks thereof. In computing whether a bank or a subsidiary that is not  
 3095 wholly owned is complying with its lending limit, the loans of the bank and the subsidiary to any  
 3096 common borrower shall be aggregated on a basis pro rata to the percentage of stock of the subsidiary  
 3097 owned by the bank. Such controlled subsidiary corporation shall not otherwise be subject to the  
 3098 provisions of this chapter except where it is expressly so provided. Notwithstanding any provisions of  
 3099 this subsection to the contrary, the restrictions set out in §§ 6.2-874 through 6.2-881 shall not be  
 3100 imposed upon any controlled subsidiary that has no state banks as shareholders.

3101 § 6.2-886. Regulation of controlled subsidiary corporations by Commission.

3102 A. A controlled subsidiary corporation shall be subject to audit and examination by the Commission  
 3103 whether or not it is an affiliate as defined in § 6.2-899. The controlled subsidiary corporation shall pay  
 3104 such examination fees as shall be imposed under § 6.2-908 for the examination of trust departments. If  
 3105 upon examination the Commission shall ascertain that the corporation is created or operated in  
 3106 violation of this section or that the manner of operation is detrimental to the business of the parent

3107 bank and its depositors, it may order the bank to dispose of all or part of its investment in such  
3108 corporation upon such terms as the Commission may deem proper.

3109 B. A controlled subsidiary may not merge or consolidate unless the surviving corporation is itself a  
3110 controlled subsidiary corporation, or unless as a result of such merger or consolidation the bank divests  
3111 itself of all stock or other securities that are held pursuant to the authority granted by this section.

3112 C. The Commission shall have the same powers over controlled subsidiary corporations as it has  
3113 over banks under §§ 6.2-913, 6.2-915, 6.2-917, 6.2-918, and 6.2-919, excepting those controlled  
3114 subsidiary corporations that have no state banks as stockholders.

3115 § 6.2-887. Insurance business of controlled subsidiary.

3116 A. In addition to the types of business authorized in § 6.2-885, a controlled subsidiary corporation  
3117 that is a domestic or foreign corporation, the majority of the voting stock of which is owned, directly or  
3118 indirectly, by (i) a bank or banks organized under the laws of the United States, (ii) a bank or banks  
3119 organized under the laws of the Commonwealth, (iii) a bank or banks organized under the laws of  
3120 another state, or (iv) a bank holding company owning a bank or banks in the Commonwealth or in  
3121 another state, may be formed to:

3122 1. Transact the type of insurance business specified in § 38.2-120 and other insurance normally  
3123 written under the coverage known as financial institution blanket bonds;

3124 2. Underwrite insurance indemnifying the bank, its holding companies or its affiliates, and their  
3125 directors and officers against liability; and

3126 3. Underwrite reinsurance of mortgage guaranty insurance, subject to such conditions as the  
3127 Commission may impose, on loans secured by real estate made or purchased by such controlled  
3128 reinsurance subsidiary's affiliates or by a bank owning such controlled subsidiary.

3129 B. Any such controlled subsidiary corporation shall (i) transact only the insurance business  
3130 specifically permitted by this section and (ii) be subject to the further provisions of Title 38.2 otherwise  
3131 applicable to insurance companies transacting a comparable business.

3132 C. The investment of any bank in the stock, services, or other obligations of such a controlled  
3133 subsidiary shall not exceed two percent of such bank's capital, surplus, and undivided profits.

3134 § 6.2-888. Real estate brokerage business of controlled subsidiary.

3135 A. In addition to the types of business authorized in §§ 6.2-885 and 6.2-887, a controlled subsidiary  
3136 corporation may be formed and licensed to transact business as a real estate brokerage firm in  
3137 accordance with § 54.1-2106.1, provided such controlled subsidiary corporation transacts the real estate  
3138 brokerage business and such services only in accordance with the specific provisions of this section.  
3139 Such controlled subsidiary corporation shall be subject to the provisions of Chapter 21 (§ 54.1-2100 et  
3140 seq.) of Title 54.1 that are otherwise applicable to real estate brokerage companies transacting a  
3141 comparable business.

3142 B. A controlled subsidiary corporation of a state bank may own and transact business as a real  
3143 estate brokerage firm and provide the services of a real estate brokerage firm, only upon the  
3144 Commission's determination that the state bank making application to do so is in full compliance with  
3145 applicable law. The investment of any bank in the stock, securities, or other obligations of a controlled  
3146 subsidiary corporation shall be approved by the Commission only upon a determination by the  
3147 Commission that (i) the depositors of the bank are adequately protected from the risk of such ownership  
3148 and (ii) the ownership is a safe and sound investment for the bank in accordance with applicable law.  
3149 Such determination shall include but not be limited to providing written notice to the Virginia Real  
3150 Estate Board and receiving written confirmation from the Virginia Real Estate Board that the real estate  
3151 brokerage firm, to be owned, and its brokers, are in good standing in accordance with the requirements  
3152 of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

3153 C. A controlled subsidiary corporation of a state bank may own and transact business as a real  
3154 estate brokerage firm only in compliance with the following:

3155 1. The controlled subsidiary corporation, or a state bank that owns a controlled subsidiary  
3156 corporation, that engages in real estate brokerage, shall not:

3157 a. Impose a requirement, orally or in writing, that a borrower shall contract for or enter into any  
3158 other arrangement for real estate services with its affiliated real estate brokerage firm;

3159 b. Impose a requirement, orally or in writing, that as a condition of approving a loan a borrower  
3160 shall contract or enter into any other arrangement with its affiliated real estate brokerage firm;

3161 c. Impose a requirement, orally or in writing, that a real estate brokerage customer shall make  
3162 application for a loan or any other service or services of a particular bank or any of its subsidiaries,  
3163 affiliates, or service entities, except as otherwise permitted under the Real Estate Settlement Procedures  
3164 Act of 1974, (12 U.S.C. § 2601 et seq.), and regulations adopted thereunder;

3165 d. Impose a requirement, orally or in writing, that a condition of providing real estate brokerage  
3166 services is that the customer shall make application for a loan or any other arrangement for other  
3167 services of the bank or any of its subsidiaries, affiliates, or service entities, except as otherwise

3168 permitted under the Real Estate Settlement Procedures Act of 1974, (12 U.S.C. § 2601 et seq.), and  
 3169 regulations adopted thereunder;

3170 e. Offer or provide more favorable consideration, terms, or conditions for any financial products or  
 3171 services to induce or attempt to induce a person to enter into any arrangement for real estate brokerage  
 3172 services with any particular real estate brokerage firm;

3173 f. Offer or provide more favorable terms or conditions for any real estate brokerage services to  
 3174 induce or attempt to induce a person to apply for a loan or obtain any other services of a particular  
 3175 bank or any of its subsidiaries, affiliates, or service entities;

3176 g. Conduct real estate brokerage activities in the same areas of a building where the bank routinely  
 3177 accepts retail deposits from the general public;

3178 h. Conduct real estate brokerage activities in areas of a building that are identified as areas where  
 3179 banking activities occur;

3180 i. Conduct banking activities in areas of the building that are identified as areas where real estate  
 3181 brokerage activities occur;

3182 j. Make payment to its employees for any referrals of real estate brokerage business;

3183 k. Use confidential credit and other financial information available from the bank for solicitation  
 3184 purposes by a real estate brokerage affiliate, without first having obtained the written consent of the  
 3185 customer;

3186 l. Use or transfer from a bank to any affiliated real estate brokerage firm any financial information  
 3187 of or relating to any unaffiliated competing real estate brokerage firm that is an actual or prospective  
 3188 customer; or

3189 m. Use, directly or indirectly, nonpublic customer information that is held or obtained by the bank  
 3190 for the purpose of soliciting real estate business, without first having obtained the written consent of the  
 3191 customer;

3192 2. A state bank that makes a referral to its affiliated real estate brokerage firm shall clearly and  
 3193 conspicuously disclose in writing, in a separate document, to any person who applies for credit related  
 3194 to a real estate transaction or applies for prequalification or preapproval for credit related to a real  
 3195 estate transaction, that the person is not required to consult with, contract for, or enter into an  
 3196 arrangement for real estate brokerage services with its affiliated real estate brokerage firm; and

3197 3. A real estate brokerage firm that is affiliated with a bank shall clearly and conspicuously disclose  
 3198 in writing, in a separate document, before the time an agency agreement for real estate brokerage  
 3199 services is executed, that the person is not required to apply, contract for, or enter into any other  
 3200 arrangement for services of a particular bank or any of its subsidiaries, affiliates, or service entities.

3201 D. The requirements of this section are in addition to the requirements of the Real Estate Settlement  
 3202 Procedures Act of 1974, (12 U.S.C. § 2601 et seq.), and regulations adopted thereunder.

3203 E. State banks owning and transacting business as real estate brokerage firms under this section are  
 3204 subject to the provisions of Chapter 27.1 (§ 55-525.1 et seq.) of Title 55.

3205 F. A state bank that acts as a mortgage broker, as defined in § 6.2-1600, and that transacts business  
 3206 as a real estate brokerage through a controlled subsidiary corporation, is subject to subdivision B 5 and  
 3207 subsection C of § 6.2-1616; however, a state bank that, pursuant to an executed originating agreement  
 3208 with the Virginia Housing Development Authority, acts or offers to act as an originating agent of the  
 3209 Virginia Housing Development Authority in connection with a mortgage loan shall not be deemed to be  
 3210 acting as a mortgage broker with respect to such mortgage loan but shall be deemed to be acting as a  
 3211 mortgage lender with respect to such mortgage loan, notwithstanding that the Virginia Housing  
 3212 Development Authority is or would be the payee on the note evidencing such mortgage loan and that  
 3213 the Virginia Housing Development Authority provides or would provide the funding of such mortgage  
 3214 loan prior to or at the settlement thereof.

3215 G. In the event of a violation of this section, the Commission may take such action as is authorized  
 3216 in accordance with § 6.2-946, including issuance of an order requiring the state bank to cease and  
 3217 desist the activity that violates this section and imposing penalties.

3218 Article 10.

3219 Reserves.

3220 § 6.2-889. Required reserves.

3221 A. As used in this section, unless the context requires otherwise:

3222 "Demand deposits" means all deposits the payment of which can be legally required in less than 30  
 3223 days.

3224 "Time deposits" means all deposits the payment of which cannot be legally required in less than 30  
 3225 days.

3226 B. Every bank shall maintain a reserve related to its demand deposits and to its time deposits. The  
 3227 reserve on:

3228 1. Demand deposits shall consist of actual cash on hand and balances payable on demand, due from

3229 other solvent banks; and

3230 2. Time deposits shall consist of actual cash on hand and balances payable on demand due from  
3231 other solvent banks; provided that up to 100 percent of such reserve on time deposits may be in the  
3232 form of short maturity general obligations of the United States, such maximum percentage to be fixed by  
3233 the Commission.

3234 C. The Commission shall by regulation establish from time to time the reserve requirements within  
3235 the following limits:

3236 1. On demand deposits: zero to 15 percent; and

3237 2. On time deposits: zero to five percent.

3238 D. The reserves required herein for each day shall be computed on the basis of average daily  
3239 deposits covering a biweekly period, provided that shorter averaging periods may be fixed by regulation  
3240 of the Commission.

3241 E. Nothing herein shall be construed to relieve any bank which is a member of the Federal Reserve  
3242 System from maintaining a reserve fund in accordance with the requirements applicable to such member  
3243 banks.

3244 § 6.2-890. Preferences by pledging assets.

3245 A. No bank shall give preference to any depositor or creditor by pledging the assets of such bank,  
3246 except as otherwise authorized by subsection B, or except to secure deposits of trust funds made  
3247 pursuant to the provisions of § 6.2-1005 or 6.2-1057.

3248 B. Notwithstanding the provisions of subsection A, any bank:

3249 1. May deposit securities for the purpose of securing deposits of:

3250 a. The United States government and its agencies;

3251 b. The Commonwealth, its agencies, and its political subdivisions;

3252 c. Insolvent national bank funds as permitted under 12 U.S.C. § 192;

3253 d. Proceeds of sale of United States obligations as permitted under 31 U.S.C. § 771; and

3254 e. Bankruptcy funds deposited under the provisions of 11 U.S.C. § 15345;

3255 2. May deposit securities for the purpose of securing sureties on surety bonds furnished to secure  
3256 deposits listed in subdivision 1, or may, in lieu of depositing such securities to secure deposits of  
3257 political subdivisions of the Commonwealth, by its board of directors, adopt a resolution before such  
3258 public funds are deposited therein, to the effect that, in the event of the insolvency or failure of such  
3259 bank, such public funds thereafter deposited therein shall, in the distribution of the assets of such bank,  
3260 be paid in full before any other depositors shall be paid deposits thereafter made therein. The adoption  
3261 of such resolution shall be deemed to constitute an obligation binding on such bank;

3262 3. Is authorized to pledge its assets as security for amounts of borrowed money which shall not,  
3263 without the approval of the Commission given in advance in writing, exceed in the aggregate the  
3264 amount of the capital, surplus, and undivided profits of such bank actually paid in or earned and  
3265 remaining undiminished by losses or otherwise. The amount of assets pledged for the security of such a  
3266 loan shall not, without such approval, exceed 150 percent of the amount borrowed. No loan in excess of  
3267 the amount so permitted made to any such bank shall be invalid or illegal as to the lender, even though  
3268 made without the consent of the Commission. Rediscounting with or without guarantee or endorsement  
3269 of notes, drafts, bills of exchange, or loans is hereby authorized and shall not be limited by the terms of  
3270 this section, and shall not be considered as borrowed money within the meaning of this section;

3271 4. Is authorized to borrow from a Federal Reserve Bank or a Federal Home Loan Bank and to  
3272 rediscount with and sell to a Federal Reserve Bank or a Federal Home Loan Bank any and all notes,  
3273 drafts, bills of exchange, acceptances, and other securities, and to give security for all money so  
3274 borrowed and for all liabilities incurred by the discount of such notes, drafts, bills of exchange and  
3275 other securities without restriction in like manner and to the same extent as national banks may lawfully  
3276 do under the acts of Congress and regulations of the Board of Governors of the Federal Reserve System  
3277 and the Federal Housing Finance Board; and

3278 5. Is authorized to pledge its assets in connection with qualified financial contracts, which  
3279 transactions shall be governed by this subdivision and not subdivision 3. The amount of assets pledged  
3280 for obligations under such contracts shall not exceed 150 percent of the amount of the obligations,  
3281 without the consent of the Commission, and the qualified financial contract shall be in writing and  
3282 approved by the board of directors of such bank or an appropriate committee, which approval shall be  
3283 reflected in the minutes of such board or committee. At the time any qualified financial contracts  
3284 consisting of retail repurchase agreements are sold by a state bank, the market value of the underlying  
3285 security must be at least equal to the amount of the aggregate purchase price paid by the purchasers of  
3286 the retail repurchase agreements. As used in this subdivision, "qualified financial contract" means a  
3287 qualified financial contract as defined in 12 U.S.C. § 1821(e)(8)(D)(i), as the same may be amended,  
3288 and any contract or transaction that the Commissioner determines to be a qualified financial contract  
3289 for purposes of this section.

3290 § 6.2-891. *Perfection of certain security interests.*

3291 *When securities are sold by a bank subject to an obligation of repurchase, any security interest or*  
 3292 *interest of ownership therein may be perfected:*

3293 1. *As specified by Title 8.8A or Title 8.9A;*

3294 2. *By designation to the person holding physical custody thereof, which shall include a person*  
 3295 *keeping the master records, in case of securities identified by book entry only, that certain securities*  
 3296 *identified by serial number or dollar amount are held for the benefit of third parties other than the*  
 3297 *bank, who may, but need not be, identified by name; or*

3298 3. *By physical separation on the premises of the bank in a separate drawer, compartment, or other*  
 3299 *facility. The bank may, from time to time, instruct any third party holding such securities that the*  
 3300 *previously identified securities or an amount of such securities previously identified as pledged or*  
 3301 *belonging to third parties have been released from such pledge by payment of all or part of the amount*  
 3302 *due, or have been repurchased. The records of the bank shall identify the persons who are pledgees or*  
 3303 *owners of such securities. Book-entry securities held in a bank's customer-safekeeping account, used for*  
 3304 *the same purpose, at the Federal Reserve Bank, notwithstanding that other customer securities are held*  
 3305 *in the same account, shall be deemed in compliance with subdivision 2, provided such securities are*  
 3306 *identified in the bank's records as required by this section.*

3307 § 6.2-892. *Federal deposit insurance a credit towards certain required bonds.*

3308 *If a bank is required by the laws of the Commonwealth to furnish or deposit a surety bond or*  
 3309 *securities as security for the payment of any funds deposited in the bank, other than funds received or*  
 3310 *held in the trust department of the bank awaiting investment or distribution, the amount of the penalty*  
 3311 *of such bond or the amount of such securities shall be as required by law, less the amount of such*  
 3312 *deposit that, to the satisfaction of the body, officer, or other person responsible for seeing that a surety*  
 3313 *bond or amount of securities is furnished as security for such deposit, is insured under the provisions of*  
 3314 *§ 12-b of the Federal Reserve Act, as amended, or any amendments thereto.*

3315 *Article 11.*

3316 *Deposit Accounts.*

3317 § 6.2-893. *Payment of balance of deceased person or person under disability.*

3318 *Any bank may pay any balance on deposit to the credit of any deceased person or of any person*  
 3319 *under disability, to the personal representative, curator, conservator, or committee of such person upon*  
 3320 *a letter of qualification as such personal representative, curator, conservator or committee, issued by an*  
 3321 *appropriate court. The letter shall be sufficient authority for such transfer. Any such bank making such*  
 3322 *transfer shall no longer be liable for such deposit to any person. The presentation of a duly certified*  
 3323 *letter of qualification as personal representative, curator, conservator, or committee shall be conclusive*  
 3324 *proof of the jurisdiction of the court issuing the same. Payment to a fiduciary qualified under the law of*  
 3325 *a state other than the Commonwealth shall be in accordance with Chapter 5 (§ 26-59 et seq.) of Title*  
 3326 *26 and § 64.1-130.*

3327 § 6.2-894. *Deposits in and withdrawals from accounts of convicts.*

3328 A. *Notwithstanding the provisions of Chapter 11 (§ 53.1-221 et seq.) of Title 53.1, a person*  
 3329 *convicted of a felony and sentenced to confinement in a state correctional institution for one year or*  
 3330 *longer, with the written consent of the Director of the Department of Corrections, may have a bank*  
 3331 *account, free from control of all persons except the Director of the Department of Corrections and a*  
 3332 *committee appointed pursuant to the provisions of § 53.1-221. A deposit made in a bank account by a*  
 3333 *convict shall be held for the exclusive right and benefit of the convict. The check, order, or receipt of*  
 3334 *the convict shall be a complete and sufficient release and discharge for any payments made from the*  
 3335 *deposit in the bank, until the bank is notified in writing by a duly qualified committee or the Director of*  
 3336 *the Department of Corrections not to permit further withdrawals from that account.*

3337 B. *Upon receipt of such written notice or commencing on the banking day following the date of*  
 3338 *receipt of such written notice, the bank shall not permit further withdrawal, except with the consent of*  
 3339 *the committee or the Director of the Department of Corrections. A bank may further accept, pay or*  
 3340 *collect items on account for proceeds of collection of a bank account of a convict, despite his conviction*  
 3341 *or confinement or the bank's knowledge thereof, until it receives written directions to the contrary from*  
 3342 *the committee of such convict or the Director of the Department of Corrections.*

3343 § 6.2-895. *Payment of small balance to distributees or other persons.*

3344 A. *When the balance in any bank to the credit of a deceased person upon whose estate there has*  
 3345 *been no qualification does not exceed \$15,000, it shall be lawful for the bank, after 60 days from the*  
 3346 *death of such person, to pay such balance to the decedent's spouse. If the decedent does not have a*  
 3347 *surviving spouse, the bank may pay the balance to the distributees of the decedent or other persons*  
 3348 *entitled thereto under the laws of the Commonwealth. The receipt for such payment shall discharge and*  
 3349 *acquit the bank in full to all persons on account of the deposit.*

3350 B. *The balance of an account described in subsection A, or any part thereof not to exceed the*

3351 amount given priority by § 64.1-157, after 30 days from the death of such person, at the request of the  
 3352 decedent's spouse, or if there is none, then at the request of the distributees of the decedent or other  
 3353 persons entitled under the laws of the Commonwealth, may be paid to the undertaker or mortuary  
 3354 handling the funeral of the decedent. A receipt of the payee shall be a full and final release of the  
 3355 payor.

3356 § 6.2-896. Deposits of minors.

3357 A bank may establish a deposit account for a minor as the sole and absolute owner of such account.  
 3358 The bank may receive deposits by or for such minor, honor any withdrawal request of the minor, and  
 3359 act in any other manner with respect to such account on the minor's order. Any payment or delivery of  
 3360 funds from such account to the minor, or the payment of a check or other written order for withdrawal  
 3361 of funds signed by such minor owner, shall be a valid and sufficient release and discharge of such bank  
 3362 for any payment or delivery so made. The parent or guardian of such minor shall not in his capacity as  
 3363 parent or guardian have the power to withdraw or transfer funds in any such account unless the minor  
 3364 has given written notice to the bank to accept the signature of such parent or guardian.

3365 § 6.2-897. Bank need not inquire as to fiduciary funds deposited in fiduciary's personal account.

3366 If any fiduciary or agent makes a deposit in a bank to his personal credit of checks drawn by him  
 3367 upon an account in his own name as fiduciary, or of checks drawn by him upon an account in the name  
 3368 of his principal, if he is empowered to draw checks thereon, or of checks payable to his principal and  
 3369 endorsed by him as fiduciary, the bank receiving the deposit:

3370 1. Shall not be required to inquire whether the fiduciary is committing thereby a breach of his  
 3371 obligation as fiduciary; and

3372 2. Is authorized to pay the amount of the deposit or any part thereof upon the withdrawal by the  
 3373 fiduciary without being liable to the principal, unless the bank receives the deposit or pays the  
 3374 withdrawal with (i) actual knowledge that the fiduciary, in making such deposit or in making such  
 3375 withdrawal, is committing a breach of his obligation as fiduciary or (ii) knowledge of such facts that its  
 3376 action in receiving the deposit or paying the check amounts to bad faith.

#### 3377 Article 12.

#### 3378 Examinations and Reports.

3379 § 6.2-898. Examinations.

3380 The Commission, as often as it deems necessary in the public interest, shall examine or cause to be  
 3381 examined each bank incorporated under the laws of, and doing business in, the Commonwealth. Such  
 3382 examination shall be conducted at least once in every three-year period.

3383 § 6.2-899. Examination of affiliates.

3384 A. As used in this section, "affiliate" of any bank means any entity (i) of which such bank, directly or  
 3385 indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the  
 3386 number of shares voted for the election of its directors, trustees, or other persons exercising similar  
 3387 functions at the preceding election, or controls in any manner the election of a majority of its directors,  
 3388 trustees, or other persons exercising similar functions, (ii) of which control is held, directly or indirectly,  
 3389 through stock ownership or in any other manner, by the shareholders of such bank who own or control  
 3390 either a majority of the shares of such bank or more than 50 percent of the number of shares voted for  
 3391 the election of directors of such bank at the preceding election, or by trustees for the benefit of the  
 3392 shareholders of any such bank, or (iii) of which a majority of the directors, trustees, or other persons  
 3393 exercising similar functions are directors of such bank.

3394 B. The Commission, in connection with the examination of any bank, may make or cause to be made  
 3395 such examination of the affiliates of the bank as shall be necessary to ascertain the financial condition  
 3396 of the bank and to disclose fully the relations between the bank and its affiliates and the effect of such  
 3397 relations upon the affairs of the bank.

3398 § 6.2-900. Special examinations.

3399 The Commission, when (i) written application made to it by the board of directors or by the  
 3400 stockholders representing two-fifths of the total outstanding capital stock of any bank incorporated  
 3401 under the laws of, and doing business in, the Commonwealth or (ii) in the judgment of the Commission  
 3402 it may be necessary for the protection of the public or of persons depositing or dealing with such bank,  
 3403 shall make or cause to be made a special examination of the bank. All expenses incident to such special  
 3404 examination may be charged to the bank so examined and shall be paid by the bank so charged.

3405 § 6.2-901. Assistance in making examinations.

3406 A. Upon the making of any examination under the provisions of § 6.2-898, 6.2-899, or 6.2-900, the  
 3407 officers, directors and employees of the bank being examined or the affiliate of which is being examined,  
 3408 upon the demand of the person or officer designated to make such examination shall:

3409 1. Give to such examiner full access to all the money, books, papers, notes, bills, and other  
 3410 evidences of debts due to the bank;

3411 2. Disclose fully and accurately all indebtedness and liability thereof; and

3412 3. Furnish all information that the examiner may deem necessary to a full investigation into the  
3413 affairs of such bank.

3414 B. The examiner shall have the right to examine, under oath, any and all of the directors, officers,  
3415 clerks, and employees in any manner connected with the operation of any bank touching any matter or  
3416 thing pertaining to the examination, and for that purpose shall have authority to administer oaths to  
3417 them.

3418 C. When any bank shall utilize an independent data processing service, the operations of such  
3419 independent data processing firm and its records pertaining to any bank being examined shall be open  
3420 to inspection by examiners. Access to such operations and information shall be a prerequisite to the use  
3421 of such independent data processing services by any bank regulated hereunder.

3422 D. The Commission may impose a civil penalty of not less than \$25 but not exceeding \$100 per day  
3423 for each day of noncompliance upon any officer of any bank who it determines, in proceedings  
3424 commenced in accordance with the Commission's Rules, has refused to give any examiner the  
3425 information, or refuse to be sworn, as required by this section.

3426 § 6.2-902. Notice of examination.

3427 No prior or advance notice of any examination shall be given any bank or any of its directors,  
3428 officers, or employees unless the Bureau determines that notice will facilitate and not diminish the  
3429 effectiveness of an examination.

3430 § 6.2-903. Revaluation of assets after examination.

3431 If it appears to the Commission, from an examination of any bank, that any of the bank's assets are  
3432 valued by the bank at an amount in excess of their fair and reasonable value, the Commission, after the  
3433 bank has been given an opportunity for a hearing before the Commission, may require the bank to  
3434 revalue the assets on the basis of their fair and reasonable value.

3435 § 6.2-904. Report of examination; inspection and dissemination to directors.

3436 A. When any bank is examined under the provisions of this article, a copy of the report of the  
3437 examination, at any time after its completion, shall be open for inspection by the officers and directors  
3438 of the bank. No other copies of the report of examination shall be made except as necessary for the  
3439 inspection. The copies of the report made for officers and directors of the bank shall not be removed  
3440 from the premises of the bank. The other such copies shall be destroyed after the inspection has been  
3441 completed. The original examination report shall be retained in the records of the Bureau.

3442 B. Upon resolution of the board of directors of the bank, the report, at any time during the  
3443 established period, may be inspected in the bank by the officers and directors of any other bank or by  
3444 any other person designated in the resolution.

3445 § 6.2-905. Communications to board or executive committee.

3446 Each official communication directed by the Commission or any state bank examiner to any bank, or  
3447 to any officer thereof, relating to an examination or investigation made or caused to be made by the  
3448 Commission, or containing suggestions or recommendations as to the conduct of the bank, shall, if  
3449 required by the Commission or examiner submitting the communication, be submitted by the officer or  
3450 director of the bank receiving it, to the executive committee or board of directors of the bank. The  
3451 communication shall be duly noted in the minutes of the meeting of the board or executive committee.

3452 § 6.2-906. Disclosure of irregularities; Commission's powers.

3453 A. If upon the examination of any bank, the Commission ascertains that the banking laws of the  
3454 Commonwealth are not being fully observed, that any irregularities are being practiced, or that the  
3455 bank's capital has been or is in danger of being impaired, the Commission shall give immediate notice  
3456 thereof to the officers and directors of the bank. In addition, if it is deemed necessary in order to  
3457 conserve the assets of such bank or to protect the interests of depositors and creditors thereof, the  
3458 Commission may do any one or more of the following:

3459 1. Temporarily suspend the right of such bank to receive any further deposits;  
3460 2. Temporarily close such bank, for a period not exceeding 60 days, which period may be further  
3461 extended for one or more 60-day periods as the Commission may deem necessary;  
3462 3. Require the officers and directors of the bank to liquidate its outstanding loans insofar as shall be  
3463 required;

3464 4. Require that any impairment of the capital stock be made good;

3465 5. Require that any irregularities be promptly corrected;

3466 6. Require the bank to make reports, daily or at such other times as may be required to the  
3467 Commission, as to the results achieved in carrying out the orders of the Commission; and

3468 7. Without examination, close, for such period as the Commission may deem necessary, any bank  
3469 facing an emergency due to withdrawal of deposits or otherwise, or, without closing such bank, grant to  
3470 it the right to suspend or limit the withdrawal of deposits, for such period as the Commission may  
3471 determine.

3472 B. If any bank fails or refuses to comply with any such order of the Commission, or if the

3473 Commission shall determine that a receiver for any such bank should be appointed, the Commission  
 3474 may apply for the appointment of a receiver to take charge of the business affairs and assets of the  
 3475 bank and to wind up its affairs as provided in this chapter.

3476 § 6.2-907. Reports of condition and other statements.

3477 A. Every bank shall make to the Commission statements of its financial condition at such times as  
 3478 the Commission may require. Such statements shall be (i) made in accordance with forms prescribed by  
 3479 the Commission, (ii) certified under oath by the president or cashier of the bank, or, if there is no  
 3480 cashier, by the treasurer, and (iii) attested by at least three of its directors.

3481 B. The Commission shall require all banks doing business in the Commonwealth to make the  
 3482 statements described in subsection A, and at the time prescribed. The Commission shall prepare such  
 3483 forms as may be necessary to carry out the provisions of this section.

3484 C. Whenever the Commission calls for statements, it shall forward to each such bank two forms, one  
 3485 of which, after being properly filled out and certified as required by subsection A, shall be returned to  
 3486 the Commission within a time prescribed by the Commission. The other form, filled out in like manner,  
 3487 shall be filed with the records of the bank. The Commission shall allow banks to submit such statements  
 3488 electronically. Any bank that submits such statements electronically shall maintain a copy of the  
 3489 statement with the required certified signatures affixed.

3490 D. The Commission may require any bank to prepare and submit such other reports and material as  
 3491 it deems necessary to protect and promote the public interest.

3492 E. The Commission may impose a civil penalty of not less than \$100 but not exceeding \$1,000 per  
 3493 day for each day of noncompliance upon any bank that it determines, in proceedings commenced in  
 3494 accordance with the Commission's Rules, has failed to comply with any of the provisions of this section,  
 3495 for a period of longer than 30 days, after being called upon by the Commission for a statement, or to  
 3496 do such other act as is herein provided.

3497 § 6.2-908. Fees for supervision and regulation and for certain examinations and investigations.

3498 A. For the purpose of defraying the expenses of supervision and regulation of banks, the Commission  
 3499 shall assess against each bank an annual fee. A bank's annual fee shall be calculated according to a  
 3500 schedule set by the Commission. The schedule shall bear a reasonable relationship to the assets of  
 3501 various individual banks and to other factors relating to their respective costs for supervision,  
 3502 regulation, and examination.

3503 B. The Commission shall also charge additional fees:

3504 1. Of \$330 per day per examiner during examinations for the supervision and regulation of trust  
 3505 departments;

3506 2. Of \$10,000 for investigating an application for a certificate of authority pursuant to § 6.2-816;

3507 3. Of \$1,800 for investigating an application for authority to establish a branch pursuant to  
 3508 § 6.2-831 or a facility pursuant to § 6.2-835;

3509 4. Of \$7,500 for investigating an application of merger. The Commission shall not be entitled to any  
 3510 further fees for investigating any application to retain existing branches of the applying banks as  
 3511 branches of the merged bank;

3512 5. Of \$1,000 for investigating an application for authority to change the location of an existing bank  
 3513 or branch bank; and

3514 6. Of \$2,000 for investigating an application for authority to exercise trust powers.

3515 C. Notwithstanding the designation of the fees set forth in subdivisions B 1 through B 6, the  
 3516 Commission may reduce by regulation or order any fee, if the Commission concludes that there is a  
 3517 reasonable basis for doing so and that the reduction of the fee will not be detrimental to the  
 3518 effectiveness of the Bureau.

3519 § 6.2-909. Assessment and payment of fees; lien.

3520 A. Except as provided in subsections B and C, all fees and charges assessed pursuant to § 6.2-908  
 3521 shall be assessed against each bank by the Commission on or before July 1 of each year and shall be  
 3522 paid into the state treasury on or before the following July 31. The Commission shall mail the  
 3523 assessment to each bank on or before July 1 of each year.

3524 B. Fees for investigating applications for a certificate of authority shall be paid before the  
 3525 investigation is made.

3526 C. Fees for the examination of trust departments shall be paid into the state treasury within 30 days  
 3527 after the Commission notifies the bank of the amount of the fee.

3528 D. All fees so assessed shall be a lien on the assets of the bank, and if not paid when due may be  
 3529 recovered in any court of the county or city in which such bank or institution is located having original  
 3530 jurisdiction of civil cases on motion of and in the name of the Commission.

3531 § 6.2-910. Reduction of fees.

3532 If the Commission is of the opinion that the amounts of the several charges and fees set forth in  
 3533 § 6.2-908 will produce more revenue than is required to cover the costs and expenses to be paid from

3534 *such charges and fees, the Commission, in its discretion, may reduce on a pro rata basis the amount of*  
 3535 *such charges and fees.*

3536 § 6.2-911. *Examination of national banks.*

3537 *Every national bank that is now or may be designated as a state depository, so long as it acts as*  
 3538 *such, shall be subject to the examination provided for state banks, when, in the opinion of the State*  
 3539 *Treasurer, such examination is necessary for the protection of the Commonwealth. However, no fees or*  
 3540 *charges shall be imposed upon national banks for such examinations.*

3541 *Article 13.*

3542 *Receiverships.*

3543 § 6.2-912. *Definition.*

3544 *As used in this article, "insolvent" means incapable of meeting the current demands of creditors or*  
 3545 *having liabilities which, in total, exceed the book value of assets.*

3546 § 6.2-913. *Closing bank upon insolvency; appointment of receiver.*

3547 *A. If (i) any bank, upon its examination by the Commission, is found to be insolvent or (ii) the*  
 3548 *Commission deems it necessary with respect to any bank for the protection of the public interests, the*  
 3549 *Commission (a) may close immediately the doors of the bank without any notice and (b) by its duly*  
 3550 *appointed agent shall take charge of the books, assets, and affairs of the bank until the appointment of*  
 3551 *a receiver as provided by law.*

3552 *B. If a bank has been closed by the Commission, the Commission may proceed (i) to have a receiver*  
 3553 *for the closed bank appointed in accordance with § 6.2-916 or (ii) as provided in Article 14 (§ 6.2-925*  
 3554 *et seq.) of this chapter.*

3555 § 6.2-914. *Merger or transfer of assets of insolvent bank.*

3556 *A. If the Commission finds that a bank is insolvent, that its merger into another bank is desirable for*  
 3557 *the protection of its depositors, and that an emergency exists, and, if the board of directors of such*  
 3558 *insolvent bank approves a plan of merger of such bank into another bank, (i) compliance with the*  
 3559 *requirements of § 13.1-718 shall be dispensed with as to such insolvent bank and (ii) the approval by*  
 3560 *the Commission of such plan of merger shall be the equivalent of approval by the holders of more than*  
 3561 *two-thirds of the outstanding shares of such insolvent bank for all purposes of Article 12 (§ 13.1-715.1*  
 3562 *et seq.) of Chapter 9 of Title 13.1.*

3563 *B. If the Commission finds that a bank is insolvent, that the acquisition of its assets by another bank*  
 3564 *is in the best interests of its depositors, and that an emergency exists, the Commission, with the consent*  
 3565 *of the boards of directors of both banks as to the terms and conditions of such transfer, including the*  
 3566 *assumption of all or certain liabilities, may enter an order transferring some or all of the assets of such*  
 3567 *insolvent bank to such other bank, in which event (i) compliance with the provisions of §§ 13.1-723 and*  
 3568 *13.1-724 shall not be required and (ii) §§ 13.1-730 through 13.1-741 shall not be applicable to such*  
 3569 *transfer.*

3570 *C. In the case either of a merger as provided in subsection A or of a sale of assets as provided in*  
 3571 *subsection B, the Commission shall provide that prompt notice of its finding of insolvency and of the*  
 3572 *merger or sale of assets be sent to the stockholders of record of the insolvent bank for the purpose of*  
 3573 *providing such shareholders an opportunity to challenge the finding that the bank is insolvent. The*  
 3574 *relevant books and records of such insolvent bank shall remain intact and be made available to such*  
 3575 *shareholders for a period of 30 days after such notice is sent. The Commission's finding of insolvency*  
 3576 *shall become final if a hearing before the Commission is not requested by any such shareholder within*  
 3577 *such 30-day period.*

3578 *D. If, after such hearing provided in subsection C, the Commission finds that such bank was solvent,*  
 3579 *it shall rescind its order entered pursuant to subsection A or B and the merger or transfer of assets*  
 3580 *shall be rescinded. However, if after such hearing the Commission finds that such bank was insolvent,*  
 3581 *its order shall be final.*

3582 § 6.2-915. *Protection of state deposits upon insolvency.*

3583 *If, upon the examination of any bank that is designated as a state depository, it appears to the*  
 3584 *Commission that the bank is insolvent or is unable to meet its obligations and the legal demands upon it*  
 3585 *in the ordinary course of its business, the Commission shall forthwith notify the State Treasurer, who*  
 3586 *shall discontinue further deposits therein of state funds and take such action as may be necessary to*  
 3587 *protect the deposits of the Commonwealth therein.*

3588 § 6.2-916. *Appointment of receiver.*

3589 *When, in the judgment of the Commission, it is necessary for the protection of the interests of the*  
 3590 *Commonwealth or of the depositors and creditors of any bank doing business in the Commonwealth, or*  
 3591 *of the creditors of any trust company doing business in the Commonwealth, the Commission shall apply*  
 3592 *to any court in the Commonwealth having jurisdiction to appoint receivers for the appointment of a*  
 3593 *receiver to take charge of the business affairs and assets, and to wind up the affairs and business, of*  
 3594 *any such bank or trust company (i) failing to comply with the requirements of the Commission or (ii)*

3595 found upon examination to be insolvent or unable to meet its obligations and the legal demands made  
3596 upon it in the ordinary course and conduct of its business.

3597 § 6.2-917. Execution of powers of sale by receivers.

3598 A. When any receiver is appointed under the provisions of this article for any bank authorized to do  
3599 a trust business or for any trust company, the receiver may be empowered by the court by which he is  
3600 appointed:

3601 1. To act for and on behalf of such bank or trust company in the execution of any power of sale  
3602 conferred upon such bank or trust company by any instrument;

3603 2. When such sale is made, to execute, acknowledge and deliver for and on behalf of such bank or  
3604 trust company such deed as may be proper under the provisions of such instrument for the conveyance  
3605 of title to the property conveyed therein; and

3606 3. Upon payment of the amount secured under any such instrument, to execute, acknowledge, and  
3607 deliver for and on behalf of such bank or trust company a proper release deed for the property  
3608 conveyed therein.

3609 B. Any such sale made by such receiver and any such deed or release executed by him, when so  
3610 authorized and empowered, shall be as effective and as binding as if the same had been made or  
3611 executed by such bank or trust company before the appointment of such receiver.

3612 C. All sales that have been made by any such receivers within the Commonwealth, and all such  
3613 deeds and release deeds that have been executed by any such receivers within the Commonwealth under  
3614 the authority of the court by which they were appointed, since June 19, 1936, shall be as effective and  
3615 as binding as if the same had been made by such bank or trust company before the appointment of such  
3616 receiver.

3617 § 6.2-918. Rights and powers of receivers generally.

3618 Any receiver appointed under the provisions of this article shall be and become assignee of the  
3619 assets and property of the bank or trust company of which he has been appointed receiver, with power  
3620 to prosecute and defend, in the name of the bank or trust company or in his name as such receiver or  
3621 otherwise, in the Commonwealth or elsewhere, all such suits as may be necessary to wind up the affairs  
3622 and business of such bank or trust company, and to appoint such agents or attorneys for any such  
3623 purpose as the court may approve.

3624 § 6.2-919. Interest on deposits; distribution of surplus remaining after payment of depositors.

3625 When an appropriate court, on a proper application therefor, shall appoint a receiver for any bank  
3626 or trust company, the court may prescribe and direct, by order or decree entered of record, that the  
3627 rate of interest to be paid by the receiver upon the claims of depositors of the bank or trust company  
3628 shall not exceed the current or contracted rate of interest paid by the state bank or trust company on  
3629 deposits. In addition, the court may fix the interest to be so paid at such lower rate as the court may  
3630 deem proper under all the circumstances of the case. In such event, the court shall also direct that any  
3631 surplus remaining after the payment in full of the depositors, together with the interest thereon as so  
3632 prescribed and fixed, shall be distributed pro rata among the shareholders of the bank or trust company  
3633 as of the date of the appointment of the receiver.

3634 § 6.2-920. Proceedings to bar certain claims against banks in liquidation.

3635 If, in a suit having as its object the administration or liquidation of the assets of an insolvent bank  
3636 or trust company operating in the Commonwealth, the court orders the payment to creditors of  
3637 dividends on, or other payments of, claims as therein ascertained and established, and (i) the receiver  
3638 or other person charged with making the ordered payment to creditors is unable to make the payment  
3639 by reason of his inability to ascertain the address of any creditor, the failure of any creditor to apply to  
3640 such disbursing official for payment when so directed by the order of the court, or any other similar  
3641 reason; or (ii) a trustee engaged in the voluntary liquidation of the assets of an insolvent bank or trust  
3642 company operating in the Commonwealth, by petition to an appropriate court in the locality wherein the  
3643 principal office of the insolvent bank or trust company is located, alleges and shows to the satisfaction  
3644 of the court his inability to make payment to creditors for any of the reasons specified in clause (i), the  
3645 court, in its discretion, may enter an order directing its receiver or other person charged with the duty  
3646 of making such payment, or the trustee, to publish at least twice in a newspaper having a general  
3647 circulation in the locality where the suit or petition is pending a list of creditors to whom dividends or  
3648 payments are due and unpaid and the amount thereof. The publication shall include a notice that any  
3649 creditor therein named who fails to apply to the disbursing official for payment of the amount due him  
3650 within six months from the date of the last publication of such notice will be barred from his right  
3651 thereafter to receive payment of amounts then due and from participation in any future dividends or  
3652 payments that may thereafter be ordered.

3653 § 6.2-921. When publication of list of creditors unnecessary.

3654 If any bank or trust company under the circumstances set forth in clause (i) or (ii) of § 6.2-920 is in  
3655 liquidation for a period of more than 10 years, and more than five years have elapsed since the date of

3656 the entry of the last court order directing the payment to creditors of dividends on or other payments of  
 3657 claims as therein ascertained and established, then it shall be unnecessary to publish a list of creditors  
 3658 to whom dividends or payments are due and unpaid and the amount thereof. In such event, it shall only  
 3659 be necessary to publish a notice stating (i) the total amount of dividends ordered paid and unclaimed;  
 3660 (ii) that a list of such creditors may be seen at the office of the receiver, liquidating agent, or other  
 3661 disbursing officer; and (iii) that any creditor who fails to apply to such disbursing official for payment  
 3662 of the amount due him within six months from the date of the last publication of such notice shall be  
 3663 barred from his right thereafter to receive payment of amounts then due and from participation in any  
 3664 future dividends or payments that may thereafter be ordered.

3665 § 6.2-922. When publication once in two newspapers sufficient.

3666 If there are two or more newspapers having general circulation in the locality where a suit or  
 3667 petition described in § 6.2-920 is pending, the court, in its discretion, in lieu of the publication provided  
 3668 for therein or in § 6.2-921, may direct that the list of creditors and the notice, be published once in at  
 3669 least two of the newspapers having general circulation in the locality.

3670 § 6.2-923. When claims barred.

3671 After the lapse of six months from the date of the last publication of the notice prescribed by  
 3672 § 6.2-920, 6.2-921, or 6.2-922, the court shall enter an order barring the claims of all creditors who  
 3673 have not theretofore applied for payment of their claims. Thereafter, (i) no creditor who failed to apply  
 3674 for payment within such period shall bring or maintain any action, suit, or proceeding and (ii) no  
 3675 process shall issue, for the enforcement of any claim to dividends or payments previously ordered paid  
 3676 to such creditor. In addition, no such creditor shall participate in future dividends or payments  
 3677 thereafter ordered in the suit or petition to be paid. The court in which any such suit or petition is  
 3678 pending may, in its discretion, before final distribution and for good cause shown, reinstate any claim  
 3679 barred pursuant to the foregoing provisions of this section.

3680 § 6.2-924. Power of receivers to contract for loans and make investments.

3681 A. Any court in the Commonwealth that has jurisdiction to appoint receivers, in its discretion, may  
 3682 authorize any receiver appointed by such court for any bank or trust company, pursuant to the  
 3683 provisions of this article:

3684 1. To apply and contract for a loan from any corporation or agency that is (i) organized or provided  
 3685 for by, or pursuant to, federal law and (ii) authorized, among other purposes, to make loans upon the  
 3686 application of the receiver or liquidating agent of any bank that is closed, or in process of liquidation,  
 3687 secured by the assets of any such bank, and if such loan is for the purpose of aiding in the  
 3688 reorganization or liquidation of any such bank, secured by the payment of liquidating dividends from the  
 3689 proceeds thereof; and

3690 2. To secure any loan described in subdivision 1 by the pledge, hypothecation or mortgage of any or  
 3691 all of the assets of the bank or trust company, or in such other manner as such court, in its discretion,  
 3692 may authorize.

3693 B. Any such court, in its discretion, also may authorize any receiver so appointed by it to invest any  
 3694 funds in the hands of such receiver in bonds of the United States or of the Commonwealth.

#### Article 14.

#### Appointment of FDIC as Receiver.

3697 § 6.2-925. Definitions.

3698 As used in this article, unless the context requires otherwise:

3699 "Bank" means any bank or trust company organized under the laws of the Commonwealth.

3700 "FDIC" or "Corporation" means the Federal Deposit Insurance Corporation. The term includes any  
 3701 successor to the Corporation or any other agency or instrumentality of the United States that undertakes  
 3702 to discharge the purposes of the Corporation.

3703 "Receivership court" means the circuit court that appoints a receiver for a bank pursuant to this  
 3704 article.

3705 § 6.2-926. Appointment of FDIC as receiver.

3706 In any case where the Commission has closed and taken possession of a bank, the deposits in which  
 3707 are insured by the FDIC, the Commission may apply to any court in the Commonwealth having  
 3708 jurisdiction to appoint receivers for the appointment of the FDIC as receiver. The court, if it finds that  
 3709 to do so will be in the public interest, may appoint the FDIC receiver. Upon acceptance of the court's  
 3710 appointment of the FDIC as receiver, the FDIC shall not be required to post bond.

3711 § 6.2-927. Transfer of title to bank assets.

3712 Upon the appointment of the FDIC as receiver, title to all assets of the bank shall vest in the FDIC  
 3713 without the execution of any instruments of conveyance, assignment, transfer, or endorsement.

3714 § 6.2-928. Posting of notice; effect of posting notice.

3715 Immediately upon closing any bank with the intention of proceeding under the provisions of this  
 3716 article, the Commissioner shall post an appropriate notice of closing at the main entrance of the bank.

3717 Upon the posting of said notice, (i) no judgment lien, attachment lien, or voluntary lien shall thereafter  
 3718 attach to any asset of the bank and (ii) no director, officer, or agent of the bank thereafter shall have  
 3719 authority to act on behalf of the bank or to convey, transfer, assign, pledge, mortgage, or encumber any  
 3720 asset thereof.

3721 § 6.2-929. Powers of receiver.

3722 The FDIC as receiver shall have the following powers:

3723 1. To take possession of all books, records, and assets of the bank;

3724 2. To collect all debts, claims, and judgments belonging to the bank, and to do such other acts as  
 3725 are necessary to preserve or liquidate its assets;

3726 3. To execute in the name of the bank any instrument necessary or proper to effectuate its powers as  
 3727 receiver or perform its duties as such;

3728 4. To initiate, pursue, and defend litigation involving any right, claim, interest, or liability of the  
 3729 bank;

3730 5. To exercise any and all fiduciary functions of the bank as of the date of its appointment as  
 3731 receiver;

3732 6. To borrow money as necessary in the liquidation of the bank, and to secure such borrowings by  
 3733 the pledge or mortgage of bank assets. The repayment of money borrowed under this subdivision and  
 3734 interest thereon shall be considered an expense of administration for purposes of § 6.2-933;

3735 7. To abandon or convey title to any holder of a mortgage, security deed, security interest, or lien  
 3736 against property in which the bank has an interest, whenever the FDIC as receiver determines that to  
 3737 continue to claim such interest is burdensome and of no advantage to the bank, its depositors, creditors,  
 3738 or shareholders;

3739 8. Subject to the approval of the receivership court, to (i) sell, lease, or exchange any and all real  
 3740 and personal property, (ii) compromise any debt, claim, or judgment due the bank, and (iii) discontinue  
 3741 any action or other proceeding pending therefor; and

3742 9. Subject to the approval of the receivership court, to (i) pay off all mortgages, security deeds,  
 3743 security agreements, and liens upon any real or personal property belonging to the bank and (ii)  
 3744 purchase at judicial sale or sale authorized by court order any real or personal property in order to  
 3745 protect the bank's equity therein.

3746 § 6.2-930. Emergency sale of assets.

3747 The FDIC as receiver, with ex parte approval of the receivership court, may sell all or any part of  
 3748 the closed bank's assets. All or any part of such assets may be sold to the Federal Deposit Insurance  
 3749 Corporation in its capacity as a corporation. The FDIC as receiver may also borrow from the FDIC, in  
 3750 its corporate capacity, any amount necessary to facilitate the assumption of deposit liabilities by an  
 3751 existing bank or a newly chartered bank, and may assign any part or all of the assets of the closed  
 3752 bank as security for such loan.

3753 § 6.2-931. Notice and proof of claim; notice of rejection of claim; petition for hearing.

3754 All parties having claims against the closed bank shall present their claims, substantiated by legal  
 3755 proof, to the FDIC as receiver within 180 days after the closing of the bank. The FDIC as receiver  
 3756 shall cause notice of the claims procedure prescribed by this section to be published once a week for 12  
 3757 consecutive weeks in a newspaper of general circulation in one or more localities as the receivership  
 3758 court may direct, and shall mail such notice to the last address of record of each person whose name  
 3759 appears as a creditor upon books of the bank. The receiver shall notify in writing any claimant whose  
 3760 claim has been rejected within 180 days following receipt of the claim. Any claimant whose claim has  
 3761 been rejected by the receiver may petition the receivership court for a hearing on his claim within 60  
 3762 days of the date of notice his claim is rejected. Notice shall be deemed given when mailed.

3763 § 6.2-932. Payment of claims filed after prescribed period.

3764 Any claim filed after the 180-day claim period prescribed by § 6.2-931, and subsequently accepted by  
 3765 the FDIC as receiver or allowed by the receivership court, shall be entitled to share in the distribution  
 3766 of assets only to the extent of the undistributed assets in the hands of the FDIC as receiver on the date  
 3767 such claim is accepted or allowed.

3768 § 6.2-933. Distribution of assets.

3769 A. All claims against the bank's estate, proved to the satisfaction of the FDIC as receiver or  
 3770 approved by the receivership court, shall be paid in the following order:

3771 1. Administration expenses of the liquidation;

3772 2. Claims given priority under other provisions of state or federal law;

3773 3. Deposit obligations;

3774 4. Other general liabilities;

3775 5. Debt subordinated to the claims of depositors and general creditors; and

3776 6. Equity capital securities.

3777 B. No interest on any claim shall be paid until all claims within the same class have received the full

3778 principal amount of claim.

3779 § 6.2-934. Receivership procedures involving assets held by closed bank as fiduciary.

3780 The FDIC as receiver, with the approval of the receivership court, has the authority to appoint a  
 3781 successor to all rights, obligations, assets, deposits, agreements, and trusts held by the closed bank as  
 3782 trustee, administrator, executor, guardian, agent, or in any other fiduciary or representative capacity.  
 3783 The successor's duties and obligations commence upon appointment and are to the same extent binding  
 3784 upon the former bank as though the successor had originally assumed such duties and obligations.  
 3785 Specifically, the successor shall succeed to and be entitled to administer all trusteeships,  
 3786 administrations, executorships, guardianships, agencies, and all other fiduciary or representative  
 3787 proceedings to which the closed bank is named or appointed in wills, whenever probated, or to which it  
 3788 is appointed by any other instrument, court order, or by operation of law. Nothing in this section shall  
 3789 be construed to impair any right of the grantor or beneficiary of trust assets to secure the appointment  
 3790 of a substitute trustee or manager. Within 30 days after appointment, the successor shall (i) give written  
 3791 notice, insofar as practicable, to all interested parties named in the books and records of the bank or in  
 3792 trust documents held by it that such successor has been appointed in accordance with state law and (ii)  
 3793 cause the fact of its appointment to be recorded in appropriate courts of record.

3794 § 6.2-935. Termination of executory contracts and leases; liability; extension of statute of limitations.

3795 Within 180 days of the date of the closing of the bank, the FDIC as receiver at its election may  
 3796 reject (i) any executory contract to which the closed bank is party without further liability to the closed  
 3797 bank or the receiver or (ii) any obligation of the bank as a lessee of real or personal property. The  
 3798 receiver's election to reject a lease creates no claim (a) for rent other than rent accrued to the date of  
 3799 termination or (b) for actual damages, if any, for such termination, not to exceed the equivalent of six  
 3800 months' payment. Notwithstanding any other law of the Commonwealth, the statute of limitations shall  
 3801 be extended for a period of six months on all causes of action which may accrue to the FDIC as  
 3802 receiver.

3803 § 6.2-936. Subrogation to rights of bank depositors.

3804 Whenever the FDIC pays, or makes available for payment, the insured deposit liabilities of a closed  
 3805 bank, the FDIC, whether or not it acts as receiver, shall be subrogated to all rights of depositors  
 3806 against the closed bank to the same extent as subrogation is provided for by the Federal Deposit  
 3807 Insurance Act (12 U.S.C. § 1811 et seq.) in the case of a national bank.

3808 § 6.2-937. Destruction of records.

3809 Subject to the approval of the receivership court, the closed bank's records may be destroyed after  
 3810 the FDIC, as receiver, determines that there is no further need for them.

3811 Article 15.

3812 Banking Offenses.

3813 § 6.2-938. Engaging in banking business without authority; Commission may examine accounts of  
 3814 suspected person; penalty.

3815 A. Every person who trades or deals as a bank, or carries on banking, without authority of law, and  
 3816 their officers and agents, is guilty of a Class 6 felony.

3817 B. The Commission shall have authority to examine the accounts, books, and papers of any person  
 3818 who it has reason to suspect is doing a banking business, in order to ascertain whether such person has  
 3819 violated, or is violating, any provision of this title. The refusal to submit such accounts, books, and  
 3820 papers shall be prima facie evidence of such violation.

3821 § 6.2-939. Unlawful use of terms indicating that business is bank; penalty.

3822 A. A person not authorized to engage in the banking business in the Commonwealth by the  
 3823 provisions of this title or under the laws of the United States, shall not (i) use any office sign having  
 3824 thereon any name or other words indicating that any such office is the office of a bank; (ii) use or  
 3825 circulate any letterheads, billheads, blank notes, blank receipts, certificates, circulars, or any written or  
 3826 printed paper, having thereon any name or word indicating that such person is a bank; or (iii) use the  
 3827 word "bank," "banking," "banker," or "trust," or the equivalent thereof in any foreign language, or the  
 3828 plural thereof in connection with any business other than a banking business.

3829 B. The foregoing prohibitions shall not apply to use by a bank holding company, as defined in  
 3830 § 6.2-800, of the word "bank," "banks," "banking," "banker," "trust," or the equivalent thereof in its  
 3831 name, or of a name similar to that of a subsidiary bank of such bank holding company.

3832 C. The use of the above-mentioned words in the name of, or in connection with, any other business  
 3833 shall not be prohibited if the context or remaining words show clearly and definitely that the business is  
 3834 not a bank, and is not carrying on a banking business.

3835 D. Any person violating the provisions of this section, either individually or as an interested party, is  
 3836 guilty of a Class 6 felony.

3837 § 6.2-940. Making derogatory statements affecting banks; penalty.

3838 Any person who willfully and maliciously makes, circulates, or transmits to another any statement,

3839 rumor, or suggestion that is directly or by reference derogatory to the financial condition, or affects the  
 3840 solvency or financial standing of, any bank doing business in the Commonwealth, or who counsels, aids,  
 3841 procures, or induces another to start, transmit, or circulate any such statement or rumor, is guilty of a  
 3842 Class 1 misdemeanor.

3843 § 6.2-941. Use of bank name, logo, or symbol for marketing purposes; penalty.

3844 A. As used in this section, "name, logo, or symbol, or any combination thereof, of a bank" includes  
 3845 any name, logo, or symbol, or any combination thereof, that is deceptively similar to the name, logo, or  
 3846 symbol, or any combination thereof of a bank.

3847 B. Except as provided in subsection C, no person shall use the name, logo, or symbol, or any  
 3848 combination thereof, of a bank in marketing material provided to or solicitation of another person in a  
 3849 manner such that a reasonable person may believe that the marketing material or solicitation originated  
 3850 from or is endorsed by the bank or that the bank is responsible for the marketing material or  
 3851 solicitation.

3852 C. This section shall not apply to (i) an affiliate or agent of the bank or (ii) a person who uses the  
 3853 name, logo, or symbol of a bank with the consent of the bank.

3854 D. Any person violating the provisions of this section, either individually or as an interested party, is  
 3855 guilty of a Class 1 misdemeanor. This section shall not affect the availability of any remedies otherwise  
 3856 available to a bank.

3857 § 6.2-942. False certification of checks; penalty.

3858 Any officer, employee, agent, or director of a bank who (i) certifies a check drawn on such bank and  
 3859 willfully fails forthwith to charge the amount thereof against the account of the drawer thereof or (ii)  
 3860 willfully certifies a check drawn on such bank when the drawer of such check does not have on deposit  
 3861 with the bank the amount of money subject to the payment of such check, is guilty of a Class 1  
 3862 misdemeanor.

3863 § 6.2-943. Offenses by officer, director, agent, or employee of bank; penalties.

3864 A. Any officer, director, agent, or employee of any bank who embezzles, abstracts, or willfully  
 3865 misapplies any of the moneys, funds, or credits of, or in the possession or control of, the bank is guilty  
 3866 of larceny and subject to the penalties provided in § 18.2-95 or 18.2-96.

3867 B. Any officer, director, agent, or employee of any bank who (i) issues or puts forth any certificate of  
 3868 deposit, (ii) draws any order or bill of exchange, (iii) makes any acceptance, (iv) assigns any note,  
 3869 bond, draft, bill of exchange, mortgage, judgment, decree, or other instrument in writing, or (v) makes  
 3870 any false entry in any book, report, or statement of such bank, with intent in any case to injure or  
 3871 defraud the bank or any other individual or entity, or to deceive any officer of the bank or the  
 3872 Commission, or any agent or examiner authorized to examine the affairs of the bank, and any person,  
 3873 who, with the same intent, aids or abets any such officer, director, agent, or employee of such bank in  
 3874 any act described in clauses (i) through (v), is guilty of a Class 5 felony.

3875 C. Any officer of a bank who knowingly makes a false statement of the condition of any bank is  
 3876 guilty of a Class 5 felony.

3877 § 6.2-944. Officers, directors, agents, and employees violating or causing bank to violate laws; civil  
 3878 liability not affected.

3879 Any officer, director, agent, or employee of any bank who knowingly violates or who knowingly  
 3880 causes any bank to violate any provision of this chapter, or knowingly participates or knowingly  
 3881 acquiesces in any such violation, unless other punishment is provided for the offense of such officer,  
 3882 agent, or employee, is guilty of a Class 1 misdemeanor. The provisions of this section shall not affect  
 3883 the civil liability of any such officer, director, agent, or employee.

3884 § 6.2-945. Receiving deposit knowing bank to be insolvent; penalty.

3885 A. Any officer, director, or employee of any bank, or broker, who takes and receives, or permits to  
 3886 be received, a deposit from any person with the actual knowledge that the bank or broker is at the time  
 3887 insolvent, is guilty of embezzlement. Notwithstanding the provisions of § 18.2-111, an individual  
 3888 convicted of embezzlement pursuant to this section shall be fined double the amount so received and be  
 3889 subject to a term of imprisonment of not less than one nor more than three years, in the discretion of  
 3890 the jury, for each offense.

3891 B. On the trial of any indictment under this section, it shall be the duty of the bank or broker, and  
 3892 its agent or officers, to produce in court, on demand of the attorney for the Commonwealth, all books  
 3893 and papers of the bank or broker, to be read as evidence on the trial of such indictment. In determining  
 3894 the question of the solvency of any bank, the capital stock thereof shall not be considered as a liability  
 3895 due by it.

3896 § 6.2-946. Civil penalties for violation of Commission's orders.

3897 A. The Commission may impose, enter judgment for, and enforce by its process, a civil penalty not  
 3898 exceeding \$10,000 upon any bank, or against any of its directors, officers, or employees, who it  
 3899 determines, in proceedings commenced in accordance with the Commission's Rules, has violated any

3900 lawful order of the Commission.

3901 B. The Commission may remove from office any director or officer of a bank for a second or  
3902 subsequent violation by him of any such order.

3903 C. In all cases the defendant shall have an opportunity to be heard and to introduce evidence, and  
3904 the right to appeal as provided by law.

3905 CHAPTER 9.

3906 RESERVED.

3907 CHAPTER 10.

3908 ENTITIES CONDUCTING TRUST BUSINESS.

3909 Article 1.

3910 Trust Powers and Trust Business.

3911 § 6.2-1000. Definitions.

3912 As used in this chapter, unless the context requires otherwise:

3913 "Affiliated trust company" means a trust company that is controlled by a trust company holding  
3914 company.

3915 "Trust business" means the holding out by a person or legal entity to the public at large by  
3916 advertising, solicitation or other means that the person or legal entity is available to act as a fiduciary  
3917 in the Commonwealth or is accepting and undertaking to perform the duties of a fiduciary in the  
3918 regular course of its business. A person does not engage in trust business by:

3919 1. Rendering services as an attorney at law in the performance of duties as a fiduciary;

3920 2. Rendering services as a certified or registered public accountant in the performance of duties as  
3921 such;

3922 3. Acting as trustee under a deed of trust made only as security for the payment of money or for the  
3923 performance of another act;

3924 4. Acting as a trustee in bankruptcy or as a receiver;

3925 5. Holding trusts of real estate for the primary purpose of subdivision, development or sale, or to  
3926 facilitate any business transaction with respect to such real estate;

3927 6. Engaging in the business of an escrow agent;

3928 7. Holding assets as trustee of a trust created for charitable purposes if:

3929 a. The trustee is an entity exempt from federal income tax under § 501(c)(3) of the Internal Revenue  
3930 Code; and

3931 b. The trust is (i) exempt from federal income taxes under § 501(c)(3) of the Internal Revenue Code;

3932 (ii) a charitable remainder trust described in § 664 of the Internal Revenue Code; (iii) a pooled income

3933 fund described in § 642(c)(5) of the Internal Revenue Code; or (iv) a trust the charitable interest in

3934 which is either a guaranteed annuity or a fixed percentage distributed yearly of the fair market value of  
3935 the trust property, described in § 2055(e)(2)(B) or § 2522(c)(2)(B) of the Internal Revenue Code;

3936 8. Receiving rents and proceeds of sale as a licensed real estate broker on behalf of the principal;  
3937 or

3938 9. Engaging in securities transactions as a broker-dealer or salesman.

3939 "Trust company" means a corporation, including an affiliated trust company, that is authorized to  
3940 engage in the trust business under Article 2 (§ 6.2-1013 et seq.) of this chapter, the powers of which are  
3941 expressly restricted to the conduct of trust business.

3942 "Trust company holding company" means a corporation that controls a trust company. A trust  
3943 company holding company shall not be deemed a financial institution holding company for any purpose  
3944 under this title unless it controls a financial institution other than an affiliated trust company or another  
3945 financial institution holding company.

3946 "Trust institution" means any (i) bank authorized to engage in the trust business, (ii) trust company,  
3947 or (iii) trust subsidiary.

3948 "Trust subsidiary" or "subsidiary trust company" means a corporation organized under Chapter 9  
3949 (§ 13.1-601 et seq.) of Title 13.1, or an association organized under the National Banking Act with its  
3950 main office located in the Commonwealth, that is authorized to transact trust business and business  
3951 incidental thereto, but not to accept deposits except as incidental to such trust business.

3952 § 6.2-1001. Entities authorized to engage in trust business.

3953 A. No entities, except (i) corporations duly chartered and already conducting trust business in the  
3954 Commonwealth under authority of the laws of the Commonwealth or the United States, (ii) banks  
3955 hereafter incorporated under the laws of the Commonwealth that are authorized to engage in the trust  
3956 business through a separate trust department pursuant to Article 3 (§ 6.2-819 et seq.) of Chapter 8, (iii)

3957 corporations authorized to engage in the trust business in the Commonwealth under the banking laws of  
3958 the United States, (iv) trust companies authorized to establish and operate one or more trust offices or  
3959 engage in trust business in the Commonwealth under Article 2 (§ 6.2-1013 et seq.) of this chapter, (v)

3960 trust subsidiaries authorized to engage in trust business under Article 3 (§ 6.2-1047 et seq.) of this

3961 chapter, (vi) multistate trust institutions authorized to engage in trust business under Article 4  
 3962 (§ 6.2-1065 et seq.) of this chapter, (vii) private trust companies authorized to engage in trust business  
 3963 under Article 5 (§ 6.2-1074 et seq.) of this chapter, or (viii) savings institutions authorized to engage in  
 3964 the trust business pursuant to Article 6 (§ 6.2-1081 et seq.) of this chapter, shall engage in the trust  
 3965 business in the Commonwealth. No foreign corporation, except as permitted in Chapter 7 (§ 6.2-700 et  
 3966 seq.), shall engage in trust business in the Commonwealth.

3967 B. Nothing in this chapter shall prevent:

3968 1. A natural person from qualifying and acting as trustee, personal representative, guardian,  
 3969 conservator, committee, or in any other fiduciary capacity;

3970 2. Any person from (i) lending money on real estate and personal security or collateral, (ii)  
 3971 guaranteeing the payment of bonds, notes, bills and other obligations, or (iii) purchasing or selling  
 3972 stocks and bonds;

3973 3. Any bank or trust company organized under the laws of the Commonwealth from qualifying and  
 3974 acting in another state as trustee, personal representative, guardian of a minor, conservator, or  
 3975 committee or in any other fiduciary capacity, when permitted so to do by the laws of such other state;  
 3976 or

3977 4. An incorporated association that is authorized to sell burial association group life insurance  
 3978 certificates in the Commonwealth, as described in the definition of limited burial insurance authority in  
 3979 § 38.2-1800, the principal purpose of which is to assist its members in (i) financial planning for their  
 3980 funerals and burials and (ii) obtaining insurance for the payment, in whole or in part, for funeral,  
 3981 burial, and related expenses, from serving as trustee of a trust established pursuant to § 54.1-2822.

3982 C. Nothing in this section shall be construed:

3983 1. To prevent any bank or trust company organized in the Commonwealth and chartered under the  
 3984 laws of the United States from transacting business in the Commonwealth; or

3985 2. To prevent a real estate broker as defined in § 54.1-2100 from owning or operating a bank  
 3986 provided that the requirements of this chapter are met.

3987 D. Except as permitted by this chapter or by Article 3 (§ 6.2-819 et seq.) of Chapter 8, or by federal  
 3988 law in the case of a national banking association having its main office in the Commonwealth, no entity  
 3989 shall qualify or act (i) as a personal representative of a deceased person; (ii) as a guardian for an  
 3990 infant or an incapacitated person; (iii) as a committee; (iv) as a conservator for an incapacitated  
 3991 person; (v) as a testamentary trustee, or trustee for any other trust if required by law to account to the  
 3992 commissioner of accounts of a circuit court in the Commonwealth; or (vi) in any other fiduciary  
 3993 capacity required to account to the commissioner of accounts of a circuit court in the Commonwealth.

3994 § 6.2-1002. Powers of trust institutions.

3995 A. All banks that are authorized to do a trust business and all trust companies shall have the  
 3996 following rights, powers, and privileges, and shall be subject to the following regulations and  
 3997 restrictions:

3998 1. To act as agent for any person, corporation, municipality, or state, for the collection or  
 3999 disbursement of interest, or income or principal of securities;

4000 2. To act as the fiscal or transfer agent of any state, municipality, or body politic or corporate, and  
 4001 in such capacity to receive and disburse money; to transfer, register, and countersign certificates of  
 4002 stock, bonds, or other evidences of indebtedness;

4003 3. To act as agent of any corporation, foreign or domestic, for any lawful purpose;

4004 4. To act as trustee under any mortgage or bond issued by an individual, municipality, or body  
 4005 politic or corporate, and to accept and execute any other municipal or corporate trust not inconsistent  
 4006 with the laws of the Commonwealth;

4007 5. To act as guardian, receiver, or trustee of the estate of any minor and as depository of any money  
 4008 paid into court, whether for the benefit of any minor or other person;

4009 6. To take, accept, and execute any and all such lawful trusts, duties, and powers in regard to the  
 4010 holding and management and disposition of any estate, real and personal, and the rents and profits  
 4011 thereof, or the sale or lease thereof, as may be granted or confided to it by any circuit court, judge, or  
 4012 clerk, or by any person, corporation, municipality, or other authority, and it shall be accountable to all  
 4013 parties in interest for the faithful discharge of every such trust, duty, or power which it may so accept;

4014 7. To take, accept, and execute any and all such trusts and powers, of whatever nature and  
 4015 description, as may be conferred upon or entrusted or committed to it by any person, including any  
 4016 body politic or corporate or other authority, by grant, assignment, transfer, devise, bequest, or otherwise  
 4017 or as may be entrusted or committed or transferred to it or vested in it by order of any circuit court,  
 4018 judge, or clerk, and to receive and hold any property or estate, real or personal, which may be the  
 4019 subject of any such trust; and

4020 8. To act as:

4021 a. Executor under the last will and testament or administrator of the estate of any deceased person,

4022 under appointment of any circuit court, judge, or clerk thereof, having jurisdiction of the estate of such  
4023 deceased person;

4024 b. Guardian of the person or of the estate of any infant, guardian or conservator of any  
4025 incapacitated person, habitual drunkard, or person who by reason of advanced age or impaired health  
4026 or physical disability has become mentally or physically incapable of taking proper care of his person  
4027 or properly handling and managing his estate, under appointment of any circuit court, judge, or clerk  
4028 thereof, having jurisdiction of the estate of such person; or

4029 c. Trustee or committee for any convict in the penitentiary, under appointment of any circuit court,  
4030 judge, or clerk thereof, having jurisdiction of the estate of such person.

4031 B. Nothing in this section shall ever be construed as authorizing the creation of a trust not lawful as  
4032 between individuals nor to prohibit the deposit of funds by court and fiduciaries in banks of deposit and  
4033 discount and savings banks.

4034 C. Every trust company doing business in the Commonwealth is authorized temporarily to suspend its  
4035 usual business during a period of actual or threatened enemy attack, civil insurrection, or riot, affecting  
4036 the community in which such institution is doing business or other emergency justifying temporary  
4037 closing, such as fire, flood, or hurricane.

4038 § 6.2-1003. When security not required; payment of probate taxes and fees.

4039 A. No bank or trust company with a minimum unimpaired capital stock of \$50,000 or more shall be  
4040 required by any officer or court of the Commonwealth to (i) give security upon appointment to or  
4041 acceptance of any office of trust which it may, by law, be authorized to execute or (ii) give security  
4042 upon any bond given pursuant to § 4.1-341 or similar statute; however, no bank or trust company shall  
4043 qualify on an estate having a value in excess of its combined unimpaired capital and surplus without  
4044 giving bond for such excess.

4045 B. When such bank or trust company shall qualify on any office of trust, the clerk in lieu of  
4046 collecting the fees under Title 17.1 and probate taxes may render a bill or statement to the bank or  
4047 trust company to be paid within five business days.

4048 § 6.2-1004. Who may take oath for corporate fiduciary.

4049 In all cases where any trust institution shall be appointed to act as trustee, executor, or  
4050 administrator of any estate or guardian for any infant, or in any other fiduciary capacity, it shall be  
4051 lawful for any officer of the trust institution to take and subscribe for the institution any and all oaths  
4052 required to be taken or subscribed by such executor, administrator, trustee, guardian, or other fiduciary.

4053 § 6.2-1005. Deposit or other use of trust funds.

4054 A. Funds received or held in the trust department of a bank or by a trust company awaiting  
4055 investment or distribution shall not be used by the bank or trust company in the conduct of its business.

4056 B. Notwithstanding subsection A, such funds may be deposited by a bank in its commercial or  
4057 savings department to the credit of its trust department, if the bank first delivers to the trust department,  
4058 as collateral security therefor, securities of any of the following classes:

4059 1. Bonds, notes, or certificates of indebtedness of the United States;

4060 2. Other readily marketable securities of the classes in which fiduciaries are authorized or permitted  
4061 to invest trust funds, as set forth in § 26-40.01; or

4062 3. Other readily marketable bonds, notes, or debentures, commonly known as investment securities,  
4063 meeting the following requirements:

4064 a. That the issue be of a sufficiently large total to make marketability possible;

4065 b. Such a public distribution of the securities must have been provided for or made in a manner to  
4066 protect or insure the marketability of the issue; and

4067 c. That the trust agreement under which the security is issued provides for a trustee independent of  
4068 the obligor, which trustee must be a trust institution.

4069 C. The securities deposited as collateral pursuant to subsection B shall be owned by the bank and  
4070 shall at all times be at least equal in market value to the amount of trust funds so used in the conduct  
4071 of the business of the bank less such amount thereof as shall be insured by the Federal Deposit  
4072 Insurance Corporation under existing or future federal law.

4073 D. In the event of the failure or liquidation of such bank, the owners of the funds held in trust for  
4074 investment shall have a lien on the bonds or other securities so set apart in addition to their claim  
4075 against the estate of the bank.

4076 § 6.2-1006. Custody of trust securities to be kept separate; federal securities and obligations.

4077 A. The securities and investments held in each trust shall be kept separate and distinct from the  
4078 securities owned by the trust institution. The trust institution shall at all times show upon its trust  
4079 records the interests of each separate fiduciary account and trust in each particular security or  
4080 investment held by it in a fiduciary capacity. Trust securities and investments shall be placed in the joint  
4081 custody or control of two or more officers or other employees designated by the board of directors of  
4082 the trust institution. Such joint custody shall be interpreted to mean that neither of such officers or

4083 employees shall have access alone at any time to such securities and investments. All such officers and  
4084 employees shall be bonded.

4085 B. Securities and obligations of the United States and of agencies of the United States government  
4086 may be held for the account of the trust institution by a Federal Reserve Bank in a book-entry custody  
4087 account, without the requirement of the trust institution having physical possession of such securities,  
4088 provided at all times that the records of the Federal Reserve Bank and the trust institution shall at all  
4089 times identify separately those securities held for the account of the trust institution and those held by  
4090 the trust institution in a fiduciary capacity.

4091 § 6.2-1007. Investment of trust funds.

4092 A. Funds received or held by a trust institution awaiting investment or distribution shall be invested  
4093 or distributed as soon as practicable and shall not be held uninvested by the trust institution any longer  
4094 than is reasonably necessary.

4095 B. If the instrument creating the trust does not specify the character or class of investments to be  
4096 made, and does not expressly grant to the trust institution, its officers or directors discretion in the  
4097 matter of investments, funds held in trust shall be invested in any securities in which corporate or  
4098 individual fiduciaries may lawfully invest.

4099 C. If the instrument under which a trust institution is serving as fiduciary or cofiduciary does  
4100 authorize it to retain:

4101 1. Its own stock or securities, it shall be authorized to retain in like manner the stock or securities of  
4102 a bank holding company of which it is a subsidiary; or

4103 2. The stock or securities of a bank or trust company to the business of which the fiduciary has  
4104 succeeded, or the stock or securities of a bank or trust company which has become a subsidiary of a  
4105 bank holding company, such fiduciary shall be authorized in like manner to retain the stock of the  
4106 successor bank or trust company or bank holding company.

4107 § 6.2-1008. Dealings with self or affiliates.

4108 A. No trust institution shall buy any property for a trust or estate from itself, or a department or  
4109 branch thereof, or from an affiliate or subsidiary corporation, or from a director, officer, or employee  
4110 of such trust institution. Any such purchase shall be voidable at the election of any beneficiary or  
4111 successor trustee, unless (i) approved by an appropriate court, (ii) consented to by all beneficiaries after  
4112 full and fair disclosure, (iii) authorized by the instrument creating the fiduciary relationship, or (iv)  
4113 permitted by ruling of the Commissioner.

4114 B. A sale of any trust or fiduciary property by a trust institution to itself, or a department or branch  
4115 of such trust institution, or to an affiliate or subsidiary corporation, or to a director, officer, or  
4116 employee of such trust institution, except as (i) approved by an appropriate court, (ii) consented to by  
4117 all beneficiaries after full and fair disclosure, (iii) authorized by the instrument creating the fiduciary  
4118 relationship, or (iv) permitted by ruling of the Commissioner, shall be a breach of trust and voidable at  
4119 the election of any beneficiary or successor trustee.

4120 C. Notwithstanding the provisions of subsections A and B, a trust institution, as fiduciary of one  
4121 estate or trust, may buy or sell from or to itself, as fiduciary of another estate or trust, assets which at  
4122 the time of sale are permissible fiduciary investments under Title 26, if the transaction is fair to both  
4123 estates or trusts and is not prohibited by the terms of any instrument under which the fiduciary is  
4124 acting.

4125 § 6.2-1009. Common trust and collective investment funds.

4126 A. As used in this section:

4127 "Common trust fund" means a common trust fund described under § 584 of the Internal Revenue  
4128 Code of 1986, as amended, as well as any other type of collective investment fund that is exempt from  
4129 federal income taxation under any other provision of the Internal Revenue Code or regulations issued  
4130 pursuant thereto.

4131 "Maintaining bank" means a trust institution that establishes and maintains a common trust fund for  
4132 the collective investment of qualified employee benefit trusts or funds held in a fiduciary capacity by it,  
4133 including agency accounts under which the institution exercises investment discretion and assumes  
4134 fiduciary responsibilities.

4135 "Participating bank" means a trust institution duly authorized to act as a fiduciary, wherever located,  
4136 that is owned, controlled by, or affiliated with (i) a maintaining bank or (ii) a bank holding company  
4137 that also owns, controls, or is affiliated with a maintaining bank.

4138 B. Any trust institution may establish and maintain one or more common trust funds for the  
4139 collective investment of qualified employee benefit trusts or funds held in a fiduciary capacity by it,  
4140 including agency accounts under which the institution exercises investment discretion and assumes  
4141 fiduciary responsibilities.

4142 C. The maintaining bank may include, for the purposes of collective investment in a common trust  
4143 fund or funds established and maintained by it, funds held in a fiduciary capacity by any participating

4144 bank.

4145 D. A maintaining bank may invest the funds held by it in any fiduciary capacity in one or more  
4146 common trust funds, provided (i) such investment is not prohibited by the instrument, judgment, decree,  
4147 or order creating such fiduciary relationship or amendment thereof; (ii) in the case of co-fiduciaries the  
4148 written consent of the co-fiduciary is obtained by the maintaining bank; and (iii) the maintaining bank  
4149 has no interest in the assets of the common trust fund other than as a fiduciary.

4150 E. Unless ordered by an appropriate court, the maintaining bank operating a common trust fund  
4151 shall not be required to render a court accounting with regard to such fund; but, by application to an  
4152 appropriate court, it may secure approval of such an accounting on such conditions as the court may  
4153 establish. This section shall not affect the duties of the trustees of the participating trusts under the  
4154 common trust fund to render accounts of their several trusts.

4155 F. All common trust funds shall be operated in conformity with the regulations issued from time to  
4156 time by the Commission, which regulations shall conform substantially to the regulations of the  
4157 Comptroller of the Currency governing the operations of common trust funds.

4158 § 6.2-1010. Holding stock or other securities as fiduciary.

4159 A. A trust institution holding stock or other securities as fiduciary may hold it in the name of a  
4160 nominee without mention of the trust in the stock certificate or stock registry book or other book in  
4161 which such securities are registered. A fiduciary registering stock or other securities in the name of a  
4162 nominee as herein permitted, shall (i) clearly show upon its trust records the ownership of the stock or  
4163 other securities by the fiduciary and the facts regarding its holding and (ii) provide that the nominee  
4164 shall not have possession of the stock certificate or other securities nor access thereto except under the  
4165 immediate supervision of the fiduciary. The fiduciary shall be personally liable for any loss to the trust  
4166 resulting from any act of such nominee in connection with stock or other securities so held. Any  
4167 individual serving as cofiduciary with a trust institution may consent to the trust institution holding such  
4168 stock or other securities in the name of a nominee as herein provided; however, in such case the trust  
4169 institution shall forthwith upon demand of the individual cofiduciary cause the stock or other securities  
4170 to be transferred into the name of the fiduciaries in their fiduciary capacity.

4171 B. Notwithstanding the provision relating to possession of the nominee, the trust institution may  
4172 permit such certificates or other securities to remain in the possession of the nominee or a clearing  
4173 corporation as defined in § 8.8A-102, within or without the Commonwealth, if the trust institution  
4174 obtains adequate protection, through insurance or otherwise, against loss of such certificates or  
4175 securities due to lack of possession by the fiduciary or possession thereof by the nominee or a clearing  
4176 corporation.

4177 C. The Commissioner or other appropriate regulatory official may review in advance and approve  
4178 the protection through insurance or otherwise against loss due to lack of possession of these certificates  
4179 or securities by the fiduciary.

4180 § 6.2-1011. Voting of bank shares held by trust institution as fiduciary; when disqualified.

4181 A. As used in this section, "banking corporation" includes a bank or a corporation or company that  
4182 is a bank holding company under 12 U.S.C. § 1841, as amended from time to time.

4183 B. When shares of a national banking association or of a banking corporation organized under the  
4184 laws of the Commonwealth or another state are held by a trust institution that is serving as a personal  
4185 representative of a decedent, trustee, guardian of any infant, agent or in any other fiduciary capacity,  
4186 the trust institution may not (i) vote or participate in the voting of any voting securities of such bank if  
4187 the securities held in such fiduciary capacity, together with all the other voting securities of such bank  
4188 held in a fiduciary capacity, exceed 25 percent of the outstanding voting securities of such bank or (ii)  
4189 vote such voting securities, if the voting securities of such bank held as a personal representative of the  
4190 decedent, together with all other voting securities of such bank held in a fiduciary capacity, exceed five  
4191 percent, unless there has been a determination by the Board of Governors of the Federal Reserve  
4192 System that the right to vote five percent or more of the voting securities but less than 25 percent  
4193 thereof does not constitute control of that bank.

4194 C. If there is any personal representative, trustee, guardian of any infant, or other fiduciary in  
4195 addition to the trust institution in such fiduciary capacity, the other fiduciary, if not a director, officer,  
4196 or employee of the trust institution, may vote such shares. If the trust institution is the sole fiduciary, or  
4197 if the trust institution is serving along with a director, officer, or employee of the trust institution, it may  
4198 petition the court, as provided in subsection D, for the appointment of a cofiduciary for the sole purpose  
4199 of voting such bank shares.

4200 D. When a trust institution has qualified or is serving under the laws of the Commonwealth as  
4201 personal representative of a decedent, trustee, guardian of any infant, or in any other fiduciary capacity,  
4202 and in such estate or trust, there are shares of stock of a national banking association or a banking  
4203 corporation organized under the laws of the Commonwealth or another state, and the trust institution is  
4204 disqualified under subsection B from voting such shares, the trust institution or any interested party may

4205 petition the court in which the institution qualified or is capable to qualify to appoint a cofiduciary for  
 4206 the sole purpose of voting the shares of the banking association or banking corporation held by the  
 4207 estate or trust, which the trust institution is disqualified from voting. The appointment and qualification  
 4208 may be ex parte, and no prior notice to the beneficiary shall be required. The court at the time of such  
 4209 qualification may relieve the cofiduciary of any obligation for the giving of surety on his bond, and if  
 4210 the appointment of the cofiduciary is limited to voting of the bank stock, such order may provide that  
 4211 the cofiduciary shall not be liable or accountable as a fiduciary in the administration of such estate or  
 4212 trust except for the breach of any fiduciary duty in voting or failing to vote such bank stock. No  
 4213 director, officer, or employee of a trust institution shall be eligible to be named cofiduciary under the  
 4214 provisions of this subsection.

4215 § 6.2-1012. Suspension or prohibition of trust institutions.

4216 The Commission may prohibit or suspend from engaging in trust business any (i) trust company that  
 4217 fails to comply with any of the provisions of § 6.2-1005, 6.2-1006, or 6.2-1008; (ii) bank doing a trust  
 4218 business that fails to comply with any of the provisions of § 6.2-821, 6.2-1005, 6.2-1006, or 6.2-1008;  
 4219 or (iii) trust subsidiary that fails to comply with the provisions of § 6.2-1006 or 6.2-1008.

4220 Article 2.

4221 Trust Companies.

4222 § 6.2-1013. Definitions.

4223 As used in this article, unless the context requires a different meaning:

4224 "Agent" has the meaning assigned to it in § 13.1-501 of the Virginia Securities Act (§ 13.1-501 et  
 4225 seq.).

4226 "Broker-dealer" has the meaning assigned to it in § 13.1-501 of the Virginia Securities Act.

4227 "Control" means (i) ownership by a person of 25 percent or more of the voting stock of a trust  
 4228 company; (ii) control as defined in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.);  
 4229 or (iii) as determined by the Commission, the exercise of a controlling influence over the management  
 4230 and policies of a trust company.

4231 "Fiduciary" means executor, administrator, conservator, guardian of a minor, committee, or trustee.

4232 "Investment advisor" has the meaning assigned to it in § 13.1-501 of the Virginia Securities Act.

4233 "Investment advisor representative" has the meaning assigned to it in § 13.1-501 of the Virginia  
 4234 Securities Act.

4235 "Investment company" has the meaning assigned to it in the Investment Company Act of 1940 (15  
 4236 U.S.C. § 80a-1 et seq.).

4237 "Operating plan" means a plan submitted by an applicant for a certificate of authority, which plan  
 4238 establishes the policies and procedures a trust company will have in effect when the institution opens for  
 4239 business and thereafter (i) to avoid or resolve conflicts of interests, (ii) to prevent improper influences  
 4240 from affecting the actions of the trustee, (iii) to ensure that trust accounts are handled in accordance  
 4241 with recognized standards of fiduciary conduct, and (iv) to assure compliance with applicable laws and  
 4242 regulations.

4243 "Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of  
 4244 the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in a nonstock  
 4245 corporation or a limited liability company.

4246 § 6.2-1014. Certificate required.

4247 No person shall engage in the trust business without first obtaining a certificate of authority from the  
 4248 Commission; however, a bank or savings institution authorized under state or federal laws to engage in  
 4249 the trust business or a trust subsidiary may engage in such business to the extent permitted by law  
 4250 without obtaining a certificate under this article.

4251 § 6.2-1015. Application for certificate; fee.

4252 A. An application for a certificate shall (i) be in writing, in such form as the Commission prescribes,  
 4253 (ii) be verified under oath, (iii) be supported by such information, data, and records as the Commission  
 4254 may require, and (iv) include an operating plan.

4255 B. Each application for a certificate of authority shall be accompanied by an investigation fee of  
 4256 \$10,000.

4257 § 6.2-1016. Bond required.

4258 A. No applicant shall obtain a certificate without filing with the Commission, and maintaining  
 4259 continuously thereafter, a surety bond in such amount as the Commission may from time to time require.

4260 B. In no event shall the amount of the surety bond be less than \$1 million.

4261 C. The surety bond required by this section shall be for the benefit of:

4262 1. Any person damaged as a result of a violation of the provisions of, or any regulation adopted  
 4263 pursuant to, this chapter;

4264 2. Any person damaged by the negligence, fraud, or embezzlement of a trust company organized  
 4265 under this article or its directors, officers, or employees; and

- 4266 3. Any person damaged by any other breach of trust of any trust company organized under this  
4267 article or its directors, officers, or employees.
- 4268 D. The Commission may revoke the certificate of any trust company that the Commission finds has  
4269 failed to maintain a bond as required by this section.
- 4270 § 6.2-1017. Procedure for granting or denying certificate.
- 4271 Before any trust company shall begin business, it shall obtain from the Commission a certificate of  
4272 authority authorizing it to do so. Prior to the issuance of such a certificate to a trust company or  
4273 affiliated trust company, the Commission shall ascertain that:
- 4274 1. All of the provisions of law have been complied with;
- 4275 2. The applicant is formed as a trust company for no other reason than to engage in legitimate trust  
4276 business;
- 4277 3. Financially responsible persons have subscribed for capital stock, surplus, and a reserve for  
4278 operation in an amount deemed by the Commission to be sufficient to warrant successful operation, but  
4279 the capital stock shall not be less than \$500,000;
- 4280 4. Each principal of an applicant has the financial responsibility, character, reputation, and general  
4281 fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest,  
4282 and in accordance with law;
- 4283 5. Oaths of all the directors have been taken and filed in accordance with § 6.2-1029;
- 4284 6. The moral fitness, financial responsibility, and business qualifications of those named as officers  
4285 and directors of the applicant are such as to command the confidence of the community in which the  
4286 trust company is proposed to be located;
- 4287 7. If the applicant is an affiliated trust company, the trust company holding company of the applicant  
4288 is qualified by virtue of its business record, experience, and financial responsibility to control a trust  
4289 company;
- 4290 8. In its opinion, the public interest will be served by the formation of a trust company in the  
4291 community where it is proposed. Authorizing the applicant to engage in the trust business as a trust  
4292 company shall be deemed in the public interest if, based on all relevant evidence and information,  
4293 advantages such as, but not limited to, increased competition, additional convenience, or gains in  
4294 efficiency outweigh possible adverse effects such as, but not limited to, diminished or unfair competition,  
4295 undue concentration of resources, conflicts of interests, or unsafe or unsound practices;
- 4296 9. The operating plan and any other relevant evidence and information warrant belief that the  
4297 applicant will conduct its business in accordance with generally accepted fiduciary standards;
- 4298 10. The applicant has provided a bond as required by § 6.2-1016;
- 4299 11. The applicant is not in violation of § 6.2-1021; and
- 4300 12. Anything else deemed pertinent.
- 4301 § 6.2-1018. Minimum capital; state of incorporation; form of entity.
- 4302 A certificate shall not be issued under § 6.2-1017 to an applicant:
- 4303 1. Unless it meets the minimum capital requirement for a trust company prescribed by § 6.2-1017;  
4304 and
- 4305 2. That is not a corporation organized under the laws of the Commonwealth.
- 4306 § 6.2-1019. Issuance of shares; subscriptions to stock; stock option plans.
- 4307 A. A trust company shall not issue no-par stock. The stock of a trust company shall be paid for in  
4308 money at not less than par value, and a trust company shall not begin business until it has received  
4309 payment in full of the amounts of initial capital specified in its certificate of authority.
- 4310 B. Money received for subscriptions to or purchases of stock of a trust company before it opens for  
4311 business shall be deposited in escrow in one or more insured financial institutions or invested in United  
4312 States government obligations. Such funds shall be under the joint control of at least two organizing  
4313 directors of the trust company, each of whom shall be bonded for an amount not less than the total  
4314 amount of money under their control. Such funds, together with any income thereon, less such  
4315 organizational expenses as have been approved by the trust company's board of directors, shall be  
4316 remitted to the trust company on the day it opens for business.
- 4317 C. If the trust company is denied a certificate of authority, or it is otherwise determined that the  
4318 trust company will not open for business, such funds, after payment of any amount owing for expenses  
4319 in connection with such attempted organization, including reasonable consulting fees, attorney fees,  
4320 salaries, filing fees, and other expenses, shall be refunded to subscribers or shareholders. The directors  
4321 of the trust company, individually, jointly, and severally, shall be liable for any failure of the trust  
4322 company to refund such funds to the subscribers or shareholders. This liability may be enforced by a  
4323 suit in equity instituted by one or more of the subscribers or stockholders on behalf of all subscribers or  
4324 stockholders against the trust company and one or more of its directors.
- 4325 D. The requirement that capital stock be paid for in money shall not be construed to prohibit the  
4326 establishment, as otherwise authorized by law, of stock option plans and stock purchase plans, or the

4327 issuance of stock pursuant to such plans. Such plans shall be established only after the trust company  
 4328 has opened for business and shall be approved by the shareholders of the company in accordance with  
 4329 applicable provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.).

4330 § 6.2-1020. Certain transactions by affiliated trust companies prohibited.

4331 An affiliated trust company shall not:

4332 1. During the underwriting period, purchase from an affiliated broker-dealer, for any trust account  
 4333 or for its own account, any security that is being underwritten by that broker-dealer; or

4334 2. Purchase for any trust account or for its own account any security that is issued by a company  
 4335 that owns five percent or more of the capital stock of, or is affiliated with, the affiliated trust company.

4336 § 6.2-1021. Commissions or fees for sale of stock not permitted.

4337 The Commission shall not issue a certificate of authority to a trust company if any commissions,  
 4338 fees, brokerage, or other compensation by whatever name have been paid or contracted to be paid by  
 4339 the trust company, or by anyone in its behalf, directly or indirectly, to any person for the sale of stock  
 4340 in such trust company. Nothing herein shall be construed to prohibit a trust company that has been  
 4341 issued a certificate of authority and is conducting operations from paying or contracting to pay such  
 4342 commissions or fees in connection with the issue or reissue of shares of stock of the trust company.

4343 § 6.2-1022. Reacquisition of shares; dividends.

4344 A. A trust company may not purchase, redeem or otherwise reacquire shares of stock it has issued,  
 4345 except that the Commission, upon the petition of a trust company, may permit the company to reacquire  
 4346 its own stock if the Commission finds that the proposed reacquisition will not jeopardize the safety and  
 4347 soundness of the trust company and will not be contrary to the public interest.

4348 B. The board of directors of any trust company may declare a dividend of so much as it finds  
 4349 expedient of the net undivided profits of the trust company, after providing for all expenses, losses,  
 4350 interest, and taxes owed by the trust company. However, before any dividend is declared, capital funds  
 4351 originally paid in shall have been restored by earnings to their initial level, and no dividend shall be  
 4352 declared or paid by the trust company that would impair the paid-in capital of the trust company.  
 4353 Notwithstanding the foregoing provisions of this section, the Commission may limit the payment of  
 4354 dividends by a trust company when it is determined that the limitation is in the public interest and is  
 4355 necessary to ensure the financial soundness of the trust company.

4356 § 6.2-1023. Acquisition of stock; application.

4357 A. Except as provided in this section, no person shall acquire, directly or indirectly, 10 percent or  
 4358 more of the voting shares of a trust company unless such person first:

4359 1. Files an application with the Commission in such form as the Commission may prescribe;

4360 2. Delivers such other information to the Commission as the Commission may require concerning the  
 4361 financial responsibility, background, experience, and activities of the applicant, its directors, senior  
 4362 officers, and principals and of any proposed new directors, senior officers, and principals of the trust  
 4363 company; and

4364 3. Pays such application fee as the Commission may prescribe.

4365 B. Upon the filing and investigation of an application, the Commission shall permit the acquisition,  
 4366 subject to § 6.2-1024, if it finds that the applicant and (i) its members if applicable, (ii) its directors,  
 4367 senior officers, and principals, and (iii) any proposed new directors, senior officers, and principals,  
 4368 have the financial responsibility, character, reputation, experience, and general fitness to warrant belief  
 4369 that the business will be operated efficiently and fairly, in the public interest, and in accordance with  
 4370 law. The Commission shall grant or deny the application within 60 days from the date a completed  
 4371 application, accompanied by the required fee, is filed, unless the period is extended by order of the  
 4372 Commission reciting the reasons for the extension. If the application is denied, the Commission shall  
 4373 notify the applicant of the denial and the reasons for the denial.

4374 C. The foregoing provisions of this section shall not apply to a person owning 51 percent or more of  
 4375 the capital stock of the trust company at the time of the proposed acquisition; however, such person  
 4376 shall give the Commission 30 days advance written notice of the proposed acquisition and provide such  
 4377 additional information as the Commission may require.

4378 § 6.2-1024. Restrictions on control, officers and directors.

4379 A. None of the following individuals or entities shall acquire control of any trust company under  
 4380 § 6.2-1023:

4381 1. An agent;

4382 2. A broker-dealer;

4383 3. An investment advisor;

4384 4. An investment advisor representative;

4385 5. An investment company; or

4386 6. Any corporation, limited liability company, partnership, business trust, association, or similar  
 4387 organization.

4388 *B. Nothing in this section shall prohibit (i) the formation of a trust company holding company by a*  
 4389 *trust company, (ii) any officer, director, or employee of a trust company holding company or a*  
 4390 *subsidiary of a trust company holding company from owning, indirectly, five percent or more of any*  
 4391 *class of capital stock of an affiliated trust company, or (iii) the acquisition of a trust company pursuant*  
 4392 *to § 6.2-1023 by a bank holding company as defined in 12 U.S.C. § 1841 or by a corporation that*  
 4393 *controls a subsidiary authorized to engage in the trust business under federal law or the laws of any*  
 4394 *state.*

4395 *§ 6.2-1025. Report to Commission of election of director.*

4396 *Within 60 days following the election or reelection of any person as a director of a trust company,*  
 4397 *the trust company shall furnish such information to the Commission relative to his personal character,*  
 4398 *integrity, financial condition, and personal and business background as the Commission shall from time*  
 4399 *to time prescribe. Such report, under oath, shall be signed by the director as well as a designated*  
 4400 *officer of the trust company. Any person knowingly making a false statement in such a report is guilty of*  
 4401 *perjury.*

4402 *§ 6.2-1026. Removal of director or officer; appeals; penalty.*

4403 *A. Whenever any director or officer of a trust company doing business in the Commonwealth, shall*  
 4404 *have continued to violate any law relating to such trust company or shall have continued unsafe or*  
 4405 *unsound practices in conducting the business of such trust company, after the director or officer, and*  
 4406 *the board of directors of the trust company of which he is a director or officer, have been warned in*  
 4407 *writing by the Commissioner to discontinue such violation of law or such unsafe or unsound practices,*  
 4408 *the Commissioner shall certify the facts to the Commission. The Commission shall thereupon enter an*  
 4409 *order requiring such director or officer to appear before the Commission, within not less than 10 days,*  
 4410 *to show cause why he should not be removed from office and thereafter restrained from participating in*  
 4411 *any manner in the management of such trust company. Such order shall contain a brief statement of the*  
 4412 *facts certified to the Commission by the Commissioner. A copy of such order shall be served upon such*  
 4413 *director or officer, and a copy thereof shall be sent by registered mail to each director of the trust*  
 4414 *company affected.*

4415 *B. If, after granting the accused director or officer a reasonable opportunity to be heard, the*  
 4416 *Commission shall find that he has continued to violate any law relating to such trust company, or has*  
 4417 *continued unsafe or unsound practices in conducting the business of such trust company, after he and*  
 4418 *the board of directors of the trust company of which he is a director or officer have been warned in*  
 4419 *writing by the Commissioner to discontinue such violation of law or unsafe or unsound practices, the*  
 4420 *Commission shall enter an order removing such director or officer from office and restraining such*  
 4421 *director or officer from thereafter participating in any manner in the management of such trust*  
 4422 *company. A copy of such order shall be served upon such director or officer. A copy of such order shall*  
 4423 *also be served upon the trust company of which he is a director or officer. Upon such removal the*  
 4424 *director or officer shall cease to be a director or officer of such trust company and thereafter cease to*  
 4425 *participate in any manner in the management of such trust company.*

4426 *C. Any director or officer aggrieved (i) by any order of the Commission entered under subsection B*  
 4427 *or (ii) by an order refusing to remove another director or officer from office or to restrain him from*  
 4428 *participating in the management of the trust company, shall have, of right, an appeal to the Supreme*  
 4429 *Court of Virginia within 60 days from the date of the order.*

4430 *D. Any director or officer removed or restrained under the provisions of subsection B from*  
 4431 *participating in any manner in the management of any trust company of which he is a director or*  
 4432 *officer, and who thereafter participates in any manner in the management of such trust company except*  
 4433 *as a stockholder therein, is guilty of a Class 6 felony.*

4434 *§ 6.2-1027. Bonds required of officers and employees; blanket bond.*

4435 *A. The board of directors of every trust company shall require bonds from all of the active officials*  
 4436 *and employees of such corporation. In lieu of such bonds, the board may obtain one or more blanket*  
 4437 *bonds. The surety on every bond shall be a bonding or surety company authorized to transact business*  
 4438 *in Virginia, and the penalty of any such bond shall be increased whenever in the opinion of the*  
 4439 *Commission it is necessary for the protection of the public interest.*

4440 *B. If a trust company is unable to obtain the bond required by this section, it shall immediately*  
 4441 *notify the Commission. The Commission may then direct the trust company to have an audit performed*  
 4442 *at its expense by an independent certified public accounting firm. The trust company shall obtain*  
 4443 *blanket bond coverage as soon as such coverage is available. Failure to obtain blanket bond coverage*  
 4444 *may be cause for action by the Commission as provided by § 6.2-1036.*

4445 *§ 6.2-1028. Offices.*

4446 *A. When satisfied that the public interest, as defined in subdivision 8 of § 6.2-1017, will be served,*  
 4447 *the Commission may authorize:*

4448 *1. A trust company having paid-up and unimpaired capital and surplus in an amount deemed*

4449 sufficient to warrant expansion to establish additional offices; and

4450 2. The relocation of any office.

4451 B. The office at which a trust company begins business shall be designated initially as its principal  
4452 office. The board of directors of a trust company may thereafter redesignate as the principal office  
4453 another authorized office of the trust company in the Commonwealth. The trust company shall notify the  
4454 Commission of any such redesignation not later than 30 days before its effective date and shall confirm  
4455 to the Commission any redesignation within 10 days of its occurrence.

4456 § 6.2-1029. Directors.

4457 A. The affairs of every trust company shall be directed by a board of directors. The board shall  
4458 consist of not less than five nor more than 25 individuals. A majority of the directors shall be citizens of  
4459 the Commonwealth.

4460 B. Every director of a trust company shall be the sole owner, and have in his personal possession or  
4461 control shares, of stock of such trust company having a book value of not less than \$2,000 and, within  
4462 30 days of election, shall take an oath that he will diligently and honestly perform his duties as a  
4463 director and that he is the sole owner and has in his possession or control the required amount of  
4464 stock, unencumbered in any way. When a director is reelected or reappointed, he shall take an oath  
4465 certifying his ownership and control of the required amount of unencumbered stock throughout his  
4466 previous term.

4467 C. Any director who (i) fails, for a period of 30 days, to take the oath or (ii) does not comply with  
4468 the requirement for ownership of stock, both as required by subsection B, shall automatically forfeit his  
4469 office.

4470 D. Within 60 days following the election or reelection of any individual as a director of a trust  
4471 company, the trust company shall furnish such information to the Commission relative to his personal  
4472 character, integrity, financial condition, and personal and business background, as the Commission shall  
4473 from time to time prescribe. Such report, under oath, shall be signed by the director as well as a  
4474 designated officer of the trust company. Any person knowingly making a false statement in such a report  
4475 is guilty of perjury.

4476 § 6.2-1030. Discount by officer, director, or employee of refused paper.

4477 No officer, director, or employee of a trust company may purchase or discount any note or paper at  
4478 a rate of interest in excess of what the trust company might charge knowing that the trust company has  
4479 refused to purchase or discount such paper.

4480 § 6.2-1031. Reports.

4481 Each trust company and trust company holding company shall file statements of condition and other  
4482 reports with the Commission in accordance with requirements established by regulation.

4483 § 6.2-1032. Investigations; examinations.

4484 A. The Commission may, by its designated officers and employees, as often as it deems necessary,  
4485 investigate and examine the affairs, business, premises, and records of any trust company and of any  
4486 trust company holding company. Examinations of such trust companies shall be conducted at least twice  
4487 in each three-year period.

4488 B. In the course of such investigations and examination, the principals, officers, directors, and  
4489 employees of such trust company or trust company holding company being investigated or examined  
4490 shall, upon demand of the person making such investigation or examination, afford full access to all  
4491 premises, books, records, and information that the person making such investigation or examination  
4492 deems necessary. For the foregoing purposes, the person making the investigation or examination shall  
4493 have authority to administer oaths, examine under oath all the aforementioned persons, and compel the  
4494 production of papers and objects of all kinds.

4495 § 6.2-1033. Fees.

4496 A. In order to defray the costs of their examination, supervision, and regulation, every trust company  
4497 shall pay a fee of \$330 per day per examiner during examinations.

4498 B. Each trust company and each trust company holding company shall also pay to the Commission:

4499 1. Such additional or special costs as the Commission may incur in connection with its examination;

4500 2. For investigating an application for authority to establish a branch office pursuant to § 6.2-1028,  
4501 a fee of \$1,800;

4502 3. For investigating an application to change the location of a principal office or branch office, a  
4503 fee of \$1,000; and

4504 4. For investigating an application made pursuant to § 6.2-1023, a fee of \$7,000.

4505 § 6.2-1034. Regulations.

4506 The Commission may adopt such regulations as it deems appropriate to effect the purposes of this  
4507 article. Before adopting any such regulation, the Commission shall give reasonable notice of its content  
4508 and shall afford interested parties an opportunity to be heard in accordance with the Commission's  
4509 Rules. In adopting regulations applicable to affiliated trust companies, the Commission shall be guided,

4510 where appropriate, by those standards and requirements concerning self-dealing and conflicts of  
 4511 interests that apply to banks, bank holding companies, and their subsidiaries when engaged in both trust  
 4512 and securities activities.

4513 § 6.2-1035. Audits.

4514 The Commission may require trust companies or trust company holding companies to have audits  
 4515 made of their books, records, and methods of operation annually. The Commission may require such  
 4516 audits to be conducted at any other time that it appears to the Commission that (i) the internal controls  
 4517 of a trust company or trust company holding company are not adequate, (ii) it is engaging in unsound  
 4518 practices, or (iii) its financial condition makes such audit necessary.

4519 § 6.2-1036. Commission's remedial powers.

4520 A. If the Commission finds that a trust company (i) has failed to fully observe the laws of the  
 4521 Commonwealth, (ii) is being operated in an unsafe or unsound manner, (iii) has failed to comply with  
 4522 any Commission order or regulation, (iv) is engaging in any irregular practices, or (v) is, or is about to  
 4523 become, insolvent or its capital has been, or is in danger of being, impaired, the Commission shall give  
 4524 notice thereof to the officers and directors of the company. If necessary to conserve the assets of the  
 4525 company or protect the public interest, the Commission may:

4526 1. Close the company for a period not exceeding 60 days, which period may be further extended for  
 4527 a like period or periods as the Commission deems necessary;

4528 2. Require that all orders and regulations of the Commission be complied with;

4529 3. Require that the company make reports daily or at such other times as may be required as to the  
 4530 results achieved in carrying out the Commission's orders;

4531 4. Require that any irregularities be promptly corrected;

4532 5. Require that any impairment of capital be made good; or

4533 6. Temporarily suspend the right of the company to receive any further property in a fiduciary  
 4534 capacity.

4535 B. If the Commission determines that a receiver should be appointed for a trust company, the  
 4536 Commission may close the company; take charge of the books, assets and affairs of the company; and  
 4537 apply to any circuit court in the Commonwealth for the appointment of a receiver to take charge of the  
 4538 company's business, assets and affairs. Proceedings for appointment of a receiver for a trust company  
 4539 shall not be entertained by any court except on application of the Commission.

4540 C. The Commissioner may issue and serve upon a trust company a cease and desist order if, in the  
 4541 opinion of the Commissioner, the company is engaging, has engaged, or, there is reasonable cause to  
 4542 believe, is about to engage in an unsafe or unsound practice, irregularity, or any violation of law, rule,  
 4543 or regulation applicable to the conduct of its business, or any Commission order. The cease and desist  
 4544 order shall contain a statement of the facts upon which it is based and may require, in terms that may  
 4545 be mandatory or otherwise, the company and its directors, officers, employees, and agents to cease and  
 4546 desist from the practice or violation. The order shall specify its effective date and shall notify the  
 4547 company of its right to request a hearing in accordance with the Commission's Rules.

4548 D. When the practice or violation specified in an order issued pursuant to subsection C, or any  
 4549 continuation thereof, is likely to prejudice the company's stockholders, or persons having an interest in  
 4550 property held by the company in a fiduciary capacity, the Commissioner may make the order effective  
 4551 immediately. An order shall remain in effect until withdrawn by the Commissioner or terminated by the  
 4552 Commission after a hearing. A request for a hearing shall be given expeditious treatment on the  
 4553 Commission's docket, and the Commission need not allow 10 days' notice to the company.

4554 § 6.2-1037. Effect of surrender or revocation of certificate.

4555 If a trust company surrenders its certificate or its certificate is revoked, the trust company, its assets,  
 4556 and the assets it holds in trust shall nevertheless continue to be subject to the provisions of this article,  
 4557 including the provisions of § 6.2-1036.

4558 § 6.2-1038. Appointment of receiver.

4559 A. When in the judgment of the Commission it is necessary for the protection of the interests of the  
 4560 Commonwealth or of the creditors of any trust company doing business in this Commonwealth, the  
 4561 Commission shall apply to any court in this Commonwealth having jurisdiction to appoint receivers for  
 4562 the appointment of a receiver to take charge of the business affairs and assets and to wind up the  
 4563 affairs and business of any such trust company failing to comply with the requirements of the  
 4564 Commission, or found upon examination to be insolvent or unable to meet its obligations and the legal  
 4565 demands made upon it in the ordinary course and conduct of its business.

4566 B. Reference is hereby made to §§ 6.2-916 through 6.2-924 and Article 14 (§ 6.2-925 et seq.) of  
 4567 Chapter 8 for provisions applicable to receiverships of trust companies.

4568 § 6.2-1039. Engaging in trust business without authority; Commission may examine accounts of  
 4569 suspected person; penalty.

4570 A. Every person who trades or deals as a trust company, or conducts a trust business, without

4571 authority of law, and their officers and agents, is guilty of a Class 6 felony.

4572 B. The Commission shall have authority to examine the accounts, books, and papers of any person  
4573 who it has reason to suspect is doing a trust business, in order to ascertain whether such person has  
4574 violated, or is violating, any provision of this title. The refusal to submit such accounts, books, and  
4575 papers shall be prima facie evidence of such violation.

4576 § 6.2-1040. Unlawful use of terms indicating that business is trust company; penalty.

4577 A. A person not authorized to engage in the trust business in the Commonwealth by the provisions of  
4578 this title or under the laws of the United States, shall not (i) use any office sign having thereon any  
4579 name or other words indicating that any such office is the office of a trust company; (ii) use or  
4580 circulate any letterheads, billheads, blank notes, blank receipts, certificates, circulars or any written or  
4581 printed paper, having thereon any name or word indicating that such person is a trust company; or (iii)  
4582 use the word "trust" or the equivalent thereof in any foreign language, or the plural thereof in  
4583 connection with any business other than a trust business.

4584 B. The foregoing prohibitions shall not apply to use by a trust company holding company of the  
4585 word "trust" or the equivalent thereof in its name, or of a name similar to that of a subsidiary trust  
4586 company of such trust company holding company.

4587 C. The use of the above-mentioned words in the name of, or in connection with, any other business  
4588 shall not be prohibited if the context or remaining words show clearly and definitely that the business is  
4589 not a trust company, and is not carrying on a trust business.

4590 D. Any person violating the provisions of this section, either individually or as an interested party, is  
4591 guilty of a Class 6 felony.

4592 § 6.2-1041. Civil penalties for failure to comply with § 6.2-1031 or 6.2-1032.

4593 A. Any trust company failing to comply with any of the provisions of § 6.2-1031, for a period of  
4594 longer than 30 days, after being called upon by the Commission for a statement, or to do such other act  
4595 as is therein provided, shall be subject to assessment by the Commission of a civil penalty of not less  
4596 than \$100 nor more than \$1,000 per day for each day of noncompliance.

4597 B. Any officer of any trust company who shall refuse to give any examiner the information or refuse  
4598 to be sworn, as required by § 6.2-1032, shall be subject to assessment by the Commission of a civil  
4599 penalty of not less than \$25 nor more than \$100 per day for each day of noncompliance.

4600 § 6.2-1042. Making derogatory statements affecting trust companies; penalty.

4601 Any person who willfully and maliciously makes, circulates or transmits to another, any statement,  
4602 rumor or suggestion that is directly or by reference derogatory to the financial condition, or affects the  
4603 solvency or financial standing of, any trust company doing business in the Commonwealth, or who  
4604 counsels, aids, procures or induces another to start, transmit, or circulate any such statement or rumor,  
4605 is guilty of a Class 1 misdemeanor.

4606 § 6.2-1043. Use of trust company name, logo, or symbol for marketing purposes; penalty.

4607 A. As used in this section, "name, logo, or symbol, or any combination thereof, of a trust company"  
4608 includes any name, logo, or symbol, or any combination thereof, that is deceptively similar to the name,  
4609 logo, or symbol of a trust company.

4610 B. Except as provided in subsection C, no person shall use the name, logo, or symbol, or any  
4611 combination thereof, of a trust company in marketing material provided to or solicitation of another  
4612 person in a manner such that a reasonable person may believe that the marketing material or  
4613 solicitation originated from or is endorsed by the trust company or that the trust company is responsible  
4614 for the marketing material or solicitation.

4615 C. This section shall not apply to (i) an affiliate or agent of the trust company or (ii) a person who  
4616 uses the name, logo, or symbol of a trust company with the consent of the trust company.

4617 D. Any person violating the provisions of this section, either individually or as an interested party, is  
4618 guilty of a Class 1 misdemeanor. This section shall not affect the availability of any remedies otherwise  
4619 available to a trust company.

4620 § 6.2-1044. Offenses by officer, director, agent or employee of trust company; penalties.

4621 A. Any officer, director, agent, or employee of any trust company who embezzles, abstracts, or  
4622 willfully misapplies any of the moneys, funds or credits of, or in the possession or control of the trust  
4623 company is guilty of larceny and subject to the penalties provided in § 18.2-95 or 18.2-96.

4624 B. Any officer, director, agent or employee of any trust company who (i) issues or puts forth any  
4625 certificate of deposit, (ii) draws any order or bill of exchange, (iii) makes any acceptance, (iv) assigns  
4626 any note, bond, draft, bill of exchange, mortgage, judgment, decree or other instrument in writing, or  
4627 (v) makes any false entry in any book, report or statement of such trust company with intent in any case  
4628 to injure or defraud the trust company, or any other individual or entity, or to deceive any officer of the  
4629 trust company or the Commission, or any agent or examiner authorized to examine the affairs of the  
4630 trust company, and any person, who, with like intent, aids or abets any such officer, director, agent or  
4631 employee of such trust company in any act described in clauses (i) through (v), is guilty of a Class 5

4632 felony.

4633 C. Any officer of a trust company who knowingly makes a false statement of the condition of any  
4634 trust company is guilty of a Class 5 felony.

4635 § 6.2-1045. Officers, directors, agents and employees violating or causing trust company to violate  
4636 laws; civil liability not affected.

4637 Any officer, director, agent, or employee of any trust company who knowingly violates or who  
4638 knowingly causes any trust company to violate any provision of this chapter, or knowingly participates  
4639 or knowingly acquiesces in any such violation, unless other punishment is provided for the offense of  
4640 such officer, agent, or employee, is guilty of a Class 1 misdemeanor. The provisions of this section shall  
4641 not affect the civil liability of any such officer, director, agent or employee.

4642 § 6.2-1046. Civil penalties for violation of Commission's orders.

4643 A. The Commission may impose, enter judgment for, and enforce by its process, a civil penalty not  
4644 exceeding \$10,000 upon any trust company or against any of its directors, officers, or employees, who it  
4645 determines, in proceedings commenced in accordance with the Commission's Rules, has violated any  
4646 lawful order of the Commission.

4647 B. The Commission may remove from office any director or officer of a trust company for a second  
4648 or subsequent violation by him of any such order.

4649 C. In all cases the defendant shall have an opportunity to be heard and to introduce evidence, and  
4650 the right to appeal as provided by law.

4651 Article 3.

4652 Trust Subsidiaries.

4653 § 6.2-1047. Definitions.

4654 As used in this article, unless the context requires a different meaning:

4655 "Affiliate bank" with respect to a trust subsidiary means (i) a bank of which more than 50 percent of  
4656 the shares are owned directly or indirectly through a subsidiary by the same Virginia bank holding  
4657 company that owns directly or indirectly through a subsidiary all the shares, except directors' qualifying  
4658 shares, of a trust subsidiary or a subsidiary bank or (ii) a bank that owns some or all of the shares of a  
4659 trust subsidiary or a subsidiary bank.

4660 "Bank" has the meaning assigned to it in § 6.2-800.

4661 "Bank holding company" has the meaning assigned to it in § 6.2-800.

4662 "Bank under common ownership" means a bank of which 80 percent or more of its common stock is  
4663 owned, directly or indirectly through a subsidiary, by the same Virginia bank holding company as owns,  
4664 directly or indirectly through a subsidiary, at least 80 percent of the stock of the subsidiary bank  
4665 substituted as fiduciary.

4666 "Fiduciary capacity" means every capacity in which a trust institution is granted the right to act  
4667 pursuant to § 6.2-1002 and every other capacity in which a bank acts, or may act, through its trust  
4668 department, including, without limitation, trusteeship with respect to common trust funds.

4669 "Main office" is the place designated in the articles of incorporation or articles of association as the  
4670 main office of the bank or trust subsidiary at which the principal functions of the bank or trust  
4671 subsidiary are to be conducted.

4672 "Owning bank" means a bank owning 10 percent or more of the shares of a trust subsidiary.

4673 "Subsidiary bank" means a bank authorized to exercise trust powers, at least 80 percent of the  
4674 outstanding shares of which are owned directly or indirectly through a subsidiary by a Virginia bank  
4675 holding company.

4676 "Trust office" means, with regard to a trust subsidiary or a bank having trust powers, an office for  
4677 trust purposes only, at which the trust subsidiary or bank holds itself out as dealing with the public in  
4678 the solicitation and conduct of its trust business.

4679 "Virginia bank holding company" means a bank holding company that, directly or indirectly through  
4680 a subsidiary, owns or controls a bank the main office of which is located in the Commonwealth.

4681 § 6.2-1048. Organization of subsidiary trust companies.

4682 A. A subsidiary trust company may be incorporated and organized under Article 3 (§ 13.1-618 et  
4683 seq.) of Chapter 9 of Title 13.1 or under federal laws relating to national banking associations for the  
4684 purpose of conducting a trust business and other activities and business incidental thereto in which a  
4685 trust subsidiary is permitted to engage as provided in § 6.2-1049.

4686 B. All the outstanding voting shares of a subsidiary trust company, other than directors' qualifying  
4687 shares, shall be owned directly or indirectly through a subsidiary by (i) one or more Virginia bank  
4688 holding companies, (ii) one or more banks authorized to have a main or parent office in Virginia, or  
4689 (iii) both.

4690 C. A trust subsidiary shall be subject to regular examination and supervision by the Commission or  
4691 by the Comptroller of the Currency of the United States.

4692 D. If incorporated under Title 13.1, a trust subsidiary shall pay such examination fees as may be

4693 from time to time imposed upon trust departments of banks that are subject to examination by the  
4694 Commission.

4695 § 6.2-1049. Permissible business.

4696 A trust subsidiary shall be permitted to engage in trust business and activities that may be engaged  
4697 in by a bank pursuant to § 6.2-1002, and business incidental thereto. A trust subsidiary shall not accept  
4698 deposits or conduct any other business except as may be incidental to the trust business being conducted  
4699 by it.

4700 § 6.2-1050. Directors.

4701 The affairs of every trust subsidiary incorporated under the laws of the Commonwealth shall be  
4702 managed by a board of directors. The board shall consist of not fewer than five individuals. A majority  
4703 of the directors shall be citizens of the Commonwealth. Directors need not be stockholders of the trust  
4704 subsidiary unless the articles of incorporation so require.

4705 § 6.2-1051. Report to Commission of election of director.

4706 Within 60 days following the election or reelection of any person as a director of a trust subsidiary,  
4707 the trust subsidiary shall furnish such information to the Commission relative to his personal character,  
4708 integrity, financial condition, and personal and business background as the Commission shall from time  
4709 to time prescribe. Such report, under oath, shall be signed by the director as well as a designated  
4710 officer of the trust subsidiary. Any person knowingly making a false statement in such a report is guilty  
4711 of perjury.

4712 § 6.2-1052. Removal of director or officer; appeals; penalty.

4713 A. Whenever any director or officer of a trust subsidiary doing business in the Commonwealth, shall  
4714 have continued to violate any law relating to such trust subsidiary or shall have continued unsafe or  
4715 unsound practices in conducting the business of such trust subsidiary, after the director or officer, and  
4716 the board of directors of the trust subsidiary of which he is a director or officer, have been warned in  
4717 writing by the Commissioner to discontinue such violation of law or such unsafe or unsound practices,  
4718 the Commissioner shall certify the facts to the Commission. The Commission shall thereupon enter an  
4719 order requiring such director or officer to appear before the Commission, within not less than 10 days,  
4720 to show cause why he should not be removed from office and thereafter restrained from participating in  
4721 any manner in the management of such trust subsidiary. Such order shall contain a brief statement of  
4722 the facts certified to the Commission by the Commissioner. A copy of such order shall be served upon  
4723 such director or officer, and a copy thereof shall be sent by registered mail to each director of the trust  
4724 subsidiary affected.

4725 B. If, after granting the accused director or officer a reasonable opportunity to be heard, the  
4726 Commission shall find that he has continued to violate any law relating to such trust subsidiary, or has  
4727 continued unsafe or unsound practices in conducting the business of such trust subsidiary, after he and  
4728 the board of directors of the trust subsidiary of which he is a director or officer have been warned in  
4729 writing by the Commissioner to discontinue such violation of law or unsafe or unsound practices, the  
4730 Commission shall enter an order removing such director or officer from office and restraining such  
4731 director or officer from thereafter participating in any manner in the management of such trust  
4732 subsidiary. A copy of such order shall be served upon such director or officer. A copy of such order  
4733 shall also be served upon the trust subsidiary of which he is a director or officer. Upon such removal  
4734 the director or officer shall cease to be a director or officer of such trust subsidiary and thereafter  
4735 cease to participate in any manner in the management of such trust subsidiary.

4736 C. Any director or officer aggrieved by (i) any order of the Commission entered under subsection B  
4737 or (ii) an order refusing to remove another director or officer from office or to restrain him from  
4738 participating in the management of the trust subsidiary, shall have, of right, an appeal to the Supreme  
4739 Court of Virginia within 60 days from the date of the order.

4740 D. Any director or officer removed or restrained under the provisions of subsection B from  
4741 participating in any manner in the management of any trust subsidiary of which he is a director or  
4742 officer, and who thereafter participates in any manner in the management of such trust subsidiary  
4743 except as a stockholder therein, is guilty of a Class 6 felony.

4744 § 6.2-1053. Bonds required of officers and employees; blanket bond.

4745 A. The board of directors of every trust subsidiary shall require bonds from all of the active officials  
4746 and employees of such corporation. In lieu of such bonds, the board may obtain one or more blanket  
4747 bonds. The surety on every bond shall be a bonding or surety company authorized to transact business  
4748 in Virginia, and the penalty of any such bond shall be increased whenever in the opinion of the  
4749 Commission it is necessary for the protection of the public interest.

4750 B. If a trust subsidiary is unable to obtain the bond required by this section, it shall immediately  
4751 notify the Commission, which may then direct the trust subsidiary to have an audit performed at its  
4752 expense by an independent certified public accounting firm. The trust subsidiary shall obtain blanket  
4753 bond coverage as soon as such coverage is available. Failure to obtain blanket bond coverage may be

4754 *cause for action by the Commission as provided by § 6.2-906.*

4755 *§ 6.2-1054. Certificate required.*

4756 *No trust subsidiary, other than a wholly owned subsidiary of a national banking association, shall*  
 4757 *engage in trust business without first obtaining a certificate of authority from the Commission, or the*  
 4758 *Comptroller of the Currency if it is organized as a national banking association. The Commission shall*  
 4759 *not grant such certificate unless:*

4760 *1. The capital and surplus of the trust subsidiary equal or exceed \$200,000; and*

4761 *2. The Commission is satisfied that (i) the trust subsidiary is capable of complying with the*  
 4762 *provisions of this chapter and (ii) the officers and directors have the moral fitness and business*  
 4763 *qualifications necessary to manage the trust subsidiary.*

4764 *§ 6.2-1055. Trust offices.*

4765 *A trust subsidiary may have trust offices at locations where branches are permitted under § 6.2-831,*  
 4766 *upon approval of the Commission.*

4767 *§ 6.2-1056. When security not required of trust subsidiaries.*

4768 *No trust subsidiary with combined unimpaired capital stock and surplus of \$200,000 or more shall*  
 4769 *be required by any officer or court of the Commonwealth to give security upon appointment to or*  
 4770 *acceptance of any office or trust that it may, by law, be authorized to execute. No trust subsidiary shall*  
 4771 *qualify in a fiduciary capacity on an estate that has a value in excess of its combined unimpaired*  
 4772 *capital and surplus, without giving security for such excess, unless:*

4773 *1. The requirement that the trust subsidiary give security for such excess is waived by the person*  
 4774 *creating such fiduciary relationship;*

4775 *2. A Virginia bank holding company or a bank owning, directly or indirectly through a subsidiary*  
 4776 *bank, 100 percent of the stock, exclusive of directors' qualifying shares, of the trust subsidiary files with*  
 4777 *the Commission and with the circuit court for the jurisdiction in which the main office of the bank*  
 4778 *holding company or bank is located an undertaking to be fully responsible for the existing and future*  
 4779 *fiduciary acts and omissions of its trust subsidiary. If such undertaking is filed, a trust subsidiary may*  
 4780 *qualify in a fiduciary capacity without giving security if the assets it is to receive in such capacity have*  
 4781 *a value not greater than the combined and unimpaired capital and surplus of the parent Virginia bank*  
 4782 *holding company or parent bank that has undertaken to be responsible for the acts of such trust*  
 4783 *subsidiary. If no such undertaking shall have been filed, and corporate surety is provided, the premium*  
 4784 *thereof shall be borne by the trust subsidiary and not the fiduciary estate; or*

4785 *3. If an affiliate bank shall already have qualified in any fiduciary capacity and given bond, without*  
 4786 *security, and the trust subsidiary or subsidiary bank shall qualify as successor fiduciary, then, if the*  
 4787 *order of substitution so provides, and the fiduciary for which there is to be substitution consents, the*  
 4788 *predecessor fiduciary shall remain liable on its bond for the acts of its named successor and no security*  
 4789 *shall be required of the successor fiduciary, if the bond of the fiduciary for which there is to be*  
 4790 *substitution is otherwise sufficient.*

4791 *§ 6.2-1057. Deposits held or received by trust subsidiaries or subsidiary bank with affiliate banks.*

4792 *A. Funds received or held by a trust subsidiary or subsidiary bank while awaiting investment or*  
 4793 *distribution shall not be used by an affiliate bank or owning bank in the conduct of its business or*  
 4794 *deposited in such bank, unless the bank first delivers to its trust department or to the trust subsidiary or*  
 4795 *subsidiary bank, as collateral security therefor, securities of any of the classes described in subdivision*  
 4796 *B 1, B 2, or B 3 of § 6.2-1005, in an amount described in subsection B.*

4797 *B. The securities deposited as collateral as required by subsection A shall be owned by the bank and*  
 4798 *shall at all times be at least equal in market value to the amount of trust funds held on deposit by such*  
 4799 *trust subsidiary or subsidiary bank, less such amount thereof as are insured by the Federal Deposit*  
 4800 *Insurance Corporation.*

4801 *C. In the event of the failure or liquidation of such bank, the trust subsidiary or subsidiary bank and*  
 4802 *the owners of the beneficial interest in such trust funds shall have a lien on the bonds or other*  
 4803 *securities so set apart, in addition to their claims against the estate of the bank.*

4804 *§ 6.2-1058. Substitution of trust subsidiary as fiduciary.*

4805 *A. Upon obtaining a certificate to engage in the trust business, a trust subsidiary may file an*  
 4806 *application in the circuit court of the jurisdiction in which its main office is located requesting that it be*  
 4807 *substituted, except as may be excluded in such application, in every fiduciary capacity for each of its*  
 4808 *owning banks, or, in the case of a Virginia bank holding company, for any one or more of its affiliate*  
 4809 *banks specified in the application.*

4810 *B. Upon finding that (i) the trust subsidiary has obtained a certificate to engage in the trust business*  
 4811 *by the Commission, or by the Comptroller of the Currency if the trust subsidiary is a national banking*  
 4812 *association, the main office of which is in the Commonwealth and (ii) the requirements of § 6.2-1056*  
 4813 *have been met, the court shall enter an order substituting the trust subsidiary in every fiduciary capacity*  
 4814 *for each of its specified affiliate banks, or specified owning banks, except as may be otherwise specified*

4815 *in the application.*

4816 *C. Upon entry of such order, the trust subsidiary shall, without further act, be substituted in every*  
4817 *fiduciary capacity. The substitution shall be evidenced by filing a copy of the order with the clerk of any*  
4818 *circuit court in the Commonwealth. The order shall be indexed in each index in the records of such*  
4819 *court in which substitutions of fiduciaries are otherwise indexed. The application may be made ex parte*  
4820 *and need not list the fiduciary capacities in which substitution is made. If the requirements of*  
4821 *§ 6.2-1056 have been met, the order of substitution shall specify that the trust subsidiary shall be*  
4822 *deemed without further act to have given bond with open penalty with respect to each fiduciary capacity*  
4823 *in which there is substitution.*

4824 *D. Any bond, with corporate surety, posted under this section or § 6.2-1056 may be a blanket bond*  
4825 *conditioned as otherwise contemplated by law.*

4826 *E. Each designation in a will or other instrument heretofore or hereafter executed of a bank as*  
4827 *fiduciary shall be deemed a designation of the trust subsidiary substituted for such bank pursuant to this*  
4828 *section except when the instrument is executed after such substitution and expressly negates the*  
4829 *application of this section. No waiver of surety with respect to any fiduciary bond shall be effective*  
4830 *except in such case when the bond would be otherwise sufficient as contemplated by § 6.2-1056 or*  
4831 *6.2-1059. Any grant in such an instrument of any discretionary power shall be deemed conferred upon*  
4832 *the fiduciary deemed to have been nominated hereunder.*

4833 *F. A bank shall account jointly with the trust subsidiary that has been substituted as fiduciary for*  
4834 *such bank pursuant to this section for the accounting period during which the trust subsidiary is initially*  
4835 *so substituted. Upon substitution pursuant to this section, the bank shall deliver to the trust subsidiary*  
4836 *all assets held by the bank as fiduciary, except assets held for accounts to which there has been no*  
4837 *substitution. Upon such substitution, all such assets shall become the property of the trust subsidiary as*  
4838 *fiduciary without the necessity of any instrument of transfer or conveyance.*

4839 *§ 6.2-1059. Substitution of subsidiary bank under common ownership as fiduciary.*

4840 *A. Upon obtaining permission to engage in the trust business, a subsidiary bank may file an*  
4841 *application in the circuit court of the jurisdiction in which its main office is located requesting that it be*  
4842 *substituted, except as may be specified in such application, in every fiduciary capacity for a bank under*  
4843 *common ownership.*

4844 *B. Upon a finding that (i) the subsidiary bank has been granted such permission to engage in the*  
4845 *trust business by the Commission or the Comptroller of the Currency and (ii) the unimpaired capital*  
4846 *and surplus of such subsidiary bank is sufficient as prescribed in § 6.2-1003, or bond with corporate*  
4847 *surety has been posted for any excess, or has been validly waived, the court shall enter an order*  
4848 *substituting the subsidiary bank in every fiduciary capacity for each of the specified banks under*  
4849 *common ownership, except as may be otherwise specified in the application.*

4850 *C. Upon entry of such order, such subsidiary bank shall, without further act, be substituted in every*  
4851 *such fiduciary capacity. The substitution shall be evidenced by filing a copy of the order with the clerk*  
4852 *of any circuit court in the Commonwealth. The order shall be indexed in each index in the records of*  
4853 *such court in which substitutions of fiduciaries are otherwise indexed. The application may be made ex*  
4854 *parte and need not list the fiduciary capacities in which substitution is made. If a bank under common*  
4855 *ownership with the subsidiary bank shall already have qualified in any fiduciary capacity and given*  
4856 *bond, without surety, then if the order of substitution shall so provide, which it may provide only if the*  
4857 *fiduciary for which there is to be substitution consents, the predecessor fiduciary shall remain liable on*  
4858 *its bond for the acts of its named successor, and no security or corporate surety shall be required of the*  
4859 *successor fiduciary on its bond.*

4860 *D. Any bond, with corporate surety, posted under this section or under § 6.2-1056 may be a blanket*  
4861 *bond conditioned as otherwise contemplated by law.*

4862 *E. Each designation in a will or other instrument heretofore or hereafter executed of a bank as*  
4863 *fiduciary shall be deemed a designation of the subsidiary bank under common ownership substituted for*  
4864 *such bank pursuant to this section except when the instrument is executed after such substitution and*  
4865 *expressly negates the application of this section. No waiver of surety with respect to any fiduciary bond*  
4866 *shall be effective except in such case when the bond would be otherwise sufficient as contemplated by*  
4867 *§ 6.2-1056 or this section. Any grant in such an instrument of any discretionary power shall be deemed*  
4868 *conferred upon the fiduciary deemed to have been nominated hereunder.*

4869 *F. A bank shall account jointly with the subsidiary bank that has been substituted as fiduciary for*  
4870 *such bank pursuant to this section for the accounting period during which the subsidiary bank is*  
4871 *initially so substituted. Upon substitution pursuant to this section, the bank shall deliver to the*  
4872 *substituted subsidiary bank under common ownership all assets held by the bank as fiduciary, except*  
4873 *assets held for accounts to which there has been no substitution. Upon such substitution, all such assets*  
4874 *shall become the property of the subsidiary bank as fiduciary without the necessity of any instrument of*  
4875 *transfer or conveyance.*

4876 § 6.2-1060. Trust subsidiaries to have same powers and restrictions as bank trust departments.

4877 Wherever there is granted to or imposed upon a bank having and exercising trust powers any further  
 4878 powers in the nature of trust powers or any restriction upon any such powers, whether under this title  
 4879 or otherwise, it is intended that such grant to or restriction upon a bank in its trust powers shall be  
 4880 equally applicable to a trust subsidiary, unless context shall otherwise require or unless this chapter or  
 4881 Chapter 8 (§ 6.2-800 et seq.) specifically covers such situation or provides otherwise.

4882 § 6.2-1061. Reports; investigations and examinations; civil penalties.

4883 A. Each trust subsidiary shall file statements of condition and other reports with the Commission in  
 4884 accordance with the requirements established by regulation.

4885 B. The Commission may, by its designated officers and employees, as often as it deems necessary,  
 4886 investigate and examine the affairs, business, premises, and records of any trust subsidiary.  
 4887 Examinations of such trust subsidiaries shall be conducted at least twice in each three-year period.

4888 C. In the course of such investigations and examination, the principals, officers, directors, and  
 4889 employees of such trust subsidiary being investigated or examined shall, upon demand of the person  
 4890 making such investigation or examination, afford full access to all premises, books, records, and  
 4891 information that the person making such investigation or examination deems necessary. For the  
 4892 foregoing purposes, the person making the investigation or examination shall have authority to  
 4893 administer oaths, examine under oath all the aforementioned persons, and compel the production of  
 4894 papers and objects of all kinds.

4895 D. Any trust subsidiary that fails to comply with the provisions of subsection A, for a period of  
 4896 longer than 30 days, after being called upon by the Commission for a statement, or to do such other act  
 4897 as is therein provided, shall be subject to assessment by the Commission of a civil penalty of not less  
 4898 than \$100 nor more than \$1,000 per day for each day of noncompliance.

4899 E. Any officer of any trust subsidiary being investigated or examined by the Commission who shall  
 4900 refuse to give any examiner the information or refuse to be sworn, as required by subsections B and C,  
 4901 shall be subject to assessment by the Commission of a civil penalty of not less than \$25 nor more than  
 4902 \$100 per day for each day of noncompliance.

4903 § 6.2-1062. Offenses by officer, director, agent or employee of trust subsidiary; penalties.

4904 A. Any officer, director, agent, or employee of any trust subsidiary who embezzles, abstracts, or  
 4905 willfully misapplies any of the moneys, funds or credits of, or in the possession or control of the trust  
 4906 subsidiary is guilty of larceny and subject to the penalties provided in § 18.2-95 or 18.2-96.

4907 B. Any officer, director, agent or employee of any trust subsidiary who (i) issues or puts forth any  
 4908 certificate of deposit, (ii) draws any order or bill of exchange, (iii) makes any acceptance, (iv) assigns  
 4909 any note, bond, draft, bill of exchange, mortgage, judgment, decree or other instrument in writing, or  
 4910 (v) makes any false entry in any book, report or statement of such trust subsidiary with intent in any  
 4911 case to injure or defraud the trust subsidiary, or any other individual or entity, or to deceive any officer  
 4912 of the trust subsidiary or the Commission, or any agent or examiner authorized to examine the affairs of  
 4913 the trust subsidiary, and any person, who, with like intent, aids or abets any such officer, director, agent  
 4914 or employee of such trust subsidiary in any act described in clauses (i) through (v), is guilty of a Class  
 4915 5 felony.

4916 C. Any officer of a trust subsidiary who knowingly makes a false statement of the condition of any  
 4917 trust subsidiary is guilty of a Class 5 felony.

4918 § 6.2-1063. Officers, directors, agents and employees violating or causing trust subsidiary to violate  
 4919 laws; civil liability not affected.

4920 Any officer, director, agent, or employee of any trust subsidiary who knowingly violates or who  
 4921 knowingly causes any trust subsidiary to violate any provision of this chapter, or knowingly participates  
 4922 or knowingly acquiesces in any such violation, unless other punishment is provided for the offense of  
 4923 such officer, agent, or employee, is guilty of a Class 1 misdemeanor. The provisions of this section shall  
 4924 not affect the civil liability of any such officer, director, agent or employee.

4925 § 6.2-1064. Civil penalties for violation of Commission's orders.

4926 A. The Commission may impose, enter judgment for, and enforce by its process, a civil penalty not  
 4927 exceeding \$10,000 upon any trust subsidiary or against any of its directors, officers, or employees, who  
 4928 it determines, in proceedings commenced in accordance with the Commission's Rules, has violated any  
 4929 lawful order of the Commission.

4930 B. The Commission may remove from office any director or officer of a trust subsidiary for a second  
 4931 or subsequent violation by him of any such order.

4932 C. In all cases the defendant shall have an opportunity to be heard and to introduce evidence, and  
 4933 the right to appeal as provided by law.

4934

#### Article 4.

#### Multistate Trust Institutions.

4935

4936

§ 6.2-1065. Definitions.

4937 *As used in this article, unless the context requires a different meaning:*

4938 *"Acquisition of a trust office" means the acquisition of a trust office located in a host state, without*  
 4939 *acquiring the trust institution of such office.*

4940 *"Bank" has the meaning assigned to it in 12 U.S.C. § 1813(a)(1) of the Federal Deposit Insurance*  
 4941 *Company Act of 1956 (12 U.S.C. § 1811 et seq.), as amended.*

4942 *"Bank supervisory agency" means: (i) any agency of another state with primary responsibility for*  
 4943 *chartering and supervising a trust institution and (ii) the Office of the Comptroller of the Currency, the*  
 4944 *Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System and*  
 4945 *any successor to these agencies.*

4946 *"Home state" means (i) with respect to a federally chartered trust institution, the state where such*  
 4947 *institution maintains its principal office and (ii) with respect to any other trust institution, the state that*  
 4948 *chartered such institution.*

4949 *"Home state regulator" means the bank supervisory agency with primary responsibility for chartering*  
 4950 *and supervising an out-of-state trust institution.*

4951 *"Host state" means a state, other than the home state of a trust institution, in which the trust*  
 4952 *institution maintains or seeks to acquire or establish an office.*

4953 *"New trust office" means a trust office located in a host state that (i) is originally established by the*  
 4954 *trust institution as a trust office and (ii) does not become a trust office of the trust institution as a result*  
 4955 *of (a) the acquisition of another trust institution or trust office of another trust institution or (b) a*  
 4956 *merger, consolidation, or conversion involving any such trust institution or trust office.*

4957 *"Office" with respect to a trust institution means the principal office or a trust office, but not a*  
 4958 *branch.*

4959 *"Out-of-state bank" means a bank chartered to act as a fiduciary whose home state is a state other*  
 4960 *than the Commonwealth.*

4961 *"Out-of-state trust company" means a trust company or trust subsidiary whose home state is a state*  
 4962 *other than the Commonwealth.*

4963 *"Out-of-state trust institution" means a trust institution whose home state is a state other than the*  
 4964 *Commonwealth.*

4965 *"Principal office" with respect to (i) a state trust company, means a location designated by such trust*  
 4966 *company as its main office pursuant to § 6.2-1028 or 6.2-1047 or (ii) a trust institution other than a*  
 4967 *state trust company, means its principal place of business in the United States.*

4968 *"State bank" or "Virginia state bank" means a bank chartered under the laws of the Commonwealth*  
 4969 *and permitted to engage in the trust business pursuant to § 6.2-819.*

4970 *"State trust company" means a corporation organized or reorganized as a trust company under*  
 4971 *Article 2 (§ 6.2-1013 et seq.) or Article 3 (§ 6.2-1047 et seq.) of this chapter.*

4972 *"State trust institution" means a trust institution having its principal office in the Commonwealth.*

4973 *"Trust company" means a state trust company or any other entity chartered to act as a fiduciary that*  
 4974 *is not a bank.*

4975 *"Trust institution" means a bank or trust company chartered by a state bank supervisory agency or*  
 4976 *by the Office of the Comptroller of Currency.*

4977 *"Trust office" means an office at which a trust institution engages in a trust business and not in the*  
 4978 *banking business.*

4979 *§ 6.2-1066. Interstate trust offices by Virginia state banks.*

4980 *A. With the prior approval of the Commission, any Virginia state bank or state trust company may*  
 4981 *establish a new trust office or acquire a trust office in a state other than the Commonwealth.*

4982 *B. A Virginia state bank or state trust company desiring to establish and maintain a trust office in*  
 4983 *another state under this section shall file an application or notice on a form prescribed by the*  
 4984 *Commission and pay the branch application fee set forth in subdivision B 3 of § 6.2-908. If the*  
 4985 *Commission finds that the applicant has the financial resources sufficient to undertake the proposed*  
 4986 *expansion without adversely affecting its soundness and that the laws of the host state permit the*  
 4987 *establishment of the trust office, it may approve the application. In acting on the application, the*  
 4988 *Commission shall consider the views of the state bank supervisor of the host state where the trust office*  
 4989 *is proposed to be located.*

4990 *§ 6.2-1067. Trust business of out-of-state trust institution.*

4991 *A. An out-of-state trust institution that establishes or maintains one or more offices in the*  
 4992 *Commonwealth under this article may conduct any activity at each such office that would be authorized*  
 4993 *under the laws of the Commonwealth for a state trust institution to conduct at such an office.*

4994 *B. An out-of-state trust institution may engage in a trust business at an office in the Commonwealth*  
 4995 *only if it maintains (i) a trust office in the Commonwealth as permitted by this article or (ii) a branch*  
 4996 *in the Commonwealth.*

4997 *§ 6.2-1068. Establishing or acquiring an interstate trust office; additional trust offices; notice of*

4998 closure.

4999 A. An out-of-state trust institution that does not already maintain a trust office in the Commonwealth  
5000 and that meets the requirements of this article may:

5001 1. Establish and maintain a new trust office in the Commonwealth; or

5002 2. Acquire and maintain a trust office in the Commonwealth.

5003 B. An out-of-state trust institution that maintains a trust office in the Commonwealth under this  
5004 article may establish or acquire additional trust offices in the Commonwealth to the same extent that a  
5005 state trust institution may establish or acquire additional offices in the Commonwealth, provided it  
5006 follows the procedures for establishing or acquiring such offices set forth in this article.

5007 C. An out-of-state trust institution that maintains an office the Commonwealth under this article shall  
5008 give at least 30 days' prior written notice, or in the case of an emergency transaction, such shorter  
5009 notice as is consistent with applicable state or federal law, to the Commission of any merger,  
5010 consolidation, or other transaction involving the trust institution that would cause any trust office  
5011 operated by the institution in this state to be maintained by another trust institution or cause the  
5012 operation of such an office to cease.

5013 § 6.2-1069. Filing requirements.

5014 An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and  
5015 maintain a trust office in the Commonwealth pursuant to this article shall submit to the Commission a  
5016 copy of the application or notice it files with its home state regulator or the responsible federal bank  
5017 supervisory agency to establish or acquire such office. Such submission shall be made at the same time  
5018 the application or notice is filed by the out-of-state trust institution with such home state regulator or  
5019 responsible federal bank supervisory agency. The out-of-state trust institution shall also comply with the  
5020 requirements of Article 17 (§ 13.1-757 et seq.) of the Virginia Stock Corporation Act and pay any filing  
5021 fee required by the Commission.

5022 § 6.2-1070. Conditions for approval.

5023 A trust office of an out-of-state trust institution shall not be acquired or established under this article  
5024 unless:

5025 1. In the case of a new trust office, the laws of the home state of the out-of-state trust institution  
5026 permit state trust institutions to establish and maintain new trust offices in that state under substantially  
5027 the same terms as set forth in this article.

5028 2. In the case of a trust office to be established through the acquisition of a trust office, the laws of  
5029 the home state of the out-of-state trust institution permit state trust institutions to establish and maintain  
5030 trust offices in that state through the acquisition of trust offices under substantially the same terms as  
5031 set forth in this article.

5032 § 6.2-1071. Examinations; periodic reports; cooperative agreements; assessment of fees.

5033 A. The Commission may make such examinations of any office established and maintained in the  
5034 Commonwealth pursuant to this article by an out-of-state trust institution as the Commission may deem  
5035 necessary to determine whether the office is operating in compliance with the laws of the  
5036 Commonwealth and to ensure the office is being operated in a safe and sound manner. The provisions  
5037 of § 6.2-901 that apply to examinations of banks shall apply to examinations of an office conducted  
5038 under this section. The Commission shall also have authority to examine the principal office of an  
5039 out-of-state trust institution, as necessary. When any such examination is conducted outside the  
5040 Commonwealth, the out-of-state trust institution shall be liable for and shall pay to the Commission  
5041 within 30 days of the presentation of an itemized statement, the actual travel and reasonable living  
5042 expenses incurred on account of such examination, or shall pay for such examination at a reasonable  
5043 per diem rate approved by the Commission.

5044 B. The Commission may require periodic reports from any out-of-state trust institution that maintains  
5045 an office in the Commonwealth to the extent such reporting requirements (i) apply equally to similarly  
5046 situated trust institutions having Virginia as their home state and (ii) are not preempted by federal laws.  
5047 Such reports shall be filed under oath with such frequency and in such scope and detail as may be  
5048 appropriate for the purpose of assuring continuing compliance with the provisions of this article.

5049 C. The Commission may enter into cooperative agreements with the appropriate state bank  
5050 supervisors and federal bank regulatory agencies for the examination of any trust office in the  
5051 Commonwealth of an out-of-state trust institution or any office of a state trust institution in any host  
5052 state, and may accept such agency's report of examination and report of investigation in lieu of  
5053 conducting its own examinations or investigations. The Commission may enter into joint actions with  
5054 other state bank supervisors and federal banking agencies having concurrent jurisdiction over any office  
5055 maintained in this state by an out-of-state trust institution or any office established and maintained by a  
5056 state trust institution in any host state; however, the Commission may take such actions independently to  
5057 carry out its responsibilities under this article and to assure compliance with the laws of the  
5058 Commonwealth.

5059 *D. Out-of-state trust institutions may be assessed and, if assessed, shall pay supervisory and*  
 5060 *examination fees in accordance with the laws of the Commonwealth and regulations of the Commission.*  
 5061 *Such fees may be shared with other state and federal bank supervisory agencies in accordance with*  
 5062 *agreements between them and the Commission.*

5063 *§ 6.2-1072. Enforcement.*

5064 *If the Commission determines that there is any violation of any applicable law or regulation in the*  
 5065 *operation of an out-of-state trust institution engaged in business in this state or that a trust office of*  
 5066 *such an institution in this state is being operated in an unsafe and unsound manner, the Commission*  
 5067 *shall have authority to undertake such enforcement actions as it would be permitted to take if the office*  
 5068 *were a Virginia state bank or state trust company.*

5069 *§ 6.2-1073. Regulations; fees.*

5070 *The Commission may adopt such regulations, and may provide for the payment of such reasonable*  
 5071 *application and administration fees, as it finds necessary and appropriate in order to implement the*  
 5072 *provisions of this article.*

5073 *Article 5.*

5074 *Private Trust Companies.*

5075 *§ 6.2-1074. Definitions.*

5076 *As used in this article, unless the context requires a different meaning:*

5077 *"Degrees of kinship" means, with respect to two persons, (i) degrees of lineal kinship computed by*  
 5078 *counting one degree for each person in the line of ascent or descent, exclusive of the person from whom*  
 5079 *the computing begins and (ii) degrees of collateral kinship computed by commencing with one of the*  
 5080 *persons and ascending from that person to a common ancestor, descending from that ancestor to the*  
 5081 *other person, and counting one degree for each person in the line of ascent and in the line of descent,*  
 5082 *exclusive of the person from whom the computation begins, the total to represent the degree of such*  
 5083 *kinship.*

5084 *"Designated relative" means the individual to or through whom the family members are related.*

5085 *"Family" means a designated relative and family members of that designated relative.*

5086 *"Family member" means the designated relative and:*

5087 *1. Any individual within (i) the fifth degree of lineal kinship to the designated relative or (ii) the*  
 5088 *ninth degree of collateral kinship to the designated relative, for which purposes only a legally adopted*  
 5089 *individual shall be treated as a natural child of the adoptive parents;*

5090 *2. The present or past spouse of the designated relative and of any individual qualifying as a family*  
 5091 *member under subdivision 1;*

5092 *3. A trust established (i) by a family member or (ii) exclusively for the benefit of one or more family*  
 5093 *members;*

5094 *4. A stock corporation, limited partnership or limited liability company, all of the capital stock,*  
 5095 *partnership interests, membership interests, or other equity interests of which are owned by one or more*  
 5096 *family members, their spouses qualifying under subdivision 2, their trusts qualifying under subdivision 3,*  
 5097 *or their estates qualifying under subdivision 5;*

5098 *5. The estate of a family member; or*

5099 *6. A charitable foundation or other charitable entity created by a family member.*

5100 *"Fiduciary" means executor, administrator, conservator, guardian, committee, or trustee.*

5101 *"Operating plan" means a plan that establishes the policies and procedures a private trust company*  
 5102 *will have in effect when the institution opens for business and thereafter (i) to ensure that trust accounts*  
 5103 *are handled in accordance with recognized standards of fiduciary conduct and (ii) to assure compliance*  
 5104 *with applicable laws and regulations.*

5105 *"Private trust business" means acting as or performing the duties of a fiduciary in the regular course*  
 5106 *of its business for family members.*

5107 *"Private trust company" means a corporation or limited liability company that is organized to*  
 5108 *engage in private trust business under this article with one or more family members and that does not*  
 5109 *transact business with the general public.*

5110 *"Tax" includes, but is not limited to, federal, state or local income, gift, estate, generation-skipping*  
 5111 *transfer, or inheritance tax.*

5112 *§ 6.2-1075. Organization; minimum capital; notice to Bureau; control.*

5113 *A. No person other than a corporation or limited liability company organized under the laws of the*  
 5114 *Commonwealth to engage exclusively in the private trust business shall act as a private trust company.*

5115 *B. No person may act as a private trust company unless and until family members have subscribed*  
 5116 *for capital stock or interests, surplus, and a reserve for operation in an amount equal to or in excess of*  
 5117 *\$500,000.*

5118 *C. No person shall engage in business as a private trust company without first giving written notice*  
 5119 *to the Bureau. The notice shall identify (i) the designated relative whose relationship to other*

5120 individuals determines whether the individuals are family members and (ii) the location of the principal  
 5121 office and additional office, if any, within the Commonwealth. The notice shall be accompanied by an  
 5122 operating plan and such other books, records, documents, or information as the Commissioner may  
 5123 require. The notice shall also certify that (a) all provisions of law have been complied with; (b) the  
 5124 private trust company is formed for no other reason than to engage in the private trust business; and  
 5125 (c) family members have subscribed for capital stock, surplus, and a reserve for operation in an amount  
 5126 equal to or in excess of \$500,000.

5127 D. All of the capital stock, membership interests, or other equity interests of a private trust company  
 5128 shall be and shall remain owned by, and under the voting control of, family members, including any  
 5129 spouses, trusts, stock corporations, limited partnerships, limited liability companies, or estates qualifying  
 5130 under subdivision 2, 3, 4, or 5 of the definition of "family member" set forth in § 6.2-1074, of one or  
 5131 more families.

5132 § 6.2-1076. Operation and powers.

5133 Every private trust company shall have and shall conduct its business in accordance with an  
 5134 operating plan and in accordance with generally accepted fiduciary standards. A private trust company  
 5135 when engaging in a private trust business shall have the same rights, powers, and privileges as a trust  
 5136 institution pursuant to § 6.2-1002, including the power to act as executor under the last will and  
 5137 testament or administrator of the estate of any deceased family member.

5138 § 6.2-1077. Reacquisition of shares or interests; dividends.

5139 A private trust company shall not purchase, redeem, or otherwise reacquire shares of stock or  
 5140 membership interests that the private trust company has issued, or declare a dividend or other  
 5141 distribution to its stockholders, members, or holders of equity interests, to the extent that such purchase,  
 5142 redemption, reacquisition, dividend, or distribution shall cause the private trust company's paid-in  
 5143 capital, retained surplus and reserves to be reduced below \$500,000.

5144 § 6.2-1078. Offices.

5145 A. The office at which a private trust company begins business shall be designated initially as its  
 5146 principal office. The board of directors or managers of a private trust company may thereafter  
 5147 redesignate as the principal office another authorized office of the private trust company in the  
 5148 Commonwealth.

5149 B. The board of directors or managers of a private trust company may designate, and from time to  
 5150 time redesignate, one additional office at which the private trust company may conduct business in the  
 5151 Commonwealth.

5152 C. The private trust company shall notify the Bureau of any such redesignation of its principal office  
 5153 or designation or redesignation of an additional office not later than 30 days before its effective date  
 5154 and shall confirm to the Bureau any such designation or redesignation within 10 days of its occurrence.

5155 § 6.2-1079. Directors or managers.

5156 The affairs of every private trust company shall be directed by a board of directors if a corporation,  
 5157 or managers if a limited liability company, consisting of not less than five nor more than 25 persons. At  
 5158 least one director or manager shall be a citizen of the Commonwealth.

5159 § 6.2-1080. Limitation on powers.

5160 A. In the exercise of any power held by a private trust company in its capacity as a fiduciary, the  
 5161 private trust company shall have a duty not to exercise any power in such a way as to deprive the  
 5162 estate, trust, or other entity for which it acts as a fiduciary of an otherwise available tax exemption,  
 5163 deduction, or credit for tax purposes or deprive a donor of trust assets of a tax exemption, deduction, or  
 5164 credit or operate to impose a tax upon a donor or other person as owner of any portion of the estate,  
 5165 trust, or otherwise.

5166 B. Without limitation to subsection A, no family member who is a stockholder or member or who  
 5167 otherwise holds an equity interest in, or is serving as a director, officer, manager, or employee of, a  
 5168 private trust company shall participate in or otherwise have a voice in any discretionary decision by the  
 5169 private trust company to distribute income or principal of any trust in order to discharge a legal  
 5170 obligation of the family member or for the family member's pecuniary benefit, unless:

5171 1. The exercise of the discretion is limited by an ascertainable standard relating to the health,  
 5172 education, support, or maintenance of that family member;

5173 2. The distribution is necessary for that family member's support, health, or education; or

5174 3. The instrument governing the administration of that trust clearly so provides.

5175 Article 6.

5176 Trust Powers of Savings Institutions.

5177 § 6.2-1081. Definitions.

5178 As used in this article, unless the context requires a different meaning:

5179 "Affiliate" means, with respect to an association, a bank holding company, as defined in 12 U.S.C.  
 5180 § 1841, or savings and loan holding company of which the association is a subsidiary, a corporation

5181 *that is also a subsidiary of a bank holding company or savings and loan holding company of which the*  
 5182 *association is a subsidiary, a corporation with respect to which the association owns 25 percent or*  
 5183 *more of the outstanding voting shares of such corporation, or any other corporation that the*  
 5184 *Commissioner determines is, in fact, controlled by the association.*

5185 *"Association" has the meaning assigned to it in § 6.2-1100.*

5186 *"Common trust funds" means common trust funds that are described under § 584 of the Internal*  
 5187 *Revenue Code of 1954, as well as any other type of collective investment fund that is exempt from*  
 5188 *federal income taxation under any other provision of the Internal Revenue Code or regulations issued*  
 5189 *pursuant thereto.*

5190 *"Fiduciary" means the status resulting from an association's undertaking to act alone, through an*  
 5191 *affiliate, or jointly with others, primarily for the benefit of another, and includes an association's acting*  
 5192 *as trustee, executor, administrator, committee, guardian, conservator, receiver, managing agent,*  
 5193 *registrar of stocks and bonds, escrow, transfer, or paying agent, trustee of employee pension, welfare*  
 5194 *and profit sharing trusts, and in any other similar capacity.*

5195 *"Fiduciary records" means all matters which are written, transcribed, recorded, received, or*  
 5196 *otherwise come into the possession of an association and are necessary to preserve information*  
 5197 *concerning the actions and events relevant to the fiduciary activities of an association.*

5198 *"Governing instrument" means the written document or documents pursuant to which an association*  
 5199 *undertakes to act in a fiduciary capacity, and includes a will, codicil, deed of trust, trust deed, and*  
 5200 *other similar instruments.*

5201 *"Investment authority" means the responsibility conferred by action of law or a provision of a*  
 5202 *governing instrument to make, select, or change investments, review investment decisions made by*  
 5203 *others, or to provide investment advice or counsel to others.*

5204 *"Managing agent" means the fiduciary relationship assumed by an association upon the creation of*  
 5205 *an account that names the association as agent and confers investment authority upon the association.*

5206 *"Savings institution holding company" has the meaning assigned to it in § 6.2-1100.*

5207 *"Trust account" means the account established pursuant to a trust, estate, or other fiduciary*  
 5208 *relationship that has been established with an association.*

5209 *"Trust department" means that group or groups of officers and employees of an association, or of an*  
 5210 *affiliate of an association, to whom are assigned the performance of fiduciary services by the*  
 5211 *association.*

5212 *"Uniform Transfers to Minors Act" means Chapter 6 (§ 31-37 et seq.) of Title 31 or any comparable*  
 5213 *act in effect in any other state.*

5214 *§ 6.2-1082. Applications for permission to offer trust services.*

5215 *A. An association desiring to exercise fiduciary powers, either through a trust department or through*  
 5216 *an affiliate, shall file with the Commission an application indicating which trust services it wishes to*  
 5217 *offer and providing the information necessary to make the determinations required under subsection B.*

5218 *B. In addition to assessing any other facts or circumstances deemed proper, the Commission, in*  
 5219 *passing upon an application to exercise trust powers, shall not grant such application unless the*  
 5220 *Commission finds that:*

5221 *1. The association's capital structure is sufficiently strong to support such additional undertaking;*

5222 *2. The personnel who will direct the proposed trust department have adequate experience and*  
 5223 *training, and will devote sufficient time to its affairs to ensure compliance with the law and to protect*  
 5224 *the association against surcharge;*

5225 *3. The granting of trust powers to the association will be in the public interest; and*

5226 *4. The association has available legal counsel to advise and pass upon fiduciary matters wherever*  
 5227 *necessary.*

5228 *§ 6.2-1083. Commission to issue certificate; powers of associations authorized to offer trust services.*

5229 *A. Upon granting the application of an association to exercise trust powers, the Commission shall*  
 5230 *issue a certificate authorizing the association or affiliate to exercise trust powers and offer fiduciary*  
 5231 *services. Unless such certificate otherwise provides, such association shall have the following rights,*  
 5232 *powers, and privileges, and shall be subject to the following regulations and restrictions:*

5233 *1. To act as agent for any person, including any locality or state, for the collection or disbursement*  
 5234 *of interest, or income or principal of securities;*

5235 *2. To act as the fiscal or transfer agent of any state, locality, or other body public or corporate, and*  
 5236 *in such capacity to receive and disburse money, to transfer, register and countersign certificates of*  
 5237 *stock, bonds, or other evidences of indebtedness;*

5238 *3. To act as agent of any corporation, foreign or domestic, for any lawful purpose;*

5239 *4. To act as trustee under any deed of trust, mortgage, or bond issued by an individual, municipality,*  
 5240 *or body politic or corporate, and to accept and execute any other municipal or corporate trust not*  
 5241 *inconsistent with the laws of the Commonwealth;*

5242 5. To act as a guardian, conservator, as a custodian under the Uniform Transfers to Minors Act  
 5243 (§ 31-37 et seq.), and as depository of any money paid into court, whether for the benefit of a person  
 5244 under a disability or other person;

5245 6. To take, accept, and execute any and all trusts and powers, of whatever nature and description, as  
 5246 may be conferred upon or entrusted or committed to it by any person, or any body politic or corporate,  
 5247 or by other authority, by grant, assignment, transfer, devise, bequest, or otherwise or as may be  
 5248 entrusted or committed or transferred to it or vested in it by order of any circuit court, judge, or clerk;  
 5249 to receive and hold any property or estate, real or personal, which may be the subject of any such trust;  
 5250 and to be accountable to all parties in interest for the faithful discharge of every such trust, duty, or  
 5251 power which it may so accept; and

5252 7. To act as executor under the last will and testament, or administrator of the estate, of any  
 5253 deceased person, under appointment of any circuit court, judge, or clerk thereof, having jurisdiction of  
 5254 the estate of such deceased person.

5255 B. Nothing in this chapter shall be construed as authorizing the creation of a trust not lawful as  
 5256 between individuals, nor to prohibit the deposit of funds by courts and fiduciaries in savings and loan  
 5257 associations and savings banks.

5258 C. All rights, powers, and privileges, and all regulations, restrictions, and limitations, granted to or  
 5259 made applicable to associations by the provisions of this chapter shall likewise apply to any affiliate of  
 5260 an association which is authorized by the Commission to exercise trust powers. Any such affiliate shall  
 5261 be organized and operated solely for the purpose of offering trust services pursuant to the provisions of  
 5262 this chapter.

5263 D. All federal savings and loan associations and federal savings banks, that have been, or hereafter  
 5264 may be, permitted by law to act in any fiduciary capacity, shall have the rights, powers, privileges, and  
 5265 immunities conferred by this chapter to the extent permitted by federal law.

5266 § 6.2-1084. Continuation of trust powers in the event of consolidation or merger of two or more  
 5267 associations.

5268 If an association consolidates or merges with another association or a bank and the association has,  
 5269 prior to such consolidation or merger, exercised trust powers under a certificate issued by the  
 5270 Commission, which certificate is in effect at the time of the consolidation or merger, the rights existing  
 5271 under such certificate shall pass to the resulting corporation. The resulting corporation may exercise  
 5272 such trust powers in the same manner and to the same extent as the association to which such  
 5273 certificate was originally issued. No new application to continue to exercise such powers is necessary. If  
 5274 the name of the resulting corporation differs from that of the association to which the right to exercise  
 5275 trust powers was originally granted, the Commission shall issue a certificate showing the right of such  
 5276 resulting corporation to exercise the trust powers theretofore granted to any of the associations  
 5277 participating in the consolidation or merger.

5278 § 6.2-1085. When security not required.

5279 No association with a minimum combined unimpaired capital and surplus of \$50,000 or more shall  
 5280 be required by any officer or court of the Commonwealth to give security upon appointment to or  
 5281 acceptance of any fiduciary office which it may, by law, be authorized to execute, or to give security  
 5282 upon any bond given pursuant to § 4.1-341 or similar statute. No association shall qualify on an estate  
 5283 having a value in excess of its combined unimpaired capital and surplus without giving security for such  
 5284 excess on its bond, unless the giving of such security is waived under the terms of the governing  
 5285 instrument or by court order.

5286 § 6.2-1086. Association's operation and supervision of trust department.

5287 A. The board of directors of an association is responsible for the proper exercise of fiduciary powers  
 5288 by the association. All matters pertinent thereto, including the determination of policies, the investment  
 5289 and disposition of property held in a fiduciary capacity, and the direction and review of the actions of  
 5290 all officers, employees, and committees utilized by the association in the exercise of its fiduciary powers,  
 5291 are the responsibility of the board. In discharging this responsibility, the board of directors may assign,  
 5292 by action duly entered in the minutes, the administration of such of the association's trust powers as it  
 5293 may consider proper to assign to such directors, officers, employees, or committees as it may designate.

5294 B. No fiduciary account shall be accepted without the approval of the directors, officers, or  
 5295 committees to whom the board may have assigned the performance of that responsibility. A written  
 5296 record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary  
 5297 accounts.

5298 C. Upon the establishment of a trust account for which the association has investment authority, a  
 5299 prompt review of the assets of such account shall be made. The board of directors shall also ensure that  
 5300 at least once during every calendar year thereafter, and within 15 months of the last review, all the  
 5301 assets held in or held for each trust account for which the association has investment authority are  
 5302 reviewed to determine the advisability of retaining or disposing of such assets. The board of directors

5303 shall act to ensure that all investments have been made in accordance with the terms and purposes of  
5304 the governing instrument and in accordance with applicable law.

5305 *D. The trust department may utilize personnel and facilities of other departments of the association,  
5306 and other departments of the association may utilize personnel and facilities of the trust department to  
5307 the extent not otherwise prohibited by the law.*

5308 *E. Every association exercising trust powers shall adopt written policies and procedures to ensure  
5309 that the securities laws of the United States and the Commonwealth are complied with in connection  
5310 with any decision or recommendation to purchase or sell any security. Such policies and procedures, in  
5311 particular, shall ensure that the association's trust department shall not use material inside information  
5312 in connection with any decision or recommendation to purchase or sell any security.*

5313 *F. Every association exercising fiduciary powers shall designate, employ, or retain legal counsel who  
5314 shall be readily available to pass upon fiduciary matters and to advise the association and its trust  
5315 department.*

5316 *§ 6.2-1087. Books and accounts.*

5317 *Every association exercising trust powers shall keep its fiduciary records separate and distinct from  
5318 other records of the association. All fiduciary records shall be so kept and retained for such time as to  
5319 enable the association to furnish such information or reports with respect thereto as may be required by  
5320 the Commissioner. The fiduciary records shall contain full information relative to each account. Every  
5321 association shall also keep an adequate record of all pending litigation to which the association is a  
5322 party in connection with its exercise of trust powers.*

5323 *§ 6.2-1088. Investment of funds and assets held as fiduciary.*

5324 *Funds and assets held by an association in a fiduciary capacity shall be invested in accordance with  
5325 the provisions of the governing instrument. When such instrument does not specify the character or class  
5326 of investments to be made and does not vest in the association, its directors, or its officers absolute and  
5327 uncontrolled investment discretion in the matter, funds and assets held pursuant to such instrument shall  
5328 be invested in any investment in which fiduciaries may invest under the provisions of Chapter 3 (§ 26-38  
5329 et seq.) of Title 26. An association acting as fiduciary under appointment by a court may likewise invest  
5330 in any investments in which fiduciaries may invest under the provisions of Chapter 3 (§ 26-38 et seq.) of  
5331 Title 26 unless otherwise provided by order of the appointing court. Unless the governing instrument or  
5332 order establishing the fiduciary relationship provides otherwise, funds and assets held by an association  
5333 in a fiduciary capacity may also be invested in common trust funds and collective investment funds  
5334 pursuant to the provisions of § 6.2-1095.*

5335 *§ 6.2-1089. Funds awaiting investment or distribution.*

5336 *A. Funds and assets held in a fiduciary capacity by an association awaiting investment or  
5337 distribution shall not be held uninvested or undistributed any longer than is reasonable for the proper  
5338 management of the trust account.*

5339 *B. Funds and assets held in trust by an association, including managing agency accounts, awaiting  
5340 investment or distribution, unless prohibited by the governing instrument, may be deposited in other  
5341 departments of the association, provided that the association shall first set aside under the sole control  
5342 of the trust department, as collateral security:*

5343 *1. Direct obligations of the United States, or other obligations fully guaranteed by the United States  
5344 as to principal and interest;*

5345 *2. Readily marketable securities of the classes in which fiduciaries are authorized or permitted to  
5346 invest trust funds, as set forth in § 26-40.01; or*

5347 *3. Other readily marketable securities as may be authorized by the Commissioner.*

5348 *Such collateral securities, or securities substituted therefor as collateral, shall at all times be at least  
5349 equal in face value to the amount of trust funds so deposited, but such security shall not be required to  
5350 the extent that the funds so deposited are insured by the Federal Deposit Insurance Corporation or  
5351 other federal insurance agency. The requirements of this subsection are met when qualifying assets of  
5352 the association are pledged in such manner as to fully secure all trust account funds deposited by the  
5353 trust department of the association in another department of the association.*

5354 *C. Any funds held by an association as fiduciary awaiting investment or distribution and deposited in  
5355 other departments of the association shall be made productive.*

5356 *D. In the event of the failure or liquidation of an association, the owners of the funds held in trust  
5357 and deposited in another department of the association shall have a first lien on the securities set apart  
5358 as collateral for such funds, in addition to any other claim that such owners may have against the  
5359 association.*

5360 *§ 6.2-1090. Dealings with self or affiliates.*

5361 *A. Unless authorized by the governing instrument or by court order, funds held by an association as  
5362 fiduciary shall not be invested in stock or obligations of, or property acquired from, the association or  
5363 its affiliates or their directors, officers, or employees, or organizations in which the association or its*

5364 affiliates or their officers, directors, or employees possess such an interest as might affect the exercise of  
5365 the best judgment of the association in acquiring the stock, obligations, or property.

5366 B. Property held by an association as fiduciary shall not be sold or transferred, by loan or  
5367 otherwise, to the association or its affiliates or their directors, officers, or employees, or to  
5368 organizations in which the association or its affiliates or their officers, directors, or employees possess  
5369 such an interest as might affect the exercise of the best judgment of the association in selling or  
5370 transferring such property, except:

5371 1. When lawfully authorized by the governing instrument or by court order;

5372 2. In cases in which the association has been advised by its legal counsel in writing that it has  
5373 incurred, as fiduciary, a contingent or potential liability, and the association desires to relieve itself  
5374 from such liability, in which case such sale or transfer may be made with the approval of the board of  
5375 directors and the Commissioner, provided that in all such cases the association, upon the consummation  
5376 of the sale or transfer, shall make reimbursement in cash at no loss to the trust account;

5377 3. As provided in §§ 6.2-1089 and 6.2-1094; or

5378 4. When required by the Commissioner.

5379 C. If the retention of stock or obligations of the association or its affiliates is authorized by the  
5380 governing instrument or court order, the association may exercise rights to purchase its own stock or  
5381 the stock of its affiliates, or securities convertible into such stock, when such rights are offered pro rata  
5382 to all stockholders of the association or its affiliates, as the case may be. When the exercise of such  
5383 rights or the receipt of a stock dividend results in fractional shareholdings, additional fractional shares  
5384 may be purchased to complement the fractional shares so acquired. In elections of directors, shares of  
5385 an association or its affiliates held by the association as sole fiduciary, whether in its own name as  
5386 fiduciary or in the name of its nominee, may not be voted by the association or its nominee unless,  
5387 under the terms of the governing instrument or a court order, the manner in which such shares shall be  
5388 voted may be directed by a donor or beneficiary of the trust account, and the donor or beneficiary  
5389 actually directs how the shares will be voted. In addition, where the association is acting as sole  
5390 fiduciary with respect to a trust account containing voting shares of the association or its affiliates, the  
5391 association may, in accordance with the provisions of subsection B of § 6.2-1091, petition an  
5392 appropriate court for appointment of a co-fiduciary for the purpose of voting such shares.

5393 § 6.2-1091. Voting of financial institution stock held by association as fiduciary; when association  
5394 disqualified from voting.

5395 A. When voting shares of a financial institution are held by an association in a trust account, the  
5396 association may not vote or participate in the voting of any such shares if the securities held in such  
5397 fiduciary capacity, together with all the other voting securities of such financial institution held in a  
5398 fiduciary capacity by the association and its affiliates, exceed 25 percent of the outstanding voting  
5399 securities of such financial institution. If the voting securities of any financial institution held by an  
5400 association in a trust account, together with all other voting securities of such financial institution held  
5401 in a fiduciary capacity by the association and its affiliates, exceed five percent of the outstanding voting  
5402 securities of such financial institution, but less than 25 percent thereof, the association may not vote or  
5403 participate in the voting of any such voting securities unless there has been a determination by the  
5404 Commissioner that the right to vote such shares does not constitute control of the particular financial  
5405 institution in question.

5406 B. If any person is acting as fiduciary, in addition to the association, for the trust account containing  
5407 such voting securities, such other fiduciary, if not a director, officer, or employee of the association or  
5408 its affiliates, may vote such shares. If the association is the sole fiduciary for the trust account, the  
5409 association may petition an appropriate court for the appointment of a co-fiduciary for the sole purpose  
5410 of voting such shares. Such appointment and qualification may be ex parte, and no prior notice to the  
5411 beneficiaries of the trust account shall be required. The court at the time of such qualifications may  
5412 relieve the co-fiduciary of any obligation for the giving of security on his bond. If the appointment of  
5413 the co-fiduciary is limited to voting such shares, such order may provide that the co-fiduciary shall not  
5414 be liable or accountable in the administration of the trust account, except for the breach of any  
5415 fiduciary duty in voting or failing to vote such shares. No director, officer, or employee of the  
5416 petitioning association or its affiliates shall be eligible to be named co-fiduciary under the provisions of  
5417 this section.

5418 C. The provisions of this section shall also apply in the case of voting shares of a bank holding  
5419 company, as defined in 12 U.S.C. § 1841, or a savings and loan holding company held by an  
5420 association in a fiduciary capacity.

5421 § 6.2-1092. Transactions between trust accounts.

5422 A. An association may sell assets held by it as fiduciary in one trust account to itself as fiduciary in  
5423 another trust account if the transaction is fair to both accounts and if such transaction is not prohibited  
5424 by the terms of the governing instruments, court order, or the law of the Commonwealth.

5425 *B. An association may make a loan to a trust account from the funds belonging to another such*  
5426 *account, when the making of such loan to a designated trust account is authorized by the governing*  
5427 *instrument creating the account from which such loans are made, or by court order, and the terms of*  
5428 *the transaction are fair to all of the trust accounts involved.*

5429 *C. An association may make a loan to a trust account and may take as security therefor assets of the*  
5430 *account, provided such transaction is fair to such account and is not otherwise prohibited by the*  
5431 *governing instrument, by court order, or by the law of the Commonwealth.*

5432 *§ 6.2-1093. Custody of assets and investments held in trust.*

5433 *A. The assets and investments of each trust account shall be kept separate from the assets of the*  
5434 *association and shall be placed in the joint custody or control of not fewer than two of the officers or*  
5435 *employees of the association designated for that purpose by the board of directors of the association.*  
5436 *All such officers and employees shall be adequately bonded.*

5437 *B. The assets and investments of each trust account shall be either kept separate from those of all*  
5438 *other trust accounts, except as provided in § 6.2-1095, or otherwise adequately identified as the property*  
5439 *of the relevant account.*

5440 *§ 6.2-1094. Establishment of common trust funds and collective investment funds; court accountings.*

5441 *A. Any association authorized by the Commission to offer fiduciary services may establish and*  
5442 *maintain one or more common trust funds for the collective investment of funds held in a fiduciary*  
5443 *capacity by it. The association may include, in such common trust fund or funds established and*  
5444 *maintained by it, funds held in a fiduciary capacity by any affiliate of the association.*

5445 *B. An association may invest funds held by it in any fiduciary capacity in one or more common trust*  
5446 *funds, provided (i) such investment is not prohibited by the governing instrument or court order creating*  
5447 *such fiduciary relationship; (ii) in the case of co-fiduciaries, the written consent of the co-fiduciary is*  
5448 *obtained by the association; and (iii) the association has no interest in the assets of the common trust*  
5449 *fund other than as a fiduciary.*

5450 *C. Unless ordered by an appropriate court, an association operating a common trust fund or funds*  
5451 *shall not be required to render a court accounting with regard to such fund or funds, but, by*  
5452 *application to an appropriate court, such association may secure approval of such an accounting on*  
5453 *such conditions as the court may establish. Nothing contained herein shall affect the duties of the*  
5454 *fiduciaries of the trust accounts participating in the common trust fund to render accounts of their*  
5455 *several trusts.*

5456 *§ 6.2-1095. Compensation of association acting as fiduciary.*

5457 *A. If the amount of the compensation for acting in a fiduciary capacity is not provided for in the*  
5458 *governing instrument or otherwise agreed to by the parties, an association acting in such capacity may*  
5459 *charge or deduct reasonable compensation for its services. When the association is acting in a fiduciary*  
5460 *capacity under appointment by a court, it shall receive such compensation as may be allowed or*  
5461 *approved by that court.*

5462 *B. No association, except with the specific approval of its board of directors, shall permit any of its*  
5463 *officers or employees, while serving as such, to retain any compensation for acting as a co-fiduciary*  
5464 *with the association in the administration of any trust account undertaken by it.*

5465 *C. No association shall permit an officer or employee engaged in the operation of its trust*  
5466 *department to accept a devise, bequest, or gift of trust account assets, unless the devise, bequest, or gift*  
5467 *is directed or made by a relative of such officer or employee, or is approved by the board of directors*  
5468 *of the association.*

5469 *§ 6.2-1096. Surrender of trust powers by association.*

5470 *Any association that has been granted the right to exercise trust powers and that desires to*  
5471 *surrender such rights shall file with the Commission a certified copy of the resolution of its board of*  
5472 *directors signifying such desire. Upon receipt of such resolution, the Commission shall make an*  
5473 *investigation. If the Commission is satisfied that the association has been properly discharged from all*  
5474 *fiduciary duties that it has undertaken, the Commission shall issue a certificate to such association*  
5475 *certifying that it is no longer authorized to exercise fiduciary powers. Upon issuance of such a*  
5476 *certificate by the Commission, an association shall no longer be subject to the provisions of this article*  
5477 *and shall not exercise thereafter any of the powers granted by this article without first applying for and*  
5478 *obtaining a new authorization to exercise such powers.*

5479 *§ 6.2-1097. Effect on trust accounts of appointment of receiver for association or of voluntary*  
5480 *dissolution of association.*

5481 *A. If a receiver is appointed for an association, the receiver shall, pursuant to the orders of the*  
5482 *Commission and of any court having jurisdiction, proceed to close such of the association's trust*  
5483 *accounts as can be closed promptly and shall promptly transfer all other such accounts to substitute*  
5484 *fiduciaries.*

5485 *B. If an association exercising trust powers commences a voluntary dissolution, the liquidating agent*

5486 shall proceed at once to liquidate the affairs of the trust department as follows:

5487 1. All trusts and estates over which a court is exercising jurisdiction shall be closed or disposed of  
5488 as soon as practicable in accordance with the orders or instructions of such court;

5489 2. All other trust accounts which can be closed promptly shall be closed as soon as practicable and  
5490 final accountings made therefor; and

5491 3. All remaining trust accounts shall be transferred by appropriate legal proceedings to substitute  
5492 fiduciaries.

5493 § 6.2-1098. Revocation of trust powers.

5494 A. If, in the opinion of the Commission, an association is unlawfully or unsoundly exercising, or has  
5495 unlawfully or unsoundly exercised, or has failed for a period of five consecutive years to exercise, the  
5496 powers granted by this chapter, or otherwise fails or has failed to comply with the requirements of this  
5497 chapter, the Commission may issue and serve upon the association a notice of intent to revoke the  
5498 authority of the association to exercise the powers granted by this chapter. The notice shall contain a  
5499 statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to  
5500 exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held  
5501 before the Commission to determine whether an order revoking authority to exercise such powers should  
5502 issue against the association.

5503 B. Such hearing shall be conducted in accordance with the Commission's Rules, and shall be fixed  
5504 for a date not earlier than 30 days and not later than 60 days after the service of such notice, unless an  
5505 earlier or later date is set by the Commission at the request of the association so served.

5506 C. Unless the association so served shall appear by a duly authorized representative, it shall be  
5507 deemed to have consented to the issuance of the revocation order. In the event of such consent or if,  
5508 upon the record made at any such hearing, the Commission shall find that any allegation specified in  
5509 the notice of charges has been established, the Commission shall issue and serve upon the association  
5510 an order prohibiting it from accepting any new or additional trust accounts and revoking authority to  
5511 exercise any and all powers granted by this chapter, except that such order shall permit the association  
5512 to continue to service all previously accepted trust accounts pending their expeditious divestiture or  
5513 termination.

5514 D. A revocation order shall become effective not later than the expiration of 30 days after service of  
5515 such order upon the association and shall remain effective and enforceable, except to such extent as it  
5516 is stayed, modified, terminated, or set aside by action of the Commission or a reviewing court. In the  
5517 case of a revocation order issued upon the consent of an association, such order shall become effective  
5518 at the time specified therein.

5519 § 6.2-1099. Trust powers of state savings banks.

5520 State savings banks, and their subsidiaries and affiliates, may exercise fiduciary powers in the same  
5521 manner as associations pursuant to this article.

5522 CHAPTER 11.

5523 SAVINGS INSTITUTIONS.

5524 Article 1.

5525 General Provisions.

5526 § 6.2-1100. Definitions.

5527 As used in this chapter, unless the context requires a different meaning:

5528 "Account" means any account with a savings institution and includes a checking, time, interest, or  
5529 savings account.

5530 "Association" means a savings and loan association or building and loan association that is  
5531 authorized by law to accept deposits and to hold itself out to the public as engaged in the savings and  
5532 loan business.

5533 "Branch office" means an office of a savings institution where, in addition to conducting other  
5534 business activities of the institution, the institution accepts deposits.

5535 "Federal financial institution" means a financial institution incorporated or organized in accordance  
5536 with the laws of the United States.

5537 "Federal savings institution" means a savings institution incorporated or organized in accordance  
5538 with the laws of the United States.

5539 "Financial institution holding company" has the meaning assigned to it in § 6.2-700.

5540 "Foreign savings institution" means a savings institution incorporated under the laws of a state other  
5541 than the Commonwealth, the principal business office of which is located outside the Commonwealth.

5542 "Foreign savings institution" does not include a savings institution incorporated under the laws of the  
5543 United States.

5544 "Home loan" means a real estate loan the security for which is a lien on real estate comprising a  
5545 single-family dwelling or a dwelling unit for four or fewer families in the aggregate.

5546 "Insured savings institution" means a savings institution whose accounts are insured by the Federal

5547 *Deposit Insurance Corporation or other federal insurance agency.*

5548 *"Liquid assets" means (i) cash on hand; (ii) cash on deposit in Federal Home Loan Banks, Federal*  
 5549 *Reserve Banks, savings institutions, or in commercial banks that is withdrawable upon not more than 30*  
 5550 *days' notice and that is not pledged as security for indebtedness; (iii) the liquid asset fund of the United*  
 5551 *States League of Saving Institutions; (iv) obligations of, or obligations that are fully guaranteed as to*  
 5552 *principal and interest by, the United States; or (v) any other asset that the Commissioner designates as*  
 5553 *a liquid asset. Any deposits in financial institutions under the control or in the possession of any*  
 5554 *supervisory authority are not liquid assets.*

5555 *"Main office" means the office where a savings institution first commences to do business or, if the*  
 5556 *savings institution has more than one office, the office designated by the institution's board of directors*  
 5557 *as the institution's main office.*

5558 *"Manufactured building" means a manufactured home or other structure designed for use as a*  
 5559 *dwelling or business facility that is manufactured and assembled at a location other than the site where*  
 5560 *such manufactured home or other structure is placed for use as a dwelling or business facility, or both.*

5561 *"Member" means a person (i) holding a savings account of a mutual association, (ii) borrowing from*  
 5562 *a mutual association, (iii) assuming or obligated upon a loan or interest therein held by a mutual*  
 5563 *association, or (iv) purchasing real estate securing a loan or interest therein held by a mutual*  
 5564 *association. "Member" includes such persons with a joint and survivorship or other multiple owner or*  
 5565 *borrower relationship, which persons shall constitute a single membership for purposes of this chapter.*

5566 *"Mutual association" means an association that is organized and operated exclusively for the benefit*  
 5567 *of its members and that does not issue shares of capital stock.*

5568 *"Mutual savings institution" means a savings institution that is organized and operated exclusively*  
 5569 *for the benefit of its members and that does not issue shares of capital stock.*

5570 *"Real estate loan" means:*

5571 *1. A loan on the security of any instrument, whether a mortgage, deed of trust, or land contract, that*  
 5572 *makes the interest in real estate described therein, whether in fee or in a leasehold or subleasehold*  
 5573 *extending or renewable automatically or at the option of the holder, or at the option of the savings*  
 5574 *institution, for a period of at least 10 years beyond the maturity of the loan, specific security for the*  
 5575 *payment of the obligations secured by the instrument; or*

5576 *2. A loan, or interest therein, secured by cooperative housing units on the security of (i) a security*  
 5577 *interest in the stock or membership certificate issued to a tenant-stockholder or resident member of a*  
 5578 *cooperative housing corporation, as defined in § 13.1-501, coupled with (ii) the assignment by way of*  
 5579 *security of the borrower's interest in the proprietary lease or other right of tenancy in the property*  
 5580 *owned by such corporation.*

5581 *"Savings account" means an interest-bearing account not subject to withdrawal by check or other*  
 5582 *negotiable instrument.*

5583 *"Savings bank" means a savings institution specifically chartered under the laws of the*  
 5584 *Commonwealth, another state or a territory of the United States, the District of Columbia, or the United*  
 5585 *States as a savings bank. The term savings bank does not include a savings and loan association or*  
 5586 *building and loan association.*

5587 *"Savings institution" means a savings and loan association, a building and loan association, or*  
 5588 *savings bank, whether organized as a capital stock corporation or a nonstock corporation, that is*  
 5589 *authorized by law to accept deposits and to hold itself out to the public as engaged in the savings*  
 5590 *institution business.*

5591 *"Savings institution holding company" means any person who, directly or indirectly, or acting in*  
 5592 *concert with one or more other companies or with one or more subsidiaries or affiliates, acquires,*  
 5593 *owns, controls or holds with power to vote 25 percent or more of the voting shares of a stock savings*  
 5594 *institution, or which controls in any manner the election of a majority of the directors of such*  
 5595 *institution.*

5596 *"Service corporation" means a stock corporation, all of the stock of which is owned (i) directly by*  
 5597 *one or more savings institutions or (ii) indirectly through a subsidiary or subsidiaries of one or more*  
 5598 *savings institutions.*

5599 *"State association" means an association incorporated under the laws of the Commonwealth.*

5600 *"State bank" means a bank incorporated under the laws of the Commonwealth and that has its*  
 5601 *principal business office in the Commonwealth.*

5602 *"State savings bank" means a savings bank organized and incorporated under the provisions of this*  
 5603 *chapter. A state savings bank shall not be subject to the provisions of this chapter applicable only to*  
 5604 *state associations.*

5605 *"State savings institution" means a savings institution incorporated under the laws of the*  
 5606 *Commonwealth.*

5607 *"Stock association" means an association that issues shares of capital stock.*

- 5608 "Stock institution" means a savings institution that issues shares of capital stock.
- 5609 "Withdrawal value" means the amount credited to an account less lawful deductions therefrom, as
- 5610 shown by the records of the savings institution.
- 5611 § 6.2-1101. Construction and application of chapter.
- 5612 A. It is the intention of the General Assembly that this chapter shall be liberally construed to effect
- 5613 the purposes set out herein.
- 5614 B. The provisions of this chapter shall apply to federal savings institutions and foreign savings
- 5615 institutions doing business in the Commonwealth insofar as the Commonwealth has the power to enact
- 5616 legislation with regard to them.
- 5617 § 6.2-1102. Associations operating share accumulation loan plans; continued operation.
- 5618 Notwithstanding any other provision of law with respect to the rates of interest which that may be
- 5619 charged, an association that on September 1, 1959, was operating on a share accumulation loan plan
- 5620 whereby its earnings were equitably distributed to both its borrowers and its shareholders may continue
- 5621 to operate upon the same plan, but no additional loans shall be made or shares issued under such plan
- 5622 after July 1, 1974.
- 5623 § 6.2-1103. Prohibitions on conduct of savings institution business; exceptions; penalty.
- 5624 A. No person shall engage in the savings institution business in the Commonwealth except entities
- 5625 that are state associations, savings banks, federal savings institutions authorized to transact business in
- 5626 the Commonwealth, or foreign savings institutions that have been authorized to transact a savings
- 5627 institution business in the Commonwealth pursuant to the provisions of Article 5 (§ 6.2-1148 et seq.) of
- 5628 this chapter.
- 5629 B. Nothing in this chapter shall prevent any person who is not authorized to engage in the savings
- 5630 institution business from lending money on real estate or personal security or collateral, or from
- 5631 guaranteeing the payment of bonds, notes, bills or other obligations, or from purchasing or selling
- 5632 stocks and bonds, so long as such person does not hold himself out as being engaged in the savings
- 5633 institution business.
- 5634 C. Any person who violates this section is guilty of a Class 6 felony.
- 5635 § 6.2-1104. False statements and similar actions prohibited; penalty.
- 5636 Any person who knowingly makes or causes to be made, directly or indirectly, or through any
- 5637 agency, any false statement or report, or willfully overvalues any land, property, or security, for the
- 5638 purpose of influencing in any way the action of any savings institution upon any application, advance,
- 5639 discount, purchase or repurchase agreement, commitment, or loan or any change or extension thereof,
- 5640 by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security
- 5641 therefor, is guilty of a Class 1 misdemeanor.
- 5642 § 6.2-1105. Use of savings institution name, logo, or symbol for marketing purposes; penalty.
- 5643 A. Except as provided in subsection B, no person shall use the name, logo, or symbol, or any
- 5644 combination thereof, of a savings institution, or any name, logo, or symbol, or any combination thereof,
- 5645 that is deceptively similar to the name, logo, or symbol of a savings institution, in marketing material
- 5646 provided to or solicitation of another person in a manner such that a reasonable person may believe
- 5647 that the marketing material or solicitation originated from or is endorsed by the savings institution or
- 5648 that the savings institution is responsible for the marketing material or solicitation.
- 5649 B. This section shall not apply to (i) an affiliate or agent of the savings institution or (ii) a person
- 5650 who uses the name, logo, or symbol of a savings institution with the consent of the savings institution.
- 5651 C. Any person violating the provisions of this section, either individually or as an interested party, is
- 5652 guilty of a Class 1 misdemeanor.
- 5653 D. This section shall not affect the availability of any remedies otherwise available to a savings
- 5654 institution.
- 5655 § 6.2-1106. Prohibitions on the use of certain terms; exceptions; penalty.
- 5656 A. No person not engaged in the business of a savings institution in the Commonwealth under the
- 5657 provisions of this chapter shall use any sign having thereon any assumed or corporate name containing
- 5658 the words "savings and loan," "building and loan," "savings bank," or other words indicating that its
- 5659 office is the office of a savings institution; nor shall any such person use or circulate any written or
- 5660 printed material having thereon any assumed or corporate name or word or words indicating that the
- 5661 business of such person is that of a savings institution. However, the use of any of these terms in the
- 5662 name of any other corporation or in connection with any other business is not prohibited when
- 5663 additional words show clearly and definitely that the corporation is not, and that the business is not
- 5664 that of, a savings institution.
- 5665 B. Any person who violates this section is guilty of a Class 6 felony.
- 5666 § 6.2-1107. Defamation of savings institutions and certain federal agencies prohibited; penalty.
- 5667 No person shall willfully and knowingly make, issue, circulate, or transmit, or cause or knowingly
- 5668 permit to be made, issued, circulated, or transmitted, any statement or rumor, written, printed,

5669 reproduced in any manner, or by word of mouth, that is untrue in fact and is (i) malicious, in that it is  
5670 calculated to injure reputation or business, and (ii) derogatory to the financial condition or standing of  
5671 any savings institution or Federal Home Loan Bank. Any person who violates this section is guilty of a  
5672 Class 2 misdemeanor.

5673 § 6.2-1108. Membership in Federal Home Loan Bank and Federal Deposit Insurance Corporation  
5674 authorized; insurance required as a condition to receiving deposits; representations that accounts are  
5675 insured; misleading advertisements.

5676 A. A savings institution may become a member of the Federal Home Loan Bank and the Federal  
5677 Deposit Insurance Corporation or other federal insurance agency and conform to the provisions and  
5678 regulations thereof.

5679 B. Any savings institution doing business in the Commonwealth that does not have its accounts  
5680 insured by the Federal Deposit Insurance Corporation or other federal insurance agency, up to the  
5681 limits of the insurance provided thereby, shall not accept any deposits.

5682 § 6.2-1109. Representations that accounts are insured; misleading advertisements.

5683 A. A savings institution shall not make any representation, oral or written, that any of its accounts  
5684 are insured or guaranteed unless such accounts are insured or guaranteed by an instrumentality of the  
5685 United States or other insurer approved by the Commission.

5686 B. A savings institution shall not publish any misleading advertisement.

5687 § 6.2-1110. Membership in facilitating organizations or instrumentalities.

5688 A savings institution may become a member of, deal with, maintain reserves or deposits with, or  
5689 make reasonable payments or contributions to, and comply with any reasonable requirements or  
5690 conditions of eligibility of, any government or private organization or instrumentality to the extent that  
5691 the organization or instrumentality assists in furthering or facilitating the institution's purposes, powers,  
5692 services or community responsibilities. This section shall not be construed to permit a savings institution  
5693 to establish deposit or reserve accounts with any financial institution or other entity if its accounts are  
5694 not insured by federal agency or other insurer approved by the Commissioner.

5695 § 6.2-1111. Authority to purchase, convey or manage property in which state savings institution has  
5696 a security interest; time limitation.

5697 A. A state savings institution may:

5698 1. Purchase at any sale, public or private, any real estate or personal property upon which it has a  
5699 mortgage, judgment, deed of trust, pledge, lien or other encumbrance or in which it has any interest;  
5700 and

5701 2. Acquire any real or personal property that is conveyed or transferred to it in full or partial  
5702 satisfaction, discharge or release of loans for which such property is security.

5703 B. A state savings institution may sell, convey, lease, exchange, improve, repair, mortgage, convey in  
5704 trust, pledge, or encumber any real or personal property purchased or acquired by it as authorized by  
5705 subsection A.

5706 C. A state savings institution may invest its funds in or manage or deal in property or invest its  
5707 funds in or operate a business, when any of these actions are reasonably necessary to avoid loss on a  
5708 loan or investment previously made or an obligation previously created in good faith. Such property or  
5709 business shall not be held or operated by the state savings institution for a period in excess of six years  
5710 unless specifically authorized by the Commissioner.

5711 § 6.2-1112. Applicability of Virginia Uniform Commercial Code to commercial paper and depository  
5712 activities of savings institutions.

5713 The definitions and provisions contained in Title 8.3A and Title 8.4 shall apply to the commercial  
5714 paper and deposit account activities of savings institutions doing business in the Commonwealth, to the  
5715 extent that such definitions and provisions are not inconsistent with the provisions of this chapter.

5716 § 6.2-1113. Discoverability or admissibility of compliance review committee documents.

5717 A. As used in this section, "compliance review committee" means a committee appointed by the  
5718 board of directors of a savings institution for the purpose of evaluating and improving the savings  
5719 institution's compliance with federal and state laws and adherence to its own established ethical and  
5720 financial standards, and includes any other person when that person acts in an investigatory capacity at  
5721 the direction of a compliance review committee.

5722 B. Any records, reports, or other documents created by a compliance review committee are  
5723 confidential and shall not be discoverable or admissible in evidence in any civil action unless, upon  
5724 motion, the trial court determines in its discretion that there has been an abuse of the provisions of this  
5725 section.

5726 C. Any records, reports, or other documents produced by a compliance review committee and  
5727 delivered to a federal or state governmental agency remain confidential and shall not be discoverable or  
5728 admissible in evidence in any civil action, except to the extent that applicable law provides that such  
5729 records, reports or other documents are not protected from disclosure.

5730 *D. In no event shall the existence of or any action by a compliance review committee serve as a*  
 5731 *basis or justification for delay of, or limit upon, the discovery process set forth in state or federal rules.*

5732 *E. The work product created by any person acting in an investigatory capacity at the direction of a*  
 5733 *compliance review committee prior to his participation in the work of the compliance review committee*  
 5734 *or at the direction of the compliance review committee shall be subject to the rules governing discovery*  
 5735 *in accordance with the Rules of the Virginia Supreme Court.*

5736 *F. This section shall not be construed to limit the discovery or admissibility:*

5737 *1. In any civil action of any records, reports, or other documents that are not created by a*  
 5738 *compliance review committee; or*

5739 *2. Of any factual information which may be reviewed by a compliance review committee.*

5740 *Article 2.*

5741 *Incorporation; Certificate of Authority; Corporate Administration.*

5742 *§ 6.2-1114. Application of Virginia Stock Corporation Act and Virginia Nonstock Corporation Act.*

5743 *A. The provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.) shall apply to all stock*  
 5744 *institutions in all cases not inconsistent with the provisions of this chapter, except the provisions of*  
 5745 *Article 15 (§ 13.1-729 et seq.) of Chapter 9 of Title 13.1 shall not apply.*

5746 *B. The provisions of the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) shall apply to all*  
 5747 *mutual savings institutions in all cases not inconsistent with the provisions of this chapter including*  
 5748 *mutual savings and loan associations heretofore incorporated under the Virginia Stock Corporation Act*  
 5749 *or prior laws relating to stock corporations.*

5750 *§ 6.2-1115. Formation of state savings institutions.*

5751 *A. A stock savings and loan association may be incorporated as provided in the Virginia Stock*  
 5752 *Corporation Act (§ 13.1-601 et seq.). A mutual savings and loan association may be incorporated as*  
 5753 *provided in the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.).*

5754 *B. A stock savings bank may be formed by being incorporated as provided in the Virginia Stock*  
 5755 *Corporation Act (§ 13.1-601 et seq.). A mutual savings bank may be formed by being incorporated as*  
 5756 *provided in the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.).*

5757 *§ 6.2-1116. Corporation name.*

5758 *A. Every association incorporated under the laws of the Commonwealth shall have as a part of its*  
 5759 *corporate name the words "building and loan association" or "savings and loan association." No state*  
 5760 *association shall use the words "savings bank" as part of its corporate name.*

5761 *B. Every savings bank incorporated under the laws of the Commonwealth shall have as a part of its*  
 5762 *corporate name the words "savings bank."*

5763 *C. The provisions of subsection A of § 13.1-630 shall not apply to any association or state savings*  
 5764 *bank.*

5765 *§ 6.2-1117. Par value of shares; payment of shares; reacquisitions of shares or acceptance thereof as*  
 5766 *security; how subscriptions to stock to be paid; disposition of money received before institution opens;*  
 5767 *stock option plans.*

5768 *A. Shares of stock issued by a stock institution shall be paid for in full in cash at not less than their*  
 5769 *par value upon issuance or, in the case of a stock institution then actively conducting operations, in*  
 5770 *property or services valued, with the approval of the Commission, at an amount not less than the*  
 5771 *aggregate value of the shares issued in exchange therefor. A stock institution may not purchase, redeem*  
 5772 *or otherwise reacquire shares of stock that it has issued and may not accept its shares of stock as*  
 5773 *security. A stock institution shall have the power to redeem or otherwise reacquire shares of its common*  
 5774 *or preferred stock to the same extent as commercial banks incorporated under the laws of the*  
 5775 *Commonwealth are permitted to do under this title.*

5776 *B. Subscriptions to the capital stock of a stock institution shall be paid in money at not less than*  
 5777 *par. No stock institution shall begin business until the amount specified in its certificate of authority to*  
 5778 *commence business has been received by it.*

5779 *C. All money received for subscriptions to or for purchases of stock of a stock institution before it*  
 5780 *opens for business shall be deposited in an escrow account in an insured financial institution or*  
 5781 *invested in United States government obligations, under the joint control of two organizing directors of*  
 5782 *the stock institution, both of whom shall be bonded for an amount not less than the total amount of*  
 5783 *money under their control. Such funds, together with any income thereon, less such organizational*  
 5784 *expenses as have been approved by the stock institution's board of directors, shall be remitted to the*  
 5785 *stock institution on the day it opens for business. If the stock institution is denied a certificate of*  
 5786 *authority, is refused insurance of accounts, or it is otherwise determined that the stock institution will*  
 5787 *not open for business, such funds, after payment of any amount owing for expenses in connection with*  
 5788 *such attempted organization, including reasonable consulting fees, attorney fees, salaries, filing fees, and*  
 5789 *other expenses, shall be refunded to subscribers or shareholders. The directors of the stock institution,*  
 5790 *individually, jointly and severally, shall be liable for any failure of the savings institution to refund such*

5791 funds to the subscribers or shareholders. This liability may be enforced by a suit in equity instituted by  
5792 one or more of the subscribers or stockholders on behalf of all against the stock institution and one or  
5793 more of its directors.

5794 D. The requirement that capital stock be paid in money shall not be construed to prohibit the  
5795 establishment, as otherwise authorized by law, of stock option plans and stock purchase plans, and the  
5796 issuance of stock pursuant to such plans. Such plans shall be established only after the stock institution  
5797 has opened for business. Any such plan with respect to a stock association shall be established as  
5798 follows:

5799 1. The board of directors shall by resolution propose the stock option or stock purchase plan. The  
5800 plan shall describe any effect the adoption of the plan is expected to have on the value of issued and  
5801 outstanding shares of the association;

5802 2. Notice of a meeting of stockholders, stating that the purpose or one of the purposes of the meeting  
5803 is to consider the plan so proposed by the board of directors, shall be given to each stockholder of  
5804 record entitled to vote thereon within the time and in the manner provided in Chapter 9 (§ 13.1-601 et  
5805 seq.) of Title 13.1 for giving of notice of meetings of stockholders. A copy of the plan shall be included  
5806 with such notice; and

5807 3. At such meeting, the plan shall be adopted if approved by the affirmative vote of the holders of  
5808 more than two-thirds of the shares entitled to vote thereon.

5809 Any such plan with respect to a savings bank shall be adopted if approved by a majority vote of the  
5810 institution's shareholders. In no event shall such a plan established by a stock savings bank provide that  
5811 a stock option be granted at a price which is less than 100 percent of the book value per share of the  
5812 stock as shown by the stock institution's last published statement prior to the granting of the option.

5813 § 6.2-1118. Certificate of authority to do business.

5814 A. Before any state savings institution may begin business in the Commonwealth, it shall obtain from  
5815 the Commission a certificate of authority to do so. Prior to issuing a certificate, the Commission shall  
5816 ascertain that:

5817 1. All applicable provisions of law have been complied with;

5818 2. If a mutual association, deposits in a total amount deemed by the Commission to be sufficient to  
5819 warrant successful operation but not less than \$2 million, have been pledged or deposited and that such  
5820 deposits shall not be withdrawable for at least one year;

5821 3. If a stock association, that financially responsible persons have subscribed for capital stock and  
5822 surplus in an amount deemed by the Commission to be sufficient to warrant successful operation,  
5823 provided that the capital stock shall have a paid-in value of not less than \$2 million;

5824 4. If a mutual savings bank, deposits in such amount as the Commission deems necessary for safe  
5825 and sound operation, but not less than \$1 million have been pledged or deposited and that such  
5826 deposits are not subject to withdrawal for at least one year;

5827 5. If a stock savings bank, that financially responsible persons have subscribed for capital stock in  
5828 an amount deemed by the Commission to be sufficient to warrant successful operation, provided that the  
5829 capital stock shall have a paid-in value of not less than \$1 million;

5830 6. Regulations governing directors of the association have been complied with;

5831 7. The public interest will be served by the addition of the proposed savings institution facilities in  
5832 the community where the savings institution is to be located. The addition of such facilities shall be  
5833 deemed in the public interest if, based on all relevant evidence and information, advantages such as  
5834 increased competition, additional convenience, or gains in efficiency outweigh possible adverse effects  
5835 such as diminished or unfair competition, undue concentration of resources, conflicts of interests, or  
5836 unsafe or unsound practices;

5837 8. The officers and directors of the proposed savings institution demonstrate (i) moral fitness, (ii)  
5838 financial responsibility, and (iii) business ability; and

5839 9. The applicant has submitted evidence of (i) being fully insured by the Federal Deposit Insurance  
5840 Corporation or other federal insurance agency or (ii) commitment by the Federal Deposit Insurance  
5841 Corporation or other federal insurance agency that the applicant will be issued insurance of accounts  
5842 immediately subsequent to the issuance of the certificate of authority. The Commission may issue a  
5843 certificate conditioned upon the fact that the savings institution shall not commence to do business until  
5844 it is issued insurance of accounts by the Federal Deposit Insurance Corporation or other federal  
5845 insurance agency.

5846 B. The minimum capital stock requirement under:

5847 1. Subdivisions A 2 and A 3 shall apply when a state association is being organized to begin  
5848 business and shall not apply when this section is referred to or used in connection with the conversion  
5849 of an operating savings institution or bank to a state association, or when this section is used in  
5850 connection with the reorganization of an operating state association under a holding company; and

5851 2. Subdivisions A 4 and A 5 shall apply when a state savings bank is being organized to begin

5852 business and shall not apply when this section is referred to or used in connection with the conversion  
 5853 of an operating savings institution or bank to a state savings bank, or when this section is used in  
 5854 connection with the reorganization of an operating state savings bank under a holding company.

5855 § 6.2-1119. Commissions and other fees for sale of stock not permitted.

5856 The Commission shall not issue a certificate of authority to any state savings institution to commence  
 5857 business if commissions, fees, brokerage, or other compensation, however designated, have been paid or  
 5858 contracted to be paid by the savings institution or by anyone in its behalf, either directly or indirectly,  
 5859 to any person for the sale of stock in such savings institution. This section shall not be construed to  
 5860 prohibit a savings institution that has been issued a certificate of authority and has commenced  
 5861 operations from paying or contracting to pay such commissions or fees in connection with the issue or  
 5862 reissue of shares of stock of the savings institution.

5863 § 6.2-1120. Minimum capital requirement.

5864 A state savings bank shall comply with the applicable minimum capital requirements of the Federal  
 5865 Deposit Insurance Corporation. The Commission may impose such additional minimum capital  
 5866 requirements as it deems necessary in order to insure the safe and sound operation of state savings  
 5867 banks.

5868 § 6.2-1121. Board of directors.

5869 A. The affairs of every state savings institution shall be managed by a board of directors of not less  
 5870 than five nor more than 25 persons. Every director of a stock savings institution shall be the owner in  
 5871 his own name and have in his personal possession or control, shares of stock in the savings institution  
 5872 of which he is a director that have a market value at the time such director is first elected to the board  
 5873 of not less than \$500. Such shares of stock shall be unpledged, except as required to be pledged to a  
 5874 Federal Home Loan Bank, Federal Reserve Bank, or other federal agency, and unencumbered at the  
 5875 time of his becoming a director and during the whole of his term as director. If a stock savings  
 5876 institution is controlled by a savings institution holding company, a director may comply with the  
 5877 provisions of this section for each stock savings institution of which he is a director by ownership, in  
 5878 similar manner, of shares of capital stock of the holding company that have a market value at the time  
 5879 such director is first elected to the board of not less than \$500.

5880 B. Every director of a mutual state association shall have a savings account in the association of  
 5881 which he is a director, in his own name or jointly with his spouse, of not less than \$500. A mutual state  
 5882 savings bank shall be subject to the requirements of subsection A, except that, in lieu of owning  
 5883 qualifying shares of stock in the savings bank, each director shall maintain, while a director, a savings  
 5884 account in the savings bank of not less than \$500. Any account required by this subsection shall be  
 5885 unpledged, except as required to be pledged to a Federal Home Loan Bank, and unencumbered at the  
 5886 time of his becoming a director and during the whole term as director. The office of any director  
 5887 violating the provisions of subsection A or this subsection shall immediately become vacant.

5888 C. Every director of a state savings institution, within 30 days after his election or reelection, shall  
 5889 take and subscribe to an oath that he (i) will diligently and honestly perform his duties as director and  
 5890 (ii) is the owner and has in his personal possession or control the shares of stock or savings account in  
 5891 the savings institution required by this section and, in the case of reelection or reappointment, that,  
 5892 during the whole of his immediate previous term as a director, such stock or account was not at any  
 5893 time pledged or encumbered in any other manner to secure a loan. The oath, subscribed to by the  
 5894 director and certified by the officer before whom it is taken, shall be transmitted to the Commission.  
 5895 Any director who fails for a period of 30 days after his election, reelection, appointment or  
 5896 reappointment to take the oath required by this subsection shall forfeit his office.

5897 D. Within 60 days following the election or reelection of any person as a director of a state savings  
 5898 institution, the savings institution shall furnish such information to the Commission relative to the  
 5899 personal character, integrity, financial condition, and personal and business background of the director  
 5900 as the Commission shall from time to time prescribe. The report, under oath, shall be signed by the  
 5901 director as well as by a designated officer of the savings institution. Any person knowingly making a  
 5902 false statement in such a report shall be guilty of perjury, punishable as provided in § 18.2-434.

5903 § 6.2-1122. Meetings of board of directors.

5904 The board of directors of every state savings institution shall hold meetings at least once in every  
 5905 calendar month. At any meeting a majority of the whole board shall be necessary for the lawful  
 5906 transaction of business, unless the stockholders or members, by bylaw, have fixed another number,  
 5907 which in the case of a state savings bank shall be not less than five, as a quorum. The Commission may  
 5908 allow less frequent meetings, but not less often than quarterly.

5909 § 6.2-1123. Notice of meetings of members; determining members entitled to notice or to vote.

5910 A. A mutual savings institution shall give notice of its meetings of members as required by  
 5911 § 13.1-842 and shall post a copy of the notice in a conspicuous place in each office of the institution  
 5912 during the 14 days preceding the date of the meeting.

5913 B. For the purpose of determining members entitled to notice of or to vote at any meeting of  
 5914 members or any adjournment thereof, or in order to make a determination of members for any other  
 5915 purpose, the board of directors of a mutual savings institution may provide that the membership shall be  
 5916 closed for a stated period but not to exceed, in any case, 50 days. In lieu of closing the membership, the  
 5917 bylaws or, in the absence of any applicable bylaw, the board of directors may fix in advance a date as  
 5918 the record date for any such determination of membership. Such date in any case shall not be more  
 5919 than 50 days prior to the date on which the particular action, requiring such determination of members,  
 5920 is to be taken. If the membership is not closed and no record date is fixed for the determination of  
 5921 members entitled to notice of or to vote at a meeting of members, the date on which notice of the  
 5922 meeting is mailed shall be the record date for such determination of membership. When a determination  
 5923 of members entitled to vote at any meeting of members has been made as provided in this section, the  
 5924 determination shall apply to any adjournment thereof.

5925 § 6.2-1124. Voting rights; proxies.

5926 The right of members of a mutual savings institution to vote may not be conferred or limited by the  
 5927 articles of incorporation. In the determination of all questions requiring action by the members, each  
 5928 member shall be entitled to cast one vote, plus an additional vote for each \$100 or fraction thereof of  
 5929 the withdrawal value of savings accounts, if any, held by such member. No member, however, shall be  
 5930 entitled to cast more than 50 votes. At any meeting of the members, voting may be in person or by  
 5931 proxy, provided that no proxy shall be eligible to be voted at any meeting unless such proxy shall have  
 5932 been filed with the secretary of the institution, for verification, at least five days prior to the date of  
 5933 such meeting. Each proxy shall be in writing and signed by the member or his duly authorized  
 5934 attorney-in-fact and, when filed with the secretary, shall, unless otherwise specified in the proxy,  
 5935 continue in force from year to year until revoked by a writing duly delivered to the secretary of the  
 5936 institution or until superseded by subsequent proxies or upon the member's ceasing to be a member of  
 5937 the institution.

5938 § 6.2-1125. Access to books and records; communication with members.

5939 A. Every person having an account or loan with a savings institution shall have the right to inspect  
 5940 the books and records of the institution that pertain to his loan or account. In all other situations the  
 5941 right to inspect and examine the institution's books and records shall be limited to:

5942 1. The Commissioner or his duly authorized representatives;

5943 2. Persons duly authorized to act for the institution; and

5944 3. Any federal or state instrumentality or agency authorized to inspect or examine the books and  
 5945 records of such institution.

5946 B. The books and records pertaining to the accounts and loans of a savings institution shall be kept  
 5947 confidential by the institution, its directors, officers, and employees except where the disclosure thereof  
 5948 shall be compelled by an appropriate court or otherwise required by law. No person shall have access  
 5949 to the books and records of the institution or shall be furnished or shall possess information concerning  
 5950 individual accounts or loans of the institution or concerning the owners of such accounts or borrowers,  
 5951 except as authorized in writing by the account owner or borrower or as otherwise expressly authorized  
 5952 by law. A savings institution is authorized to release, publish or furnish general information and  
 5953 statistical data concerning its accounts and loans, provided the identity of individual account owners or  
 5954 borrowers, and other confidential information, is not revealed.

5955 C. If any member of a mutual savings institution desires to communicate with other members with  
 5956 reference to any questions pending or to be presented for consideration at a meeting of the members,  
 5957 the institution shall furnish upon request a statement of the approximate number of members of the  
 5958 institution at the time of such request and an estimate of the cost of forwarding such communication.  
 5959 The requesting member shall then submit the communication, together with a sworn statement that the  
 5960 proposed communication is not for any reason other than the business welfare of the institution, to the  
 5961 Commissioner. If the Commissioner finds the communication to be appropriate, truthful and in the best  
 5962 interest of the institution and its members, he shall execute a certificate setting out such findings,  
 5963 forward the certificate together with the communication to the institution, and direct that the  
 5964 communication be prepared and mailed by the institution to the members upon the requesting member's  
 5965 payment to it of the expenses of such preparation and mailing. If the Commissioner finds such proposed  
 5966 communication to be inappropriate, untruthful, or contrary to the best interest of the institution and its  
 5967 members, he may make any disposition of the request to communicate that he deems proper and he  
 5968 shall execute a certificate setting out such findings and deliver it to the requesting member together with  
 5969 his order making disposition of the request.

5970 D. Insofar as the provisions of this section are not inconsistent with federal law, such provisions  
 5971 shall apply to federal savings institutions whose home offices are located in the Commonwealth, except  
 5972 that the communication and statement provided for in subsection C shall be tendered to the appropriate  
 5973 federal agency in the case of a federal savings institution and forwarded only upon that agency's

5974 *certificate and direction.*

5975 *E. Nothing in this section shall be construed to prohibit a savings institution from furnishing the*  
 5976 *names, addresses and telephone numbers of its customers to an affiliate of the institution or an entity*  
 5977 *with whom the institution has a direct contractual relationship, for purposes of furnishing financial*  
 5978 *services to the institution's customers. Such affiliate or entity shall not furnish such customer information*  
 5979 *to any third party without the written authorization of the customer.*

5980 *§ 6.2-1126. Audit of savings institution; report.*

5981 *The directors of every savings institution shall, at least once in each calendar year, cause an*  
 5982 *independent audit by a certified public accountant to be made of the institution, its operation and its*  
 5983 *general books of account. The report of such audit shall be presented to the institution's board of*  
 5984 *directors at its next regular meeting after completion of the audit. The minutes of such meeting shall*  
 5985 *reflect that the audit report was presented and reviewed by the board, and a copy of the audit report*  
 5986 *shall be filed with the Bureau within two weeks from the date such report is received by the institution*  
 5987 *from the auditor.*

5988 *§ 6.2-1127. Bonds of officers and employees.*

5989 *A. The directors of every savings institution shall require a bond with corporate surety from each of*  
 5990 *the active officers and employees of the institution as an indemnity for any loss the institution may*  
 5991 *sustain as a result of such person's fraud, dishonesty, theft, or embezzlement. In lieu of individual bonds*  
 5992 *a blanket bond with corporate surety covering all active officers and employees of the institution may,*  
 5993 *with the approval of the board of directors, be obtained. The Commission shall, not less than twice*  
 5994 *during any period of three consecutive calendar years, examine all such bonds and pass on their*  
 5995 *sufficiency and either the board of directors or the Commission may require new or additional bonds at*  
 5996 *any time. The corporate surety shall have a license issued by the Commission.*

5997 *B. If a savings institution determines that it is unable to obtain the surety bond coverage required by*  
 5998 *subsection A, it shall immediately notify the Commission. The Commission shall forthwith investigate to*  
 5999 *determine whether such coverage is available to the institution. If the Commission determines, after such*  
 6000 *investigation, that such coverage is not reasonably available to the institution, the Commission may, but*  
 6001 *shall not be required to, close the institution solely because of the unavailability of such coverage under*  
 6002 *§ 6.2-1199. If the institution is not closed because of the unavailability of such coverage, the*  
 6003 *Commission shall closely monitor the institution to ensure that such coverage is obtained as soon as*  
 6004 *possible, and shall take such further action under § 6.2-1199 or 6.2-1200 as the Commission deems*  
 6005 *necessary.*

6006 *C. The institution, at its cost, may also obtain insurance to protect its directors, officers, and*  
 6007 *employees against lawsuits arising out of claims of negligence or misconduct.*

6008 *§ 6.2-1128. Loans to executive officers or directors.*

6009 *A. As used in this section, "executive officer" means an officer of a savings institution who*  
 6010 *participates or has authority to participate in the major policy-making functions of the savings*  
 6011 *institution.*

6012 *B. No executive officer or director of any savings institution shall borrow any amount more than*  
 6013 *\$25,000 from the institution until such loan has been approved by (i) a majority of the directors of the*  
 6014 *institution or (ii) a committee of officers and directors that includes at least one director appointed by*  
 6015 *the board of directors with authority to approve loans.*

6016 *C. The following loans or lines of credit shall not be made by an institution unless specifically*  
 6017 *approved by (i) a majority of the directors of the institution or (ii) a committee of officers and directors*  
 6018 *that includes at least one director appointed by the board of directors with authority to approve loans:*

6019 *1. Any loan in an amount of \$25,000 or more made to any executive officer or director of an*  
 6020 *institution or any entity that the Commission determines is controlled by one or more executive officers*  
 6021 *or directors;*

6022 *2. Any loan made to the persons or entities described in subdivision 1, the amount of which together*  
 6023 *with all other obligations, direct or indirect, of such executive officer, director, or controlled entity is*  
 6024 *\$100,000 or more;*

6025 *3. Any line of credit for \$25,000 or more made to the persons or entities described in subdivision 1;*  
 6026 *or*

6027 *4. Any line of credit made to the persons or entities described in subdivision 1, the amount of which*  
 6028 *together with all other obligations, direct or indirect, of such executive officer, director, or controlled*  
 6029 *entity is \$100,000 or more.*

6030 *If approved by the committee described in clause (ii), the approval shall be specifically reported to*  
 6031 *the board of directors at its next regular meeting.*

6032 *D. No extension, renewal, or renegotiation of any loan or line of credit in excess of the amounts*  
 6033 *described in subsection C shall be made to any of those individuals or entities or their interests unless it*  
 6034 *is approved by a majority of the board of directors or by the committee of officers and directors*

6035 appointed by the board. If approved by the committee, such approval shall be specifically reported to  
6036 the board of directors at its next regular meeting.

6037 E. The prohibitions set forth in subsections C and D shall not be construed to require approval by  
6038 the board of directors for advances under previously authorized lines of credit.

6039 F. The aggregate amount of a savings institution's loans to its executive officers or directors or their  
6040 interests shall not be excessive. The Commission may adopt such regulations as may be required to  
6041 prevent excessive aggregate amounts of lending by savings institutions to those individuals or entities.

6042 § 6.2-1129. Overdrafts by savings institution officers, directors or employees.

6043 A. No savings institution shall pay an overdraft of an officer, director, or employee of the institution  
6044 on any account at the institution unless the payment of funds is made in accordance with (i) a written,  
6045 preauthorized, interest-bearing extension of credit plan that specifies a method of repayment or (ii) a  
6046 written, preauthorized transfer of funds from another account of the account holder at the institution.

6047 B. The prohibition set forth in subsection A does not apply to the payment of inadvertent overdrafts  
6048 on an account in an aggregate amount of \$1,000 or less if (i) the account is not overdrawn for more  
6049 than five business days and (ii) the savings institution charges the officer, director, or employee the  
6050 same fee charged any other customer of the institution in similar circumstances.

6051 § 6.2-1130. Reserves; surplus and undivided profits.

6052 A. Every savings institution doing business in the Commonwealth shall maintain an adequate net  
6053 worth appropriate for the conduct of its business and the protection of its account holders. Every  
6054 savings institution (i) shall set up and maintain the reserves required by this chapter and (ii) may set up  
6055 and maintain such additional reserves as are permitted by this chapter.

6056 B. On or before the closing date of each accounting period, after payment of or provision for all  
6057 expenses, every savings institution shall transfer to a separate reserve account that shall be set up and  
6058 maintained for the sole purpose of absorbing losses, referred to in this section as the "general reserve,"  
6059 an amount equal to at least five percent of its net income. A savings institution that at the close of such  
6060 accounting period has assets in excess of \$20 million or that has done business as a savings institution  
6061 in the Commonwealth for more than 20 years shall transfer to such separate reserve account the greater  
6062 of five percent of its net income or an amount obtained by subtracting an amount equal to its general  
6063 reserve at the beginning of the period from an amount equal to four percent of its assets, excluding  
6064 liquid assets, at the end of the period, until the general reserve is equal to at least five percent of the  
6065 total amount of its deposit accounts at the beginning of such accounting period. Upon advanced written  
6066 application of a savings institution, the Commissioner may approve the transfer to the general reserve of  
6067 a lesser amount for such accounting period. If any credit to the general reserve is made after July 1,  
6068 1985, in excess of the minimum requirement, the dollar amount of any such excess may be carried over  
6069 as a credit toward the minimum requirement of any subsequent period.

6070 C. When the general reserve of a savings institution does not equal at least five percent of the  
6071 deposit account liability of the institution, credits, as provided in subsection B, shall again be made to  
6072 the general reserve until it again equals at least five percent of the institution's deposit account liability.

6073 D. In the case of stock savings institutions, the capital stock account, to the extent that the capital  
6074 has not been impaired, shall be treated as part of the reserve and the board of directors may, by  
6075 resolution, permanently or conditionally designate all or part of the capital stock, capital surplus,  
6076 earned surplus, or undivided profit accounts as a part of its general reserve. A savings institution may  
6077 retain its undivided profits in such amounts as may from time to time be fixed by resolution of its board  
6078 of directors.

6079 E. The Commission may temporarily reduce the reserve requirements for a savings institution if it  
6080 finds such reduction to be in the best interest of the institution and its stockholders or members.

6081 F. Notwithstanding the requirements of this section, an insured savings institution may maintain its  
6082 reserves in accordance with the requirements of the Federal Deposit Insurance Corporation or other  
6083 federal agency.

6084 § 6.2-1131. Liability of members of mutual savings institutions.

6085 A. No member of a mutual savings institution shall be responsible for any losses that the savings  
6086 account deposits shall not be sufficient to satisfy.

6087 B. No savings account shall be subject to assessment for any unpaid installments on his account.

6088 C. The holder of a savings account shall not be liable for any unpaid installments on his account.

6089 D. No preference between savings account members of a mutual savings institution shall be created  
6090 with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution, or  
6091 winding up of such institution.

6092 § 6.2-1132. Mutual capital certificates.

6093 A. A mutual savings institution shall have the power to issue and to sell, directly or through  
6094 underwriters, capital certificates that (i) represent nonwithdrawable capital contributions and (ii)  
6095 constitute part of the reserves and net worth of the institution.

6096 *B. Capital certificates:*6097 *1. Shall have no voting rights;*6098 *2. Shall be subordinate to all savings accounts, debt obligations and claims of creditors of the*  
6099 *institution;*6100 *3. Shall constitute a claim in liquidation against any reserves, surplus, and other net worth accounts*  
6101 *remaining after the payment in full of all savings accounts, debt obligations, and claims of creditors;*6102 *4. Shall be entitled to the payment of earnings prior to the allocation of any income to surplus or*  
6103 *other net worth accounts of the institution; and*6104 *5. May be issued with a fixed rate of earnings or with a prior claim to distribution of a specified*  
6105 *percentage of any net income remaining after required allocations to reserves, or a combination thereof.*6106 *C. Losses shall be charged against capital certificates only after reserves, surplus, and other net*  
6107 *worth accounts have been exhausted.*6108 *Article 3.*6109 *Offices, Branches, and Facilities.*6110 *§ 6.2-1133. Offices and other facilities of state and foreign savings institutions; approval of branch*  
6111 *offices required.*6112 *A. A state savings institution may establish and operate such offices and other facilities as are*  
6113 *authorized by its board of directors. A state savings institution shall not establish a branch office or*  
6114 *other office or facility where deposits are accepted without obtaining the prior approval of the*  
6115 *Commission as provided in subsection B. Prior to establishing or permanently closing any office or*  
6116 *other facility, a state association shall give at least 30 days' written notice to the Commissioner, in such*  
6117 *form as may be prescribed by the Commissioner. Prior to establishing, relocating, or permanently*  
6118 *closing any office or other facility of the savings bank or any of its affiliates, a savings bank shall give*  
6119 *at least 30 days' written notice to the Commissioner, in such form as may be prescribed by the*  
6120 *Commissioner. A savings institution shall also give written notice to the Commission, in such form as*  
6121 *may be prescribed by the Commission, within 10 days after it has established or permanently closed an*  
6122 *office or other facility, and if the institution is a savings bank, it shall give such written notice to the*  
6123 *Commission within 10 days after it has relocated any such office or other facility.*6124 *B. Applications for authorization to establish a branch office or other office or facility where*  
6125 *deposits are accepted shall be made in writing, in such form as may be prescribed by the Commission.*  
6126 *Upon review of a savings institution's application and any other information that the Commission may*  
6127 *reasonably require, the Commission shall approve the establishment of such office or facility if it is*  
6128 *satisfied that the public interest will be served thereby and, if the applicant is a savings bank, that it*  
6129 *has sufficient capital to warrant additional expansion. Such offices or facilities may be closed without*  
6130 *the prior approval of the Commission. However, written notice of the closing of such an office shall be*  
6131 *given to the Commissioner as provided in subsection A.*6132 *C. The requirements of subsections A and B shall also apply to the establishment and closing of the*  
6133 *offices of a foreign savings institution authorized to transact business in the Commonwealth.*6134 *§ 6.2-1134. Facilities associated with branch office.*6135 *A state or foreign savings institution authorized to transact business in the Commonwealth may*  
6136 *establish without prior approval of the Commission a drive-in or pedestrian office opened in conjunction*  
6137 *with an approved branch office of the institution, if such drive-in or pedestrian office is to be located (i)*  
6138 *within 500 feet of a public entrance of the approved branch office and (ii) closer to that entrance than*  
6139 *to a public entrance of any other financial institution. The functions of a drive-in or pedestrian office*  
6140 *shall be limited to the ordinary functions performed at a teller window.*6141 *§ 6.2-1135. Change of branch office location.*6142 *A. A state savings institution shall not change the permanent location of a branch office without the*  
6143 *prior approval of the Commission. An application to change the location of a branch office shall be*  
6144 *made in writing in such form as may be prescribed by the Commission. Such application shall be*  
6145 *approved by the Commission if the Commission finds that the change in location is in the public*  
6146 *interest.*6147 *B. Notwithstanding the provisions of subsection A, a state savings institution may change the*  
6148 *permanent location of a branch office, without applying for the approval of the Commission, if the new*  
6149 *location will be within a one mile radius of the old location of such branch office. In such event, the*  
6150 *state savings institution shall notify the Commissioner in writing, in such form as may be prescribed by*  
6151 *the Commissioner, at least 60 days before such office relocation and may proceed with the relocation*  
6152 *unless, within 30 days of receipt of the notice, the Commissioner notifies the institution that the*  
6153 *relocation is not in the public interest. In that event, the institution shall be required to file an*  
6154 *application and obtain the approval of the Commission in accordance with subsection A. The institution*  
6155 *shall also notify the Commissioner in writing that the office relocation has been completed within 10*  
6156 *days after the opening of the office at its new location.*

6157 C. The provisions of subsections A and B shall also apply to foreign savings institutions authorized  
6158 to transact business in the Commonwealth.

6159 D. The provisions of this section shall also apply to the relocation of the main office of a state  
6160 savings institution if it intends to accept deposits at the new location of the main office.

6161 § 6.2-1136. Remote service units.

6162 A. As used in this section:

6163 "Personal security identifier" or "PSI" or "PIN" means any word, number, or other security identifier  
6164 essential for an account holder to gain access to an account through a remote service unit.

6165 "Remote service unit" or "RSU" means an information processing device, including associated  
6166 equipment, structures and systems, by which information relating to financial services rendered to the  
6167 public is stored and transmitted, instantaneously or otherwise, to a financial institution. Any such device  
6168 not on the premises of a state savings institution that, for activation and account access, requires use of  
6169 a machine-readable instrument and personal security identifier in the possession and control of an  
6170 account holder, is an RSU. The term includes, without limitation, point-of-sale terminals,  
6171 merchant-operated terminals, cash-dispensing machines, and automated teller machines. The term does  
6172 not include automated teller machines on the premises of a state savings institution, unless shared with  
6173 other financial institutions.

6174 B. Subject to the requirements of the Electronic Funds Transfer Act (15 U.S.C. § 1693 et seq.) and  
6175 Regulation E of the Federal Reserve Board, a state savings institution may establish or use remote  
6176 service units and participate with others in remote service unit operations on an unrestricted geographic  
6177 basis. A state savings institution may establish a remote service unit without prior approval of the  
6178 Commission, provided that notice is given to the Commissioner in accordance with the provisions of  
6179 subsection A of § 6.2-1133. No remote service unit may be used to open a savings account or a demand  
6180 account or to establish a loan account.

6181 C. Before permitting an account holder to use a remote service unit, the savings institution shall  
6182 provide a personal security identifier to the account holder and require its use when accessing a remote  
6183 service unit. An institution may not employ RSU access techniques that require the account holder to  
6184 disclose a PSI to another person.

6185 D. A state savings institution shall not share an RSU with any financial institution or other entity the  
6186 accounts of which are not insured by an agency of the federal government or by some other insuring  
6187 agency approved by the Commissioner.

6188 E. A state savings institution shall not share an RSU located in the Commonwealth with any foreign  
6189 savings institution, or other financial institution that is not incorporated under the laws of the  
6190 Commonwealth, unless the foreign savings institution or other financial institution has been authorized  
6191 by the Commission to conduct its business in the Commonwealth. Nothing herein shall be deemed to  
6192 prohibit a state savings institution from sharing an RSU with a federal savings institution or other  
6193 federally chartered financial institution authorized to conduct its business in the Commonwealth.

6194 F. An RSU shall not be considered to be a branch office of a state savings institution.

6195 § 6.2-1137. Off premises financial services.

6196 A. As used in this section, "off premises financial services" means the transfer of funds or financial  
6197 information or the performance of other transactions initiated by the customer by means of an electronic  
6198 terminal, such as a telephone, a computer terminal, or a television set that is linked to a state savings  
6199 institution's electronic network by telephone or cable television lines or other electronic means.

6200 B. A state savings institution may utilize any electronic technology to provide its customers with off  
6201 premises financial services. Any such services provided under this section are subject to the Electronic  
6202 Funds Transfer Act (15 U.S.C. § 1693 et seq.) and Regulation E of the Federal Reserve Board.

6203 § 6.2-1138. Suspension of business during actual or threatened emergency.

6204 In the event of an actual or threatened enemy attack or civil insurrection or fire, flood, hurricane,  
6205 earthquake, or other similar natural disaster, affecting the community in which a savings institution is  
6206 doing business, the offices of the savings institution thereby affected may be temporarily closed by  
6207 appropriate officers of the savings institution without prior approval of the board of directors or the  
6208 Commissioner.

6209 Article 4.

6210 Conversions, Reorganizations, Mergers, and Acquisitions.

6211 § 6.2-1139. Conversion from mutual savings institution to stock institution.

6212 A. With the approval of the Commission, and in accordance with provisions of this section and  
6213 regulations adopted hereunder, a state mutual savings institution may convert to a stock institution. The  
6214 conversion shall be conducted in a manner equitable to all parties thereto as follows:

6215 1. The board of directors of the mutual savings institution shall first adopt by two-thirds vote a  
6216 conversion plan. The provisions of the plan shall comply with regulations adopted by the Commission;

6217 2. The plan shall provide that holders of savings accounts in the mutual savings institution will be

6218 afforded the opportunity to preserve their interest in the institution's net worth by subscribing to stock;  
6219 and

6220 3. The Commission shall approve any such plan of conversion if the Commission ascertains that such  
6221 conversion will not have an adverse effect on the stability of the institution and that all other  
6222 regulations of the Commission relating to the conversion of a mutual savings institution to a stock  
6223 institution have been complied with.

6224 B. The Commission shall adopt regulations governing the procedures to be followed in completing  
6225 the conversion after a satisfactory plan has been adopted. The regulations shall ensure that any  
6226 institution in converting shall continue to have its accounts insured by the Federal Deposit Insurance  
6227 Corporation or other federal insurance agency.

6228 § 6.2-1140. Reorganization of mutual association into mutual holding company; approval by  
6229 Commissioner; powers; issuance of stock.

6230 A. Notwithstanding any other provision of law, with the approval of the Commission, and in  
6231 accordance with the provisions of this section and any regulations adopted pursuant to this section, any  
6232 mutual association may reorganize to become a mutual holding company by:

6233 1. Causing a stock association to be formed by incorporating a stock corporation and obtaining a  
6234 certificate of authority to begin business as a savings institution pursuant to the provisions of Chapter 9  
6235 (§ 13.1-601 et seq.) of Title 13.1 and Article 2 (§ 6.2-1114 et seq.) of this chapter;

6236 2. Transferring the substantial part of its assets and liabilities, including all of its deposit liabilities,  
6237 to the stock association created, in exchange for receipt of no less than 51 percent of the capital stock  
6238 of the stock association; and

6239 3. Adopting an amended charter changing its name and conforming its organization, governance,  
6240 and powers to those prescribed hereunder for a mutual holding company.

6241 B. In connection with the transfer of assets and liabilities, the resulting mutual holding company may  
6242 retain assets to the extent such assets are not required to be transferred to the stock association created  
6243 in order to satisfy any capital or reserve requirements imposed by applicable state or federal law.

6244 C. Upon such transfer, all persons who prior thereto held depository rights with respect to or other  
6245 rights as creditors of the reorganized mutual association shall have such rights solely with respect to  
6246 the stock association created, and the corresponding liability or obligation of the reorganized mutual  
6247 association to such persons shall be assumed by the stock association. Persons who prior thereto had  
6248 any ownership, liquidation, or voting rights with respect to the reorganized mutual association, in their  
6249 capacities as savings depositors, and pursuant to provision of law, or pursuant to the articles of  
6250 incorporation and bylaws of that association, shall continue to have such rights but solely with respect  
6251 to the mutual association in its reorganized form as a mutual holding company. The ownership or  
6252 liquidation interest of any savings depositor of the subsidiary stock association in the net earnings and  
6253 net worth of the resulting mutual holding company, and the voting rights of any such depositor in the  
6254 mutual holding company, shall terminate, or otherwise be limited, in the same manner and on the  
6255 happening of the same events as was the case prior thereto with the interest held by that depositor in  
6256 the mutual association.

6257 D. The reorganization of a mutual association into a mutual holding company shall be conducted in  
6258 a manner that is equitable to all parties. The board of directors of the mutual association shall first  
6259 adopt by a two-thirds vote a plan of reorganization, the provisions of which shall comply with  
6260 requirements set forth in regulations adopted by the Commission. Such plan shall provide that holders  
6261 of savings deposits in the reorganized mutual association shall be afforded an opportunity to preserve  
6262 their interests by subscribing to the minority stock of the subsidiary stock association. The Commission  
6263 shall approve any such plan of reorganization if the Commission ascertains that the reorganization shall  
6264 not have an adverse effect on the stability of the association and that the reorganized mutual association  
6265 has complied with all laws and regulations of the Commission relating to the reorganization of a mutual  
6266 association into a mutual holding company. The Commission shall adopt regulations governing the  
6267 procedures to be followed in completing the reorganization after the Commission has approved a plan  
6268 of reorganization. Such regulations shall ensure that the subsidiary association resulting from such  
6269 reorganization shall continue to have its accounts insured by the Federal Deposit Insurance Corporation  
6270 or other federal insurance agency.

6271 E. Upon reorganization, the resulting mutual holding company (i) shall continue to possess and may  
6272 exercise all the rights, powers, and privileges, except deposit-taking powers, of a mutual association  
6273 under the laws of the Commonwealth and (ii) shall be subject to the limitations and restrictions imposed  
6274 on savings institution holding companies by §§ 6.2-1147 and 6.2-1192, as well as all limitations and  
6275 restrictions applicable to mutual savings institutions.

6276 F. Upon reorganization, the association chartered as a stock corporation shall have the power to  
6277 issue to persons other than the mutual holding company of which it is a subsidiary, an amount of  
6278 common stock which in the aggregate does not exceed 49 percent of the issued and outstanding common

6279 stock of the association. For purposes of this percentage limitation, any issued and outstanding  
6280 securities that are convertible into common stock shall be considered as issued and outstanding common  
6281 stock. If at any time, the mutual holding company resulting from reorganization sells or otherwise  
6282 disposes of outstanding shares in its stock association subsidiary, and as a result such mutual holding  
6283 company no longer owns more than 51 percent of the outstanding shares of such association, or if the  
6284 subsidiary stock association sells substantially all of its assets in a transaction in which substantially all  
6285 deposit liabilities of such association are assumed and become liabilities of the purchaser of those  
6286 assets, the Commission, on application of the Commissioner, may, after reasonable notice to the mutual  
6287 holding company and its subsidiary stock association, appoint a receiver to wind up the affairs of the  
6288 mutual holding company.

6289 G. Any mutual holding company having its principal place of business in the Commonwealth may  
6290 convert into a stock savings institution holding company, with the approval of the Commissioner, and in  
6291 accordance with any regulations adopted by the Commission.

6292 § 6.2-1141. Conversion of state savings institution into federal financial institution.

6293 A. A state savings institution may convert into a federal financial institution as follows:

6294 1. At any meeting of the members or stockholders called and held in accordance with the Virginia  
6295 Stock Corporation Act (§ 13.1-601 et seq.) or the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.)  
6296 to consider such action, the members or stockholders, by an affirmative vote of those holding and voting  
6297 two-thirds of the votes present in person or by proxy, may resolve to convert the state savings institution  
6298 into a federal financial institution;

6299 2. A copy of the minutes of the meeting duly certified by the president or vice-president and the  
6300 secretary or assistant secretary of the state savings institution shall be transmitted to the Commission;

6301 3. Thereafter, the state savings institution shall take such action as is necessary under federal law to  
6302 make it a federal financial institution; and

6303 4. The savings institution shall file with the Commission a certified copy of the charter issued to it  
6304 by the federal chartering authority or a certificate of that authority showing the organization of the state  
6305 savings institution as a federal financial institution.

6306 B. Upon the filing of the certified copy of a charter or certificate of authority as provided in  
6307 subdivision A 4, the savings institution shall cease to be a state savings institution.

6308 C. No state savings institution shall convert into a federal financial institution until it has been in  
6309 operation as a state savings institution for a period of at least five years.

6310 D. When a conversion of a state savings institution into federal financial institution becomes  
6311 effective, the state savings institution shall cease to be a Virginia corporation and all its property, by  
6312 operation of law and without any further act or deed, shall continue to be vested in it under its new  
6313 name as a federal financial institution and under its federal charter. The federal financial institution  
6314 shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was  
6315 possessed, held and enjoyed by it as a state savings institution. The federal financial institution, at the  
6316 time of the taking effect of the conversion, shall become, and continue to be, responsible for all of the  
6317 obligations of the state savings institution, including taxes and other liabilities created by law or  
6318 incurred by it before becoming a federal financial institution, to the same extent as though the  
6319 conversion had not taken place.

6320 § 6.2-1142. Conversion of federal financial institution into state savings institution or state bank.

6321 A. A federal financial institution doing business in the Commonwealth may become a state savings  
6322 institution, and such a federal financial institution that is a stock institution may become a state bank,  
6323 as follows:

6324 1. In either case, the federal financial institution shall take such action as will under federal law and  
6325 regulations terminate its existence as a federal financial institution on a specified date;

6326 2. In the case of a conversion to a state savings institution, the directors of the federal financial  
6327 institution shall organize a corporation under this chapter and, if a stock institution, the Virginia Stock  
6328 Corporation Act (§ 13.1-601 et seq.), or if a mutual savings institution, the Virginia Nonstock  
6329 Corporation Act (§ 13.1-801 et seq.), and the new corporation shall apply for a certificate of authority  
6330 to do business under § 6.2-1118; and

6331 3. In the case of a conversion to a state bank, the directors of the federal financial institution shall  
6332 organize a corporation under Chapter 8 (§ 6.2-800 et seq.) and the Virginia Stock Corporation Act  
6333 (§ 13.1-601 et seq.), and the new corporation shall apply for a certificate of authority to do business  
6334 under § 6.2-816. If the applicant meets the standards established by § 6.2-816, the Commission may  
6335 issue it a certificate of authority to begin a banking business. The order shall designate the main office  
6336 of the federal financial institution as the main office of the resulting bank, and the resulting bank shall  
6337 be permitted to operate all branch offices of the former federal financial institution. Within one year of  
6338 the date of such a conversion, the resulting bank shall conform its assets and operations to the  
6339 provisions of law regulating the operation of banks. The Commission may grant such resulting bank

6340 additional one-year periods, not to exceed a total of four additional years, in which to conform its  
6341 assets and operations to the provisions of law regulating the operation of banks.

6342 B. The former federal financial institution converting to a state savings institution or a state bank  
6343 shall transact no business as a state savings institution or as a state bank other than that relating to its  
6344 organization until its certificate of authority to do business has been granted and its dissolution as a  
6345 federal financial institution has become effective.

6346 C. As soon as the certificate of authority to do business has been granted and its dissolution as a  
6347 federal financial institution has become effective, all the property of the federal financial institution shall  
6348 by operation of law and without any further act or deed be vested in and become the property of the  
6349 state savings institution or state bank. The state savings institution or state bank shall (i) have, hold and  
6350 enjoy the same in its own right as fully and to the same extent as the same was possessed, held or  
6351 enjoyed by the federal financial institution and (ii) become, and continue to be, responsible for all the  
6352 obligations, duties and agreements of the federal financial institution, including taxes and other  
6353 liabilities created by law or incurred by it before becoming a state savings institution or state bank to  
6354 the same extent as though the conversion had not taken place.

6355 D. Upon conversion of a federal financial institution to a state savings bank, the state savings bank  
6356 shall have the right to continue to operate all branch offices then in existence without having to obtain  
6357 the approval of the Commission pursuant to § 6.2-1133.

6358 § 6.2-1143. Conversion from state savings bank to state association; conversion from state  
6359 association to state savings bank.

6360 A. A state savings bank may be converted into a state association by the amendment of its articles of  
6361 incorporation in compliance with the procedure established by Title 13.1, provided that such conversion  
6362 is approved in advance by the Commission. Prior to approving or disapproving a conversion, the  
6363 Commission shall investigate the application to convert as if it were an application for a certificate of  
6364 authority to begin a savings and loan association business, and approval shall not be granted unless the  
6365 applicant meets the standards established by § 6.2-1118. The order granting a certificate of authority to  
6366 do a savings and loan business shall designate the main office of the state savings bank as the main  
6367 office of the resulting financial institution. The resulting financial institution shall be permitted to  
6368 operate all branch offices of the state savings bank that could have been established de novo by such  
6369 financial institution having its main office at such location or which were in operation for at least five  
6370 years prior to the date of the order permitting conversion. Within one year of the date of a conversion,  
6371 the resulting financial institution shall conform its assets and operations to the provisions of law  
6372 regulating the operation of state associations. The Commission may grant such resulting financial  
6373 institution additional one-year periods, not to exceed a total of four additional years, in which to  
6374 conform its assets and operations as required by this section.

6375 B. A state association may be converted into a state savings bank by the amendment of its articles of  
6376 incorporation in compliance with the procedure established by Title 13.1, provided that such conversion  
6377 is approved in advance by the Commission. Prior to approving or disapproving a conversion, the  
6378 Commission shall investigate the application to convert as if it were an application for a certificate of  
6379 authority to begin a savings bank, and approval shall not be granted unless the applicant meets the  
6380 standards established by § 6.2-1118. Within one year of the date of the conversion, the resulting state  
6381 savings bank shall conform its assets and operations to the provisions of law regulating the operation of  
6382 state savings banks. The Commission may grant such resulting state savings bank additional one-year  
6383 periods, not to exceed a total of four additional years, in which to conform its assets and operations to  
6384 the provisions of law regulating the operation of state savings banks.

6385 § 6.2-1144. Conversion from stock savings institution to bank.

6386 A. A state stock association or state savings bank may be converted into a bank by the amendment of  
6387 its articles of incorporation in compliance with the procedure established by Title 13.1, provided that  
6388 such conversion is approved in advance by the Commission. Prior to approving or disapproving a  
6389 conversion, the Commission shall investigate the application to convert as if it were an application for a  
6390 certificate of authority to begin a banking business, and approval shall not be granted unless the  
6391 applicant meets the standards established by § 6.2-816. The order granting a certificate of authority to  
6392 do a banking business shall designate the main office of the savings institution as the main office of the  
6393 resulting bank, and the resulting bank shall be permitted to operate all branch offices of the savings  
6394 institution that could have been established de novo by a bank having its main office at such location or  
6395 which were in operation for at least five years prior to the date of the order permitting conversion.  
6396 Within one year of the date of a conversion, the resulting bank shall conform its assets and operations  
6397 to the provisions of law regulating the operation of banks. The Commission may grant such resulting  
6398 bank additional one-year periods, not to exceed a total of four additional years, in which to conform its  
6399 assets and operations to the provisions of laws regulating the operation of banks.

6400 B. A bank may be converted into a savings bank upon compliance with the procedure set forth in

6401 § 6.2-829, or into a stock association upon compliance with the procedure set forth in § 6.2-830.

6402 § 6.2-1145. Merger or consolidation of savings institutions.

6403 A. Two or more mutual savings institutions or two or more stock institutions may merge, subject to  
6404 the approval of the Commission, when the Commission finds that the merger will be in the public  
6405 interest and in accordance with applicable laws and regulations.

6406 B. Two or more state savings banks may consolidate or merge, subject to the approval of the  
6407 Commission, when the Commission finds that the capital of the resulting institution will be sufficient to  
6408 warrant successful operation, and that the merger or consolidation will be in the public interest and in  
6409 accordance with applicable laws and regulations.

6410 C. The order approving the merger shall specify which office is to be the main office and which  
6411 office or offices may be operated as branch offices.

6412 § 6.2-1146. State association or association holding company acquiring bank; association acquired  
6413 by bank or bank holding company; merger or consolidation of association and bank.

6414 A. Notwithstanding the provisions of § 6.2-874, 6.2-885, or 6.2-886, and subject to the prior  
6415 approval of the Commission:

6416 1. A state association or a federal savings institution may become a subsidiary of (i) a state bank or  
6417 a national bank whose main office is located within the Commonwealth or (ii) a bank holding company  
6418 whose banking subsidiaries principally conduct their operations within the Commonwealth;

6419 2. A state bank may become a subsidiary of (i) a state association or a federal savings institution  
6420 whose main office is located within the Commonwealth or (ii) a savings and loan holding company  
6421 whose principal place of business is located within the Commonwealth;

6422 3. A state association or a federal savings institution may merge into or consolidate with a state  
6423 bank or a national bank whose main office is located within the Commonwealth or a state bank or a  
6424 national bank may merge into or consolidate with a state association or a federal savings institution  
6425 whose main office is located within the Commonwealth;

6426 4. A state savings bank may become a subsidiary of (i) a state association, state bank, federal  
6427 savings institution or national bank the main office of which is located within the Commonwealth or (ii)  
6428 a financial institution holding company whose subsidiaries principally conduct their operations within  
6429 the Commonwealth;

6430 5. A state bank or state association may become a subsidiary of a state savings bank;

6431 6. A state savings bank may merge into or consolidate with a state association, state bank, federal  
6432 savings institution or national bank whose main office is located within the Commonwealth; and

6433 7. A state association, state bank or federal financial institution may merge into or consolidate with  
6434 a state savings bank.

6435 B. If the resulting entity is to do business as a bank, the Commission shall not approve the merger  
6436 or consolidation unless the applicant meets the standards established by § 6.2-816. If the resulting entity  
6437 is to do business as a savings institution, the Commission shall not approve the merger or consolidation  
6438 unless the applicant meets the standards established by § 6.2-1118. In either case, the order granting a  
6439 certificate of authority to do business shall designate the main office of the resulting entity.

6440 C. The resulting entity shall be permitted to operate all branch offices of the merging or  
6441 consolidating entities that could have been established de novo by the resulting entity or that were in  
6442 operation at least five years prior to the date of the order permitting merger or consolidation. Within  
6443 one year of such merger or consolidation, the resulting entity shall conform its assets and operations to  
6444 the provisions of law regulating the operation of savings institutions if the resulting entity is operated as  
6445 a savings institution or to the provisions of law regulating the operation of banks if the resulting entity  
6446 is operated as a bank. The Commission may grant the resulting entity additional one-year periods, not  
6447 to exceed a total of four additional years, in which to conform its assets and operations as provided  
6448 herein.

6449 § 6.2-1147. Acquisition of control of state stock institution requires Commission approval.

6450 No person, whether acting alone or in concert with others, shall acquire ownership or control of 25  
6451 percent or more of the voting shares of a state stock savings institution, or otherwise control the  
6452 election of a majority of the directors of such institution, without the approval of the Commission. The  
6453 Commission shall not approve the proposed acquisition unless the Commission determines that the  
6454 proposed acquisition is in the public interest.

6455 Article 5.

6456 Foreign Savings Institutions; Acquisitions by Out-of-State Savings Institutions or Out-of-State Savings  
6457 Institution Holding Companies.

6458 § 6.2-1148. Definitions.

6459 As used in this article, unless the context requires a different meaning:

6460 "Acquire" means:

6461 1. The merger or consolidation of one stock savings institution with another stock savings institution

- 6462 or of a savings institution holding company with another savings institution holding company;
- 6463 2. The acquisition by a savings institution holding company or savings institution of direct or
- 6464 indirect ownership or control of voting shares of another savings institution holding company or a
- 6465 savings institution, if, after such acquisition, the savings institution holding company or savings
- 6466 institution making the acquisition will directly or indirectly own or control more than 25 percent of any
- 6467 class of voting shares of the other savings institution holding company or savings institution;
- 6468 3. The direct or indirect acquisition by a savings institution holding company or by a savings
- 6469 institution of all or substantially all of the assets of another savings institution holding company or of
- 6470 another savings institution; or
- 6471 4. Any other action that would result in direct or indirect control by a savings institution holding
- 6472 company or by a savings institution of another savings institution holding company or another savings
- 6473 institution.
- 6474 "Out-of-state savings institution" means a savings institution that:
- 6475 1. Is organized under the laws of the United States or of one of the states other than Virginia; and
- 6476 2. Has its principal place of business in a state other than Virginia.
- 6477 "Out-of-state savings institution holding company" means a savings institution holding company that
- 6478 has its principal place of business in a state other than Virginia.
- 6479 "Principal place of business of a savings institution" shall be the state in which the largest portion
- 6480 of the deposits of the savings institution is located at the end of the last calendar year.
- 6481 "Principal place of business of a savings institution holding company" shall be the state in which the
- 6482 largest portion of the deposits of the holding company's subsidiaries is located as of the end of the last
- 6483 calendar year.
- 6484 "Subsidiary" with respect to a savings institution holding company means:
- 6485 1. Any company 25 percent or more of the voting shares of which, excluding shares owned by the
- 6486 United States or by any company wholly owned by the United States, is directly or indirectly owned or
- 6487 controlled by such savings institution holding company, or is held by it with power to vote;
- 6488 2. Any company the election of a majority of the directors of which is controlled in any manner by
- 6489 such savings institution holding company; or
- 6490 3. Any company with respect to the management or policies of which such savings institution holding
- 6491 company has the power, directly or indirectly, to exercise a controlling influence, as determined by the
- 6492 Commission, after notice and opportunity for hearing.
- 6493 "Virginia savings institution" means a savings institution, including a state savings bank, that:
- 6494 1. Is organized under the laws of the Commonwealth or of the United States; and
- 6495 2. Has deposit-taking offices located only in the Commonwealth.
- 6496 "Virginia savings institution holding company" means a savings institution holding company,
- 6497 including the holding company of a state savings bank, that:
- 6498 1. Has its principal place of business in the Commonwealth;
- 6499 2. The financial institution subsidiaries of which are located outside the Commonwealth hold not
- 6500 greater than 20 percent of the total deposits held by all of its financial institution subsidiaries; and
- 6501 3. Is not controlled by a savings institution holding company other than a Virginia savings institution
- 6502 holding company.
- 6503 § 6.2-1149. Foreign savings institutions; certificate of authority.
- 6504 A. A foreign savings institution shall not transact a savings institution business in the Commonwealth
- 6505 unless it first receives from the Commission a certificate of authority to do so.
- 6506 B. A foreign savings institution may apply to the Commission for a certificate of authority by paying
- 6507 the filing fee prescribed by the Commission and filing an application that shall include:
- 6508 1. A copy of its articles of incorporation and bylaws, certified as a true copy by the public officer
- 6509 having custody of the original articles and bylaws;
- 6510 2. Evidence satisfactory to the Commission that its accounts are insured by the Federal Deposit
- 6511 Insurance Corporation or other federal insurance agency satisfactory to the Commissioner; and
- 6512 3. Such other information as the Commission may require.
- 6513 C. The Commission shall issue a certificate of authority to the foreign savings institution when:
- 6514 1. The Commissioner has examined the application of the institution and investigated and determined
- 6515 that the institution meets the requirements of § 6.2-1118;
- 6516 2. The Commissioner has verified the financial status of the institution by conducting such
- 6517 examination of its assets and its records as the Commission shall deem appropriate for the purpose of
- 6518 ascertaining whether they meet the requirements of this chapter with regard to state associations;
- 6519 3. The Commissioner is satisfied that the institution is in sound financial condition, and that it is
- 6520 conducting its business, and will conduct its business in the Commonwealth, in a manner consistent with
- 6521 the laws of the Commonwealth; and
- 6522 4. The Commissioner is satisfied that the laws, regulations or administrative actions of the state or

6523 territory where the principal office of the applicant is located do not prohibit or unfairly impede a state  
6524 association or state savings bank from transacting business in such state or territory.

6525 D. In meeting the requirements set out in subdivisions C 1, C 2, and C 3, the Commissioner may  
6526 rely on examinations, audits and other information provided by the federal and state supervisory  
6527 authorities charged with the responsibility of regulating and supervising savings institutions in the state  
6528 where the applicant's principal place of business is located. Prior to issuing a certificate of authority to  
6529 the foreign savings institution, the Commission shall enter into cooperative agreements with the  
6530 appropriate regulatory authorities for the periodic examination of the foreign savings institution. The  
6531 Commission may accept reports of examination and other records from such authorities in lieu of  
6532 conducting its own examinations.

6533 § 6.2-1150. When operation of foreign savings institution in the Commonwealth is prohibited.

6534 When the laws, regulations or administrative actions of another state prohibit or unfairly impede a  
6535 state savings institution from transacting business in that state, then the savings institutions of that state  
6536 are prohibited from transacting business in the Commonwealth.

6537 § 6.2-1151. Applicability of Virginia Stock and Nonstock Corporation Acts.

6538 Except as otherwise provided in this chapter, a foreign savings institution conducting a savings  
6539 institution business in the Commonwealth shall comply with the provisions of the Virginia Stock  
6540 Corporation Act (§ 13.1-601 et seq.) and the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.)  
6541 governing the admission and transaction of business by foreign corporations in the Commonwealth.

6542 § 6.2-1152. Law applicable to contracts of foreign savings institutions.

6543 Any contract made by a foreign savings institution with a resident of the Commonwealth or a foreign  
6544 corporation authorized to do business in the Commonwealth shall be construed according to the laws of  
6545 the Commonwealth.

6546 § 6.2-1153. Examination and supervision of foreign savings institutions.

6547 A. Each foreign savings institution authorized to transact business in the Commonwealth shall  
6548 furnish to the Commissioner a copy of all periodic reports of examinations of the institution conducted  
6549 by all supervisory agencies that examine the institution to determine its financial soundness. Such  
6550 reports shall include the examination reports of the Federal Deposit Insurance Corporation or other  
6551 federal examining agency. Such report copies shall be furnished to the Commissioner within 10 days  
6552 after the institution receives the report and shall be in certified form or such other form as is acceptable  
6553 to the Commissioner. In determining whether such institution is in sound financial condition, the  
6554 Commissioner shall be entitled to rely solely on such examination reports.

6555 B. The Commission shall enter into cooperative agreements with other supervisory authorities for  
6556 purposes of determining the financial soundness of the foreign savings institutions doing business in the  
6557 Commonwealth. The Commission may enter into joint actions with other supervisory authorities having  
6558 concurrent jurisdiction over foreign savings institutions doing business in the Commonwealth or may  
6559 take such actions independently to carry out its responsibilities under this chapter and assure  
6560 compliance with the provisions of this chapter and other applicable financial institution laws of the  
6561 Commonwealth.

6562 § 6.2-1154. Revocation of certificate of authority of foreign savings institution.

6563 A. The Commission may revoke a certificate of authority of a foreign savings institution if:

6564 1. The institution fails to conduct its business in the Commonwealth in a manner consistent with the  
6565 laws of the Commonwealth;

6566 2. The affairs of the institution are in an unsafe condition;

6567 3. The institution refuses to comply with the orders of the Commission or refuses to comply with a  
6568 request by the Commissioner to review the books and records of the institution; or

6569 4. The institution fails to pay any fees or taxes imposed by the laws of the Commonwealth.

6570 B. The Commission may also revoke the certificate of authority of a foreign savings institution at any  
6571 time that the Commission determines that the state where the principal place of business of the foreign  
6572 savings institution is located has enacted or amended its laws or regulations, or taken administrative  
6573 action, so as to prohibit or unfairly impede a state association or state savings bank from transacting  
6574 business in that state.

6575 § 6.2-1155. Unapproved foreign savings institutions.

6576 The Commissioner is authorized to obtain an injunction or to take any other action necessary to  
6577 prevent any foreign savings institution from doing any business of a savings institution in the  
6578 Commonwealth without appropriate approval.

6579 § 6.2-1156. Activities that are not considered "doing business."

6580 For the purposes of this chapter and any other law of the Commonwealth prohibiting, limiting,  
6581 regulating, charging or taxing the doing of business in the Commonwealth by foreign savings  
6582 institutions or foreign corporations of any type, any federal savings institution the principal place of  
6583 business of which is located outside the Commonwealth, and any foreign savings institution that is

6584 subject to state or federal supervision, or both, that by law is subject to periodic examination by such  
 6585 supervisory authority and to a requirement of periodic audit, shall not be considered to be doing  
 6586 business or to have a tax situs or nexus in or with the Commonwealth by reason of engaging in any of  
 6587 the following activities:

6588 1. The purchase, acquisition, inspection, appraisal, holding, sale, assignment, transfer, collecting,  
 6589 and enforcement of obligations or any interest therein secured by real estate mortgages, deeds of trust,  
 6590 or other similar instruments, covering real property located in the Commonwealth, or the foreclosure of  
 6591 such instruments, or the acquisition of title to such property by foreclosure, or otherwise, as a result of  
 6592 default under such instruments, or the holding, protection, rental, maintenance and operation of said  
 6593 property so acquired, or the disposition thereof; or

6594 2. The advertising or solicitation of deposit accounts, or the making of any representations with  
 6595 respect thereto in the Commonwealth through the media of the mail, radio, television, magazines,  
 6596 newspapers, or any other media that are published or circulated within the Commonwealth, if (i) such  
 6597 advertising, solicitation or the making of such representations is accurately descriptive of fact and (ii)  
 6598 no such advertising, solicitation, or the making of such representations contains any reference to  
 6599 insurance or guarantee of accounts, unless the accounts of such institution are insured by the Federal  
 6600 Deposit Insurance Corporation or other insurer approved by the Commissioner.

6601 § 6.2-1157. Acquisitions by out-of-state savings institution holding company.

6602 A. Any savings institution holding company that does not have a Virginia savings institution  
 6603 subsidiary, except as acquired in the regular course of securing or collecting a debt previously  
 6604 contracted in good faith, may acquire a Virginia savings institution holding company or a Virginia  
 6605 savings institution with the approval of the Commission. Such savings institution holding company shall  
 6606 submit to the Commission an application for approval of such acquisition, which application may be  
 6607 approved if the Commission:

6608 1. Determines that the laws of the state in which the savings institution holding company making the  
 6609 acquisition has its principal place of business do not prohibit or unfairly impede a Virginia savings  
 6610 institution holding company meeting the criteria in this article from acquiring savings institutions or  
 6611 savings institution holding companies in that state;

6612 2. Determines that the laws of the state in which the savings institution holding company making the  
 6613 acquisition has its principal place of business permit such savings institution holding company to be  
 6614 acquired by the Virginia savings institution holding company or Virginia savings institution sought to be  
 6615 acquired. For purposes of this subsection, a Virginia savings institution shall be treated as if it were a  
 6616 Virginia savings institution holding company;

6617 3. Determines either that the Virginia savings institution sought to be acquired has been in existence  
 6618 and continuously operating for more than two years or that all of the savings institution subsidiaries of  
 6619 the Virginia savings institution holding company sought to be acquired have been in existence and  
 6620 continuously operating for more than two years. The Commission may approve the acquisition by such  
 6621 savings institution holding company of all or substantially all of the shares of a savings institution  
 6622 organized solely for the purpose of facilitating the acquisition of a savings institution that has been in  
 6623 existence and continuously operating as a savings institution for more than two years; and

6624 4. Makes the acquisition subject to any conditions, restrictions, requirements or other limitations that  
 6625 would apply to the acquisition by a Virginia savings institution holding company of a savings institution  
 6626 or savings institution holding company in the state where such savings institution holding company  
 6627 making the acquisition has its principal place of business but that would not apply to the acquisition of  
 6628 a savings institution or savings institution holding company in such state by a savings institution holding  
 6629 company all the savings institution subsidiaries of which are located in that state.

6630 B. An out-of-state savings institution holding company that has a Virginia savings institution  
 6631 subsidiary, except as acquired in the regular course of securing or collecting a debt previously  
 6632 contracted in good faith, may acquire any Virginia savings institution or Virginia savings institution  
 6633 holding company with the approval of the Commission. Such savings institution holding company shall  
 6634 submit to the Commission an application for approval of such acquisition, which application may be  
 6635 approved if the Commission:

6636 1. Determines either that the Virginia savings institution sought to be acquired has been in existence  
 6637 and continuously operating for more than two years or that all of the savings institution subsidiaries of  
 6638 the Virginia savings institution holding company sought to be acquired have been in existence and  
 6639 continuously operating for more than two years. The Commission may approve the acquisition by such  
 6640 savings institution holding company of all or substantially all of the shares of the savings institution  
 6641 organized solely for the purpose of facilitating the acquisition of a savings institution that has been in  
 6642 existence and continuously operating as a savings institution for more than two years; and

6643 2. Makes the acquisition subject to any conditions, restrictions, requirements or other limitations that  
 6644 would apply to the acquisition by a Virginia savings institution holding company of a savings institution

6645 or a savings institution holding company in the state where such savings institution holding company  
 6646 making the acquisition has its principal place of business but that would not apply to the acquisition of  
 6647 a savings institution or a savings institution holding company in such state by a savings institution  
 6648 holding company all the savings institution subsidiaries of which are located in that state.

6649 § 6.2-1158. Acquisitions by out-of-state savings institution.

6650 A. Any out-of-state savings institution that is insured by the Federal Deposit Insurance Corporation  
 6651 or other federal insurance agency, may acquire a Virginia savings institution holding company or a  
 6652 Virginia savings institution with the approval of the Commission. Such savings institution shall submit to  
 6653 the Commission an application for approval of such acquisition, which application may be approved if  
 6654 the Commission:

6655 1. Determines that the laws of the state in which the savings institution making the acquisition has  
 6656 its principal place of business do not prohibit or unfairly impede a Virginia savings institution meeting  
 6657 the criteria in this article from acquiring savings institutions or savings institution holding companies in  
 6658 that state;

6659 2. Determines that the laws of the state in which the savings institution making the acquisition has  
 6660 its principal place of business permit such savings institution to be acquired by the Virginia savings  
 6661 institution holding company or Virginia savings institution sought to be acquired;

6662 3. Determines that the Virginia savings institution sought to be acquired has been in existence and  
 6663 continuously operating for more than two years or that all of the Virginia savings institution  
 6664 subsidiaries of the Virginia savings institution holding company sought to be acquired have been in  
 6665 existence and continuously operating for more than two years. The Commission may approve the  
 6666 acquisition by a savings institution of all or substantially all of the shares of a savings institution  
 6667 organized solely for the purpose of facilitating the acquisition of a savings institution that has been in  
 6668 existence and continuously operating as a savings institution for more than two years; and

6669 4. Makes the acquisition subject to any conditions, restrictions, requirements or other limitations that  
 6670 would apply to the acquisition by a Virginia savings institution of a savings institution or savings  
 6671 institution holding company in the state where the savings institution making the acquisition has its  
 6672 principal place of business but that would not apply to the acquisition of a savings institution or savings  
 6673 institution holding company in such state by a savings institution located in that state.

6674 B. An out-of-state savings institution that is insured by the Federal Deposit Insurance Corporation or  
 6675 other federal insurance agency and that has previously acquired a Virginia savings institution or  
 6676 Virginia savings institution holding company may acquire any additional Virginia savings institution or  
 6677 Virginia savings institution holding company with the approval of the Commission. Such savings  
 6678 institution shall submit to the Commission an application for approval of such acquisition, which  
 6679 application may be approved if the Commission:

6680 1. Determines that the Virginia savings institution sought to be acquired has been in existence and  
 6681 continuously operating for more than two years. The Commission may approve the acquisition by a  
 6682 savings institution of all or substantially all of the shares of a savings institution organized solely for  
 6683 the purpose of facilitating the acquisition of a savings institution that has been in existence and  
 6684 continuously operating as a savings institution for more than two years; and

6685 2. Makes the acquisition subject to any conditions, restrictions, requirements or other limitations that  
 6686 would apply to the acquisition by a Virginia savings institution of a savings institution or a savings  
 6687 institution holding company in the state where the savings institution making the acquisition has its  
 6688 principal place of business but that would not apply to the acquisition of a savings institution or a  
 6689 savings institution holding company in such state by a savings institution located in that state.

6690 § 6.2-1159. Investigation of application; prescribed investigation period; shortening, lengthening or  
 6691 waiving of period; hearing; appeals.

6692 A. For 90 days following receipt of a complete application under § 6.2-1157 or 6.2-1158, the  
 6693 Commission may conduct an investigation for the purpose of determining whether:

6694 1. The proposed acquisition would be detrimental to the safety and soundness of the applicant or the  
 6695 Virginia savings institution or Virginia savings institution holding company that the applicant seeks to  
 6696 acquire or control;

6697 2. The applicant, its directors and officers, if applicable, and any proposed new directors and  
 6698 officers, of the Virginia savings institution or Virginia savings institution holding company that the  
 6699 applicant seeks to acquire, are qualified by character, experience and financial responsibility to control  
 6700 and operate a Virginia savings institution or Virginia savings institution holding company;

6701 3. The proposed acquisition would be prejudicial to the interests of the depositors, creditors,  
 6702 beneficiaries of fiduciary accounts or shareholders of the Virginia savings institution holding company  
 6703 or any Virginia savings institution that the applicant seeks to acquire or control; and

6704 4. The acquisition is in the public interest.

6705 B. The 90-day investigation period may be shortened or waived by the Commission, as it deems

6706 appropriate, if the Commission finds that it must act immediately in order to prevent the probable  
 6707 failure of a Virginia savings institution involved. The 90-day investigation period may be extended if the  
 6708 Commission determines that the applicant has not furnished all the information necessary to make the  
 6709 determination under § 6.2-1157 or 6.2-1158 or that the information submitted is substantially inaccurate  
 6710 or misleading.

6711 C. Within the prescribed investigation period, or any extension thereof, and upon request of the  
 6712 applicant or the Virginia savings institution or Virginia savings institution holding company that the  
 6713 applicant seeks to acquire or control, or upon its own motion, the Commission may order a hearing  
 6714 concerning the proposed acquisition.

6715 D. Within the prescribed investigation period, or any extension thereof, the Commission, by giving  
 6716 written notice of its decision and the reasons therefor to the applicant and to the Virginia savings  
 6717 institution or Virginia savings institution holding company that the applicant seeks to acquire or control,  
 6718 may: (i) approve the application, (ii) disapprove the application, or (iii) impose such conditions on the  
 6719 acquisition as the Commission may deem advisable to effect the purpose of this article.

6720 § 6.2-1160. Notice of intent to acquire out-of-state savings institution.

6721 A Virginia savings institution, a Virginia savings institution holding company, or an out-of-state  
 6722 savings institution holding company owning subsidiaries that conduct a savings institution business in  
 6723 the Commonwealth shall file with the Commission notice of its intention to acquire a financial  
 6724 institution outside Virginia, together with such information as the Commission may request. The  
 6725 Commission shall within 30 days or an extended period not exceeding 15 days, disapprove such  
 6726 acquisition if it determines that the acquisition could affect detrimentally the safety or soundness of a  
 6727 Virginia savings institution. The Commission may approve such acquisition prior to the expiration of the  
 6728 thirty 30-day period if it determines that the acquisition will not affect detrimentally the safety or  
 6729 soundness of such Virginia savings institution.

6730 § 6.2-1161. Applicable laws and regulations; enforcement by Commission.

6731 A. Any Virginia savings institution that is controlled by a savings institution holding company that is  
 6732 not a Virginia savings institution holding company shall be subject to all laws of the Commonwealth  
 6733 and all regulations under such laws that are applicable to Virginia savings institutions controlled by  
 6734 Virginia savings institution holding companies.

6735 B. The Commission shall adopt such regulations, including the imposition of reasonable application  
 6736 and administration fees, as it finds necessary to implement the provisions of this article.

6737 C. The Commission shall have the same powers to enforce the provisions of this article as those  
 6738 granted under Article 9 (§ 6.2-1191 et seq.) of this chapter.

6739 § 6.2-1162. Periodic reports; interstate agreements.

6740 A. The Commission may examine any out-of-state savings institution holding company owning a  
 6741 Virginia savings institution and each of its Virginia or non-Virginia savings institution or nonsavings  
 6742 institution subsidiaries and shall require reports of each savings institution holding company subject to  
 6743 this chapter. Such reports shall be filed under oath with such frequency and in such scope and detail as  
 6744 may be appropriate for the purpose of assuring continuing compliance with the provisions of this  
 6745 chapter.

6746 B. Prior to approving an acquisition under the provisions of this article, the Commission shall enter  
 6747 into cooperative agreements with the appropriate regulatory authorities for the periodic examination of  
 6748 any savings institution holding company that has a Virginia savings institution subsidiary or any  
 6749 subsidiary of such holding company and may accept reports of examination and other records from such  
 6750 authorities in lieu of conducting its own examinations. The Commission may enter into joint actions with  
 6751 other regulatory authorities having concurrent jurisdiction over any savings institution holding company  
 6752 that has a Virginia savings institution subsidiary or may take such actions independently to carry out its  
 6753 responsibilities under this chapter, assure the safety and soundness of any Virginia savings institution,  
 6754 and assure compliance with the provisions of this chapter and the applicable savings institution laws of  
 6755 the Commonwealth.

6756 § 6.2-1163. Application of article to bank or bank holding company.

6757 For purposes of this chapter, any bank or bank holding company seeking to acquire a savings  
 6758 institution or savings institution holding company, shall be deemed to be a savings institution or savings  
 6759 institution holding company, as the case may be, for purposes of determining whether such bank or  
 6760 bank holding company is permitted to acquire the savings institution or savings institution holding  
 6761 company in question.

6762 § 6.2-1164. Acquisitions of state savings bank or holding companies by out-of-state financial  
 6763 institutions.

6764 A state savings bank, or holding company thereof, may not be acquired by a financial institution, or  
 6765 financial institution holding company, whose principal place of business is outside the Commonwealth,  
 6766 except in accordance with the provisions of this article.

6767 § 6.2-1165. Nonseverability.

6768 Notwithstanding the provisions of § 1-243, if any portion of this article pertaining to the terms and  
 6769 conditions for and limitations upon acquisition of Virginia savings institution holding companies and  
 6770 Virginia savings institutions by savings institutions and savings institution holding companies that do not  
 6771 have their principal place of business in this Commonwealth is determined to be invalid for any reason  
 6772 by a final nonappealable order of any appropriate Virginia or federal court, then §§ 6.2-1157 through  
 6773 6.2-1164 shall be void and of no further effect from the effective date of such order. Any transaction  
 6774 that has been lawfully consummated pursuant to this article prior to a determination of invalidity shall  
 6775 be unaffected by such determination.

6776 Article 6.

6777 Accounts.

6778 § 6.2-1166. Accounts of state savings institutions.

6779 Notwithstanding any restriction in its articles of incorporation limiting the number, kinds and classes  
 6780 of accounts that it may offer, a state savings institution may offer such accounts, including checking  
 6781 accounts, time deposit accounts, and savings accounts, as its board of directors may authorize from time  
 6782 to time. A state savings institution may pay interest on such accounts at such rates and under such  
 6783 terms and conditions as its board of directors may direct from time to time, subject to any restrictions  
 6784 and limitations imposed by state or federal law on the payment of interest.

6785 § 6.2-1167. Rules governing withdrawal.

6786 A. The holder of a savings account in a savings institution shall have the right to withdraw all or  
 6787 any part of his account. A savings institution shall have the right to establish the rules governing the  
 6788 withdrawals and may from time to time fix the period of notice required to be given for withdrawal. In  
 6789 no event shall a savings institution delay or postpone the whole or partial payment of the value of any  
 6790 savings account pursuant to a written withdrawal application by a savings account holder for a period  
 6791 exceeding 30 days following the receipt of such application without first securing written permission  
 6792 from the Commissioner.

6793 B. The holder of a federal tax and loan account or note account as defined in regulations of the U.S.  
 6794 Treasury Department or other federal agency shall have the right of immediate withdrawal of all or any  
 6795 part of such account. In no event shall a savings institution delay or postpone the whole or partial  
 6796 payment of such an account pursuant to a written application by the account holder.

6797 § 6.2-1168. Redemption.

6798 At any time that funds are on hand for the purpose, a mutual savings institution shall have the right  
 6799 to redeem by lot or otherwise, as the board of directors may determine, all or any part of any of its  
 6800 savings accounts on an earnings date by giving 30 days' notice by certified mail addressed to each  
 6801 affected account holder at his last address as recorded on the books of the institution. No mutual  
 6802 savings institution shall redeem any of its savings accounts when its liabilities exceed its assets or when  
 6803 it has applications for withdrawal that have been on file more than 30 days and have not been reached  
 6804 for payment. The redemption price of savings accounts redeemed shall be the full value of the account  
 6805 redeemed, as determined by the board of directors, but in no event shall the redemption price be less  
 6806 than the withdrawal value. If the notice of redemption has been duly given, and if on or before the  
 6807 redemption date the funds necessary for such redemption have been set aside to be, and continue to be,  
 6808 available therefor, interest upon the accounts called for redemption shall cease to accrue from and after  
 6809 the date specified as the redemption date. All rights with respect to such accounts shall terminate upon  
 6810 the redemption date, other than any right of the account holder of record to receive the redemption  
 6811 price without interest. Accounts called for redemption, if unclaimed, shall be subject to the Uniform  
 6812 Disposition of Unclaimed Property Act (§ 55-210.1 et seq.).

6813 § 6.2-1169. Accounts of savings institutions as legal investments and as security.

6814 Administrators, executors, custodians, conservators, guardians, trustees, and other fiduciaries,  
 6815 insurance companies, business and manufacturing companies, banks, trust companies, credit unions and  
 6816 other types of similar financial organizations, charitable, educational, and eleemosynary funds and  
 6817 organizations, and all agencies, localities, and other political subdivisions and governmental units of the  
 6818 Commonwealth are specifically authorized to invest funds held by them, without any order of any court,  
 6819 in accounts of savings institutions authorized to do business in the Commonwealth. Such investments  
 6820 shall be deemed and held to be legal investments for such funds. The provisions of this section are  
 6821 supplemental to any and all other laws relating to and declaring what shall be legal investments for the  
 6822 persons referred to in this section.

6823 § 6.2-1170. Deposits of federal taxes and U.S. Treasury tax and loan accounts.

6824 Savings institutions may:

- 6825 1. Serve as depositories for federal taxes and for U.S. Treasury tax and loan deposits;
- 6826 2. Satisfy any requirements in connection therewith, including maintaining tax and loan accounts and  
 6827 note accounts, as defined by regulations of the U.S. Treasury Department or other federal agency;

- 6828 3. Pledge collateral; and
- 6829 4. Satisfy the requirements of the U.S. Treasury Department in connection with such deposits.
- 6830 § 6.2-1171. Accounts under federal Self-Employed Individuals Tax Retirement Act and federal
- 6831 Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829).
- 6832 A. To the extent allowed by federal law, an insured savings institution may act as trustee or
- 6833 custodian under the federal Self-Employed Individuals Tax Retirement Act of 1962, as amended. Funds
- 6834 held as such trustee or custodian may be invested in accounts of the association to the extent that the
- 6835 trust, custodial or other plan does not prohibit such investment.
- 6836 B. To the extent allowed by federal law, an insured savings institution may act as trustee or
- 6837 custodian of individual retirement accounts under the federal Employee Retirement Income Security Act
- 6838 of 1974 (P.L. 93-406, 88 Stat. 829), as amended. Contributions may be accepted and interest thereon
- 6839 retained by such institution pursuant to forms provided by it and may be invested in accounts of the
- 6840 institution in accordance with the terms upon which such contributions were accepted.
- 6841 § 6.2-1172. Accounts issued in name of minor.
- 6842 A savings institution may issue accounts to a minor as sole and absolute owner of the account. With
- 6843 respect to any such account, a savings institution may (i) receive deposits by or for the minor owner,
- 6844 (ii) pay withdrawals, (iii) accept pledges to the association, and (iv) act in any other manner with
- 6845 respect to such accounts on the order of the minor owner. Any payment or delivery of funds from such
- 6846 account to its owner, or payment of a check or other written order for withdrawal signed by its minor
- 6847 owner, shall be a valid and sufficient release and discharge of the institution for any payment or
- 6848 delivery so made. The parent or guardian of the minor owner shall not in his capacity as parent or
- 6849 guardian have the power to withdraw or transfer funds in any such account unless the minor has given
- 6850 written notice to the association to accept the signature of such parent or guardian.
- 6851 § 6.2-1173. Powers of attorney on accounts.
- 6852 Any savings institution may continue to recognize the authority of an attorney-in-fact authorized in
- 6853 writing to manage or to make withdrawals, either in whole or in part, from any account until it receives
- 6854 written notice or is on actual notice of the revocation of his authority. For the purposes of this section,
- 6855 written notice of death of the owner of the account shall constitute written notice of revocation of the
- 6856 authority of his attorney. Written notice of the adjudication of incapacity of an account owner shall
- 6857 constitute written notice of revocation of the authority of his attorney unless under the laws of the
- 6858 Commonwealth the authority of the attorney-in-fact survives such adjudication. Payment of the account
- 6859 in accordance with the provisions of this section shall constitute a full discharge and acquittance of the
- 6860 association as to such account.
- 6861 § 6.2-1174. Accounts of deceased or incompetent persons.
- 6862 A. A savings institution may pay funds held in the account of a deceased person or a person under
- 6863 disability to the personal representative, committee, conservator, guardian, or curator of such person
- 6864 upon proper proof of the appointment and qualification of such fiduciary. Any savings institution making
- 6865 such payment shall not thereafter be liable for the amount thereof to any person. The presentation of a
- 6866 duly certified letter or certificate of qualification as personal representative or other fiduciary shall be
- 6867 conclusive proof of the jurisdiction of the court issuing the same.
- 6868 B. A savings institution that has not received written notice and is not on actual notice that an
- 6869 account owner is deceased or has been adjudicated incompetent may pay or deliver funds held in such
- 6870 person's account in accordance with the provisions of the account contract without liability to any
- 6871 person for the amounts so paid or delivered.
- 6872 § 6.2-1175. Payment of small balances to distributees or other persons.
- 6873 A. When the account of a deceased person upon whose estate there has been no qualification does
- 6874 not exceed \$15,000, it shall be lawful for a savings institution, after 60 days from the death of such
- 6875 person, to pay such balance to the decedent's spouse, or if none, to the distributees of the decedent or
- 6876 other persons entitled thereto under the laws of the Commonwealth. The receipt of the payee therefor
- 6877 shall be a full discharge and acquittance of the institution as to all persons on account of such account.
- 6878 B. The balance of an account described in subsection A, or any part thereof not to exceed the
- 6879 amount given a priority under the provisions of § 64.1-157, after 30 days from the death of such person,
- 6880 at the written request of the decedent's spouse, or if none, of the distributees of the decedent or other
- 6881 persons entitled thereto under the laws of the Commonwealth, may be paid to the undertaker or
- 6882 mortuary handling the funeral of the decedent. A receipt of the payee shall be a full and final release of
- 6883 the institution.
- 6884 § 6.2-1176. Accounts of fiduciaries.
- 6885 A savings institution may issue accounts in the name of any administrator, executor, custodian,
- 6886 conservator, guardian, trustee, or other fiduciary for a named beneficiary or beneficiaries. The payment
- 6887 of funds from any such account pursuant to a check or other written order of withdrawal signed by the
- 6888 fiduciary, the delivery of funds in such account to such fiduciary, or a receipt signed by any such

6889 *fiduciary with regard to the payment of funds from such account, shall be a valid and sufficient release*  
 6890 *and discharge of the institution for the payment or delivery so made.*

6891 § 6.2-1177. *Savings institution need not inquire as to fiduciary funds deposited in fiduciary's personal*  
 6892 *account.*

6893 *If any fiduciary or agent makes a deposit in a savings institution to his personal credit of checks*  
 6894 *drawn by him upon an account in his own name as fiduciary, or of checks drawn by him upon an*  
 6895 *account in the name of his principal, if he is empowered to draw checks thereto, or of checks payable to*  
 6896 *his principal and endorsed by him as fiduciary, the institution receiving the deposit:*

6897 *1. Shall not be required to inquire whether the fiduciary is committing thereby a breach of his*  
 6898 *obligation as fiduciary; and*

6899 *2. Is authorized to pay the amount of the deposit or any part thereof upon the withdrawal by the*  
 6900 *fiduciary without being liable to the principal, unless the institution receives the deposit or pays the*  
 6901 *withdrawal with (i) actual knowledge that the fiduciary, in making such deposit or in making such*  
 6902 *withdrawal, is committing a breach of his obligation as fiduciary or (ii) knowledge of such facts that its*  
 6903 *action in receiving the deposit or paying the withdrawal amounts to bad faith.*

6904 § 6.2-1178. *Accounts held by various trustees for same beneficiary.*

6905 *Whenever trust interests or accounts are created for the same beneficiary, and each interest or*  
 6906 *account is in the name of a separate and distinct trustee or combination of trustees, each trust interest*  
 6907 *or account shall constitute a separate, distinct, and valid trust entity for all purposes.*

6908 *Article 7.*

6909 *Real Estate Loans.*

6910 § 6.2-1179. *Real estate loans; required investment.*

6911 *A. A state savings institution may originate, invest in, sell, purchase, service, participate, or*  
 6912 *otherwise deal in loans secured by a lien on real estate, subject to the requirements of this chapter.*  
 6913 *Such loans that are insured, guaranteed or made under a firm commitment to be sold, assigned or*  
 6914 *otherwise transferred to an agency or instrumentality of the federal government or to a corporation*  
 6915 *organized under the laws of the United States, including the Department of Housing and Urban*  
 6916 *Development, the Veterans Administration, the Federal National Mortgage Association, the Government*  
 6917 *National Mortgage Association or the Federal Home Loan Mortgage Corporation, may be made in*  
 6918 *accordance with the requirements of such federal agencies, instrumentalities or corporations.*

6919 *B. At least 60 percent of assets of a state savings institution shall be invested in real estate loans.*  
 6920 *For purposes of meeting this 60-percent requirement, a savings institution may include (i) loans secured*  
 6921 *by a lien on a manufactured building or buildings; (ii) the value of securities held by it that represent a*  
 6922 *beneficial interest, participation interest or other similar interest in loans secured by a lien on real*  
 6923 *estate including participation certificates issued by the Federal National Mortgage Association,*  
 6924 *Government National Mortgage Association or the Federal Home Loan Mortgage Corporation; and (iii)*  
 6925 *the value of liquid assets equal to the minimum liquid asset requirement for membership in a Federal*  
 6926 *Home Loan Bank.*

6927 *C. A state savings institution may not purchase, participate in or acquire an interest in any real*  
 6928 *estate loan that it could not legally make, without the prior approval of the Commissioner.*

6929 § 6.2-1180. *Appraisals; loan-to-value ratios.*

6930 *A. A savings institution may make a real estate loan only after a qualified person designated by the*  
 6931 *savings institution has submitted a signed appraisal of the security property, except that an insured or*  
 6932 *guaranteed loan may be made on the basis of a valuation of the security property furnished to the*  
 6933 *savings institution by the insuring or guaranteeing agency.*

6934 *B. At the time of origination, a real estate loan may not exceed 100 percent of the appraised fair*  
 6935 *market value of the security property. During the term of the loan, the loan-to-value ratio may increase*  
 6936 *above the maximum permissible percentage if the increase results from an adjustment authorized by*  
 6937 *§ 6.2-1182. In the case of a home loan secured by borrower-occupied property, the loan balance may*  
 6938 *not exceed 125 percent of the original appraised value of the property during the term of the loan,*  
 6939 *unless the loan contract provides that the payment shall be adjusted at least once every five years,*  
 6940 *beginning no later than the 10th year of the loan, to a level sufficient to amortize the loan at the*  
 6941 *then-existing interest rate and loan balance for the remaining term of the loan. The 125 percent*  
 6942 *limitation shall not apply to that portion of a loan balance that is interest received in the form of a*  
 6943 *percentage of the appreciation in value of the security property.*

6944 § 6.2-1181. *Initial repayments on real estate loans.*

6945 *Repayments on real estate loans shall begin not later than 60 days after the loan proceeds are*  
 6946 *disbursed. If such loan is for construction, substantial alteration, repair, or improvement of the real*  
 6947 *estate securing the loan, repayments may begin not later than 60 months after the date of the first loan*  
 6948 *disbursement, and interest shall be payable at least semiannually until regular periodic payments begin.*  
 6949 *In the case of a home loan where the loan proceeds are to be used for construction, substantial*

6950 alteration, repair, or improvement of the security property, repayments must begin not later than 36  
6951 months after the date of the first disbursement, with interest payable at least semiannually until regular  
6952 periodic payments begin.

6953 § 6.2-1182. Adjustable real estate loans.

6954 A state savings institution may adjust the interest rate, payment, balance, or term to maturity on any  
6955 real estate loan as authorized by the loan contract, and may receive a portion of the consideration for  
6956 making a real estate loan in the form of a percentage of the amount by which the current market value  
6957 of the property, during the loan term or at maturity, exceeds the original appraised value.

6958 § 6.2-1183. Special provisions for home loans.

6959 The loan term of a home loan shall not exceed 40 years, with interest payable at least semiannually,  
6960 except as expressly authorized elsewhere in this chapter. Payments on the loan balance, for other than  
6961 nonamortized and line-of-credit loans, shall be made in at least semiannual installments, except that  
6962 loans made on the security of farm residences and combinations of farm residences and commercial  
6963 farm real estate may be repayable in annual installments. The loan may be fully amortized, partially  
6964 amortized, nonamortized, or a line-of-credit loan. The loan contract may provide for the deferral of  
6965 principal and capitalization of a portion of interest, or of all interest on loans to natural persons  
6966 secured by borrower-occupied property and on which periodic advances are being made.

6967 § 6.2-1184. Dealing with successors in interest.

6968 In the case of any investment made by a savings institution in a real estate loan, if (i) the ownership  
6969 of the real estate security or any part thereof becomes vested in a person other than the party originally  
6970 executing the security instruments and (ii) there is not an agreement in writing to the contrary, a  
6971 savings institution may, without notice to such party, deal with such successor in interest with reference  
6972 to that mortgage and the debt thereby secured in the same manner as with such party. The savings  
6973 institution may forbear to sue or may extend time for payment, or otherwise modify the terms, of the  
6974 debt secured thereby without discharging or in any way affecting the original liability of such party or  
6975 parties thereunder or upon the debt thereby secured.

6976 § 6.2-1185. Trustees on loans secured by deed of trust.

6977 Any savings institution in connection with making loans secured by deed of trust is empowered to  
6978 elect a trustee, which may be a service corporation, at such times and for such terms as may be  
6979 prescribed by its charter or bylaws. All the rights, titles, duties and obligations of such a trustee  
6980 relating to loans secured by deed of trust shall pass by operation of law to his successor in office.  
6981 Every right of the savings institution required to be exercised by or through such trustee, whether it is  
6982 the sale of property or some other act, shall be done, enforced and carried out by the trustee in office  
6983 at the time when such rights are exercised by or for the savings institution. All sales or conveyances  
6984 heretofore or hereafter made by a trustee appointed in the manner designated in this section shall be as  
6985 valid and binding as though the sale, conveyance had been made by the trustee named in the deed of  
6986 trust. A majority of the trustees in office are empowered to conduct sales and make conveyances in  
6987 pursuance thereof with the same force and effect as though all the trustees had acted; and when there  
6988 are two trustees either one may act.

6989 Article 8.

6990 Other Loans and Investments.

6991 § 6.2-1186. General investment authority of state savings institutions.

6992 A. Subject to the powers and limitations regarding real estate loans set forth in § 6.2-1179, and  
6993 except as provided in § 6.2-1187 with respect to state savings banks, the assets of a state savings  
6994 institution may be invested only:

6995 1. In real and personal property necessary for the conduct of its business and in real estate to be  
6996 held for its future accommodation. A savings institution may invest in an office building or buildings  
6997 and appurtenances for the transaction of its business, or for the transaction of such business and for  
6998 rental. Except as provided in § 6.2-1187 with respect to savings banks, no such investment described in  
6999 the preceding sentence may be made without the prior approval of the Commissioner if the total amount  
7000 of the investment exceeds 50 percent of capital stock paid-in and unimpaired and 50 percent of  
7001 unimpaired combined surplus and undivided profits, or, in the case of a mutual association, 50 percent  
7002 of general reserve and surplus;

7003 2. In stock and other securities or obligations of a service corporation. Unless specifically authorized  
7004 by the Commissioner, a state savings institution shall not invest more than 10 percent, in the aggregate,  
7005 of its assets in the investments specified in this subdivision. A service corporation may charge and  
7006 collect such finance charges, fees and interest rates as state savings institutions are authorized to  
7007 charge and collect. A service corporation, directly or indirectly, may engage in providing real estate  
7008 brokerage services for property owned by a state savings institution owning capital stock in the service  
7009 corporation, by the service corporation, or a joint venture in which the service corporation is a  
7010 participant, but no service corporation, state savings institution or holding company that has control, as

7011 defined in § 6.2-701, over a state savings institution may engage directly or indirectly in providing real  
7012 estate brokerage services for property owned by third parties. Nothing in this subdivision shall prohibit  
7013 (i) a state savings bank or its affiliates or (ii) a holding company that has control over a state savings  
7014 institution from engaging in third party real estate brokerage in any state, other than the  
7015 Commonwealth, that permits such activities by its state chartered savings institutions, or their affiliates  
7016 or holding companies;

7017 3. If the savings institution is a state association, in the purchase of real estate for the purpose of  
7018 producing income or for inventory and sale or for improvement including the erection of buildings  
7019 thereon, for sale or rental purposes, and such an association may hold, sell, lease, operate or otherwise  
7020 exercise the rights of an owner of any such property. Unless specifically authorized by the  
7021 Commissioner, a state association shall not invest more than 10 percent, in the aggregate, of its assets  
7022 in the investments specified in this subdivision;

7023 4. In obligations that are fully guaranteed as to principal and interest by the United States or the  
7024 Commonwealth;

7025 5. In stock or obligations of any Federal Home Loan Bank or Federal Reserve Bank;

7026 6. In obligations of, or issued by, any other state or political subdivision thereof, so long as such  
7027 obligations continue to hold one of the four highest national investment grade ratings;

7028 7. In obligations of, or issued by, any locality, district, or other political subdivision of the  
7029 Commonwealth, or any public instrumentality or public authority created by act of the General  
7030 Assembly, so long as such obligations continue to hold one of the four highest national investment grade  
7031 ratings;

7032 8. If the savings institution is a state association, in deposits in banks for savings and loan  
7033 associations;

7034 9. In stock, obligations or other instruments of the Federal National Mortgage Association,  
7035 Government National Mortgage Association, Federal Home Loan Mortgage Corporation, or any  
7036 successor thereto;

7037 10. In obligations of, or guaranteed as to principal and interest by, Canada or any province thereof,  
7038 provided that the principal and interest of any such obligations are payable in United States funds;

7039 11. In demand, time, or savings deposits, shares or accounts, or other obligations of any financial  
7040 institution the accounts of which are insured by a federal agency or other insurer approved by the  
7041 Commissioner or other insurer approved by the Commissioner;

7042 12. In bankers' acceptances that are eligible for purchase by Federal Reserve Banks;

7043 13. In loans to individuals for personal, family or household purposes and loans reasonably incident  
7044 thereto, including loans to dealers in consumer goods for purposes of financing inventory and floor  
7045 planning. Such loans may be evidenced by installment consumer paper that is transferred to a savings  
7046 institution by an endorser or guarantor, provided that such paper shall carry a full or limited  
7047 endorsement or guarantee of the person transferring the same and the savings institution shall have a  
7048 certificate of a responsible officer designated by its board for that purpose stating that the responsibility  
7049 of the maker of such obligation has been evaluated and the savings institution is relying primarily upon  
7050 such maker for the payment of such obligation;

7051 14. Loans secured by savings accounts of the association;

7052 15. In unsecured single payment personal loans to individuals with a term of not more than 12  
7053 months;

7054 16. In personal property, which term as used herein shall include fixtures, acquired upon the specific  
7055 request of and for lease to a customer, subject to the following limitations:

7056 a. The rentals receivable by the association under the initial lease of any item of personal property  
7057 shall at least equal the cost to the savings institution of such item of personal property;

7058 b. The savings institution shall have a certificate of a responsible officer designated by its board for  
7059 that purpose stating that the responsibility of the lessee has been evaluated and approved by such  
7060 officer; and

7061 c. Upon the expiration of any lease, whether by virtue of the lease agreement or by virtue of the  
7062 retaking of possession by the association, such personal property shall be relet, sold or otherwise  
7063 disposed of, or charged off within one year from the time of expiration of such lease;

7064 17. In secured or unsecured credit to cover payment of checks, drafts or other fund transfer orders  
7065 in excess of the available balance of an account on which they are drawn. Such extensions of credit  
7066 must be paid off within 30 days after the extension of credit is made. The 30-day limitation on  
7067 repayment shall apply only to inadvertent overdrafts by the account owner, and shall not apply to  
7068 extensions of credit, agreed upon in writing, whereby the borrower is permitted to access the line of  
7069 credit by check, draft or other fund transfer order;

7070 18. In loans for commercial, corporate, business or agricultural purposes. Unless specifically  
7071 authorized by the Commissioner, (i) a state association shall not invest more than 10 percent of its

7072 assets, and (ii) a state savings bank shall not invest more than 20 percent of its assets, in loans for  
 7073 commercial, corporate, business or agricultural purposes. The percentage-of-assets limitations in the  
 7074 preceding sentence shall not apply to overdraft loans, commercial real estate loans, loans to a service  
 7075 corporation the stock of which is owned by the savings institution, or loans to dealers in consumer  
 7076 goods for inventory or floor planning financing;

7077 19. In commercial paper rated in the highest or second highest categories as of the date of purchase,  
 7078 as shown by the most recently published rating by at least two nationally recognized investment rating  
 7079 services;

7080 20. In corporate debt securities, including corporate debt securities convertible into stock, that may  
 7081 be sold with reasonable promptness at a price that corresponds reasonably to their fair market value,  
 7082 and that are rated in at least the third highest category by a nationally recognized investment rating  
 7083 service in its most recently published ratings before the date of purchase of the security;

7084 21. In shares in open-end management investment companies; and

7085 22. Any other obligations, instruments or investments that are specifically approved by the  
 7086 Commissioner.

7087 B. In addition to the items authorized by subsection A, a state savings institution may:

7088 1. Issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in  
 7089 credit card operations; and

7090 2. Issue commercial and standby letters of credit in conformance with the Uniform Commercial Code  
 7091 (§ 8.1A-101 et seq.) or the Uniform Customs and Practice for Documentary Credits published as  
 7092 International Chamber of Commerce publication No. 600, and may pledge collateral to secure its  
 7093 obligations thereunder, subject to the following requirements:

7094 a. Each letter of credit shall conspicuously state that it is a letter of credit;

7095 b. The issuer's undertaking shall contain a specified expiration date or be for a definite term, and  
 7096 shall be limited in amount;

7097 c. The issuer's obligation to pay shall be solely dependent upon the presentation of conforming  
 7098 documents as specified in the letter of credit, and not upon the factual performance or nonperformance  
 7099 by the parties to the underlying transaction; and

7100 d. The account party shall have an unqualified obligation to reimburse the issuer for payments made  
 7101 under the letter of credit.

7102 C. The Commission may adopt such regulations as may be required to prevent excessive aggregate  
 7103 amounts of lending by an association to any one individual or entity.

7104 § 6.2-1187. Investment authority of state savings banks.

7105 Notwithstanding any provision of § 6.2-1186 to the contrary:

7106 1. A state savings bank shall not invest in an office building or buildings and appurtenances for the  
 7107 transaction of its business, or for the transaction of such business and for rental, without the prior  
 7108 approval of the Commissioner if the total amount of the investment exceeds the aggregate amount of the  
 7109 savings bank's unimpaired capital fund;

7110 2. A service corporation described in subdivision A 2 of § 6.2-1186 in the stock or other securities  
 7111 or obligations of which a savings bank invests shall be subject to state and local taxation in the same  
 7112 manner as are savings banks;

7113 3. The assets of a state savings bank may be invested in stock or obligations of the Federal Deposit  
 7114 Insurance Corporation;

7115 4. The assets of a state savings bank may be invested in commercial paper eligible for purchase by  
 7116 Federal Reserve Banks;

7117 5. A state savings bank shall not invest more than 20 percent of its assets in loans the primary  
 7118 security for which is nonresidential real estate; and

7119 6. A state savings bank shall conform to the loans-to-one-borrower limitations contained in  
 7120 § 6.2-875.

7121 § 6.2-1188. Effect of repeal or amendment of statute or regulation on existing loan or investment.

7122 Any investment or loan that was in compliance with the provisions of this chapter or a regulation of  
 7123 the Commission in existence when such investment or loan was made shall remain a legal investment or  
 7124 loan even though the power to make such investment or loan in the future is amended or revoked by  
 7125 regulation or by action of the General Assembly.

7126 § 6.2-1189. Limitation on liability of savings institutions making loans for certain purposes.

7127 A savings institution that makes a loan, the proceeds of which are used or may be used by the  
 7128 borrower to finance the purchase, design, manufacture, construction, repair, modification, or  
 7129 improvement of real or personal property for personal use, or for sale or lease to others, or for the  
 7130 acquisition or operation of a business, shall not be held liable to such borrower or to any third persons  
 7131 (i) for any loss or damage occasioned by any defect in the real or personal property so purchased,  
 7132 designed, manufactured, constructed, repaired, modified or improved, (ii) for any loss or damage

7133 resulting from the failure of the borrower to use due care in the design, manufacture, construction,  
7134 repair, modification or improvement of any such real or personal property, or (iii) for the acts or  
7135 omissions of the borrower in acquisition or operation of a business, unless such loss or damage is a  
7136 result of an action of the savings institution outside the scope of its business as a savings institution, or  
7137 unless the institution has knowingly been a party to misrepresentations with respect to such real or  
7138 personal property.

7139 § 6.2-1190. Perfection of certain security interests.

7140 When securities are sold by a savings institution subject to an obligation of repurchase, any security  
7141 interest or interest of ownership therein may be perfected (i) as specified by Title 8.8 or Title 8.9A; (ii)  
7142 by designation to the person holding physical custody thereof, which shall include a person keeping the  
7143 master records, in case of securities identified by book entry only, that certain securities identified by  
7144 serial number or dollar amount are held for the benefit of third parties other than the savings  
7145 institution, who may, but need not be, identified by name; or (iii) by physical separation on the premises  
7146 of the savings institution in a separate drawer, compartment, or other facility. The savings institution  
7147 may, from time to time, instruct any third party holding such securities that the previously identified  
7148 securities or an amount of such securities previously identified as pledged or belonging to third parties,  
7149 have been released from such pledge by payment of all or part of the amount due, or have been  
7150 repurchased. There shall be an identification on the records of the savings institution of the persons  
7151 who are pledgees or owners of such securities.

7152 Article 9.

7153 Supervision.

7154 § 6.2-1191. General supervisory powers of Commission.

7155 The Commission shall have general supervisory powers with respect to all state associations, state  
7156 savings banks and their holding companies, foreign savings institutions transacting business in the  
7157 Commonwealth, savings institution holding companies whose principal place of business is located in  
7158 the Commonwealth, service corporations that are owned or controlled by one or more state savings  
7159 banks, service corporations the principal offices of which are located in the Commonwealth or that are  
7160 owned or controlled by one or more state associations, and any other person who is subject to the  
7161 provisions of this chapter.

7162 § 6.2-1192. Regulations.

7163 A. The Commission may adopt such regulations as it deems appropriate to effect the purposes of this  
7164 chapter. Before adopting any regulation, the Commission shall give reasonable notice of its content and  
7165 shall afford interested parties an opportunity to present evidence and be heard, in accordance with the  
7166 Commission's Rules.

7167 B. The Commission may adopt such regulations as may be necessary to permit state savings  
7168 institutions to have powers comparable with those of federal savings institutions, regardless of any then  
7169 existing statute, regulation or court decision limiting or denying such powers to state savings  
7170 institutions. The requirement of a public hearing shall not automatically apply to regulations adopted  
7171 under this subsection, but the Commission may have such hearing as it deems appropriate.

7172 C. The Commission may adopt regulations governing savings institution holding companies doing  
7173 business in the Commonwealth, including the activities of such companies and their subsidiaries.

7174 D. The Commissioner shall publish and mail to each state savings institution and foreign savings  
7175 institution doing business in the Commonwealth a copy of all regulations of the Commission in effect  
7176 pertaining to such savings institutions at such times as he may deem proper.

7177 E. Regulations adopted by the Commission shall continue in effect until amended or revoked by the  
7178 Commission or superseded by action of the General Assembly.

7179 § 6.2-1193. Statements to be furnished by Commission to directors of savings institutions.

7180 The Commission shall prepare and make available to each member of the board of directors of every  
7181 state savings institution a statement describing generally their duties and responsibilities. The statement  
7182 shall include a brief outline of the examining procedure employed by the Commission, an explanation of  
7183 the distinction between an examination and an audit, and any information that the Commission deems  
7184 necessary to apprise the directors of the necessity for an adequate system of internal controls.

7185 § 6.2-1194. State savings institutions to furnish financial statements and reports.

7186 A. Every state savings institutions shall furnish the Commission within 30 days after the close of its  
7187 fiscal year a statement of its financial condition on forms supplied by the Commission. The statements  
7188 shall be made in accordance with forms prescribed by the Commission, certified under oath by the  
7189 president or treasurer of the savings institution, and attested by at least three of its directors. Insofar as  
7190 practicable, the reports required by this section shall conform to those required of savings institutions  
7191 insured by any instrumentality of the federal government that insures or regulates savings institutions.  
7192 The Commission shall allow state savings institutions to submit the statements electronically. Any state  
7193 association that submits such statements electronically shall maintain a copy of the statement with the

7194 required certified signatures affixed.

7195 B. Every state savings institution shall make such other reports as the Commission may from time to  
7196 time require.

7197 § 6.2-1195. Examination of state savings institutions and affiliates by Commissioner; report of  
7198 examination.

7199 A. As used in this section, the term "affiliate of any state savings institution" means any entity (i) of  
7200 which the state savings institution, directly or indirectly, owns or controls either a majority of the voting  
7201 shares or more than 50 percent of the number of shares voted for the election of its directors, trustees,  
7202 or other persons exercising similar functions at the preceding election, or controls in any manner the  
7203 election of a majority of its directors, trustees, or other persons, exercising similar functions, (ii) of  
7204 which control is held, directly or indirectly, through stock ownership or in any other manner, by the  
7205 shareholders of such state savings institution who own or control either a majority of the shares of the  
7206 state savings institution or more than 50 percent of the number of shares voted for the election of  
7207 directors of the state savings institution at the preceding election, or by trustees for the benefit of the  
7208 shareholders of the state savings institution, or (iii) of which a majority of the directors, trustees, or  
7209 other persons exercising similar functions are directors of the state savings institution.

7210 B. The Commissioner shall, not less than once during any period of three consecutive calendar  
7211 years, or at such additional times as he deems necessary, with or without previous notice, examine each  
7212 state savings institution. A copy of the report of all examinations shall be furnished to the savings  
7213 institution. The report shall be presented by the president or other chief executive officer to the directors  
7214 at their next meeting.

7215 C. No other copies of a report of examination shall be made except as necessary for review by  
7216 officers and directors of the state savings institution. Copies of the report made for officers and  
7217 directors of the savings institution shall not be removed from the premises of such association and shall  
7218 be destroyed after the review has been completed. The original examination report shall be kept among  
7219 the records of the Bureau. Upon resolution of the board of directors of a savings institution,  
7220 examination reports may be inspected in the savings institution by such other persons as the board may  
7221 specify.

7222 D. In connection with the examination of any state savings institution, the Commission may make or  
7223 cause to be made an examination of the affiliates of the state savings institution as shall be necessary to  
7224 ascertain the financial condition of the savings institution and disclose fully the relations between the  
7225 savings institution and its affiliates and the effect of such relations upon the affairs of the savings  
7226 institution.

7227 E. Upon written application made to the Commission by the board of directors or by the  
7228 stockholders representing two-fifths of the total outstanding capital stock of any savings institution  
7229 incorporated under the laws of and doing business in the Commonwealth, or when, in the judgment of  
7230 the Commission, it may be necessary for the protection of the public or of persons depositing or dealing  
7231 with such state savings institution, the Commission shall cause to be made a special examination of  
7232 such state savings institution. All expenses incident to such special examination may be charged to the  
7233 state savings institution so examined and shall be paid by the savings institution so charged.

7234 § 6.2-1196. Access to books and evidence of debt; examination of directors, officers, and employees  
7235 under oath.

7236 A. The officers, directors, and employees of every savings institution doing business in the  
7237 Commonwealth shall, upon the demand of the person designated by law to make any examination of the  
7238 institution:

7239 1. Give to such examiner full access to all money, books, papers, notes, bills, and other evidence of  
7240 debt of the savings institution;

7241 2. Disclose fully and truly all of its indebtedness and liability; and

7242 3. Furnish the examiner with all information that the examiner deems necessary to a full  
7243 investigation into the affairs of the savings institution.

7244 B. The Commission may examine under oath any and all of the directors, officers, clerks, and  
7245 employees of a savings institution touching any matter or thing connected with the operation of the  
7246 savings institution. Any duly authorized examiner shall have the authority to administer oaths to the  
7247 persons examined.

7248 § 6.2-1197. False statements; penalty.

7249 Any officer, director, or agent of a savings institution who knowingly makes a false statement of the  
7250 condition of the institution to the Commission is guilty of a Class 6 felony.

7251 § 6.2-1198. Audits.

7252 The Commission may require a savings institution doing business in the Commonwealth to have an  
7253 audit made of its books, records and methods of operation, whenever it appears to the Commission that  
7254 the system of internal controls is not adequate or that the savings institution is engaging in dangerously

7255 *unsound practices or that the financial condition of the institution makes it necessary.*

7256 § 6.2-1199. *Powers of Commission in case of nonobservance of law, noncompliance with orders,*  
7257 *insufficient reserves or insolvency; appointment of Federal Deposit Insurance Corporation as receiver.*

7258 A. *If the Commission finds that: (i) the laws of the Commonwealth are not being fully observed by a*  
7259 *savings institution doing business in the Commonwealth; (ii) a savings institution is being operated in*  
7260 *an unsafe or unsound manner; (iii) the institution has failed to comply with the lawful orders of the*  
7261 *Commission; (iv) the reserve of the institution is insufficient for the protection of account holders; or (v)*  
7262 *a savings institution is, or is about to become, insolvent, it shall give immediate notice thereof to the*  
7263 *officers and directors of the institution. If necessary to conserve the assets of the institution or to protect*  
7264 *the interests of its account holders or the public interest, the Commission may, after reasonable notice*  
7265 *to the institution and opportunity for it to be heard:*

7266 1. *Close the institution for a period not exceeding 60 days, which period may be further extended for*  
7267 *a like period or periods as the Commission deems necessary;*

7268 2. *Require the officers and directors of the institution to liquidate, insofar as is required, its*  
7269 *outstanding loans;*

7270 3. *Require that all lawful orders of the Commission be complied with;*

7271 4. *Require the institution to make reports daily or at such other times as it may require as to the*  
7272 *results achieved in carrying out its orders;*

7273 5. *Temporarily suspend the right of such institution to receive any further deposits;*

7274 6. *Without examination, close, for such period or periods as the Commission may deem necessary,*  
7275 *any savings institution facing an emergency due to withdrawal of deposits or otherwise, or, without*  
7276 *closing such savings institution, grant to it the right to suspend or limit the withdrawal of deposits, for*  
7277 *such period as the Commission may determine; or*

7278 7. *Require that the savings institution desist from those activities that have resulted in the unsafe or*  
7279 *unsound operation of the institution.*

7280 B. *If the Commission determines that a receiver should be appointed for a savings institution, the*  
7281 *Commission may close the doors of the institution, take charge of the books, assets and affairs of the*  
7282 *institution, and apply to any court in the Commonwealth having jurisdiction to appoint receivers for the*  
7283 *appointment of a receiver to take charge of the institution's business and assets. Proceedings for the*  
7284 *appointment of a receiver of a savings institution shall not be entertained by any court except on the*  
7285 *application of the Commission.*

7286 C. *In any case where the Commission finds that an insured savings institution is insolvent or about*  
7287 *to become insolvent, the Commission may seek the appointment of the Federal Deposit Insurance*  
7288 *Corporation as receiver for the savings institution. The court may appoint the Federal Deposit*  
7289 *Insurance Corporation as receiver for the savings institution if it finds that to do so would be in the*  
7290 *public interest. Upon its being appointed, the Federal Deposit Insurance Corporation shall not be*  
7291 *required to post bond, and it shall have as receiver all those powers afforded under federal law.*

7292 D. *The Commissioner may issue and serve upon an association an order to cease and desist from an*  
7293 *unsafe or unsound practice or a violation if, in the opinion of the Commissioner, an association (i) is*  
7294 *engaging or has engaged, or there is reasonable cause to believe is about to engage, in an unsafe or*  
7295 *unsound practice in conducting the business of the association; or (ii) is violating or has violated, or*  
7296 *there is reasonable cause to believe is about to violate, this chapter or any other applicable law,*  
7297 *regulation, or order. An order to cease and desist shall contain a statement of the facts constituting the*  
7298 *alleged violation or unsafe or unsound practice, and it may require, in terms that may be mandatory or*  
7299 *otherwise, an association, its directors, officers, employees, or agents to cease and desist from such*  
7300 *violation or practice. The order shall specify the effective date thereof and shall contain a notice to the*  
7301 *association of its right to request a hearing on the order in accordance with the Commission's Rules.*

7302 E. *When the unsafe or unsound practice or the violation specified in an order to cease and desist, or*  
7303 *any continuation thereof, is likely to prejudice the interests of the account holders or the stockholders of*  
7304 *an association, the Commissioner may issue his order effective immediately. An order to cease and*  
7305 *desist shall remain in effect until it is withdrawn by the Commissioner or is terminated by the*  
7306 *Commission after a hearing on the matter. A request for hearing under this section shall be given*  
7307 *expeditious treatment on the docket of the Commission, and the Commission need not allow for 10 days'*  
7308 *notice to the parties.*

7309 § 6.2-1200. *Removal of director or officer; appeal; penalty for acting after removal.*

7310 A. *Whenever any director or officer of a savings institution doing business in the Commonwealth has*  
7311 *knowingly continued to violate any law relating to such savings institution or has knowingly continued*  
7312 *any unsafe or unsound practice in conducting the business of such institution, after the director or*  
7313 *officer, and the board of directors of the institution of which he is a director or officer, have been*  
7314 *warned in writing by the Commissioner to discontinue such violation of law or such unsafe or unsound*  
7315 *practice, the Commissioner shall certify the facts to the Commission. The Commission shall thereupon*

7316 enter an order requiring such director or officer to appear before the Commission, within not less than  
 7317 10 days, to show cause why he should not be removed from office and thereafter restrained from  
 7318 participating in any manner in the management of such savings institution. Such order shall contain a  
 7319 brief statement of the facts certified to the Commission by the Commissioner. A copy of the order shall  
 7320 be served upon the director or officer, and a copy thereof shall be sent by certified or registered mail to  
 7321 each director of the savings institution affected.

7322 B. If, after granting the accused director or officer a reasonable opportunity to be heard, the  
 7323 Commission finds that he has knowingly continued to violate any law relating to the savings institution,  
 7324 or has knowingly continued any unsafe or unsound practice in conducting the business of the institution,  
 7325 after he and the board of directors of the institution of which he is a director or officer have been  
 7326 warned in writing by the Commissioner to discontinue such violation of law or unsafe or unsound  
 7327 practice, the Commission shall enter an order removing the director or officer from office and  
 7328 restraining the director or officer from thereafter participating in any manner in the management of  
 7329 such savings institution. A copy of such order shall be served upon the director or officer and upon the  
 7330 savings institution of which he is a director or officer, whereupon the director or officer shall cease to  
 7331 be a director or officer of the institution and shall thereafter cease to participate in any manner in the  
 7332 management of the institution.

7333 C. Any director or officer removed and restrained under the provisions of this section who thereafter  
 7334 participates in any manner in the management of such savings institution, except as a stockholder  
 7335 therein, is guilty of a Class 6 felony.

7336 § 6.2-1201. Special examinations.

7337 When (i) written application is made to the Commission by the board of directors or by the  
 7338 stockholders representing two-fifths of the total outstanding capital stock of any savings institution  
 7339 incorporated under the laws of and doing business in the Commonwealth, or (ii) in the judgment of the  
 7340 Commission it may be necessary for the protection of the public or of persons depositing or dealing  
 7341 with such savings institution, the Commission shall cause to be made a special examination of such  
 7342 savings institution. All expenses incident to such special examination may be charged to the savings  
 7343 institution so examined and shall be paid by the savings institution so charged.

7344 § 6.2-1202. Fees for supervision and regulation; investigations.

7345 A. For the purpose of defraying the expenses of supervision and regulation of state savings  
 7346 institutions and foreign savings institutions doing business in the Commonwealth, the Commission shall,  
 7347 on or before July 1 of each year, assess against every such savings institution fees in accordance with a  
 7348 schedule to be set by the Commission. Such schedule shall bear a reasonable relationship to the total  
 7349 assets of various individual savings institutions and to the costs of their respective supervision,  
 7350 regulation, and examination.

7351 B. All fees so assessed shall be paid into the state treasury on or before July 31 following. The  
 7352 Commission shall mail the assessments to each association on or before July 1 of each year.

7353 C. The Commission shall charge a fee:

7354 1. Of \$1,800 for investigating an application for authority to establish a branch, if the branch is to  
 7355 be located within the Commonwealth;

7356 2. As prescribed by the Commission for investigating an application for authority to establish a  
 7357 branch if the branch is to be located outside the Commonwealth;

7358 3. Of \$1,000 for investigating an application for authority to change the location of an existing main  
 7359 office or branch office;

7360 4. Of \$10,000 for investigating an application for a certificate of authority in the case of a state  
 7361 association;

7362 5. As prescribed by the Commission for investigating an application for a certificate of authority in  
 7363 the case of a foreign savings institution;

7364 6. Of \$7,500 for investigating an application for merger or consolidation;

7365 7. Of \$2,000 for investigating an application for authority to exercise trust powers if such powers  
 7366 are to be exercised through a trust department;

7367 8. Of \$10,000 for investigating an application for authority to exercise trust powers if such powers  
 7368 are to be exercised through a trust affiliate or subsidiary;

7369 9. Of \$5,000 for investigating an application to convert from a state association to a state savings  
 7370 bank pursuant to subsection B of § 6.2-1143 or from a state bank to a state savings bank pursuant to  
 7371 § 6.2-829; and

7372 10. Of \$10,000 for investigating an application for a conversion other than a conversion from a state  
 7373 association or state bank to a state savings bank as provided in subdivision 9.

7374 D. The Commission shall not be entitled to any fees other than as provided in subdivision C 6 for  
 7375 investigating any application to retain existing branches of the applying savings institution as branches  
 7376 of the merged or consolidated institutions. The fee prescribed in subdivision C 6 may be waived by the

7377 Commission in the case of supervisory mergers or consolidations made pursuant to § 6.2-1205.

7378 E. Notwithstanding the designation of the several fees set forth in subsection C, the Commission may  
7379 reduce by regulation or order any such fee or fees, if the Commission concludes that there is a  
7380 reasonable basis for doing so and that the reduction of the fee will not be detrimental to the  
7381 effectiveness of the Bureau.

7382 § 6.2-1203. Examination of persons believed to be doing business without authority; doing business  
7383 without authority; penalty.

7384 A. The Commissioner shall examine the accounts, books, and papers of any person or entity that he  
7385 has reason to believe is doing the business of a savings institution in the Commonwealth without legal  
7386 authority to do so. Any person having possession, custody, or control of such accounts, books, and  
7387 papers refusing to produce such documents for examination by the Commissioner is guilty of a Class 1  
7388 misdemeanor.

7389 B. Every person who does the business of a savings institution in the Commonwealth without  
7390 authority, and every officer and agent of a corporation doing such business without authority who  
7391 knowingly participates therein, is guilty of a Class 6 felony.

7392 § 6.2-1204. Compliance by savings institution holding companies with federal regulations constitutes  
7393 compliance with Commission regulations.

7394 Any savings institution holding company that does not have any subsidiaries that are state savings  
7395 institutions and that is subject to regulations adopted by the appropriate federal authority shall be  
7396 deemed to be in substantial compliance with the regulations adopted by the Commission if it is in  
7397 compliance with the regulations adopted by the appropriate federal authority.

7398 § 6.2-1205. Merger, consolidation or transfer of assets of insolvent or financially unstable savings  
7399 institution; notice and hearing; final order; priorities; examinations of resulting institutions.

7400 A. As used in this section:

7401 "Bank" or "savings institution" means institutions incorporated or established under the laws of (i)  
7402 the Commonwealth, (ii) the United States, or (iii) any other state, which institutions' deposits are  
7403 insured as required by this title for the issuance of a certificate of authority to do business.

7404 "Insolvent" means that the current book value of liabilities is in excess of the current book value of  
7405 assets.

7406 B. If the Commission finds that (i) a state savings institution is insolvent, or, in its opinion, the  
7407 financial stability of a state savings institution is threatened, (ii) the merger or consolidation of such  
7408 state savings institution into another savings institution or into a bank is desirable for the protection of  
7409 the stockholders, members or depositors of such association, and that such merger or consolidation is in  
7410 the public interest, and (iii) an emergency exists, and if the board of directors of such state savings  
7411 institution approves a plan of merger or consolidation of such savings institution into another savings  
7412 institution or bank, compliance with the requirements of § 13.1-718 or 13.1-895 shall be dispensed with  
7413 as to such state savings institution. In such event, the approval by the Commission of such plan of  
7414 merger or consolidation shall be the equivalent of approval by the holders of more than two-thirds of  
7415 the outstanding shares of such state savings institution for all purposes of Article 12 (§ 13.1-715.1 et  
7416 seq.) of Chapter 9 of Title 13.1 or the approval of two-thirds of the members for all purposes of Article  
7417 II (§ 13.1-893.1 et seq.) of Chapter 10 of Title 13.1.

7418 C. If the Commission finds that (i) a state savings institution is insolvent, or in its opinion, the  
7419 financial stability of a state savings institution is threatened, (ii) the acquisition of the assets and  
7420 liabilities of such savings institution by another savings institution or by a bank is in the best interests  
7421 of the stockholders, members or depositors of such state savings institution, and that such acquisition of  
7422 the assets and liabilities is in the public interest, and (iii) an emergency exists, it may, with the consent  
7423 of the board of directors of both institutions as to the terms and conditions of such transfer, including  
7424 the assumption of all or certain liabilities, enter an order transferring some or all of the assets and  
7425 liabilities of such state savings institution to such other savings institution or bank. In such event,  
7426 compliance with the provisions of § 13.1-723, 13.1-724, 13.1-899, or 13.1-900 shall not be required, and  
7427 § 13.1-730 shall not be applicable to such transfer.

7428 D. In the case either of such a merger, consolidation or a transfer of assets and liabilities, the  
7429 Commission shall provide that prompt notice of its findings, and plan of merger, consolidation or  
7430 transfer of assets and liabilities, be sent to the stockholders or members of record of such insolvent  
7431 savings institution or savings institution threatened with financial instability for the purpose of providing  
7432 such shareholders or members an opportunity to challenge the findings of the Commission and the plan  
7433 of merger, consolidation or transfer of assets and liabilities. The relevant books and records of such  
7434 state savings institution shall remain intact and be made available to such shareholders or members for  
7435 a period of 30 days after such notice is sent. The Commission's findings and plan of merger,  
7436 consolidation or transfer of assets and liabilities shall become final if a hearing before the Commission  
7437 is not requested by any such shareholder or member in a written request delivered to the Commission

7438 within 15 days after the notice specified by this section is sent. Any such request for a hearing shall  
 7439 contain a statement of the specific grounds for such shareholder's or member's challenge to the  
 7440 Commissioner's findings and plan of merger, or consolidation or transfer of assets and liabilities.

7441 E. If, after a hearing as provided in subsection D, the Commission finds that good cause has been  
 7442 shown for the reversal or modification of its initial findings, or for rescission or modification of its  
 7443 initial plan for merger, consolidation or transfer of assets and liabilities, the Commission shall enter its  
 7444 final order accordingly. If, after such hearing, the Commission affirms its original findings and plan for  
 7445 merger, or consolidation or transfer of assets and liabilities, its order shall be final.

7446 F. Notwithstanding any other provision of law, any institution resulting from a merger, consolidation  
 7447 or a transfer of assets and liabilities under the provisions of this section shall have the right to retain  
 7448 and operate all offices of the association so merged, consolidated or acquired that were in operation at  
 7449 the time of such merger, or consolidation or acquisition. This section shall not be construed to allow the  
 7450 establishment of additional branches by any institution resulting from such merger, consolidation or  
 7451 transfer than would otherwise be allowed by the laws of the Commonwealth.

7452 G. The Commission shall authorize transactions under this section in the following order of priority:

7453 1. Between financial institutions of the same type located within the Commonwealth;

7454 2. Between financial institutions of different types located within the Commonwealth;

7455 3. Between financial institutions of the same type including depository institutions located outside the  
 7456 Commonwealth; and

7457 4. Between financial institutions of different types including depository institutions located outside the  
 7458 Commonwealth.

7459 H. In considering transactions involving financial institutions located outside the Commonwealth, the  
 7460 Commission shall give priority to plans of merger, consolidation or asset acquisition involving financial  
 7461 institutions located in states adjoining the Commonwealth or located in the District of Columbia.

7462 I. Any institution resulting from a transaction authorized by this section whose main office is located  
 7463 outside of the Commonwealth shall, as a condition of being able to do business in the Commonwealth,  
 7464 allow the Commission to examine such institution from time to time as the Commission deems necessary.  
 7465 In conducting such examinations, the Commission shall have all of the powers provided by this title  
 7466 relating to the examination of financial institutions.

7467 J. The provisions of Article 5 (§ 6.2-1148 et seq.) of this chapter shall not apply to mergers,  
 7468 consolidations, and acquisitions authorized by the provisions of this section.

7469 CHAPTER 12.

7470 RESERVED.

7471 CHAPTER 13.

7472 CREDIT UNIONS.

7473 Article 1.

7474 General Provisions.

7475 § 6.2-1300. Definitions.

7476 As used in this chapter, unless the context requires a different meaning:

7477 "Capital" means the sum of share accounts, reserves, and undivided earnings of a credit union.

7478 "Corporate credit union" means a credit union whose field of membership consists primarily of other  
 7479 credit unions.

7480 "Credit union" means a cooperative, nonprofit corporation organized under the laws of the  
 7481 Commonwealth and authorized to do business under this chapter for the purposes of encouraging thrift  
 7482 among its members, creating a source of credit at fair and reasonable rates of interest, providing an  
 7483 opportunity for its members to use and control their own money on a democratic basis in order to  
 7484 improve their economic and social condition, and conducting any other business, engaging in any other  
 7485 activity, and providing any other service that may be of benefit to its members, consistent with the  
 7486 provisions of this chapter and any regulations adopted by the Commission under this chapter.

7487 "Credit union service organization" means any organization, corporation, or association, if (i) the  
 7488 membership or ownership, as the case may be, of such organization, corporation, or association is  
 7489 primarily confined or restricted to credit unions or organizations of credit unions and (ii) the purpose  
 7490 for which such organization, corporation, or association is organized is to strengthen or advance the  
 7491 development of credit unions or credit union organizations.

7492 "Household" means those individuals who are related by blood, marriage, or other recognized family  
 7493 relationship and who live in the same house or other place of residence.

7494 "Immediate family" means the individuals in a household who are related by blood, marriage, or  
 7495 other recognized family relationship. "Immediate family" also includes, regardless of their place of  
 7496 residence, the children, grandchildren, grandparents, parents, siblings, and spouse of an individual.

7497 "Insuring organization" means an organization that provides aid and financial assistance to credit  
 7498 unions that are in the process of liquidation or are incurring financial difficulty in order that the share

7499 accounts in the credit unions shall be protected or guaranteed against loss up to a specified limit for  
 7500 each account, such as the National Credit Union Administration Share Insurance Fund, a corporation  
 7501 organized under Article 5 (§ 6.2-1331 et seq.) of this chapter, or any other share insurance provider  
 7502 approved by the Commission.

7503 "Member," with respect to a credit union, or "credit union member," means any person holding a  
 7504 share account in accordance with standards specified by the credit union. "Member" may also be used  
 7505 to refer to an individual or other entity that is included within a group or a community, or to an  
 7506 individual who is part of a household or family.

7507 "Reserves" means the total of allowances for loan losses, regular, special, and any other type of  
 7508 funds held in reserve.

7509 "Share account" means a balance held by a credit union and established by a member in accordance  
 7510 with standards specified by the credit union, including balances designated as shares, share certificates,  
 7511 share draft accounts, or other names.

7512 "Shares" means the interest of a member having an account in a credit union.

7513 § 6.2-1301. Effect of ownership of a share account; priority of shares.

7514 A. Ownership of a share account confers membership and voting rights as set forth in the credit  
 7515 union bylaws and represents an interest in the capital of the credit union upon dissolution or conversion  
 7516 to another type of institution.

7517 B. Shares shall be subordinate to all other obligations of the credit union.

7518 § 6.2-1302. Powers.

7519 In addition to the powers specified or implied elsewhere in this chapter or in the laws of the  
 7520 Commonwealth, a credit union shall have the power to:

7521 1. Enter into contracts;

7522 2. Sue and be sued;

7523 3. Adopt, use, and display a corporate seal;

7524 4. Receive savings from and make loans and extend lines of credit to its members;

7525 5. Individually or jointly with other credit unions acquire, lease as lessor or lessee, hold, assign,  
 7526 pledge, exchange, repair, mortgage, hypothecate, sell, discount, or otherwise dispose of property or  
 7527 assets, either in whole or in part, as necessary or incidental to its operations, including any property or  
 7528 assets obtained as a result of defaults under obligations owing to it;

7529 6. Borrow from any source, provided that (i) a credit union shall notify and obtain prior approval of  
 7530 the Commissioner if the total borrowings will exceed 50 percent of the credit union's outstanding shares  
 7531 and (ii) in no event shall the borrowings exceed 90 percent of the credit union's outstanding shares;

7532 7. Sell all or substantially all of its assets or purchase all or substantially all of the assets of another  
 7533 credit union, subject to the approval of the Commission;

7534 8. Offer related financial services, including electronic fund transfers, share draft accounts, safe  
 7535 deposit boxes, leasing of tangible personal property to its members, and correspondent arrangements  
 7536 with other financial institutions;

7537 9. Hold membership in other credit unions organized under this chapter or other applicable law, and  
 7538 in associations and organizations controlled by or fostering the interest of credit unions, including a  
 7539 central liquidity facility organized under state or federal law;

7540 10. Contract with any licensed insurance company or society to insure the lives of its members to the  
 7541 extent of their loans and share accounts, in whole or in part, and to pay all or a portion of the  
 7542 premium therefor;

7543 11. Engage in activities or programs as requested by any governmental authority, subject to the  
 7544 approval of the Commissioner;

7545 12. Invest its funds, operate a business, manage or deal in property when such actions are  
 7546 reasonably necessary to avoid loss on a loan or investment previously made or an obligation previously  
 7547 created in good faith. Such property or business shall not be held or operated by the credit union for a  
 7548 period longer than is reasonably required to protect the interest of the credit union, unless specifically  
 7549 authorized by the Commissioner;

7550 13. Make contributions to any nonprofit civic, charitable, or service organizations;

7551 14. Make loans to its members and to other credit unions; and

7552 15. Undertake such other activities relating to the purposes of the credit union as its charter or  
 7553 bylaws may authorize, provided such activities are not inconsistent with this chapter.

7554 § 6.2-1303. Regulations.

7555 A. The Commission may adopt regulations to implement the provisions of this chapter.

7556 B. In addition to the powers specifically granted to state chartered credit unions by the provisions of  
 7557 this chapter, the Commission may adopt such regulations as may be necessary to permit state chartered  
 7558 credit unions to have powers at least comparable with those of federally chartered credit unions or to  
 7559 effect the purposes of this chapter, regardless of any then existing statute, regulation or court decision

7560 limiting or denying such powers to state chartered credit unions. The requirement of a public hearing  
7561 shall not automatically apply to regulations adopted under this subsection, but the Commission may  
7562 hold such hearings as it deems appropriate.

7563 C. Before adopting any regulation under this chapter, the Commission shall give reasonable notice  
7564 of its content and shall afford interested parties an opportunity to present evidence and be heard, in  
7565 accordance with the Commission's Rules.

7566 § 6.2-1304. Franchise tax exemption.

7567 All credit unions organized under the laws of the Commonwealth and doing business purely as credit  
7568 unions shall be exempt from the payment of any franchise tax.

7569 § 6.2-1305. Making or circulating derogatory statements affecting credit unions; penalty.

7570 Any person who willfully and maliciously makes, circulates, or transmits to another any statement or  
7571 rumor that is untrue in facts and is directly or by inference derogatory to the financial condition or  
7572 affects the solvency or financial standing of any credit union doing business in the Commonwealth, or  
7573 who knowingly counsels, aids, procures, or induces another to start, transmit, or circulate any such  
7574 statement or rumor, is guilty of a Class 3 misdemeanor.

7575 § 6.2-1306. Unlawful use of words "credit union."

7576 A. It shall be unlawful for any person, other than (i) a credit union organized under the provisions  
7577 of this chapter, (ii) any entity authorized by any federal law, or (iii) any association or corporation the  
7578 owners, members or constituents of which consist exclusively of authorized state and federal credit  
7579 unions or members of authorized state and federal credit unions, to use any name or title which  
7580 contains the words "credit union."

7581 B. Any person violating the provisions of this section is guilty of a Class 1 misdemeanor and may be  
7582 enjoined by any court having equity jurisdiction over the unauthorized user.

7583 § 6.2-1307. Use of credit union name, logo, or symbol for marketing purposes; penalty.

7584 A. Except as provided in subsection B, no person shall use the name, logo, or symbol, or any  
7585 combination thereof, of a credit union, or any name, logo, or symbol, or any combination thereof, that  
7586 is deceptively similar to the name, logo, or symbol of a credit union, in marketing material provided to  
7587 or solicitation of another person in a manner such that a reasonable person may believe that the  
7588 marketing material or solicitation originated from or is endorsed by the credit union or that the credit  
7589 union is responsible for the marketing material or solicitation.

7590 B. This section shall not apply to (i) an affiliate or agent of the credit union or (ii) a person who  
7591 uses the name, logo, or symbol of a credit union with the consent of the credit union.

7592 C. Any person violating the provisions of this section, either individually or as an interested party, is  
7593 guilty of a Class 1 misdemeanor.

7594 D. This section shall not affect the availability of any remedies otherwise available to a credit union.

#### Article 2.

7596 Supervision and Regulation.

7597 § 6.2-1308. Supervision and regulation by Commission.

7598 Credit unions organized under the provisions of this chapter shall be subject to the supervision and  
7599 regulation of the Commission.

7600 § 6.2-1309. Examinations.

7601 A. Each credit union shall be examined as often as the Commission deems that an examination is in  
7602 the interest of its members, provided that an examination shall be conducted at least twice in every  
7603 three-year period. The examiners shall be given free access to all books, papers, securities, and other  
7604 sources of information in respect to the credit union. For the purpose of making an examination, the  
7605 Commission may subpoena and examine personally witnesses under oath, whether such witnesses are  
7606 members of the credit union or not, and may require the production of any documents, whether such  
7607 documents are documents of the credit union or not.

7608 B. All expenses incident to any special examination which may be necessary shall be paid by the  
7609 credit union so examined.

7610 § 6.2-1310. Fees for examination, supervision, and regulation.

7611 In order to defray the costs of an examination pursuant to § 6.2-1309 and of supervision and  
7612 regulation by the Commission, every credit union shall pay an annual fee, to be calculated in  
7613 accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to  
7614 the total assets of various individual credit unions, to the actual cost of their respective examinations,  
7615 and to other factors relating to their supervision and regulation. Fees shall be assessed pursuant to this  
7616 section on or before March 1 each year. All fees so assessed shall be paid by the credit union to the  
7617 state treasury on or before March 31 following the assessment.

7618 § 6.2-1311. Reports to Commission; penalty for failure to make reports.

7619 A. No later than March 31 of each year, each credit union shall report to the Commission regarding  
7620 its condition as of the close of business on the preceding December 31. These reports shall be signed by

7621 the president or the chairman and the treasurer or secretary, or by the majority of the members of the  
7622 supervisory committee. A credit union shall make such other reports as the Commissioner shall at any  
7623 time demand.

7624 B. The Commission may allow a credit union to make the reports required by this section  
7625 electronically, in accordance with procedures established by the Commission. A credit union that  
7626 submits a report electronically shall maintain a copy of the report with the required certified signatures  
7627 affixed.

7628 C. If any credit union (i) neglects or refuses to make its reports as provided in this chapter for more  
7629 than 15 days or (ii) fails to pay such charges as are required under this chapter, including any charges  
7630 for delay in filing reports, the Commission may impose a civil penalty not exceeding \$100 per day upon  
7631 the credit union, to a maximum of \$5,000, or the Commission may give notice to such credit union of its  
7632 intention to revoke the certificate of authority of the credit union for such neglect or failure. If such  
7633 neglect or failure continues for 15 days after such notice, then the Commission may revoke or suspend  
7634 the certificate of authority of the credit union. In such event, the Commission may, in its discretion, (a)  
7635 close such credit union and take possession of its property and business until such time as it may see fit  
7636 to allow the credit union to resume business or (b) proceed to finally liquidate such business.

7637 § 6.2-1312. Cease and desist orders; right to hearing.

7638 A. The Commission may issue and serve upon a credit union an order to cease and desist from one  
7639 or more unsafe or unsound practices or violations if, in the opinion of the Commission, a credit union  
7640 (i) is engaging or has engaged, or there is reasonable cause to believe is about to engage, in an unsafe  
7641 or unsound practice; or (ii) is violating or has violated, or there is reasonable cause to believe is about  
7642 to violate, this chapter or any other applicable law, regulation, or order. An order to cease and desist  
7643 shall contain a statement of the facts constituting the alleged violations or unsafe or unsound practices,  
7644 and the order may require, in terms that may be mandatory or otherwise, a credit union, its officers,  
7645 directors, employees, or agents to cease and desist from such practices or violations. The order shall  
7646 specify the effective date thereof and shall contain a notice to the credit union of its right to a hearing  
7647 on such order in accordance with the Commission's Rules.

7648 B. If an unsafe or unsound practice or violation specified in the order to cease and desist, or any  
7649 continuation thereof, is likely to prejudice the interest of the members of the credit union, the  
7650 Commission may issue an order effective immediately. An order to cease and desist shall remain in  
7651 effect until it is withdrawn or terminated by the Commission after a hearing on the matter. A request for  
7652 hearing under this section shall be given expeditious treatment on the docket of the Commission, and  
7653 the Commission need not allow for 10 days' notice to the parties.

7654 § 6.2-1313. Powers of Commission in case of nonobservance of law, noncompliance with orders,  
7655 insufficient reserves, or insolvency; appointment of receiver.

7656 A. If the Commission finds that (i) a credit union is in violation of a law or regulation applicable to  
7657 it, (ii) a credit union is being operated in an unsafe or unsound manner, (iii) a credit union has failed  
7658 to comply with a lawful order of the Commissioner, (iv) the reserve of the credit union fails to meet the  
7659 requirements set forth in § 6.2-1377, or (v) a credit union is, or is about to become, insolvent, it shall  
7660 give immediate notice of its finding to the officers and directors of the credit union. If necessary to  
7661 conserve the assets of the credit union or protect the interests of the members of the credit union, the  
7662 Commission may, after reasonable notice to the credit union and an opportunity for it to be heard, do  
7663 any one or more of the following:

7664 1. Close the credit union for a period not exceeding 60 days, which period may be extended for  
7665 additional like periods as the Commission may deem necessary;

7666 2. Require the officers and directors of the credit union to liquidate outstanding loans;

7667 3. Require that all lawful orders of the Commission be complied with;

7668 4. Require the credit union to make reports daily or otherwise as to the results achieved in carrying  
7669 out its orders;

7670 5. Temporarily suspend the right of such credit union to receive any further investment in its share  
7671 accounts;

7672 6. Grant the right to suspend or limit withdrawals against share accounts for such period as the  
7673 Commission may deem necessary; and

7674 7. Appoint a conservator to take charge of the credit union and operate it pending further action by  
7675 the Commission.

7676 B. If the Commission determines that a credit union is insolvent and that a receiver should be  
7677 appointed, the Commission may close the doors of the credit union, take charge of the books, assets and  
7678 affairs of the credit union, and apply to any court in the Commonwealth having jurisdiction to appoint  
7679 receivers for the appointment of a receiver to take charge of the credit union's business and assets. A  
7680 credit union shall be deemed insolvent when the current value of its assets is less than the current value  
7681 of the sum of its share accounts and liabilities.

7682 § 6.2-1314. Penalties for violation of orders of Commission.

7683 The Commission may impose a civil penalty not exceeding \$10,000 upon any credit union or against  
7684 any of its directors, officers, or employees for knowingly or willfully violating any lawful order of the  
7685 Commission.

7686 § 6.2-1315. Removal of director or officer; penalty for acting after removal.

7687 A. Whenever any director or officer of a credit union doing business in the Commonwealth violates  
7688 any lawful order of the Commission or knowingly continues to violate any law relating to credit unions  
7689 or knowingly continues an unsafe or unsound practice in conducting the business of a credit union, after  
7690 the director or officer, and the board of directors of the institution of which he is a director or officer,  
7691 have been warned in writing by the Commissioner to discontinue such violation of law or such unsafe  
7692 or unsound practice, the Commissioner shall certify the facts to the Commission. The Commission shall  
7693 thereupon enter an order requiring such director or officer to appear before the Commission, within not  
7694 less than 10 days, to show cause why he should not be removed from office and thereafter restrained  
7695 from participating in any manner in the management of the credit union. The order shall contain a brief  
7696 statement of the facts certified to the Commission by the Commissioner. A copy of the order shall be  
7697 served upon the director or officer, and a copy thereof shall be sent by certified or registered mail to  
7698 each director of the credit union affected.

7699 B. If, after granting the accused director or officer a reasonable opportunity to be heard, the  
7700 Commission finds that he has knowingly continued to violate any law relating to the credit union, or has  
7701 knowingly continued any unsafe or unsound practice in conducting the business of the credit union, after  
7702 he and the board of directors of the credit union of which he is a director or officer have been warned  
7703 in writing by the Commissioner to discontinue such violation of law or unsafe or unsound practice, the  
7704 Commission shall enter an order removing the director or officer from office and restraining the  
7705 director or officer from thereafter participating in any manner in the management of the credit union. A  
7706 copy of such order shall be served upon the director or officer and upon the credit union of which he is  
7707 a director or officer, whereupon the director or officer shall cease to be a director or officer of the  
7708 credit union and shall thereafter cease to participate in any manner in the management of the credit  
7709 union.

7710 C. Any director or officer removed and restrained under the provisions of this section who thereafter  
7711 participates in any manner in the management of the credit union, except as a member thereof, is guilty  
7712 of a Class 6 felony.

7713 § 6.2-1316. Offenses; penalty.

7714 Any officer, director, employee, receiver, or agent of a credit union who willfully does any of the  
7715 following is guilty of a Class 6 felony:

- 7716 1. With the intent to deceive, falsifies any book of account, report, statement, record, or other  
7717 document of a credit union, whether by alteration, false entry, omission, or otherwise;
- 7718 2. Signs, issues, publishes, or transmits to a government agency any book of account, report,  
7719 statement, record, or other document that he knows to be false;
- 7720 3. By means of deceit, obtains a signature to a writing that is a subject of forgery;
- 7721 4. With intent to deceive, destroys any credit union book of account, report, statement, record, or  
7722 other document; or
- 7723 5. With the intent to defraud, shares or receives directly or indirectly any money, property, or  
7724 benefits through any transaction of the credit union.

7725 § 6.2-1317. Supervisory merger or transfer of assets of insolvent credit union.

7726 A. If the Commission finds that a state credit union is insolvent, that an emergency exists, and that  
7727 its merger into another credit union is desirable for the protection of its members, and if the board of  
7728 directors of both credit unions approves a plan of merging the insolvent state credit union into another  
7729 state credit union or a federal credit union, compliance with § 13.1-895 shall be dispensed with as to  
7730 both credit unions and the approval of the Commission of such plan of merger shall be the equivalent of  
7731 approval by more than two-thirds of the members of both credit unions for all purposes of Article 11  
7732 (§ 13.1-893.1 et seq.) and Article 12 (§ 13.1-899 et seq.) of Chapter 10 of Title 13.1.

7733 B. If the Commission finds that a state credit union is insolvent, that the acquisition of its assets by  
7734 another state credit union or a federal credit union is in the best interests of its members, and that an  
7735 emergency exists, it may, with the consent of the board of directors of both credit unions as to the terms  
7736 and conditions of such transfer, including the assumption of all or certain liabilities, enter an order  
7737 transferring some or all of the assets of such insolvent state credit union to such other state or federal  
7738 credit union and no compliance with the provisions of §§ 13.1-899 and 13.1-900 shall be required.

7739 C. In the case either of such a merger or of such a sale of assets, the Commission shall provide that  
7740 prompt notice of its findings of insolvency and of the merger or sale of assets be sent to the members of  
7741 record of the insolvent state credit union for the purpose of providing such members an opportunity to  
7742 challenge the finding that the state credit union is insolvent. The relevant books and records of such

7743 insolvent credit union shall be preserved and be made available to such members for a period of 30  
7744 days after such notice is sent. The Commission's finding of insolvency shall become final if a hearing  
7745 before the Commission is not requested by any such member within such 30-day period.

7746 D. If, after such hearing provided in subsection C, the Commission finds that the state credit union  
7747 was solvent, it shall rescind its order entered pursuant to subsection A or subsection B and the merger  
7748 or transfer of assets shall be rescinded. After such hearing, however, if the Commission finds that the  
7749 state credit union was insolvent, its order shall be final.

7750 E. Notwithstanding the provisions of subsection B of § 6.2-1327, or any other provisions of this  
7751 chapter, the Commission may order a merger pursuant to subsection A or a sale of assets pursuant to  
7752 subsection B. The continuing credit union, upon approval of the Commission, shall amend its bylaws to  
7753 incorporate the specified common bond of interest of the insolvent credit union.

7754 F. The Commission may authorize a financial institution whose deposits are insured by a federal  
7755 agency to purchase any of the assets of or assume any of the liabilities of a credit union that is  
7756 insolvent or in danger of insolvency, provided that prior to exercising this authority the Commission  
7757 shall use every reasonable effort to effect a merger or consolidation with or purchase and assumption  
7758 by another credit union and shall have been advised by the insuring organization that it cannot effect a  
7759 merger, consolidation, or other disposition of the insolvent credit union acceptable to the Commission.

7760 § 6.2-1318. Consolidation or merger.

7761 Notwithstanding the provisions of subsection B of § 6.2-1327, two credit unions may consolidate or  
7762 merge, subject to the approval of the Commission, when the Commission finds that an emergency exists  
7763 and that the merger or consolidation will promote the best interests of the members.

7764 § 6.2-1319. Involuntary dissolution.

7765 If the Commission determines that a credit union is violating any provisions of this chapter, it may,  
7766 after a hearing or an opportunity for a hearing has been given to the credit union, direct that it  
7767 discontinue the illegal methods or practices described in the order. If any credit union is insolvent, or  
7768 has failed or refused to comply with the provisions of this chapter, the Commission may take possession  
7769 of the business and property of the credit union and retain such possession until such time as it may  
7770 permit such credit union to resume business, or until its affairs are finally liquidated under order of the  
7771 Commission. Alternatively, the Commission may apply to any court in the Commonwealth having  
7772 jurisdiction to appoint receivers for the appointment of a receiver to take charge of the business and  
7773 assets and to wind up the affairs and business of any such credit union. The receiver when appointed  
7774 shall become and be assignee of the assets of such credit union.

7775 Article 3.

7776 Formation of Credit Union.

7777 § 6.2-1320. Incorporation.

7778 A. Five or more residents of the Commonwealth who are of legal age and share a common bond  
7779 referred to in subsection B of § 6.2-1327 may establish, pursuant to the provisions of the Virginia  
7780 Nonstock Corporation Act (§ 13.1-801 et seq.), a corporation for the purpose of conducting business as  
7781 a credit union as provided in this chapter. Every corporation organized under this chapter shall include  
7782 in the corporate name the words "credit union" as well as some other distinguishing word or words.

7783 B. Credit unions incorporated pursuant to this chapter shall be subject to the provisions of the  
7784 Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), except as may otherwise be provided in this  
7785 chapter.

7786 § 6.2-1321. Certificate of authority.

7787 A. Before it begins to do any business, an organizing credit union shall apply for and obtain from  
7788 the Commission a certificate of authority. An application, accompanied by a fee of \$300, shall be made  
7789 on a form prescribed by the Commission. The Commission shall issue such a certificate if it finds that:

7790 1. The credit union has been formed for no purpose other than the conduct of a legitimate credit  
7791 union business;

7792 2. The moral fitness, financial responsibility, and other qualifications of the proposed officers and  
7793 directors are such as to command the confidence of the members;

7794 3. The field of membership of the proposed credit union complies with § 6.2-1327, and all other  
7795 applicable provisions of law have been complied with;

7796 4. Share accounts in the credit union will be insured by an approved insuring organization; and

7797 5. Establishment of the proposed credit union is economically advisable. In reaching a decision on  
7798 whether the establishment of a credit union is economically advisable, the Commission shall give  
7799 consideration to 12 C.F.R. § 701.1, which incorporates the National Credit Union Administration's  
7800 Interpretive Ruling and Policy Statement 99-1 as it pertains to economic advisability.

7801 B. The Commission may issue a certificate on condition that the credit union shall not begin to do  
7802 business until it is actually issued insurance of accounts by an approved insuring organization.

7803 C. A credit union that is not actually issued insurance of accounts by an approved insuring

- 7804 organization shall not receive funds or sell any shares.
- 7805 § 6.2-1322. Contents of bylaws; amendments to bylaws generally.
- 7806 The bylaws of a credit union shall specify:
- 7807 1. The name of the credit union;
- 7808 2. The purpose for which it was formed;
- 7809 3. The time of the annual meeting of the members of the credit union, or a provision that the board
- 7810 of directors may set the time for the meeting. Such a meeting shall be held each calendar year. Notice
- 7811 of all meetings shall be given in a manner prescribed in the bylaws, subject to compliance with
- 7812 § 13.1-842;
- 7813 4. The number, authority, and the duties of the directors and the authority, duties, and maximum
- 7814 compensation of all officers;
- 7815 5. The conditions and qualifications for membership;
- 7816 6. The number of members of the credit committee, if any, and of the supervisory committee, with
- 7817 their respective authorities and duties;
- 7818 7. The conditions upon which shares may be issued, transferred, or withdrawn;
- 7819 8. The conditions upon which loans may be made and repaid;
- 7820 9. The manner of effecting the forfeiture of a member's shares when a member's share account
- 7821 balance is below the amount established by the bylaws and remains below such amount for a period of
- 7822 two years;
- 7823 10. The manner in which dividends shall be determined and paid out;
- 7824 11. The manner in which remaining assets are to be distributed in the event of dissolution after all
- 7825 distributions required by subdivision A 1 of § 13.1-907 have been made; and
- 7826 12. The manner in which bylaws may be amended.
- 7827 § 6.2-1323. Amendments to articles of incorporation and bylaws.
- 7828 The articles of incorporation or the bylaws of a credit union may be amended as provided in the
- 7829 articles and bylaws, as the case may be, subject to §§ 13.1-886, 13.1-892, and 13.1-893. Amendments to
- 7830 the articles of incorporation shall be accomplished as provided in §§ 13.1-888 and 13.1-889. Proposed
- 7831 amendments to bylaws shall be submitted to the Commissioner, who shall approve or disapprove
- 7832 proposed amendments within 30 days. A bylaw amendment shall be effective upon its approval by the
- 7833 Commissioner. No amendment to the articles of incorporation or bylaws that would expand the field of
- 7834 membership of a credit union shall be effective until such amendment has been approved by the
- 7835 Commissioner. When any such change in bylaws or articles of incorporation is proposed, the
- 7836 Commissioner may extend the period for approval as he may deem necessary for as much as an
- 7837 additional 30 days.
- 7838 § 6.2-1324. Bylaws amended by Commission.
- 7839 Any bylaw may be amended by the Commission by order entered on its order book and certified to
- 7840 the credit union. Before entering any such order the Commission shall notify the credit union of the
- 7841 proposed amendment and afford it an opportunity to be heard.
- 7842 § 6.2-1325. Fiscal year.
- 7843 The fiscal year of every credit union shall end at the close of business on December 31.
- 7844 § 6.2-1326. Establishing, moving, and closing offices.
- 7845 A. As used in this section, "service facility" means a physical facility at a location other than its
- 7846 main office that is wholly owned by the credit union establishing it.
- 7847 B. A credit union may maintain service facilities at locations other than its main office if the
- 7848 maintenance of such offices is reasonably necessary to serve its members, subject to the approval of the
- 7849 Commission. An application to establish such a service facility, accompanied by a fee of \$200, shall be
- 7850 made on a form prescribed by the Commission. The Commission shall approve the establishment of the
- 7851 proposed service facility if it appears that the interest of the members of the applicant will be served
- 7852 thereby and that such establishment will not impair the financial condition of the applicant or any other
- 7853 credit union.
- 7854 C. A credit union may (i) contract with one or more other credit unions subject to this chapter or
- 7855 organized under the laws of the United States or any other state to provide for the operation of one or
- 7856 more shared service facilities or (ii) provide for its members to have the use of one or more shared
- 7857 service facilities by contracting with a credit union service organization approved by the Commissioner
- 7858 for such purpose. A participating credit union may also invest in the credit union service organization.
- 7859 A credit union shall give prior written notice to the Commissioner of its participation in each shared
- 7860 service facility or credit union service organization. Notice to the Commissioner of a credit union's
- 7861 participation in a credit union service organization shall satisfy the requirement of subsection E that the
- 7862 Commissioner be notified of the establishment of an office, if the credit union service organization has
- 7863 notified the Commissioner of the establishment of the shared service facility.
- 7864 D. The authority of the Commission and the Commissioner to supervise and regulate credit unions,

7865 as set forth in Article 2 (§ 6.2-1308 et seq.) of this chapter, shall extend to any shared service facility  
 7866 and any credit union service organization that is involved in the operation of a shared service facility  
 7867 that provides service to credit unions organized under this chapter, except that such authority shall not  
 7868 extend to the assets, records, books, and accounts of any federal credit union or credit union organized  
 7869 under the laws of another state.

7870 E. A credit union may change the location of its main office, a service facility, or office, and may  
 7871 close any such office, provided it gives at least 30 days' prior written notice thereof to the  
 7872 Commissioner in such form as he may prescribe. A credit union shall notify the Commissioner in writing  
 7873 within 10 days after it establishes, relocates, or closes any office. A credit union shall notify the  
 7874 Commissioner of its withdrawal from participation in any shared service facility within 10 days of such  
 7875 withdrawal.

7876 Article 4.  
 7877 Membership.

7878 § 6.2-1327. Membership defined; field of membership.

7879 A. The membership of a credit union shall consist of the incorporators, employees of such credit  
 7880 union, and other persons within the field of membership set forth in the bylaws as have: (i) been fully  
 7881 admitted into membership, (ii) paid any required entrance fee or annual membership fee, or both, (iii)  
 7882 subscribed for one or more shares, (iv) paid the initial installment thereon, and (v) complied with such  
 7883 other requirements as the articles of incorporation or bylaws specify.

7884 B. Credit union membership shall be limited to persons within a specified field of membership,  
 7885 individuals within the immediate family or household of such persons, associations of such persons,  
 7886 other credit unions, and employees of the credit union. The field of membership specified shall be  
 7887 composed of one of the following:

7888 1. A single group having a common bond of occupation or association;

7889 2. More than one group, each of which has a common bond of occupation or association, and each  
 7890 of which does not exceed 3,000 members at the time it is proposed to be included in a multiple  
 7891 common-bond credit union. The 3,000-member limitation shall not apply if the Commission determines  
 7892 that an exception on the grounds provided in subsection (d) (2) or (d) (3) of § 101 of the Credit Union  
 7893 Membership Access Act (12 U.S.C. § 1759) is appropriate. In making any determination under this  
 7894 provision, the Commission shall give consideration to the National Credit Union Administration  
 7895 guidelines; or

7896 3. Those persons or organizations within a well-defined local community, neighborhood or rural  
 7897 district.

7898 The Commission shall in its discretion determine whether a proposed field of membership constitutes  
 7899 a "well-defined local community, neighborhood or rural district." In making such determination, the  
 7900 Commission shall give consideration to the definition of the term that has been adopted by the National  
 7901 Credit Union Administration and has become legally effective.

7902 C. Except as the board of directors may provide to the contrary in the bylaws with respect to  
 7903 termination of membership, once a person or entity becomes a member of a credit union in accordance  
 7904 with this chapter, that person or entity may remain a member of that credit union until the person or  
 7905 entity chooses to withdraw from the credit union.

7906 D. The board of directors may expel from the credit union any member who: (i) has not carried out  
 7907 his obligations to the credit union; (ii) has been convicted of a criminal offense; (iii) neglects or refuses  
 7908 to comply with the provisions of this chapter or of the bylaws; (iv) neglects to pay his debts, or  
 7909 otherwise causes financial loss to the credit union; or (v) has deceived the credit union with regard to  
 7910 the use of borrowed money. No member shall be so expelled until he has been informed in writing of  
 7911 the charges against him, and an opportunity has been given to him, after reasonable notice, to be  
 7912 heard.

7913 E. Members of the credit union shall not be personally liable for payment of the debts of the credit  
 7914 union.

7915 F. The surviving spouse of a deceased credit union member shall be eligible to become a member of  
 7916 the credit union to which the deceased member belonged. In no other instance shall an individual be  
 7917 eligible for membership in a credit union on the basis of the individual's relationship to another person  
 7918 who is eligible for membership in the credit union, unless the individual is a member of the immediate  
 7919 family or household of such person. The board of directors of a credit union may provide in the bylaws  
 7920 for a less inclusive policy governing membership by virtue of relationship to another person, and such  
 7921 policy shall be effective.

7922 G. Societies, associations, organizations, partnerships, and corporations composed of persons who  
 7923 are eligible for membership may be admitted to membership in the same manner and under the same  
 7924 conditions as such persons.

7925 H. Any individual or entity that was a member of a credit union as of July 1, 1999, may remain a

7926 member of the credit union after that date, and any group that was included in the field of membership  
 7927 of a credit union on that date may remain within the field of membership of that credit union after that  
 7928 date. The successor of an entity that was a member or was eligible for membership in a credit union or  
 7929 for inclusion in a field of membership on July 1, 1999, retains the status of its predecessor.

7930 § 6.2-1328. Expansion of field of membership.

7931 When practicable and consistent with reasonable safety-and-soundness standards, the Commission  
 7932 shall encourage the formation of a separately chartered credit union instead of adding a new group to  
 7933 the field of membership of an existing credit union. If the Commission finds that the formation of a  
 7934 separate credit union by a group desiring such services is not practicable, or is not consistent with  
 7935 reasonable safety-and-soundness standards, it may authorize the group to be included in the field of  
 7936 membership of a state credit union that is located within reasonable proximity, if the Commission finds,  
 7937 based on the information it compiles, that the credit union proposed to be expanded:

7938 1. Is adequately capitalized and will continue to have insurance on its members' shares and other  
 7939 accounts;

7940 2. Has not engaged in any materially unsafe or unsound practice in the year preceding its  
 7941 application to expand; and

7942 3. Has the management, administrative and financial resources to serve the additional group  
 7943 effectively. The Commission shall not authorize the proposed inclusion of a new group unless it finds  
 7944 that any potential harm to another insured credit union or its members which would likely result from  
 7945 the proposed expansion is clearly outweighed in the public interest by the probable beneficial effects of  
 7946 the proposed expansion in meeting the convenience and needs of the members of the group proposed to  
 7947 be included.

7948 § 6.2-1329. Membership meetings; voting.

7949 A. The annual meeting and any special meeting of the credit union shall be held in accordance with  
 7950 the bylaws.

7951 B. At all meetings a member shall have but one vote. Except as hereinafter provided, no member  
 7952 may vote by proxy, but a member may vote by absentee ballot, mail, or other method if the bylaws so  
 7953 provide. An entity having membership in the credit union may be represented by one person authorized  
 7954 by the entity to so represent it. At any meeting called for the purpose of amending the articles of  
 7955 incorporation or dissolving the credit union any member may vote by proxy.

7956 C. The board of directors may establish a minimum age, not greater than 18 years of age, as a  
 7957 qualification of eligibility to vote at meetings of the members, to hold office, or both.

7958 § 6.2-1330. Special meetings.

7959 A. The supervisory committee by a majority vote may call a meeting of the members to consider any  
 7960 violation of this chapter, the credit union's articles of incorporation or bylaws, or any practice of the  
 7961 credit union deemed by the supervisory committee to be unsafe or unauthorized.

7962 B. The bylaws may also prescribe the manner in which a special meeting of the members may be  
 7963 called by the members or by the board of directors.

7964 Article 5.

7965 Share Insurance.

7966 § 6.2-1331. Definitions.

7967 As used in this article, unless the context requires a different meaning:

7968 "Corporation" means a corporation organized in accordance with this article.

7969 "Member credit union" means a credit union which is a member of the corporation.

7970 "Shares" means the interest of a member having a savings account in a member credit union.

7971 § 6.2-1332. Insurance of shares.

7972 Every credit union authorized to do business in the Commonwealth shall insure its members' shares  
 7973 with an approved insuring organization. A credit union that has been denied a commitment for  
 7974 insurance or fails to maintain insurance upon its shares shall either dissolve or merge with another  
 7975 credit union that is insured by such an insuring organization.

7976 § 6.2-1333. Establishment of corporation; purposes.

7977 A. Nine or more individuals, all of whom are duly authorized representatives, respectively, of nine or  
 7978 more credit unions may, pursuant to the provisions of the Virginia Nonstock Corporation Act  
 7979 (§ 13.1-801 et seq.), establish a corporation for the purpose of:

7980 1. Aiding and assisting any member credit union that is in liquidation or is experiencing financial  
 7981 difficulties, such as insolvency or nonliquidity, in order that the shares of a member of a member credit  
 7982 union shall be protected;

7983 2. Providing insurance for the shares of members of a member credit union in amounts, not less than  
 7984 \$20,000, that shall be established from time to time by the corporation with the approval of the  
 7985 Commission; and

7986 3. Cooperating with the Commission and member credit unions in maintaining and advancing the

7987 financial integrity of member credit unions.

7988 B. Except as otherwise herein provided, a corporation organized in accordance with this article shall  
7989 (i) have the powers contained in the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.); (ii) be  
7990 subject to the provisions thereof; and (iii) include in its corporate name the words "Credit Union Share  
7991 Insurance."

7992 § 6.2-1334. Contents of corporation bylaws; amendments thereto.

7993 A. The bylaws of a corporation shall specify:

7994 1. The requirements for membership including contributions to loss reserve, and for the revocation of  
7995 membership;

7996 2. The date of the annual meeting;

7997 3. The number of directors, which shall not be less than five;

7998 4. The conditions upon which loans to member credit unions may be made;

7999 5. The manner in which remaining assets are to be distributed in the event of dissolution after all  
8000 distributions required by subdivisions A 1 through A 3 of § 13.1-907 of the Virginia Nonstock  
8001 Corporation Act have been made;

8002 6. The manner and terms upon which reinsurance of shares may be obtained; and

8003 7. The conditions upon which contributions to loss reserve may be refunded when membership is  
8004 terminated.

8005 B. Bylaws filed with and approved by the Commission shall be the bylaws of the corporation, and no  
8006 amendments thereto by the corporation shall be operative unless they conform to the provisions of this  
8007 article and are approved by the Commission.

8008 C. Bylaws may be amended by the Commission by an order entered on its order book and certified  
8009 to the corporation. Before any such order is entered, the Commission shall notify the corporation of the  
8010 proposed amendment and afford it an opportunity to be heard thereon.

8011 § 6.2-1335. Application for membership; share insurance required.

8012 A. Every credit union organized:

8013 1. Prior to January 1, 1975, the shares of which are not insured by the National Credit Union Share  
8014 Insurance Fund on that date, shall apply for membership in a corporation before January 1, 1976; and

8015 2. On or after January 1, 1975, shall apply for membership in a corporation within 30 days after its  
8016 organization or by January 1, 1976, whichever is later.

8017 B. Failure to apply for membership in a corporation as required by subsection A shall constitute  
8018 grounds for the revocation by the Commission of the credit union's certificate of authority to do  
8019 business.

8020 C. Every credit union (i) that is required by subsection A to apply for membership in a corporation  
8021 and (ii) whose shares are not insured by a corporation at least in the amount of \$20,000 for each  
8022 member, by July 1, 1976, shall not thereafter receive the savings of its members or issue thereto any  
8023 other debt obligation until its shares are so insured. If the Commission determines that share insurance  
8024 issued by a corporation is not available to a credit union and that its shares are insured by the  
8025 National Credit Union Share Insurance Fund or under a plan of share insurance that has been  
8026 approved by the Commission, the credit union shall be permitted to continue its normal operations.

8027 § 6.2-1336. Loss reserve contributions.

8028 A. A corporation shall collect from each credit union accepted for membership an initial contribution  
8029 to loss reserve the greater of (i) \$5 or (ii) an amount equal to the percentage fixed in the bylaws of the  
8030 corporation, which percentage shall not exceed one percent, of the amount of its shares outstanding on  
8031 the last day of the month preceding the month in which application is filed. Whenever the initial  
8032 contribution to loss reserve and any additions thereto paid by a credit union amount to less than the  
8033 prescribed percentage of its outstanding shares of December 31, of any year, the corporation shall  
8034 collect the amount of the deficiency so that the total contributions to loss reserve paid by each credit  
8035 union is never less than the prescribed percentage of the amount of its outstanding shares on December  
8036 31 of any year in which it is a member, except to the extent that refunds have been paid under  
8037 subsection B. The amount of contribution by a credit union shall be carried on the books of each credit  
8038 union as an investment.

8039 B. Subject to the approval of the Commission, contributions to loss reserve may be refunded to  
8040 existing members whenever in the judgment of the directors the financial condition of the corporation  
8041 warrants such action. Refunds so made shall be on the basis of a uniform percentage of the total  
8042 contributions to loss reserve paid by each credit union and shall be credited to its reserve fund to the  
8043 extent that such contribution was charged thereto.

8044 § 6.2-1337. Annual and special assessments.

8045 A. A regular annual assessment, not to exceed one-twelfth of one percent of the member credit  
8046 union's outstanding shares, shall be levied by the directors. The directors may raise, lower or waive  
8047 such assessment for any year when the directors and the Commission agree that the net worth of the

8048 corporation justifies or requires such change. The member credit union's outstanding shares as of  
 8049 December 31 shall be the basis for calculating the assessment due in the ensuing year, and the directors  
 8050 shall determine the date the annual assessment is due and payable.

8051 B. In the event of potential impairment of the corporation's funds, special assessments may be levied  
 8052 by the directors with the approval of the Commission.

8053 C. Upon a finding by the Commission that it is necessary in order to maintain the financial  
 8054 soundness of the insurance fund, it may direct that the corporation make special assessments of its  
 8055 members.

8056 § 6.2-1338. Duties and additional powers of corporation.

8057 A corporation shall have the following powers in addition to those otherwise provided:

8058 1. To advance funds to aid member credit unions to operate and meet liquidity requirements;

8059 2. To assist in the merger, consolidation, and liquidation of credit unions;

8060 3. To receive by assignment or purchase from member credit unions property of any nature owned  
 8061 by them;

8062 4. Upon written direction of the Commission, to assume control of the property and business of any  
 8063 member credit union and to operate the credit union in accordance with the directions of the  
 8064 Commission; and

8065 5. To invest its funds in (i) bonds, notes, or securities of the Commonwealth and of the federal  
 8066 government, and their agencies; (ii) deposits in banks doing business in the Commonwealth; (iii)  
 8067 deposits in any savings institution doing business in the Commonwealth the accounts of which are  
 8068 insured by the Federal Deposit Insurance Corporation or other federal insurance agency; and (iv) such  
 8069 other investments as are deemed prudent by the directors and are approved by the Commission.

8070 § 6.2-1339. Duties and powers of Commission; judicial review.

8071 A. The Commission shall promptly forward to the corporation copies of all examination reports of  
 8072 member credit unions. The cost of furnishing the copies shall be paid by the corporation.

8073 B. If the Commission determines, pursuant to the provisions of § 6.2-1311 or 6.2-1313, that it should  
 8074 take possession of the business and property of a member credit union, the Commission may direct the  
 8075 corporation to assume control of such business and property and, subject to the Commission's orders  
 8076 operate the credit union until such time as the Commission permits the credit union to resume business  
 8077 or until its assets are finally liquidated. If the Commission orders the liquidation of an insolvent member  
 8078 credit union then in the control of the corporation through the purchase of the assets and the  
 8079 assumption of the liabilities of such credit union by another insured credit union, the corporation shall  
 8080 be empowered to convey all right, title, and interest in all or part of the assets and liabilities of the  
 8081 insolvent credit union to the other insured credit union. Upon such transfer, good title to the assets and  
 8082 liabilities conveyed shall vest in the other insured credit union. Any cost or expense incurred by the  
 8083 corporation in such operation of the credit union may be reimbursed from the assets of the credit union  
 8084 by an order of the Commission.

8085 C. The Commission may suspend or revoke, after notice of hearing, the certificate of authority to do  
 8086 business of any member credit union that fails to pay, when due, any assessment made by the  
 8087 corporation pursuant to this article.

8088 D. Any final action or order of the Commission under this article shall be subject to judicial review  
 8089 in accordance with the provisions of § 12.1-39.

8090 § 6.2-1340. Supervision, reports and examinations by Commission.

8091 A. The corporation shall be subject to supervision and annual examination by the Commission. The  
 8092 cost of each examination shall be paid by the corporation. The corporation shall file annually by such  
 8093 time and in such form as the Commission prescribes a statement showing its financial condition on  
 8094 December 31 of the previous year.

8095 B. In addition to the annual statement, the Commission from time to time may require the  
 8096 corporation to file such further reports, exhibits or statements as it deems necessary to furnish full  
 8097 information concerning the condition, solvency, transactions and affairs of the corporation. The  
 8098 Commission shall prescribe the time within which such additional reports, exhibits or statements shall  
 8099 be filed and may require verification by such officers of the corporation as it may designate.

8100 C. Whenever the Commission deems it expedient to do so, it may make or direct to be made  
 8101 additional examinations of the affairs of the corporation, the cost of which shall be paid by the  
 8102 corporation. Upon completion of an examination, a copy of the report thereof shall be furnished to the  
 8103 corporation.

8104 § 6.2-1341. Audit by corporation and corrective measures; appeal.

8105 A. A corporation may require independent audits and investigations of any member credit union to  
 8106 ascertain its financial condition as it relates to share insurance.

8107 B. If the directors of a corporation ascertain evidence of carelessness, unsound practices, or  
 8108 mismanagement of any member credit union that appears to adversely affect the solvency or liquidity of

8109 *the credit union or threaten loss to the corporation, the directors shall notify the Commission and may*  
 8110 *order that corrective action be taken or, after due notice and hearing, as provided in the bylaws, revoke*  
 8111 *the credit union's membership in the corporation.*

8112 *C. If a member credit union is aggrieved by any decision, action, or order of the corporation, it may*  
 8113 *appeal the decision, action, or order to the Commission. The Commission may modify, reverse, or affirm*  
 8114 *such decision, action, or order.*

8115 *§ 6.2-1342. Tax exemptions.*

8116 *Any corporation shall be exempt from all state and local taxes except real and personal property*  
 8117 *taxes.*

8118 *§ 6.2-1343. Inconsistent laws inapplicable.*

8119 *All other general or special laws, or parts thereof, inconsistent with the provisions of this article*  
 8120 *shall be inapplicable to the provisions of this article.*

8121 *Article 6.*

8122 *Change in Corporate Status.*

8123 *§ 6.2-1344. Voluntary merger.*

8124 *A. A credit union organized under this chapter may merge, with the approval of the Commission,*  
 8125 *with one or more other credit unions, state or federal. In any case in which the surviving credit union*  
 8126 *will be a Virginia state-chartered credit union, a merger application, accompanied by an application fee*  
 8127 *of \$300, shall be filed with the Commission. The Commission shall approve the application if the*  
 8128 *Commission finds that:*

8129 *1. The field of membership of the credit union which is proposed to result from the merger satisfies*  
 8130 *the requirements of subsection B of § 6.2-1327;*

8131 *2. The plan of merger will promote the best interests of the members of the credit unions; and*

8132 *3. The members of the merging credit unions have approved the plan of merger in accordance with*  
 8133 *applicable laws and regulations. Notwithstanding subsection D of § 13.1-895, the members of a Virginia*  
 8134 *state-chartered credit union may authorize a plan of merger by vote of at least a majority of all votes*  
 8135 *cast thereon at an annual or special meeting at which a quorum is present. Notwithstanding the terms*  
 8136 *of § 13.1-895, in a merger where a Virginia credit union will be the resulting credit union, the adoption*  
 8137 *of the plan of merger by the board of directors of that credit union shall be sufficient approval of the*  
 8138 *plan, and approval of the plan of merger by the members of that credit union shall not be required.*  
 8139 *Notice of the meeting may be given in a manner prescribed in the articles of incorporation or bylaws,*  
 8140 *notwithstanding the terms of § 13.1-842 relating to the manner of notice. A federal credit union merging*  
 8141 *with a state credit union may give notice to its members as prescribed by federal regulation.*

8142 *B. If the Commission finds that the requirements of subsection A have been met and all required fees*  
 8143 *have been paid, it shall approve the merger and issue a certificate of merger, which shall be admitted*  
 8144 *to record in its office and in the office for the recording of deeds in the city or county in which the*  
 8145 *registered office of each credit union is located. No such further recordation shall be required in the*  
 8146 *City of Richmond or the Counties of Chesterfield or Henrico.*

8147 *C. Upon the issuance of the certificate of merger the provisions of § 13.1-897, mutatis mutandis,*  
 8148 *shall become effective.*

8149 *D. For the purposes of this section, a member entitled to vote may vote in person or, unless the*  
 8150 *articles of incorporation or bylaws otherwise provide, by proxy. A member may appoint a proxy to vote*  
 8151 *or otherwise act for him by signing an appointment form. An appointment of a proxy becomes effective*  
 8152 *when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is*  
 8153 *valid for 11 months unless a different period is expressly provided in the appointment form or the*  
 8154 *appointment is revoked by the member.*

8155 *§ 6.2-1345. Voluntary dissolution.*

8156 *A. A credit union may dissolve in accordance with the provisions of Article 13 (§ 13.1-902 et seq.) of*  
 8157 *Chapter 10 of Title 13.1. Within 10 days after the board of directors votes to recommend dissolution to*  
 8158 *the members, the board shall notify the Commissioner and the insuring organization of that fact in*  
 8159 *writing, setting forth the reasons for the proposed dissolution.*

8160 *B. The dissolving credit union shall also (i) notify the Commissioner of the result when the members*  
 8161 *have voted on the proposal to dissolve and (ii) file with the Commissioner a copy of the certificate of*  
 8162 *dissolution and the certificate of termination of corporate existence of the credit union within 10 days of*  
 8163 *the issuance of each.*

8164 *§ 6.2-1346. Conversion of federal credit union to state credit union.*

8165 *A credit union organized under the laws of the United States and authorized to do business in this*  
 8166 *Commonwealth may convert to a credit union organized under the laws of the Commonwealth by the*  
 8167 *following procedure:*

8168 *1. The directors of the federal credit union shall organize a corporation under this chapter and the*  
 8169 *Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) for the purpose set forth in § 6.2-1320;*

8170 2. The new corporation shall apply for a certificate of authority to do business as a credit union as  
8171 provided in § 6.2-1321;

8172 3. The federal credit union shall follow the procedures set forth in § 125 (a), of the Federal Credit  
8173 Union Act (12 U.S.C. § 1771), as it now exists or may hereafter be amended, for conversion;

8174 4. Upon completion of the requirements of the Federal Credit Union Act, the authorized officers of  
8175 the federal credit union shall execute a certificate setting forth the procedures followed, the number of  
8176 members eligible to vote and the number voting in favor of the plan of conversion and file said  
8177 certificate with the Commission; and

8178 5. When the Commission has determined that all of the requirements of this section have been  
8179 complied with, and that the criteria of § 6.2-1321 have been met, the Commission shall authorize the  
8180 state-chartered credit union to commence business as of the date it ceases to be a federal credit union.  
8181 The successor state-chartered credit union shall be vested with all of the assets and shall continue to be  
8182 responsible for all of the obligations of the federal credit union to the same extent as though the  
8183 conversion had not taken place.

8184 § 6.2-1347. Conversion of state credit union to federal credit union.

8185 A state credit union may convert to a federal credit union by the following procedure:

8186 1. At any meeting of the members called and held in accordance with the Virginia Nonstock  
8187 Corporation Act (§ 13.1-801 et seq.) to consider such action, the members, by an affirmative vote of  
8188 those holding and voting two-thirds of the votes present in person or by proxy, may resolve to convert  
8189 the credit union into a federal credit union;

8190 2. A copy of the minutes of the meeting duly certified by the authorized officer of the credit union  
8191 shall be transmitted to the Commission;

8192 3. The state credit union shall take such action as is necessary under § 125 (b), of the Federal  
8193 Credit Union Act (12 U.S.C. § 1771), as it now exists or may hereafter be amended, to make it a federal  
8194 credit union;

8195 4. It shall file with the Commission a certified copy of the organization certificate approved by the  
8196 National Credit Union Administration Board; and

8197 5. Upon receipt of the organization certificate the state credit union shall become a federal credit  
8198 union which shall be vested with all of the assets and shall continue to be responsible for all of the  
8199 obligations of the state credit union to the same extent as though the conversion had not taken place.

#### 8200 Article 7.

#### 8201 Direction of Affairs.

8202 § 6.2-1348. Board of directors; number; election; term; appointment of supervisory; and credit  
8203 committee.

8204 A. The board of directors shall have the authority and responsibility for directing the business  
8205 affairs, funds, and records of the credit union.

8206 B. The board shall consist of an odd number of directors, at least five in number, to be elected by  
8207 and from the members. After the election of the initial board at the organizational meeting, the election  
8208 of the board shall be held at the annual meeting or at such other time as the bylaws provide.

8209 C. A director shall be elected for a term of not less than one year nor more than four years, as  
8210 provided in the bylaws. If the term is more than one year, the bylaws shall establish terms of office so  
8211 that an approximately equal number of directors shall be elected each year. A director, unless removed  
8212 from office, shall hold office until a successor is elected and qualified. Directors may serve more than  
8213 one term. Any vacancy on the board of directors shall be filled until the next annual election by  
8214 appointment by the remainder of the directors.

8215 D. The board of directors at its first meeting following the annual election shall appoint a  
8216 supervisory committee from the membership. The supervisory committee shall consist of an odd number  
8217 of members, not less than three. No member of the board of directors or the credit committee shall  
8218 serve on the supervisory committee. The terms for the members of the supervisory committee shall be as  
8219 provided in the bylaws.

8220 E. Unless the members have authorized and directed the board of directors to serve as the credit  
8221 committee, the board of directors at its first meeting following the annual election shall either appoint:

8222 1. A credit committee, which shall be appointed from the membership. The credit committee shall  
8223 consist of an odd number of members, not less than three. No member of the board of directors or the  
8224 supervisory committee shall serve on the credit committee unless authorized by the provisions of this  
8225 section. The terms for the members of the credit committee shall be as provided in the bylaws; or

8226 2. One or more loan officers to carry out the duties and responsibilities of the credit committee.

8227 § 6.2-1349. Board of directors; election of officers.

8228 A. At its first meeting after the annual election, the board of directors shall elect from its own  
8229 number (i) an executive officer, who may be designated as chairman of the board or president; (ii) a  
8230 vice-chairman of the board or one or more vice-presidents; (iii) a secretary; and (iv) a treasurer. The

8231 same member may simultaneously hold more than one office in the credit union, if the bylaws so  
8232 provide. The board of directors shall also elect any other officers that are specified in the bylaws.

8233 B. The board of directors shall appoint (i) a chief operating officer of the credit union to be in  
8234 active charge of its operations and (ii) a financial officer. The chief operating officer may also serve as  
8235 the financial officer.

8236 C. The terms of the officers shall be one year or until their successors are elected and qualified.

8237 D. The duties of the officers shall be as prescribed in the bylaws.

8238 E. A credit union may use any other title it chooses for officers, so long as such titles are not  
8239 misleading.

8240 § 6.2-1350. Executive committee.

8241 The board of directors may appoint from its own number an executive committee, consisting of not  
8242 less than three directors. The executive committee may be authorized to act for the board in all respects,  
8243 subject to such conditions and limitations as are prescribed by the board and subsection D of  
8244 § 13.1-869.

8245 § 6.2-1351. Meetings of directors.

8246 The board of directors and the executive committee shall meet as often as the bylaws prescribe.

8247 § 6.2-1352. Compensation of officials.

8248 No member of the board of directors shall receive any compensation for his services as a member of  
8249 the board. The members of the credit or supervisory committee may receive for their services, as  
8250 members, such compensation as the board of directors may determine. Health, accident, and term life  
8251 insurance protection for a director or committee member shall not be considered compensation.  
8252 Directors and committee members, while on official business of the credit union, may be reimbursed for  
8253 necessary expenses incidental to performing the business of the credit union. Official business of the  
8254 credit union shall include attendance at regular or special meetings of the board of directors or  
8255 committees thereof.

8256 § 6.2-1353. Powers and duties of directors.

8257 In addition to any other duties set forth in this chapter, the board of directors shall have the  
8258 following powers and duties:

8259 1. To act upon applications for membership and upon the expulsion of a member. The board of  
8260 directors may appoint one or more membership officers to act upon applications for membership. A  
8261 record of the membership officer's approval or denial of membership shall be available to the board of  
8262 directors for inspection. A person denied membership by a membership officer may appeal the denial to  
8263 the board;

8264 2. To purchase and maintain fidelity bond coverage, in accordance with regulations of the  
8265 Commission;

8266 3. To determine from time to time the rates of interest that shall be charged on loans and to  
8267 prescribe the conditions under which interest refunds will be made;

8268 4. To fix the amount, if any, that may be charged for initial and annual membership fees;

8269 5. To determine the maximum amount of shares that may be held by, and the maximum amount  
8270 which may be loaned to, any one member;

8271 6. To declare dividends on share accounts;

8272 7. To determine the manner in which dividends shall be paid on shares issued or withdrawn during  
8273 a dividend period;

8274 8. To fill vacancies in the supervisory committee or in the credit committee until the election or  
8275 appointment, as the case may be, and qualification of successors;

8276 9. To remove any member of the board of directors failing to attend regular meetings of the board  
8277 without good cause shown for three consecutive months or otherwise failing to perform any of the duties  
8278 devolving upon him as a director;

8279 10. To remove any member of the credit committee failing to attend three consecutive regular  
8280 meetings of the credit committee without good cause shown or otherwise failing to perform any of the  
8281 duties devolving upon him as a credit committee member;

8282 11. To suspend any member of the supervisory committee failing to attend regular meetings of the  
8283 supervisory committee without cause or otherwise failing to perform any of the duties devolving upon  
8284 him as a supervisory committee member, provided that the members shall decide at a meeting held not  
8285 less than 10 nor more than 25 days after such suspension if such suspended committee member shall be  
8286 removed from or restored to the supervisory committee;

8287 12. To have charge of the investment of the funds of the credit union, except that the board of  
8288 directors may designate an investment committee or any qualified individual to have charge of making  
8289 investments pursuant to written policies established by the board of directors;

8290 13. To establish policy on loans to members, which policy shall provide that the rates, terms, and  
8291 conditions on any loan or line of credit either made to, or endorsed or guaranteed by (i) an official, (ii)

8292 *an immediate family member of an official, or (iii) any individual having a common ownership,*  
 8293 *investment, or other pecuniary interest in a business enterprise with an official or with an immediate*  
 8294 *family member of an official shall not be more favorable than the rates, terms, and conditions for*  
 8295 *comparable loans or lines of credit to other credit union members;*

8296 *14. To designate a depository or depositories for the funds of the credit union;*

8297 *15. To authorize the acquisition or conveyance of real property;*

8298 *16. To authorize the employment and compensation of the president or person named by the board to*  
 8299 *manage the affairs of the credit union;*

8300 *17. To make adequate provisions for reserves; and*

8301 *18. To perform such other duties as the members may from time to time authorize.*

8302 *§ 6.2-1354. Credit committee or loan officers; appeal.*

8303 *A. The credit committee of a credit union shall approve every loan or advance made by the credit*  
 8304 *union to members, unless the committee is replaced by a loan officer as provided in subdivision E 2 of*  
 8305 *§ 6.2-1348.*

8306 *B. If the credit committee has not been replaced by action of the board of directors, it may appoint*  
 8307 *and delegate to loan officers the authority to approve or disapprove loan applications, subject to the*  
 8308 *written policies prescribed by the board of directors. The approval of an application by the credit*  
 8309 *committee shall be by a majority of members of the committee who are present at the meeting at which*  
 8310 *it is considered, provided a majority of the full committee is present.*

8311 *C. All applications disapproved by a loan officer may, upon request of the applicant, be reviewed by*  
 8312 *the credit committee. The approval of a majority of members of the credit committee who are present at*  
 8313 *the meeting when such review is undertaken shall be required to reverse the loan officer's decision. A*  
 8314 *majority of members of the full credit committee shall be present at such review. A member whose*  
 8315 *application was disapproved by a loan officer or the credit committee may appeal such action to the*  
 8316 *board of directors.*

8317 *D. No individual shall have the authority to disburse funds of the credit union for any loan for*  
 8318 *which the application has been approved by him in his capacity as a loan officer.*

8319 *E. The credit committee shall meet as often as the business of the credit union may require to*  
 8320 *consider applications for loans or to review the work of the loan officers, as the case may be.*  
 8321 *Reasonable notice of each such meeting shall be given to each member of the committee.*

8322 *§ 6.2-1355. Supervisory committee; suspension and removal of officials.*

8323 *The supervisory committee:*

8324 *1. Shall make or cause to be made an annual audit of the credit union, and shall submit a report of*  
 8325 *that audit to the board of directors and a summary of the report to the members at the next annual*  
 8326 *meeting of the credit union;*

8327 *2. Shall make or cause to be made such supplementary audits and verification of members' accounts*  
 8328 *as it deems necessary or as may be ordered by the board of directors, and shall submit such report to*  
 8329 *the board of directors; and*

8330 *3. May by unanimous vote suspend any officer of the credit union or any member of the credit*  
 8331 *committee or of the board of directors, until the next meeting of members, which shall be held not less*  
 8332 *than 10 nor more than 25 days after any such suspension, at which meeting such suspension shall be*  
 8333 *acted upon by the members.*

8334 *§ 6.2-1356. Special audit.*

8335 *The Commissioner may require a credit union to have an independent audit made of its books,*  
 8336 *records, and methods of operation by a certified public accountant or other qualified person or firm*  
 8337 *approved by the Commissioner, whenever it appears to the Commissioner that (i) the system of internal*  
 8338 *controls pertaining to the credit union is not adequate, (ii) the credit union is engaging in unsafe or*  
 8339 *unsound practices, or (iii) the financial condition of the credit union makes such an audit necessary.*

8340 *§ 6.2-1357. Qualifications of officials.*

8341 *Every officer, director, and committee member shall be a member of the credit union.*

8342 *Article 8.*

8343 *Accounts.*

8344 *§ 6.2-1358. Share accounts.*

8345 *A. Every credit union may issue shares to and maintain share accounts for any member qualified*  
 8346 *pursuant to the credit union's bylaws.*

8347 *B. Shares and share accounts may be withdrawn for payment to the account holder or to third*  
 8348 *parties in such manner and in accordance with such procedures as may be established by the board of*  
 8349 *directors.*

8350 *C. Shares and share accounts shall be subject to any withdrawal notice requirement that may be*  
 8351 *imposed pursuant to the credit union bylaws.*

8352 *§ 6.2-1359. Payment for shares; transfers; lien on shares.*

8353 Shares shall be paid for in money. Shares may be subscribed to, paid for, and transferred in such  
 8354 manner as the bylaws prescribe. The credit union shall have a lien on the shares, including share  
 8355 accounts of a member in his individual, joint, or trust accounts and upon any dividends payable thereon  
 8356 as security for all debts and obligations owed by, and for any loan endorsed by, such member to the  
 8357 credit union.

8358 § 6.2-1360. Dividends.

8359 A. At such intervals and for such periods as the bylaws provide and after provision for the required  
 8360 reserves, the board of directors may declare dividends on share accounts from the undivided earnings  
 8361 or other funds set aside for dividends.

8362 B. Dividends may be paid at different rates on different types of share accounts and at different rates  
 8363 and maturity dates in the case of share certificates.

8364 C. Dividend credit may be accrued on shares as authorized by the board of directors.

8365 D. The rates of dividends and terms of payment may be declared in advance by the board of  
 8366 directors.

8367 E. In no event shall a dividend be paid, if, after the payment thereof, the liabilities of the credit  
 8368 union would exceed its assets.

8369 § 6.2-1361. Ascertaining value of assets.

8370 In ascertaining the value of the assets of a credit union:

8371 1. A loan delinquent for more than two but less than six months shall be valued at 90 percent of the  
 8372 unpaid balance;

8373 2. A loan delinquent for six months but less than 12 months shall be valued at 75 percent of the  
 8374 unpaid balance; and

8375 3. A loan delinquent for 12 months or more shall be treated as of no value.

8376 § 6.2-1362. Minors' accounts.

8377 A credit union may issue shares in the name of a minor as the sole and absolute owner of such  
 8378 shares and may accept the purchase of such shares by and for such owner, pay withdrawals from such  
 8379 share accounts, and act in any other manner with respect to such share accounts on the order of such  
 8380 minor. Any withdrawal of shares or delivery of funds from such account to the owner thereof, or  
 8381 payment of a share draft or other written order for withdrawal signed by such minor owner, shall be a  
 8382 valid and sufficient release and discharge of the credit union for any payment, withdrawal, or delivery  
 8383 so made. The parent or guardian of such minor shall not in his capacity as parent or guardian have the  
 8384 power to withdraw or transfer shares in any such account unless the minor has given written notice to  
 8385 the credit union to accept the signature of such parent or guardian.

8386 § 6.2-1363. Individual retirement accounts and retirement or pension plans.

8387 A. A credit union may act as trustee or custodian of (i) individual retirement accounts established  
 8388 with the credit union for the benefit of its members under the federal Employee Retirement Income  
 8389 Security Act of 1974 (P.L. 93-406, 88 Stat. 829) (ERISA), as amended from time to time; (ii) pension  
 8390 funds of self-employed individuals or of a company or organization sponsoring the credit union; or (iii)  
 8391 other similar retirement or pension plans.

8392 B. Contributions to and earnings on an account described in clause (i) of subsection A may be  
 8393 accepted and retained in accordance with ERISA but shall be invested in shares of the credit union. If  
 8394 the credit union bylaws so provide such accounts may be established for the benefit of members in the  
 8395 names of other trustees or custodians who are qualified to serve as such under the laws of this  
 8396 Commonwealth and ERISA.

8397 § 6.2-1364. Acceptance of money under Virginia Uniform Transfers to Minors Act.

8398 A credit union may accept money paid to it pursuant to the Virginia Uniform Transfers to Minors  
 8399 Act (§ 31-37 et seq.) for credit to an account in the name of the custodian as provided in such Act if the  
 8400 custodian or the minor for whose benefit the transfer is made is a member of the credit union.

8401 § 6.2-1365. Accounts of deceased or incapacitated person.

8402 A. A credit union may pay any share balance due a deceased person or any person under a  
 8403 disability to the personal representative, guardian, conservator, curator, or committee of such person  
 8404 upon proper proof of the appointment and qualification of such fiduciary. Such qualification shall be  
 8405 sufficient authority for making such payment. A credit union making such payment shall no longer be  
 8406 liable for the amount so paid to any person. The presentation of a duly certified letter or certificate of  
 8407 qualification as personal representative, or other fiduciary, guardian, conservator, curator, or committee  
 8408 shall be conclusive proof of the jurisdiction of the court issuing the same.

8409 B. A credit union that has received no written notice and does not have actual notice that a member  
 8410 is deceased or has been adjudicated incapacitated, may pay or deliver shares in such member's account  
 8411 in accordance with the provisions of the account contract without liability to any person for the amounts  
 8412 so paid.

8413 § 6.2-1366. Payment of small balances to distributees or other persons.

8414 A. When the share balance of a deceased person upon whose estate there has been no qualification  
 8415 does not exceed \$15,000, it shall be lawful for the credit union, after 60 days from the death of such  
 8416 person, to pay such balance to the decedent's spouse, and if none, to the distributees of the decedent or  
 8417 other persons entitled thereto under the laws of the Commonwealth. The receipt therefor shall be a full  
 8418 discharge of the credit union for the amount so paid. Such balance or any part thereof shall not exceed  
 8419 the amount given a priority by § 64.1-157 after 30 days from the death of such person.

8420 B. Upon the written request of the spouse, or if there is none, the distributees of the decedent or  
 8421 other persons entitled thereto under the laws of the Commonwealth, the balance may be paid to the  
 8422 funeral director or mortuary handling the funeral of the decedent. A receipt of the payee shall be a full  
 8423 and final release of the credit union for the amount so paid.

8424 § 6.2-1367. Application of provisions to federal credit unions.

8425 The provisions of §§ 6.2-1365 and 6.2-1366 shall apply to federal credit unions operating in this  
 8426 Commonwealth to the extent that the same are not inconsistent with any federal law applicable to such  
 8427 credit unions.

8428 § 6.2-1368. Accounts of fiduciaries.

8429 A credit union may issue shares and maintain share accounts in the name of any person or entity  
 8430 eligible for membership in such credit union pursuant to § 6.2-1327 as administrator, executor,  
 8431 custodian, conservator, guardian, trustee, or other fiduciary for a named beneficiary. The payment of  
 8432 funds from any such account pursuant to a share draft or other written order of withdrawal signed by  
 8433 the fiduciary, the delivery of funds in such account to such fiduciary, or a receipt signed by any such  
 8434 fiduciary with regard to the payment of funds from such account, shall be valid and sufficient release  
 8435 and discharge of the credit union for the payment or delivery so made.

8436 § 6.2-1369. Credit union need not inquire as to fiduciary funds used to purchase shares in fiduciary's  
 8437 personal account.

8438 A. If any fiduciary or agent purchases shares in a credit union in his own name (i) with share drafts  
 8439 or other instruments drawn by him upon an account in his own name as fiduciary, (ii) with share drafts  
 8440 or other instruments drawn by him upon an account in the name of his principal, if he is empowered to  
 8441 draw share drafts or other instruments thereto, or (iii) with share drafts or other instruments payable to  
 8442 his principal and endorsed by him as fiduciary, the credit union issuing such shares shall not be bound  
 8443 to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary.

8444 B. The credit union is authorized to pay the amount of the shares issued or any part thereof upon  
 8445 the withdrawal by the fiduciary without being liable to the principal, unless the credit union receives  
 8446 payment for the shares or pays the withdrawal (i) with the actual knowledge that the fiduciary, in  
 8447 purchasing such shares or in making such withdrawal, is committing a breach of his obligation as a  
 8448 fiduciary, or (ii) with knowledge of such facts that its action in issuing the shares or paying the  
 8449 withdrawal amounts to bad faith.

8450 Article 9.

8451 Loans and Investments.

8452 § 6.2-1370. Purpose and condition of loans.

8453 A credit union may lend to its members for such purposes and upon such conditions as the bylaws  
 8454 may prescribe. The board of directors shall establish written policies with respect to granting loans and  
 8455 extending lines of credit, including the terms, conditions, and acceptable forms of security.

8456 § 6.2-1371. Other charges.

8457 A. In addition to interest charged on loans, a credit union may charge members all reasonable  
 8458 expenses in connection with making, closing, disbursing, extending, collecting, or renewing loans.

8459 B. In accordance with the bylaws, a credit union may assess charges to members for failure to meet  
 8460 in a timely manner their obligations to the credit union.

8461 § 6.2-1372. Loan limits.

8462 A. No loan may be made by a credit union to a member if, upon making the loan, the member would  
 8463 be indebted to the credit union on loans to such member in an aggregate amount which would exceed  
 8464 the lesser of (i) 10 percent of the credit union's share accounts and reserve fund or (ii) the maximum  
 8465 amount as authorized by its bylaws.

8466 B. The aggregate amount of a credit union's "member business loans," as defined in 12 C.F.R.  
 8467 § 701.21 (h), shall not exceed the limit prescribed for insured credit unions by subsection (a) of § 107A  
 8468 of the Federal Credit Union Act (12 U.S.C. § 1757a), taking into account also the provisions of  
 8469 subsections (b) through (d) of that section.

8470 § 6.2-1373. Loans to members of credit committee; nonmember loans.

8471 A. If the borrower or endorser on a loan by a credit union is a member of the credit committee, or a  
 8472 member of the board of directors if the board is serving as the credit committee, the loan shall be  
 8473 approved by the supervisory committee or a loan officer instead of by the credit committee. If the loan  
 8474 is fully secured by shares, such loan may be approved by the credit committee.

8475 *B. No loan shall be made to an individual or entity that is not a member of the credit union. If the*  
 8476 *credit committee or loan officer should knowingly approve such a loan, the members of the credit*  
 8477 *committee shall be jointly and severally liable, or in the case of a loan officer, he shall be individually*  
 8478 *liable, to the credit union for the immediate repayment thereof.*

8479 *§ 6.2-1374. Lines of credit.*

8480 *Notwithstanding the requirements of § 6.2-1354, the credit committee or a loan officer may approve*  
 8481 *an application for a line of credit. When a line of credit has been approved, advances may be made as*  
 8482 *requested without further loan application or approval if the aggregate outstanding balance on all*  
 8483 *advances does not exceed the limit specified.*

8484 *§ 6.2-1375. Cooperative loans.*

8485 *A credit union may originate loans to credit union members jointly with other credit unions, credit*  
 8486 *union organizations, or other financial institutions pursuant to written policies established by the board*  
 8487 *of directors. The policies shall include the limitation set forth in § 6.2-1372. A credit union that*  
 8488 *originates such a loan shall retain at least a 10 percent interest in such loan.*

8489 *§ 6.2-1376. Authorized investments.*

8490 *The funds of a credit union that are not used in loans to members may be invested only:*

8491 *1. In loans to other insured credit unions to the extent permitted in the bylaws;*

8492 *2. In shares, share accounts, or deposits of other insured credit unions to the extent authorized in its*  
 8493 *bylaws, but not to exceed 25 percent of the investing credit union's outstanding shares and reserve fund;*

8494 *3. Notwithstanding any other provision of this section, in shares or deposits of any corporate credit*  
 8495 *union provided such investments are specifically authorized by the board of directors making the*  
 8496 *investment;*

8497 *4. In federally insured banks and savings institutions;*

8498 *5. In the capital stock of the National Credit Union Central Liquidity Facility or any central liquidity*  
 8499 *facility established under the laws of the Commonwealth;*

8500 *6. In obligations of the United States and securities fully guaranteed as to principal and interest*  
 8501 *thereby;*

8502 *7. In obligations of the Commonwealth and any political subdivision thereof, including, but not*  
 8503 *limited to, revenue bonds;*

8504 *8. In such stock, securities, obligations, or other investments as may be approved from time to time*  
 8505 *by the Commission;*

8506 *9. In real estate, office buildings, equipment, and furnishings of the credit union provided that the*  
 8507 *aggregate investment in all such fixed assets shall not exceed five percent of the total of the members'*  
 8508 *share accounts without the prior written authorization of the Commissioner;*

8509 *10. In shares, stock, deposits in, loans, or other obligations of any credit union service organization,*  
 8510 *corporation, or association, if (i) the membership or ownership, as the case may be, of such*  
 8511 *organization, corporation, or association is primarily confined or restricted to credit unions or*  
 8512 *organizations of credit unions and (ii) the purpose for which such organization, corporation, or*  
 8513 *association is organized is to strengthen or advance the development of credit unions or credit union*  
 8514 *organizations. Such investment by any credit union shall not exceed five percent of the credit union's*  
 8515 *outstanding shares and reserves without the prior approval of the Commissioner;*

8516 *11. In deposits in, loans to, or shares of any Federal Reserve Bank; and*

8517 *12. In cooperative loans with other credit unions or credit union organizations. Such investment shall*  
 8518 *not exceed 10 percent of outstanding shares and reserves of the investing credit union.*

8519 *Article 10.*

8520 *Reserves.*

8521 *§ 6.2-1377. Maintenance of regular reserves; special reserves.*

8522 *A. A credit union shall establish and maintain a regular reserve account in accordance with the*  
 8523 *applicable provisions of Part 702 of the National Credit Union Administration Rules and Regulations,*  
 8524 *12 C.F.R. §§ 702.1 through 702.403.*

8525 *B. The Commission may increase or decrease the reserve requirement when in its opinion such an*  
 8526 *increase or decrease is necessary or desirable.*

8527 *C. In addition to such regular reserve, special reserves shall be established when found by the board*  
 8528 *of directors of the credit union or by the Commission to be necessary to protect the interest of members.*

8529 *D. Unless otherwise prohibited by the Commission, the board of directors of a credit union may*  
 8530 *establish the regular reserve in an amount in excess of that required by this section when in its opinion*  
 8531 *the increased amount is necessary or desirable.*

8532 *§ 6.2-1378. Use of reserves.*

8533 *Losses may be charged to the reserve fund. Any sums recovered on items previously charged to it*  
 8534 *shall be credited to the reserve fund. No dividends shall be paid out of the reserve fund unless the fund,*  
 8535 *after such payment, exceeds the total amount required to be set aside in the regular reserve and special*

8536 reserves of the credit union.

Article 11.

Out-of-State Credit Unions.

8539 § 6.2-1379. Out-of-state credit unions.

8540 A. A credit union organized and doing business in another state may conduct business as a credit  
8541 union in the Commonwealth with the approval of the Commission. The Commission shall grant such  
8542 approval if it shall find that the out-of-state credit union:

8543 1. Is a credit union duly organized under the laws of another state that would allow credit unions  
8544 organized in the Commonwealth to conduct business in that state;

8545 2. Has share insurance for its members;

8546 3. Reasonably needs to establish a place of business in the Commonwealth to adequately serve its  
8547 members in the Commonwealth;

8548 4. Is examined and supervised by the supervisory authority of the state in which the out-of-state  
8549 credit union is organized; and

8550 5. Has filed an application with the Commission to conduct such business.

8551 B. The out-of-state credit union shall:

8552 1. Grant loans at rates of interest not in excess of the rates permitted for credit unions organized  
8553 under the laws of the Commonwealth;

8554 2. Comply with the same consumer protection provisions that credit unions organized under the laws  
8555 of the Commonwealth are required to obey;

8556 3. Designate and maintain a registered agent in the Commonwealth;

8557 4. Submit all examination reports from its supervisory agency to the Commission;

8558 5. Have any insurer of shares designate an agent for service of process and agree that in the  
8559 absence of such designation service may be upon the clerk of the Commission;

8560 6. Inform the members of the credit union who use any facility authorized pursuant to this section of  
8561 the state where the organization, supervision, and share insurance of the credit union are, and of the  
8562 fact that it is not regulated, supervised, or insured by any agency of the Commonwealth; and

8563 7. Comply with § 6.2-1326.

8564 C. Credit unions organized in the Commonwealth may establish offices outside the Commonwealth  
8565 upon approval of the Commission.

8566 D. The Commission may suspend or revoke the authority of an out-of-state credit union to do  
8567 business in the Commonwealth if the Commission finds that such credit union is not in compliance with  
8568 the requirements of this section.

8569 § 6.2-1380. Examinations; periodic reports; cooperative agreements; assessment of fees.

8570 A. The Commission may make such examinations of an out-of-state credit union conducting business  
8571 in the Commonwealth pursuant to § 6.2-1379 as the Commission may deem necessary to determine  
8572 whether the credit union is operating in compliance with the laws of the Commonwealth or to ensure  
8573 that any office or facility of the out-of-state credit union is being operated in a safe and sound manner.  
8574 The provisions of § 6.2-1309 shall apply to such examinations.

8575 B. The Commission shall require periodic reports from any out-of-state credit union that so conducts  
8576 business in the Commonwealth. Such reports shall be filed under oath with such frequency and in such  
8577 scope and detail as may be appropriate for the purpose of assuring continuing compliance with the  
8578 provisions of this chapter.

8579 C. The Commission may enter into cooperative agreements with appropriate state credit union  
8580 supervisors and federal credit union agencies for the examination of any office or facility in the  
8581 Commonwealth of an out-of-state credit union, or any office or facility of a Virginia credit union in any  
8582 host state, and may accept such supervisors' and agencies' reports of examination and reports of  
8583 investigation in lieu of conducting its own examinations or investigations. The Commission may enter  
8584 into joint actions with other state credit union supervisors and federal agencies having concurrent  
8585 jurisdiction over any such out-of-state credit union or any branch of a Virginia credit union, or may  
8586 take such actions independently to carry out its responsibilities under this article and to assure  
8587 compliance with the laws of the Commonwealth.

8588 D. Out-of-state credit unions may be assessed and, if assessed, shall pay supervisory and  
8589 examination fees in accordance with the laws of the Commonwealth and regulations of the Commission.  
8590 Such fees may be shared with other state and federal regulators and agencies in accordance with  
8591 agreements between them and the Commission.

8592 SUBTITLE III.

8593 OTHER REGULATED PROVIDERS OF FINANCIAL SERVICES.

8594 CHAPTER 14.

8595 INDUSTRIAL LOAN ASSOCIATIONS.

8596 § 6.2-1400. Definitions.

8597 As used in this chapter, unless the context requires a different meaning:

8598 "Affiliated person of an association" means any person which is a subsidiary, stockholder, partner,  
8599 trustee, director, officer, or employee of an association, and any corporation 10 percent or more of the  
8600 capital stock of which is owned by an association or by any person which is a subsidiary, stockholder,  
8601 partner, trustee, director, officer, or employee of an association.

8602 "Association" means a corporation organized as an industrial loan association under the provisions  
8603 of the Virginia Stock Corporation Act (§ 13.1-601 et seq.), the business of which is substantially  
8604 confined to the business of making loans and issuing certificates of investment.

8605 "Mortgage loan" means a loan made to an individual, the proceeds of which are to be used  
8606 primarily for personal, family or household purposes, which loan is secured by a mortgage or deed of  
8607 trust upon any interest in one- to four-family residential property located in the Commonwealth,  
8608 regardless of where made, including the renewal or refinancing of any such loan, but excluding (i)  
8609 loans or extensions of credit to buyers of real property for any part of the purchase price of such  
8610 property by persons selling such property owned by them, (ii) loans to persons related to the lender by  
8611 blood or marriage, and (iii) loans to persons who are bona fide employees of the lender. "Mortgage  
8612 loan" shall not include any loan secured by a mortgage or deed of trust upon any interest in a more  
8613 than four-family residential property or property used for a commercial or agricultural purpose.

8614 § 6.2-1401. Powers of associations.

8615 Associations shall have all the general powers and be subject to all the restrictions contained in the  
8616 Virginia Stock Corporation Act (§ 13.1-601 et seq.), except as herein otherwise provided. An association  
8617 need not comply with the provisions of subsection A of § 13.1-630.

8618 § 6.2-1402. Use of certain words in name prohibited.

8619 An association shall neither use in its corporate name nor do business under a name containing the  
8620 word "bank," "savings bank," "banker," "trust company," "trust," or other word of similar import.

8621 § 6.2-1403. Directors.

8622 A. Every association shall have at least five directors, each of whom shall own in his own right and  
8623 have in his personal possession or control shares of stock in the association that (i) have in the  
8624 aggregate at least \$100 in par value, and (ii) shall be unpledged and unencumbered at the time he  
8625 became a director and during his entire term as director.

8626 B. Each director shall take and subscribe an oath that he will (i) comply with the requirements of  
8627 subsection A regarding his stock of the association and (ii) diligently and honestly administer the affairs  
8628 of the association as its director. The oath shall be transmitted to the Commission within 60 days  
8629 following his election.

8630 C. Any director violating the provisions of this section shall thereby vacate his office. The remaining  
8631 directors shall proceed forthwith to fill such vacancy.

8632 D. The directors shall require all active officers of such association to provide bonds in such sums  
8633 as may be prescribed by the Commission in a surety company authorized to do business in the  
8634 Commonwealth.

8635 § 6.2-1404. Commission may regulate issuance of evidences of debt.

8636 The Commission may by regulation prescribe the terms and conditions upon which an association  
8637 may issue bonds, debentures, or other evidences of debt, however described, that are offered to the  
8638 public by advertisement or solicitation.

8639 § 6.2-1405. Extent to which associations regarded as banks; conversion of certain associations to  
8640 banks; new associations not authorized.

8641 A. An association incorporated after July 1, 1960, shall have all the powers conferred on banks,  
8642 shall be subject to all restrictions applicable to banks, and shall for the purposes of state supervision  
8643 and control be banks.

8644 B. An association that had certificates of investment issued and outstanding on January 1, 1959, may  
8645 become a bank upon complying with all the provisions of Chapter 8 (§ 6.2-800 et seq.).

8646 C. Any person who has not obtained authorization from the Commission to do business as an  
8647 association prior to October 1, 2010, shall not conduct business as an association.

8648 § 6.2-1406. Sale of certificates of investment by certain associations prohibited.

8649 A. An association that had no certificates of investment issued and outstanding on January 1, 1959,  
8650 may not sell certificates of investment.

8651 B. An association that had certificates of investment issued and outstanding on January 1, 1959, may  
8652 sell certificates of investment upon either the fully paid or partial payment system. Any such association  
8653 that did not obtain insurance of its liability for such certificates, through either a state or federal  
8654 agency, up to the limits of insurance provided thereby prior to July 1, 1975, shall not sell such  
8655 certificates after such date.

8656 § 6.2-1407. Prohibitions on associations with certificates issued and outstanding; advertisements.

8657 A. An association that has certificates of investment issued and outstanding shall not:

- 8658 1. Advertise that it carries insurance unless its certificates of investment are insured or guaranteed  
8659 by a state or federal agency;
- 8660 2. Own any shares of stock issued by any other corporation except to the extent legal for banks;
- 8661 3. Invest more than 80 percent of the amount of its outstanding certificates of investment in loans  
8662 secured by liens on real estate;
- 8663 4. Make any loan secured by liens on real estate in excess of that percent of the appraised value  
8664 permitted to banks;
- 8665 5. Issue certificates of investment for the purpose of borrowing money from financial institutions; or
- 8666 6. Issue a certificate of investment paying a higher rate of interest than four and one-half percent  
8667 per annum, except that notwithstanding this limitation it may pay at any time an interest rate equal to  
8668 the highest rate paid by any state savings institution or bank located in the same community in the  
8669 Commonwealth.
- 8670 B. An association that has certificates of investment issued and outstanding shall place in a  
8671 prominent manner in every advertisement for, and upon any document evidencing ownership of,  
8672 certificates of investment that are not insured by a state or federal agency the words: "The savings  
8673 accounts in this association are not insured."
- 8674 § 6.2-1408. Associations to have one office; how office moved.
- 8675 An association shall not have more than one office for the conduct of its business. An association  
8676 shall not move its office without first satisfying the Commission that moving its office will promote the  
8677 convenience of its customers.
- 8678 § 6.2-1409. Prepayment by borrower from association; rebates for unearned interest; prepayment  
8679 penalty.
- 8680 A. Any individual borrowing from an association shall have the right to anticipate payment of his  
8681 debt at any time.
- 8682 B. If interest has been added to the face amount of the note, the borrower shall have the right, upon  
8683 prepayment of the debt, to receive a rebate by way of credit for any unearned interest. The rebate shall  
8684 be computed:
- 8685 1. On loans (i) with an initial maturity and corresponding amortization period of 61 months or less  
8686 and (ii) payable in equal periodic installments, in accordance with the Rule of 78 as illustrated in  
8687 § 6.2-403 or by using any other method that is at least as favorable to such borrower; and
- 8688 2. On other loans, under a method at least as favorable to the borrower as the actuarial method.
- 8689 C. An association may charge a prepayment penalty not to exceed two percent of the amount of the  
8690 prepayment, provided such prepayment penalty, including the percent thereof, is set forth in the contract  
8691 of indebtedness and is disclosed to the borrower pursuant to applicable federal interest disclosure laws.
- 8692 § 6.2-1410. Amount of loan.
- 8693 No loan made by an association shall be made for a greater amount in the aggregate to any person  
8694 than 20 percent of the paid-in capital stock and capital surplus of the association.
- 8695 § 6.2-1411. Retention of books, accounts, and records.
- 8696 A. Every association shall maintain in its offices such books, accounts, and records as the  
8697 Commission may reasonably require in order to determine whether such association is complying with  
8698 the provisions of this chapter and regulations adopted in furtherance thereof. Such books, accounts, and  
8699 records as relate to the mortgage lending or mortgage brokering business of the association shall be  
8700 maintained separate from any other business in which the association is involved.
- 8701 B. When acting as a mortgage lender, the association shall retain for at least three years after final  
8702 payment is made on any mortgage loan or the mortgage loan is sold, whichever first occurs, copies of  
8703 the note, settlement statement, Truth in Lending disclosure, and such other papers or records relating to  
8704 the loan as may be required by regulation.
- 8705 C. When acting as a mortgage broker, the association shall retain for at least three years after the  
8706 mortgage loan is made the original contract for its compensation, a copy of the settlement statement, an  
8707 account of fees received in connection with the loan, and such other papers and records as may be  
8708 required by regulation.
- 8709 § 6.2-1412. Annual report.
- 8710 Each association shall annually, on or before March 25, file a written report with the Commissioner  
8711 containing such information as the Commissioner may require concerning its business and operations  
8712 during the preceding calendar year. Reports shall be made under oath and be in the form prescribed by  
8713 the Commissioner.
- 8714 § 6.2-1413. Investigations; examinations.
- 8715 The Commission, as often as it deems necessary, may investigate and examine the affairs, business,  
8716 premises, and records of any association. Examinations shall be conducted at least twice in each  
8717 three-year period. In the course of such investigations and examinations, the owners, officers, directors,  
8718 and employees of the association shall, upon demand of the person making such examination or

8719 investigation, afford full access to all premises, books, records, and information that the person making  
 8720 such examination or investigation deems necessary. For the purposes of this section, the person making  
 8721 such examination or investigation shall have authority to administer oaths, examine under oath all the  
 8722 aforementioned persons, and compel the production of papers and objects of all kinds.

8723 § 6.2-1414. Annual fees.

8724 Each association shall pay an annual fee calculated in accordance with a schedule set by the  
 8725 Commission. The schedule shall bear a reasonable relationship to the total assets of the individual  
 8726 associations, the actual costs of the associations' examination and other factors relating to their  
 8727 supervision and regulation. All such fees shall be assessed on or before July 1 for each calendar year  
 8728 and be paid by the associations to the State Treasurer on or before the July 31 following such  
 8729 assessment.

8730 § 6.2-1415. Regulations.

8731 The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this  
 8732 chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content  
 8733 and shall afford interested parties an opportunity to be heard.

8734 § 6.2-1416. Prohibited practices.

8735 A. No association shall:

8736 1. Obtain any agreement or instrument in which blanks are left to be filled in after execution;

8737 2. Take an interest in collateral other than the real estate or residential property, including fixtures  
 8738 and appliances thereon, securing a mortgage loan; however, an interest in collateral other than real  
 8739 estate may be taken if the real estate taken as collateral does not have sufficient equity to secure the  
 8740 mortgage loan;

8741 3. Obtain any exclusive dealing or exclusive agency agreement from any borrower;

8742 4. Delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges  
 8743 payable by the borrower;

8744 5. Obtain any agreement or instrument executed by the borrower which contains an acceleration  
 8745 clause permitting the unpaid balance of a mortgage loan to be declared due for any reason other than  
 8746 failure to make timely payments of interest and principal or to perform other obligations undertaken in  
 8747 the agreement or instrument; or

8748 6. If acting as a mortgage lender, fail to require the person closing the mortgage loan to provide the  
 8749 borrower, prior to closing of the mortgage loan, with a (i) settlement statement and (ii) disclosure which  
 8750 conforms to that required by the provisions of 15 U.S.C. § 1601 et seq. and Federal Reserve Board  
 8751 Regulation Z (12 C.F.R. Part 226).

8752 B. No association, when acting as a mortgage broker, shall:

8753 1. Except for documented costs of a credit report and appraisals, receive compensation from a  
 8754 borrower until a written commitment to make a mortgage loan is given to the borrower by a mortgage  
 8755 lender;

8756 2. Receive compensation from a mortgage lender of which it is a principal, partner, trustee, director,  
 8757 officer, or employee;

8758 3. Receive compensation from a borrower in connection with any mortgage loan transaction in which  
 8759 it is the lender or a principal, partner, trustee, director, or officer of the lender;

8760 4. Receive compensation from a borrower other than that specified in a written agreement signed by  
 8761 the borrower; or

8762 5. Receive compensation for negotiating, placing or finding a mortgage loan where such association,  
 8763 or any person affiliated with such association, has otherwise acted as a real estate broker, agent, or  
 8764 salesman in connection with the real estate which secures the mortgage loan, and such association or  
 8765 affiliated person has received or will receive any other compensation or thing of value from the lender,  
 8766 borrower, seller, or any other person, unless the borrower is given the following notice in writing at the  
 8767 time the mortgage broker services are first offered to the borrower:

8768

8769 **NOTICE**

8770 **WE HAVE OFFERED TO ASSIST YOU IN OBTAINING A MORTGAGE LOAN. IF WE ARE**  
 8771 **SUCCESSFUL IN OBTAINING A LOAN FOR YOU, WE WILL CHARGE AND COLLECT FROM YOU**  
 8772 **A FEE NOT TO EXCEED .... % OF THE LOAN AMOUNT.**

8773 **WE DO NOT REPRESENT ALL OF THE LENDERS IN THE MARKET AND THE LENDERS WE**  
 8774 **DO REPRESENT MAY NOT OFFER THE LOWEST INTEREST RATES OR BEST TERMS AVAILABLE**  
 8775 **TO YOU. YOU ARE FREE TO SEEK A LOAN WITHOUT OUR ASSISTANCE, IN WHICH EVENT YOU**  
 8776 **WILL NOT BE REQUIRED TO PAY US A FEE FOR THAT SERVICE.**

8777 **IF YOU ARE A MEMBER OF A CREDIT UNION, YOU SHOULD COMPARE OUR INTEREST**  
 8778 **RATES AND TERMS WITH THE MORTGAGE LOANS AVAILABLE THROUGH YOUR CREDIT**  
 8779 **UNION.**

8780 .....  
8781 BORROWER'S SIGNATURE

8782 .....  
8783 BORROWER'S SIGNATURE

8784  
8785 *The foregoing notice shall be in at least 10-point type, and the prospective borrower shall*  
8786 *acknowledge receipt of the written notice.*

8787 § 6.2-1417. Escrow accounts.

8788 *All moneys required by an association to be paid by borrowers in escrow to defray future taxes or*  
8789 *insurance premiums shall be kept in accounts segregated from accounts of the association and shall not*  
8790 *be commingled with other funds of the association. No association shall require any borrower to pay*  
8791 *any amounts in escrow to defray future taxes and insurance premiums in connection with a loan secured*  
8792 *by a subordinate mortgage or deed of trust as defined in Chapter 3 (§ 6.2-300 et seq.), except where*  
8793 *escrows for such purposes are not being maintained in connection with a mortgage loan superior to*  
8794 *such subordinate mortgage loan.*

8795 § 6.2-1418. Suspension or revocation of authority.

8796 *A. The Commission may suspend or revoke the authority of an association to do business upon any*  
8797 *of the following grounds:*

8798 *1. Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant*  
8799 *thereto, or a violation of any other law or regulation applicable to the conduct of its business;*

8800 *2. A course of conduct consisting of failure to perform written agreements with borrowers;*

8801 *3. Failure to account for funds received or disbursed to the satisfaction of the person supplying or*  
8802 *receiving such funds;*

8803 *4. Failure to disburse funds in accordance with any agreement connected with, and promptly upon*  
8804 *closing of, a mortgage loan, taking into account any applicable right of rescission;*

8805 *5. Conviction of any felony or misdemeanor involving fraud, misrepresentation, or deceit;*

8806 *6. Entry of judgment against such association involving fraud, misrepresentation, or deceit;*

8807 *7. Entry of a federal or state administrative order against such association for violation of any law*  
8808 *or regulation applicable to the conduct of its business;*

8809 *8. Refusal to permit an investigation or examination by the Commission;*

8810 *9. Failure to pay any fee or assessment imposed by this chapter; or*

8811 *10. Failure to comply with any order of the Commission.*

8812 *B. For the purposes of this section, acts of any officer, director, or principal stockholder shall be*  
8813 *deemed acts of the association.*

8814 § 6.2-1419. Cease and desist orders.

8815 *If the Commission determines that any association has violated any provision of this chapter or any*  
8816 *regulation adopted pursuant thereto, the Commission may, upon 21 days' notice in writing, order the*  
8817 *association to cease and desist from such practices and to comply with the provisions of this chapter.*

8818 *The notice shall be sent by certified mail to the principal place of business of the association and shall*  
8819 *state the grounds for the contemplated action. Within 14 days of mailing the notice, the association may*

8820 *file with the clerk of the Commission a written request for a hearing. If a hearing is so requested, the*  
8821 *Commission shall not issue a cease and desist order prior to such hearing. The Commission may*

8822 *enforce compliance with any such order by imposition and collection of such fines and penalties as may*  
8823 *be prescribed by Commission regulations, or by revocation of the association's authority to do business*

8824 *in accordance with §§ 6.2-1418 and 6.2-1420.*

8825 § 6.2-1420. Notice of proposed suspension or revocation.

8826 *The Commission may not revoke or suspend the authority of an association to do business upon any*  
8827 *of the grounds set forth in § 6.2-1418 until it has given the association 21 days' notice in writing of the*  
8828 *reasons for the proposed revocation or suspension and an opportunity to introduce evidence and be*

8829 *heard. The notice shall be sent by certified mail to the principal place of business of the association and*  
8830 *shall state with particularity the grounds for the contemplated action. Within 14 days of mailing the*

8831 *notice, the association may file with the clerk of the Commission a written request for a hearing. If a*  
8832 *hearing is so requested, the Commission shall not suspend or revoke the association's authority to do*

8833 *business except based upon findings made at such hearing.*

8834 § 6.2-1421. Civil penalties.

8835 *In addition to the authority conferred upon the Commission by other provisions of this chapter, the*  
8836 *Commission may impose a civil penalty not exceeding \$1,000 upon any association which it determines,*  
8837 *in proceedings commenced in accordance with the Commission's Rules, has violated any of the*  
8838 *provisions of this chapter or regulations adopted pursuant thereto. For the purposes of this section,*  
8839 *each separate violation shall constitute a separate offense.*

8840 CHAPTER 15.

## CONSUMER FINANCE COMPANIES.

- 8841 § 6.2-1500. Definitions.
- 8842 As used in this chapter, unless the context requires a different meaning:
- 8843 "Consumer finance company" means a person engaged in the business of making loans to individuals
- 8844 for personal, family, household, or other nonbusiness purposes.
- 8845 "License" means a single license issued under this chapter with respect to a single place of business.
- 8846 "Licensee" means a consumer finance company to which one or more licenses have been issued.
- 8847 "Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of
- 8848 the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in another person.
- 8849 § 6.2-1501. Compliance with chapter; license required; attempts to evade application of chapter.
- 8850 A. No person shall engage in the business of making loans to individuals for personal, family,
- 8851 household, or other nonbusiness purposes, and charge, contract for, or receive, directly or indirectly, on
- 8852 or in connection with any loan interest, charges, compensation, consideration, or expense that in the
- 8853 aggregate is greater than the interest permitted by § 6.2-303, except as provided in and authorized by
- 8854 this chapter and without first having obtained a license from the Commission.
- 8855 B. Subject to subdivision C 3 and subsection C of § 6.2-1524, the prohibition in subsection A shall
- 8856 not be construed to prevent any person, other than a licensee, from:
- 8857 1. Making a loan in accordance with Chapter 18 (§ 6.2-1800 et seq.);
- 8858 2. Making a mortgage loan pursuant to §§ 6.2-325 and 6.2-326 or §§ 6.2-327 and 6.2-328 in any
- 8859 principal amount; or
- 8860 3. Extending credit as described in § 6.2-312 in any amount.
- 8861 C. The provisions of subsection A shall apply to any person who seeks to evade its application by
- 8862 any device, subterfuge, or pretense whatsoever, including:
- 8863 1. The loan, forbearance, use, or sale of (i) credit, as guarantor, surety, endorser, comaker, or
- 8864 otherwise; (ii) money; (iii) goods; or (iv) things in action;
- 8865 2. The use of collateral or related sales or purchases of goods or services, or agreements to sell or
- 8866 purchase, whether real or pretended; receiving or charging compensation for goods or services, whether
- 8867 or not sold, delivered, or provided; and
- 8868 3. The real or pretended negotiation, arrangement, or procurement of a loan through any use or
- 8869 activity of a third person, whether real or fictitious.
- 8870 § 6.2-1502. Certain persons ineligible as licensees; exception for subsidiaries.
- 8871 A. No person doing business under the authority of any law of the Commonwealth or of the United
- 8872 States relating to banks, savings institutions, trust companies, building and loan associations, industrial
- 8873 loan associations, or credit unions shall be eligible for licensure under this chapter.
- 8874 B. Nothing contained in subsection A or any other section of this title shall be construed to prevent a
- 8875 subsidiary of a bank or savings institution from becoming a licensee under this chapter. A licensee that
- 8876 is a subsidiary or affiliate of a bank or savings institution shall be governed by the provisions of this
- 8877 chapter, and all regulations adopted hereunder, as fully as if such licensee were not such a subsidiary
- 8878 or affiliate.
- 8879 § 6.2-1503. Scope of chapter.
- 8880 This chapter shall not apply to:
- 8881 1. Any business transacted by any person under the authority of and as permitted by any law of the
- 8882 Commonwealth or of the United States relating to banks, savings institutions, trust companies, building
- 8883 and loan associations, industrial loan associations, or credit unions;
- 8884 2. Any bona fide pawnbroking business transacted under a pawnbroker's license; or
- 8885 3. Any person operating in accordance with the specific provisions of any other provision of this title
- 8886 currently in effect or hereafter enacted.
- 8887 § 6.2-1504. Restrictions on name.
- 8888 No licensee shall use a firm, corporate, or assumed name that contains any of the words "savings,"
- 8889 "trust," "trustee," "bank," "banker," "banking," "investment," "thrift," "building," or "industrial."
- 8890 § 6.2-1505. Application for license; application fee.
- 8891 A. Application for a license to make loans under this chapter shall be in writing, under oath, and in
- 8892 the form prescribed by the Commission.
- 8893 B. The application shall contain:
- 8894 1. The name and address of the applicant;
- 8895 2. If the applicant is a partnership or association, the name and address of each partner or member
- 8896 of the partnership or association;
- 8897 3. If the applicant is a corporation or limited liability company, the name and address of each senior
- 8898 officer, director, member, registered agent, and principal;
- 8899 4. If the applicant is a business trust, the name and address of each trustee and beneficiary;
- 8900 5. The address, with street and number, if any, where the business is to be conducted; and
- 8901

- 8902 6. Such other information as may be required by the Commission.  
 8903 C. The application shall be accompanied by payment of an application fee of \$500.  
 8904 § 6.2-1506. Investigation of application.  
 8905 A. Upon the filing of the application and the payment of the application fee, the Commission shall  
 8906 make such investigation relative to the application and the requirements provided for in § 6.2-1507 as it  
 8907 deems appropriate.  
 8908 B. The Commission shall grant or deny each application for a license within 60 days from the date  
 8909 the application, together with all required information and the application fee, is filed unless the period  
 8910 is extended by order of the Commission that recites the reasons for the extension.  
 8911 § 6.2-1507. Issuance of license.  
 8912 A. The Commission shall issue and deliver to the applicant a license to make loans in accordance  
 8913 with the provisions of this chapter at the location in the Commonwealth specified in the application if it  
 8914 finds:  
 8915 1. That the financial responsibility, experience, character and general fitness of the applicant and its  
 8916 members, senior officers, directors, and principals are such as to command the confidence of the public  
 8917 and to warrant belief that this business will be operated lawfully, honestly, fairly and efficiently within  
 8918 the purpose of this chapter;  
 8919 2. That the applicant has available, for the operation of the business at the specified location, liquid  
 8920 assets of at least \$50,000 if the specified location is in a locality with a population of more than  
 8921 20,000, or of at least \$25,000 if the location is not in a locality with a population of more than 20,000;  
 8922 and  
 8923 3. That the applicant has complied with all of the prerequisites to obtaining the license prescribed by  
 8924 § 6.2-1505.  
 8925 If the Commission fails to make the findings required by subdivisions 1, 2, and 3, it shall deny the  
 8926 application for a license.  
 8927 B. Notwithstanding the provisions of subsection A, if the applicant has an existing license at another  
 8928 location in the Commonwealth, the Commission shall issue and deliver to the applicant a license to  
 8929 make loans in accordance with the provisions of this chapter at the location specified in the application  
 8930 if it finds:  
 8931 1. That the general fitness of the licensee is such as to command the confidence of the public and to  
 8932 warrant belief that this business will be operated lawfully, honestly, fairly and efficiently within the  
 8933 purpose of this chapter; and  
 8934 2. That the applicant has complied with all of the prerequisites to obtaining the license prescribed by  
 8935 § 6.2-1505.  
 8936 If the Commission fails to make the findings required by subdivisions 1 and 2, it shall deny the  
 8937 application for a license.  
 8938 C. If the Commission denies an application for a license, it shall notify the applicant of the denial.  
 8939 The Commission shall retain the application fee.  
 8940 § 6.2-1508. Notices to Commission.  
 8941 A. After receiving approval to conduct business at an additional location pursuant to subsection B of  
 8942 § 6.2-1507 or providing notice of relocation pursuant to § 6.2-1519, a licensee shall give written notice  
 8943 to the Commissioner within 10 days of the commencement of business at the additional location or  
 8944 relocated place of business.  
 8945 B. Every licensee shall notify the Commissioner, in writing, within 10 days of (i) the closing of any  
 8946 business location, and (ii) the name, address and position of each new senior officer, member, partner,  
 8947 or director. The licensee also shall provide such other information with respect to any such event as the  
 8948 Commissioner may reasonably require.  
 8949 § 6.2-1509. Contents, posting, transfer, and duration of license.  
 8950 A. Each license shall contain:  
 8951 1. The address at which the business is to be conducted;  
 8952 2. The full name of the licensee or, if the licensee is a partnership or association, the names of the  
 8953 partners or members; and  
 8954 3. If the licensee is a corporation, the date and place of incorporation.  
 8955 B. The licensee shall keep the license conspicuously posted in its place of business.  
 8956 C. The license shall not be transferable or assignable.  
 8957 D. Each license shall remain in full force and effect until surrendered, revoked, or suspended as  
 8958 provided by this chapter or by lawful order of the Commission.  
 8959 § 6.2-1510. Acquisition of control; application.  
 8960 A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or  
 8961 more of the voting shares of a corporation, or 25 percent or more of the ownership of any other person,  
 8962 licensed to conduct business under this chapter unless such person first:

8963 1. Files an application with the Commission in such form as the Commissioner may prescribe from  
8964 time to time;

8965 2. Delivers such other information to the Commissioner as the Commissioner may require concerning  
8966 the financial responsibility, background, experience, and activities of the applicant, its directors, senior  
8967 officers, principals, and members, and of any proposed new directors, senior officers, principals, or  
8968 members of the licensee; and

8969 3. Pays such application fee as the Commission may prescribe.

8970 B. Upon the filing and investigation of an application, the Commission shall permit the applicant to  
8971 acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors,  
8972 senior officers, and principals, and any proposed new directors, members, senior officers, and principals  
8973 have the financial responsibility, character, reputation, experience, and general fitness to warrant belief  
8974 that the business will be operated efficiently and fairly, in the public interest, and in accordance with  
8975 law. The Commission shall grant or deny the application within 60 days from the date a completed  
8976 application accompanied by the required fee is filed unless the period is extended by order of the  
8977 Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall  
8978 notify the applicant of the denial and the reasons for the denial.

8979 C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee,  
8980 directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed  
8981 by this chapter, (ii) the acquisition of an interest in a licensee, directly or indirectly, including an  
8982 acquisition by merger or consolidation, by or with a person affiliated through common ownership with  
8983 the licensee, or (iii) the acquisition of an interest in a licensee by a person by bequest, descent,  
8984 survivorship or operation of law. The person acquiring an interest in a licensee in a transaction that is  
8985 exempt from filing an application by this subsection shall send written notice to the Commissioner of  
8986 such acquisition within 30 days of its closing.

8987 § 6.2-1511. Revocation of license.

8988 The Commission, upon 10 days' written notice to the licensee stating the contemplated action and in  
8989 general the grounds therefor, and upon reasonable opportunity to be heard, may revoke any license  
8990 issued hereunder if it finds that:

8991 1. The licensee has failed to pay the annual fee assessed pursuant to § 6.2-1532 or to comply with  
8992 any order of the Commission lawfully made pursuant to and within the authority of this chapter;

8993 2. The licensee, either knowingly or without the exercise of due care to prevent the same, has  
8994 violated any provision of this chapter or any regulation lawfully made by the Commission under  
8995 § 6.2-1535; or

8996 3. Any fact or condition exists that clearly would have warranted the Commission to refuse originally  
8997 to issue the license.

8998 § 6.2-1512. Suspension of license.

8999 If the Commission finds that probable cause for revocation of any license exists and that enforcement  
9000 of the law requires immediate suspension of the license pending investigation, it may, upon three days'  
9001 written notice and a hearing, by the Commission or by the Commissioner, enter an order suspending the  
9002 license for a period not exceeding 30 days.

9003 § 6.2-1513. Record and notice of revocation or suspension.

9004 Whenever the Commission revokes or suspends a license issued pursuant to this chapter, it shall:

9005 1. Enter an order to that effect, which order shall set forth its findings;

9006 2. Compile a record containing (i) a summary of the evidence, (ii) the findings with respect thereto,  
9007 (iii) the order, and (iv) the reasons supporting the revocation or suspension; and

9008 3. Serve a copy of the order upon the licensee.

9009 § 6.2-1514. Surrender of license.

9010 Any licensee may surrender any license by delivering it to the Commission with written notice of its  
9011 surrender. The surrender shall not affect the licensee's civil or criminal liability for acts previously  
9012 committed.

9013 § 6.2-1515. Effect of license revocation, suspension, or surrender.

9014 The revocation, suspension, or surrender of any license shall not impair or affect the obligation of  
9015 any preexisting lawful contract between the licensee and any borrower.

9016 § 6.2-1516. Reinstatement of license.

9017 The Commission may reinstate any suspended license, or issue a new license to a person any license  
9018 of whom has been revoked, if no fact or condition then exists that clearly would have warranted the  
9019 Commission to refuse originally to issue a license under this chapter.

9020 § 6.2-1517. Place of business generally.

9021 A. Not more than one place of business shall be maintained under the same license.

9022 B. The Commission may issue more than one license to the same licensee upon compliance, as to  
9023 each additional license, with all applicable provisions of this chapter governing issuance of a single

9024 license.

9025 C. No licensee shall conduct the business of making loans provided for by this chapter under any  
9026 other name or at any place of business within the Commonwealth other than as designated in the  
9027 license.

9028 § 6.2-1518. Notice of conduct of other business in same place of business; fee.

9029 A. A licensee shall not conduct the business of making loans under this chapter within any office,  
9030 suite, room, or other place of business in which any other business is solicited or engaged in, or in  
9031 association or conjunction with any other business, unless the licensee has first given 30 days' written  
9032 notice to the Commission. Every notice shall be accompanied by a fee of \$300.

9033 B. Upon receipt of such notice and fee, the Commission may require the licensee to provide  
9034 information relating to the other business, including how and by whom it will be conducted. The  
9035 Commission shall have the authority to investigate the conduct of such other businesses in the licensee's  
9036 place of business.

9037 C. The provisions of this section shall not affect (i) any regulations adopted by the Commission prior  
9038 to July 1, 2000, governing the conduct of other businesses in the place of business designated in a  
9039 license or (ii) the authority of the Commission to adopt such regulations as the Commission deems  
9040 necessary.

9041 D. If the Commission finds that the other business (i) is of such a nature or is being conducted in  
9042 such a manner as to conceal or facilitate a violation or evasion of the provisions of this chapter or  
9043 regulations adopted pursuant to it; (ii) is contrary to the public interest; or (iii) is otherwise being  
9044 conducted in an unlawful manner, the Commission may, after notice to the licensee and an opportunity  
9045 for a hearing, prohibit or limit the conduct of such other business in the place of business designated in  
9046 the license.

9047 E. Any authority granted under this section shall remain in full force and effect until surrendered, or  
9048 until revoked or suspended by the Commission as provided in this chapter or by lawful order of the  
9049 Commission.

9050 § 6.2-1519. Changing place of business.

9051 A. A licensee may change its place of business to a different location in the Commonwealth if the  
9052 new location is:

9053 1. Within the original locality; or

9054 2. From the original locality to a location in a contiguous locality.

9055 B. A licensee shall notify the Commission of a change in the place of business within 10 days of  
9056 such relocation. Upon receipt of the notification, the Commission shall issue and deliver to the licensee  
9057 an amended license covering the new location if it finds that the change in the place of business meets  
9058 one of the criteria listed in subsection A. Each notice of change of location under this section shall be  
9059 accompanied by a fee of \$250.

9060 § 6.2-1520. Rate of interest; late charges; processing fees.

9061 A. A licensee may charge and receive interest on loans of:

9062 1. Not more than \$2,500, at a single annual rate not to exceed 36 percent; and

9063 2. More than \$2,500, at such single annual rate as shall be stated in the loan contract.

9064 The annual rate of interest shall be charged only upon principal balances outstanding from time to  
9065 time. Interest shall not be charged on an add-on basis and shall not be compounded or paid, deducted  
9066 or received in advance. For the purpose of calculating interest under this section, a year may be any  
9067 period of time consisting of 360 or 365 days.

9068 B. A licensee may impose a late charge for failure to make timely payment of any installment due on  
9069 a debt, which late charge shall not exceed five percent of the amount of such installment payment. The  
9070 late charge shall be specified in the loan contract between the lender and the borrower. For purposes of  
9071 this section, "timely payment" means a payment made by the date fixed for payment or within a period  
9072 of seven calendar days after such fixed date.

9073 C. A licensee may charge and receive a processing fee, charged on the principal amount of the loan,  
9074 for processing the loan contract. The processing fee shall be stated in the loan contract. Such  
9075 processing fee shall be deemed to constitute interest charged on the principal amount of the loan for  
9076 purposes of determining whether the interest charged on a loan of not more than \$2,500 exceeds the 36  
9077 percent annual interest rate limitation imposed by subdivision A 1.

9078 § 6.2-1521. Post-judgment charges.

9079 If judgment is obtained against any party on any loan made under the provisions of this chapter,  
9080 neither the judgment nor the loan shall carry, from the date of the judgment, any charges against any  
9081 party to the loan other than court costs, attorney fees, and interest on the amount of the judgment at the  
9082 rate fixed by § 6.2-302.

9083 § 6.2-1522. Other limitations on interest.

9084 A. Any loan made under the provisions of this chapter that is properly scheduled in a bankruptcy

9085 proceeding shall bear interest against any party to the loan from 90 days after the date of adjudication,  
9086 whether there is an ultimate discharge or an extension, if any interest is allowable at all, at six percent  
9087 per year. This limitation shall not apply (i) to a comaker not currently in bankruptcy when the bankrupt  
9088 is not entitled to a discharge, or (ii) if the particular obligation is not dischargeable under the  
9089 provisions of Title 11 of the United States Code.

9090 B. After 90 days from the date of the death of the borrower, no other charges than interest at six  
9091 percent per year shall be computed or collected from any party to the loan upon the unpaid principal  
9092 balance of the loan.

9093 C. For the period beginning six months after the date of maturity, as originally scheduled or as  
9094 deferred in the event of deferment, of any loan contract under the provisions of this chapter, no further  
9095 charges than interest at six percent per year shall be computed or collected from any party to the loan  
9096 upon the unpaid balance of the loan.

9097 § 6.2-1523. Additional charges prohibited; exceptions.

9098 In addition to the interest, late charges, and processing fee permitted under § 6.2-1520, no further or  
9099 other amount whatsoever for any examination service, brokerage, commission, fine, notarial fee, or  
9100 other thing or otherwise shall be directly or indirectly charged, contracted for, collected, or received,  
9101 except:

9102 1. Insurance premiums actually paid out by the licensee to any insurance company or agent duly  
9103 authorized to do business in the Commonwealth for insurance for the protection and benefit of the  
9104 borrower written in connection with any loan;

9105 2. The actual cost of recordation fees or, on loans over \$100, the amount of the lawful premiums, no  
9106 greater than such fees, actually paid for insurance against the risk of not recording any instrument  
9107 securing the loan; and

9108 3. A handling fee not to exceed \$15 for each check returned to the licensee because the drawer had  
9109 no account or insufficient funds in the payor bank.

9110 § 6.2-1524. Required and prohibited activities and conduct.

9111 A. Each licensee shall maintain at all times the minimum assets prescribed by this chapter for each  
9112 license, either (i) in liquid form available for the operation of the business at the location specified in  
9113 each license or (ii) actually used, whether pledged or not, in the conduct of the business at the location  
9114 specified in each license.

9115 B. A licensee or other person subject to this chapter shall not advertise, display, distribute or  
9116 broadcast, or cause or permit to be advertised, displayed, distributed or broadcast, in any manner  
9117 whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates,  
9118 terms, or conditions for loans made under this chapter. The Commission may require that charges or  
9119 rates of charge, if stated by a licensee, be stated fully and clearly in such manner as it deems necessary  
9120 to prevent misunderstanding by prospective borrowers. The Commission may permit or require licensees  
9121 to refer in their advertising to the fact that their business is under state supervision, subject to  
9122 conditions imposed by it to prevent false, misleading, or deceptive impression as to the scope or degree  
9123 of protection provided by this chapter.

9124 C. A licensee shall not take a lien upon real estate as security for any loan made under the  
9125 provisions of this chapter, except a lien arising upon rendition of a judgment. Any lien taken in  
9126 violation of this subsection shall be void.

9127 D. A licensee shall, at the time any loan is made, deliver to the borrower, or if there are two or  
9128 more borrowers to one of them, a statement disclosing (i) the names and addresses of the licensee and  
9129 of the principal debtor on the loan contract, and (ii) a statement in compliance with Federal Reserve  
9130 Board Regulation Z (12 C.F.R. Part 226).

9131 E. A licensee shall give the borrower a receipt for all cash payments. The Commission may specify  
9132 the form and content of such receipts in keeping with the intent and purpose of this chapter.

9133 F. A licensee shall permit payment to be made in advance in whole, or in part equal to one or more  
9134 full installments. The licensee may apply the payment first to any amounts that are due and unpaid at  
9135 the time of such payment.

9136 G. A licensee shall, upon repayment of the loan in full, (i) mark plainly every obligation and security  
9137 other than a security agreement executed by the borrower with the word "Paid" or "Canceled," (ii)  
9138 mark satisfied any judgment, (iii) restore any pledge, (iv) cancel and return any note and any  
9139 assignment given by the borrower to the licensee, and (v) release any security agreement or other form  
9140 of security instrument that no longer secures an outstanding loan between the borrower and the  
9141 licensee.

9142 H. In the event of collection by foreclosure sale or otherwise, a licensee shall pay and return to the  
9143 borrower, or to another person entitled thereto, any surplus arising after the payment of the expenses of  
9144 collection, sale or foreclosure and satisfaction of the debt.

9145 I. A licensee shall not take any confession of judgment or any power of attorney running to himself

9146 or to any third person to confess judgment or to appear for the borrower in a judicial proceeding. Any  
9147 such confession of judgment or power of attorney to confess judgment shall be void.

9148 J. A licensee shall not take any note, promise to pay, or instrument of security in which blanks are  
9149 left to be filled in after execution, or that does not give the amount of the loan, a clear description of  
9150 the installment payments required, and the rate of interest charged. A licensee may also include the  
9151 disclosures required by Federal Reserve Board Regulation Z (12 C.F.R. Part 226) in the note, promise  
9152 to pay, or instrument of security.

9153 K. Every loan contract shall be in writing, be signed by the borrower, and provide for repayment of  
9154 the amount loaned in substantially equal monthly installments of principal and interest. Nothing  
9155 contained in this chapter shall prevent (i) a loan being considered a new loan because the proceeds of  
9156 the loan are used to pay an existing loan contract or (ii) a licensee from entering into a loan contract  
9157 providing for an odd first payment period of up to 45 days and an odd first payment greater than other  
9158 monthly payments because of such odd first payment period.

9159 § 6.2-1525. Wage purchases.

9160 The payment of any amount in money, credit, goods or things in action, as consideration for any  
9161 sale or assignment of, or order for, the payment of wages, salary, commission, or other compensation  
9162 for services, whether earned or to be earned, shall for the purposes of this chapter be deemed a loan of  
9163 money secured by the sale, assignment or order. The amount by which the compensation so sold,  
9164 assigned or ordered paid exceeds the amount of consideration actually paid (i) shall be deemed for the  
9165 purpose of this chapter to be interest upon the loan from the date of the payment to the date the  
9166 compensation is payable and (ii) shall not, in any case, be more than is sufficient to yield, to the person  
9167 making the loan, interest on his investment at the annual rate of 10 percent. Such transaction shall in  
9168 all other respects be governed by and subject to the provisions of this chapter.

9169 § 6.2-1526. Wage assignments.

9170 A. A valid assignment or order for the payment of future salary, wages, commissions, or other  
9171 compensation for services may be given as security for a loan made by any licensee, notwithstanding the  
9172 provisions of any other law to the contrary.

9173 B. No assignment of, or order for payment of, any salary, wages, commissions, or other  
9174 compensation for services, earned or to be earned, given to secure any loan made by any licensee shall  
9175 be valid unless:

9176 1. The amount of the loan is paid to the borrower simultaneously with its execution; and

9177 2. The assignment or order is in writing, signed in person by the borrower, and not by an attorney,  
9178 or if the borrower is married unless it is signed in person by both husband and wife, and not by an  
9179 attorney. Written assent of a spouse shall not be required when husband and wife have been living  
9180 separate and apart for a period of at least five months prior to the giving of the assignment or order.  
9181 The provisions of this section are in addition to, and not in derogation of, the general statutes  
9182 pertaining to the subject.

9183 C. Under the assignment or order, an amount equal to not more than 10 percent of the borrower's  
9184 salary, wages, commissions, or other compensation for services shall be collectible from the employer of  
9185 the borrower by the licensee at the time of each payment to the borrower of the salary, wages,  
9186 commission, or other compensation for services, from the time that a copy of the assignment, verified by  
9187 the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid  
9188 upon the loan and a printed copy of this section, is served upon the employer.

9189 § 6.2-1527. Liens on household furniture.

9190 No chattel mortgage or other lien on household furniture then in the possession and use of the  
9191 borrower given to secure any loan made by a licensee shall be valid unless it is in writing, signed in  
9192 person by the borrower, and not by an attorney, or if the borrower is married unless it is signed in  
9193 person by both husband and wife, and not by an attorney. Written assent of a spouse shall not be  
9194 required when a husband and wife have been living separate and apart for a period of at least five  
9195 months prior to the giving of the mortgage or lien.

9196 § 6.2-1528. Exemptions unimpaired.

9197 A. Nothing in this chapter shall have the effect of impairing any rights on the part of anyone as to  
9198 exemptions under the poor debtors law or under any other applicable exemption law now in effect or  
9199 hereafter enacted.

9200 B. The provisions of subdivision B 2 of § 6.2-1526 and § 6.2-1527 are in addition to, and not in  
9201 derogation of, the general statutes pertaining to the subject.

9202 § 6.2-1529. Collection of loans made outside Commonwealth.

9203 No loan made outside the Commonwealth for which greater rates of interest, consideration or  
9204 charges than are permitted by the law applicable to such loan in the state in which the loan was made,  
9205 have been charged, contracted for, or received shall be collected in the Commonwealth. Every person in  
9206 any way participating in an effort to enforce the collection of such loan in the Commonwealth shall be

9207 *subject to the provisions of this chapter.*

9208 *§ 6.2-1530. Investigations; immunities.*

9209 *A. For the purpose of discovering violations of this chapter or securing information lawfully required*  
9210 *under it, the Commission may at any time investigate the loans, books and records of any person who:*

9211 *1. Is engaged, or appears to the Commission to be required to be licensed and supervised under this*  
9212 *chapter;*

9213 *2. Advertises for, solicits, or holds itself out as willing to make loans subject to the provisions of this*  
9214 *chapter; or*

9215 *3. The Commission has reason to believe is violating any provision of this chapter, whether such*  
9216 *person shall act or claim to act under or without the authority of this chapter, or as principal, agent,*  
9217 *broker, or otherwise.*

9218 *B. In furtherance of the investigation the Commission shall:*

9219 *1. Have and be given free access to the offices, places of business, books, papers, accounts, records,*  
9220 *files, safes, and vaults of all such persons; and*

9221 *2. Have authority to require attendance of witnesses and to examine under oath any person whose*  
9222 *testimony may be required relative to any such loans or business or to the subject matter of the*  
9223 *investigation, examination or hearing.*

9224 *C. Before making an investigation as provided for in this section as to any person who is neither*  
9225 *licensed nor an applicant for a license under this chapter, an order shall be entered by the Commission.*  
9226 *The order shall specifically direct the investigation to be made, command submission by the person*  
9227 *whose business is to be investigated, and set forth all other details the Commission finds necessary. The*  
9228 *Commission shall not enter such an order except upon (i) at least one affidavit, which may be given by*  
9229 *an employee of the Commission or by any other person, (ii) documentary data, (iii) admissions of the*  
9230 *person to be investigated, or (iv) any combination of the foregoing, satisfactorily establishing, prima*  
9231 *facie, facts sufficient to warrant the investigation provided for by subsection A. If the person involved*  
9232 *consents to the investigation, the foregoing requirements may be dispensed with and the investigation*  
9233 *may be made upon direction of the Commission or the Commissioner.*

9234 *D. No criminal prosecution or action for the imposition of any penalty or forfeiture provided for by*  
9235 *this chapter may be maintained against a person not a licensee or an applicant for a license under this*  
9236 *chapter who is investigated following entry of an order as provided in subsection C. This subsection*  
9237 *shall not:*

9238 *1. Prevent prosecution for the violation of any other criminal law or of any other law providing for*  
9239 *penalty or forfeiture; and*

9240 *2. Provide immunity from prosecution for any officer, agent, or employee of the person whose*  
9241 *business is investigated.*

9242 *E. If the Commission compels a person not a licensee or an applicant for a license under this*  
9243 *chapter to give verbal testimony, the person so compelled to testify shall not be subject to criminal*  
9244 *prosecution or the imposition of any penalty or forfeiture in connection with the subject matter as to*  
9245 *which such testimony is compelled.*

9246 *F. The immunities provided pursuant to subsections D and E shall not impair (i) any civil right of*  
9247 *action, not involving penalty or forfeiture, of any person and (ii) the authority of the Attorney General*  
9248 *to institute and prosecute a proceeding for injunctive relief as provided for in § 6.2-1537. Any facts*  
9249 *discovered and disclosures made in the course of any investigation following entry of an order as*  
9250 *provided in subsection C or verbal testimony compelled as provided in subsection E shall be available*  
9251 *in any proceeding involving any civil right of action or for obtaining an injunction under this chapter*  
9252 *against the person so investigated or so compelled to testify.*

9253 *§ 6.2-1531. Examination.*

9254 *The Commission shall, as often as it deems to be in the public interest, examine the affairs, business,*  
9255 *office, and records of each licensee that pertain to any business licensed under this chapter. Such*  
9256 *examination shall be conducted at least once in every three-year period. The licensee shall furnish*  
9257 *promptly by mail or otherwise such facts and statements in connection with its business transacted in*  
9258 *the Commonwealth that the Commission may request from time to time.*

9259 *§ 6.2-1532. Fees for examination, supervision and regulation.*

9260 *To defray the costs of examination, supervision and regulation of licensed consumer finance*  
9261 *companies, every licensee shall pay an annual fee to be calculated in accordance with a schedule set by*  
9262 *the Commission. The schedule shall bear a reasonable relationship to the total assets, including loans*  
9263 *under this chapter and other loans, of various licensees and their affiliates doing business in authorized*  
9264 *consumer finance company offices, to the actual cost of their respective examinations, and to other*  
9265 *factors relating to their supervision and regulation. Fees shall be assessed pursuant to this section on or*  
9266 *before May 1 of every calendar year. All such fees shall be paid by the licensees to the State Treasurer*  
9267 *on or before June 1 following each assessment.*

9268 § 6.2-1533. *Books, accounts, and records; pledge or deposit of notes and securities.*

9269 A. Each licensee shall maintain in authorized consumer finance company office, or at such other  
9270 place within or outside the Commonwealth as the Commission may approve, such books, accounts, and  
9271 records as the Commission may reasonably require to determine whether the licensee is complying with  
9272 the provisions of this chapter and with regulations adopted in furtherance thereof. Such books, accounts,  
9273 and records shall be maintained in paper form or, with the Commission's approval, in any electronic  
9274 format available for examination on the basis of computer printed reproduction, video display, or other  
9275 medium. Any books, accounts, and records not maintained in paper form shall be convertible into  
9276 clearly legible paper documents within a reasonable time. Every licensee shall preserve the books,  
9277 accounts, and records for at least three years after making the final entry on any loan recorded therein.

9278 B. If any note or security taken under this chapter shall be pledged as collateral or deposited within  
9279 or outside the Commonwealth, the licensee shall notify promptly the Commission in writing of the  
9280 identity and location of the person holding such paper. Prior approval of the Commission shall not be  
9281 required. Any pledged or deposited paper shall be subject to examination by the Commission in  
9282 accordance with subsection C as fully as if maintained in an approved location.

9283 C. All books, accounts and records shall be subject to examination by the Commission. If such  
9284 books, accounts, and records are examined outside the Commonwealth, all reasonable costs associated  
9285 with such examination shall be paid by the licensee.

9286 § 6.2-1534. *Annual reports.*

9287 Each licensee shall annually, on or before April 1, file a report with the Commission giving such  
9288 relevant information as may reasonably be required concerning its business and operations during the  
9289 preceding calendar year as to each authorized consumer finance company office. Reports shall be made  
9290 under oath and shall be in the form prescribed by the Commission.

9291 § 6.2-1535. *Regulations and orders.*

9292 The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this  
9293 chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content  
9294 and shall afford interested parties an opportunity to be heard, in accordance with the Commission's  
9295 Rules. A copy of each regulation and order adopting it shall be mailed to all licensees at least 10 days  
9296 before the effective date thereof.

9297 § 6.2-1536. *Disclosures in connection with sale of securities.*

9298 A. The Commission may adopt regulations prescribing required disclosures in connection with the  
9299 offer or sale of any "security," as that term is defined in § 13.1-501 of the Virginia Securities Act  
9300 (§ 13.1-501 et seq.), issued by any licensee organized under the laws of the Commonwealth.

9301 B. The disclosures prescribed by subsection A shall be printed in bold, 10-point type and shall  
9302 contain substantially the following language: "This security or these securities are being offered in  
9303 Virginia pursuant to an exemption from the registration requirements of the Virginia Securities Act. The  
9304 State Corporation Commission does not pass upon the adequacy or accuracy of the security or this  
9305 offering circular or upon the merits of this security or this offering. These securities are not insured or  
9306 guaranteed by any state or federal agency."

9307 § 6.2-1537. *Authority of Attorney General; impoundment of property and receivership.*

9308 A. Whenever the Attorney General has reasonable cause to believe that (i) any person, not licensed  
9309 under this chapter, is violating, has violated, is threatening to violate or intends to violate any provision  
9310 of this chapter or any order or regulation lawfully made pursuant to the authority of this chapter and  
9311 (ii) the facts justify it, the Attorney General shall institute and prosecute a lawsuit for monetary or  
9312 injunctive relief or both in the Circuit Court of the City of Richmond, in the name of the  
9313 Commonwealth. The court may grant monetary relief or may enjoin and restrain or both any such  
9314 person from engaging in or continuing any such violation or from doing any act or acts in furtherance  
9315 thereof. In any such suit a decree or order may be entered awarding such monetary relief or  
9316 preliminary or final injunctive relief as may be deemed proper.

9317 B. In addition to all other means provided by law for the enforcement of an award of monetary  
9318 relief, a temporary restraining order, temporary injunction, or final injunction, the court may impound,  
9319 and appoint a receiver for, (i) the property and business of the defendant, including books, papers,  
9320 documents, and records pertaining thereto, (ii) so much thereof as the court deems reasonably necessary  
9321 to prevent further violation of this chapter through or by means of the use of such property and  
9322 business, or (iii) so much thereof as is necessary to identify borrowers who have been damaged and the  
9323 amount of their damages, and to refund the amount of any such damages to the borrowers pursuant to  
9324 subsection C. The receiver, when appointed and qualified, shall have such powers and duties as to  
9325 custody, collection, administration, payment of debts and liquidation of the property and business as  
9326 from time to time are conferred upon him by the court.

9327 C. The Attorney General may seek and the circuit court may order or decree such other relief  
9328 allowed by law, including restitution to the extent available to borrowers under § 6.2-1541.

9329 *D. In any action brought by the Attorney General by virtue of the authority granted in this section,*  
 9330 *the Attorney General shall be entitled to seek attorney fees and costs.*

9331 *E. Nothing in this section shall be construed to preclude any person who suffers a loss as a result of*  
 9332 *a violation of § 6.2-1501 from maintaining an action to recover damages or restitution under*  
 9333 *§ 6.2-1541.*

9334 *F. No individual shall be entitled to refuse to testify in a suit brought under this section because the*  
 9335 *person's testimony would tend to incriminate such person or subject the individual to penalty or*  
 9336 *forfeiture. If called to testify by the Commonwealth or by the court trying the case, the individual may*  
 9337 *not thereafter be prosecuted for any crime or subjected to any penalty or forfeiture growing out of the*  
 9338 *transaction concerning which the individual testifies.*

9339 *§ 6.2-1538. Copies of orders or licenses.*

9340 *On application of any person, and payment of the costs, the Commission shall furnish such person*  
 9341 *with a certified copy of any order entered or license issued by it. Such copy shall be prima facie*  
 9342 *evidence in any court or proceeding of the fact of the entry of the order or of the issuance of the*  
 9343 *license.*

9344 *§ 6.2-1539. Review by Commission.*

9345 *In addition to any other remedy he may have any licensee or any other person considering himself*  
 9346 *aggrieved by any action of the Commissioner under this chapter pursuant to authority conferred upon*  
 9347 *him or delegated to him by the Commission may, within 30 days of the action complained of, file a*  
 9348 *petition as a matter of right with the Commission to review the action. The proceeding on review shall*  
 9349 *be de novo and the record and summary of the evidence before, and findings of, the Commissioner shall*  
 9350 *be admissible as evidence before the Commission.*

9351 *§ 6.2-1540. Criminal penalties.*

9352 *Any person, including the members, officers, directors, agents, and employees of an entity, who*  
 9353 *violates or participates in the violation of any provision of § 6.2-1501 is guilty of a Class 2*  
 9354 *misdemeanor.*

9355 *§ 6.2-1541. Unlawful contracts void; recovery of amounts paid.*

9356 *A. A loan contract shall be void if any act has been done in the making or collection thereof that*  
 9357 *violates § 6.2-1501.*

9358 *B. The lender on any loan for which a person has taken any action in its making or collection in*  
 9359 *violation of § 6.2-1501 shall not collect, receive, or retain any principal, interest, or charges whatsoever*  
 9360 *with respect to the loan, and any principal or interest paid on the loan shall be recoverable by the*  
 9361 *person by or for whom payment was made.*

9362 *§ 6.2-1542. Duty to refund unauthorized or excess charges; liability to borrower for penalty.*

9363 *A. If any amount not authorized by this chapter or in excess of the charges permitted by this chapter*  
 9364 *is charged and received by a licensee, such unauthorized or excess charge actually received by a*  
 9365 *licensee shall be refunded to the borrower or credited to the borrower's account.*

9366 *B. Except for excess charges charged and received as the result of a bona fide error of computation*  
 9367 *that was not made pursuant to a regular course of dealing, the licensee shall be liable to the borrower*  
 9368 *for a penalty of twice the amount of any unauthorized or excess charge actually received by the licensee*  
 9369 *and for any court costs and reasonable attorney fees incurred by the borrower.*

9370 *§ 6.2-1543. Civil penalties.*

9371 *The Commission may impose a civil penalty not exceeding \$10,000 upon any licensee who it*  
 9372 *determines, in proceedings conducted in accordance with the Commission's Rules, has violated any*  
 9373 *provision of this chapter or of any regulation or order of the Commission, either knowingly or without*  
 9374 *the exercise of due care to prevent the violation. In any proceeding under this section, a licensee shall*  
 9375 *not be penalized for any act or omission done in reasonable reliance on any regulation, order, letter, or*  
 9376 *other written directive or request of the Commission.*

9377 *CHAPTER 16.*

9378 *MORTGAGE LENDERS AND MORTGAGE BROKERS.*

9379 *§ 6.2-1600. Definitions.*

9380 *As used in this chapter, unless the context requires a different meaning:*

9381 *"Licensee" means a mortgage lender or mortgage broker licensed by the Commission pursuant to*  
 9382 *this chapter.*

9383 *"Mortgage broker" means any person who directly or indirectly negotiates, places or finds mortgage*  
 9384 *loans for others, or offers to negotiate, place or find mortgage loans for others. Any licensed mortgage*  
 9385 *lender that, pursuant to an executed originating agreement with the Virginia Housing Development*  
 9386 *Authority, acts or offers to act as an originating agent of the Virginia Housing Development Authority*  
 9387 *in connection with a mortgage loan shall not be deemed to be acting as a mortgage broker with respect*  
 9388 *to such mortgage loan but shall be deemed to be acting as a mortgage lender with respect to such*  
 9389 *mortgage loan, notwithstanding that the Virginia Housing Development Authority is or would be the*

9390 payee on the note evidencing such mortgage loan and that the Virginia Housing Development Authority  
 9391 provides or would provide the funding of such mortgage loan prior to or at the settlement thereof.

9392 "Mortgage lender" means any person who directly or indirectly originates or makes mortgage loans.

9393 "Mortgage loan" means a loan made to an individual, the proceeds of which are to be used  
 9394 primarily for personal, family or household purposes, which loan is secured by a mortgage or deed of  
 9395 trust upon any interest in one- to four-family residential property located in the Commonwealth,  
 9396 regardless of where made, including the renewal or refinancing of any such loan, but excluding (i)  
 9397 loans or extensions of credit to buyers of real property for any part of the purchase price of such  
 9398 property by persons selling such property owned by them, (ii) loans to persons related to the lender by  
 9399 blood or marriage, and (iii) loans to persons who are bona fide employees of the lender. "Mortgage  
 9400 loan" shall not include any loan secured by a mortgage or deed of trust upon any interest in a more  
 9401 than four-family residential property or property used for a commercial or agricultural purpose.

9402 "Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of  
 9403 the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in a nonstock  
 9404 corporation or a limited liability company.

9405 "Residential property" means improved real property used or occupied, or intended to be used or  
 9406 occupied, for residential purposes.

9407 § 6.2-1601. License requirement.

9408 No person shall engage in business as a mortgage lender or a mortgage broker, or hold himself out  
 9409 to the general public to be a mortgage lender or a mortgage broker, unless such person has first  
 9410 obtained a license under this chapter. Subject to such conditions as the Commission may prescribe, an  
 9411 individual who is a bona fide employee or exclusive agent of a licensee may negotiate, place or find  
 9412 mortgage loans without being licensed as a mortgage broker.

9413 § 6.2-1602. Persons exempt from chapter.

9414 The following shall be exempt from the licensing and other provisions of this chapter:

9415 1. Lenders making three or fewer mortgage loans in any period of 12 consecutive months;

9416 2. Any person subject to the general supervision of or subject to examination by the Commissioner  
 9417 pursuant to Chapters 7 (§ 6.2-700 et seq.), 8 (§ 6.2-800 et seq.), 11 (§ 6.2-1100 et seq.), 13 (§ 6.2-1300  
 9418 et seq.), or 14 (§ 6.2-1400 et seq.);

9419 3. Any lender authorized to engage in business as a bank, savings institution, or credit union under  
 9420 the laws of the United States or any state, and subsidiaries and affiliates of such entities which lender,  
 9421 subsidiary or affiliate is subject to the general supervision or regulation of or subject to audit or  
 9422 examination by a regulatory body or agency of the United States or any state;

9423 4. Nonprofit corporations making mortgage loans to promote home ownership or improvements for  
 9424 the disadvantaged;

9425 5. Agencies of the federal government, or any state or municipal government, or any  
 9426 quasi-governmental agency making or brokering mortgage loans under the specific authority of the laws  
 9427 of any state or the United States;

9428 6. Persons acting as fiduciaries with respect to any employee pension benefit plan qualified under  
 9429 the Internal Revenue Code who make mortgage loans solely to plan participants from plan assets;

9430 7. Any insurance company;

9431 8. Persons licensed by the Commonwealth as attorneys, real estate brokers, or real estate salesmen,  
 9432 not actively and principally engaged in negotiating, placing or finding mortgage loans, when rendering  
 9433 services as an attorney, real estate broker or real estate salesman; however, a real estate broker or real  
 9434 estate salesman who receives any fee, commission, kickback, rebate or other payment for directly or  
 9435 indirectly negotiating, placing or finding a mortgage loan for others shall not be exempt from the  
 9436 provisions of this chapter;

9437 9. Persons acting in a fiduciary capacity conferred by authority of any court;

9438 10. Persons licensed as small business investment companies by the Small Business Administration;  
 9439 and

9440 11. The Virginia Housing Development Authority and persons who (i) are approved by the Virginia  
 9441 Housing Development Authority pursuant to its rules and regulations to act as field originators with  
 9442 respect to mortgage loans made under its programs and (ii) are not engaged in any other activities for  
 9443 which a license is required to be obtained under this chapter.

9444 § 6.2-1603. Application for license; form; content; fee.

9445 A. An application for a license under this chapter shall be made in writing, under oath and on a  
 9446 form provided by the Commissioner.

9447 B. The application shall set forth:

9448 1. The name and address of the applicant;

9449 2. If the applicant is a firm or partnership, the name and address of each member of the firm or  
 9450 partnership;

9451 3. If the applicant is a corporation or a limited liability company, the name and address of each  
9452 officer, director, registered agent and each principal;

9453 4. The address of each location at which the business to be licensed is to be conducted;

9454 5. Whether the applicant seeks a license to act as a mortgage lender, mortgage broker, or both; and

9455 6. Such other information concerning the financial responsibility, background, experience and  
9456 activities of the applicant and its members, officers, directors, and principals as the Commissioner may  
9457 require.

9458 C. The application shall be accompanied by payment of the following fees:

9459 1. In the case of an application for a license to act as a mortgage lender or a mortgage broker, an  
9460 application fee of \$500; or

9461 2. In the case of an application for a license to act as both mortgage lender and mortgage broker,  
9462 an application fee of \$1,000.

9463 D. The application fee shall not be refundable in any event. The fee shall not be abated by  
9464 surrender, suspension or revocation of the license.

9465 § 6.2-1604. Bond required.

9466 The application for a license shall also be accompanied by a bond filed with the Commissioner with  
9467 corporate surety authorized to execute such bond in the Commonwealth, in the sum of \$25,000, or such  
9468 greater sum as the Commissioner may require. The form of the bond shall be approved by the  
9469 Commission. The bond shall be continuously maintained thereafter in full force. The bond shall be  
9470 conditioned upon the applicant or licensee performing all written agreements with borrowers or  
9471 prospective borrowers, correctly and accurately accounting for all funds received by him in his licensed  
9472 business, and conducting his licensed business in conformity with this chapter and all applicable law.  
9473 Any person who may be damaged by noncompliance of a licensee with any condition of such bond may  
9474 proceed on such bond against the principal or surety thereon, or both, to recover damages. The  
9475 aggregate liability under the bond shall not exceed the penal sum of the bond.

9476 § 6.2-1605. Investigation of applications.

9477 A. The Commissioner may make such investigations as he deems necessary to determine if the  
9478 applicant has complied with all applicable provisions of law and regulations.

9479 B. For the purpose of investigating individuals who are members, senior officers, directors, and  
9480 principals of an applicant, such persons shall consent to a national and state criminal history records  
9481 check and submit to fingerprinting by a local or state law-enforcement agency. Each member, senior  
9482 officer, director, and principal shall pay for the cost of such fingerprinting and criminal records check.  
9483 Upon receipt of the records check fees along with such individuals' fingerprints and their personal  
9484 descriptive information, the Commissioner shall forward these items to the Central Criminal Records  
9485 Exchange. The Central Criminal Records Exchange shall conduct a search of its own criminal history  
9486 records and forward such individuals' fingerprints and personal descriptive information to the Federal  
9487 Bureau of Investigation for the purpose of obtaining national criminal history record information  
9488 regarding such individuals. The Central Criminal Records Exchange shall forward the results of the  
9489 state and national records search to the Commissioner, who shall be an employee of the Commission.

9490 C. If any member, senior officer, director, or principal of an applicant fails to submit his  
9491 fingerprints, personal descriptive information, or records check fees to the Commissioner or his designee  
9492 in accordance with subsection B, the application for licensure as a mortgage lender or mortgage broker  
9493 shall be denied.

9494 § 6.2-1606. Qualifications.

9495 A. Upon the filing and investigation of an application for a license, and compliance by the applicant  
9496 with the provisions of §§ 6.2-1603 and 6.2-1604, the Commission shall issue and deliver to the applicant  
9497 the license applied for to engage in business under this chapter at the office locations specified in the  
9498 application if it finds:

9499 1. That the financial responsibility, character, reputation, experience, and general fitness of the  
9500 applicant and its members, senior officers, directors and principals are such as to warrant belief that  
9501 the business will be operated efficiently and fairly, in the public interest and in accordance with law;  
9502 and

9503 2. That, in the case of an application for a license to act as a mortgage lender, the applicant has  
9504 funds available for the operation of the business of at least \$200,000.

9505 B. If the Commission fails to make such findings, no license shall be issued and the Commissioner  
9506 shall notify the applicant of the denial and the reasons for such denial.

9507 § 6.2-1607. Licenses; places of business; changes.

9508 A. Each license shall state the address of each office at which the business is to be conducted and  
9509 shall state fully the name of the licensee. Each license shall be prominently posted in each office of the  
9510 licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee  
9511 shall use any name other than the name set forth on the license issued by the Commission.

9512 *B. No licensee shall open an additional office or relocate any office without prior approval of the*  
 9513 *Commission. Applications for such approval shall be made in writing on a form provided by the*  
 9514 *Commissioner and shall be accompanied by payment of a \$150 nonrefundable application fee. The*  
 9515 *application shall be approved unless the Commission finds that the applicant has not conducted business*  
 9516 *under this chapter efficiently, fairly, in the public interest, and in accordance with law. The application*  
 9517 *shall be deemed approved if notice to the contrary has not been mailed by the Commission to the*  
 9518 *applicant within 30 days of the date the application is received by the Commission. After approval, the*  
 9519 *applicant shall give written notice to the Commissioner within 10 days of the commencement of business*  
 9520 *at the additional or relocated office.*

9521 *C. Every licensee shall within 10 days notify the Commissioner, in writing, of the closing of any*  
 9522 *approved office and of the name, address and position of each new senior officer, member, partner, or*  
 9523 *director and provide such other information with respect to any such change as the Commissioner may*  
 9524 *reasonably require.*

9525 *D. Every license shall remain in force until it has been surrendered, revoked, or suspended. The*  
 9526 *surrender, revocation, or suspension of a license shall not affect any preexisting legal right or*  
 9527 *obligation of such lender or broker.*

9528 *§ 6.2-1608. Acquisition of control; application.*

9529 *A. Except as provided in this section, no person shall acquire directly or indirectly 25 percent or*  
 9530 *more of the voting shares of a corporation or 25 percent or more of the ownership of any licensee*  
 9531 *unless such person first:*

9532 *1. Files an application with the Commission in such form as the Commissioner may prescribe from*  
 9533 *time to time;*

9534 *2. Delivers such other information to the Commissioner as the Commissioner may require concerning*  
 9535 *the financial responsibility, background, experience, and activities of the applicant, its directors, senior*  
 9536 *officers, principals and members, and of any proposed new directors, senior officers, principals, or*  
 9537 *members of the licensee; and*

9538 *3. Pays such application fee as the Commission may prescribe.*

9539 *B. Upon the filing and investigation of an application, the Commission shall permit the applicant to*  
 9540 *acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors,*  
 9541 *senior officers and principals, and any proposed new directors, members, senior officers and principals*  
 9542 *have the financial responsibility, character, reputation, experience and general fitness to warrant belief*  
 9543 *that the business will be operated efficiently and fairly, in the public interest, and in accordance with*  
 9544 *law. The Commission shall grant or deny the application within 60 days from the date a completed*  
 9545 *application accompanied by the required fee is filed unless the period is extended by order of the*  
 9546 *Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall*  
 9547 *notify the applicant of the denial and the reasons for the denial.*

9548 *C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee*  
 9549 *directly or indirectly including an acquisition by merger or consolidation by or with another licensee or*  
 9550 *a person exempt from this chapter under the provisions of subdivisions 2 through 11 of § 6.2-1602, (ii)*  
 9551 *the acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or*  
 9552 *consolidation by or with a person affiliated through common ownership with the licensee, or (iii) the*  
 9553 *acquisition of an interest in a licensee by a person by bequest, descent, or survivorship or by operation*  
 9554 *of law. The person acquiring an interest in a licensee in a transaction which is exempt from filing an*  
 9555 *application by this subsection shall send written notice to the Commissioner of such acquisition within*  
 9556 *30 days of its closing.*

9557 *§ 6.2-1609. Retention of books, accounts and records.*

9558 *A. Every mortgage lender or mortgage broker required to be licensed under this chapter shall*  
 9559 *maintain in its offices such books, accounts, and records as the Commission may reasonably require in*  
 9560 *order to determine whether such person is complying with the provisions of this chapter and regulations*  
 9561 *adopted hereunder. Such books, accounts, and records shall be maintained apart and separate from any*  
 9562 *other business in which the mortgage lender or mortgage broker is involved.*

9563 *B. Each mortgage lender required to be licensed under this chapter shall retain, for at least three*  
 9564 *years after final payment is made on any mortgage loan or the mortgage loan is sold, whichever first*  
 9565 *occurs, copies of the note, settlement statement, truth-in-lending disclosure, and such other papers or*  
 9566 *records relating to the loan as may be required by regulation.*

9567 *C. Each mortgage broker required to be licensed under this chapter shall retain for at least three*  
 9568 *years after a mortgage loan is made the original contract for his compensation, a copy of the settlement*  
 9569 *statement, and an account of fees received in connection with the loan, and such other papers or*  
 9570 *records as may be required by regulation.*

9571 *§ 6.2-1610. Annual report.*

9572 *Each mortgage lender or mortgage broker required to be licensed under this chapter shall annually,*

9573 on or before March 1, file a written report with the Commissioner containing such information as the  
9574 Commissioner may require concerning his business and operations during the preceding calendar year  
9575 as to each office. Reports shall be made under oath and shall be in the form prescribed by the  
9576 Commissioner, who shall make and publish annually an analysis and recapitulation of the reports.

9577 § 6.2-1611. Investigations; examinations.

9578 The Commission may, as often as it deems necessary, investigate and examine the affairs, business,  
9579 premises, and records of any mortgage lender or mortgage broker required to be licensed under this  
9580 chapter insofar as they pertain to any business for which a license is required by this chapter.  
9581 Examinations of such mortgage lenders shall be conducted at least once in each three-year period. In  
9582 the course of such investigations and examinations, the owners, members, officers, directors, partners,  
9583 and employees of such mortgage lender or mortgage broker being investigated or examined shall, upon  
9584 demand of the person making such investigation or examination, afford full access to all premises,  
9585 books, records and information which the person making such investigation or examination deems  
9586 necessary. For the foregoing purposes, the person making such investigation or examination shall have  
9587 authority to administer oaths, examine under oath all the aforementioned persons, and compel the  
9588 production of papers and objects of all kinds.

9589 § 6.2-1612. Annual fees.

9590 A. To defray the costs of examination, supervision, and regulation, every:

9591 1. Mortgage lender required to be licensed under this chapter shall pay an annual fee calculated in  
9592 accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to  
9593 the business volume of an individual mortgage lender, the actual cost of the examination, and to other  
9594 factors relating to the supervision and regulation; and

9595 2. Mortgage broker required to be licensed under this chapter shall pay an annual fee calculated in  
9596 accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to  
9597 the volume of business transacted by such mortgage broker, to the actual cost of examination and to  
9598 other factors relating to the supervision and regulation.

9599 B. The annual fee prescribed in subsection A shall be assessed on or before April 25 for every  
9600 calendar year. All such fees shall be paid by the licensees to the State Treasurer on or before May 25  
9601 following each assessment.

9602 C. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine  
9603 or investigate the books and records of a mortgage lender or mortgage broker required to be licensed  
9604 under this chapter at a location outside the Commonwealth, the mortgage lender or mortgage broker  
9605 shall be liable for and shall pay to the Commission within 30 days of the presentation of an itemized  
9606 statement, the actual travel and reasonable living expenses incurred on account of its examination,  
9607 supervision and regulation, or shall pay at a reasonable per diem rate approved by the Commission.

9608 § 6.2-1613. Regulations.

9609 The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this  
9610 chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content  
9611 and shall afford interested parties an opportunity to present evidence and be heard, in accordance with  
9612 the Commission's Rules.

9613 § 6.2-1614. Prohibitions applicable to mortgage lenders and mortgage brokers.

9614 No mortgage lender or mortgage broker required to be licensed under this chapter shall:

9615 1. Obtain any agreement or instrument in which blanks are left to be filled in after execution;

9616 2. Take an interest in collateral other than the real estate or residential property securing a  
9617 mortgage loan, including any fixtures and appliances thereon and any mobile or manufactured home  
9618 placed on such real estate even if such mobile or manufactured home is not permanently affixed thereto;

9619 3. Obtain any exclusive dealing or exclusive agency agreement from any borrower;

9620 4. Delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges  
9621 payable by the borrower;

9622 5. Obtain any agreement or instrument executed by a borrower which contains an acceleration  
9623 clause permitting the unpaid balance of a mortgage loan to be declared due for any reason other than  
9624 failing to make timely payments of interest and principal, submitting false information in connection  
9625 with an application for the mortgage loan, breaching any representation or covenant made in the  
9626 agreement or instrument, or failing to perform any other obligations undertaken in the agreement or  
9627 instrument;

9628 6. Recommend or encourage a person to default on an existing loan or other debt, if such default  
9629 adversely affects such person's creditworthiness, in connection with the solicitation or making of a  
9630 mortgage loan that refinances all or any portion of such existing loan or debt;

9631 7. Knowingly or intentionally engage in the act or practice of refinancing a mortgage loan within 12  
9632 months following the date the refinanced mortgage loan was originated, unless the refinancing is in the  
9633 borrower's best interest, which act or practice is commonly referred to as "flipping." This prohibition

9634 shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the  
9635 borrower in connection with the refinancing exceed any limitation established pursuant to Chapter 3  
9636 (§ 6.2-300 et seq.) or Article 2 (§ 6.2-406 et seq.) of Chapter 4. Factors to be considered in determining  
9637 if the refinancing is in the borrower's best interest include but are not limited to whether:

- 9638 a. The borrower's new monthly payment is lower than the total of all monthly obligations being
- 9639 financed, taking into account the costs and fees;
- 9640 b. There is a change in the amortization period of the new loan;
- 9641 c. The borrower receives cash in excess of the costs and fees of refinancing;
- 9642 d. The rate of interest on the borrower's note is reduced;
- 9643 e. There is a change from an adjustable to a fixed rate loan, taking into account costs and fees; and
- 9644 f. The refinancing is necessary to respond to a bona fide personal need or an order of an
- 9645 appropriate court; or

- 9646 8. Use or cause to be published any advertisement that:
- 9647 a. Contains any false, misleading, or deceptive statement or representation; or
- 9648 b. Identifies the mortgage lender or mortgage broker by any name other than the name set forth on
- 9649 the license issued by the Commission.

9650 § 6.2-1615. Other prohibitions applicable to mortgage lenders.

9651 No mortgage lender required to be licensed under this chapter shall fail to require the person  
9652 closing the mortgage loan to provide to the borrower prior to closing of the mortgage loan, a (i)  
9653 settlement statement and (ii) disclosure which conforms to that required by the provisions of 15 U.S.C.  
9654 § 1601 et seq. and Federal Reserve Board Regulation Z (12 C.F.R. Part 226).

9655 § 6.2-1616. Other prohibitions applicable to mortgage brokers.

9656 A. As used in this section, "person affiliated," when used with reference to another person, means (i)  
9657 any person who is a subsidiary, stockholder, partner, trustee, director, officer or employee of the other  
9658 person or (ii) any corporation 10 percent or more of the capital stock of which is owned by the other  
9659 person or by any person who is a subsidiary, stockholder, partner, trustee, director, officer, or employee  
9660 of the other person.

9661 B. No mortgage broker required to be licensed under this chapter shall:

- 9662 1. Except for documented costs of credit reports and appraisals, receive compensation from a
- 9663 borrower until a written commitment to make a mortgage loan is given to the borrower by a mortgage
- 9664 lender;
- 9665 2. Receive compensation from a mortgage lender of which he is a principal, partner, trustee,
- 9666 director, officer, or employee;
- 9667 3. Receive compensation from a borrower in connection with any mortgage loan transaction in which
- 9668 he is the lender or a principal, partner, trustee, director, or officer of the lender;
- 9669 4. Receive compensation from a borrower other than that specified in a written agreement signed by
- 9670 the borrower;
- 9671 5. Receive compensation for negotiating, placing or finding a mortgage loan where such mortgage
- 9672 broker, or any person affiliated with the mortgage broker, has otherwise acted as a real estate broker,
- 9673 agent or salesman in connection with the sale of the real estate which secures the mortgage loan and
- 9674 such mortgage broker or person affiliated with the mortgage broker has received or will receive any
- 9675 other compensation or thing of value from the lender, borrower, seller or any other person, unless the
- 9676 borrower is given the following notice in writing at the time the mortgage broker services are first
- 9677 offered to the borrower:

9678  
9679 NOTICE

9680 WE HAVE OFFERED TO ASSIST YOU IN OBTAINING A MORTGAGE LOAN. IF WE ARE  
9681 SUCCESSFUL IN OBTAINING A LOAN FOR YOU, WE WILL CHARGE AND COLLECT FROM YOU  
9682 A FEE OF ..... % OF THE LOAN AMOUNT.

9683 WE DO NOT REPRESENT ALL OF THE LENDERS IN THE MARKET AND THE LENDERS WE  
9684 DO REPRESENT MAY NOT OFFER THE LOWEST INTEREST RATES OR BEST TERMS AVAILABLE  
9685 TO YOU. YOU ARE FREE TO SEEK A LOAN WITHOUT OUR ASSISTANCE, IN WHICH EVENT YOU  
9686 WILL NOT BE REQUIRED TO PAY US A FEE FOR THAT SERVICE.

9687 IF YOU ARE A MEMBER OF A CREDIT UNION YOU SHOULD COMPARE OUR INTEREST  
9688 RATES AND TERMS WITH THE MORTGAGE LOANS AVAILABLE THROUGH YOUR CREDIT  
9689 UNION.

9690 .....  
9691 BORROWER'S SIGNATURE

9692 .....  
9693 BORROWER'S SIGNATURE

9694

9695 *The foregoing notice shall be in at least 10-point type and the prospective borrower shall*  
 9696 *acknowledge receipt of the written notice; or*

9697 *6. Fail to use reasonable skill, care, and diligence in exercising the broker's duty, which duty is*  
 9698 *hereby created, to make reasonable efforts to secure a mortgage loan that is in the best interests of the*  
 9699 *applicant, considering the applicant's circumstances and loan characteristics, including but not limited*  
 9700 *to the product type, rates, charges, and repayment terms of the loan.*

9701 *C. Notwithstanding the provisions of subdivision B 5, no person shall act as a mortgage broker in*  
 9702 *connection with any real estate sales transaction in which such person, or any person affiliated with*  
 9703 *such person, has acted as a real estate broker, agent, or salesman and has received or will receive*  
 9704 *compensation in connection with such transaction, unless such person was regularly engaged in acting*  
 9705 *as a mortgage broker in the Commonwealth as of February 25, 1989.*

9706 *§ 6.2-1617. Application to certain real estate brokers.*

9707 *The provisions of this chapter shall not be construed to prohibit a real estate broker, as defined in*  
 9708 *§ 54.1-2100, who is either an owner of an interest in a real estate firm or acts as a real estate broker*  
 9709 *in a sole proprietorship, from:*

9710 *1. Having an ownership interest in a mortgage broker or mortgage lender;*

9711 *2. Receiving returns on investment arising from the real estate broker's ownership interest in a*  
 9712 *mortgage broker or mortgage lender; or*

9713 *3. Receiving payment of compensation for services actually performed for a mortgage broker or*  
 9714 *mortgage lender in which the real estate broker has an ownership interest.*

9715 *§ 6.2-1618. Escrow accounts.*

9716 *A. All moneys required by a mortgage lender required to be licensed under this chapter to be paid*  
 9717 *by borrowers in escrow to defray future taxes or insurance premiums, or for other lawful purposes,*  
 9718 *shall be kept in accounts segregated from accounts of the lender, and shall not be commingled with*  
 9719 *other funds of the lender.*

9720 *B. No licensed mortgage lender shall require any borrower to pay any moneys in escrow to defray*  
 9721 *future taxes and insurance premiums, or for any other purpose, in connection with a subordinate*  
 9722 *mortgage loan as referred to in Article 2 (§ 6.2-406 et seq.) of Chapter 4, except where escrows for*  
 9723 *such purposes are not being maintained in connection with the mortgage loan superior to such*  
 9724 *subordinate mortgage loan.*

9725 *C. Mortgage lenders holding money in escrow for insurance premiums shall notify the insurer in*  
 9726 *writing within 30 days of a change of the mortgage lender's billing address, or 60 days prior to the*  
 9727 *renewal date of the insurance policy, whichever is later.*

9728 *§ 6.2-1619. Suspension or revocation of license.*

9729 *A. The Commission may suspend or revoke any license issued under this chapter to a mortgage*  
 9730 *lender or mortgage broker upon any of the following grounds:*

9731 *1. Any ground for denial of a license under this chapter;*

9732 *2. Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant*  
 9733 *thereto, or a violation of any other law or regulation applicable to the conduct of the mortgage lender's*  
 9734 *or mortgage broker's business;*

9735 *3. A course of conduct consisting of the failure to perform written agreements with borrowers;*

9736 *4. Failure to account for funds received or disbursed to the satisfaction of the person supplying or*  
 9737 *receiving such funds;*

9738 *5. Failure to pay when due reasonable fees to a licensed appraiser for appraisal services that are (i)*  
 9739 *requested from the appraiser in writing by the mortgage broker or mortgage lender or an employee of*  
 9740 *the mortgage broker or mortgage lender and (ii) performed, in accordance with the terms of the*  
 9741 *contract with the appraiser and all regulatory requirements related to such appraiser and appraisal, by*  
 9742 *the appraiser in connection with the origination or closing of a mortgage loan for a customer of the*  
 9743 *mortgage broker or mortgage lender;*

9744 *6. Failure to disburse funds in accordance with any agreement connected with, and promptly upon*  
 9745 *closing of, a mortgage loan, taking into account any applicable right of rescission;*

9746 *7. Conviction of a felony or misdemeanor involving fraud, misrepresentation or deceit;*

9747 *8. Entry of a judgment against the licensee involving fraud, misrepresentation or deceit;*

9748 *9. Entry of a federal or state administrative order against the licensee for violation of any law or*  
 9749 *any regulation applicable to the conduct of his business;*

9750 *10. Refusal to permit an investigation or examination by the Commission;*

9751 *11. Failure to pay any fee or assessment imposed by this chapter; or*

9752 *12. Failure to comply with any order of the Commission.*

9753 *B. For the purposes of this section, acts of any officer, director, member, partner, or principal shall*  
 9754 *be deemed acts of the licensee.*

9755 *§ 6.2-1620. Censuring, suspending, or barring persons.*

9756 A. The Commission, after providing notice and an opportunity for a hearing, may (i) censure a  
 9757 person, (ii) suspend a person for a defined period from any position of employment, management, or  
 9758 control of any licensee, or (iii) bar a person from any position of employment, management, or control  
 9759 of any licensee, if the Commission finds that:

9760 1. The censure, suspension or bar is in the public interest and that the person, after July 1, 2003,  
 9761 has committed or caused a violation of this chapter or any regulation or order of the Commission; or

9762 2. The person, after July 1, 2003, was (i) convicted of, or pled guilty or nolo contendere to, any  
 9763 crime; (ii) held liable in any civil action by final judgment; or (iii) held liable in any administrative  
 9764 proceeding by any public agency, if the criminal conviction or plea, or the holding in the civil action or  
 9765 administrative proceeding, involved any offense reasonably related to the qualifications, functions, or  
 9766 duties of a person employed by, or in a position of management or control of, a licensee.

9767 B. Persons suspended or barred under this section are prohibited from participating in any business  
 9768 activity of a licensee and from engaging in any business activity on the premises where a licensee is  
 9769 conducting its business. This subsection shall not be construed to prohibit suspended or barred persons  
 9770 from having their personal transactions processed by a licensee.

9771 § 6.2-1621. Filing of written report with Commissioner; events affecting activities of licensee.

9772 A. A licensee shall file a written report with the Commissioner within 15 days of becoming aware of  
 9773 the occurrence of any of the following:

9774 1. The filing for bankruptcy or reorganization by the licensee;

9775 2. The institution of revocation or suspension proceedings against the licensee by any state or  
 9776 governmental authority;

9777 3. The denial of the opportunity of the licensee to engage in business by any state or governmental  
 9778 authority;

9779 4. Any felony indictment of the licensee or any of its employees, officers, directors, or principals;

9780 5. Any felony conviction of the licensee or any of its employees, officers, directors, or principals; and

9781 6. Such other events as the Commissioner may determine and identify by regulation.

9782 B. The report shall be in writing and describe the event and its expected impact on the activities of  
 9783 the licensee in the Commonwealth.

9784 § 6.2-1622. Cease and desist orders.

9785 A. If the Commission determines that any mortgage lender or mortgage broker required to be  
 9786 licensed hereunder has violated any provision of this chapter or any regulation adopted pursuant to  
 9787 thereto, the Commission may, upon 21 days' notice in writing, order such person to cease and desist  
 9788 from such practices and to comply with the provisions of this chapter. The notice shall be sent by  
 9789 certified mail to the principal place of business of such mortgage lender or mortgage broker and shall  
 9790 state the grounds for the contemplated action.

9791 B. Within 14 days of mailing the notice, the person named therein may file with the clerk of the  
 9792 Commission a written request for a hearing. If a hearing is requested, the Commission shall not issue a  
 9793 cease and desist order except based upon findings made at the hearing. The hearing shall be conducted  
 9794 in accordance with the provisions of Title 12.1. The Commission may enforce compliance with any such  
 9795 order issued under this section by imposition and collection of such fines and penalties as may be  
 9796 prescribed by Commission regulations.

9797 § 6.2-1623. Notice of proposed suspension or revocation.

9798 The Commission may not revoke or suspend the license of any licensee upon any of the grounds set  
 9799 forth in § 6.2-1619 until it has given the mortgage lender or mortgage broker (i) 21 days' notice in  
 9800 writing of the reasons for the proposed revocation or suspension and (ii) an opportunity to introduce  
 9801 evidence and be heard. The notice shall be sent by certified mail to the principal place of business of  
 9802 such licensee and shall state with particularity the grounds for the contemplated action. Within 14 days  
 9803 of mailing the notice, the licensee named therein may file with the clerk of the Commission a written  
 9804 request for a hearing. If a hearing is requested, the Commission shall not suspend or revoke the license  
 9805 except based upon findings made at such hearing. The hearing shall be conducted in accordance with  
 9806 the provisions of Title 12.1.

9807 § 6.2-1624. Civil penalties.

9808 In addition to the authority conferred under §§ 6.2-1619 and 6.2-1622, the Commission may impose  
 9809 a civil penalty not exceeding \$2,500 upon any mortgage lender or mortgage broker required to be  
 9810 licensed under this chapter who it determines, in proceedings commenced in accordance with the  
 9811 Commission's Rules, has violated any of the provisions of this chapter or any other law or regulation  
 9812 applicable to the conduct of the mortgage lender's or mortgage broker's business. For the purposes of  
 9813 this section, each separate violation shall be subject to the civil penalty herein prescribed, and each day  
 9814 after the date of notification, excluding Sundays and holidays, as prescribed in § 2.2-3300, that an  
 9815 unlicensed person engages in the business or holds himself out to the general public as a mortgage  
 9816 lender or mortgage broker shall constitute a separate violation.

9817 § 6.2-1625. *Criminal penalties.*

9818 Any person not exempt from the licensure requirements of this chapter who acts as a mortgage  
9819 lender or mortgage broker in the Commonwealth without having obtained a license is guilty of a Class  
9820 6 felony. For the purposes of this section, each violation shall constitute a separate offense.

9821 § 6.2-1626. *Authority of Attorney General; referral by Commission to Attorney General.*

9822 A. If the Commission determines that a licensee is in violation of, or has violated, § 6.2-1614,  
9823 6.2-1615, or 6.2-1616, or any provision of Chapter 3 (§ 6.2-300 et seq.) or Chapter 4 (§ 6.2-400 et  
9824 seq.), the Commission may refer the information to the Attorney General and may request that the  
9825 Attorney General investigate such violations.

9826 B. Upon such referral, the Attorney General:

9827 1. May seek to enjoin violations of such laws. The appropriate circuit court may enjoin such  
9828 violations notwithstanding the existence of an adequate remedy at law; and

9829 2. May seek, and the circuit court may order or decree, damages and such other relief allowed by  
9830 law, including restitution to the extent available to borrowers under applicable law.

9831 C. Persons entitled to any relief authorized by this section shall be identified by order of the court  
9832 within 180 days from the date of the order permanently enjoining the unlawful act or practice.

9833 D. In any action brought by the Attorney General by virtue of the authority granted in this section,  
9834 the Attorney General shall be entitled to seek attorney fees and costs.

9835 E. The Attorney General shall be authorized to bring an action to enjoin violations of the Real  
9836 Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. § 2601 et seq.), to the extent authorized  
9837 by §§ 8 and 16 of RESPA (12 U.S.C. §§ 2607 and 2614).

9838 § 6.2-1627. *Private actions.*

9839 A. Nothing in this chapter shall be construed to preclude any person who suffers loss as a result of  
9840 a violation of Chapter 3 (§ 6.2-300 et seq.) or Chapter 4 (§ 6.2-400 et seq.) from maintaining an action  
9841 to recover damages or restitution and, as provided by statute, attorney fees. However, in any matter in  
9842 which the Attorney General has exercised his authority pursuant to § 6.2-1626, an individual action  
9843 shall not be maintainable if the individual has received damages or restitution pursuant to § 6.2-1626.

9844 B. A borrower who suffers a loss as a result of a mortgage broker's breach of duty as set forth in  
9845 subdivision B 6 of § 6.2-1616 may bring an action against such broker to recover actual damages. In  
9846 addition to any damages awarded, such borrower also may be awarded attorney fees and court costs.

9847 § 6.2-1628. *Enforcement of prohibitions on certain practices; recovery of attorney fees.*

9848 A. The Attorney General, the Commission, or any party to a mortgage loan may enforce the  
9849 provisions of §§ 6.2-1614, 6.2-1615, and 6.2-1616.

9850 B. In any suit instituted by a borrower who alleges that the defendant violated § 6.2-1614, 6.2-1615,  
9851 or 6.2-1616, the presiding judge may, in the judge's discretion, allow reasonable attorney fees to the  
9852 attorney representing the prevailing party. The attorney fees shall be taxed as a part of the court costs  
9853 and payable by the losing party upon a finding by the presiding judge that (i) the party charged with  
9854 the violation has willfully engaged in the act or practice with which he was charged or (ii) the party  
9855 instituting the action knew, or should have known, that the action was frivolous and malicious.

9856 C. The provisions of this section shall be in addition to, and shall not impair, the rights of and  
9857 remedies available to borrowers in mortgage loans otherwise provided by law.

9858 § 6.2-1629. *Prohibited practices; authority of the Attorney General.*

9859 A. Notwithstanding whether a person is licensed, is required to be licensed, or is exempt from  
9860 licensure under this chapter, and notwithstanding any other provision of the law to the contrary, no  
9861 person that is engaged in the business of originating residential mortgage loans in the Commonwealth  
9862 shall use any deception, fraud, false pretense, false promise, or misrepresentation in connection with a  
9863 mortgage loan transaction.

9864 B. Whenever the Attorney General has reasonable cause to believe that any person has engaged in,  
9865 or is engaging in, or is about to engage in, any violation of this section, the Attorney General is  
9866 empowered to issue a civil investigative demand. The provisions of § 59.1-9.10 shall apply, mutatis  
9867 mutandis, to civil investigative demands issued pursuant to this section.

9868 C. The Attorney General may cause an action to be brought in the appropriate circuit court in the  
9869 name of the Commonwealth to enjoin any violation of this section. The circuit court having jurisdiction  
9870 may enjoin such violations notwithstanding the existence of an adequate remedy at law. In any action  
9871 under this section, it shall not be necessary that damages or intent be proved to establish a violation.  
9872 The standard or proof at trial shall be preponderance of the evidence. The circuit courts are authorized  
9873 to issue temporary or permanent injunctions to restrain and prevent violations of this section.

9874 D. In any action brought under this section, if the court finds that a person has willfully engaged in  
9875 a violation of this section, the Attorney General may recover, upon petition to the court, a civil penalty  
9876 of not more than \$2,500 per violation.

9877 E. In any action brought under this section, the Attorney General may recover damages and such

9878 other relief allowed by law, including restitution on behalf of borrowers injured by violations of this  
 9879 section as well as costs and reasonable expenses incurred by the Commonwealth in investigation and  
 9880 preparing the case, including attorney fees.

9881 F. Unless the Attorney General determines that a person subject to the provisions of this section  
 9882 intends to depart from the Commonwealth or to remove his property from the Commonwealth, or to  
 9883 conceal himself or his property in the Commonwealth, or on a reasonable determination that  
 9884 irreparable harm may occur if immediate action is not taken, the Attorney General shall, before  
 9885 initiating any legal proceedings as provided in this section, give notice in writing that such proceedings  
 9886 are contemplated, and allow such person a reasonable opportunity to appear before the Attorney  
 9887 General and show that a violation did not occur or execute an assurance of voluntary compliance or  
 9888 consent judgment.

9889 G. Nothing in this section shall create a private right of action in favor of any individual aggrieved  
 9890 by a violation of this section.

9891 CHAPTER 17.  
 9892 MORTGAGE LOAN ORIGINATORS.

9893 § 6.2-1700. Definitions.

9894 As used in this chapter:

9895 "Act" means the federal Secure and Fair Enforcement for Mortgage Licensing Act, Title V (§ 1501 et  
 9896 seq.) of the Housing and Economic Recovery Act of 2008, P.L. 110-289.

9897 "Administrative or clerical tasks" means the receipt, collection, and distribution of information  
 9898 common for the processing or underwriting of a residential mortgage loan in the mortgage industry and  
 9899 communication with the consumer to obtain information necessary for the processing or underwriting of  
 9900 a residential mortgage loan.

9901 "Depository institution" has the same meaning as in § 3 of the Federal Deposit Insurance Act (12  
 9902 U.S.C. § 1811 et seq.), and includes any credit union.

9903 "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the  
 9904 Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union  
 9905 Administration, and the Federal Deposit Insurance Corporation.

9906 "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This  
 9907 includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

9908 "Individual loan servicer" means any person who, on behalf of the note holder, collects or receives  
 9909 payments, including payments of principal, interest, escrow amounts, and other amounts due, on  
 9910 obligations due and owing to the note holder pursuant to a residential mortgage loan, or who, when the  
 9911 borrower is in default or in foreseeable likelihood of default, works on behalf of the note holder with  
 9912 the borrower to modify or refinance, either temporarily or permanently, the obligations in order to  
 9913 avoid foreclosure or otherwise to finalize collection through the foreclosure process.

9914 "Licensee" means an individual licensed under this chapter.

9915 "Loan processor or underwriter" means an individual who performs clerical or support duties at the  
 9916 direction of and subject to the supervision and instruction of a licensee or a person exempt from  
 9917 licensing under this chapter. For the purposes of this definition, clerical or support duties may include  
 9918 (i) the receipt, collection, distribution, and analysis of information common for the processing or  
 9919 underwriting of a residential mortgage loan and (ii) communication with a consumer to obtain the  
 9920 information necessary for the processing or underwriting of a residential mortgage loan, to the extent  
 9921 that such communication does not include offering or negotiating loan rates or terms, or counseling  
 9922 consumers about residential mortgage loan rates or terms.

9923 "Mortgage loan originator" means an individual who takes an application for or offers or negotiates  
 9924 the terms of a residential mortgage loan, as defined in § 1503(8) of the Act, that is secured by real  
 9925 property located in the Commonwealth. "Mortgage loan originator" does not include (i) any individual  
 9926 who only performs administrative or clerical tasks on behalf of a person licensed or exempt pursuant to  
 9927 Chapter 16 (§ 6.2-1600 et seq.) or on behalf of any individual licensed pursuant to this chapter; (ii) any  
 9928 individual who only performs real estate brokerage activities and is licensed or registered in accordance  
 9929 with applicable law, unless the individual is compensated by the lender, a mortgage broker, or other  
 9930 mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan  
 9931 originator; (iii) any individual solely involved in extensions of credit relating to timeshare plans, as that  
 9932 term is defined in 11 U.S.C. § 101(53D); (iv) a registered mortgage loan originator; (v) any individual  
 9933 who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family  
 9934 member of the individual; (vi) any individual who offers or negotiates terms of a residential mortgage  
 9935 loan secured by a dwelling that serves as the individual's residence; (vii) a licensed attorney who  
 9936 negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the  
 9937 attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage  
 9938 broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other

9939 mortgage loan originator; or (viii) any individual acting as an individual loan servicer.

9940 "Nationwide Mortgage Licensing System and Registry" or "Registry" means a mortgage licensing  
9941 system developed and maintained by the Conference of State Bank Supervisors and the American  
9942 Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan  
9943 originators.

9944 "Nontraditional mortgage product" means any mortgage product other than a 30-year fixed rate  
9945 mortgage.

9946 "Real estate brokerage activities" means any activity governed by Chapter 21 (§ 54.1-2100 et seq.) of  
9947 Title 54.1.

9948 "Registered mortgage loan originator" means any individual who (i) takes an application for or  
9949 offers or negotiates the terms of a residential mortgage loan, as defined in § 1503(8) of the Act, that is  
9950 secured by real property located in the Commonwealth and is an employee of (a) a depository  
9951 institution, (b) a subsidiary that is owned and controlled by a depository institution and regulated by a  
9952 federal banking agency, or (c) an institution regulated by the Farm Credit Administration, and (ii) is  
9953 registered with, and maintains a unique identifier through, the Registry.

9954 "Unique identifier" means a number or other identifier assigned by protocols established by the  
9955 Registry.

9956 § 6.2-1701. License requirement.

9957 On or after July 1, 2010, no individual shall act as a mortgage loan originator, or hold himself out  
9958 to the general public as a mortgage loan originator, unless such individual has first obtained a license  
9959 under this chapter. An individual engaged solely as a loan processor or underwriter, who does not  
9960 represent to the public, through advertising or other means of communicating or providing information  
9961 including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items,  
9962 that such individual can or will perform any of the activities of a mortgage loan originator, shall not be  
9963 required to obtain a mortgage loan originator license. An individual acting as an independent  
9964 contractor may not engage in residential mortgage loan origination activities as a loan processor or  
9965 underwriter unless such individual obtains a mortgage loan originator license.

9966 § 6.2-1702. Application for license; form; content; fee.

9967 A. An application for a license under this chapter shall be on a form provided by the Registry.

9968 B. The application shall set forth:

9969 1. The name and residential address of the applicant;

9970 2. The address of the applicant's employer or the address where the applicant will act as a mortgage  
9971 loan originator, as applicable; and

9972 3. Such other information concerning the financial responsibility, background, experience, and  
9973 activities of the applicant as the Commissioner may require.

9974 C. The application shall be accompanied by payment of an application fee in an amount not to  
9975 exceed \$150, or a lesser amount as may be prescribed by the Commission. The application fee shall be  
9976 in addition to any other fees payable by the applicant, including but not limited to fees for pre-licensing  
9977 education and testing, fingerprinting, criminal background checks, credit reports, or administrative fees  
9978 charged by the Registry.

9979 D. The application fee shall not be refundable in any event. The fee shall not be abated by  
9980 surrender, suspension, or revocation of the license.

9981 § 6.2-1703. Bond required.

9982 A. The application for a license shall be accompanied by a bond to be filed with the Commission  
9983 with corporate surety authorized to execute such bond in the Commonwealth, the form of which shall be  
9984 approved by the Commission.

9985 1. If the applicant is not an employee or exclusive agent of a person licensed or exempt from  
9986 licensing under Chapter 16 (§ 6.2-1600 et seq.), the bond shall be an individual surety bond for the  
9987 applicant; or

9988 2. If the applicant is an employee or exclusive agent of a person licensed or exempt from licensing  
9989 under Chapter 16 (§ 6.2-1600 et seq.), the bond shall be a surety bond filed by such person covering all  
9990 such employees and exclusive agents holding or applying for a license as a mortgage loan originator.

9991 B. The amount of the bond shall be \$25,000, or such greater sum as the Commission may require  
9992 based on the total dollar amount of residential mortgage loans originated in the preceding calendar  
9993 year by (i) the applicant, in the case of the bond referred to in subdivision A 1 or (ii) the person  
9994 licensed or exempt from licensing under Chapter 16 (§ 6.2-1600 et seq.), in the case of the bond  
9995 referred to in subdivision A 2. A bond already filed with the Commission pursuant to § 6.2-1604 may be  
9996 applied toward the minimum bond required by this section, subject to approval by the Commission. In  
9997 the case of the bond referred to in subdivision A 2, it shall be the responsibility of the person licensed  
9998 or exempt from licensing under Chapter 16 (§ 6.2-1600 et seq.) to provide information, in a form  
9999 satisfactory to the Commission, sufficient for determining and verifying the total dollar amount of

10000 residential mortgage loans originated in the preceding calendar year.

10001 C. Such bond shall be continuously maintained thereafter in full force.

10002 D. Such bond shall be conditioned upon the licensee: (i) performing all written agreements with  
10003 borrowers or prospective borrowers; (ii) correctly and accurately accounting for all funds received by  
10004 him in the course of his business activities as a licensee; and (iii) conducting himself in conformity with  
10005 this chapter and all applicable laws and regulations.

10006 E. Any person who may be damaged by noncompliance of a licensee with any condition of such  
10007 bond may proceed on such bond against the principal or surety thereon, or both, to recover damages.  
10008 The aggregate liability under the bond shall not exceed the penal sum of the bond.

10009 § 6.2-1704. Mortgage loan originator background checks.

10010 A. In connection with an application for licensing as a mortgage loan originator, the applicant shall  
10011 furnish to the Registry information concerning the applicant's identity, including fingerprints for  
10012 submission to the Federal Bureau of Investigation or any federal or state governmental agency or entity  
10013 authorized to receive such information for a state, national, and international criminal history  
10014 background check, as prescribed by the Commission.

10015 B. The applicant shall also submit personal history and experience in a form prescribed by the  
10016 Registry, including submission of authorization for the Registry and the Commission to obtain (i) an  
10017 independent credit report from a consumer reporting agency described in § 603(p) of the Fair Credit  
10018 Reporting Act (15 U.S.C. § 1681 et seq.), and (ii) information related to any administrative, civil, or  
10019 criminal findings by any governmental jurisdiction.

10020 C. For the purposes of this section and in order to reduce the points of contact that the Federal  
10021 Bureau of Investigation may be required to maintain, the Commission may use the Registry as a  
10022 channeling agent for requesting information from, and distributing information to, the Department of  
10023 Justice, other governmental agency, or any other source.

10024 § 6.2-1705. Coordination of licensing.

10025 In connection with its administration and enforcement of this chapter, the Commission is authorized  
10026 to establish agreements or contracts with the Registry or other entities designated by the Registry to  
10027 collect, distribute, and maintain information and records, and to process transaction fees and other fees,  
10028 related to licensees and other persons subject to this chapter. When establishing such agreements or  
10029 contracts the Commission shall not be subject to the Virginia Public Procurement Act (§ 2.2-4300 et  
10030 seq.). Notwithstanding the provisions of § 6.2-101, the Commission shall report regularly to the Registry  
10031 any violations of this chapter, enforcement actions, and license status changes. The Commission shall  
10032 report to the Registry only those violations, actions, and license status changes effected by final order of  
10033 the Commission or by the Commissioner pursuant to his delegated authority.

10034 § 6.2-1706. Qualifications.

10035 Upon the filing and investigation of an application for a license, and compliance by the applicant  
10036 with all applicable provisions of this chapter, the Commission shall issue and deliver to the applicant  
10037 the license applied for to engage in business under this chapter if it finds that the financial  
10038 responsibility, character, and general fitness of the applicant are such as to warrant belief that the  
10039 licensee will act as a mortgage loan originator efficiently and fairly, in the public interest, and in  
10040 accordance with law. If the Commission fails to make such findings, no license shall be issued and the  
10041 Commissioner shall notify the applicant of the denial and the reasons for such denial. The Commission  
10042 shall not base a license denial, in whole or in part, on an applicant's credit score, nor shall it use a  
10043 credit report as the sole basis for license denial.

10044 § 6.2-1707. Other conditions for mortgage loan originator licensing.

10045 In addition to the findings required by § 6.2-1706, the Commission shall not issue a mortgage loan  
10046 originator license unless it finds that:

10047 1. The applicant has never had a mortgage loan originator license revoked by any governmental  
10048 authority;

10049 2. The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a  
10050 domestic, foreign, or military court (i) during the seven-year period preceding the application for  
10051 licensing and registration; or (ii) at any time preceding such date of application if such felony involved  
10052 an act of fraud, dishonesty, breach of trust, or money laundering;

10053 3. The applicant has completed the pre-licensing education requirement described in § 6.2-1708;

10054 4. The applicant has passed a written test that meets the test requirement described in § 6.2-1709;  
10055 and

10056 5. The applicant has become registered through, and obtained a unique identifier from, the Registry.

10057 § 6.2-1708. Pre-licensing education of mortgage loan originators.

10058 A. In order to meet the pre-licensing education requirement referred to in subdivision 3 of  
10059 § 6.2-1707, an applicant shall complete at least 20 hours of pre-licensing education courses, approved  
10060 in accordance with subsection B, which shall include at least (i) three hours of federal law and

10061 regulations; (ii) three hours of ethics, which shall include instruction about fraud, consumer protection,  
10062 and fair lending issues; and (iii) two hours of training related to lending standards for the  
10063 nontraditional mortgage product marketplace.

10064 B. Pre-licensing education courses shall be reviewed and approved by the Registry based upon  
10065 reasonable standards. Review and approval of a course shall include review and approval of the course  
10066 provider.

10067 C. Nothing in this section shall preclude the provision of any pre-licensing education course that has  
10068 been approved by the Registry by: (i) the employer of the applicant; (ii) an entity that is affiliated with  
10069 the applicant by any agency contract; or (iii) a subsidiary or affiliate of such employer or entity.

10070 D. Pre-licensing education courses may be offered in a classroom, online, or by any other means  
10071 approved by the Registry.

10072 § 6.2-1709. Testing of mortgage loan originator applicants.

10073 A. In order to meet the written test requirement referred to in subdivision 4 of § 6.2-1707, an  
10074 individual shall pass, in accordance with reasonable standards established under this subsection, a  
10075 qualified written test that has been developed by the Registry and administered by a test provider  
10076 approved by the Registry.

10077 B. A written test shall not be a qualified written test for purposes of subsection A unless the test  
10078 adequately measures the applicant's knowledge and comprehension in appropriate subject areas,  
10079 including: (i) ethics; (ii) federal law and regulation pertaining to mortgage loan origination; (iii) state  
10080 law pertaining to mortgage loan origination; and (iv) federal and state law and regulation pertaining to  
10081 fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues.

10082 C. Nothing in this section shall prohibit a test provider approved by the Registry from providing a  
10083 test at a location of: (i) the employer of the applicant; (ii) any subsidiary or affiliate of the employer;  
10084 or (iii) any entity with which the applicant maintains an exclusive arrangement to act as a mortgage  
10085 loan originator.

10086 D. An individual shall not be considered to have passed a qualified written test unless he has  
10087 correctly answered at least 75 percent of the test questions. An individual may retake a test three  
10088 consecutive times with each consecutive taking occurring at least 30 days after the preceding test. After  
10089 failing three consecutive tests, an individual shall wait at least six months before retaking the test. A  
10090 licensed mortgage loan originator who fails to maintain a valid license for a period of five years or  
10091 longer, exclusive of any period during which such individual is a registered mortgage loan originator,  
10092 shall retake the test.

10093 E. An applicant who has successfully completed pre-licensing education and testing that is mandated  
10094 by the Act and approved by the Registry for any state shall be deemed to have completed Virginia's  
10095 pre-licensing education and testing requirements, other than any limited or separate state testing  
10096 requirements relating to Virginia law and regulation as described in subsection B.

10097 § 6.2-1710. Continuing education requirements.

10098 A. A licensed mortgage loan originator shall complete annually at least eight hours of continuing  
10099 education courses approved in accordance with subsection B, which shall include at least: (i) three  
10100 hours related to federal law and regulations; (ii) two hours related to ethics, which shall include  
10101 instruction about fraud, consumer protection, and fair lending issues; and (iii) two hours related to  
10102 lending standards for the nontraditional mortgage product marketplace.

10103 B. Continuing education courses shall be reviewed and approved by the Registry based upon  
10104 reasonable standards. Review and approval of a continuing education course shall include review and  
10105 approval of the course provider.

10106 C. Nothing in this section shall preclude the provision of any continuing education course that has  
10107 been approved by the Registry by: (i) the employer of the mortgage loan originator; (ii) an entity that is  
10108 affiliated with the mortgage loan originator by an agency contract; or (iii) a subsidiary or affiliate of  
10109 such employer or entity.

10110 D. Continuing education courses may be offered in a classroom, online, or by any means approved  
10111 by the Registry.

10112 E. A licensed mortgage loan originator may only receive credit for a continuing education course in  
10113 the year in which the course is taken and may not take the same approved course in the same or  
10114 successive years to meet the annual requirements for continuing education.

10115 F. A licensed mortgage loan originator who is an instructor of an approved continuing education  
10116 course may receive credit for his annual continuing education requirement at the rate of two hours of  
10117 credit for every one hour of teaching.

10118 G. A licensed mortgage loan originator who has successfully completed Registry-approved continuing  
10119 education courses that satisfy the requirements of subsection A for any state shall be deemed to have  
10120 satisfied the continuing education requirements of this chapter.

10121 § 6.2-1711. Licenses; places of business; changes.

10122 A. Each license shall state fully the name and address of record of the licensee. Each licensee shall  
 10123 be required to display proof of licensing upon request, and to prominently display at any location where  
 10124 he acts as a mortgage loan originator the telephone numbers and Internet addresses for the Registry  
 10125 and the Commission where consumers and other interested parties may confirm the status of his license.  
 10126 Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use  
 10127 any name, in acting as a mortgage loan originator, other than the name set forth on the license issued  
 10128 by the Commission.

10129 B. Every licensee shall within 10 days notify the Commissioner, in writing, of any change of  
 10130 residential or business address and provide such other information with respect to any such change as  
 10131 the Commissioner may reasonably require.

10132 C. Every license shall remain in force until it expires or has been surrendered, revoked, or  
 10133 suspended. The expiration, surrender, revocation, or suspension of a license shall not affect any  
 10134 preexisting legal right or obligation of the licensee. Licenses shall expire at the end of each calendar  
 10135 year unless renewed by prior payment of the annual license renewal fee.

10136 § 6.2-1712. Provisional mortgage loan originator license.

10137 A. An applicant for licensure as a mortgage loan originator who has completed and filed with the  
 10138 Commission and the Registry all information, documents, and requirements for licensure pursuant to this  
 10139 chapter shall be provided a provisional license, registration, and unique identifier as a mortgage loan  
 10140 originator for the period preceding the date the Commission acts on his application if (i) the applicant  
 10141 is employed by or contracted to act as a mortgage loan originator for a person licensed under Chapter  
 10142 16 (§ 6.2-1600 et seq.) and (ii) a senior officer or principal of such person licensed under Chapter 16  
 10143 attests to the Commission that:

10144 1. If the applicant is not currently, and has not within the six-month period preceding the date of  
 10145 filing his application been, acting as a mortgage loan originator or a state-licensed mortgage loan  
 10146 originator in another state under provisions of § 1507 of the Act:

10147 a. The applicant has never had a mortgage loan originator license denied, revoked, or suspended in  
 10148 any governmental jurisdiction;

10149 b. The Commission has not denied the application of or revoked or taken any adverse action with  
 10150 respect to any license held by the applicant during the five-year period ending on the date of filing of  
 10151 the application;

10152 c. The applicant has not been convicted of a felony that would otherwise authorize the Commission  
 10153 to deny a license;

10154 d. The applicant meets or exceeds all of the applicable requirements of this chapter for licensure;  
 10155 and

10156 e. The licensed person will be responsible for the acts of the applicant during the period that such  
 10157 application is pending; or

10158 2. If the applicant is currently, or has within the six-month period preceding the date of filing his  
 10159 application been, acting as a registered mortgage loan originator or a state-licensed mortgage loan  
 10160 originator in another state under provisions of § 1507 of the Act:

10161 a. The applicant has never had a mortgage loan originator license denied, revoked, or suspended in  
 10162 any governmental jurisdiction; and

10163 b. The applicant has not been convicted of a felony that would otherwise authorize the Commission  
 10164 to deny a license.

10165 B. Any provisional license issued pursuant to this section shall expire on the earlier of the following:

10166 1. The date upon which the Commission issues or denies the application for licensure; or

10167 2. Six months from the date of issuance of the provisional license.

10168 C. The Commission may suspend or revoke the license of, or impose a fine not exceeding \$2,500  
 10169 upon, a person licensed under Chapter 16 (§ 6.2-1600 et seq.) if the Commission finds that the licensee,  
 10170 or a senior officer or principal thereof, did not act in good faith in making any attestation described in  
 10171 subsection A.

10172 § 6.2-1713. Investigations; examinations.

10173 The Commission may, by its designated officers and employees, as often as it deems necessary,  
 10174 investigate and examine the business activities, premises, and records of any individual required to be  
 10175 licensed under this chapter insofar as they pertain to any activities for which a license is required by  
 10176 this chapter. In the course of such investigations and examinations, the individual being investigated or  
 10177 examined shall, upon demand of the person making such investigation or examination, afford full access  
 10178 to all persons, premises, books, records, and information that the person making such investigation or  
 10179 examination deems necessary. For the foregoing purposes, the person making such investigation or  
 10180 examination shall have authority to administer oaths, examine under oath all the aforementioned  
 10181 individuals, and compel the production of papers and objects of all kinds.

10182 § 6.2-1714. Annual fees.

10183 A. In order to defray the costs of his examination, supervision, and regulation, every licensee shall  
 10184 pay an annual license renewal fee. The fee shall be \$100 unless another amount is prescribed by the  
 10185 Commission. The renewal fee shall be paid by the licensee to the State Treasurer or through the  
 10186 Registry, as determined by the Commission, on or before the end of each license year.

10187 B. When it becomes necessary to examine or investigate the books and records of an individual  
 10188 required to be licensed under this chapter at a location outside the Commonwealth, the individual shall  
 10189 be liable for and shall pay to the Commission within 30 days of the presentation of an itemized  
 10190 statement, the actual travel and reasonable living expenses incurred on account of his examination,  
 10191 supervision, and regulation, or shall pay a reasonable per diem rate approved by the Commission. Any  
 10192 sums due pursuant to this subsection shall be in addition to the annual fee prescribed in subsection A.

10193 C. If an individual is an employee or exclusive agent of a person licensed under Chapter 16  
 10194 (§ 6.2-1600 et seq.), the expenses referred to in subsection B shall be paid by the licensed mortgage  
 10195 lender or mortgage broker.

10196 § 6.2-1715. Advertising.

10197 No individual required to be licensed under this chapter shall use or cause to be published any  
 10198 advertisement that:

- 10199 1. Contains any false, misleading, or deceptive statement or representation; or
- 10200 2. Identifies a licensee by any name other than the name set forth on the license issued by the  
 10201 Commission.

10202 § 6.2-1716. Suspension or revocation of license.

10203 The Commission may suspend or revoke any license issued under this chapter based upon:

- 10204 1. Any ground sufficient for denial of the issuance of a license under this chapter;
- 10205 2. Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant  
 10206 thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's licensed  
 10207 activities;
- 10208 3. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;
- 10209 4. Entry of a judgment against a licensee involving fraud, misrepresentation, or deceit;
- 10210 5. Entry of a federal or state administrative order against a licensee for violation of any law or any  
 10211 regulation applicable to the conduct of his licensed activities;
- 10212 6. Refusal to permit an investigation or examination by the Commission;
- 10213 7. Failure to pay any fee or assessment imposed by this chapter;
- 10214 8. Failure to comply with any order of the Commission; or
- 10215 9. Failure to maintain registration with, or a unique identifier from, the Registry.

10216 § 6.2-1717. Filing of written report with Commissioner; events affecting a licensee.

10217 Within 15 days of becoming aware of the occurrence of any of the events listed below, a licensee  
 10218 shall file a written report with the Commissioner describing such event:

- 10219 1. The institution of revocation or suspension proceedings against the licensee by any state or other  
 10220 governmental authority;
- 10221 2. The denial of the opportunity to engage in business by any state or other governmental authority;
- 10222 3. Any felony indictment of the licensee;
- 10223 4. Any felony conviction of the licensee; and
- 10224 5. Such other events as the Commission may determine and identify by regulation.

10225 § 6.2-1718. Notice of proposed suspension or revocation.

10226 The Commission may not revoke or suspend the license of any licensee under this chapter unless it  
 10227 has given the licensee 21 days' notice in writing of the reasons for the proposed revocation or  
 10228 suspension and has given the licensee an opportunity to introduce evidence and be heard. The notice  
 10229 shall be sent by certified mail to the licensee's last address on the Commission's records and shall state  
 10230 with particularity the basis for the contemplated action. Within 14 days of mailing the notice, the  
 10231 licensee may file with the clerk of the Commission a written request for a hearing. If a hearing is  
 10232 requested, the Commission shall not suspend or revoke the license except based upon findings made at  
 10233 such hearing. The hearing shall be conducted in accordance with the provisions of Title 12.1.

10234 § 6.2-1719. Civil penalties.

10235 The Commission may impose a civil penalty not exceeding \$2,500 upon any individual required to be  
 10236 licensed under this chapter who it determines, in proceedings commenced in accordance with the  
 10237 Commission's Rules, has violated any of the provisions of this chapter or any other law or regulation  
 10238 applicable to the licensee's activities. For the purposes of this section, each separate violation shall be  
 10239 subject to the civil penalty herein prescribed, and each day that an unlicensed individual acts as or  
 10240 holds himself out to the general public as, a mortgage loan originator shall constitute a separate  
 10241 violation.

10242 § 6.2-1720. Regulations; agreements between Commission and Registry.

10243 A. The Commission shall adopt such regulations as it deems appropriate to effect the purposes of

10244 *this chapter. Before adopting any such regulations, the Commission shall give reasonable notice of their*  
 10245 *content and shall afford interested parties an opportunity to present evidence and be heard, in*  
 10246 *accordance with the Commission's Rules.*

10247 *B. The Commission shall, to the extent practicable, include in any written memorandum of*  
 10248 *understanding or other written agreement between the Commission and the Registry provisions*  
 10249 *substantially similar to the following:*

10250 *1. Any organization serving as the administrator of the Registry or any officer or employee of any*  
 10251 *such entity shall implement and maintain an information security program that meets or exceeds federal*  
 10252 *and state standards pursuant to § 18.2-186.6 and that complies with the regulation guidelines*  
 10253 *promulgated under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) for safeguarding personal*  
 10254 *information of mortgage loan originators and applicants;*

10255 *2. The Registry shall not under any circumstances disclose to any third party any information*  
 10256 *pertaining to any pending or incompletely adjudicated regulatory matters;*

10257 *3. The Registry shall develop, as requested by the Commission, a mortgage loan originator licensing*  
 10258 *test that may be limited to specific products and services;*

10259 *4. The Registry shall provide to the Commission summary statistical information by March 31 of*  
 10260 *each year relating to loan originator examinations taken by applicants for a mortgage loan originator*  
 10261 *license in the Commonwealth during the preceding calendar year;*

10262 *5. Except as otherwise provided in § 1512 of the Act, the requirements under any federal or state*  
 10263 *law regarding the privacy or confidentiality of any information or material provided to the Registry, and*  
 10264 *any privilege arising under federal or state law, including the rules of any federal or state court, with*  
 10265 *respect to such information or material, shall continue to apply to such information or material after the*  
 10266 *information or material has been disclosed to the Registry. Such information and material may be*  
 10267 *shared with all state and federal regulatory officials with mortgage industry oversight authority without*  
 10268 *the loss of privilege or the loss of confidentiality protections provided by federal or state law; and*

10269 *6. Information or material that is subject to privilege or confidentiality under § 6.2-101 shall not be*  
 10270 *subject to: (i) disclosure under any federal or state law governing the disclosure to the public of*  
 10271 *information held by an officer or an agency of the federal government or the Commonwealth; or (ii)*  
 10272 *subpoena or discovery, or admission into evidence, in any private civil action or administrative process,*  
 10273 *unless with respect to any privilege held by the Registry with respect to such information or material,*  
 10274 *the individual to whom such information or material pertains waives, in whole or in part, in the*  
 10275 *discretion of such individual, that privilege.*

10276 *C. Any provision of the laws of the Commonwealth relating to the disclosure of confidential*  
 10277 *supervisory information or any information or material described in § 6.2-101 that is inconsistent with*  
 10278 *such provision shall be superseded by the requirements of this chapter.*

10279 *D. This chapter shall not apply with respect to the information or material relating to the*  
 10280 *employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage*  
 10281 *loan originators that is included in the Registry for access by the public.*

10282 *E. The Commission shall:*

10283 *1. Annually review the proposed budget, fees, and audited financial statements of the Registry;*

10284 *2. Annually, to the extent practicable, report to the House and Senate Committees on Commerce and*  
 10285 *Labor on the operations of the Registry, including compliance with its established protocols for securing*  
 10286 *and safeguarding personal information in the Registry; and*

10287 *3. To the extent practicable, prepare, publicly announce, and publish a report, by no later than May*  
 10288 *1 of each year, that summarizes statistical test results and demographic information to be prepared by*  
 10289 *the Registry or its test administrator.*

10290

10291

#### CHAPTER 18. PAYDAY LENDERS.

10292 *§ 6.2-1800. Definitions.*

10293 *As used in this chapter, unless the context requires a different meaning:*

10294 *"Check" means a draft drawn on the account of an individual at a depository institution.*

10295 *"Depository institution" means a bank, savings institution, or credit union.*

10296 *"Licensee" means a person to whom a license has been issued under this chapter.*

10297 *"Payday loan" means a small, short-maturity loan on the security of (i) a check, (ii) any form of*  
 10298 *assignment of an interest in the account of an individual at a depository institution, or (iii) any form of*  
 10299 *assignment of income payable to an individual, other than loans based on income tax refunds.*

10300 *"Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of*  
 10301 *the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in a nonstock*  
 10302 *corporation or a limited liability company.*

10303 *§ 6.2-1801. License requirement.*

10304 *A. No person shall engage in the business of making payday loans to any consumer residing in the*

**10305** Commonwealth, whether or not the person has an office or conducts business at a location in the  
**10306** Commonwealth, except in accordance with the provisions of this chapter and without having first  
**10307** obtained a license under this chapter from the Commission.

**10308** B. No person shall engage in the business of arranging or brokering payday loans for any consumer  
**10309** residing in the Commonwealth, whether or not the person has an office or conducts business at a  
**10310** location in the Commonwealth.

**10311** § 6.2-1802. Applicability.

**10312** The provisions of this chapter shall not apply to any depository institution that does not elect to  
**10313** become licensed under this chapter. Electing to become licensed under this chapter shall constitute a  
**10314** waiver of the benefit of any and all laws of the Commonwealth and other states and federal laws  
**10315** preemptive of, or inconsistent with, the provisions of this chapter.

**10316** § 6.2-1803. Application for license; form; content; fee.

**10317** A. An application for a license under this chapter shall be made in writing, under oath and on a  
**10318** form provided by the Commissioner.

**10319** B. The application shall set forth:

**10320** 1. The name and address of the applicant;

**10321** 2. If the applicant is a firm or partnership, the name and address of each member of the firm or  
**10322** partnership;

**10323** 3. If the applicant is a corporation or a limited liability company, the name and address of each  
**10324** officer, director, registered agent, and each principal;

**10325** 4. The addresses of the locations of the offices to be approved; and

**10326** 5. Such other information concerning the financial responsibility, background, experience and  
**10327** activities of the applicant and its members, officers, directors, and principals as the Commissioner may  
**10328** require.

**10329** C. The application shall be accompanied by payment of an application fee of \$500.

**10330** D. The application fee shall not be refundable in any event. The fee shall not be abated by  
**10331** surrender, suspension, or revocation of the license.

**10332** § 6.2-1804. Bond required.

**10333** The application for a license shall be accompanied by a bond filed with the Commissioner with  
**10334** corporate surety authorized to execute such bond in the Commonwealth, in the sum of \$10,000 per  
**10335** office, not to exceed a total of \$50,000. The form of such bond shall be approved by the Commission.  
**10336** The bond shall be continuously maintained thereafter in full force. The bond shall be conditioned upon  
**10337** the applicant or licensee performing all written agreements with borrowers or prospective borrowers,  
**10338** correctly and accurately accounting for all funds received by him in his licensed business, and  
**10339** conducting his licensed business in conformity with this chapter and all other applicable law. Any  
**10340** person who may be damaged by noncompliance of the licensee with any condition of such bond may  
**10341** proceed on such bond against the principal or surety thereon, or both, to recover damages. The  
**10342** aggregate liability under the bond shall not exceed the penal sum of the bond.

**10343** § 6.2-1805. Investigation of applications.

**10344** The Commissioner may make such investigations as he deems necessary to determine if the applicant  
**10345** has complied with all applicable provisions of law and regulations adopted thereunder.

**10346** § 6.2-1806. Qualifications.

**10347** A. Upon the filing and investigation of an application for a license, and compliance by the applicant  
**10348** with the provisions of §§ 6.2-1803 and 6.2-1804, the Commission shall issue and deliver to the applicant  
**10349** the license applied for to engage in business under this chapter at the offices specified in the  
**10350** application if it finds:

**10351** 1. That the financial responsibility, character, reputation, experience, and general fitness of the  
**10352** applicant and its members, senior officers, directors, and principals are such as to warrant belief that  
**10353** the business will be operated efficiently and fairly, in the public interest and in accordance with law;  
**10354** and

**10355** 2. That the applicant has unencumbered liquid assets per office available for the operation of the  
**10356** business of at least \$25,000.

**10357** B. If the Commission fails to make such findings, no license shall be issued and the Commissioner  
**10358** shall notify the applicant of the denial and the reasons for such denial.

**10359** § 6.2-1807. Licenses; places of offices; changes.

**10360** A. Each license shall:

**10361** 1. State the address of each approved office at which the business is to be conducted;

**10362** 2. State fully the name of the licensee; and

**10363** 3. Be prominently posted in each office of the licensee.

**10364** B. No licensee shall:

**10365** 1. Use any name other than the name set forth on the license issued by the Commission; or

- 10366 2. Open an additional office or relocate any office without prior approval of the Commission.
- 10367 C. Applications for Commission approval to open an additional office or relocate any office shall be
- 10368 made in writing on a form provided by the Commissioner and shall be accompanied by payment of a
- 10369 \$150 nonrefundable application fee. The application shall be approved unless the Commission finds that
- 10370 the applicant does not have the required liquid assets or has not conducted business under this chapter
- 10371 efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed
- 10372 approved if notice to the contrary has not been mailed by the Commission to the applicant within 30
- 10373 days of the date the application is received by the Commission. After approval, the applicant shall give
- 10374 written notice to the Commissioner within 10 days of the commencement of business at the additional
- 10375 office or relocated office.
- 10376 D. Every licensee shall within 10 days notify the Commissioner, in writing, of the closing of any
- 10377 office and of the name, address, and position of each new senior officer, member, partner, or director
- 10378 and provide such other information with respect to any such change as the Commissioner may
- 10379 reasonably require.
- 10380 E. Licenses shall:
- 10381 1. Not be transferable or assignable, by operation of law or otherwise; and
- 10382 2. Remain in force until they have been surrendered, revoked, or suspended. The surrender,
- 10383 revocation, or suspension of a license shall not affect any preexisting legal right or obligation of the
- 10384 licensee.
- 10385 § 6.2-1808. Acquisition of control; application.
- 10386 A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or
- 10387 more of the voting shares of a corporation or 25 percent or more of the ownership of any other person
- 10388 licensed to conduct business under this chapter unless such person first:
- 10389 1. Files an application with the Commission in such form as the Commissioner may prescribe from
- 10390 time to time;
- 10391 2. Delivers such other information to the Commissioner as the Commissioner may require concerning
- 10392 the financial responsibility, background, experience, and activities of the applicant, its directors, senior
- 10393 officers, principals and members, and of any proposed new directors, senior officers, principals or
- 10394 members of the licensee; and
- 10395 3. Pays such application fee as the Commission may prescribe.
- 10396 B. Upon the filing and investigation of an application, the Commission shall permit the applicant to
- 10397 acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors,
- 10398 senior officers and principals, and any proposed new directors, members, senior officers and principals
- 10399 have the financial responsibility, character, reputation, experience and general fitness to warrant belief
- 10400 that the business will be operated efficiently and fairly, in the public interest, and in accordance with
- 10401 law. The Commission shall grant or deny the application within 60 days from the date a completed
- 10402 application accompanied by the required fee is filed unless the period is extended by order of the
- 10403 Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall
- 10404 notify the applicant of the denial and the reasons for the denial.
- 10405 C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee,
- 10406 directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed
- 10407 by this chapter, (ii) the acquisition of an interest in a licensee, directly or indirectly, including an
- 10408 acquisition by merger or consolidation, by or with a person affiliated through common ownership with
- 10409 the licensee, or (iii) the acquisition of an interest in a licensee by a person by bequest, descent,
- 10410 survivorship or operation of law. The person acquiring an interest in a licensee in a transaction that is
- 10411 exempt from filing an application by this subsection shall send written notice to the Commissioner of
- 10412 such acquisition within 30 days of its closing.
- 10413 § 6.2-1809. Retention of books, accounts, and records.
- 10414 Every licensee shall maintain in its approved offices such books, accounts and records as the
- 10415 Commission may reasonably require in order to determine whether such licensee is complying with the
- 10416 provisions of this chapter and regulations adopted in furtherance thereof. Such books, accounts and
- 10417 records shall be maintained apart and separate from any other business in which the licensee is
- 10418 involved. Such records relating to payday loans, including copies of checks given to a licensee as
- 10419 security for such loans, shall be retained for at least three years after final payment is made on any
- 10420 loan.
- 10421 § 6.2-1810. Payday lending database.
- 10422 A. The Commission shall certify and contract with one or more third parties to develop, implement,
- 10423 and maintain a real-time, Internet-accessible database that contains such payday loan information as the
- 10424 Commission may require from time to time by administrative rule or policy statement. The database
- 10425 shall be operational by January 1, 2009.
- 10426 B. The following provisions shall apply to the database:

10427 1. Before making a payday loan, a licensee shall query the database through a Commission-certified  
 10428 database provider and shall retain evidence of the query for the Commission's supervisory review. The  
 10429 database shall allow a licensee to make a payday loan only if making the loan is permissible under the  
 10430 provisions of this chapter. During any period that the database is unavailable due to technical problems  
 10431 beyond the licensee's control, a licensee may rely on the payday loan applicant's written representations,  
 10432 rather than the database's information, to verify that making the loan applied for is permissible under  
 10433 the provisions of this chapter. Because a licensee may rely on the accuracy of the applicant's  
 10434 representations and the database's information, a licensee is not subject to any administrative penalty or  
 10435 civil liability if that information is later determined to be inaccurate.

10436 2. The database provider shall maintain the database, take all actions it deems necessary to protect  
 10437 the confidentiality and security of the information contained in the database, be responsible for the  
 10438 confidentiality and security of such information, and own the information contained in the database. The  
 10439 Commission shall have access to and utilize the database as an enforcement tool to ensure licensees'  
 10440 compliance with the provisions of this chapter.

10441 3. Upon a licensee's query, the database shall advise the licensee whether the applicant is eligible  
 10442 for a new payday loan and, if the applicant is ineligible, the reason for such ineligibility. If the  
 10443 database advises the licensee that the applicant is ineligible for a payday loan, then the applicant shall  
 10444 direct any inquiry regarding the specific reason for such ineligibility to the database provider rather  
 10445 than to the licensee. The information contained in the payday loan database is confidential and exempt  
 10446 from the Freedom of Information Act (§ 2.2-3700 et seq.).

10447 4. If a licensee and borrower consummate a payday loan, then the licensee shall pay a fee to defray  
 10448 the costs of submitting the database inquiry. The amount of the database inquiry fee shall be calculated  
 10449 in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship  
 10450 to actual cost of the operation of the database. If a licensee submits a database inquiry but does not  
 10451 consummate a payday loan with the applicant, then the licensee shall not pay the database inquiry fee.  
 10452 Each licensee shall remit all database inquiry fees directly to the database provider on a weekly basis.

10453 5. If a borrower enters into a payday loan or pays or otherwise satisfies a payday loan in full, or if  
 10454 a borrower enters into an extended payment plan as provided in subdivision 26 of § 6.2-1816 or an  
 10455 extended term loan as provided in subdivision 27 of § 6.2-1816, then the licensee making the loan shall  
 10456 report such event or other information to the database not later than the close of business on the date  
 10457 of such event.

10458 § 6.2-1811. Annual report.

10459 Each licensee under this chapter shall annually, on or before March 25, file a written report with  
 10460 the Commissioner containing such information as the Commissioner may require concerning his  
 10461 business and operations during the preceding calendar year as to each approved office. Reports shall be  
 10462 made under oath and shall be in the form prescribed by the Commissioner.

10463 § 6.2-1812. Other reporting requirements.

10464 A. A licensee shall file a written report with the Commissioner within 15 days following the  
 10465 occurrence of any of the following:

- 10466 1. The filing of bankruptcy, reorganization or receivership proceedings by or against the licensee;
- 10467 2. The institution of administrative or regulatory proceedings against the licensee by any  
 10468 governmental authority;
- 10469 3. Any felony indictments of the licensee or any of its members, partners, directors, officers, or  
 10470 principals;
- 10471 4. Any felony conviction of the licensee or any of its members, partners, directors, officers, or  
 10472 principals; and
- 10473 5. Such other event as the Commission may prescribe by regulation.

10474 B. The report shall be in writing and describe the event and its expected impact on the business of  
 10475 the licensee.

10476 § 6.2-1813. Investigations; examinations.

10477 The Commission may, as often as it deems necessary, investigate and examine the affairs, business,  
 10478 premises and records of any person licensed or required to be licensed under this chapter or any person  
 10479 who may be violating § 6.2-1801. Examinations of licensees shall be conducted at least once in each  
 10480 three-year period. In the course of such investigations and examinations, the owners, members, officers,  
 10481 directors, partners, and employees of such person being investigated or examined shall, upon demand of  
 10482 the person making such investigation or examination, afford full access to all premises, books, records,  
 10483 and information that the person making such investigation or examination deems necessary. For the  
 10484 foregoing purposes, the person making such investigation or examination shall have authority to  
 10485 administer oaths, examine under oath all the aforementioned persons, and compel the production of  
 10486 papers and objects of all kinds.

10487 § 6.2-1814. Annual fees.

10488 A. To defray the costs of examination, supervision and regulation, every licensee shall pay an annual  
 10489 fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a  
 10490 reasonable relationship to the business volume of licensees, the actual costs of their examinations, and  
 10491 to other factors relating to their supervision and regulation. All such fees shall be assessed on or before  
 10492 September 15 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer  
 10493 on or before October 15 following each assessment.

10494 B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or  
 10495 investigate the books and records of a licensee at a location outside the Commonwealth, the licensee  
 10496 shall be liable for and shall pay to the Commission within 30 days of the presentation of an itemized  
 10497 statement, the actual travel and reasonable living expenses incurred on account of its examination,  
 10498 supervision and regulation, or shall pay at a reasonable per diem rate approved by the Commission.

10499 § 6.2-1815. Regulations.

10500 The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this  
 10501 chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content  
 10502 and shall afford interested parties an opportunity to be heard, in accordance with the Commission's  
 10503 Rules.

10504 § 6.2-1816. Required and prohibited business methods.

10505 Each licensee shall comply with the following requirements:

10506 1. Each payday loan shall be evidenced by a written loan agreement, which shall be signed by the  
 10507 borrower and a person authorized by the licensee to sign such agreements and dated the same day the  
 10508 loan is made and disbursed. The loan agreement shall set forth, at a minimum: (i) the principal amount  
 10509 of the loan; (ii) the interest and any fee charged; (iii) the annual percentage rate, which shall be stated  
 10510 using that term, applicable to the transaction calculated in accordance with Federal Reserve Board  
 10511 Regulation Z (12 C.F.R. Part 226); (iv) evidence of receipt from the borrower of a check, dated as of  
 10512 the date that the loan is due, as security for the loan, stating the amount of the check; (v) an agreement  
 10513 by the licensee not to present the check for payment or deposit until the date the loan is due, which date  
 10514 shall produce a loan term of at least two times the borrower's pay cycle and after which date interest  
 10515 shall not accrue on the amount advanced at a greater rate than six percent per year; (vi) an agreement  
 10516 by the licensee that the borrower shall have the right to cancel the loan transaction at any time before  
 10517 the close of business on the next business day following the date of the transaction by paying to the  
 10518 licensee, in the form of cash or other good funds instrument, the amount advanced to the borrower; and  
 10519 (vii) an agreement that the borrower shall have the right to prepay the loan prior to maturity by paying  
 10520 the licensee the principal amount advanced and any accrued and unpaid interest, fees, and charges.

10521 2. The licensee shall give a duplicate original of the loan agreement to the borrower at the time of  
 10522 the transaction.

10523 3. A licensee shall not obtain any agreement from the borrower (i) giving the licensee or any third  
 10524 person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee  
 10525 or any third party to bring suit against the borrower in a court outside the Commonwealth; or (iii)  
 10526 waiving any right the borrower has under this chapter.

10527 4. A licensee shall not require or accept more than one check from a borrower as security for any  
 10528 loan.

10529 5. A licensee shall not cause any person to be obligated to the licensee in any capacity at any time  
 10530 in the principal amount of more than \$500.

10531 6. A licensee shall not (i) refinance, renew or extend any payday loan; (ii) make a loan to a person  
 10532 if the loan would cause the person to have more than one payday loan from any licensee outstanding at  
 10533 the same time; (iii) make a loan to a borrower on the same day that a borrower paid or otherwise  
 10534 satisfied in full a previous payday loan; (iv) make a payday loan to a person within 90 days following  
 10535 the date that the person has paid or otherwise satisfied in full a payday loan through an extended  
 10536 payment plan as provided in subdivision 26; (v) make a payday loan to a person within 45 days  
 10537 following the date that the person has paid or otherwise satisfied in full a fifth payday loan made within  
 10538 a period of 180 days as provided in subdivision 27 a; or (vi) make a payday loan to a person within  
 10539 the longer of (a) 90 days following the date that the person has paid or otherwise satisfied in full an  
 10540 extended term loan or (b) 150 days following the date that the person enters into an extended term  
 10541 loan, as provided in subdivision 27 b.

10542 7. A licensee shall not cause a borrower to be obligated upon more than one loan at any time.

10543 8. A check accepted by a licensee as security for any loan shall be dated as of the date the loan is  
 10544 due.

10545 9. Notwithstanding any provision of § 8.01-226.10 to the contrary, a licensee shall not threaten, or  
 10546 cause to be instigated, criminal proceedings against a borrower if a check given as security for a loan  
 10547 is dishonored. In addition to any other remedies available at law, a licensee that knowingly violates this  
 10548 prohibition shall pay the affected borrower a civil monetary penalty equal to three times the amount of

10549 *the dishonored check.*

10550 10. A licensee shall not take an interest in any property other than a check payable to the licensee  
10551 as security for a loan.

10552 11. A licensee shall not make a loan to a borrower to enable the borrower to pay for any other  
10553 product or service sold at the licensee's office location.

10554 12. Loan proceeds shall be disbursed in cash or by the licensee's business check. No fee shall be  
10555 charged by the licensee or an affiliated check casher for cashing a loan proceeds check.

10556 13. A check given as security for a loan shall not be negotiated to a third party.

10557 14. Upon receipt of a check given as security for a loan, the licensee shall stamp the check with an  
10558 endorsement stating: "This check is being negotiated as part of a payday loan pursuant to Chapter 18  
10559 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia, and any holder of this check takes it subject to  
10560 all claims and defenses of the maker."

10561 15. Before entering into a payday loan, the licensee shall provide each borrower with a pamphlet, in  
10562 form consistent with regulations adopted by the Commission, explaining in plain language the rights and  
10563 responsibilities of the borrower and providing a toll-free number at the Commission for assistance with  
10564 complaints.

10565 16. Before disbursing funds pursuant to a payday loan, a licensee shall provide a clear and  
10566 conspicuous printed notice to the borrower indicating that a payday loan is not intended to meet  
10567 long-term financial needs and that the borrower should use a payday loan only to meet short-term cash  
10568 needs.

10569 17. A borrower shall be permitted to make partial payments, in increments of not less than \$5, on  
10570 the loan at any time prior to maturity, without charge. The licensee shall give the borrower signed,  
10571 dated receipts for each payment made, which shall state the balance due on the loan. Upon repayment  
10572 of the loan in full, the licensee shall mark the original loan agreement with the word "paid" or  
10573 "canceled," return it to the borrower, and retain a copy in its records.

10574 18. Each licensee shall conspicuously post in each approved office a schedule of fees and interest  
10575 charges, with examples using a \$300 loan payable in 14 days and 30 days.

10576 19. Any advertising materials used to promote payday loans that includes the amount of any  
10577 payment, expressed either as a percentage or dollar amount, or the amount of any finance charge, shall  
10578 also include a statement of the interest, fees and charges, expressed as an annual percentage rate,  
10579 payable using as an example a \$300 loan payable in 14 and 30 days.

10580 20. In any print media advertisement, including any web page, used to promote payday loans, the  
10581 disclosure statements shall be conspicuous. "Conspicuous" shall have the meaning set forth in  
10582 subdivision (a) (14) of § 59.1-501.2. If a single advertisement consists of multiple pages, folds, or faces,  
10583 the disclosure requirement applies only to one page, fold, or face. In a television advertisement used to  
10584 promote payday loans, the visual disclosure legend shall include 20 scan lines in size. In a radio  
10585 advertisement or advertisement communicated by telephone used to promote payday loans, the disclosure  
10586 statement shall last at least two seconds and the statement shall be spoken so that its contents may be  
10587 easily understood.

10588 21. A licensee or affiliate shall not knowingly make a payday loan to a person who is a member of  
10589 the military services of the United States or the spouse or other dependent of a member of the military  
10590 services of the United States. Prior to making a payday loan, every licensee or affiliate shall inquire of  
10591 every prospective borrower if he is a member of the military services of the United States or the spouse  
10592 or other dependent of a member of the military services of the United States. The loan documents shall  
10593 include verification that the borrower is not a member of the military services of the United States or  
10594 the spouse or other dependent of a member of the military services of the United States.

10595 22. In collecting or attempting to collect a payday loan, a licensee shall comply with the restrictions  
10596 and prohibitions applicable to debt collectors contained in the Fair Debt Collection Practices Act (15  
10597 U.S.C. § 1692 et seq.) regarding harassment or abuse, false or misleading misrepresentations, and  
10598 unfair practices in collections.

10599 23. A licensee may not file or initiate a legal proceeding of any kind against a borrower until 60  
10600 days after the date of default on a payday loan, during which period the licensee and borrower may  
10601 voluntarily enter into a repayment arrangement.

10602 24. A licensee shall not obtain authorization to electronically debit a borrower's deposit account in  
10603 connection with any payday loan.

10604 25. A licensee may not engage in any unfair, misleading, deceptive, or fraudulent acts or practices in  
10605 the conduct of its business.

10606 26. A borrower may pay any outstanding payday loan from any licensee by means of an extended  
10607 payment plan as follows:

10608 a. A borrower shall not be eligible to enter into more than one extended payment plan in any  
10609 12-month period.

10610 *b. To enter into an extended payment plan with respect to a payday loan, the borrower shall agree*  
 10611 *in a written and signed document to repay the amount owed in at least four equal installments over an*  
 10612 *aggregate term of at least 60 days. Interest shall not accrue on the indebtedness during the term of the*  
 10613 *extended payment plan. The borrower may prepay an extended payment plan in full at any time without*  
 10614 *penalty. If the borrower fails to pay the amount owed under the extended payment plan when due, then*  
 10615 *the licensee may immediately accelerate the unpaid loan balance.*

10616 *c. If the borrower enters into an extended payment plan, then no licensee may make a payday loan*  
 10617 *to the borrower until a waiting period of 90 days shall have elapsed from the date that the borrower*  
 10618 *pays or satisfies in full the balance of the loan under the terms of the extended payment plan.*

10619 *d. At each approved office, the licensee shall post a notice in at least 24-point bold type, in a form*  
 10620 *established or approved by the Commission, informing persons that they may be eligible to enter into an*  
 10621 *extended payment plan.*

10622 *e. The licensee shall provide oral notice to any borrower who is eligible to enter into an extended*  
 10623 *payment plan, at the time a payday loan is made, which notice shall inform the borrower of his ability*  
 10624 *to pay the payday loan by means of an extended payment plan. The information contained in the notice*  
 10625 *shall be in a form provided by the Bureau.*

10626 *27. In addition to the other conditions set forth in this chapter, the fifth payday loan that is made to*  
 10627 *any person within a period of 180 days shall be made only in compliance with, at the option of the*  
 10628 *borrower, either of the following:*

10629 *a. The fifth payday loan is made upon the same terms and conditions otherwise applicable to payday*  
 10630 *loans under the terms of this chapter, except that (i) no licensee may make a payday loan to such*  
 10631 *borrower during a period of 45 days following the date such fifth payday loan is paid or otherwise*  
 10632 *satisfied in full and (ii) the borrower may elect, at any time on or before its due date, to repay such*  
 10633 *fifth payday loan by means of an extended payment plan as provided in subdivision 26 b; or*

10634 *b. The fifth payday loan is made in the form of an extended term loan. An extended term loan is a*  
 10635 *loan that complies with the terms and conditions otherwise applicable to payday loans under the terms*  
 10636 *of this chapter except that (i) the principal amount of the loan, and any interest and fees permitted by*  
 10637 *§ 6.2-1817, shall be payable in four equal installments over a payment period of 60 days following the*  
 10638 *date the loan is made and (ii) no licensee may make a payday loan to such borrower during the longer*  
 10639 *of (a) 90 days following the date the extended term loan is paid or otherwise satisfied in full or (b) 150*  
 10640 *days following the date the extended term loan is made.*

10641 *§ 6.2-1817. Rate of interest, loan fee, and verification fee.*

10642 *A. A licensee may charge and receive on each loan interest at a simple annual rate not to exceed 36*  
 10643 *percent. A licensee may also charge (i) a loan fee as provided in subsection B and (ii) a verification fee*  
 10644 *as provided in subsection C.*

10645 *B. A licensee may charge and receive a loan fee in an amount not to exceed 20 percent of the*  
 10646 *amount of the loan proceeds advanced to the borrower.*

10647 *C. A licensee may charge and receive a verification fee in an amount not to exceed \$5 for a loan*  
 10648 *made under this chapter. The verification fee shall be used in part to defray the costs of submitting a*  
 10649 *database inquiry as provided in subdivision B 4 of § 6.2-1810.*

10650 *§ 6.2-1818. Additional charges.*

10651 *In addition to the loan principal, interest, and fees permitted under § 6.2-1817, no further or other*  
 10652 *amount whatsoever shall be directly or indirectly charged, contracted for, collected, received or*  
 10653 *recovered except (i) any deposit item return fee incurred by the licensee, not to exceed \$25, if the check*  
 10654 *given by the borrower as security is returned because the account on which it was drawn was closed by*  
 10655 *the borrower or contained insufficient funds, or the borrower stopped payment on the check, and (ii) if*  
 10656 *judgment is obtained against the borrower, court costs and reasonable attorney fees if awarded by the*  
 10657 *court, incurred as a result of the returned check in an amount not to exceed \$250. A licensee shall not*  
 10658 *be entitled to collect or recover from a borrower any sum otherwise permitted pursuant to § 6.2-302,*  
 10659 *8.01-27.2, or 8.01-382.*

10660 *§ 6.2-1819. Advertising.*

10661 *No person licensed or required to be licensed under this chapter shall use or cause to be published*  
 10662 *any advertisement that (i) contains any false, misleading or deceptive statement or representation; or (ii)*  
 10663 *identifies the person by any name other than the name set forth on the license issued by the*  
 10664 *Commission.*

10665 *§ 6.2-1820. Other business.*

10666 *No licensee shall conduct the business of making payday loans under this chapter at any office,*  
 10667 *suite, room, or other place of business where any other business is solicited or conducted except a*  
 10668 *registered check cashing business or such other business as the Commission determines should be*  
 10669 *permitted, and subject to such conditions as the Commission deems necessary and in the public interest.*  
 10670 *No such other business shall be allowed except as permitted by Commission regulation or upon the*

10671 filing of a written application with the Commission, payment of a \$300 fee, and provision of such  
 10672 information as the Commission may deem pertinent. The Commission shall not, however, permit the sale  
 10673 of insurance or the enrolling of borrowers under group insurance policies.

10674 § 6.2-1821. Suspension or revocation of license.

10675 A. The Commission may suspend or revoke any license issued under this chapter upon any of the  
 10676 following grounds:

10677 1. Any ground for denial of a license under this chapter;

10678 2. Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant  
 10679 thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's  
 10680 business;

10681 3. A course of conduct consisting of the failure to perform written agreements with borrowers;

10682 4. Conviction of a felony or misdemeanor involving fraud, misrepresentation or deceit;

10683 5. Entry of a judgment against the licensee involving fraud, misrepresentation or deceit;

10684 6. Entry of a federal or state administrative order against such licensee for violation of any law or  
 10685 any regulation applicable to the conduct of his business;

10686 7. Refusal to permit an investigation or examination by the Commission;

10687 8. Failure to pay any fee or assessment imposed by this chapter; or

10688 9. Failure to comply with any order of the Commission.

10689 B. For the purposes of this section, acts of any officer, director, member, partner, or principal shall  
 10690 be deemed acts of the licensee.

10691 § 6.2-1822. Cease and desist orders.

10692 If the Commission determines that any person has violated any provision of this chapter or any  
 10693 regulation adopted hereunder, the Commission may, upon 21 days' notice in writing, order such person  
 10694 to cease and desist from such practices and to comply with the provisions of this chapter. The notice  
 10695 shall be sent by certified mail to the principal place of business of such person or other address  
 10696 authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of  
 10697 mailing the notice, the person named therein may file with the clerk of the Commission a written request  
 10698 for a hearing. If a hearing is requested, the Commission shall not issue a cease and desist order except  
 10699 based upon findings made at such hearing. Such hearing shall be conducted in accordance with the  
 10700 provisions of Title 12.1. The Commission may enforce compliance with any such order issued under this  
 10701 section by imposition and collection of such fines and penalties as may be prescribed by law.

10702 § 6.2-1823. Notice of proposed suspension or revocation.

10703 The Commission shall not revoke or suspend the license of any licensee upon any of the grounds set  
 10704 forth in § 6.2-1821 until it has given the licensee 21 days' notice in writing of the reasons for the  
 10705 proposed revocation or suspension and an opportunity to introduce evidence and be heard. The notice  
 10706 shall be sent by certified mail to the principal place of business of the licensee or other address  
 10707 authorized under § 12.1-19.1 and shall state with particularity the grounds for the contemplated action.  
 10708 Within 14 days of mailing the notice, the person named therein may file with the clerk of the  
 10709 Commission a written request for a hearing. If a hearing is requested, the Commission shall not suspend  
 10710 or revoke the license except based upon findings made at such hearing. The hearing shall be conducted  
 10711 in accordance with the provisions of Title 12.1.

10712 § 6.2-1824. Civil penalties.

10713 In addition to the authority conferred under §§ 6.2-1821 and 6.2-1822, the Commission may impose  
 10714 a civil penalty not exceeding \$1,000 upon any person who it determines, in proceedings commenced in  
 10715 accordance with the Commission's Rules, has violated any of the provisions of this chapter, the  
 10716 regulations adopted by the Commission pursuant thereto, or any other law or regulation applicable to  
 10717 the conduct of the lender's business. For the purposes of this section, each separate violation shall be  
 10718 subject to the civil penalty herein prescribed, and in the case of a violation of § 6.2-1801, each loan  
 10719 made or arranged shall constitute a separate violation.

10720 § 6.2-1825. Criminal penalties.

10721 Any person violating § 6.2-1801 is guilty of a Class 6 felony. For the purposes of this section, each  
 10722 violation shall constitute a separate offense.

10723 § 6.2-1826. Validity of noncompliant loan agreement; private right of action.

10724 A. If any provision of a written loan agreement violates this chapter, such provision shall be  
 10725 unenforceable against the borrower.

10726 B. Any person who suffers loss by reason of a violation of any provision of this chapter may bring a  
 10727 civil action to enforce such provision. Any person who is successful in such action shall recover  
 10728 reasonable attorney fees, expert witness fees, and court costs incurred by bringing such action.

10729 § 6.2-1827. Application of chapter to Internet loans.

10730 The provisions of this chapter, including specifically the licensure requirements of § 6.2-1801, shall  
 10731 apply to persons making payday loans over the Internet to Virginia residents, whether or not the person

10732 making the loan maintains a physical presence in the Commonwealth.

10733 § 6.2-1828. Authority of Attorney General; referral by Commission to Attorney General.

10734 A. If the Commission determines that a person is in violation, or has violated, any provision of this  
10735 chapter, the Commission may refer the information to the Attorney General and may request that the  
10736 Attorney General investigate such violations. Upon such referral, the Attorney General is authorized to  
10737 seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin such violations  
10738 notwithstanding the existence of an adequate remedy at law.

10739 B. Upon such referral by the Commission, the Attorney General may also seek, and the circuit court  
10740 may order or decree, damages and such other relief allowed by law, including restitution to the extent  
10741 available to borrowers under applicable law. Persons entitled to any relief as authorized by this section  
10742 shall be identified by order of the court within 180 days from the date of the order permanently  
10743 enjoining the unlawful act or practice.

10744 C. In any action brought by the Attorney General by virtue of the authority granted in this provision,  
10745 the Attorney General shall be entitled to seek reasonable attorney fees and costs.

10746 § 6.2-1829. Violation of the Virginia Consumer Protection Act.

10747 Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance  
10748 with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia  
10749 Consumer Protection Act (§ 59.1-196 et seq.).

#### 10750 CHAPTER 19.

#### 10751 MONEY ORDER SELLERS AND MONEY TRANSMITTERS.

10752 § 6.2-1900. Definitions.

10753 As used in this chapter, unless the context requires a different meaning:

10754 "Authorized delegate" means a person designated or appointed by a licensee to sell money orders or  
10755 provide money transmission services on behalf of the licensee.

10756 "Licensee" means a person licensed under this chapter to engage in the business of selling money  
10757 orders or the business of money transmission, or both.

10758 "Monetary value" means a medium of exchange, whether or not redeemable in money.

10759 "Money order" means a check, traveler's check, draft, or other instrument for the transmission or  
10760 payment of money or monetary value whether or not negotiable.

10761 "Money order seller" means a person engaged in the business of selling money orders.

10762 "Money transmission" means receiving money or monetary value for transmission by wire, facsimile,  
10763 electronic means or other means or selling or issuing stored value.

10764 "Money transmitter" means a person engaged in the business of money transmission.

10765 "Outstanding" means:

10766 1. With respect to a money order, a money order that has been issued and sold directly by a  
10767 licensee, or sold by an authorized delegate of the licensee and reported to the licensee, that has not yet  
10768 been paid by or on behalf of the licensee; or

10769 2. With respect to a money transmission transaction, a money transmission transaction for which the  
10770 licensee, directly or through an authorized delegate of the licensee, has received money or monetary  
10771 value from a customer for transmission, but has not yet (i) completed the money transmission  
10772 transaction by delivering the money or monetary value to the person designated by the customer, or (ii)  
10773 refunded the money or monetary value to the customer.

10774 "Principal" means any person who, directly or indirectly, owns or controls a 10 percent or greater  
10775 interest in any form of entity.

10776 "Stored value" means monetary value that is evidenced by an electronic record.

10777 § 6.2-1901. License required; exception.

10778 A. No person shall engage in the business of selling money orders or engage in the business of  
10779 money transmission, whether or not the person has a location in the Commonwealth, unless the person  
10780 obtains from the Commission a license issued pursuant to this chapter.

10781 B. No license under this chapter shall be required of any authorized delegate of a licensee.

10782 § 6.2-1902. Scope and construction of chapter.

10783 A. The provisions of this chapter shall not apply to:

10784 1. The United States, or any department, instrumentality or agency thereof;

10785 2. The Commonwealth, or any political subdivision thereof;

10786 3. Any bank, trust company, savings institution, or credit union operating under the laws of the  
10787 United States or any state or territory thereof, or other person to the extent the person provides money  
10788 transmission services as an agent of one or more banks, trust companies, savings institutions, or credit  
10789 unions operating under the laws of the United States or any state or territory thereof; or

10790 4. Any private security services business, licensed under § 9.1-139, that transports or offers to  
10791 transport money.

10792 B. This chapter shall be construed by the Commission for the purpose of protecting, against financial

10793 loss, residents of the Commonwealth who (i) purchase money orders or (ii) give money or control of  
10794 their funds or credit into the custody of another person for transmission, regardless of whether the  
10795 money order seller or money transmitter has any office, facility, authorized delegate, or other physical  
10796 presence in the Commonwealth.

10797 § 6.2-1903. Application for license; financial statements; application fee.

10798 A. Applications for a license shall be made on forms furnished by the Commission and shall set forth  
10799 the name and address of the applicant, which shall be an entity, a description of the manner in which  
10800 and the locations at which it proposes to do business, and such additional relevant information as the  
10801 Commission requires.

10802 B. The application shall be accompanied by such audited financial statements as the Commission  
10803 may require and an application fee of \$1,000. If an application for a license under this chapter is  
10804 denied, the application fee shall not be refunded. The fee shall not be abated by the expiration,  
10805 surrender, or revocation of the license.

10806 § 6.2-1904. Bond required.

10807 A. The application for a license shall be accompanied by a surety bond satisfactory to the  
10808 Commission in the principal amount as determined by the Commission. The amount of the bond shall be  
10809 not less than \$25,000 nor more than \$ 1 million. The bond shall be conditioned as the Commission may  
10810 require for the benefit of purchasers, payees, and holders of money orders sold by the licensee and its  
10811 authorized delegates in the Commonwealth, and for the benefit of purchasers of money transmission  
10812 services. If any material information provided to the Commission in an application changes during the  
10813 investigation period, the applicant shall immediately notify the Commission.

10814 B. As an alternative security device and in lieu of the surety bond required by subsection A, a  
10815 license applicant may deposit with a financial institution designated by such applicant and approved by  
10816 the Commission for that purpose, cash, stocks and bonds, notes, debentures or other obligations of the  
10817 United States or any agency or instrumentality thereof, or guaranteed by the United States, or of the  
10818 Commonwealth, or of a locality or other political subdivision of the Commonwealth, in an aggregate  
10819 amount, based upon the principal amount or market value, whichever is lower, of not less than the  
10820 amounts required by the Commission pursuant to subsection A. Such cash or securities shall be  
10821 deposited and held to secure obligations established in subsection A, but the licensee shall be entitled to  
10822 (i) receive all interest and dividends thereon and (ii) substitute, with the Commission's prior approval,  
10823 other securities for those deposited. The Commission may also direct the licensee, for good cause  
10824 shown, to substitute other securities for those deposited.

10825 C. The security device required by this section shall remain in place for five years after a licensee  
10826 ceases money order sales or money transmission activities within the Commonwealth. The Commission  
10827 may permit the security device to be reduced or eliminated prior to that time to the extent the amount of  
10828 such licensee's money orders and money transmission transactions outstanding in the Commonwealth  
10829 are reduced. The Commission may also permit any licensee to substitute a letter of credit, or such other  
10830 form of security device as may be acceptable to the Commission, for the security device in place at the  
10831 time the licensee ceases money order sales or money transmission activities in the Commonwealth.

10832 § 6.2-1905. Annual fees; expenses; annual reports; renewal.

10833 A. Each licensee shall pay to the Commission annually on or before September 1 a license renewal  
10834 fee of \$750. All fees paid pursuant to this chapter shall be paid into the state treasury and credited to  
10835 the "Financial Institutions Special Fund - State Corporation Commission."

10836 B. In order to defray the costs of their examination and supervision, every licensee under this  
10837 chapter shall pay an annual assessment calculated in accordance with a schedule set by the  
10838 Commission. The schedule shall bear a reasonable relationship to the dollar volume of money orders  
10839 sold and Virginia money transmission business conducted by licensees, either directly or through their  
10840 authorized delegates, the costs of their examinations, and to other factors relating to their supervision  
10841 and regulation. All such fees shall be assessed on or before August 1 for every calendar year. All such  
10842 fees shall be paid by licensees to the State Treasurer on or before September 1 following each  
10843 assessment.

10844 C. In addition to the annual assessment prescribed in subsection B, when it becomes necessary to  
10845 examine or investigate the books and records of a licensee at a location outside the Commonwealth, the  
10846 licensee shall be liable for and shall pay to the Commission within 30 days of the presentation of an  
10847 itemized statement, the actual travel and reasonable living expenses incurred on account of its  
10848 examination and supervision, or shall pay a reasonable per diem rate approved by the Commission.

10849 D. Each licensee under this chapter shall annually, on or before April 15, file a written report with  
10850 the Commissioner along with such information as the Commissioner may require concerning the  
10851 licensee's business, including audited financial statements. If a licensee is unable to furnish copies of its  
10852 audited financial statements by April 15, the licensee may request an extension, which may be granted  
10853 by the Commissioner for good cause shown.

10854 E. Every license shall remain in force until it expires or has been surrendered or revoked. The  
 10855 expiration, surrender, or revocation of a license shall not affect any preexisting legal right or obligation  
 10856 of the licensee.

10857 F. If a license has expired or has been surrendered or revoked, the former licensee shall immediately  
 10858 (i) cease selling money orders and engaging in the money transmission business, and (ii) instruct its  
 10859 authorized delegates to cease selling money orders and accepting funds for transmission on behalf of  
 10860 the licensee. The Commission may grant relief from this subsection for good cause shown.

10861 G. A license issued under this chapter shall expire on September 30 of each year unless it is  
 10862 renewed by a licensee. A licensee may renew its license by complying with the following: (i) paying its  
 10863 license renewal fee in accordance with subsection A; (ii) paying its annual assessment in accordance  
 10864 with subsection B; (iii) filing its annual report and audited financial statements in accordance with  
 10865 subsection D; and (iv) maintaining the minimum net worth specified in subsection B of § 6.2-1906, as  
 10866 evidenced by its audited financial statements. Upon receiving a licensee's renewal fee, annual  
 10867 assessment, and the documents and other information required by this section, the Commissioner shall  
 10868 renew such person's license. If a license has expired, the former licensee may seek reinstatement within  
 10869 three months after the license expiration date. Upon receiving a former licensee's renewal fee, annual  
 10870 assessment, and the documents and other information required by this section, together with payment of  
 10871 a reinstatement fee of \$1,000, the Commissioner shall reinstate such person's license.

10872 § 6.2-1906. Conditions prerequisite to issuance of license; net worth requirement.

10873 A. The Commission shall not issue a license to an applicant unless it determines that:

10874 1. The applicant will be able to and will perform its obligations to purchasers of money transmission  
 10875 services and purchasers, payees, and holders of money orders sold by it and its authorized delegates in  
 10876 the Commonwealth; and

10877 2. The financial responsibility, character, reputation, experience, and general fitness of the applicant  
 10878 and its members, senior officers, directors, and principals are such as to warrant belief that the business  
 10879 will be operated efficiently and fairly, in the public interest, and in accordance with applicable law and  
 10880 regulations.

10881 B. Each licensee shall at all times have a net worth of not less than \$200,000, or a higher amount  
 10882 not to exceed \$1 million as determined by the Commission, calculated in accordance with generally  
 10883 accepted accounting principles. Any person who was licensed under this chapter on July 1, 2009, shall  
 10884 have three years from that date to comply with the minimum net worth requirement of this section,  
 10885 during which period the licensee shall at all times have a net worth of not less than \$100,000, or a  
 10886 higher amount not to exceed \$1 million as determined by the Commission, calculated in accordance  
 10887 with generally accepted accounting principles.

10888 § 6.2-1907. Investigations; license revocation.

10889 A. The Commissioner may make such investigations as he deems necessary to determine if the  
 10890 applicant has complied with all applicable provisions of law and regulations adopted thereunder.

10891 B. The Commission may revoke a license issued under this chapter:

10892 1. If it reasonably determines that (i) a licensee is engaging in one or more unsafe or unsound  
 10893 practices, (ii) a licensee may be unable to perform its obligations, or (iii) a licensee has willfully failed  
 10894 without reasonable cause to pay or provide for the payment of any of its obligations; or

10895 2. Upon any of the following grounds:

10896 a. Any ground for denial of a license under this chapter;

10897 b. Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant  
 10898 thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's  
 10899 business;

10900 c. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

10901 d. Entry of a judgment against such licensee involving fraud, misrepresentation, or deceit;

10902 e. Entry of a federal or state administrative order against such licensee for violation of any law or  
 10903 any regulation applicable to the conduct of his business;

10904 f. Refusal to permit an investigation or examination by the Commission;

10905 g. Failure to pay any fee or assessment imposed by this chapter; or

10906 h. Failure to comply with any order of the Commission.

10907 § 6.2-1908. Notice of proposed revocation.

10908 The Commission may not revoke a license issued under this chapter upon any of the grounds set  
 10909 forth in § 6.2-1907 until it has given the licensee 21 days' notice in writing of the reasons for the  
 10910 proposed revocation and has given the licensee an opportunity to introduce evidence and be heard. The  
 10911 notice shall be sent by certified mail to the principal place of business of such licensee and shall state  
 10912 with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the  
 10913 person or persons named therein may file with the clerk of the Commission a written request for a  
 10914 hearing. If a hearing is requested, the Commission shall not revoke the license except based upon

10915 findings made at such hearing.

10916 § 6.2-1909. Cease and desist orders.

10917 A. If the Commission determines that (i) any person has violated any provision of this chapter or any  
10918 regulation adopted hereunder or (ii) a licensee is engaging in one or more unsafe or unsound practices,  
10919 the Commission may, upon 21 days' notice in writing, order such person to cease and desist from such  
10920 practices and to comply with the provisions of this chapter. The notice shall be sent by certified mail to  
10921 the principal place of business of such person or other address authorized under § 12.1-19.1 and shall  
10922 state the grounds for the contemplated action. Within 14 days of mailing the notice, the person or  
10923 persons named therein may file with the clerk of the Commission a written request for a hearing. The  
10924 Commission may enforce compliance with any such order issued under this section by imposition and  
10925 collection of such fines and penalties as may be prescribed by law.

10926 B. When, in the opinion of the Commission, immediate action is required to protect the public  
10927 interest, a cease and desist order may be issued immediately without prior hearing. In such cases, the  
10928 Commission shall make a hearing available to the person on an expedited basis.

10929 C. If required to conserve the assets of a licensee or protect the public interest, the Commission may  
10930 order a licensee and its authorized delegates to cease and desist from selling additional money orders  
10931 or receiving additional funds for transmission.

10932 D. The Commission shall have jurisdiction to enter and enforce a cease and desist order against any  
10933 person, regardless of whether such person is present in the Commonwealth, who directly or indirectly (i)  
10934 sells money orders to citizens of the Commonwealth or (ii) obtains money or control over such citizens'  
10935 funds for transmission.

10936 § 6.2-1910. Examination of books by Commission; reporting violations.

10937 A. The Commission shall have authority to examine the books and records of all money order sellers  
10938 and money transmitters, either directly or through authorized delegates. Except as provided herein, the  
10939 Commission shall make an examination of the books and records of each licensee at least once in every  
10940 three-year period, and shall adjust the surety bond or alternative security device as it may deem  
10941 necessary in accordance with § 6.2-1904. The Commission may also examine the books and records of  
10942 any authorized delegate of a licensee as often as it is deemed to be in the public interest. Examinations  
10943 under this section may be conducted in conjunction with examinations to be performed by  
10944 representatives of agencies of the federal government or another state. The Commission, in lieu of an  
10945 examination, may accept the examination report of the federal government or another state.

10946 B. Any person designated by the Commission to make examinations pursuant to this section shall  
10947 have authority to (i) administer oaths, (ii) examine under oath in the course of such examinations, the  
10948 principals, officers, directors, partners, and employees of any person required to be licensed by this  
10949 chapter or such person's authorized delegates, and (iii) compel the production of documents.

10950 C. The Commission shall report violations of the licensing requirements of § 6.2-1901 to the attorney  
10951 for the Commonwealth of the city or county in which such violation occurs.

10952 § 6.2-1911. Conduct of business through authorized delegates of licensee.

10953 A. A licensee may conduct its business through or by means of such authorized delegates as the  
10954 licensee may designate or appoint under a written agreement with such authorized delegates. The  
10955 agreement between a licensee and an authorized delegate shall (i) require the authorized delegate to  
10956 comply with the provisions of this chapter and all other applicable state and federal laws and  
10957 regulations; (ii) require the authorized delegate to remit all sums owing to the licensee in accordance  
10958 with the terms of the written agreement; (iii) require the authorized delegate to permit the Commission  
10959 to investigate or examine its business pursuant to § 6.2-1910; and (iv) prohibit the authorized delegate  
10960 from using a subdelegate, or from otherwise designating or appointing another person to sell money  
10961 orders or engage in money transmission business on behalf of the licensee.

10962 B. A licensee shall conduct a due diligence review of all new authorized delegates. A licensee shall  
10963 be responsible for implementing and maintaining a reasonable risk-based supervision program to  
10964 monitor its authorized delegates.

10965 § 6.2-1912. Liability of licensee for payment of money order; money order to bear name of licensee.

10966 A. A licensee shall be liable for the payment of all funds collected for transmission by the licensee or  
10967 its authorized delegates and all money orders which it sells, in whatever form and whether directly or  
10968 through an authorized delegate, as the maker or drawer thereof according to the negotiable instrument  
10969 laws of the Commonwealth. A licensee who sells a money order, whether directly or through an  
10970 authorized delegate, upon which he is not designated as maker or drawer shall nevertheless have the  
10971 same liabilities with respect thereto as if he had signed the money order as the maker or drawer  
10972 thereof.

10973 B. Every money order sold by a licensee, whether directly or through an authorized delegate, shall  
10974 bear the name of the licensee clearly imprinted thereon as it appears on its license.

10975 § 6.2-1913. Regulations.

10976 The Commission may adopt such regulations as it deems appropriate to effect the purposes of this  
 10977 chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content  
 10978 and shall afford interested parties an opportunity to be heard, in accordance with the Commission's  
 10979 Rules.

10980 § 6.2-1914. Acquisition of control; application.

10981 A. Except as provided in this section, no person shall acquire directly or indirectly 25 percent or  
 10982 more of the voting shares of a corporation or 25 percent or more of the ownership of any other entity  
 10983 licensed to conduct business under this chapter unless such person first:

10984 1. Files an application with the Commission in such form as the Commission may prescribe from  
 10985 time to time;

10986 2. Delivers such information as the Commission may require concerning the financial responsibility,  
 10987 background, experience, and activities of the applicant, its directors, senior officers, principals, and  
 10988 members, and of any proposed new directors, senior officers, principals, or members of the licensee;  
 10989 and

10990 3. Pays such application fee as the Commission may prescribe.

10991 B. If any material information provided to the Commission in an application changes during the  
 10992 investigation period, the applicant shall immediately notify the Commission.

10993 C. Upon the filing and investigation of an application, the Commission shall permit the applicant to  
 10994 acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors,  
 10995 senior officers, and principals, and any proposed new directors, members, senior officers, and principals  
 10996 have the financial responsibility, character, reputation, experience, and general fitness to warrant belief  
 10997 that the business will be operated efficiently and fairly, in the public interest, and in accordance with  
 10998 the applicable laws and regulations. The Commission shall grant or deny the application within 90 days  
 10999 from the date a completed application, accompanied by the required fee, is filed unless the period is  
 11000 extended by the Commission. If the application is denied, the Commission shall notify the applicant of  
 11001 the denial and the reasons for the denial.

11002 D. The provisions of this section shall not apply to the acquisition of an interest in a licensee  
 11003 directly or indirectly by merger, consolidation, or otherwise, (i) by or with a person licensed under this  
 11004 chapter, (ii) by or with a person affiliated through common ownership with the licensee, or (iii) by  
 11005 bequest, descent, survivorship, or by operation of law. The person acquiring an interest in a licensee in  
 11006 a transaction which is exempt from filing an application by this subsection shall send written notice to  
 11007 the Commission of such acquisition within 30 days after its closing.

11008 E. If any person acquires an ownership interest in a licensee without obtaining prior approval from  
 11009 the Commission as required by this section, the Commission may for good cause shown order such  
 11010 person to divest himself or itself of such ownership interest.

11011 F. The Commission may not enter an order requiring divestiture pursuant to subsection E until it has  
 11012 given the person 21 days' notice in writing of the reasons for the proposed divestiture and has given the  
 11013 person an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to  
 11014 such person and shall state with particularity the grounds for the contemplated action. Within 14 days  
 11015 of mailing the notice, the person named therein may file with the clerk of the Commission a written  
 11016 request for a hearing. If a hearing is requested, the Commission shall not require divestiture except  
 11017 based upon findings made at such hearing.

11018 § 6.2-1915. Sale or issuance of bearer money orders; prohibition.

11019 A. No authorized delegate of a licensee shall sell a money order with a face amount of \$750 or  
 11020 more that does not designate a specific payee.

11021 B. This section applies only to paper money orders.

11022 C. This section does not apply to (i) travelers checks, (ii) electronic instruments, (iii) stored value  
 11023 products or other similar instruments for the transmission or payment of money, or (iv) money orders  
 11024 sold or issued by insured financial institutions.

11025 D. Licensees shall inform their authorized delegates of the obligations imposed by this section.

11026 § 6.2-1916. Retention of books, accounts, and records.

11027 A. Every licensee shall maintain in its licensed offices such books, accounts, and records as the  
 11028 Commission may reasonably require in order to determine whether such licensee is complying with the  
 11029 provisions of this chapter and other laws applicable to the conduct of its licensed business. Such books,  
 11030 accounts, and records shall be maintained apart and separate from any other business in which the  
 11031 licensee is involved.

11032 B. Each licensee shall retain the following records for at least three years:

11033 1. A record of each money transmission transaction and money order sold;

11034 2. A general ledger posted at least monthly containing all asset, liability, capital, income, and  
 11035 expense accounts;

11036 3. Bank statements and bank reconciliation records;

- 11037 4. Records of outstanding money orders and money transmission transactions;  
11038 5. Records of each money order and money transmission transaction paid or completed within the  
11039 three-year period; and  
11040 6. A list of the names, addresses, and telephone numbers of all of the licensee's authorized delegates.  
11041 C. Each licensee shall maintain policies and procedures sufficient for it to comply with this chapter  
11042 and all other laws and regulations applicable to the conduct of its licensed business. A licensee shall  
11043 furnish copies of its policies and procedures, as amended, to all of its authorized delegates.  
11044 § 6.2-1917. Other reporting requirements.  
11045 A. A licensee or other person shall file a report with the Commission within 15 days after the  
11046 licensee or other person becomes aware of any material changes in information previously provided in  
11047 an application filed under § 6.2-1903 or 6.2-1914. This requirement shall be applicable only to material  
11048 changes that occur within one year after the date the licensee begins business or the acquisition is  
11049 consummated.  
11050 B. A licensee shall file with the Commission no later than 45 days after the end of each fiscal  
11051 quarter its quarterly financial statements along with a current list of all authorized delegates and  
11052 locations in the Commonwealth where the licensee or an authorized delegate of the licensee sells money  
11053 orders or receives money for transmission. The licensee shall state the name, street address, and  
11054 telephone number of each location and authorized delegate.  
11055 C. A licensee shall file a report with the Commission within one business day after the licensee  
11056 becomes aware of the occurrence of any of the following events:  
11057 1. The filing of a petition by or against the licensee for bankruptcy or reorganization;  
11058 2. The filing of a petition by or against the licensee for receivership, the commencement of any other  
11059 judicial or administrative proceeding for its dissolution or reorganization, or the making of a general  
11060 assignment for the benefit of its creditors;  
11061 3. The commencement of administrative or regulatory proceedings against the licensee by any  
11062 governmental authority;  
11063 4. The cancellation or other impairment of the licensee's bond or other security;  
11064 5. Any felony indictment of the licensee or any of its members, partners, directors, officers,  
11065 principals, or authorized delegates;  
11066 6. Any felony conviction of the licensee or any of its members, partners, directors, officers,  
11067 principals, or authorized delegates; or  
11068 7. Such other events as the Commission may prescribe by regulation.  
11069 D. A licensee shall within 10 days notify the Commissioner, in writing, of the name, address and  
11070 position of each new member, senior officer, partner, or director and provide such other information  
11071 with respect to any such change as the Commissioner may reasonably require.  
11072 § 6.2-1918. Maintenance of permissible investments.  
11073 A. A licensee shall maintain at all times permissible investments that have a market value computed  
11074 in accordance with generally accepted accounting principles of not less than the aggregate dollar  
11075 amount of all of its (i) outstanding money orders from all states, and (ii) outstanding money  
11076 transmission transactions from all states.  
11077 B. The Commission, with respect to any licensees, may limit the extent to which a type of investment  
11078 within a class of permissible investments may be considered a permissible investment, except for money  
11079 and certificates of deposit issued by a bank. The Commission may prescribe by regulation other types of  
11080 investments that the Commission determines to have a safety substantially equivalent to other  
11081 permissible investments.  
11082 C. Permissible investments shall be deemed to be held in trust for the benefit of the purchasers and  
11083 holders of the licensee's outstanding money orders and money transmission services in the event of  
11084 bankruptcy or receivership of the licensee.  
11085 § 6.2-1919. Types of permissible investments.  
11086 A. Except to the extent otherwise limited by the Commission pursuant to § 6.2-1918, the following  
11087 investments are permissible under § 6.2-1918:  
11088 1. Cash, a certificate of deposit, or senior debt obligation of an insured depository institution, as  
11089 defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813).  
11090 2. A banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a  
11091 member bank of the Federal Reserve System and is eligible for purchase by a Federal Reserve Bank.  
11092 3. An investment bearing a rating of one of the three highest grades, as defined by a nationally  
11093 recognized organization that rates securities.  
11094 4. An investment security that is an obligation of the United States or a department, agency, or  
11095 instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and  
11096 interest by the United States; or an investment in an obligation of a state or a governmental subdivision,  
11097 agency, or instrumentality thereof.

11098 5. *Receivables that are payable to a licensee from its authorized delegates, in the ordinary course of*  
 11099 *business, pursuant to contracts which are not past due or doubtful of collection if the licensee does not*  
 11100 *hold at one time receivables under this paragraph from any one person aggregating more than 10*  
 11101 *percent of the licensee's total permissible investments. An authorized delegate shall remit all money*  
 11102 *owing to the licensee in accordance with the terms of the contract between the licensee and the*  
 11103 *authorized delegate but in no event more than seven business days.*

11104 6. *A share or a certificate issued by an open-end management investment company that is registered*  
 11105 *with the U.S. Securities and Exchange Commission under the Investment Companies Act of 1940 (15*  
 11106 *U.S.C. § 80a-1 et seq.), and whose portfolio is restricted by the management company's investment*  
 11107 *policy to investments specified in subdivisions 1 through 4.*

11108 *B. The following investments are permissible under § 6.2-1918, but only to the extent specified:*

11109 1. *An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a*  
 11110 *national securities exchange or on a national over-the-counter market, if the aggregate of investments*  
 11111 *under this subdivision does not exceed 20 percent of the total permissible investments of a licensee and*  
 11112 *the licensee does not at one time hold investments under this subdivision in any one person aggregating*  
 11113 *more than 10 percent of the licensee's total permissible investments;*

11114 2. *A share of a person traded on a national securities exchange or a national over-the-counter*  
 11115 *market or a share or a certificate issued by an open-end management investment company that is*  
 11116 *registered with the U.S. Securities and Exchange Commission under the Investment Companies Act of*  
 11117 *1940 (15 U.S.C. § 80a-1 et seq.), and whose portfolio is restricted by the management company's*  
 11118 *investment policy to shares of a person traded on a national securities exchange or a national*  
 11119 *over-the-counter market, if the aggregate of investments under this subdivision does not exceed 20*  
 11120 *percent of the total permissible investments of a licensee and the licensee does not at one time hold*  
 11121 *investments in any one person aggregating more than 10 percent of the licensee's total permissible*  
 11122 *investments;*

11123 3. *A demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose*  
 11124 *securities are traded on a national securities exchange if the aggregate of the amount of principal and*  
 11125 *interest outstanding under demand-borrowing agreements under this subdivision does not exceed 20*  
 11126 *percent of the total permissible investments of a licensee and the licensee does not at one time hold*  
 11127 *principal and interest outstanding under demand-borrowing agreements under this subdivision with any*  
 11128 *one person aggregating more than 10 percent of the licensee's total permissible investments; and*

11129 4. *Any other investment the Commission designates, to the extent specified by the Commission.*

11130 *C. The aggregate of investments under subsection B may not exceed 50 percent of the total*  
 11131 *permissible investments of a licensee calculated in accordance with § 6.2-1918.*

11132 *§ 6.2-1920. Civil penalties.*

11133 *In addition to the authority conferred under §§ 6.2-1907 and 6.2-1909, the Commission may impose*  
 11134 *a civil penalty not exceeding \$2,500 upon any person licensed or required to be licensed under this*  
 11135 *chapter who the Commission determines has violated any of the provisions of this chapter or any other*  
 11136 *law or regulation applicable to the conduct of the person's business. For the purposes of this section,*  
 11137 *each separate violation shall be subject to the civil penalty herein prescribed. In the case of a violation*  
 11138 *of § 6.2-1901, each money order sale or money transmission transaction shall constitute a separate*  
 11139 *violation.*

11140 *§ 6.2-1921. Criminal penalty.*

11141 *Any person required by this chapter to have a license who sells money orders or engages in the*  
 11142 *business of money transmission without first being licensed as required by § 6.2-1901 is guilty of a*  
 11143 *Class 1 misdemeanor.*

## CHAPTER 20.

### AGENCIES PROVIDING DEBT MANAGEMENT PLANS.

11146 *§ 6.2-2000. Definitions.*

11147 *As used in this chapter, unless the context requires a different meaning:*

11148 *"Agency" means any person that provides or offers to provide debt management plans for consumers.*

11149 *"Consumer" means an individual residing in the Commonwealth who owes money to one or more*  
 11150 *creditors, for personal, family, or household purposes, including an individual who owes money jointly*  
 11151 *with one or more other individuals.*

11152 *"Credit counselor" means an employee or agent of an agency who designs a debt management plan,*  
 11153 *provides consumer budget and basic financial planning services, or engages in debt settlement or debt*  
 11154 *pooling and distribution services on a consumer's behalf.*

11155 *"Creditor" or "credit-granting organization" does not include (i) doctors, lawyers, or other*  
 11156 *professionals who receive payment for their services in installments or (ii) persons whose only*  
 11157 *participation in a credit transaction is to honor a credit card.*

11158 *"Debt collector" means a person defined as a debt collector under 15 U.S.C. § 1692a of the federal*

11159 *Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.).*

11160 "Debt management plan" or "DMP" means a program whereby a person agrees to engage in debt  
11161 pooling and distribution services on behalf of a consumer, or multiple consumers if a joint account.

11162 "Debt pooling and distribution service" means an arrangement whereby a consumer gives money or  
11163 control of his funds to a person for distribution to the consumer's creditors.

11164 "Debt settlement" means any action or negotiation initiated or taken by or on behalf of any  
11165 consumer with any creditor of the consumer for the purpose of obtaining debt forgiveness of a portion  
11166 of the credit extended by the creditor to the consumer or reduction of payments, charges, or fees  
11167 payable by the consumer.

11168 "Duplicate original" means an exact copy with signatures created by the same impression as the  
11169 original, or an exact copy bearing an original signature, or in the case of an electronic transaction, an  
11170 electronic version with electronic signatures.

11171 "Electronic signature" means a signature as defined in § 59.1-480.

11172 "Licensee" means a person licensed under this chapter.

11173 "Maintenance fee" means a fee paid by a consumer to an agency for the administration of a DMP.

11174 "Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of  
11175 the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in a person.

11176 "Set-up fee" means a fee paid by a consumer to an agency for the establishment of a DMP.

11177 § 6.2-2001. License requirement; exceptions.

11178 A. No person shall engage in the business of providing or offering to provide a DMP to any  
11179 consumer, whether or not the person has an office, facility, agent, or other physical presence in the  
11180 Commonwealth, unless such person obtains from the Commission a license issued pursuant to this  
11181 chapter. The provisions of this chapter shall not apply to a person licensed to practice law in the  
11182 Commonwealth.

11183 B. This chapter shall be construed by the Commission to promote sound personal financial advice  
11184 and management, and protect against financial loss consumers who place money or control of their  
11185 funds or credit into the custody of an agency for transmission to such consumers' creditors.

11186 C. A person licensed under this chapter is not required to be licensed as a money transmitter under  
11187 Chapter 19 (§ 6.2-1900 et seq.), if the person's money transmission activities are limited to providing  
11188 debt pooling and distribution services in accordance with this chapter.

11189 § 6.2-2002. Application for license; form; content; fee.

11190 A. An application for a license under this chapter shall be made in writing, under oath, and on a  
11191 form provided by the Commissioner.

11192 B. The application shall include:

11193 1. The name and address of the applicant; and (i) if the applicant is a partnership, firm, or  
11194 association, the name and address of each partner or member; (ii) if the applicant is a corporation or  
11195 limited liability company, the name and address of each director, member, registered agent, and  
11196 principal; or (iii) if the applicant is a business trust, the name and address of each trustee and  
11197 beneficiary;

11198 2. The name and address of each manager and officer;

11199 3. The addresses of the locations of the business to be licensed;

11200 4. Financial statements for the applicant as of the most recent fiscal year;

11201 5. A current copy of the agency's standard DMP agreement;

11202 6. Such other information concerning the financial responsibility, background, experience, and  
11203 activities of the applicant and the persons referred to in this section as the Commissioner may require;

11204 7. Any other pertinent information as the Commissioner may require; and

11205 8. Payment of an application fee of \$500.

11206 C. The application fee shall not be refundable in any event. The fee shall not be abated by  
11207 surrender, suspension, or revocation of the license.

11208 § 6.2-2003. Bond required.

11209 The application for a license shall be accompanied by a bond filed with the Commissioner with  
11210 corporate surety authorized to execute the bond in the Commonwealth, in the principal amount as  
11211 determined by the Commission. The amount of the bond shall be not less than \$25,000 nor more than  
11212 \$350,000. The form of the bond shall be approved by the Commission. The bond shall be continuously  
11213 maintained thereafter in full force, and the Commission may require the principal amount to be adjusted  
11214 as it deems necessary. The bond shall be conditioned upon the licensee performing all written  
11215 agreements with consumers, correctly and accurately accounting for all funds received by the licensee in  
11216 the licensed business, and conducting the licensed business in conformity with this chapter and all  
11217 applicable law. Any person who may be damaged by noncompliance of the licensee with any condition  
11218 of the bond may proceed on the bond against the principal or surety thereon, or both, to recover  
11219 damages. The aggregate liability under the bond shall not exceed the penal sum of the bond.

11220 § 6.2-2004. Investigation of applications.

11221 The Commissioner may make such investigations as he deems necessary to determine if the applicant  
11222 has complied with all applicable provisions of law and regulations adopted thereunder.

11223 § 6.2-2005. Qualifications.

11224 A. Upon the filing and investigation of an application for a license, and compliance by the applicant  
11225 with the provisions of §§ 6.2-2002 and 6.2-2003, the Commission shall issue and deliver to the applicant  
11226 the license to engage in business under this chapter at the locations specified in the application if it  
11227 finds that:

11228 1. The financial responsibility, character, reputation, experience, and general fitness of the applicant  
11229 and its members, senior officers, directors, trustees, and principals are such as to warrant belief that the  
11230 business will be operated efficiently and fairly, in the public interest, and in accordance with law;

11231 2. The applicant has made acceptable provision for the avoidance of conflicts of interest;

11232 3. The applicant maintains a separate trust account with an FDIC-insured depository institution for  
11233 the handling of customers' funds;

11234 4. The applicant's credit counselors are certified through a bona fide third-party certification  
11235 provider unaffiliated with the applicant that authenticates the competence of counselors providing  
11236 consumer assistance;

11237 5. No more than one-third of the board of directors or managing members are employees, officers,  
11238 members, principals, trustees, directors, agents, or other representatives of organizations that grant  
11239 credit to consumers;

11240 6. The applicant is accredited by the International Standards Organization or the Council on  
11241 Accreditation or any other organization approved by the Commission;

11242 7. The applicant has fidelity bond coverage in such principal amount as may be determined by the  
11243 Commission;

11244 8. The applicant (i) is not the subject of any current material administrative or regulatory  
11245 proceedings by any governmental authority and (ii) has not received a material adverse determination in  
11246 any past administrative or regulatory proceedings by any governmental authority; and

11247 9. The applicant has filed with the Commission a form, that shall be provided to each consumer  
11248 prior to his execution of a DMP, that contains the following disclosures to the consumer: (i) all fees  
11249 charged by the applicant or contributions solicited by the applicant from the consumer; (ii) whether the  
11250 applicant is a for-profit entity or nonprofit entity; and (iii) whether the applicant received financial  
11251 support from creditors during the preceding calendar year.

11252 B. If the Commission fails to make such findings, no license shall be issued and the Commissioner  
11253 shall notify the applicant of the denial and the reasons for such denial.

11254 C. A license shall not be issued to a collection agency, or to any creditor or association of creditors,  
11255 or to any credit-granting organization or association of such organizations.

11256 § 6.2-2006. Licenses; places of business; changes.

11257 A. Each license shall state the address or addresses at which the business is to be conducted and  
11258 shall state fully the legal name of the licensee as well as any fictitious name by which the licensee is  
11259 operating in the Commonwealth. Each license shall be posted prominently in each place of business of  
11260 the licensee. Licenses shall not be transferable or assignable, by operation of law or otherwise. No  
11261 licensee shall use any name in the Commonwealth other than the legal name or fictitious name set forth  
11262 on the license issued by the Commission.

11263 B. No licensee shall open an additional office or relocate any place of business without prior  
11264 approval of the Commission. Applications for such approval shall be made in writing on a form  
11265 provided by the Commissioner and shall be accompanied by payment of a \$150 nonrefundable  
11266 application fee. The application shall be approved unless the Commission finds that the applicant has  
11267 not conducted business under this chapter efficiently, fairly, in the public interest, and in accordance  
11268 with law. The application shall be deemed approved if notice to the contrary has not been mailed by the  
11269 Commission to the applicant within 30 days of the date the application is received by the Commission,  
11270 but this period may be extended for good cause. After approval, the applicant shall give written notice  
11271 to the Commissioner within 20 days of the commencement of business at the additional location or  
11272 relocated place of business.

11273 C. Every licensee shall within 20 days notify the Commissioner, in writing, of the closing of any  
11274 business location and of the name, address, and position of each new senior officer, member, partner,  
11275 or director and provide such other information with respect to any such change as the Commissioner  
11276 may reasonably require.

11277 D. Every license shall remain in force until it has been surrendered, revoked, or suspended. The  
11278 surrender, revocation, or suspension of a license shall not affect any preexisting legal right or  
11279 obligation of such licensee.

11280 § 6.2-2007. Acquisition of control; application.

11281 A. Except as provided in this section, no person shall acquire, directly or indirectly, 25 percent or  
 11282 more of the voting shares of a corporation, or 25 percent or more of the ownership of any other person,  
 11283 licensed to conduct business under this chapter unless such person first:

11284 1. Files an application with the Commission in such form as the Commissioner may prescribe from  
 11285 time to time;

11286 2. Delivers such other information to the Commissioner as the Commissioner may require concerning  
 11287 the financial responsibility, background, experience, and activities of the applicant, its directors, senior  
 11288 officers, trustees, beneficiaries, principals, and members, and of any proposed new directors, senior  
 11289 officers, principals, or members of the licensee; and

11290 3. Pays such application fee as the Commission may prescribe.

11291 B. Upon the filing and investigation of an application, the Commission shall permit the applicant to  
 11292 acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors,  
 11293 senior officers, members, trustees, beneficiaries, and principals, and any proposed new persons having  
 11294 any such status have the financial responsibility, character, reputation, experience, and general fitness  
 11295 to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in  
 11296 accordance with law. The Commission shall grant or deny the application within 60 days from the date  
 11297 a completed application accompanied by the required fee is filed unless the period is extended by order  
 11298 of the Commissioner reciting the reasons for the extension. If the application is denied, the Commission  
 11299 shall notify the applicant of the denial and the reasons for the denial.

11300 C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee,  
 11301 directly or indirectly, including an acquisition by merger or consolidation, by or with a person licensed  
 11302 by this chapter, (ii) the acquisition of an interest in a licensee, directly or indirectly, including an  
 11303 acquisition by merger or consolidation, by or with a person affiliated through common ownership with  
 11304 the licensee, or (iii) the acquisition of an interest in a licensee by a person by bequest, descent,  
 11305 survivorship, or operation of law. The person acquiring an interest in a licensee in a transaction that is  
 11306 exempt from filing an application by this subsection shall send written notice to the Commissioner of  
 11307 such acquisition within 30 days of its closing.

11308 § 6.2-2008. Retention of books, accounts, and records; responding to Bureau.

11309 A. Every licensee shall maintain in its licensed offices such books, accounts, and records as the  
 11310 Commission may reasonably require in order to determine whether the licensee is complying with the  
 11311 provisions of this chapter and regulations adopted thereunder. Such books, accounts, and records shall  
 11312 be maintained apart and separate from any other business in which the licensee is involved. Such  
 11313 records relating to DMPs shall be retained for at least three years after the DMPs are terminated. To  
 11314 safeguard the privacy of consumers, records containing personal financial information shall be  
 11315 shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for the  
 11316 shredding, incineration, or other disposal of the records from a business record destruction vendor.

11317 B. When the Bureau requests a written response, books, records, documentation, or other information  
 11318 from a licensee in connection with the Bureau's investigation, enforcement, or examination of  
 11319 compliance with applicable laws, the licensee shall deliver a written response as well as any requested  
 11320 books, records, documentation, or information within the time period specified in the Bureau's request.  
 11321 If no time period is specified, a written response as well as any requested books, records,  
 11322 documentation, or information shall be delivered by the licensee to the Bureau not later than 30 days  
 11323 from the date of such request. In determining the specified time period for responding to the Bureau and  
 11324 when considering a request for an extension of time to respond, the Bureau shall take into consideration  
 11325 the volume and complexity of the requested written response, books, records, documentation, or  
 11326 information and such other factors as the Bureau determines to be relevant under the circumstances.

11327 § 6.2-2009. Annual report.

11328 Each licensee under this chapter shall annually, on or before March 25, file a written report with  
 11329 the Commissioner containing such information as the Commissioner may require concerning his  
 11330 business and operations during the preceding calendar year as to each licensed place of business.  
 11331 Reports shall be made under oath and shall be in the form prescribed by the Commissioner.

11332 § 6.2-2010. Other reporting requirements.

11333 A. Within 15 days following the occurrence of any of the following events, a licensee shall file a  
 11334 written report with the Commission describing such event and its expected impact upon the business of  
 11335 the licensee:

11336 1. The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;

11337 2. The institution of administrative or regulatory proceedings against the licensee by any  
 11338 governmental authority;

11339 3. Any felony indictments of the licensee or any of its members, partners, directors, officers, trustees,  
 11340 beneficiaries, or principals, if known;

11341 4. Any felony conviction of the licensee or any of its members, partners, directors, officers, trustees,

- 11342 beneficiaries, or principals, if known;
- 11343 5. The institution of an action against the licensee under the Virginia Consumer Protection Act
- 11344 (§ 59.1-196 et seq.) by the Attorney General or any other governmental authority; or
- 11345 6. Such other event as the Commission may prescribe by regulation.
- 11346 B. Within 30 days of judgment against the licensee in a civil action relating to the DMP of a
- 11347 consumer, a licensee shall file a written report with the Commission describing such event and its
- 11348 expected impact upon the business of the licensee. The licensee shall advise the Commission within 30
- 11349 days of any settlement or the result of any judgment entered.
- 11350 C. Within 10 days of receipt of any qualified audit, a licensee shall notify the Commission and
- 11351 describe what steps are being taken to address concerns raised in the audit.
- 11352 D. Failure to file a report or other information or documents required under this section shall
- 11353 subject the licensee to a fine of \$25 for each day the report is overdue.
- 11354 § 6.2-2011. Investigations; examinations.
- 11355 The Commission may, by its designated officers and employees, as often as it deems necessary,
- 11356 investigate and examine the affairs, business, premises, and records of any person licensed or required
- 11357 to be licensed under this chapter insofar as they pertain to any business for which a license is required
- 11358 by this chapter. Examinations of licensees shall be conducted at least once in each three-year period. In
- 11359 the course of such investigations and examinations, the owners, members, officers, directors, partners,
- 11360 trustees, beneficiaries, and employees of such person being investigated or examined shall, upon demand
- 11361 of the person making such investigation or examination, afford full access to all premises, books,
- 11362 records, and information that the person making such investigation or examination deems necessary.
- 11363 For the foregoing purposes, the person making such investigation or examination shall have authority to
- 11364 administer oaths, examine under oath all the aforementioned persons, and compel the production of
- 11365 papers and objects of all kinds.
- 11366 § 6.2-2012. Annual fees.
- 11367 A. To defray the costs of the examination, supervision, and regulation of licensees, every licensee
- 11368 under this chapter shall pay an annual fee calculated in accordance with a schedule set by the
- 11369 Commission. The schedule shall bear a reasonable relationship to the total number of DMPs maintained
- 11370 by licensees in the Commonwealth, the actual costs of their examinations, and to other factors relating
- 11371 to their supervision and regulation. All such fees shall be assessed on or before June 1 for every
- 11372 calendar year. All such fees shall be paid by the licensee to the State Treasurer on or before July 1
- 11373 following each assessment.
- 11374 B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or
- 11375 investigate the books and records of a licensee under this chapter at a location outside the
- 11376 Commonwealth, the licensee shall be liable for and shall pay to the Commission within 30 days of the
- 11377 presentation of an itemized statement, the actual travel and reasonable living expenses incurred on
- 11378 account of its examination, supervision, and regulation, or shall pay at a reasonable per diem rate
- 11379 approved by the Commission.
- 11380 § 6.2-2013. Regulations.
- 11381 The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this
- 11382 chapter. Before adopting any such regulation, the Commission shall give reasonable notice of its content
- 11383 and shall afford interested parties an opportunity to be heard, in accordance with the Commission's
- 11384 Rules.
- 11385 § 6.2-2014. Required and prohibited business methods.
- 11386 Each licensee shall comply with the following requirements:
- 11387 1. Each DMP shall be evidenced by an agreement, which shall be maintained in either a hard copy,
- 11388 including a faxed copy, or electronic version and which shall be signed by the consumer and a person
- 11389 authorized by the licensee to sign such agreements and dated the same day the DMP is executed by the
- 11390 consumer. The agreement may be signed by the parties either originally or by electronic signature. The
- 11391 agreement shall set forth, at a minimum: (i) the name and address of both the consumer and the
- 11392 licensee; (ii) a full description of all services to be performed for the consumer by the licensee; (iii) a
- 11393 clear explanation, highlighted in bold type, of the costs to the consumer; (iv) a statement that the DMP
- 11394 agreement can be terminated for any reason by the consumer and that the consumer has no obligation
- 11395 to continue the arrangement unless satisfied with the services provided; (v) a statement that in the event
- 11396 of termination of the agreement, the consumer shall be entitled to a refund of all funds that have not
- 11397 been disbursed to creditors and either (a) all fees paid if terminated within five days of the date the
- 11398 DMP agreement is executed by the consumer or (b) all fees paid less the set-up fee if terminated more
- 11399 than five but less than 31 days after execution by the consumer; (vi) an explanation of the method of
- 11400 dispute resolution under the agreement; (vii) an explanation of the obligations of the consumer and the
- 11401 licensee that are subject to the agreement; (viii) notification of privacy policies in compliance with state
- 11402 and federal laws and regulations; and (ix) a statement that participating in a DMP may have a

- 11403 *derogatory effect upon the consumer's credit report;*  
 11404 2. A licensee shall give to the consumer a duplicate original of the agreement executed by the  
 11405 consumer and licensee upon full execution;  
 11406 3. At the time of execution of the DMP, a licensee shall have a good faith belief that the creditors  
 11407 listed in the DMP will participate in the DMP. A licensee shall advise the consumer of any changes by  
 11408 a creditor in accepting payments under the DMP promptly upon learning of such changes;  
 11409 4. A licensee shall provide a consumer enrolled in a DMP with periodic statements, no less often  
 11410 than quarterly, accounting for the funds received from the consumer for payments to the consumer's  
 11411 creditors and disbursements made to each such creditor on the consumer's behalf since the last report;  
 11412 5. A licensee shall not purchase any debt or obligation of a consumer;  
 11413 6. A licensee shall not lend money or provide credit to any consumer;  
 11414 7. A licensee shall not obtain a mortgage or any other security interest in the property of a  
 11415 consumer;  
 11416 8. A licensee shall not operate as a debt collector;  
 11417 9. A licensee shall not structure an agreement for the consumer that, at the conclusion of the DMP,  
 11418 would knowingly result in negative amortization of any of the consumer's obligations to creditors;  
 11419 10. A licensee shall not give legal advice to a consumer or perform legal services on behalf of a  
 11420 consumer;  
 11421 11. A licensee shall have an established practice of disbursing to creditors funds received from a  
 11422 consumer under a DMP within eight business days of receipt and shall provide consumers its  
 11423 disbursement practices in writing, including any circumstances that would establish an exception to the  
 11424 eight-day practice;  
 11425 12. A licensee shall maintain appropriate safeguards against conflicts of interest in the conduct of its  
 11426 DMP activities;  
 11427 13. A licensee shall not employ any person who is employed at the same time by a creditor or  
 11428 collection agency;  
 11429 14. A licensee shall keep (i) its operating funds separate from the funds entrusted to the licensee by  
 11430 consumers for disbursement to creditors and (ii) consumers' funds in a trust account, held in the name  
 11431 of the licensee by an insured depository institution;  
 11432 15. A licensee shall upon request give a consumer signed, dated receipts for funds received from a  
 11433 consumer under a DMP, or provide a means whereby the consumer may view the status of his account  
 11434 electronically; and  
 11435 16. A licensee shall not obtain any agreement from a consumer (i) giving the licensee or any third  
 11436 person power of attorney or authority to confess judgment for the borrower; (ii) authorizing the licensee  
 11437 or any third party to bring suit against the borrower in a court outside the Commonwealth; or (iii)  
 11438 waiving any right the borrower has under this chapter.
- 11439 § 6.2-2015. Fees and contributions.  
 11440 For establishing and maintaining a DMP, a licensee may charge or receive fees or contributions in  
 11441 an amount not to exceed the following: (i) \$75 for a set-up fee; and (ii) a monthly maintenance fee of  
 11442 15 percent of the total amount disbursed, but in no event more than \$60 per month.
- 11443 § 6.2-2016. Additional charges.  
 11444 In addition to the fees and contributions permitted under § 6.2-2015, no further or other amount  
 11445 whatsoever shall be directly or indirectly charged, contracted for, collected, received, or recovered with  
 11446 respect to a DMP except, with the consumer's advance permission after disclosure of such amounts,  
 11447 reimbursement for (i) the actual cost of obtaining for such consumer one credit report and related credit  
 11448 report information from a credit reporting agency; and (ii) the actual bank charges for automatic  
 11449 account debiting for debt repayment.
- 11450 § 6.2-2017. Advertising.  
 11451 No person licensed or required to be licensed under this chapter shall use or cause to be published  
 11452 any advertisement that (i) contains any false, misleading, or deceptive statement or representation; or  
 11453 (ii) identifies the person by any name other than the name set forth on the license issued by the  
 11454 Commission.
- 11455 § 6.2-2018. Suspension or revocation of license.  
 11456 A. The Commission may suspend or revoke any license issued under this chapter upon any of the  
 11457 following grounds:  
 11458 1. Any ground for denial of a license under this chapter;  
 11459 2. Any violation of the provisions of this chapter or regulations adopted by the Commission  
 11460 thereunder, or a violation of any other law or regulation applicable to the conduct of the licensee's  
 11461 business;  
 11462 3. A course of conduct consisting of the failure to perform written agreements with borrowers;  
 11463 4. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

- 11464 5. Entry of a judgment against the licensee involving fraud, misrepresentation, or deceit;
- 11465 6. Entry of a federal or state administrative order against such licensee for violation of any law or
- 11466 any regulation applicable to the conduct of his business;
- 11467 7. Refusal to permit an investigation or examination by the Commission;
- 11468 8. Failure to pay any fee or assessment imposed by this chapter;
- 11469 9. Failure to comply with any order of the Commission; or
- 11470 10. Insolvency of the licensee.
- 11471 B. For the purposes of this section, acts of any officer, director, member, trustee, beneficiary,
- 11472 partner, or principal shall be deemed acts of the licensee.
- 11473 § 6.2-2019. Cease and desist orders.
- 11474 A. If the Commission determines that any person has violated any provision of this chapter or any
- 11475 regulation adopted hereunder, the Commission may, upon 21 days' notice in writing, order such person
- 11476 to cease and desist from such practices and to comply with the provisions of this chapter. The notice
- 11477 shall be sent by certified mail to the principal place of business of such person or other address
- 11478 authorized under § 12.1-19.1 and shall state the grounds for the contemplated action. Within 14 days of
- 11479 mailing the notice, the person or persons named therein may file with the clerk of the Commission a
- 11480 written request for a hearing. If a hearing is requested, the Commission shall not issue a cease and
- 11481 desist order except based upon findings made at such hearing. Such hearing shall be conducted in
- 11482 accordance with the Commission's Rules. The Commission may enforce compliance with any order
- 11483 issued under this section by imposition and collection of such fines and penalties as may be prescribed
- 11484 by law.
- 11485 B. When, in the opinion of the Commission, immediate action is required to protect the public
- 11486 interest, a cease and desist order may be issued without prior hearing. In such cases, the Commission
- 11487 shall make a hearing available to the person on an expedited basis.
- 11488 C. The Commission shall have jurisdiction to enter and enforce a cease and desist order against any
- 11489 person, regardless of whether such person is present in the Commonwealth, who obtains money or funds
- 11490 from a consumer for transmission to the consumer's creditors.
- 11491 § 6.2-2020. Notice of proposed suspension or revocation.
- 11492 The Commission shall not revoke or suspend the license of any person licensed under this chapter
- 11493 upon any of the grounds set forth in § 6.2-2018 until it has given the licensee 21 days' notice in writing
- 11494 of the reasons for the proposed revocation or suspension and an opportunity to introduce evidence and
- 11495 be heard. The notice shall be sent by certified mail to the principal place of business of the licensee or
- 11496 other address authorized under § 12.1-19.1 and shall state with particularity the grounds for the
- 11497 contemplated action. Within 14 days of mailing the notice, the person or persons named therein may file
- 11498 with the clerk of the Commission a written request for a hearing. If a hearing is requested, the
- 11499 Commission shall not suspend or revoke the license except based upon findings made at such hearing.
- 11500 The hearing shall be conducted in accordance with the Commission's Rules.
- 11501 § 6.2-2021. Civil penalties.
- 11502 A. In addition to the authority conferred under §§ 6.2-2018 and 6.2-2019, the Commission may
- 11503 impose a civil penalty not exceeding \$1,000 upon any person who it determines, in proceedings
- 11504 commenced in accordance with the Commission's Rules, has violated any of the provisions of this
- 11505 chapter. For the purposes of this section, each separate violation shall be subject to the civil penalty
- 11506 herein prescribed. In the case of a violation of § 6.2-2001, each DMP entered into shall constitute a
- 11507 separate violation.
- 11508 B. The Commission shall have jurisdiction to impose civil penalties upon any person, regardless of
- 11509 whether such person is present in the Commonwealth, who obtains money or funds from a consumer for
- 11510 transmission to the consumer's creditors.
- 11511 § 6.2-2022. Criminal penalty.
- 11512 Any person violating subsection A of § 6.2-2001 is guilty of a Class 1 misdemeanor. For purposes of
- 11513 this section, each violation shall constitute a separate offense.
- 11514 § 6.2-2023. Private right of action.
- 11515 Any person who suffers loss by reason of a violation of any provision of this chapter may bring a
- 11516 civil action to enforce such provision. Any person who is successful in such action shall recover
- 11517 reasonable attorney fees, expert witness fees, and court costs incurred by bringing such action.
- 11518 § 6.2-2024. Authority of Attorney General; referral by Commission to Attorney General.
- 11519 A. If the Commission determines that a person is in violation, or has violated, any provision of this
- 11520 chapter, the Commission may refer the information to the Attorney General and may request that the
- 11521 Attorney General investigate such violations. In the case of such referral, the Attorney General is hereby
- 11522 authorized to seek to enjoin violations of this chapter. The circuit court having jurisdiction may enjoin
- 11523 such violations notwithstanding the existence of an adequate remedy at law.
- 11524 B. Upon such referral by the Commission, the Attorney General may also seek, and the circuit court

11525 may order or decree, damages and such other relief allowed by law, including restitution to the extent  
 11526 available to borrowers under applicable law. Persons entitled to any relief as authorized by this section  
 11527 shall be identified by order of the court within 180 days from the date of the order permanently  
 11528 enjoining the unlawful act or practice.

11529 C. In any action brought by the Attorney General by virtue of the authority granted in this provision,  
 11530 the Attorney General shall be entitled to seek reasonable attorney fees and costs.

11531 § 6.2-2025. Violation of the Virginia Consumer Protection Act.

11532 Any violation of the provisions of this chapter shall constitute a prohibited practice in accordance  
 11533 with § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia  
 11534 Consumer Protection Act (§ 59.1-196 et seq.).

#### 11535 CHAPTER 21.

#### 11536 CHECK CASHERS.

11537 § 6.2-2100. Definitions.

11538 As used in this chapter, unless the context requires a different meaning:

11539 "Check casher" means a person engaged in the business of cashing checks, drafts, or money orders  
 11540 for compensation.

11541 "Item" means a check, draft, or money order.

11542 "Registrant" means a person registered under this chapter.

11543 "Registration" means a registration filed under this chapter.

11544 § 6.2-2101. Registration requirement; offices.

11545 A. No person shall engage in business as a check casher in the Commonwealth unless such person  
 11546 has first registered with the Commission in accordance with procedures established by the Commission  
 11547 under this chapter.

11548 B. Every registered check casher shall give written notice to the Commission, within 10 days  
 11549 thereafter, of the opening, closing, or relocation of an office.

11550 § 6.2-2102. Exempt persons.

11551 This chapter shall not apply to:

11552 1. Any person who:

11553 a. Does not hold itself out to be a check cashing service;

11554 b. Is principally engaged in the bona fide retail sale of goods or services;

11555 c. Either as an incident to or independently of such a retail sale from time to time cashes items; and

11556 d. Charges a fee or other consideration for the service that does not exceed the greater of \$2 or two  
 11557 percent of the amount of the item; or

11558 2. Any person authorized to engage in business as a bank, savings institution, or credit union under  
 11559 the laws of the United States or any state.

11560 § 6.2-2103. Registration fees; reports.

11561 A. Each registration form shall be accompanied by payment of a \$200 fee, which shall not be  
 11562 refundable or abated in any event.

11563 B. To defray the costs of their examination, supervision and regulation, check cashers required to be  
 11564 registered under this chapter shall pay to the Commission annually on or before July 1 a registration  
 11565 fee in an amount prescribed by the Commission, but not exceeding \$250.

11566 C. All fees shall be paid into the state treasury and credited to the "Financial Institutions Special  
 11567 Fund - State Corporation Commission."

11568 D. Every check casher required to be registered under this chapter shall file such annual or other  
 11569 reports as the Commission may prescribe.

11570 § 6.2-2104. Investigations.

11571 The Commission, upon receiving a complaint or upon its own motion, may investigate the affairs,  
 11572 business, premises and records of any person required to be registered under this chapter. In the course  
 11573 of such investigation, all persons associated with the person being investigated shall afford full access to  
 11574 all premises, books, records and information which the person making such investigation deems  
 11575 necessary. For the foregoing purposes, the person making such investigation shall have authority to  
 11576 administer oaths, examine under oath all the aforementioned persons, and compel the production of  
 11577 documents and objects of all kinds.

11578 § 6.2-2105. Fees posted; endorsement of items cashed.

11579 A. A registrant shall conspicuously post and at all times display, in every location at which it  
 11580 conducts the business of a check casher, a notice stating the fees charged for cashing items. A registrant  
 11581 shall further file with the Commissioner a statement of the fees currently charged at every such location.

11582 B. Items cashed by registrants shall be deposited or presented for payment by the second business  
 11583 day from the date the item is cashed for the customer. A registrant shall endorse every item presented  
 11584 by the registrant for payment in the actual name under which the registrant is doing business.

11585 C. A registrant shall post in every location at which it conducts the business of a check casher the

11586 Commission's toll-free telephone number and information on how to file a complaint pursuant to  
11587 regulations adopted by the Commission.

11588 D. A registrant shall provide each customer cashing an item with a receipt showing the name or  
11589 trade name of the registrant, the transaction date, the amount of the check, the fee charged, and the  
11590 cash given.

11591 § 6.2-2106. Regulations.

11592 The Commission shall adopt such regulations as it deems appropriate to effect the purposes of this  
11593 chapter. Before adopting any such regulations, the Commission shall give reasonable notice of the  
11594 content thereof, and shall afford interested parties an opportunity to be heard, in accordance with the  
11595 Commission's Rules.

11596 § 6.2-2107. Prohibited practices.

11597 No person required to be registered under this chapter shall:

11598 1. Engage in the business of making loans of credit, goods, or things; or discounting notes, bills of  
11599 exchange, items, or other evidences of debt; or accepting deposits or bailments of money or items  
11600 without meeting the requirements of the laws of the Commonwealth;

11601 2. Cash post-dated items, other than government or payroll checks;

11602 3. Use, or cause to be published or disseminated, any advertisement or communication that (i)  
11603 contains any false, misleading, or deceptive statement or representation or (ii) identifies the person by  
11604 any name other than the name or trade name set forth on the registration;

11605 4. Engage in unfair, deceptive, or fraudulent practices; or

11606 5. Make loans unless such person is licensed under, and the loans are made in accordance with,  
11607 Chapter 18 (§ 6.2-1800 et seq.).

11608 § 6.2-2108. Civil penalties; civil action.

11609 A. The Commission may impose a civil penalty not exceeding \$1,000 upon any person required to be  
11610 registered hereunder whom it determines, in proceedings commenced in accordance with the  
11611 Commission's Rules, has violated any of the provisions of this chapter or regulations adopted  
11612 thereunder. For the purposes of this section, each separate violation shall be subject to the civil penalty  
11613 therein prescribed.

11614 B. Any person who suffers loss by reason of a violation of any provision of this chapter may bring a  
11615 civil action to enforce such provision. Any person who is successful in such action shall recover  
11616 reasonable attorney fees, expert witness fees and court costs incurred by bringing such action.

11617 § 6.2-2109. Criminal penalties.

11618 Any person required to be registered under this chapter who acts as a check casher without first  
11619 registering with the Commission as required by § 6.2-2101 is guilty of a Class 1 misdemeanor. For the  
11620 purposes of this section, each transaction entered into involving the cashing of an item by such person  
11621 shall constitute a separate offense.

11622 § 6.2-2110. Revocation of registration.

11623 A. The Commission may revoke a registration under this chapter upon any of the following grounds:

11624 1. Any violation of the provisions of this chapter or regulations adopted thereunder or of any law or  
11625 regulation applicable to the conduct of the registrant's business;

11626 2. Charging fees for cashing items in excess of fees posted at any place of business or filed with the  
11627 Commission pursuant to § 6.2-2105;

11628 3. Conviction of a felony or misdemeanor involving fraud, misrepresentation, deceit, false swearing,  
11629 or theft; or

11630 4. Refusal to permit or respond to an investigation by the Commission.

11631 B. For the purposes of this section, acts of any officer, director, member, partner, or principal shall  
11632 be deemed acts of the registrant.

11633 § 6.2-2111. Notice of proposed revocation.

11634 The Commission may not revoke a registration under this chapter until it has given the registrant 21  
11635 days' notice in writing of the grounds for the proposed revocation and an opportunity to be heard. The  
11636 notice shall be served in accordance with § 12.1-19.1. Within 14 days of mailing the notice, the  
11637 registrant may file with the clerk of the Commission a written request for a hearing. If a written request  
11638 for a hearing is filed, the Commission shall not revoke the registration except based upon findings made  
11639 at such hearing.

11640

#### SUBTITLE IV.

11641

#### OTHER FINANCIAL ACTIVITIES.

11642

#### CHAPTER 22.

11643

#### SAFE DEPOSIT BOXES.

11644

§ 6.2-2200. Definitions.

11645

As used in this chapter, unless the context requires otherwise:

11646

"Box" or "safe deposit box" means any safe or box that is available for rent within the vaults of a

11647 company.

11648 "Company" means a bank, trust company, or other entity conducting the business of renting safe  
11649 deposit boxes.

11650 "Lessee" means the person renting a box from a company.

11651 § 6.2-2201. Access to joint safe deposit box.

11652 When a box is rented from any company transacting business in the Commonwealth under the name  
11653 of two or more persons with (i) the right of access being given to either or (ii) access to either the  
11654 survivor or survivors of such persons, any one or more of such persons, whether the other or others be  
11655 living or not shall have the right of access to the box and may remove therefrom its contents. In the  
11656 case of such a removal, the company shall be exempt from any liability for permitting such person  
11657 access thereto.

11658 § 6.2-2202. Limited access to safe deposit box upon death of lessee.

11659 A. Upon (i) the death of the sole lessee of a box or (ii) the death of a lessee of a box rented under  
11660 the name of two or more persons upon proof satisfactory to the company that no then co-lessee is  
11661 reasonably available for access to the box, the company may permit limited access to the box by the  
11662 spouse or next of kin of the deceased lessee, a court clerk, or other interested person for the limited  
11663 purpose of looking for a will or other testamentary instruments.

11664 B. The company may require proof of death as it deems necessary prior to permitting access to a  
11665 box.

11666 C. Access to a box shall be under the supervision of a designated officer or employee of the  
11667 company, and nothing shall be removed from the box except the will or testamentary instrument for  
11668 transmission to the appropriate clerk.

11669 D. The company shall (i) make a photocopy of any document removed from a box pursuant to this  
11670 section, (ii) place the copy in the box prior to delivering the original to any person, and (iii) not be  
11671 liable except for acting in bad faith or for permitting the removal from the safe deposit box of items  
11672 other than the will or other testamentary instrument of the deceased lessee.

11673 § 6.2-2203. Limited access to safe deposit box upon incapacity of lessee.

11674 A. Upon receiving a letter from a licensed physician that in his professional opinion an individual,  
11675 who is the sole lessee of a box, is incapable of receiving and evaluating information effectively or  
11676 responding to people, events, or environments to such an extent that the individual lacks the capacity:

11677 1. To manage property or financial affairs or provide for his support or for the support of his legal  
11678 dependents without the assistance or protection of another, the company may permit access to such box  
11679 for the limited purpose of looking for a power of attorney executed by the lessee that relates to the  
11680 management of his property or financial affairs; or

11681 2. To meet the essential requirements for his health, care, safety, or therapeutic needs without the  
11682 assistance or protection of another, the company may permit access to the box for the limited purpose  
11683 of looking for an advance medical directive executed by the lessee.

11684 B. Such access shall only be granted to the lessee's guardian, conservator, spouse or next of kin or  
11685 to a person asserting a knowledge or belief:

11686 1. If the access is sought pursuant to subdivision A 1, that he is named as an agent in a power of  
11687 attorney believed to be in the box; or

11688 2. If the access is sought pursuant to subdivision A 2, that he is named as an agent in an advance  
11689 medical directive believed to be in the box.

11690 C. Access to a box shall be under the supervision of a designated officer or employee of the  
11691 company, and nothing shall be removed from the box except (i) if the access is sought pursuant to  
11692 subdivision A 1, the power of attorney for transmission to a person named as agent therein or (ii) if the  
11693 access is sought pursuant to subdivision A 2, the advance medical directive for transmission to a person  
11694 named as agent therein or in the absence of such a person, to the lessee's attending physician to be  
11695 made a part of the lessee's medical records.

11696 D. If the box is co-leased, the company may permit entry into the box by the same persons and  
11697 under the same circumstances and terms as specified above, upon proof satisfactory to it that the then  
11698 co-lessees are not reasonably available for access to the box.

11699 E. The company shall (i) make a photocopy of any document removed from a box pursuant to this  
11700 section, (ii) place the copy in the box prior to delivering the original to any person, and (iii) not be  
11701 liable except for acting in bad faith or for permitting the removal of other items from the box.

11702 § 6.2-2204. Duty to deny access to safe deposit boxes under certain conditions.

11703 A. As used in this section, unless the context requires otherwise:

11704 "Creditor" means (i) a judgment creditor, (ii) a plaintiff who has obtained a pre-judgment  
11705 attachment order, or (iii) an appropriate federal or state tax official.

11706 "Defendant" means the lessee of a box who is named as defendant, judgment debtor, or taxpayer in  
11707 a notice of proceeding.

11708 "Notice of proceeding" means a notice of (i) lien of fieri facias, (ii) other process under §§ 8.01-474,  
 11709 8.01-478, 8.01-479, 8.01-501 through 8.01-504, and § 58.1-1804, 58.1-2020, or 58.1-3952, (iii) levy for  
 11710 federal taxes, or (iv) attachment that states the office of the company where a box rented by the  
 11711 defendant is located.

11712 B. If a company is served with a notice of proceeding with respect to a box, the company shall deny  
 11713 the defendant access to the box leased in the name of the defendant unless otherwise directed by an  
 11714 appropriate court or the judgment creditor.

11715 C. If the notice of proceeding names less than all of the co-lessees of a box and:

11716 1. If the rental contract so provides, the company may deny all co-lessees access to the box, unless  
 11717 otherwise directed by an appropriate court or the judgment creditor. The company may allow access to  
 11718 such co-lessee if in so doing the company complies with the requirements of subdivision 2 as if the  
 11719 rental contract did not provide for denial of access to co-lessees not named in the notice of proceeding;  
 11720 and

11721 2. If the rental contract does not provide for denial of access to co-lessees not named in the notice  
 11722 of proceeding, the company shall not deny access to any co-lessee not named in the notice of  
 11723 proceeding if the co-lessee (i) is given notice by the company that if the co-lessee knowingly removes  
 11724 from the box any property subject to the notice of proceeding, the co-lessee shall be deemed guilty of  
 11725 larceny, (ii) is given a copy of the notice of proceeding, and (iii) signs and delivers to the company a  
 11726 written acknowledgment of receipt of such notices.

11727 § 6.2-2205. Notice to lessee upon nonpayment of rent.

11728 Whenever any amount due for the use of any box of any company shall remain unpaid for a period  
 11729 of one year, the company may, at the expiration of such period, send to the lessee of the box a notice in  
 11730 writing by registered or certified mail, postage prepaid, at his last known post-office address, notifying  
 11731 the lessee that if the amount due for the rental of the box is not paid within 60 days from the date of  
 11732 sending the notice, the company will cause the box to be opened and the contents thereof to be  
 11733 inventoried, sealed, and placed in one of the general safes or boxes of the company.

11734 § 6.2-2206. Opening box; marking contents.

11735 Upon the expiration of 60 days from the date of mailing the notice required by § 6.2-2205 and the  
 11736 failure within such period of the lessee of the box according to the records of the company to pay the  
 11737 amount due for the rental thereof, together with any charges for which the rental agreement provides,  
 11738 the company may, in the presence of two company employees, one of whom shall be a notary public,  
 11739 cause the box to be opened and the contents thereof, if any, to be removed, inventoried, and sealed up  
 11740 by the notary public in a package. The notary public shall distinctly mark upon the package the name of  
 11741 the lessee of the box according to the records of the company and the date of removal of the property.

11742 § 6.2-2207. Disposition of contents.

11743 When a package has been marked for identification by a notary public as required under the  
 11744 provisions of § 6.2-2206, it shall, in the presence of an officer of the company, be placed by the notary  
 11745 public in one of the general safes or boxes of the company. The lessee shall be liable to the company  
 11746 for storage of the package at a rental rate that does not exceed the original rental of the box that was  
 11747 opened. The package shall remain in such general safe or box for a period of not less than two years,  
 11748 unless sooner removed by the lessee.

11749 § 6.2-2208. Certificate of notary public.

11750 A. The notary public who placed a package in one of the general safes or boxes of the company as  
 11751 required under the provisions of § 6.2-2207 shall, upon doing so, file with the company a certificate,  
 11752 under seal, which shall set out the date of the opening of such box, the name of the lessee of the box,  
 11753 and a list of the contents, if any. The certificate shall be sworn to by the notary public and shall be  
 11754 prima facie evidence of the facts therein set forth in all legal proceedings wherein evidence of such facts  
 11755 would be admissible.

11756 B. The company shall mail a copy of such certificate within 10 days after its filing, to the lessee of  
 11757 the box at his last known post-office address, , by registered or certified mail, return receipt requested.  
 11758 The company shall include in its mailing of the copy of the certificate a notice that the contents will be  
 11759 kept, at the expense of the lessee, in a general safe or box in the vaults of the company for a period of  
 11760 not less than two years, unless sooner removed by the lessee.

11761 § 6.2-2209. Subsequent right of lessee to contents.

11762 At any time after the mailing of the notice as required by § 6.2-2208 and before the expiration of  
 11763 two years, the lessee may require the delivery of the contents of the box as shown by the certificate,  
 11764 upon payment of all rentals due at the time of opening the box, the cost of opening the box, the fees of  
 11765 the notary public for issuing his certificate thereon, and all charges accrued during the period the  
 11766 contents remained in the general safe or box of the company, together with any charges for which the  
 11767 rental agreement provides.

11768 § 6.2-2210. Sale of contents after two years.

11769 A. After the expiration of two years from the time of mailing the certificate provided for in  
11770 § 6.2-2208, if the lessee has not obtained delivery of the contents, the company shall:

11771 1. Mail in a securely closed envelope, by registered or certified mail, return receipt requested,  
11772 addressed to the lessee at his last known post-office address, a notice stating that two years have  
11773 elapsed since the opening of the box and the mailing of the certificate, and that the company will sell  
11774 all the property or articles of value set out in the certificate at a time and place stated in the notice,  
11775 which time shall be not less than 60 days after the date of mailing such notice. The notice shall also  
11776 state the amount due for rental, up to the time of opening the box, the cost of opening the box, and the  
11777 further cost of safekeeping of its contents for the period since the opening of the safe or box; and

11778 2. Publish twice a notice of the time and place of the sale, not more than 20 days prior to the sale,  
11779 in a newspaper published in the locality where the sale will be held. If there is no newspaper published  
11780 in the locality, then in a newspaper published in the locality nearest thereto having a newspaper.

11781 B. Unless the lessee pays, on or before the day stated in the notice, all such sums, and all the  
11782 charges accruing to the time of payment, together with any charges for which the rental agreement  
11783 provides, the company may sell all the property or articles of value set out in such certificate for cash,  
11784 at public auction, at the time and place stated in such notice.

11785 § 6.2-2211. Disposition of proceeds of sale.

11786 From the proceeds of any sale held pursuant to the provisions of § 6.2-2210, the company shall  
11787 deduct all its charges, as stated in such notice, together with any further charges that shall have  
11788 accrued since the mailing thereof, including reasonable expenses for notices, advertising and sale,  
11789 together with any charges for which the rental agreement provides. The balance, if any, of such  
11790 proceeds, shall be deposited to the credit of the lessee and shall be paid to the lessee or his assignee or  
11791 legal representative, on demand and upon production of satisfactory evidence of identity. The company  
11792 shall be liable to the lessee for interest on any balance so deposited at the annual rate of three percent.

11793 § 6.2-2212. Rental for storage unpaid for three years.

11794 If a company has received for safekeeping from any person any package or box to be stored in its  
11795 general vault, and the rental for such storage shall have remained unpaid for a period of three years,  
11796 the company shall have the right to open such package or box and to have the contents thereof  
11797 inventoried, upon compliance substantially with the procedure as to witnesses, notices, and certificates  
11798 provided for the opening of any box in §§ 6.2-2205 through 6.2-2208. If the rental or other charges for  
11799 the safekeeping of such package or box and the charges incident to the opening of the same remain  
11800 unpaid for a period of two years from the date of such opening, the contents thereof may be sold upon  
11801 compliance substantially with the procedure provided for the sale of the contents of any box in  
11802 § 6.2-2210, and the proceeds of such sale shall be treated in the same manner provided for the  
11803 treatment of the proceeds of sale of the contents of any box in § 6.2-2211.

11804 § 6.2-2213. Documents having pretium affectionis.

11805 Whenever the contents of any box opened under the provisions of this chapter shall consist either  
11806 wholly or in part of documents, letters, or other papers of a private nature, or articles having a pretium  
11807 affectionis, such documents, letters, papers, or articles shall not be sold, but shall be retained by the  
11808 company, without liability.

11809 § 6.2-2214. Provisions confer cumulative remedy.

11810 The provisions of this chapter shall not (i) preclude any other remedy existing for the enforcement of  
11811 the claims of a company against the person in whose name the box is rented, nor (ii) bar the right of  
11812 the company to recover the unpaid portion of the debt from the proceeds of the sale of the property  
11813 deposited with it.

11814

11815

## CHAPTER 23. SECURITIZATION TRANSACTIONS.

11816 § 6.2-2300. Definition.

11817 As used in this chapter:

11818 "Securitization transaction" means a transaction relating to the issuance or transfer by a special  
11819 purpose entity of beneficial interests or undivided interests, which entitle their holders to receive  
11820 payments or other distributions that depend primarily on the cash flow from assets, including financial  
11821 assets and other credit exposures, in which that special purpose entity has rights or the power to  
11822 transfer rights.

11823 § 6.2-2301. Securitization transactions; no interest retained by transferor.

11824 Notwithstanding any other provision of law, including § 8.9A-623, to the extent set forth in the  
11825 transaction documents relating to a securitization transaction:

11826 1. Any property, assets, or rights purported to be transferred, in whole or in part, in the  
11827 securitization transaction shall be deemed to no longer be the property, assets, or rights of the  
11828 transferor;

11829 2. A transferor in the securitization transaction, its creditors or, in any insolvency proceeding with

11830 respect to the transferor or the transferor's property, a bankruptcy trustee, receiver, debtor, debtor in  
 11831 possession, or similar person, to the extent the issue is governed by the laws of the Commonwealth,  
 11832 shall have no rights, legal or equitable, whatsoever to reacquire, reclaim, recover, repudiate, disaffirm,  
 11833 redeem, or recharacterize as property of the transferor any property, assets, or rights purported to be  
 11834 transferred, in whole or in part, by the transferor; and

11835 3. In the event of a bankruptcy, receivership, or other insolvency proceeding with respect to the  
 11836 transferor or the transferor's property, to the extent the issue is governed by the laws of the  
 11837 Commonwealth, such property, assets, and rights shall not be deemed to be part of the transferor's  
 11838 property, assets, rights, or estate.

11839 § 6.2-2302. Treatment of securitization transactions.

11840 Nothing contained in this chapter shall:

11841 1. Be deemed to require any securitization transaction to be treated as a sale for federal or state tax  
 11842 purposes or to preclude the treatment of any securitization transaction as debt for federal or state tax  
 11843 purposes or to change any applicable laws relating to the perfection and priority of security or  
 11844 ownership interests of persons other than the transferor, hypothetical lien creditor or, in the event of a  
 11845 bankruptcy, receivership or other insolvency proceeding with respect to the transferor or its property, a  
 11846 bankruptcy trustee, receiver, debtor, debtor in possession, or similar person; or

11847 2. Change the tax treatment of securitization transactions that take place pursuant to this chapter.

11848 CHAPTER 24.

11849 REFUND ANTICIPATION LOANS.

11850 § 6.2-2400. Definitions.

11851 As used in this chapter, unless the context requires a different meaning:

11852 "Applicant" means a customer who applies for a refund anticipation loan through a facilitator.

11853 "Borrower" means an applicant who receives a refund anticipation loan through a facilitator.

11854 "Customer" means an individual for whom tax preparation services are performed.

11855 "Facilitator" means a person who receives or accepts for delivery an application for a refund  
 11856 anticipation loan, delivers a check in payment of refund anticipation loan proceeds, or in any other  
 11857 manner acts to allow the making of a refund anticipation loan. "Facilitator" does not include a bank,  
 11858 thrift, savings association, industrial bank, or credit union, operating under the laws of the United  
 11859 States or the Commonwealth, an affiliate that is a servicer for such an entity, or any person who acts  
 11860 solely as an intermediary and does not deal with an applicant in the making of the refund anticipation  
 11861 loan.

11862 "Refund anticipation loan" means a loan, whether provided through a facilitator or by another entity  
 11863 such as a financial institution, in anticipation of, and whose payment is secured by, a customer's federal  
 11864 or state income tax refund or by both.

11865 "Refund anticipation loan fee" means any fee, charge, or other consideration imposed by a lender or  
 11866 a facilitator for a refund anticipation loan. The term does not include any fee, charge, or other  
 11867 consideration usually imposed by a facilitator in the ordinary course of business for nonloan services,  
 11868 such as fees for preparing tax returns and fees for the electronic filing of tax returns.

11869 "Refund anticipation loan fee schedule" means a list or table of refund anticipation loan fees that (i)  
 11870 includes three or more representative refund anticipation loan amounts; (ii) lists separately each fee or  
 11871 charge imposed, as well as a total of all fees imposed, related to the making of a refund anticipation  
 11872 loan; and (iii) includes, for each representative loan amount, the estimated annual percentage rate  
 11873 calculated under the guidelines established by the federal Truth in Lending Act (15 U.S.C. § 1601 et  
 11874 seq.).

11875 "Tax return" means a return, declaration, statement, refund claim, or other document required to be  
 11876 made or filed in connection with state or federal income taxes.

11877 § 6.2-2401. Advertising; posting refund anticipation loan fee schedules; and disclosures.

11878 A. Any facilitator who advertises the availability of a refund anticipation loan shall not directly or  
 11879 indirectly represent the loan as a customer's actual refund. Any advertisement that mentions a refund  
 11880 anticipation loan shall state conspicuously that it is a loan and that a fee or interest will be charged by  
 11881 the lending institution. The advertisement shall also disclose the name of the lending institution.

11882 B. Every facilitator who offers to facilitate, or who facilitates, a refund anticipation loan to a  
 11883 customer shall post a refund anticipation loan fee schedule showing the current fees for refund  
 11884 anticipation loans facilitated at the office, for the electronic filing of a customer's tax return, for setting  
 11885 up a refund account, and any other related activities necessary to receive a refund anticipation loan.  
 11886 The refund anticipation loan fee schedule also shall include a statement indicating that a customer may  
 11887 have the tax return filed electronically without also obtaining a refund anticipation loan.

11888 C. The refund anticipation loan fee schedule required by subsection B shall be made in not less than  
 11889 28-point type on a document measuring not less than 16 inches by 20 inches. The postings required in  
 11890 this section shall be displayed in a prominent location at each office where any facilitator is offering to

11891 *facilitate or is facilitating a refund anticipation loan.*

11892 *D. Prior to an applicant completing a refund anticipation loan application, a facilitator that offers to*  
 11893 *facilitate a refund anticipation loan shall provide to the applicant a disclosure clearly setting forth the*  
 11894 *following:*

11895 *1. The refund anticipation loan fee schedule;*

11896 *2. That a refund anticipation loan is a loan and is not the applicant's actual income tax refund;*

11897 *3. That a customer can file an income tax return electronically without applying for a refund*  
 11898 *anticipation loan;*

11899 *4. The average amount of time, according to the Internal Revenue Service, within which a customer*  
 11900 *who does not obtain a refund anticipation loan can expect to receive a refund if a customer's return is*  
 11901 *filed or mailed as follows:*

11902 *a. Filed electronically and the refund is deposited directly into a customer's bank account or mailed*  
 11903 *to a customer; and*

11904 *b. Mailed to the Internal Revenue Service and the refund is deposited directly into a customer's bank*  
 11905 *account or mailed to a customer;*

11906 *5. That the Internal Revenue Service does not guarantee that it will pay the full amount of the*  
 11907 *anticipated refund and it does not guarantee a specific date that a refund will be deposited into a*  
 11908 *customer's bank account or mailed to a customer;*

11909 *6. That the borrower is responsible for the repayment of the refund anticipation loan and the related*  
 11910 *fees in the event that the tax refund is not paid or not paid in full;*

11911 *7. The estimated time within which the loan proceeds will be disbursed to the borrower if the loan is*  
 11912 *approved; and*

11913 *8. The fee that will be charged, if any, if the applicant's loan is not approved.*

11914 *E. Prior to consummating a refund anticipation loan transaction, a facilitator shall provide to the*  
 11915 *applicant, in either written or electronic form, the following:*

11916 *1. The estimated total fees for obtaining the refund anticipation loan;*

11917 *2. The estimated annual percentage rate for the applicant's refund anticipation loan, using the*  
 11918 *guidelines established under the federal Truth in Lending Act (15 U.S.C. § 1601 et seq.); and*

11919 *3. The various costs, fees, and finance charges, if applicable, associated with receiving a refund by*  
 11920 *mail or by direct deposit directly from the Internal Revenue Service, a refund anticipation loan, a refund*  
 11921 *anticipation check, or any other refund settlement options facilitated by the facilitator.*

11922 *F. When an application involves more than one applicant, a disclosure pursuant to this section need*  
 11923 *only be given to one of the applicants applying for the refund anticipation loan.*

11924 *§ 6.2-2402. Prohibited activities.*

11925 *Any facilitator who offers to facilitate, or who facilitates, a refund anticipation loan shall not:*

11926 *1. Require a customer to enter into a loan arrangement in order to complete a tax return;*

11927 *2. Misrepresent a material factor or condition of a refund anticipation loan;*

11928 *3. Fail to process the application for a refund anticipation loan promptly after an applicant applies*  
 11929 *for the loan; or*

11930 *4. Engage in any transaction, practice, or course of business that operates a fraud upon any person*  
 11931 *in connection with a refund anticipation loan.*

11932 *§ 6.2-2403. Right of rescission.*

11933 *A borrower who obtains a refund anticipation loan may rescind the loan, on or before the close of*  
 11934 *business on the next day of business, by either returning the original check issued for the loan or*  
 11935 *providing the amount of the loan in cash to the lender or the facilitator. The facilitator may not charge*  
 11936 *the borrower a fee for rescinding the loan or a refund anticipation loan fee if the loan is rescinded but*  
 11937 *may charge the customer a fee for establishing and administering a bank account to electronically*  
 11938 *receive and distribute the refund.*

11939 *§ 6.2-2404. Preemption of local laws.*

11940 *This chapter shall preempt and be exclusive of all ordinances of any locality relating to refund*  
 11941 *anticipation loans. This section shall be given retroactive and prospective effect.*

11942 *§ 6.2-2405. Violations; enforcement.*

11943 *Any violation of the provisions of this chapter shall constitute a prohibited practice under the*  
 11944 *provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the*  
 11945 *Virginia Consumer Protection Act (§ 59.1-196 et seq.).*

11946 *§ 8.4-105. "Bank"; "depository bank"; "intermediary bank"; "collecting bank"; "payor bank";*  
 11947 *"presenting bank."*

11948 *In this title:*

11949 *(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings*  
 11950 *and loan association institution, credit union or trust company.*

11951 *(2) "Depository bank" means the first bank to take an item even though it is also the payor bank,*

- 11952 unless the item is presented for immediate payment over the counter;
- 11953 (3) "Payor bank" means a bank that is the drawee of a draft;
- 11954 (4) "Intermediary bank" means a bank to which an item is transferred in the course of collection
- 11955 except the depository or payor bank;
- 11956 (5) "Collecting bank" means a bank handling an item for collection except the payor bank;
- 11957 (6) "Presenting bank" means a bank presenting an item except a payor bank.
- 11958 § 17.1-626.1. *Recovery of costs in civil actions for bad checks.*
- 11959 A. *In any civil action by a holder to recover the sum payable of a check drawn by the defendant on*
- 11960 *which payment has been refused by the payor bank because the drawer had no account or insufficient*
- 11961 *assets, or in any civil action following an arrest under § 18.2-181 or 18.2-182, the court, upon a*
- 11962 *determination that the plaintiff has prevailed, shall add the following amounts, as costs, to the amount*
- 11963 *due to the plaintiff for the check: (i) the sum of \$10 to defray the cost of processing the returned check;*
- 11964 *and (ii) the base wage of one employee for time actually spent acting as a witness for the*
- 11965 *Commonwealth; provided, however, that the total amount of allowable costs granted under the*
- 11966 *provisions of this section shall not exceed the sum of \$250 excluding restitution for the amount of the*
- 11967 *check.*
- 11968 B. *Such award of costs shall be contingent upon a finding (i) that the plaintiff complied with the*
- 11969 *provisions in § 18.2-183 relating to notice and (ii) that the defendant failed to deliver payment or*
- 11970 *evidence of bank error to the plaintiff within five days after receipt of such notice.*
- 11971 § 19.2-10.1. Subpoena duces tecum for obtaining records concerning banking and credit cards.
- 11972 A. A financial institution as defined in § ~~6.1-125.1~~ 6.2-604, money transmitter as defined in §
- 11973 ~~6.1-370~~ 6.2-1900, or commercial businesses providing credit history or credit reports; or a credit card
- 11974 issuer as defined in § ~~41-30~~ 6.2-424 shall disclose a record or other information pertaining to a
- 11975 customer, to a law-enforcement officer pursuant to a subpoena duces tecum issued pursuant to this
- 11976 section.
- 11977 1. In order to obtain such records, the law-enforcement official shall provide a statement of the facts
- 11978 documenting the reasons that the records or other information sought are relevant to a legitimate
- 11979 law-enforcement inquiry, relating to a named person or persons, to the attorney for the Commonwealth.
- 11980 A court shall issue a subpoena duces tecum upon motion of the Commonwealth only if the court finds
- 11981 that there is probable cause to believe that a crime has been committed and to believe the records
- 11982 sought or other information sought are relevant to a legitimate law-enforcement inquiry into that offense.
- 11983 The court may issue a subpoena duces tecum under this section regardless of whether any criminal
- 11984 charges have been filed.
- 11985 2. A court issuing an order pursuant to this section, on a motion made promptly by the financial
- 11986 institution or credit card issuer, or enterprise may quash or modify the subpoena duces tecum, if the
- 11987 information or records requested are unusually voluminous in nature or compliance with such subpoena
- 11988 duces tecum would otherwise cause an undue burden on such provider.
- 11989 B. No cause of action shall lie in any court against a financial institution or credit card issuer, or
- 11990 enterprise, its officers, employees, agents, or other specified persons for providing information, facilities,
- 11991 or assistance in accordance with the terms of a subpoena duces tecum under this section.
- 11992 C. Upon issuance of a subpoena duces tecum under this section, the statement shall be temporarily
- 11993 sealed by the court upon application of the attorney for the Commonwealth for good cause shown in an
- 11994 ex parte proceeding. Any individual arrested and claiming to be aggrieved by the order may move the
- 11995 court for the unsealing of the statement, and the burden of proof with respect to continued sealing shall
- 11996 be upon the Commonwealth.
- 11997 D. Any and all records received by law enforcement pursuant to this section shall be utilized only for
- 11998 a reasonable amount of time and only for a legitimate law-enforcement purpose. Upon the completion of
- 11999 the investigation the records shall be submitted to the court by the attorney for the Commonwealth along
- 12000 with a proposed order requiring the records to be sealed. Upon entry of such order, the court shall seal
- 12001 the records in accordance with the requirements contained in subsection C.
- 12002 § 26-7.5. *Effect of orders of qualification of bank as committee or guardian.*
- 12003 *In the case of qualification before or after July 1, 1984, if the order of qualification of a bank as*
- 12004 *committee or guardian fails to specify that the bank is to be guardian or committee of the person, it*
- 12005 *shall be deemed a qualification solely as committee, conservator, or guardian of the estate.*
- 12006 § 36-55.33:1. Mortgage loan terms and conditions.
- 12007 A. All mortgage loans made by HDA pursuant to § 36-55.31 of this chapter shall be subject to the
- 12008 following terms and conditions:
- 12009 1. The ratio of mortgage loan principal amount to total housing development costs and the
- 12010 amortization period of any mortgage loans made by HDA which are federally insured mortgages, in
- 12011 whole or in part, or which are otherwise assisted or aided, directly or indirectly, by the federal
- 12012 government, shall be governed by the rules and regulations provided in or pursuant to the federal

12013 government program under which the HDA mortgage loan or part thereof is insured, guaranteed, assisted  
12014 or aided; but in no event shall such amortization period exceed 50 years.

12015 2. A mortgage loan made by HDA may be prepaid to maturity after a period of years, and on such  
12016 terms and conditions, as are determined by HDA in its rules and regulations or in the HDA resolution  
12017 authorizing, or commitment for, such mortgage loan.

12018 3. HDA shall have authority to establish and modify from time to time the interest rates at which it  
12019 shall make mortgage loans and commitments therefor. Such interest rates shall be established by HDA  
12020 in its sole discretion at the lowest level consistent with HDA's cost of operation and its responsibilities  
12021 to the holders of its bonds, bond anticipation notes and other obligations. In addition to such interest  
12022 charges, HDA may make and collect such fees and charges, including but not limited to reimbursement  
12023 of HDA's financing costs, service charges, insurance premiums and mortgage insurance premiums, as  
12024 HDA determines to be reasonable. No person shall, by way of defense or otherwise, avail himself of  
12025 any of the provisions of Chapter 7.2 3 (§ 6.1-330.47 6.2-300 et seq.) of Title 6.1 6.2 to avoid or defeat  
12026 the payment of any interest or fee which he shall have contracted to pay on any loan or forbearance of  
12027 money made, directly or indirectly, or assisted in any manner by HDA under or pursuant to this chapter.

12028 B. Mortgage loans made by HDA to housing sponsors to finance the ownership and operation of  
12029 housing developments and multifamily residential housing intended for occupancy by persons and  
12030 families of low and moderate income, pursuant to subdivision (10) of § 36-55.31, shall be subject to the  
12031 following terms and conditions in addition to those contained in subsection A of this section:

12032 1. The amount disbursed with respect to an HDA mortgage loan to a limited profit housing sponsor  
12033 shall not exceed 95 percent of the total housing development costs and to a nonprofit housing sponsor  
12034 shall not exceed 100 percent of the total housing development costs. Subsequent to the disbursement of  
12035 such amount, additional amounts may be from time to time disbursed if the sum of the amount to be so  
12036 disbursed and the then outstanding principal balance of the HDA mortgage loan does not exceed 95  
12037 percent of the market value of the housing development or residential housing as then determined by the  
12038 Authority. The amortization period of such an HDA mortgage loan shall be as determined by HDA in  
12039 its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage loan;  
12040 but in no event shall such amortization period exceed 50 years.

12041 2. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such  
12042 HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed  
12043 or approved by HDA. The aforesaid mortgage and instrument evidencing an HDA mortgage loan may  
12044 contain exculpatory provisions relieving the housing sponsor or its principal or principals from personal  
12045 liability if deemed desirable by HDA.

12046 3. With respect to any such HDA mortgage loan made to a limited profit housing sponsor, HDA may  
12047 require that such limited profit housing sponsor not make distributions in any one year with respect to  
12048 the housing development or multifamily residential housing financed by such HDA mortgage loan in  
12049 excess of such percentage of such limited profit housing sponsor's equity in the housing development or  
12050 multifamily residential housing as may be determined by HDA in its rules and regulations or in the  
12051 HDA resolution authorizing, or commitment for such mortgage loan. None of the partners, principals,  
12052 stockholders or holders of a beneficial interest in such limited profit housing sponsor shall earn, accept  
12053 or receive a return in any one year with respect to the housing development or multifamily residential  
12054 housing financed by such HDA mortgage loan greater than his applicable proportion of any such  
12055 percentage of such limited profit housing sponsor's equity in the housing development or multifamily  
12056 residential housing as may be determined by HDA in its rules and regulations or in the HDA resolution  
12057 authorizing, or commitment for, such mortgage loan. The right to any such limited distribution or return  
12058 may be cumulative to the extent provided by HDA in its rules and regulations or in the HDA resolution  
12059 authorizing, or commitment for, such mortgage loan. For the purpose of this section, the terms  
12060 "distribution" and "return" are intended to mean payments on account of the housing development or  
12061 multifamily residential housing financed by such HDA mortgage loan resulting from the operation  
12062 thereof. Any payment to a person or entity who is a partner, principal, stockholder or holder of a  
12063 beneficial interest in such limited profit housing sponsor shall not be deemed a "distribution" or "return"  
12064 to such person or entity if the funds with which such payment is made are funds paid or contributed to  
12065 such limited profit housing sponsor by persons or entities purchasing a beneficial interest in such limited  
12066 profit housing sponsor. At or after the completion of construction, rehabilitation or improvement of the  
12067 housing development or multifamily residential housing financed by such HDA mortgage loan, such  
12068 limited profit housing sponsor's equity in the housing development or multifamily residential housing  
12069 shall be established in the manner provided by HDA in its rules and regulations or in the HDA  
12070 resolution authorizing, or commitment for such mortgage loan. Such equity shall be determined by  
12071 HDA, at its option, as either (i) the difference between the total housing development costs as to the  
12072 housing development or multifamily residential housing and the final principal amount of such HDA  
12073 mortgage loan, or (ii) the difference between the fair market value of such housing development and the

12074 final principal amount of such HDA mortgage loan. HDA may thereafter from time to time adjust such  
 12075 equity to be equal to the difference, as of the date of adjustment, between the fair market value of such  
 12076 housing development and the outstanding principal balance of such HDA mortgage loan. HDA may  
 12077 review and regulate a proposed retirement of any capital investment in, or redemption of any stock of,  
 12078 such limited profit housing sponsor in the manner provided by HDA in its rules and regulations or in  
 12079 the HDA resolution authorizing, or commitment for, such mortgage loan.

12080 4. With respect to any such HDA mortgage loan, HDA may require the housing sponsor and other  
 12081 parties related to the housing development or multifamily residential housing financed by such HDA  
 12082 mortgage loan to execute such agreements, assurances, guarantees and certifications as HDA shall  
 12083 determine to be necessary including, without limitation, agreements between HDA and such housing  
 12084 sponsor and its partners, principals or stockholders to limitations established by HDA as to rentals and  
 12085 other charges, profits, fees, the use and disposition of the real property constituting the site of or relating  
 12086 to the housing development or multifamily residential housing and other property of such housing  
 12087 sponsor, and the use and disposition of franchises of such housing sponsor to the extent more restrictive  
 12088 limitations are not provided by the law under which such housing sponsor is incorporated or organized.

12089 5. As a condition of any such HDA mortgage loan, HDA shall have the power to supervise the  
 12090 housing sponsor in accordance with the provisions of § 36-55.34:1 at all times during which such HDA  
 12091 mortgage loan is outstanding and thereafter as necessary to preserve the federal tax exemption of the  
 12092 notes or bonds issued by HDA to finance such HDA mortgage loan.

12093 C. Mortgage loans made by HDA to persons and families of low and moderate income to finance the  
 12094 purchase or refinancing of single-family residential housing, pursuant to subdivision (11) of § 36-55.31,  
 12095 shall be subject to the following terms and conditions in addition to those contained in subsection A of  
 12096 this section:

12097 1. The amount disbursed with respect to such HDA mortgage loan shall not exceed 100 percent of  
 12098 the sales price or market value of the single-family residential housing, as determined or approved by or  
 12099 on behalf of HDA. HDA may also disburse additional amounts to finance such closing costs and fees as  
 12100 it may deem necessary or appropriate, and all such disbursements and financings of closing costs and  
 12101 fees subsequent to the enactment of this chapter are hereby validated. The amortization period of such  
 12102 an HDA mortgage loan shall be as determined by HDA in its rules and regulations or in the HDA  
 12103 resolution authorizing, or commitment for, such mortgage loan; but in no event shall such amortization  
 12104 period exceed 50 years. If during the term of the HDA mortgage loan (i) the outstanding principal  
 12105 balance of the HDA mortgage loan is expected to increase to an amount in excess of the original  
 12106 principal balance or (ii) the amount of monthly payments on the HDA mortgage loan will or may be  
 12107 adjusted, HDA shall so notify the applicants prior to the execution of the HDA mortgage loan. Such  
 12108 notice shall describe the terms and conditions under which the outstanding principal balance or the  
 12109 amount of monthly payments, or both, may be so increased or adjusted, and such notice shall be signed  
 12110 by the applicants.

12111 2. Such an HDA mortgage loan shall be made only after a determination that such a mortgage loan  
 12112 is not otherwise available from private lenders upon reasonably equivalent terms and conditions, and the  
 12113 HDA resolution authorizing, or commitment for, such mortgage loan shall contain such a determination.

12114 3. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such  
 12115 HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed  
 12116 or approved by HDA. With respect to any such HDA mortgage loan, HDA may require the person or  
 12117 family of low or moderate income to execute such agreements, assurances, guarantees and certifications  
 12118 as HDA shall determine to be necessary including, without limitation, agreements between HDA and  
 12119 such person or family of low or moderate income relating to the use, occupancy, maintenance and sale  
 12120 of the single-family residential housing financed by such HDA mortgage loan and the payment,  
 12121 prepayment and assignment of such HDA mortgage loan.

12122 D. Mortgage loans made by HDA to housing sponsors or persons or families of low or moderate  
 12123 income to finance the construction, rehabilitation, preservation or improvement of housing developments  
 12124 or residential housing intended, upon completion of such construction, rehabilitation, preservation or  
 12125 improvement, for ownership or occupancy by persons and families of low and moderate income,  
 12126 pursuant to subdivision (12) of § 36-55.31 of this chapter, shall be subject to the following terms and  
 12127 conditions in addition to those contained in subsection A of this section:

12128 1. The amount disbursed with respect to such an HDA mortgage loan to a limited profit housing  
 12129 sponsor shall not exceed 95 percent of the total housing development costs and to a nonprofit housing  
 12130 sponsor or a person or family of low or moderate income shall not exceed 100 percent of the total  
 12131 housing development costs. Subsequent to the disbursement of such amount, additional amounts may be  
 12132 from time to time disbursed if the sum of the amount to be so disbursed and the then outstanding  
 12133 principal balance of the HDA mortgage loan does not exceed 95 percent of the market value of the  
 12134 housing development or residential housing as then determined by the Authority. Without regard as to

12135 whether HDA intends to remain the lender in respect to such mortgage loan throughout the amortization  
 12136 period thereof, the amortization period of such an HDA mortgage loan shall be as determined by HDA  
 12137 in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage  
 12138 loan.

12139 2. In considering any application for such an HDA mortgage loan, HDA shall give first priority to  
 12140 applications relating to housing developments or residential housing which are or will be well-planned  
 12141 and well-designed, and also shall give consideration to:

12142 a. The comparative need for housing for persons and families of low and moderate income in the  
 12143 area proposed to be served by the housing development or residential housing;

12144 b. The ability of the applicant to construct, rehabilitate or improve and market or operate, manage  
 12145 and maintain the housing development or residential housing;

12146 c. The existence of zoning or other regulations to protect adequately the housing development or  
 12147 residential housing against detrimental future uses which could cause undue depreciation in the value of  
 12148 the housing development or residential housing;

12149 d. The availability of adequate parks, recreational areas, utilities, schools, transportation and parking;  
 12150 and

12151 e. The existence of statewide housing plans.

12152 3. With respect to any such HDA mortgage loan, HDA may require the housing sponsor, person or  
 12153 family of low or moderate income, contractors, architects, marketing agents, management agents and  
 12154 other parties related to the housing development or residential housing financed by such HDA mortgage  
 12155 loan to execute such agreements, assurances, guarantees and certifications as HDA shall determine to be  
 12156 necessary including, without limitation, agreements between HDA and such housing sponsor and its  
 12157 partners, principals or stockholders or such person or family of low or moderate income to limitations  
 12158 established by HDA as to rentals and other charges, profits, fees, the use and disposition of the real  
 12159 property constituting the site of or relating to the housing development or residential housing and other  
 12160 property of such housing sponsor, and the use and disposition of franchises of such housing sponsor to  
 12161 the extent more restrictive limitations are not provided by the law under which such housing sponsor is  
 12162 incorporated or organized. HDA shall require the housing sponsor or person or family of low or  
 12163 moderate income receiving such HDA mortgage loan, or the construction contractor, or both, to furnish  
 12164 such assurances of completion of the construction, rehabilitation or improvement as determined by HDA  
 12165 in its rules and regulations or in the HDA resolution authorizing, or commitment for, such mortgage  
 12166 loan.

12167 4. As a condition of any such HDA mortgage loan to a housing sponsor, HDA shall have the power  
 12168 to supervise such housing sponsor in accordance with the provisions of § 36-55.34:1 at all times during  
 12169 which such HDA mortgage loan is outstanding and thereafter as necessary to preserve the federal tax  
 12170 exemption of the notes or bonds issued by HDA to finance such HDA mortgage loan.

12171 5. With respect to any such HDA mortgage loan, the provisions of subdivisions 2 and 3 of  
 12172 subsection B of this section shall be applicable.

12173 E. Mortgage loans made by HDA pursuant to subdivision 13 of § 36-55.31 to finance the  
 12174 construction, rehabilitation, preservation or improvement, or ownership and operation, of economically  
 12175 mixed projects or portions thereof and, if any such project is within a revitalization area designated in or  
 12176 pursuant to § 36-55.30:2, any nonhousing buildings that are incidental to such project or are determined  
 12177 by such governing body of the city or county to be necessary or appropriate for the revitalization of  
 12178 such area or for the industrial, commercial or other economic development of such area shall be subject  
 12179 to the following terms and conditions in addition to those contained in subsection A of this section:

12180 1. The principal amount of such an HDA mortgage loan shall not exceed 95 percent of the total  
 12181 housing development costs, and the amortization period of such an HDA mortgage loan shall be as  
 12182 determined by HDA in its rules and regulations or in the HDA resolution authorizing, or in the  
 12183 commitment for, such mortgage loan; but in no event shall such amortization period exceed 50 years.

12184 2. Such an HDA mortgage loan shall be made only if the provisions of § 36-55.30:2 are satisfied.

12185 3. The instrument evidencing any such HDA mortgage loan and the mortgage securing any such  
 12186 HDA mortgage loan shall be in such form and contain such terms and conditions as shall be prescribed  
 12187 or approved by HDA. The aforesaid mortgage and instrument evidencing an HDA mortgage loan may  
 12188 contain exculpatory provisions relieving a housing sponsor, if any, or its principal or principals from  
 12189 personal liability if deemed desirable by HDA.

12190 4. The nonhousing buildings shall be financed by such an HDA mortgage loan only if the HDA shall  
 12191 receive a certification from the housing sponsor that a mortgage loan for the financing of such  
 12192 nonhousing buildings is not otherwise available from private lenders upon reasonably equivalent terms  
 12193 and conditions.

12194 § 36-96.20. Additional powers of the Real Estate Board; action on real estate licenses.

12195 A. In any case in which the Board has received or initiated a complaint and conducted an

12196 investigation of any violation of this chapter and determined that there exists reasonable cause to believe  
 12197 that a real estate broker, real estate salesperson, real estate brokerage firm licensed in accordance with  
 12198 Chapter 21 (§ 54.1-2100 et seq.), or their agents or employees have engaged in discriminatory housing  
 12199 practices prohibited by the Virginia Fair Housing Law (§ 36-96.1 et seq.) or the Virginia Equal Credit  
 12200 Opportunity Act (~~§ 59.1-21.19 et seq.~~) Chapter 5 (§ 6.2-500 et seq.) of Title 6.2, the Board shall  
 12201 immediately attempt to resolve the matter by conference and conciliation, and upon failure to resolve the  
 12202 matter in such manner, may initiate an administrative hearing to determine whether to revoke, suspend  
 12203 or fail to renew the license or licenses in question. Not less than 10 days prior to the initial conference  
 12204 hereunder, the Board shall prepare and deliver to the respondent or respondents a written report setting  
 12205 forth the scope, findings and conclusions of the investigation conducted under this section.

12206 B. If any person operating under a real estate license issued by the Board, pursuant to the provisions  
 12207 of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, is found by a court to have violated any provision of  
 12208 this chapter and this fact is so certified to the Board, the Board, after notification to the licensee, shall  
 12209 take appropriate action to consider suspension or revocation of the license of the licensee.

#### 12210 CHAPTER 27.1.

#### 12211 REAL ESTATE SETTLEMENTS.

##### 12212 § 55-525.1. Definitions.

12213 *As used in this chapter, unless the context requires a different meaning:*

12214 *"Disbursement of loan funds" means the delivery of the loan funds by the lender to the settlement*  
 12215 *agent in one or more of the following forms:*

12216 1. *Cash;*

12217 2. *Wired funds;*

12218 3. *Certified check;*

12219 4. *Checks issued by the Commonwealth or a political subdivision of the Commonwealth;*

12220 5. *Cashier's check, or teller's check with equivalent funds availability in conformity with the federal*  
 12221 *Expedited Funds Availability Act (12 U.S.C. § 4001 et seq.);*

12222 6. *Checks issued by a financial institution, the accounts of which are insured by an agency of the*  
 12223 *federal or state government, which checks are drawn on a financial institution located within the Fifth*  
 12224 *Federal Reserve District, the accounts of which are insured by an agency of the federal or state*  
 12225 *government;*

12226 7. *Drafts issued by a state chartered or federally chartered credit union, which drafts are drawn on*  
 12227 *the United States Central Credit Union;*

12228 8. *Checks issued by an insurance company licensed and regulated by the State Corporation*  
 12229 *Commission, which checks are drawn on a financial institution located within the Fifth Federal Reserve*  
 12230 *District, the accounts of which are insured by an agency of the federal government; or*

12231 9. *Checks issued by a state or federal savings and loan association or savings bank operating in the*  
 12232 *Commonwealth, which checks are drawn on the Federal Home Loan Bank of Atlanta.*

12233 *"Disbursement of settlement proceeds" means the payment of all proceeds of the transaction by the*  
 12234 *settlement agent to the persons entitled thereto.*

12235 *"Lender" means any person regularly engaged in making loans secured by mortgages or deeds of*  
 12236 *trust on real estate.*

12237 *"Loan closing" means the time agreed upon by the borrower and lender, when the execution of the*  
 12238 *loan documents by the borrower occurs.*

12239 *"Loan documents" means the note evidencing the debt due the lender, the deed of trust, or mortgage*  
 12240 *securing the debt due the lender, and any other documents required by the lender to be executed by the*  
 12241 *borrower as a part of the transaction.*

12242 *"Loan funds" means the gross or net proceeds of the loan to be disbursed by the lender at loan*  
 12243 *closing.*

12244 *"Settlement" means the time when the settlement agent has received the duly executed deed, loan*  
 12245 *funds, loan documents, and other documents and funds required to carry out the terms of the contract*  
 12246 *between the parties and the settlement agent reasonably determines that prerecordation conditions of*  
 12247 *such contracts have been satisfied. A determination by a settlement agent that prerecordation conditions*  
 12248 *have been satisfied shall not control the rights and obligations of the parties under the contract*  
 12249 *including whether settlement has occurred under the terms and conditions of the contract. "Parties" as*  
 12250 *used in this definition means the seller, purchaser, borrower, lender, and the settlement agent.*

12251 *"Settlement agent" means the person responsible for conducting the settlement and disbursement of*  
 12252 *the settlement proceeds and includes any individual, corporation, partnership, or other entity conducting*  
 12253 *the settlement and disbursement of loan proceeds.*

12254 *"Settlement service provider" means any person providing settlement services, as that term is defined*  
 12255 *under the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.).*

12256 *"Thing of value" means any payment, advance, funds, loan, service, or other consideration.*

- 12257 § 55-525.2. *Applicability; effect of noncompliance.*  
 12258 A. *This chapter applies only to transactions involving loans that (i) are made by lenders and (ii) will*  
 12259 *be secured by first deeds of trust or mortgages on real estate containing not more than four residential*  
 12260 *dwelling units.*  
 12261 B. *Failure to comply with the provisions of this chapter shall not affect the validity or enforceability*  
 12262 *of any loan documents.*  
 12263 § 55-525.3. *Duty of lender.*  
 12264 *The lender shall, at or before loan closing, cause disbursement of loan funds to the settlement agent.*  
 12265 *In the case of a refinancing or any other loan where a right of rescission applies, the lender shall,*  
 12266 *within one business day after the expiration of the rescission period required under the federal Truth in*  
 12267 *Lending Act (15 U.S.C. § 1601 et seq.), cause disbursement of loan funds to the settlement agent. The*  
 12268 *lender shall not be entitled to receive or charge any interest on the loan until disbursement of loan*  
 12269 *funds and loan closing has occurred.*  
 12270 § 55-525.4. *Duty of settlement agent.*  
 12271 *The settlement agent shall cause recordation of the deed, the deed of trust, or mortgage, or other*  
 12272 *documents required to be recorded and shall cause disbursement of settlement proceeds within two*  
 12273 *business days of settlement. A settlement agent may not disburse any or all loan funds or other funds*  
 12274 *coming into its possession prior to the recordation of any instrument except (i) funds received that are*  
 12275 *overpayments to be returned to the provider of such funds, (ii) funds necessary to effect the recordation*  
 12276 *of instruments, or (iii) funds that the provider has by separate written instrument directed to be*  
 12277 *disbursed prior to recordation of any instrument. Additionally, in any transaction involving the purchase*  
 12278 *or sale of an interest in residential real property, the settlement agent shall provide notification to the*  
 12279 *purchaser of the availability of owner's title insurance as required under § 38.2-4616.*  
 12280 § 55-525.5. *Prohibition against payment or receipt of settlement services kickbacks, rebates,*  
 12281 *commissions, and other payments; penalty.*  
 12282 A. *No person selling real property, or performing services as a real estate agent, attorney, lay*  
 12283 *settlement agent or lender incident to any real estate settlement or sale, shall pay or receive, directly or*  
 12284 *indirectly, any kickback, rebate, commission, thing of value, or other payment pursuant to any*  
 12285 *agreement or understanding, oral or otherwise, that business incident to services required to complete a*  
 12286 *settlement be referred to any person.*  
 12287 B. *Nothing in this section shall be construed to prohibit:*  
 12288 1. *Expenditures for bona fide advertising and marketing promotions otherwise permissible under the*  
 12289 *provisions of the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.);*  
 12290 2. *The provision of educational materials or classes, if such materials or classes are provided to a*  
 12291 *group of persons or entities pursuant to a bona fide marketing or educational effort;*  
 12292 3. *The payment to any person of a bona fide salary or compensation or other payment for services*  
 12293 *actually performed for the business of the settlement service provider; or*  
 12294 4. *An employer's payment to its own bona fide employees for referrals of mortgage loan or insurance*  
 12295 *business. An employer's payment to its own employees for the referral of insurance business shall be*  
 12296 *subject to the requirements of subdivision B 8 of § 38.2-1821.1.*  
 12297 C. *No person shall be in violation of this section solely by reason of ownership in a settlement*  
 12298 *service provider, where such person receives returns on investments arising from the ownership interest.*  
 12299 D. *Any person who knowingly and willfully violates this section is guilty of a Class 3 misdemeanor.*  
 12300 *Any criminal charge brought under this section shall be by indictment pursuant to Chapter 14*  
 12301 *(§ 19.2-216 et seq.) of Title 19.*  
 12302 § 55-525.6. *Disclosure of affiliated business by settlement service providers.*  
 12303 *Any person making a referral to an affiliated settlement service provider shall disclose the affiliation*  
 12304 *in accordance with the federal Real Estate Settlement Procedures Act (12 U.S.C. § 2601 et seq.). Such*  
 12305 *disclosure shall be provided regardless of the amount of the person's actual ownership interest in the*  
 12306 *affiliated provider. However, if the person's ownership interest is one percent or less of the capital stock*  
 12307 *of a corporation or entity with a class of securities registered under the Securities Exchange Act of*  
 12308 *1934 (15 U.S.C. § 78a et seq.), the disclosure shall not be required.*  
 12309 § 55-525.7. *Disclosure of charges for appraisal or valuation using automated or other valuation*  
 12310 *mechanism.*  
 12311 *Any lender providing a loan secured by a first deed of trust or mortgage on real estate containing*  
 12312 *not more than four residential dwelling units shall disclose on the settlement statement, as that term is*  
 12313 *defined in § 55-525.9, any fee charged to the borrower for an appraisal, as that term is defined in*  
 12314 *§ 54.1-2009, and any fee charged to the borrower for a valuation or opinion of value of the property*  
 12315 *prepared using an automated or other mechanism prepared by a person who is not licensed as an*  
 12316 *appraiser under Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1.*  
 12317 § 55-525.8. *Penalty.*

12318 Any persons suffering losses due to the failure of the lender or the settlement agent to cause  
 12319 disbursement as required by this chapter shall be entitled to recover, in addition to other actual  
 12320 damages, double the amount of any interest collected in violation of § 55-525.3 plus reasonable attorney  
 12321 fees incurred in the collection thereof.

12322 CHAPTER 27.2.

12323 REAL ESTATE SETTLEMENT AGENTS.

12324 § 55-525.9. Definitions.

12325 As used in this chapter, unless the context requires a different meaning:

12326 "Association" means the National Association of Insurance Commissioners.

12327 "Commission" means the State Corporation Commission.

12328 "Escrow" means written instruments, money, or other items deposited by a party with a settlement  
 12329 agent for delivery to other persons upon the performance of specified conditions or the happening of a  
 12330 certain event.

12331 "Escrow, closing, or settlement services" means the administrative and clerical services required to  
 12332 carry out the terms of contracts affecting real estate. These services include placing orders for title  
 12333 insurance, receiving and issuing receipts for money received from the parties, ordering loan checks and  
 12334 payoffs, ordering surveys and inspections, preparing settlement statements, determining that all closing  
 12335 documents conform to the parties' contract requirements, setting the closing appointment, following up  
 12336 with the parties to ensure that the transaction progresses to closing, ascertaining that the lenders'  
 12337 instructions have been satisfied, conducting a closing conference at which the documents are executed,  
 12338 receiving and disbursing funds, completing form documents and instruments selected by and in  
 12339 accordance with instructions of the parties to the transaction, handling or arranging for the recording  
 12340 of documents, sending recorded documents to the lender, sending the recorded deed and the title policy  
 12341 to the buyer, and reporting federal income tax information for the real estate sale to the Internal  
 12342 Revenue Service.

12343 "Lay real estate settlement agent" means a person who (i) is not licensed as an attorney under  
 12344 Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1, (ii) is not a party to the real estate transaction, (iii)  
 12345 provides escrow, closing, or settlement services in connection with a transaction related to any real  
 12346 estate in the Commonwealth, and (iv) is listed as the settlement agent on the settlement statement for  
 12347 such transaction.

12348 "Licensing authority" shall mean the (i) Commission acting pursuant to this chapter, Title 6.2, Title  
 12349 12.1, or Title 38.2; (ii) the Virginia State Bar acting pursuant to this chapter or Chapter 39  
 12350 (§ 54.1-3900 et seq.) of Title 54.1; or (iii) the Virginia Real Estate Board acting pursuant to this  
 12351 chapter or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1.

12352 "Party to the real estate transaction" means with respect to that real estate transaction, a lender,  
 12353 seller, purchaser or borrower, and with respect to a corporate purchaser, any entity that is a subsidiary  
 12354 of or under common ownership with that corporate purchaser.

12355 "Settlement agent" means a person, other than a party to the real estate transaction, who provides  
 12356 escrow, closing, or settlement services in connection with a transaction related to real estate in the  
 12357 Commonwealth and who is listed as the settlement agent on the settlement statement for such  
 12358 transaction. Any person, other than a party to the transaction, who conducts the settlement conference  
 12359 and receives or handles money shall be deemed a "settlement agent" subject to the applicable  
 12360 requirements of this chapter.

12361 "Settlement statement" means the statement of receipts and disbursements for a transaction related to  
 12362 real estate, including a statement prescribed under the Real Estate Settlement Procedures Act of 1974  
 12363 (RESPA) (12 U.S.C. § 2601 et seq.), as amended, and the regulations thereunder.

12364 § 55-525.10. Limitation on applicability of chapter.

12365 Nothing in this chapter shall be construed to prevent a person licensed under Chapter 21  
 12366 (§ 54.1-2100 et seq.) of Title 54.1, or such licensee's employees or independent contractors, from  
 12367 performing escrow, closing, or settlement services to facilitate the settlement of a transaction in which  
 12368 the licensee is involved without complying with the provisions of this chapter, so long as the licensee,  
 12369 the licensee's employees, or independent contractors are not named as the settlement agent on the  
 12370 settlement statement and the licensee is otherwise not prohibited from performing such services by law  
 12371 or regulation.

12372 § 55-525.11. Scope of chapter; lay real estate settlement agents.

12373 A. Except as provided in subsection B, this chapter applies only to transactions involving the  
 12374 purchase of or lending on the security of real estate located in the Commonwealth containing not more  
 12375 than four residential dwelling units.

12376 B. Notwithstanding any rule of court or other provision of this chapter to the contrary:

12377 1. A lay real estate settlement agent may provide escrow, closing, and settlement services for any  
 12378 real property located within the Commonwealth, and receive compensation for such services, provided

12379 *he is registered pursuant to and is in compliance with the provisions of this chapter with the exception*  
 12380 *of subsection A; and*

12381 2. *A party to a real estate transaction involving the purchase of or lending on the security of real*  
 12382 *estate located in the Commonwealth containing more than four residential dwelling units shall have the*  
 12383 *same authority as a party to a real estate transaction as is provided pursuant to subsection B of*  
 12384 *§ 55-525.12.*

12385 *§ 55-525.12. Persons who may act as a settlement agent.*

12386 A. *A person shall not act in the capacity of a settlement agent, and a lender, seller, purchaser or*  
 12387 *borrower may not contract with any person to act in the capacity of a settlement agent, with respect to*  
 12388 *real estate settlements in the Commonwealth unless the person has not been convicted of a felony,*  
 12389 *unless such person has had his civil rights restored by the Governor or been granted a writ of actual*  
 12390 *innocence, and is either:*

12391 1. *Licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1;*

12392 2. *Licensed as a title insurance company under Title 38.2;*

12393 3. *Licensed as a title insurance agent under Title 38.2 and is appointed by a title insurance company*  
 12394 *licensed in the Commonwealth pursuant to Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;*

12395 4. *Licensed as a real estate broker under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1;*

12396 5. *A financial institution authorized to do business in the Commonwealth under any of the provisions*  
 12397 *of Title 6.2 or under federal law; or*

12398 6. *A subsidiary or affiliate of a financial institution described in subdivision 5.*

12399 *Any person described in subdivisions 1 through 6, not acting in the capacity of a settlement agent,*  
 12400 *shall not be subject to the provisions of this chapter.*

12401 B. *Notwithstanding any rule of court to the contrary, a settlement agent operating in compliance with*  
 12402 *the requirements of this chapter or a party to the real estate transaction may provide escrow, closing,*  
 12403 *or settlement services and receive compensation for such services.*

12404 *§ 55-525.13. Duties of settlement agents.*

12405 A. *A settlement agent shall exercise reasonable care and comply with all applicable requirements of*  
 12406 *this chapter and its licensing authority regarding licensing, financial responsibility, errors and omissions*  
 12407 *or malpractice insurance policies, fidelity bonds, employee dishonesty insurance policies, audits, escrow*  
 12408 *account analyses and record retention.*

12409 B. *A settlement agent who is not (i) a person described in subdivision A 5 of § 55-525.12 or (ii) a*  
 12410 *title insurance company as defined in § 38.2-4601 shall maintain the following to the satisfaction of the*  
 12411 *appropriate licensing authority:*

12412 1. *An errors and omissions or malpractice insurance policy providing a minimum of \$250,000 in*  
 12413 *coverage;*

12414 2. *A blanket fidelity bond or employee dishonesty insurance policy covering persons employed by the*  
 12415 *settlement agent providing a minimum of \$100,000 in coverage. When the settlement agent has no*  
 12416 *employees except the owners, partners, shareholders or members, the settlement agent may apply to the*  
 12417 *appropriate licensing authority for a waiver of this fidelity bond or employee dishonesty requirement;*  
 12418 *and*

12419 3. *A surety bond of not less than \$200,000.*

12420 C. *A settlement agent, other than an attorney or a title insurance company if such company's*  
 12421 *financial statements are audited annually by an independent certified public accountant, shall, at its*  
 12422 *expense, have an audit of its escrow accounts conducted by an independent certified public accountant*  
 12423 *at least once each consecutive 12-month period. The appropriate licensing authority shall require the*  
 12424 *settlement agent to provide a copy of its audit report to the licensing authority no later than 60 days*  
 12425 *after the date on which the audit is completed. A settlement agent that is a licensed title insurance agent*  
 12426 *under Title 38.2 shall also provide a copy of the audit report to each title insurance company that it*  
 12427 *represents. In lieu of such annual audit, a settlement agent that is licensed as a title insurance agent*  
 12428 *under Title 38.2 shall allow each title insurance company for which it has an appointment to conduct an*  
 12429 *analysis of its escrow accounts in accordance with regulations adopted by the Commission or guidelines*  
 12430 *issued by the Bureau of Insurance of the Commission, as appropriate, at least once each consecutive*  
 12431 *12-month period, and each title insurance company conducting such analysis shall submit a copy of its*  
 12432 *analysis report to the appropriate licensing authority no later than 60 days after the date on which the*  
 12433 *analysis is completed. With the consent of the title insurance agent, a title insurance company may*  
 12434 *share the results of its analysis with other title insurance companies that will accept the same in lieu of*  
 12435 *conducting a separate analysis. A title insurance company shall retain a copy of the analysis or audit*  
 12436 *report, as applicable, for each title insurance agent it has appointed and such reports and other records*  
 12437 *of the insurance company's activities as a settlement agent shall be made available to the appropriate*  
 12438 *licensing authority when examinations are conducted pursuant to provisions in Title 38.2.*

12439 *§ 55-525.14. Persons prohibited from assisting or being employed by settlement agents.*

12440 A. A person who has been convicted of a felony involving fraud, deceit, or misrepresentation shall  
 12441 not assist a settlement agent in the performance of escrow, closing, or settlement services involving the  
 12442 receipt or disbursement of funds from real estate settlements in the Commonwealth.

12443 B. A settlement agent shall not employ a person who has been convicted of a felony involving fraud,  
 12444 deceit, or misrepresentation in an administrative or clerical capacity that involves the receipt or  
 12445 disbursement of funds from real estate settlements in the Commonwealth.

12446 § 55-525.15. Choice of settlement agent.

12447 A purchaser or borrower in a transaction related to real estate in the Commonwealth shall have the  
 12448 right to select the settlement agent to provide escrow, closing, or settlement services in connection with  
 12449 the transaction. The seller in such a transaction may not require the use of a particular settlement agent  
 12450 as a condition of the sale of the property.

12451 § 55-525.16. Disclosure.

12452 All contracts involving the purchase of real estate containing not more than four residential dwelling  
 12453 units shall include, in bold face, and in at least 10-point type, the following language:

12454 "Choice of Settlement Agent: Chapter 27.2 of Title 55 of the Code of Virginia provides that the  
 12455 purchaser or borrower has the right to select the settlement agent to handle the closing of this  
 12456 transaction. The settlement agent's role in closing this transaction involves the coordination of numerous  
 12457 administrative and clerical functions relating to the collection of documents and the collection and  
 12458 disbursement of funds required to carry out the terms of the contract between the parties. If part of the  
 12459 purchase price is financed, the lender for the purchaser will instruct the settlement agent as to the  
 12460 signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent  
 12461 can provide legal advice to any party to the transaction except a settlement agent who is engaged in the  
 12462 private practice of law in Virginia and who has been retained or engaged by a party to the transaction  
 12463 for the purpose of providing legal services to that party.

12464 "Variation by agreement: The provisions of Chapter 27.2 of Title 55 of the Code of Virginia may not  
 12465 be varied by agreement, and rights conferred by this chapter may not be waived. The seller may not  
 12466 require the use of a particular settlement agent as a condition of the sale of the property.

12467 "Escrow, closing, and settlement service guidelines: The Virginia State Bar issues guidelines to help  
 12468 settlement agents avoid and prevent the unauthorized practice of law in connection with furnishing  
 12469 escrow, settlement or closing services. As a party to a real estate transaction, the purchaser or  
 12470 borrower is entitled to receive a copy of these guidelines from his settlement agent, upon request, in  
 12471 accordance with the provisions of Chapter 27.2 of Title 55 of the Code of Virginia."

12472 § 55-525.17. Conditions for providing escrow, closing, or settlement services and for maintaining  
 12473 escrow accounts.

12474 A. All funds deposited with the settlement agent in connection with an escrow, settlement, or closing  
 12475 shall be handled in a fiduciary capacity and submitted for collection to or deposited in a separate  
 12476 fiduciary trust account or accounts in a financial institution licensed to do business in the  
 12477 Commonwealth no later than the close of the second business day, in accordance with the following  
 12478 requirements:

12479 1. The funds shall be the property of the person or persons entitled to them under the provisions of  
 12480 the escrow, settlement, or closing agreement and shall be segregated for each depository by escrow,  
 12481 settlement, or closing in the records of the settlement agent in a manner that permits the funds to be  
 12482 identified on an individual basis; and

12483 2. The funds shall be applied only in accordance with the terms of the individual instructions or  
 12484 agreements under which the funds were accepted.

12485 B. Funds held in an escrow account shall be disbursed only pursuant to a written instruction or  
 12486 agreement specifying how and to whom such funds may be disbursed. Funds payable to persons other  
 12487 than the settlement agent shall be disbursed in accordance with § 55-525.4, except:

12488 1. Title insurance premiums payable to title insurers under § 38.2-1813 or to title insurance agents.  
 12489 Such title insurance premiums payable to title insurers and agents may be (i) held in the settlement  
 12490 agent's settlement escrow account, identified and itemized by file name or file number, as a file with a  
 12491 balance; (ii) disbursed in the form of a check drawn upon the settlement escrow account payable to the  
 12492 title insurer or agent but maintained within the settlement file of the settlement agent; or (iii) transferred  
 12493 within two business days into a separate title insurance premium escrow account, which account shall  
 12494 be identified as such and be separate from the business or personal funds of the settlement agent. These  
 12495 transferred title insurance premium funds shall be itemized and identified within the separate title  
 12496 insurance premium escrow account. All title insurance premiums payable to title insurers by title  
 12497 insurance agents serving as settlement agents shall be paid in the ordinary course of business as  
 12498 required by subsection A of § 38.2-1813; and

12499 2. Escrows held by the settlement agent pursuant to written instruction or agreement. A settlement  
 12500 statement that has been signed by the seller and the purchaser or borrower shall be deemed sufficient to

12501 satisfy the requirement of this subsection.

12502 C. A settlement agent may not retain any interest received on funds deposited in connection with any  
12503 escrow, settlement, or closing. An attorney settlement agent shall maintain escrow accounts in  
12504 accordance with applicable rules of the Virginia State Bar and the Supreme Court of Virginia.

12505 D. Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time  
12506 funds are available for disbursement with respect to a transaction, provided all parties consent to such  
12507 recordation.

12508 E. All settlement statements for transactions related to real estate governed by this chapter shall be  
12509 in writing and identify, by name and business address, the settlement agent.

12510 F. Nothing in this section is intended to amend, alter or supersede other sections of this chapter, or  
12511 the laws of the Commonwealth or the United States, regarding the duties and obligations of the  
12512 settlement agent in maintaining escrow accounts.

12513 § 55-525.18. Falsifying settlement statements prohibited.

12514 No settlement agent shall intentionally make any materially false or misleading statement or entry on  
12515 a settlement statement. An estimate of charges made in good faith by a settlement agent, and indicated  
12516 as such on the settlement statement, shall not be deemed to be a violation of this section.

12517 § 55-525.19. Separate charge for reporting transactions limited.

12518 No settlement agent shall charge any party to a real estate transaction, as a separate item on a  
12519 settlement statement, a sum exceeding \$10 for complying with any requirement imposed on the  
12520 settlement agent by § 58.1-316 or 58.1-317.

12521 § 55-525.20. Record retention requirements.

12522 The settlement agent shall maintain sufficient records of its affairs so that the appropriate licensing  
12523 authority may adequately ensure that the settlement agent is in compliance with all provisions of this  
12524 chapter. The settlement agent shall retain records pertaining to each settlement handled for a minimum  
12525 of five years after the settlement is completed. The appropriate licensing authority may prescribe the  
12526 specific record entries and documents to be kept.

12527 § 55-525.21. Regulations and orders.

12528 Except as provided in § 55-525.23, the appropriate licensing authority may issue summonses,  
12529 subpoenas, rules, regulations, and orders, including educational requirements, consistent with and  
12530 necessary to carry out the provisions of this chapter.

12531 § 55-525.22. Accounting by title insurance companies.

12532 A title insurance company domiciled in the Commonwealth or acting in the capacity of a settlement  
12533 agent pursuant to this chapter shall account for funds held and income derived from escrow, closing, or  
12534 settlement services in accordance with the applicable instructions of, and the accounting practices and  
12535 procedures manuals adopted by, the Association when filing the annual statements and reports required  
12536 under Chapter 13 (§ 38.2-1300 et seq.) of Title 38.2.

12537 § 55-525.23. Settlement agent registration requirements and compliance with unauthorized practice of  
12538 law guidelines.

12539 A. Every settlement agent subject to the provisions of this chapter shall be registered as such with  
12540 the appropriate licensing authority. In conjunction therewith, settlement agents shall furnish (i) their  
12541 names, business addresses, and telephone numbers and (ii) such other information as may be required.

12542 Each such registration (a) shall be accompanied by a fee not to exceed \$100, and (b) shall be renewed  
12543 at least biennially thereafter. When the registration of a settlement agent is renewed, the appropriate  
12544 authority shall notify the registrant of the provisions of § 17.1-223.

12545 B. The Virginia State Bar, in consultation with the Commission and the Virginia Real Estate Board,  
12546 shall adopt regulations establishing guidelines for settlement agents designed to assist them in avoiding  
12547 and preventing the unauthorized practice of law in conjunction with providing escrow, closing, and  
12548 settlement services. Such guidelines shall be furnished by the appropriate licensing authority to (i) each  
12549 settlement agent at the time of registration and any renewal thereof, (ii) state and federal agencies that  
12550 regulate financial institutions, and (iii) members of the general public upon request. Such guidelines  
12551 shall also be furnished by settlement agents to any party to a real estate transaction in which such  
12552 agents are providing escrow, closing, or settlement services, upon request.

12553 C. The Virginia State Bar shall receive complaints concerning settlement agent or financial  
12554 institution noncompliance with the guidelines established pursuant to subsection B and shall (i)  
12555 investigate the same to the extent they concern the unauthorized practice of law or any other matter  
12556 within its jurisdiction, and (ii) refer all other matters or allegations to the appropriate licensing  
12557 authority. The willful failure of any settlement agent to comply with the guidelines shall be considered a  
12558 violation of this chapter, and such agent shall be subject to a penalty of up to \$5,000 for each such  
12559 failure as the Virginia State Bar may determine.

12560 § 55-525.24. Penalties and liabilities.

12561 A. If the appropriate licensing authority determines that the settlement agent licensed by it or any of

12562 *its other licensees has violated this chapter, or any regulation or order adopted thereunder, after notice*  
 12563 *and opportunity to be heard, the appropriate licensing authority may do one or more of the following:*

- 12564 1. *Impose a penalty not exceeding \$5,000 for each violation;*  
 12565 2. *Revoke or suspend the applicable licenses;*  
 12566 3. *Issue a restraining order requiring such person to cease and desist from engaging in such act or*  
 12567 *practice; or*  
 12568 4. *Require restitution to be made by the person violating this chapter in the amount of any actual,*  
 12569 *direct financial loss.*

12570 B. *The appropriate licensing authority may terminate administratively the registration of any*  
 12571 *settlement agent if the settlement agent (i) no longer holds a license, (ii) fails to renew its registration,*  
 12572 *or (iii) fails to comply with the financial responsibility requirements set forth in § 55-525.13.*

12573 C. *In addition to the authority given in subsection A, and pursuant to § 12.1-13, the Commission,*  
 12574 *after determining that any person who does not hold a license from the appropriate licensing authority*  
 12575 *has violated this chapter or any regulation or order adopted thereunder, may do one or more of the*  
 12576 *following:*

- 12577 1. *Impose a penalty not exceeding \$5,000 for each violation;*  
 12578 2. *Issue a temporary or permanent injunction, or restraining order requiring such person to cease*  
 12579 *and desist from engaging in such act or practice; or*  
 12580 3. *Require restitution to be made by the person violating this chapter in the amount of any actual,*  
 12581 *direct financial loss.*

12582 D. *Nothing in this section shall affect the right of the appropriate licensing authority to impose any*  
 12583 *other penalties provided by law or regulation. Notwithstanding any provision contained in this section to*  
 12584 *the contrary, as to that portion of any complaint by a party to the real estate transaction arising under*  
 12585 *this chapter or any regulation or order adopted thereunder relating to the unauthorized practice of law,*  
 12586 *the Virginia State Bar, after complying with applicable law and regulation relating to unauthorized*  
 12587 *practice of law complaints and concluding the activity was not authorized by statute or regulation, may*  
 12588 *refer that portion of such complaint to the Attorney General or an Attorney for the Commonwealth. The*  
 12589 *Attorney General or Attorney for the Commonwealth may, in addition to any other powers conferred on*  
 12590 *him by law, seek the issuance of a temporary or permanent injunction or restraining order against any*  
 12591 *person so violating this chapter or any regulation or order adopted thereunder.*

12592 E. *A final order of the licensing authority imposing a penalty or ordering restitution may be*  
 12593 *recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such order*  
 12594 *by the licensing authority.*

12595 § 55-525.25. *Confidentiality of information obtained by the Commission.*

12596 A. *Any documents, materials, or other information in the control or possession of the Commission*  
 12597 *that are furnished by a title insurance company or title insurance agent or an employee thereof acting*  
 12598 *on behalf of the title insurance company or title insurance agent, or obtained by the Commission in an*  
 12599 *investigation pursuant to this chapter shall be confidential by law and privileged, shall not be subject to*  
 12600 *inspection or review by the general public, shall not be subject to subpoena, and shall not be subject to*  
 12601 *discovery or admissible in evidence in any private civil action. The Commission is authorized to use the*  
 12602 *documents, materials, or other information in the furtherance of any regulatory or legal action brought*  
 12603 *as a part of the Commission's duties.*

12604 B. *Neither the Commission nor any person who received documents, materials, or other information*  
 12605 *while acting under the authority of the Commission shall be permitted or required to testify in any*  
 12606 *private civil action concerning any confidential documents, materials, or information subject to*  
 12607 *subsection A.*

12608 C. *In order to assist in the performance of the Commission's duties under this chapter, the*  
 12609 *Commission:*

12610 1. *May share documents, material, or other information, including the confidential and privileged*  
 12611 *documents, materials, or information subject to subsection A, with other state, federal, and international*  
 12612 *regulatory agencies; with the Association, its affiliates or subsidiaries; and with local state, federal, and*  
 12613 *international law-enforcement authorities, provided that the recipient agrees to maintain the*  
 12614 *confidentiality and privileged status of the document, material, or other information; and*

12615 2. *May receive documents, materials, or information, including otherwise confidential and privileged*  
 12616 *documents, materials, or information, from the Association, its affiliates or subsidiaries and from*  
 12617 *regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain*  
 12618 *as confidential or privileged any document, material, or information received with notice or the*  
 12619 *understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of*  
 12620 *the document, material, or information.*

12621 D. *No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or*  
 12622 *information shall occur as a result of disclosure to the Commission under this section or as a result of*

12623 *sharing as authorized in subsection C.*

12624 *E. Nothing in this chapter shall prohibit the Commission from releasing final, adjudicated actions*  
 12625 *including for-cause terminations that are open to public inspection pursuant to Chapter 4 (§ 12.1-18 et*  
 12626 *seq.) of Title 12.1 to a database or other clearinghouse service maintained by the Association, its*  
 12627 *affiliates, or subsidiaries.*

12628 § 57-60. Exemptions.

12629 A. The following persons shall be exempt from the registration requirements of § 57-49, but shall  
 12630 otherwise be subject to the provisions of this chapter:

12631 1. Educational institutions that are accredited by the Board of Education, by a regional accrediting  
 12632 association or by an organization affiliated with the National Commission on Accrediting, the  
 12633 Association Montessori Internationale, the American Montessori Society, the Virginia Independent  
 12634 Schools Association, or the Virginia Association of Independent Schools, any foundation having an  
 12635 established identity with any of the aforementioned educational institutions, and any other educational  
 12636 institution confining its solicitation of contributions to its student body, alumni, faculty and trustees, and  
 12637 their families.

12638 2. Persons requesting contributions for the relief of any individual specified by name at the time of  
 12639 the solicitation when all of the contributions collected without any deductions whatsoever are turned  
 12640 over to the named beneficiary for his use.

12641 3. Charitable organizations that do not intend to solicit and receive, during a calendar year, and have  
 12642 not actually raised or received, during any of the three next preceding calendar years, contributions from  
 12643 the public in excess of \$5,000, if all of their functions, including fund-raising activities, are carried on  
 12644 by persons who are unpaid for their services and if no part of their assets or income inures to the  
 12645 benefit of or is paid to any officer or member. Nevertheless, if the contributions raised from the public,  
 12646 whether all of such are or are not received by any charitable organization during any calendar year, shall  
 12647 be in excess of \$5,000, it shall, within 30 days after the date it has received total contributions in excess  
 12648 of \$5,000, register with and report to the Commissioner as required by this chapter.

12649 4. Organizations that solicit only within the membership of the organization by the members thereof.

12650 5. Organizations that have no office within the Commonwealth, that solicit in the Commonwealth  
 12651 from without the Commonwealth solely by means of telephone or telegraph, direct mail or advertising in  
 12652 national media, and that have a chapter, branch, or affiliate within the Commonwealth that has registered  
 12653 with the Commissioner.

12654 6. Organizations that have been granted tax-exempt status under § 501(c)(3) of the Internal Revenue  
 12655 Code and that are organized wholly as Area Health Education Centers in accordance with § 32.1-122.7.

12656 7. Health care institutions defined herein as any facilities that have been granted tax-exempt status  
 12657 under § 501(c)(3) of the Internal Revenue Code, and that are (i) licensed by the Department of Health or  
 12658 the Department of Behavioral Health and Developmental Services; (ii) designated by the Health Care  
 12659 Financing Administration (HCFA) as federally qualified health centers; (iii) certified by the HCFA as  
 12660 rural health clinics; or (iv) wholly organized for the delivery of health care services without charge; and  
 12661 any supporting organization that exists solely to support any such health care institutions. For the  
 12662 purposes of clause (iv), "delivery of health care services without charge" includes the delivery of dental,  
 12663 medical or other health services where a reasonable minimum fee is charged to cover administrative  
 12664 costs.

12665 8. Civic organizations as defined herein.

12666 9. ~~Nonprofit debt counseling agencies~~ *Agencies providing or offering to provide debt management*  
 12667 *plans for consumers that are licensed pursuant to Chapter 40.2 20 (§ 6.1-363.2 6.2-2000 et seq.) of Title*  
 12668 ~~6.1 6.2.~~

12669 10. Agencies designated by the Virginia Department for the Aging pursuant to subdivision A 6 of  
 12670 § 2.2-703 as area agencies on aging.

12671 11. Labor unions, labor associations and labor organizations that have been granted tax-exempt status  
 12672 under § 501(c)(5) of the Internal Revenue Code.

12673 12. Trade associations that have been granted tax-exempt status under § 501(c)(6) of the Internal  
 12674 Revenue Code.

12675 13. Organizations that have been granted tax-exempt status under § 501(c)(3) of the Internal Revenue  
 12676 Code and that are organized wholly as regional emergency medical services councils in accordance with  
 12677 § 32.1-111.11.

12678 14. Nonprofit organizations that have been granted tax-exempt status under § 501(c)(3) of the Internal  
 12679 Revenue Code and that solicit contributions only through (i) grant proposals submitted to for-profit  
 12680 corporations, (ii) grant proposals submitted to other nonprofit organizations that have been granted  
 12681 tax-exempt status under § 501(c)(3) of the Internal Revenue Code, or (iii) grant proposals submitted to  
 12682 organizations determined to be private foundations under § 509(a) of the Internal Revenue Code.

12683 B. A charitable organization shall be subject to the provisions of §§ 57-57 and 57-59, but shall

12684 otherwise be exempt from the provisions of this chapter for any year in which it confines its  
 12685 solicitations in the Commonwealth to five or fewer contiguous cities and counties, and in which it has  
 12686 registered under the charitable solicitations ordinance, if any, of each such city and county. No  
 12687 organization shall be exempt under this subsection if, during its next preceding fiscal year, more than 10  
 12688 percent of its gross receipts were paid to any person or combination of persons, located outside the  
 12689 boundaries of such cities and counties, other than for the purchase of real property, or tangible personal  
 12690 property or personal services to be used within such localities. An organization that is otherwise  
 12691 qualified for exemption under this subsection that solicits by means of a local publication, or radio or  
 12692 television station, shall not be disqualified solely because the circulation or range of such medium  
 12693 extends beyond the boundaries of such cities or counties.

12694 C. No charitable or civic organization shall be exempt under this section unless it submits to the  
 12695 Commissioner, who in his discretion may extend such filing deadline prospectively or retrospectively for  
 12696 good cause shown, on forms to be prescribed by him, the name, address and purpose of the organization  
 12697 and a statement setting forth the reason for the claim for exemption. Parent organizations may file  
 12698 consolidated applications for exemptions for any chapters, branches, or affiliates that they believe to be  
 12699 exempt from the registration provisions of this chapter. If the organization is exempted, the  
 12700 Commissioner shall issue a letter of exemption, which may be exhibited to the public. A registration fee  
 12701 of \$10 shall be required of every organization requesting an exemption after June 30, 1984. The letter of  
 12702 exemption shall remain in effect as long as the organization continues to solicit in accordance with its  
 12703 claim for exemption.

12704 D. Nothing in this chapter shall be construed as being applicable to the American Red Cross or any  
 12705 of its local chapters.

12706 § 59.1-207.19. Inapplicability of other laws; exempted transactions.

12707 A. Lease-purchase agreements that comply with this chapter are not governed by the laws relating to:

- 12708 1. A home solicitation sale as defined in § 59.1-21.1;
- 12709 2. A consumer transaction as discussed *described* in § ~~6.1-330.77~~ 6.2-311; or
- 12710 3. A security interest as defined in subdivision (35) of § 8.1A-201.

12711 B. This chapter does not apply to the following:

- 12712 1. Lease-purchase agreements primarily for business, commercial, or agricultural purposes, or those  
 12713 made with governmental agencies or instrumentalities or with organizations;
- 12714 2. A lease of a safe deposit box;
- 12715 3. A lease or bailment of personal property which is incidental to the lease of real property, and  
 12716 which provides that the consumer has no option to purchase the leased property; or
- 12717 4. A lease of an automobile.

12718 2. That whenever any of the conditions, requirements, provisions, or contents of any section or  
 12719 chapter of Title 6.1 or any other title of the Code of Virginia as such titles existed prior to  
 12720 October 1, 2010, are transferred in the same or modified form to a new section or chapter of Title  
 12721 6.2 or any other title of the Code and whenever any such former section or chapter is given a new  
 12722 number in Title 6.2 or any other title, all references to any such former section or chapter of Title  
 12723 6.1 or other title appearing in this Code shall be construed to apply to the new or renumbered  
 12724 section or chapter containing such conditions, requirements, provisions, contents, or portions  
 12725 thereof.

12726 3. That the regulations of any department or agency affected by the revision of Title 6.1 or such  
 12727 other titles in effect on the effective date of this act shall continue in effect to the extent that they  
 12728 are not in conflict with this act and shall be deemed to be regulations adopted under this act.

12729 4. That the provisions of § 30-152 of the Code of Virginia shall apply to the revision of Title 6.2  
 12730 so as to give effect to other laws enacted by the 2010 Session of the General Assembly,  
 12731 notwithstanding the delay in the effective date of this act.

12732 5. That the repeal of Title 6.1, effective as of October 1, 2010, shall not affect any act or offense  
 12733 done or committed, or any penalty incurred, or any right established, accrued, or accruing on or  
 12734 before such date, or any proceeding, prosecution, suit, or action pending on that day. Except as  
 12735 otherwise provided in this act, neither the repeal of Title 6.1 nor the enactment of Title 6.2 shall  
 12736 apply to offenses committed prior to October 1, 2010, and prosecution for such offenses shall be  
 12737 governed by the prior law, which is continued in effect for that purpose. For the purpose of this  
 12738 enactment, an offense was committed prior to October 1, 2010, if any of the essential elements of  
 12739 the offense occurred prior thereto.

12740 6. That any notice given, recognizance taken, or process or writ issued before October 1, 2010,  
 12741 shall be valid although given, taken, or to be returned to a day after such date, in like manner as  
 12742 if Title 6.2 had been effective before the same was given, taken, or issued.

12743 7. That if any clause, sentence, paragraph, subdivision, or section of Title 6.2 shall be adjudged in  
 12744 any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or

12745 invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence,  
12746 paragraph, subdivision, or section thereof directly involved in the controversy in which the  
12747 judgment shall have been rendered, and to this end the provisions of Title 6.2 are declared  
12748 severable.

12749 8. That the provisions of former §§ 6.1-330.47 and 6.1-330.48, which provide that (i) any contract,  
12750 note, mortgage, or deed of trust made or received and providing for interest charges in excess of  
12751 those permitted by former §§ 6.1-330.16 and 6.1-330.24, except as hereinafter provided, shall be  
12752 null and void and unenforceable by the lender or by his assignees, who are agents or principals of  
12753 the lender; (ii) the provisions of clause (i) shall apply only to loans made under former  
12754 § 6.1-330.16; (iii) the provisions of clause (i) shall not apply to any (a) contract or note, or  
12755 mortgage or deed of trust securing such obligation, that has been assigned to a person who is not  
12756 the agent or principal of the lender, if such assignee has taken the note or obligation in good faith  
12757 and in reasonable reliance upon the provisions of former § 6.1-330.44, (b) loan made by a lender  
12758 licensed by, and under the supervision of, the State Corporation Commission or the federal  
12759 government, or (c) loan made by a state or national bank, state or federal savings institution, or  
12760 state or federal credit union, or to a seller in a real estate transaction who takes a subordinate  
12761 mortgage on such real estate; and (iv) any agreement whereby the borrower waives the benefits of  
12762 former Chapter 7.2 (§ 6.1-330.6 et seq.) of the Code of Virginia or releases any rights he may have  
12763 acquired by the virtue thereof shall be deemed to be against public policy and void, shall continue  
12764 to apply to, and apply only to, loans secured by subordinate deeds of trust or mortgages closed  
12765 prior to July 1, 1986. For the purposes of this enactment, a loan shall be deemed closed upon the  
12766 initial recordation of the deed of trust or mortgage securing the loan. The provisions of former  
12767 § 6.1-330.47 shall not apply to any loan closed on or after July 1, 1986.

12768 9. That the provisions of §§ 6.2-304, 6.2-305, and 6.2-306 shall apply to all loans made under (i)  
12769 § 6.2-327, (ii) former § 6.1-330.71 that closed between July 1, 1987, and the effective date of this  
12770 act, or (iii) former § 6.1-330.16 as amended in 1986, that closed between July 1, 1986, and July 1,  
12771 1987. For the purposes of this enactment, a loan shall be deemed closed upon the initial  
12772 recordation of the deed of trust or mortgage securing the loan.

12773 10. That the repeal of Title 6.1 of the Code of Virginia, effective as of October 1, 2010, shall not  
12774 affect the validity, enforceability, or legality of any loan agreement or other contract, or any right  
12775 established or accrued under such loan agreement or contract, that existed prior to such repeal.

12776 11. That Title 6.1 (§§ 6.1-1 through 6.1-479), Chapter 6 (§§ 11-30 through 11-34) of Title 11, and  
12777 Chapter 2.3 (§§ 59.1-21.19 through 59.1-21.28) of Title 59.1 of the Code of Virginia are repealed.

12778 12. That the provisions of this act shall become effective on October 1, 2010.