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REVISION OF
TITLE 6 OF THE CODE OF VIRGINIA

REPORT OF THE
VIRGINIA CODE COMMISSION
To
THE GOVERNOR
And
THE GENERAL ASSEMBLY OF VIRGINIA

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
RICHMOND
1965

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REVISION OF TITLE 6 OF THE CODE OF VIRGINIA

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THE VIRGINIA CODE COMMISSION
TO
THE GOVERNOR AND THE GENERAL ASSEMBLY
OF VIRGINIA

Richmond, Virginia, December 13, 1965

To:

HONORABLE A. S. HARRISON, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The General Assembly at its Regular Session of 1964 directed the Virginia Code Commission, by Chapter 625 of the Acts of that Session, to revise certain titles of the Code of Virginia, including Title 6, relating to banking and finance.

Extracts from Chapter 625 follow:

"§ 1. The Code of Virginia shall be gradually revised by revising one or more titles at a time. In revising each title, all other sections of the Code relating to the same subject matter shall be revised to the extent necessary. Experts shall be employed by the Virginia Code Commission to assist in the project. The Commission may also accept the services of qualified volunteers who are willing to serve without pay. Tentative drafts of proposed revisions shall be printed and circulated among interested persons and their comments solicited.

"§ 2. The Commission shall undertake the revision of Titles 1, 2, 3, 5, 6 and 7, and submit to the Governor and the General Assembly, on or before October one, nineteen hundred sixty-five, a report of its recommendations, together with suggested legislation necessary to carry such recommendations into effect."

William Griffith Thomas, Esquire, of the Alexandria Bar was retained as Counsel to assist in the revision of this Title.

Counsel examined the provisions of this Title in detail, and consulted interested individuals, groups and agencies of the State government. The Commission met with Counsel, and representatives of such interested groups and agencies, on several occasions, and discussed in detail changes recommended by members of the Commission, by Counsel and by such groups and agencies.

As a result of its efforts, the Commission considered it desirable that there be a rearrangement of a number of the provisions for better sequence, a general renumeration of the sections, the deletion of certain obsolete sections, and the amendment of other sections. We are of the opinion that this can be better accomplished by the repeal of Title 6, and the enactment of Title 6.1 in lieu thereof.

Included in this Report is the Report of Counsel to the Commission on Title 6. Also, following each section of the draft of Title 6.1 are Counsel's notes identifying the source of the provisions of the section and commenting upon any change therein. Furthermore, preceding the draft of Title 6.1 there is set forth a table of comparable sections, for the purpose of tracing each of the provisions of Title 6 into proposed Title 6.1. This table also indicates those sections of Title 6 which have been deleted, and those sections of Title 6.1 which are new sections. Those who are interested in the major features of the Revision should read the Report of Counsel and the notes following the several sections of Title 6.1, to which reference is hereby made.

RECOMMENDATIONS

The Code Commission submits this Report, and recommends that the Legislature enact the attached bill in 1966.

The Commission acknowledges the high caliber of the work of Counsel in this project. The assistance of various agencies, groups and individuals is gratefully recognized.

Respectfully submitted,

JAMES M. THOMSON, *Chairman*

E. ALMER AMES, JR., *Vice-Chairman*

JOHN B. BOATWRIGHT, JR.

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December 13, 1965

The Honorable James M. Thomson, Chairman

The Honorable E. Almer Ames, Jr.

The Honorable Kenneth C. Patty

The Honorable John B. Boatwright, Jr.

The Honorable W. Moscoe Huntley

Virginia Code Commission
State Capitol
Richmond, Virginia

Gentlemen:

Pursuant to your instructions, I submit herewith a draft of revision of Title 6 of the Code of Virginia, in which I have attempted to conform with the Commission's desires as expressed during its various conferences held upon the subject.

The major part of my time has been spent in revising the Banking Act (Chapter 2). I have tried to make as few substantive changes as possible. In many cases, those substantive changes made were done so in an attempt to bring the State banking law into line with the law covering national banks. I have also attempted to re-arrange the various sections within the Banking Act in somewhat more logical order.

Another chapter which needed major revision was that on industrial loan associations. I have attempted to make no substantive changes. Many of the revisions in this chapter were to re-arrange the sections.

In Chapter 7, dealing with money and interest, I have made changes which are few in number but great in scope. These changes deal primarily with the sections on service charges and fees for loans.

In the balance of the chapters contained in this title most of the revisions have been minor.

Respectfully submitted,

WILLIAM GRIFFITH THOMAS

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A BILL to revise, rearrange, amend and recodify the general laws of Virginia relating to banking and finance; to that end to repeal Title 6 of the Code of Virginia, which title includes chapters 1 to 13 and §§ 6-1 to 6-585, inclusive, of the Code of Virginia, as amended, which title relates to banking and finance; to amend the Code of Virginia by adding thereto, in lieu of the foregoing title, chapters and sections of the Code repealed by this act, a new title numbered 6.1, which title includes new chapters numbered 1 to 9, inclusive, and new sections numbered §§ 6.1-1 to 6.1-351, inclusive, relating to banking and finance; to prescribe when such revision and recodification shall become effective, and to repeal all acts and parts of acts in conflict with the provisions of this act.

Be it enacted by the General Assembly of Virginia:

1. That Title 6 of the Code of Virginia, which title includes chapters 1 to 13 and §§ 6-1 to 6-585, inclusive, of the Code of Virginia, as amended, is repealed.

2. That the Code of Virginia be amended by adding thereto, in lieu of the title, chapters and sections of the Code of Virginia herein repealed, a new title number 6.1, new chapters numbered 1 to 9, inclusive, and new sections numbered 6.1-1 to 6.1-351, inclusive, which new title, chapters and sections are as follows:

CHAPTER 1

GENERAL PROVISIONS

§ 6.1-1. The term "the Commission," as used in this title, shall be construed to mean the State Corporation Commission.

Source: § 6-1.

Comment: No change.

§ 6.1-2. In order to provide adequate funds for the operation of the Bureau of Banking, the Commission is hereby authorized to increase the fees and assessments for the investigation, examination, supervision, registration and licensing of banks, savings and loan associations, small loans, industrial loan associations, or credit unions to the extent of fifty per centum of the fees and assessments otherwise imposed by this Title.

Source: § 6-4.

Comment: The present § 6-4 gives this authority over only industrial loans and credit unions. This section is amended to include banks, savings and loans and small loans so that all entities governed by the Bureau of Banking are included. The various industries are seeking an alternative to this section in conjunction with the Bureau of Banking. Such alternatives will be introduced separately as an amendment to this bill.

CHAPTER 2

BANKING ACT

§ 6.1-3. This chapter may be cited as the Virginia Banking Act.

Source: § 6-5.

Comment: No change.

§ 6.1-4. The provisions of this Chapter shall apply to all state banks and trust companies; and so far as constitutionally permissible, to all banks organized under the laws of the United States doing business in Virginia.

As used in this chapter, unless a different meaning is required by the context, (1) the words "bank" and "trust company" mean a corporation authorized by statute to accept deposits and to hold itself out to the public as engaged in the banking or trust business in this Commonwealth; (2) the words "merged bank" mean any bank which has acquired another bank under the provision of § 6.1-39 which has its principal office in one political subdivision and a branch in another political subdivision. (3) The words "bank holding company" mean any company (a) which directly or indirectly owns, controls or holds with power to vote, twenty-five per centum or more of the voting shares of each of two or more banks or of a company which is or becomes a bank holding company by virtue of this section, or (b) which controls in any manner the election of a majority of the directors of each of two or more banks, or (c) for the benefit of whose shareholders or members twenty-five per centum or more of the voting shares of each of two or more banks or bank holding company is held by trustees; and for the purpose of this section, any successor to any such company shall be deemed to be a bank holding company from the date as of which such successor co-company becomes a bank holding company. Notwithstanding the foregoing, (i) no bank shall be a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except where such shares are held for the benefit of the shareholders of such banks, (ii) no company shall be a bank holding company by virtue of its ownership or control of its shares acquired by it in connection with its underwriting of securities and which are held only for such period of time as will permit the sale thereof upon a reasonable basis, (iii) no company formed for the sole purpose of participating in a proxy solicitation shall be a bank holding company by virtue of its control of voting rights or shares acquired in the course of such solicitation, and (iv) no company shall be a bank holding company if at least eighty per centum of its total assets are composed of holdings in the field of agriculture.

Source: §§ 6-6, 6-27.1.

Comment: This section has been rewritten and clarifies the applicability of the chapter. Certain important definitions have been placed in this Section, too.

§ 6.1-5. No person, co-partnership or corporation, except corporations duly chartered and already conducting the banking business or trust business in this State under authority of the laws of this State or the United States, or which shall hereafter be incorporated under the laws of this State or authorized to do business in this State under the banking laws of the United States, shall engage in the banking business or trust business in this State, and no foreign corporation shall do a banking or trust business in this State; except that nothing in this chapter shall:

(1) Prevent a natural person from qualifying and acting as trustee, personal representative, guardian, committee or in any other fiduciary, capacity,

(2) Prevent any person or co-partnership or corporation from lending money on real estate and personal security or collateral, or from guaranteeing the payment of bonds, notes, bills and other obligations, or from purchasing or selling stocks and bonds, or

(3) Prevent any bank or trust company organized under the laws of this State from qualifying and acting in another state or in the District of

Columbia, as trustee, personal representative, guardian or committee or in any other fiduciary capacity, when permitted so to do by the laws of such other state or District.

Nothing in this section shall be construed to prevent banks or trust companies organized in this State and chartered under the laws of the United States from transacting business in Virginia.

Source: § 6-9.

Comment: "Banking institution" changed to "Banks."

§ 6.1-6. A bank may be incorporated under the Virginia Stock Corporation Act; but need not comply with the provisions of subdivision (a) of § 13.1-6. Except as otherwise provided in this Chapter, it shall have all the powers conferred on corporations and be subject to all restrictions imposed on corporations by the Virginia Stock Corporation Act. Except as otherwise provided in this Chapter, a bank shall not issue its shares for any consideration except money at least equal in amount to the par value of its shares; and it shall not issue no-par stock.

Source: § 6-10.

Comment: Last sentence rewritten to make it clear that this provision does not prohibit such things as stock option plans and mergers.

§ 6.1-7. The powers, privileges, duties and restrictions conferred and imposed upon any bank existing and doing business under the laws of this State are abridged, enlarged or modified, as each particular case may require, to conform to the provisions of this chapter. Nothing in this chapter, however, shall be construed to change or affect any privilege granted by charter to any bank incorporated before June fifteenth, nineteen hundred and ten, nor to affect the legality of any investment made or transaction had prior to June eighteenth, nineteen hundred and twenty-eight, pursuant to any provisions of law in force when such investment was made or transaction had, nor shall the provisions of this chapter other than § 6.1-5 apply to any bank chartered prior to such date under the laws of this State but having no place of business within this State and conducting its entire business outside of this State.

Source: § 6-8.

Comment: Leave intact except as above. Virginia Bankers Association (VBA) clearly points out problem in this section. It is felt that it is better left basically intact as it has stood the test of time. The slight change corresponds to that proposed by VBA.

§ 6.1-8. Any bank heretofore or hereafter incorporated under the laws of this State may, if it so elect, become a member bank of the Federal Reserve Bank System of the United States, subject to the provisions of the Act of Congress of the United States, approved December twenty-third, nineteen hundred and thirteen, and of any amendment thereof permitting it to do so, and shall be vested with all powers conferred upon State member banks of such system by the terms of such act, which shall be exercised subject to all restrictions and limitations imposed by the Federal Reserve Act, or by regulations of the Federal Reserve Board made pursuant thereto. The right, however, is expressly reserved to revoke or amend the powers herein conferred. The State Corporation Commission may disclose to the Federal Reserve Board, or to examiners duly appointed by it, all

information in reference to the affairs of any bank which has become, or desires to become a member of the system.

Source: § 6-24.

Comment: No change.

§ 6.1-9. Any bank heretofore or hereafter incorporated under the laws of this State may, if it so elects, become an "insured bank" as that term is used in section twelve-B of the Federal Reserve Act, as amended, providing for the creation of a Federal Deposit Insurance Corporation, and shall, upon becoming an insured bank, be vested with all powers conferred by the section and any amendment thereof upon State banks which shall become insured banks. Such powers shall be exercised subject to all restrictions and limitations imposed upon such banks by the section and any amendment thereof. All records, reports, reports of examinations and information relating to insured banks shall be open to the inspection of, and made available to, the officers and duly accredited agents of Federal Deposit Insurance Corporation so long as like records, reports and information in the possession or under the control of Federal Deposit Insurance Corporation are, by federal statute, made available and subject to the inspection of the governmental authority of this Commonwealth having supervisory authority over such banks.

Source: § 6-25.

Comment: No change.

§ 6.1-10. A bank may contract with the principal of any elementary or secondary school, if authorized so to do by the school board in any county, city or town wherein such bank has a location, for the participation by the bank in any school thrift or savings plan, and it may accept deposits at such a school either by its own collector or by any representative of the school who becomes the agent of the bank for such purpose.

Source: § 6-23.1.

Comment: No change.

§ 6.1-11. Every such bank shall have power to exercise, by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating bills of exchange, promissory notes, drafts, and other evidences of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on real and personal security, or collateral; by guaranteeing the payment of bonds, bills, notes and other obligations, having not more than six months to run; by rediscounting paper; and in purchasing and selling bonds.

Source: § 6-23.

Comment: No change.

§ 6.1-12. Every bank and trust company doing business in this state is authorized temporarily to suspend its usual business during a period of actual or threatened enemy attack affecting the community in which such institution is doing business or other emergency justifying temporary closing such as fire, flood or hurricane.

Source: § 6-30.

Comment: Enlarged to cover other emergencies as per VBA suggestion.

§ 6.1-13. Before any bank shall begin business it shall obtain from the State Corporation Commission a certificate of authority authorizing it to do so; and prior to the issuance of such certificate, the Commission shall ascertain:

(1) That all of the provisions of law have been complied with;

(2) That financially responsible individuals have subscribed for capital stock, surplus and a reserve for operation in amounts sufficient to warrant successful operation, provided that the capital stock shall not be less than Fifty Thousand Dollars;

(3) That oaths of all the directors have been taken and filed in accordance with the provisions of § 6.1-48;

That, in its opinion, there is public need for banking facilities or additional banking facilities, as the case may be, in the community where the bank is proposed to be, except as provided in § 6.1-40;

(5) That the corporation is formed for no other reason than a legitimate banking business;

(6) That the moral fitness, financial responsibility, and business qualifications of those named as officers and directors of the proposed bank are such as to command the confidence of the community in which the bank is proposed to be located;

(7) Anything else deemed pertinent.

Source: § 6-31.

Comment: This section has been rewritten. The old last paragraph which stated there could be an appeal has been dropped as unnecessary. The old next to last paragraph has been placed into subdivisions (4), (5), and (6).

§ 6.1-14. Subscriptions to the capital stock of a bank shall be paid in money at not less than par. No bank shall begin business until the amounts specified in its certificate of authority to commence business have been received by it.

The requirement that capital stock be paid in money shall not be construed to prohibit the establishment, as otherwise authorized by law, of stock option plans and stock purchase plans, and the issuance of stock pursuant to such plans. In no event shall any stock option be granted at a price which is less than one hundred per cent of the book value per share of the stock as shown by the bank's last published statement prior to the granting of the option.

Source: § 6-34.

Comment: First paragraph rewritten deleting old references to minimum capital, one half paid in, and partial payment plan. This conforms to earlier changes. Stock option plan adopted in 1964 remains in.

§ 6.1-15. The State Corporation Commission shall not issue a certificate of authority to any bank to commence business if commissions, fees, brokerage, or other compensation, by whatever name it may be called, have been paid or contracted to be paid by the bank, or by anyone in its behalf, either directly or indirectly, to any person, partnership, association or corporation for the sale of stock in said bank.

Source: § 6-35.

Comment: No change.

§ 6.1-16. A bank shall not engage in the trust business unless its articles of incorporation state that one of its purposes is to engage in the trust business. It shall not commence to engage in the trust business without first obtaining permission from the State Corporation Commission. The Commission shall not grant such permission unless the bank's capital, surplus and undivided profits exceed two hundred thousand dollars and the Commission is satisfied that the bank is capable of complying with the provisions of this article. But any bank actively engaged in the trust business on January 1, 1966, may continue in the trust business without such permission.

Source: § 6-91.

Comment: The section clearly requires banks to come before the Commission before using trust powers. The capital requirement of $200,000 as set by Judge Catterall for future trust companies seems reasonable.

§ 6.1-17. All banks that are authorized to do a trust business and all trust companies, heretofore and hereafter chartered, shall have the powers, and be subject to the regulations and restrictions conferred or imposed upon companies authorized to do a general banking business in this State, and shall in addition thereto have the following rights, powers and privileges, and shall be subject to the following regulations and restrictions:

(1) To act as agent for any person, corporation, municipality or State for the collection or disbursement of interest, or income or principal of securities.

(2) To act as the fiscal or transfer agent of any State, municipality, body politic or corporate, and in such capacity to receive and disburse money; to transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any lawful purpose.

(3) To act as trustee under any mortgage or bond issued by an individual, municipality, body politic or corporate, and accept and execute any other municipal or corporate trust not inconsistent with the laws of this State.

(4) To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property, or to transact any business in relation thereto.

(5) To act as guardian, receiver or trustee of the estate of any minor and as depository of any money paid into court, whether for the benefit of any minor or other person, corporation or party.

(6) To take, accept and execute any and all such lawful trusts, duties and powers in regard to the holding and management and disposition of any estate, real and personal, and the rents and profits thereof, or the sale or lease thereof, as may be granted or confided to it by any court of record, judge or clerk, or by any person, corporation, municipality or other authority, and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

(7) To take, accept and execute any and all such trusts and powers, of whatever nature and description, as may be conferred upon or entrusted or committed to it by any person or persons, or any body politic or corporate, or by other authority, by grant, assignment, transfer, devise, bequest or otherwise or as may be entrusted or committed or transferred to it or vested in it by order of any court of record, judge or clerk, and to receive and hold any property or estate, real or personal, which may be the subject of any such trust.

(8) To act as executor under the last will and testament or administrator of the estate of any deceased person; or as guardian of any infant; or as committee of the estate of any insane person, idiot or habitual drunkard or any person who by reason of advanced age or impaired health or physical disability has become mentally or physically incapable of taking proper care of his person or properly handling and managing his estate, or trustee or committee for any convict in the penitentiary, under appointment of any court of record, judge or clerk thereof, having jurisdiction of the estate of such deceased person or other person.

Nothing in this section shall ever be construed as authorizing the creation of a trust not lawful as between individuals nor to prohibit the deposit of funds by court and fiduciaries in banks of deposit and discount and savings banks.

All national banks which have been, or hereafter may be, permitted by law to act as trustee and in other fiduciary capacities, shall have the rights, powers, privileges and immunities conferred upon trust companies by this chapter.

Source: §§ 6-94, 6-104.

Comment: These sections were combined for conciseness.

§ 6.1-18. No bank or trust company of this State, with a minimum unimpaired capital stock of fifty thousand dollars or more, shall be required by any officer or court of this State to give security upon appointment to or acceptance of any office of trust which it may, by law, by authorized to execute; provided, however, that no bank or trust company shall qualify on an estate having a value in excess of its combined unimpaired capital and surplus without giving bond for such excess.

Source: § 6-95.

Comment: No change.

§ 6.1-19. In all cases where any bank or trust company in this State shall be appointed to act as trustee, executor or administrator of any estate or guardian for any infant, or in any other fiduciary capacity, it shall be lawful for the president, vice-president, cashier, treasurer, secretary, or any other officer of such trust company to take and subscribe for such corporation any and all oaths required to be taken or subscribed by such executor, administrator, trustee, guardian, or other fiduciary.

Source: § 6-96.

Comment: No change.

§ 6.1-20. Every State bank which obtains permission from the State Corporation Commission to do a trust business, and every trust company permitted to do commercial banking, shall establish a separate trust department. Such department shall be established before such bank or trust company undertakes to act in any fiduciary capacity and shall be placed under the management of an officer or officers whose duties shall be prescribed by the board of directors of the bank or trust company or by either an amendment to the by-laws of the bank or trust company or by a resolution duly entered in the minutes of the board of directors.

Source: § 6-97.

Comment: No change.

§ 6.1-21. Funds received or held in the trust department of a bank or trust company awaiting investment or distribution shall not be used by the bank or trust company in the conduct of its business, through deposit in its commercial or savings department to the credit of its trust department, or otherwise, unless the bank or trust company first delivers to the trust department, as collateral security therefor securities of any of the following classes:

(1) Bonds, notes, or certificates of indebtedness of the United States; or

(2) Other readily marketable securities of the classes in which fiduciaries are authorized or permitted to invest trust funds, as set forth in § 26-40 of this Code; or

(3) Other readily marketable bonds, notes, or debentures, commonly known as investment securities, meeting the following requirements:

(a) That the issue be of a sufficiently large total to make marketability possible;

(b) Such a public distribution of the securities must have been provided for or made in a manner to protect or insure the marketability of the issue;

(c) That the trust agreement under which the security is issued provides for a trustee independent of the obligor, which trustee must be a bank or trust company.

The securities so deposited as collateral shall be owned by the bank or trust company and shall at all times be at least equal in market value to the amount of trust funds so used in the conduct of the business of the bank or trust company, less such amount thereof as shall be insured by the Federal Deposit Insurance Corporation under existing or future Federal law.

In the event of the failure or liquidation of such bank or trust company the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the bank.

Source: § 6-99.

Comment: No change.

§ 6.1-22. The securities and investments held in each trust shall be kept separate and distinct from the securities owned by the bank and separate and distinct one from another. Trust securities and investments shall be placed in the joint custody of two or more officers or other employees designated by the board of directors of the bank or trust company, and such joint custody shall be interpreted to mean that neither of such officers shall have access alone at any time to such securities and investments, and all such officers and employees shall be bonded.

Source: § 6-100.

Comment: No change.

§ 6.1-23. Funds received or held in the trust department of a bank or trust company awaiting investment or distribution shall be invested or distributed as soon as practicable and shall not be held uninvested by such bank or trust company any longer than is reasonably necessary.

Where the instrument creating the trust does not specify the character or class of investments to be made, and does not expressly invest in

the bank, its officers or directors a discretion in the matter of investments, funds held in trust shall be invested in any securities in which corporate or individual fiduciaries may lawfully invest.

Source: §§ 6-98 and 6-101.

Comment: Combined because they overlapped.

§ 6.1-24. No trust company or bank doing a trust business shall buy any property for a trust from itself, or a department or branch thereof, or from an affiliate or subsidiary corporation, or from an officer or employee of such trust company or bank. Any such purchase shall be voidable at the election of any beneficiary or successor trustee.

A sale of any trust property by a trust company or bank doing a trust business to itself, or a department or branch of such trust company or bank, or to an affiliate or subsidiary corporation, or to an officer or employee of such trust company or bank shall be a breach of trust and voidable at the election of any beneficiary or successor trustee.

But a trust company or bank as trustee of one trust may sell to itself as trustee of another trust, and as such trustee of such other trust may buy from itself as trustee of the first trust, bonds and negotiable notes directly secured by a first lien on improved real estate which at the time of sale satisfy the requirements of § 26-40.

Comment: No change. Also see § 6.1-28, concerning purchase by bank of defaulted mortgage from common trust fund.

§ 6.1-25. Any bank may establish and maintain one or more common trust funds for the collective investment of funds held by it in any fiduciary capacity, other than merely as agent. Such bank may invest the funds held by it in such capacity in one or more such common trust funds, whether it be acting as sole fiduciary or with others as cofiduciaries, provided:

(1) That such investment in interests in such common trust funds is not prohibited by the instrument, judgment, decree or order creating the fiduciary relationship;

(2) That in the case of cofiduciaries, such bank procures the written consent of its cofiduciary or cofiduciaries to such investment, which consent such cofiduciary or cofiduciaries are hereby authorized to grant;

(3) That at the time of making an investment in any such common trust fund there shall not be held in the fund any asset which, because of the nature of such asset, the bank might not then lawfully purchase as an investment for the fiduciary account for which the investment in the common trust fund is made; and

(4) That the bank has no interest in any of the assets of the common trust fund other than in a fiduciary capacity.

Fiduciary accounts in existence on June twenty-ninth, nineteen hundred and forty-four, or thereafter established, may be invested in a common trust fund under the provisions of §§ 6.1-25 to 6.1-30.

Source: §§ 6-570 and 6-576.

Comment: Sections combined.

§ 6.1-26. Each common trust fund shall be established and maintained in accordance with a written plan, approved by resolution of the board of directors of the bank, and approved in writing by competent legal counsel. A copy of such plan shall be available at the principal office of the bank for inspection during all regular business hours by any person having a beneficial interest in a fiduciary account participating in the common trust fund, and a copy of such plan shall be furnished to any such person upon request. Such plan may be amended, altered or modified from time to time by the bank, provided, that such amendment, alteration or modification is approved in the manner provided herein for the approval of the original plan.

Such plan shall contain full and detailed provisions, not inconsistent with the provisions of this chapter, as to (1) the manner in which the fund is to be operated; (2) the bank's investment powers with respect to the assets of the fund; (3) the allocation and apportionment of income, profits and losses; (4) the terms governing the admission and withdrawal of participations in the fund; (5) the auditing of accounts of the bank with respect to the common trust fund; (6) the basis and method of valuing assets in the common trust fund; (7) the basis upon which the fund may be terminated; (8) the sale or segregation for liquidation, prior to the next valuation date, of any asset which no longer qualifies as an original investment of the common trust fund; and (9) such other matters as may be necessary to define clearly the rights of participants in the common trust fund.

Such plan may provide for the issuance of certificates of participation in the common trust fund. The plan shall not require amortization of premiums upon bonds or other obligations purchased for the common trust fund. The provisions of the plan shall control all participation in the fund and the rights and benefits of all persons interested in such participations as beneficiaries, or otherwise.

Source: § 6-571.

Comment: No change.

§ 6.1-27. Not less frequently than once during each period of three months, the bank administering a common trust fund shall determine the value of the assets in such fund. A copy of such appraisal shall be filed with the Commissioner of Banking. No participations shall be admitted to or withdrawn from the common trust fund except on the basis of such valuation. When participations are withdrawn from a common trust fund, distribution may be in cash or ratably in kind, or partly in cash and partly ratably in kind, provided, however, that all such distributions as of any one valuation date shall be made on the same basis. Valuations made in good faith in accordance with the provisions of this chapter shall be conclusive and binding upon all parties in any way interested in the fund.

Source: § 6-572.

Comment: No change.

§ 6.1-28. The bank shall have the exclusive management and control of each common trust fund administered by it, and the sole right at any time to sell, exchange, transfer or otherwise change or dispose of assets comprising the same; provided, however, that no asset shall be purchased which is not a proper investment for each fiduciary account participating in such fund, and that at no time shall the bank purchase any asset in which it has any interest. The bank shall not invest any of its own funds in a

common trust fund administered by it, and if the bank, because of a creditor relationship or for any other reason acquires an interest in a participating fiduciary account, such participation shall be withdrawn on the first date on which such withdrawal can be effected. The legal title to all of the assets of the common trust fund shall be solely in the bank as fiduciary, and shall be considered as assets held by it as fiduciary. The bank may hold any of the assets of a common trust fund in the name of a nominee, provided the records of such common trust fund clearly show the ownership of the asset to be in the bank as trustee of the common trust fund. The participating accounts owning or holding participations in the common trust fund shall be deemed to have only a proportionate undivided interest in the common trust fund. No fees, commissions or compensation whatsoever shall be paid out of any common trust for the management of such fund; provided, that a bank shall not be prohibited from reimbursing itself out of a common trust fund for such reasonable expenses incurred by it in the administration thereof as would have been chargeable to the respective participating fiduciary accounts if incurred in the separate administration of such participating fiduciary accounts.

Source: § 6-573.

Comment: No change.

§ 6.1-29. A bank administering a common trust fund shall, at least once during each period of twelve months, cause a complete audit to be made of the common trust fund either by auditors responsible only to the board of directors of the bank or by independent public accountants. If an independent public accountant is used the expense shall be charged to the common trust fund, either against principal or income or apportioned between both as may be provided by the plan. A condensed statement of such audit shall be available, without charge, to any person who is receiving income from any of the trusts participating in the common trust fund and such complete audit shall be available at the principal office of the bank for examination and inspection, during all regular business hours, by any person having an interest in a fiduciary account participating in the common trust fund.

Source: § 6-574.

Comment: No change.

§ 6.1-30. Whenever ordered by a court of competent jurisdiction, a bank administering a common trust fund shall render to such court an accounting of such fund; and upon application of a bank to a court of competent jurisdiction, it may obtain a settlement of its common trust fund accounts on such conditions as the court may specify.

Source: § 6-575.

Comment: No change.

§ 6.1-31. A bank holding stock as fiduciary may hold it in the name of a nominee without mention of the trust in the stock certificate or stock registry book. A fiduciary registering stock in the name of a nominee as herein permitted, shall (1) clearly show upon its trust records the ownership of the stock by the fiduciary and the facts regarding its holding, and (2) shall provide that the nominee shall not have possession of the stock certificate nor access thereto except under the immediate supervision of the fiduciary. The fiduciary shall be personally liable for any loss to the trust resulting from any act of such nominee in connection with stock so

held. Any individual serving as co-fiduciary with a bank may consent to the bank holding such stock in the name of a nominee as herein provided, but provided further in such case said bank shall forthwith upon demand of said individual co-fiduciary cause said stock to be transferred into the name of the fiduciaries in their fiduciary capacity.

Source: § 6-103.1.

Comment: No change.

§ 6.1-32. Any trust company or any bank doing a trust business, failing to comply with the provisions of §§ 6.1-20 to 6.1-22 and 6.1-24 or any one or more of them, may be suspended or prohibited, or suspended and prohibited from doing a trust business by the State Corporation Commission.

Source: § 6-103.

Comment: No change.

§ 6.1-33. A national banking association, organized under the laws of the United States and doing business in this State, may be converted into and become an incorporated bank of this State by the following procedure:

1. The directors of the national banking association shall cause to be incorporated under the laws of this State a corporation authorized by its certificate of incorporation to conduct the business of banking as the successor of the national banking association.

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

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

c. The maximum amount of the capital stock of said corporation, its division into shares, the par value of shares, their classification and preferences, if any, shall conform in all respects to those of the national banking association; and the minimum capital stock requirements shall comply with § 6-14 of the Code.

2. The procedure to be followed in effecting the conversion of a national banking association to a State bank shall be that prescribed by the Act of Congress of August seventeen, nineteen hundred fifty, chapter 729, as it now exists or as it may hereafter be amended.

3. Upon completion of the procedures required by federal law, 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, and file said certificate with the State Corporation Commission.

Source: § 6-14.

Comment: No change.

§ 6.1-34. Upon the conversion of a national banking association to a State bank, as provided in §§ 6.1-33 and 6.1-38 the State bank shall be considered to be the same business and corporate entity as the former

national banking association but with rights, powers and duties as prescribed by State law. Any reference to the former national banking association in any contract, will or document shall be considered and construed as a reference to the State bank if not inconsistent with the provisions of the contract, will or document or with applicable law.

Source: § 6-15.2.

Comment: No change.

§ 6.1-35. Any bank incorporated under the laws of this State may, upon compliance with the laws of the United States, be converted into a national banking association.

Whenever any such bank shall have become a corporation for carrying on the business of banking under the laws of the United States, it shall notify the State Corporation Commission of such fact, and shall file with it a copy of its authorization as a national banking association certified by the Comptroller of the Currency. It shall thereupon cease to be a corporation under the laws of this State, except that for a period not exceeding three years thereafter, its corporate existence shall be deemed to continue for the purpose of prosecuting or defending suits by or against it, and of enabling it to settle and close its affairs, to dispose of and convey its property, and to divide its capital, but not for the purpose of continuing the business for which such bank shall have been established.

Such change from a State to a national bank shall not release any such bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a national banking association, or any tax imposed by the laws of this State up to the date of its becoming such national banking association in proportion to the time which has elapsed since the next preceding payment therefor, or any assessment, penalty or forfeiture imposed or incurred under the laws of this State up to the date of its becoming a national banking association.

Source: § 6-18.

Comment: No change.

§ 6.1-36. At the time when such a conversion of a State bank into a national banking association under the authority granted by the preceding section becomes effective, all the property of the former State bank, including all its right, title and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately, by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of such national bank, which shall have, hold and enjoy the same in its own right as fully and to the same extent as if the same were possessed, held or enjoyed by such State bank; and such national bank shall be deemed to be a continuation of the entity and identity of such State banking corporation, operated under and pursuant to the laws of the United States, and all the rights, obligations and relations of such State banking corporation to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust, and in or in respect to any executorship or trusteeship or other trust or fiduciary function, including appointments, designations and nominations, shall remain unimpaired. And such national bank, as of the beginning of its corporate existence, shall, by operation of this section, succeed to all such rights, obligations, relations and trusts, including ap-

pointments, designations and nominations, and the duties and liabilities connected therewith, and shall execute and perform each and every such trust and relation in the same manner as if such national bank had itself assumed the trust or relation, including the obligations and liabilities connected therewith. If such State banking corporation be acting as administrator, co-administrator, executor, co-executor, trustee, or co-trustee of, or in respect to, any estate or trust being administered under the laws of this State, such relation, as well as any other or similar fiduciary relation, and all rights, privileges, duties and obligations connected therewith shall remain unimpaired and shall continue into and in such national bank from and as of the beginning of its corporate existence, irrespective of the date when any such relation may have been created or established, and irrespective of the date of any trust agreement relating thereto or the date of the death of any testator or decedent whose estate is being so administered.

Nothing done in connection with the change from a State to a national bank shall, in respect to any such executorship, trusteeship or similar fiduciary relation, be deemed to be or to effect, under the laws of this State, a renunciation or revocation of any letters of administration or letters testamentary pertaining to such relation, nor a removal or resignation from any such executorship or trusteeship, nor shall such act or any other thing done be deemed to be of the same effect as if the executor or trustee had died or otherwise become incompetent to act; provided, however, that nothing in this section shall in any way affect any provisions of law in case of a national bank becoming a State bank.

Source: § 6-19.

Comment: No change.

§ 6.1-37. The rights of stockholders of the national banking association who dissent from the action of the stockholders, approving the conversion of the national banking corporation into a State bank, shall be governed by the provisions of § 2 (b) of the Act of Congress of August seventeen, nineteen hundred fifty, chapter 729, as now existing or as hereafter amended.

Source: § 6-15.3.

Comment: No change.

§ 6.1-38. The State Corporation Commission shall examine the certificate filed pursuant to § 6.1-33 and if from such examination it appears that the procedure required by federal law 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 § 6.1-13 and upon the issue of such certificate the conversion of the national banking association into a State bank shall be and become effective and automatically completed.

Source: § 6-15.1.

Comment: No change.

§ 6.1-39. No bank or trust company shall be authorized to engage in business in more than one place, except that the State Corporation Commission, when satisfied that public convenience and necessity will thereby be served, may authorize banks to establish branches:

1. Within the limits of the city or county in which the parent bank is located;

2. Within the limits of a city contiguous to the city or county in which the parent bank is located;

3. Within the limits of a county contiguous to the city in which the parent bank is located, provided the branch is not more than five miles outside the city limits;

4. By merger with another bank or other banks elsewhere in the state provided the merging corporations have been engaged in the banking business for more than five years, except that, if the Commission deems such merger to be in the public interest, on account of emergency conditions, this five year restriction shall not apply. The surviving corporation shall be the parent bank.

"Parent Bank" means the banking office at which the principal functions of the bank are conducted. The location of a parent bank or of a branch bank may be moved if the Commission determines that public convenience and necessity will be served by such move; but the location of a parent bank or of a branch bank may not be moved beyond the limits of the city, town or county in which it is located except through a merger with another bank.

Source: §§ 6-26, 6-27, 6-27.2.

Comment: These sections are combined for the sake of clarity and place all branching information in one section. The only substantive change has been to delete requirement in old 6-26 about $50,000 capital and surplus. It seems clear that the question of a bank's financial stability to branch is considered by the Commission and the $50,000 requirement is meaningless.

§ 6.1-40. When an application is made to the State Corporation Commission by a bank pursuant to § 6.1-13 for a certificate of authority to commence business in a political subdivision it shall not be necessary to prove the requirements of the paragraph numbered (4) of § 6.1-13 or, under § 6.1-13 to prove the public necessity for banking or additional banking facilities in the community where the bank is proposed to be located when all of the banks located in such political subdivision are owned or controlled (1) by "bank holding companies" or (2) when all of the banks located in that political subdivision are owned or controlled by "merged banks" or (3) when all of the banks located in such political subdivision are owned or controlled by "bank holding companies" and "merged banks."

Source: § 6-27.1.

Comment: Balance of 6-27.1 placed in 6.1-4.

§ 6.1-41. No branch bank shall be operated or advertised under any other name than that of the identical name of the parent bank, unless permission be first had and obtained from the Commission, and unless such different name shall contain or have added thereto language clearly indicating that it is a branch bank and of which bank it is a branch.

Comment: Changed "home bank" to "parent bank" to conform with terminology in other sections.

§ 6.1-42. The Commission, when in its discretion the same is required for patients in, students at, and employees of hospitals operated by the Veterans Administration or by the State or for members of the armed forces at any military or naval federal area in Virginia, may permit any bank which is authorized to do business in this State to establish and operate such banking facilities as are required in any such hospital or federal area.

The banking facilities so established shall be operated in accordance with the laws of this State relative thereto and the Commission may permit only certain specified services to be so established and operated.

Source: § 6-29.1.

Comment: No change.

§ 6.1-43. Banks may merge or consolidate upon compliance with the provisions of Article 5 of the Virginia Stock Corporation Act, except that the provisions of § 13.1-75 shall not apply. § 13.1-71 (other than the last paragraph thereof) shall apply to the merger or consolidation of a state and a national bank if the national bank is engaged in business in Virginia. 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.

Source: § 6-20.

Comment: Rewritten for clarity. This section still deprives dissenting bank stockholders of the rights given them in § 13.1-75 to stockholders generally. This applies to a surviving state bank.

§ 6.1-44. In the event of any such merger or consolidation as is authorized by the preceding section the merged or consolidated corporation (whether it be one of merging or consolidating banks, or a new bank, State or national, formed by means of such merger or consolidation) 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 consolidation or merger became effective, or then belonging or pertaining to any one or more of the banks, parties to such consolidation or merger, or which would then inure to any one or more of such banks. But no such merged or consolidated State bank resulting from any merger or consolidation shall do business in Virginia until it shall have obtained from the State Corporation Commission a certificate of authority authorizing it to do so. The provisions of § 6.13 and 6-103 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 or consolidated bank were a new bank.

Source: § 6-21.

Comment: No change.

§ 6.1-45. The affairs of every bank or banking institution incorporated under the laws of this State shall be managed by a board of directors which shall consist of not less than five persons.

A majority of the directors shall be citizens of this State, provided this requirement shall not apply to any bank chartered under the laws of this State prior to June eighteenth, nineteen hundred and twenty-eight

but having no place of business within this State and conducting its entire business outside of this State.

Source: § 6-36.

Comment: No change.

§ 6.1-46. The provisions of The Virginia Stock Corporation Act relating to officers of a corporation shall apply to banks except that, if a bank shall not appoint a secretary, the cashier of a bank shall be deemed to be the secretary of the corporation.

Source: § 6-22.

Comment: This section would be better covered by the Corporation Act, allowing for the situation of cashier.

§ 6.1-47. Every director of a bank incorporated under the laws of this State which has a capital stock not in excess of Fifty Thousand Dollars shall be the owner in his sole name and have in his personal possession or control shares of stock in such bank having a par value of not less than One Hundred Dollars for each Ten Thousand Dollars, or fractional part thereof, of the capital stock of such bank; every director of a bank which has a capital stock in excess of Fifty Thousand Dollars shall be the owner in his sole name and have in his personal possession or control shares of stock in such bank having a par value of not less than Five Hundred Dollars if such bank has a capital stock of more than Fifty Thousand Dollars and not to exceed One Hundred Thousand Dollars, not less than Seven Hundred and Fifty Dollars if such bank has a capital stock of more than One Hundred Thousand Dollars and not more than Three Hundred Thousand Dollars, and not less than One Thousand Dollars if such bank has a capital stock of more than Three Hundred Thousand Dollars. Such stock must be unpledged and unencumbered at the time such director becomes a director and during the whole of his term as such.

When a bank is controlled by a bank holding company as defined in § 6.1-4, a director may comply with the provisions of this section for each bank of which he is a director by ownership, in similar manner, of shares of capital stock of the bank holding company having an aggregate par value equal to the par value of shares of bank stock that he would be obligated to own under the preceding provisions of this section.

Any director violating the provisions of this section shall, immediately, vacate his office. The requirements of this section shall not apply to any person duly elected a director of a bank prior to June eighteen, nineteen hundred twenty-eight, or so long as such person shall successively be re-elected a director, and as to such person the requirements of the law prior to such date shall apply.

Source: § 6-37.

Comment: Last line of old section deleted since question of filling vacancy is covered by Stock Corporation Act. Paragraph two is new to cover holding company situation.

§ 6.1-48. Every director of a bank incorporated under the laws of this State shall, within sixty days after his election, take and subscribe to an oath that he will diligently and honestly perform his duties as director, and that he is the owner and has in his personal possession or control, standing in his sole name on the books of the bank or bank holding company, unpledged and unencumbered in any way, shares of stock of the

bank of which he is a director or, when a bank is controlled by a bank holding company as defined in § 6.1-4, shares of stock of the bank holding company, having a par value of not less than the amounts respectively prescribed by § 6.1-47, and, in case of re-election or re-appointment, that during the whole of his immediate previous term as a director, such stock was not at any time pledged or in any other manner encumbered or hypothecated to secure a loan. Such oath subscribed to by such director, certified by the officer before whom it is taken, shall be transmitted by the cashier of such bank to the Commission. Any director who fails for a period of sixty days after his election or appointment to take the oath as required by this section, shall automatically forfeit his office.

Source: § 6-39.

Comment: Same as § 6.1-47.

§ 6.1-49. Whenever any director or officer of a bank doing business in this State, shall have continued to violate any law relating to such bank or shall have continued unsafe or unsound practices in conducting the business of such bank, after the director or officer, and the governing board of the bank of which he is a director or officer, have been warned in writing by the State Corporation Commission to discontinue such violation of law or such unsafe or unsound practices, the Commission shall certify the facts to the circuit court of the city of Richmond. Such circuit court shall thereupon enter an order requiring such director or officer to appear before such court, within not less than ten days, to show cause why he should not be removed from office and thereafter restrained from participating in any manner in the management of such bank. Such order shall contain a brief statement of the facts certified to the court by the Commission. A copy of such order shall be served upon such director or officer, and a copy thereof shall be sent by registered mail to each director of the bank affected.

If after granting the accused director or officer a reasonable opportunity to be heard the court shall find that he has continued to violate any law relating to such bank, or has continued unsafe or unsound practices in conducting the business of such bank, after he and the governing board of the bank, of which he is a director or officer have been warned in writing by the Commission to discontinue such violation of law or unsafe or unsound practices, the court shall enter an order removing such director or officer from office and restraining such director or officer from thereafter participating in any manner in the management of such bank. A copy of such order shall be served upon such director or officer. A copy of such order shall also be served upon the bank of which he is a director, or officer, whereupon such director or officer shall cease to be a director or officer of such bank and thereafter cease to participate in any manner in the management of such bank.

The Commission in any such hearing shall be represented by the Attorney General.

Source: § 6-40.

Comment: No change.

§ 6.1-50. The Commission and any director or officer aggrieved by any order of the court entered under the preceding section removing such director or officer from office and restraining him from participating in any manner in the management of the bank of which he is a director or officer, or refusing to remove the director or officer from office and to restrain him from participating in any manner in the management of the

bank, shall have, of right, an appeal to the Supreme Court of Appeals within sixty days from the date of such order.

Source: § 6-41.

Comment: No change.

§ 6.1-51. Any director or officer removed and restrained under the provisions of § 6.1-49 from participating in any manner in the management of any bank of which he is a director or officer, who thereafter participates in any manner in the management of such bank except as a stockholder therein shall be fined not more than five thousand dollars, or confined in the penitentiary for not less than one year nor more than five years, or both.

Source: § 6-42.

Comment: No change.

§ 6.1-52. The board of directors of every bank shall hold meetings at least once in each calendar month, at which meeting a majority of the whole board shall be necessary for the lawful transaction of business, except that the stockholders, by by-law, may fix any number not less than five as a quorum.

Source: § 6-43.

Comment: No change.

§ 6.1-53. No officer, director or employee of a bank or trust company may purchase or discount any note or paper at a rate of interest in excess of what such bank might charge knowing that such bank has refused to purchase or discount such paper.

Comment: The above is a possible rewriting of this section, but primarily a point of departure of discussion toward clarification.

§ 6.1-54. The board of directors of every bank shall require bonds from all of the active officials and employees of such bank. In lieu of such bonds, the board may obtain one or more blanket bonds. The surety on every bond shall be a bonding or surety company authorized to transact business in Virginia, and the penalty of any such bond shall be increased whenever in the opinion of the State Corporation Commission it is necessary for the protection of the public interest.

Source: § 6-46.

Comment: Addition of second sentence codifies present practice.

§ 6.1-55. The directors of every bank shall, at least once in each calendar year, cause an examination to be made of the operation of the bank and of its general books of account. A statement of such examination shall be reported to the Board at the next regular meeting following report of such examination and the minutes of the meeting shall show that such report was made.

Source: § 6-47.

Comment: Section rewritten. Old section referred to "accounts of the cashier" and this has been clarified. Last sentence was added to require a report of the examination to the board.

§ 6.1-56. The board of directors of any bank may declare a dividend of so much as they shall judge expedient of the profits of the bank, after providing for all expenses, losses, interest and taxes accrued, or due by such bank. But before any such dividend is declared, the capital shall be paid in full, and the directors shall cause to be laid aside, to a fund known as a surplus the entire net profits, until such fund shall amount to at least ten per centum of the capital stock of the bank; and thereafter the directors, before declaring a dividend and, in the absence of a dividend declaration, at least annually, shall set aside to the surplus fund, at least ten per centum of the net profits as hereinafter defined, until the surplus fund shall amount to twenty per centum of the capital stock of the bank. Any losses sustained by such bank in excess of its net undivided profits may be charged to its surplus; provided, that its surplus shall thereafter be reimbursed from its earnings, and no dividend shall be declared or paid by such bank until its surplus shall be fully restored to the amount accumulated in accordance with this section and no dividend shall be declared or paid by any bank which would reduce the surplus below the amount accumulated in accordance with the mandatory requirements of this section.

To ascertain the net undivided profits before any dividend shall be declared, all debts due to such bank on which interest is past due and unpaid for a period of twelve months, unless the same are well secured and in process of collection by law, shall be deducted from the profits in addition to all expenses, losses, interest and taxes accrued, and the balance shall be deemed to be the net profits.

Source: § 6-48.

Comment: Deletes obsolete reference to Reconstruction Finance Corporation. Also deletes word "fund" from references to "surplus fund".

§ 6.1-57. No bank or trust company shall, without approval of the Commission, (1) invest in bank premises, including its furniture and fixtures, or in the stock, bonds, debentures, or other obligations of any corporation, trust, or association owning such premises, or (2) make loans to or against the securities of any such corporation, trust, or association, in which the bank has an investment or to which, or against the securities of which, the bank has a loan, if the aggregate value of all such investments and loans will exceed one half of the bank's capital and surplus. As used in this section, "value" means cost less depreciation.

If subsequent to any such investment or loan, the surplus of any such bank be diminished by losses so that such investment or loan shall amount to more than fifty per centum of its paid-in capital and its remaining surplus, such bank shall not, without approval of the Commission, pay dividends until such surplus and paid-in capital of such bank shall again be equal to double the value of such investments and loans, provided, however, that nothing in this section shall apply to such investments and loans existing on June 21, 1932, and valid when made.

Source: § 6-49.

Comment: This section has been rewritten. The limitation of investment (½ of capital and surplus) has not been changed but its meaning more clearly defined. Under the old section even when a bank was in violation they could pay a dividend of up to 6%. This has been changed so that now no dividend may be paid when a bank is in violation to this section, unless Commission approval is obtained.

§ 6.1-58. A bank may acquire, own and hold the stock and other securities or obligations of a bank service corporation in an amount not to exceed ten per cent of the bank's capital stock and permanent surplus; provided that it may not invest in any such service corporation unless it uses or intends to use the services of such service corporation. It may not invest in more than one such corporation without the consent of the State Corporation Commission. For purposes of this section, a bank service corporation is defined as one engaged primarily in rendering services, other than the renting of the bank premises or the furnishing of furniture or fixtures, to two or more banks. Stock in a Federal Reserve Bank shall not be considered stock of a bank service corporation within the meaning of this section.

Source: § 6-49.1.

Comment: No change.

§ 6.1-59. Every bank incorporated under the laws of this State may purchase, hold and convey real estate for the following purposes and for no other:

(1) Such as shall be desirable and prudent for its present or future accommodation in the transaction of its business;

(2) Such as shall be mortgaged or otherwise encumbered to it in good faith by way of security for debts contracted;

(3) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

(4) Such as it shall purchase at sales under judgments, decrees, mortgages, or deeds of trust held by it, in whole or in part, or shall purchase to secure debts due to it; but no such bank shall hold the possession of any real estate under mortgage or other encumbrance or the title and possession of any real estate conveyed to it in satisfaction of debt or purchased by it for the protection of obligations secured thereby, for a longer period than ten years except with the written consent and approval of the State Corporation Commission, provided, however, that if, within such ten year period, a bank shall have reduced upon its books the asset value of such mortgage, deed of trust or real estate to the nominal sum of one dollar, it may thereafter continue to hold and own the same indefinitely without such consent and approval of the Commission.

Nothing in this section shall affect the validity of the title to any such real estate conveyed or transferred by a bank.

Source: § 6-50.

Comment: The change in (1) brings state requirements into line with those governing national banks. Words "or banking institution" deleted from (4).

§ 6.1-60. No bank shall acquire or own its own stock except to protect itself against loss from debts previously conracted, in which case it shall be disposed of within twelve months from the time acquired. No bank shall make loans collaterally secured by the stock of such bank. No bank shall invest any of its funds in shares of stock of any other corporation nor in any notes or other obligations secured by real estate on which as security it is prohibited by § 6.1-63 from making any loans; this provision shall not, however, prevent any bank, (1) from acquiring any such stock, notes or other obligations to protect itself or any fund in its custody or possession against loss from debts theretofore contracted, nor (2) from acquir-

ing, owning and holding stock of a building corporation of the character and to the amount provided by § 6.1-57, nor (3) from acquiring, owning and holding stock of an agricultural credit corporation organized under the laws of this State, provided that the total amount of such stock shall not exceed twenty per centum of the amount of the capital stock of such bank actually paid in and unimpaired, plus the amount of its unimpaired surplus fund, nor (4) from acquiring, owning and holding stock of Federal National Mortgage Association, nor (4) (a) from acquiring, holding and owning stock, in any corporations which have as their purpose the operation of parking lots or parking garages, provided that no bank shall own, at any one time, stock in such corporations exceeding two per centum of the amount of the capital stock of such bank actually paid in and unimpaired, plus the amount of its unimpaired surplus fund, nor (5) from acquiring, owning and holding stock of a small business investment company as defined by the Federal Small Business Investment Act of 1958, nor (6) from acquiring, owning and holding stock of an industrial development company organized under the provisions of the Virginia Industrial Development Corporation Act; nor (7) from acquiring, owning and holding stock of a bank service corporation of the character and to the amount provided in § 6.1-58; nor shall the provisions hereof be construed to require a bank to dispose of any preferred stocks lawfully acquired as an investment prior to the first day of January, nineteen hundred and forty.

Source: § 6-51.

Comment: No change.

§ 6.1-61. Subject to the exceptions hereinafter stated, the total liabilities of any person, partnership (including the members other than limited partners) or corporation to any bank shall at no time exceed fifteen per cent of the capital and surplus of such bank. For the purposes of this section there may be counted as part of the surplus (a) the undivided profits as of the date of the most recent call statement, and (b) capital notes and debentures, the issuance of which has been approved by the Commission, outstanding as of said date, and consisting of debt obligations subordinate to all other contractural liabilities of the bank, and maturing more than five years after said date.

A. The following kinds of obligations shall not be subject to any limitation:

Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing values;

(2) Obligations arising out of the discount of commercial or business paper actually owned by the person, partnership, association, or corporation negotiating the same;

Obligations drawn in good faith against actually existing values and secured by goods or commodities in process of shipment;

(4) Obligations in the form of banker's acceptances of other banks of the kind described in section thirteen of the Federal Reserve Act;

(5) Obligations of the United States, obligations of the State of Virginia and of its political subdivisions, including sanitary or public facilities districts, obligations fully guaranteed or insured by a state or by a state authority for the payment of the obligation of which the faith and credit of the State is pledged, obligations issued under authority of the Federal Farm Loan Act, as amended, or issued by the Federal Home Loan Banks,

first mortgage real estate loans which are insured by the Federal Housing Administrator, obligations guaranteed as to principal and interest by the United States, loans in which the Small Business Administration or a federal reserve bank has definitely agreed or committed itself to participate, to the extent of such participation, loans which the Federal Commodity Credit Corporation has definitely agreed to purchase, direct obligations of and obligations guaranteed by the Export-Import Bank and loans guaranteed by a federal guaranteeing agency, pursuant to the Defense Production Act of 1950, or bonds and notes of the Federal National Mortgage Association or obligations of Federal Land Banks, Federal Intermediate Credit Banks, or Banks for Cooperatives issued pursuant to Acts of Congress;

(6) Obligations of any person, partnership, association or corporation secured by not less than a like amount of bonds or notes or other evidences of indebtedness of the United States or of the State of Virginia.

B. The following kinds of obligations shall be subject to a limitation of thirty per cent of such capital and surplus:

(1) Obligations as endorser or guarantor of notes, other than commercial or business paper excepted under paragraph A(2) hereof having a maturity of not more than six months, and owned by the person, partnership, or corporation endorsing and negotiating the same.

(2) Obligations of any person, partnership, or corporation in the form of notes or drafts secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligations is not at any time less than one hundred and fifteen per cent of the amount by which the obligations exceed fifteen per cent of such capital and surplus.

(3) Obligations secured by bonds or notes of the United States, or bonds of the State of Virginia or any of its political subdivisions, if the face value thereof is at least equal to the excess of the obligations over fifteen per cent of such capital and surplus.

C. Non-renewable obligations having not more than ten months to run consisting of notes or drafts secured by shipping documents, warehouse receipts or similar documents creating a security interest in readily marketable, nonperishable, staple commodities, insured to the extent that insurance is customarily required, shall be subject to a sliding scale limitation up to fifty per cent of such capital, surplus and undivided profits. The sliding scale limitation shall be applied as follows: When the face amount of the obligation exceeds fifteen per cent of such capital and surplus by any number of percentage points up to thirty-five, the market value of the security for the obligation must exceed the face amount of the obligation by at least the same number of percentage points.

All loans made by a bank in excess of fifteen per cent of its capital and surplus shall be approved by the board of directors or the executive committee of the bank by resolution recorded in the minute book.

Source: § 6-76.

Comment: This section has been rewritten. Subsection A(6) has deleted reference to maturity of government securities. The last part of the old section was extremely cumbersome and has been rewritten along lines suggested by Commissioner Jones of the Bureau of Banking.

§ 6.1-62. No officer, director, or employee of any bank shall borrow any amount whatever from such bank until after such loan has been

approved by a majority of the directors or a committee appointed by the board of directors with authority to approve loans. The board of directors may by proper resolution authorize certain officers to handle renewals of such loans, or may fix for a definite period lines of credit that may be granted to individual directors, officers or employees.

Source: § 6-77.

Comment: The section as previously written is inconsistent. It appears to require collateral and then states a line of credit may be established "on single name" or without collateral. It appears requiring Board action on these loans will solve any problems.

§ 6.1-63. No bank shall make any loan secured by real estate when such loan together with all prior liens and encumbrances on such real estate exceeds fifty percentum of the appraised value of the real estate offered as security, unless such loan be for a term not longer than twenty-five years and be secured by an amortized mortgage, deed of trust or other instrument under the terms of which the annual installment payments are not less than four per centum per annum of the principal of the loan, in which events the amount of the loan together with all prior liens and encumbrances on such real estate shall not exceed eighty per centum of the appraised value of the real estate offered as security.

No bank shall make such loans in an aggregate sum in excess of the amount of its capital stock actually paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of seventy per centum of the amount of its time and savings deposits, whichever is greater.

A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations executed or assumed by the borrower secured by mortgage, trust deed or other such instrument upon real estate owned by the borrower, and upon which real estate the bank relies as the principal security for the loan.

The appraisals required by this section, if and when the loan shall exceed one thousand dollars, shall be made by appraisers appointed by or by the authority of the board of directors, shall be in writing, signed by the appraisers and shall be retained in the files of the bank, subject to examination of bank examiners. The appraisers so appointed shall be experienced persons competent to appraise real estate in the locality in which the real estate is, and each appraisal, if and when the loan shall exceed five thousand dollars, shall be made by at least two appraisers.

Source: § 6-78.

Comment: This is part of old § 6-78 which spells out what is a real estate loan. Changes in percentages and term of loans conforms to national banks.

§ 6.1-64. Loans made to finance the construction of a building or otherwise to improve real estate, and having maturities of not to exceed eighteen months, if accompanied by a valid and binding agreement to advance the full amount of the loan upon the completion of the building or improvement entered into by an individual, partnership, association, or corporation acceptable to the bank (including the lending bank itself), whether or not secured by a mortgage or similar lien on the real estate upon which the building or improvement is being constructed, shall not be considered as a loan secured by real estate within the meaning of § 6.1-63, but shall be classed as ordinary commercial loans, provided that no bank shall invest in, or be liable on, any such loans in an aggregate amount in

excess of 100 per centum of its capital stock and surplus. The provisions of this section shall be cumulative with the provisions of § 6.1-65.

Source: § 6-78.

Comment: This section has been extracted from old 6-78 for clarity. It spells out requirements on construction loans.

§ 6.1-65. When the bank reasonably and prudently relies principally upon factors other than or in addition to the real estate security (such as general credit standing, guarantees, commitments, or tangible or intangible personal property security) and enters in its records a written statement of the factors it relies on, the loan does not constitute a real estate loan within the meaning of § 6.1-63.

The provision of § 6.1-63 shall not be construed to prohibit any bank from accepting as security for a loan made in good faith without security or upon security since found to be inadequate an obligation or obligations secured by mortgage, trust deed, or other such instrument upon real estate.

Source: § 6-78.

Comment: This section combines parts of § 6-78. This brings together those loans involving real estate which are not within the limits of a real estate loan as defined in § 6.1-63.

§ 6.1-66. Loans made to home owners for maintenance, repair, modernization, improvement and equipment to their homes, whether or not secured, shall not be considered as loans secured by real estate within the meaning of § 6.1-63, provided each such loan shall be payable in approximately equal monthly installments, shall not be for a term longer than six years, and shall not exceed Five Thousand Dollars in amount.

Source: § 6-79.2.

Comment: The term of these loans has been changed to six years from five and the amount increased from $3,500 to $5,000.

§ 6.1-67. Any bank or trust company borrowing money or rediscounting any of its notes shall at all times show on its books and accounts and in its reports the amount of such borrowed money or rediscounts. No officer, director or employee of any bank or trust company shall issue the note of such bank or trust company for borrowed money or rediscount any note or pledge any of the assets of such bank or trust company, except when authorized by resolution of the board of directors of such bank or trust company previously made and entered upon the minutes of such bank or trust company, under such rules and regulations and in such form as may be prescribed by the Commission.

Source: § 6-80.

Comment: Change made since there is no such position as "chief examiner of banks."

§ 6.1-68. Any bank or trust company doing business in this State may accept drafts or bills of exchange drawn upon it, having not more than six months' sight to run, which grow out of transactions involving the importation or exportation of goods, or which grow out of transactions involving the domestic shipment of goods, (1) if shipping documents conveying or securing title are attached at the time of acceptance, or (2) if such drafts or bills of exchange are secured at the time of acceptance by a

warehouse receipt or other such document conveying or securing title covering readily marketable staples. No bank shall accept, whether in a foreign or domestic transaction, for any one person, company, firm or corporation to an amount equal at any time in the aggregate to more than ten per centum of its paid-up and unimpaired capital stock and surplus, unless the bank is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance; and no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid-up and unimpaired capital stock and surplus except that:

(1) With the approval of the State Corporation Commission, any bank may accept such bills to an amount not exceeding at any time in the aggregate one hundred per centum of its paid-up and unimpaired capital stock and surplus, provided, however, that the aggregate of acceptance growing out of domestic transactions shall in no event exceed fifty per centum of such capital stock and surplus; and

(2) All banks which are members of the Federal Reserve System may accept drafts or bills of exchange drawn upon them by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective counties, dependencies or insular possessions, according to the conditions, limitations and restrictions then in force, as prescribed by the Federal Reserve Board of the United States.

Any bank or trust company doing business in this State may issue letters of credit authorizing the holders thereof to draw drafts upon it or upon its correspondent at sight or on time not exceeding one year, but the total amount issued for one person, firm or corporation shall not at any one time exceed ten per centum of the capital and surplus of the issuing bank or trust company.

Source: § 6-82.

Comment: No change.

§ 6.1-69. Every bank shall at all times maintain a reserve of at least ten per centum of its demand deposits and of at least three per centum of its time deposits. Such reserve shall consist of actual cash on hand and balances payable on demand, due from other solvent banks. The term "demand deposits" shall mean all deposits the payment of which can be legally required under thirty days. The term "time deposits" shall mean all deposits the payment of which cannot be legally required in less than thirty days and represented by a certificate of deposit which so states or by a pass book issued to the customer in which the notice required for withdrawal is printed, written or stamped in such pass book; provided, however, that when any bank has become a member of the Federal Reserve System it shall be required to comply with the reserve requirements of the Federal Reserve Act.

Source: § 6-52.

Comment: The first line of § 6-52 seems obsolete—section deals only with reserves.

§ 6.1-70. Any bank may pay any balance on deposit to the credit of any deceased person (after ten days shall have elapsed from the date of his death), or of any person under disabilities, to the personal representative, guardian, curator or committee of such person upon a letter of qualification as such personal representative, guardian, curator or committee, issued by

any court of competent jurisdiction of this State, and such letter shall be sufficient authority for such transfer. Any such bank making such transfer shall no longer be liable for such deposit to any person whomsoever. The presentation of a duly certified letter of qualification as personal representative, guardian, curator or committee shall be conclusive proof of the jurisdiction of the court issuing the same.

Source: § 6-53.

Comment: The period of payment has been changed from two weeks to ten days to conform with the U.C.C.

§ 6.1-71. When the balance in any bank or trust company to the credit of a deceased person, upon whose estate there shall have been no qualification, shall not exceed one thousand dollars, it shall be lawful for such bank or trust company, after one hundred and twenty days from the death of such person, to pay such balance to his next of kin, whose receipt therefor shall be a full discharge and acquittance to such bank or trust company to all persons whomsoever on account of such deposit.

Source: § 6-54.

Comment: No change.

§ 6.1-72. When a deposit has been made, or shall hereafter be made, in any bank or trust company transacting business in this State, under the names of two or more persons, payable to either, or payable to the survivor or any survivor, such deposit, or any part thereof, or any interest or dividend thereon, may be paid to any of such persons, whether the other or others be living or not, and the receipt of acquittance of the person so paid shall be a valid, sufficient and complete release and discharge of the bank or trust company for any payment so made. The term "deposit" shall include certificates of deposit, heretofore and hereafter issued.

Source: § 6-55.

Comment: No change.

§ 6.1-73. When a deposit has been made, or shall hereafter be made, in any bank or trust company transacting business in this State, under the names of a husband and wife, payable to either, or payable to the survivor, such deposit, or any interest or dividend thereon, upon the death of either husband or wife shall vest in the survivor. Upon the entry of a decree of divorce, either a mensa et thoro or a vinculo matrimonii, of the parties subsequent to the making of such deposit, and delivery of a certified copy of such decree to the bank or trust company wherein such deposit was made, the interests of said parties in such deposit shall be as tenants in common, unless otherwise ordered by the court.

This section shall not apply to any proceeding pending in any court in this State on June 29, 1956.

Source: § 6-55.1.

Comment: No change.

§ 6.1-74. Whenever any deposit shall be made in any bank by or in the name of any infant or minor, such deposit shall be held for the exclusive right and benefit of such minor, free from the control of all persons whomsoever, except creditors, and shall be paid with interest, if any be due thereon, to the person in whose name the deposit shall have been made,

and the check, order or receipt of such infant or minor shall be a good and sufficient release and discharge for such deposit to the bank.

Source: § 6-56.

Comment: No change.

§ 6.1-75. If any fiduciary or agent makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks drawn by him upon an account in the name of his principal, if he is empowered to draw checks thereon, or of checks payable to his principal and endorsed by him as fiduciary, the bank receiving such deposit shall not be bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary, in making such deposit or in drawing such check, is committing a breach of his obligation as fiduciary, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

Source: § 6-57.

Comment: No change.

§ 6.1-76. No bank or trust company shall issue any certificate of deposit, or other negotiable instrument of its indebtedness, to the holder thereof, except for lawful money of the United States, checks, drafts, or bills of exchange which are the actual equivalent of such money. Any officer or employee of any bank violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined or imprisoned, or both in the discretion of the court.

Source: § 6-62.

Comment: Deleted obsolete references to savings institutions.

§ 6.1-77. (Reserved)

§ 6.1-78. No bank or trust company shall give preference to any depositor or creditor by pledging the assets of such bank or trust company, except as otherwise authorized in the two succeeding sections.

Source: § 6-64.

Comment: No change.

§ 6.1-79. Notwithstanding the provisions of § 6.1-78 any bank or trust company may deposit securities for the purpose of securing deposits of the United States government, and its agencies, and the Commonwealth of Virginia, its agencies, and its political subdivisions, and for the purpose of securing sureties on surety bonds furnished to secure such deposits, or may, in lieu of depositing such securities to secure deposits of political subdivisions of the Commonwealth, by its board of directors, adopt a resolution before such public funds are deposited therein, to the effect that, in the event of the insolvency or failure of such bank or trust company, such public funds thereafter deposited therein shall, in the distribution of the assets of such bank or trust company, be paid in full before any other depositors shall be paid deposits thereafter made therein, and the adoption

of such resolution shall be deemed to constitute an obligation binding on such bank or trust company.

Source: § 6-65.

Comment: No change.

§ 6.1-80. Notwithstanding the provisions of § 6.1-78, any bank or trust company is authorized:

(1) For any temporary purpose to pledge its assets as security for amounts of borrowed money which shall not, without the approval of the State Corporation Commission given in advance in writing, exceed in the aggregate the amount of the capital and surplus of such bank or trust company actually paid in or earned and remained undiminished by losses or otherwise; provided that the amount of assets pledged for the security of such a loan shall not without such approval, so given, exceed one hundred and fifty per centum of the amount borrowed; provided also, that no loan in excess of the amount so permitted made to any such bank or trust company shall be invalid or illegal as to the lender, even though made without the consent of the Commission; and provided, also, that rediscounting with or without guarantee or indorsement of notes, drafts, bills of exchange or loans is hereby authorized and shall not be limited by the terms of this section, and shall not be considered as borrowed money within the meaning of this section; and

(2) To borrow from a Federal Reserve Bank and to rediscount with and sell to a Federal Reserve Bank any and all notes, drafts, bills of exchange, acceptances and other securities, and to give security for all money so borrowed and for all liabilities incurred by the discount of such notes, drafts, bills of exchange and other securities without restriction in like manner and to the same extent as national banks may lawfully do under the acts of Congress and regulations of the Board of Governors of the Federal Reserve System.

Source: § 6-66.

Comment: No change.

§ 6.1-81. (Reserved)

§ 6.1-82. (Reserved)

§ 6.1-83. In every case in which a bank is required by the laws of this State to furnish or deposit a surety bond or securities as security for the payment of any funds deposited in such banking institution, other than funds received or held in the trust department of such banking institution awaiting investment or distribution, the amount of the penalty of such bond or the amount of such securities shall be as required by law, less the amount of such deposit as is, to the satisfaction of the body, officer or person charged with the responsibility of seeing that a surety bond or securities are furnished as security for such deposit, insured under the provisions of section twelve-b of the Federal Reserve Act, as amended, or any amendments thereto.

Source: § 6-70.

Comment: No change.

§ 6.1-84. The Commission shall, at least once in each and every year, and at such other times as it may deem necessary, cause to be examined

each and every bank incorporated under the laws of, and doing business in, this State.

Source: § 6-106.

Comment: No change.

§ 6.1-85. The Commission may, also in connection with the examination of any bank, make or cause to be made such examination of the affiliates of the bank as shall be necessary to ascertain the financial condition of the bank and to disclose fully the relations between the bank and its affiliates and the effect of such relations upon the affairs of the bank.

For the purpose of this section the term "affiliate" of any bank shall mean any corporation, business trust, association, or other similar organization (1) of which such bank, directly or indirectly owns or controls either a majority of the voting shares or more than fifty per centum of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions, or (2) of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of such bank who own or control either a majority of the shares of such bank or more than fifty per centum of the number of shares voted for the election of directors of such bank at the preceding election, or by trustees for the benefit of the shareholders of any such bank, or (3) of which a majority of the directors, trustees, or other persons exercising similar functions are directors of such bank.

Source: § 6-107.

Comment: No change.

§ 6.1-86. The Commission shall also, upon written application made to it by the board of directors or by the stockholders representing two-fifths of the total outstanding capital stock of any bank incorporated under the laws of, and doing business in, this State, or whenever, in the judgment of the Commission, it may be necessary for the protection of the public or of persons depositing or dealing with such bank, cause to be made a special examination of such bank. All expenses incident to such special examination shall be borne by the bank so examined.

Source: § 6-108.

Comment: No change.

§ 6.1-87. Upon the making of any examination under the provisions of any of the three preceding sections, the officers, directors and employees of the bank being examined or whose affiliate is being examined shall, upon the demand of the person or officer designated to make such examination, give to such examiner full access to all the money, books, papers, notes, bills and other evidences of debts due said bank and shall also disclose fully and truly all indebtedness and liability thereof, and shall furnish all information which such examiner may deem necessary to a full investigation into the affairs of such bank. And such examiner shall have the right to examine, under oath, any and all of the directors, officers, clerks and employees in any manner connected with the operation of any such bank touching any matter or thing pertaining to such examination, and for that purpose shall have authority to administer oaths to them.

§ 6.1-88. No previous notice of any examination shall be given any bank or any of its directors, officers, or employees.

Source: § 6-110.

Comment: No change.

§ 6.1-89. Whenever it shall appear to the Commission, from an examination of any bank, that any of the assets thereof are valued by the bank at an amount in excess of their fair and reasonable value, the Commission may, after such bank shall have been given an opportunity to be heard by the Commission, require such bank to revalue such assets on the basis of their fair and reasonable value.

Source: § 6-111.

Comment: No change.

§ 6.1-90. When any bank is examined under the provisions of this article, a copy of the report of such examination shall for a period of sixty days after completion thereof be open to the inspection of the officers and directors of the bank.

Upon resolution of the board of directors of such bank, such report may at any time during such period be inspected by the officers and directors of any other bank designated in such resolution.

Source: § 6-112.

Comment: No change.

§ 6.1-91. Each official communication directed by the Commission, or any State bank examiner, to any bank, or to any officer thereof, relating to an examination or investigation conducted or made by the Commission, or containing suggestions or recommendations as to the conduct of the bank shall, if required by the authority submitting same, be submitted by the officer or director receiving it, to the executive committee or board of directors of such bank and duly noted in the minutes of such meeting.

Source: § 6-119.

Comment: Old second sentence deleted. It required a notice of receipt of commission's communication. This is not done now.

§ 6.1-92. If upon the examination of any bank, the Commission shall ascertain that the banking laws of this State are not being fully observed, or that any irregularities are being practiced, or that its capital has been or is in danger of being impaired, the Commission shall give immediate notice thereof to the officers and directors of such bank and, if deemed necessary in order to conserve the assets of such bank or to protect the interests of depositors and creditors thereof, the Commission may:

(1) Temporarily suspend the right of such bank to receive any further deposits;

(2) Temporarily close such bank, for a period not exceeding sixty days, and such period may be further extended for a like period or periods as the Commission may deem necessary;

(3) Require the officers and directors of such bank to liquidate its outstanding loans insofar as shall be required;

(4) Require that any such impairment of the capital stock be made good;

(5) Require that any such irregularities be promptly corrected;

(6) Require such bank to make reports daily or at such other times as may be required to the Commission as to the results achieved in carrying out the orders of the Commission; and/or

(7) Without examination, close, for such period or periods as the Commission may deem necessary, any bank facing an emergency due to withdrawal of deposits or otherwise, or, without closing such bank, grant to it the right to suspend or limit the withdrawal of deposits, for such period as the Commission may determine.

But the powers enumerated in subdivisions (1), (2), (3) and (7) of this section shall be exercised only upon request of directors of such bank.

If any such bank shall fail or refuse to comply with any such order or orders of the Commission, or if the Commission shall determine that a receiver for any such bank should be appointed, the Commission may apply for the appointment of a receiver to take charge of the business affairs and assets of such bank and to wind up its affairs as hereinafter provided.

Source: § 6-113.

Comment: No change.

§ 6.1-93. Every bank shall make to the State Corporation Commission statements of its financial condition at such times as the national banks organized under the laws of the United States are required to make statements to the comptroller of the currency and at such other times as the Commission may deem necessary; and also within fifteen days thereafter publish such statements in condensed form in some newspaper printed in the county, city or town where such banking business is carried on, or where the principal office of such bank is located; and if there is no such paper published in the county, city or town, then such statements shall be published in the newspaper published in the county, city or town nearest thereto. Such statements shall be made and published in accordance with forms prescribed by the Commission certified under oath by the president or cashier of the bank, or, if there is no cashier, by the treasurer, and attested by at least three of its directors. The Commission shall call upon all such banks doing business in Virginia for the statements hereinbefore mentioned, and at the time prescribed, and shall have prepared such forms as may be necessary to carry out the provisions of this section. Whenever calls for statements are made by the Commission, it shall forward to each such bank two blank forms, one of which, after being properly filled out and certified, as hereinbefore required, shall be returned to the Commission within fifteen days next succeeding the date of such call, and the other of which, filled out in like manner, shall be filed with the records of the bank.

Source: § 6-105.

Comment: No change.

§ 6.1-94. Every bank shall pay for its examination provided for by §§ 6.1-84 to 6.1-86, fees as follows:

For an examination for a period of one year, a minimum fee of one hundred dollars, which shall cover the first one hundred thousand dollars of assets or less, to which shall be added, in the case of each bank, according to its total assets, as shown by the statement of financial condition made to the Commission next preceding June the first as follows: (1) For the

amount by which its total assets exceed one hundred thousand dollars and do not exceed five hundred thousand dollars, six dollars per twenty thousand dollars or fraction thereof; (2) for the amount by which its total assets exceed five hundred thousand dollars and do not exceed two million dollars, four dollars per twenty thousand dollars or fraction thereof; (3) for the amount by which its total assets exceed two million dollars and do not exceed fifty million dollars, two dollars per twenty thousand dollars or fraction thereof; (4) and for all assets over fifty million dollars, one dollar per twenty thousand dollars or fraction thereof.

For the examination of trust departments of State banks and trust companies, the Commission shall charge an additional fee at the rate of thirty dollars per day per man.

For investigating an application for a certificate of authority pursuant to § 6.1-13, the Commission shall charge a fee of two hundred and fifty dollars.

For investigating an application for authority to establish a branch pursuant to §§ 6.1-39 or 6.1-42, the Commission shall charge a fee of one hundred dollars.

But no fee shall be charged for investigating an application for authority to change the location of an existing bank or branch bank.

Source: § 6-122.

Comment: No change.

§ 6.1-95. Except as hereinafter provided all such fees and charges shall be assessed against each such bank by the Commission on or before the first day of July of each year and shall be paid into the State treasury on or before the thirty-first day of July following. All fees so assessed shall be a lien on the assets of the bank, and if not paid when due may be recovered in any court of the county or city in which such bank or institution is located having original jurisdiction of civil cases on motion of and in the name of the Commission. The Commission shall mail the assessment to each bank on or before July first of each year and give advice thereof to the Comptroller and it shall be the duty of the Comptroller to furnish the Commission promptly with a list of the banks which fail to pay the assessment on or before July thirty-first.

Fees for investigating applications for authority shall be paid before the investigation is made.

Fees for the examination of trust departments shall be paid into the State treasury within thirty days after the Commission notifies the bank or trust company of the amount of the fee.

Source: § 6-123.

Comment: As per suggestion of Judge Catterall, of the State Corporation Commission. Add words "or before" after word "on" prior to the first date mentioned in the section.

§ 6.1-96. If the Commission is of the opinion that the amounts of the several charges and fees fixed by § 6.1-94 will produce a greater sum than required to cover the costs and expenses to be paid thereby, the Commission may, in its discretion, reduce on a pro rata basis the amount of such charges so fixed.

Source: § 6-124.

Comment: No change.

§ 6.1-97. Every bank authorized to begin business after the first day of July and before the thirty-first day of December in any one year, shall pay the full amount of fees prescribed by § 6.1-94 and every bank authorized to begin business after the first day of January and before the thirtieth day of June of any year, shall pay one-half of the fees so prescribed. Such fees shall be based on the total resources of such bank at its first examination after it has been authorized to begin business, and at that time collected by the Commission and paid into the State treasury as other funds arising under the provisions of this chapter.

Source: § 6-125.

Comment: No change.

§ 6.1-98. All fees paid into the State treasury as provided in § 6.1-95 shall be credited to a fund designated as "Banking Fund—State Corporation Commission" and out of such fund and the unexpended balance thereof, shall be appropriated the sums required for the proper examination of State banks and trust companies. The Governor is hereby authorized, in his discretion, to increase the annual appropriation made to the Commission for examination of banks and trust companies to an amount not to exceed existing balances in the Banking Fund aforesaid.

Source: § 6-126.

Comment: No change.

§ 6.1-99. Every national bank which is now or may be designated as a State depository, shall, so long as it acts as such, be subject to the examination provided for State banks, when, in the opinion of the State Treasurer, such examination is necessary for the protection of the State. But no fees or charges shall be imposed upon national banks for such examinations.

Source: § 6-127.

Comment: No change.

§ 6.1-100. If upon the examination of any bank it shall be found to be insolvent, or it is deemed necessary by the Commission for the protection of the public interests, the Commission may at once close the doors of such bank without any notice whatsoever, and the Commission by its duly appointed agent shall take charge of the books, assets and affairs of such bank until the appointment of a receiver as provided by law.

Source: § 6-114.

Comment: No change.

§ 6.1-101. If, upon the examination of any bank, it shall appear to the Commission that any such bank, which is designated as a State depository, is insolvent or is unable to meet its obligations and the legal demands upon it in the ordinary course of its business, the Commission shall forthwith notify the State Treasurer, who shall discontinue further deposits therein of State funds and take such action as may be necessary to protect the deposits of the State therein.

Source: § 6-115.

Comment: No change.

§ 6.1-102. In any case the Commission shall, whenever, in its judgment, it is necessary or the protection of the interests of the State or of

the depositors and creditors of any bank doing business in this State, or of the creditors of any trust company doing business in this State, apply to any court in this Commonwealth having jurisdiction to appoint receivers for the appointment of a receiver to take charge of the business affairs and assets and to wind up the affairs and business of any such bank or trust company failing to comply with the requirements of the Commission, or found upon examination to be insolvent or unable to meet its obligations and the legal demands made upon it in the ordinary course and conduct of its business.

Source: § 6-116.

Comment: No change.

§ 6.1-103. And when any receiver shall be appointed under the provisions of this article for any bank authorized to do a trust business or for any trust company he may be empowered by the court by which he is appointed to act for and on behalf of such bank or trust company in the execution of any power of sale conferred upon such bank or trust company in the execution of any power of sale conferred upon such bank or trust company by any instrument, and, when such sale is made, to execute, acknowledge and deliver for and on behalf of such bank or trust company such deed as may be proper under the provisions of such instrument for the conveyance of title to the property conveyed therein; and upon payment of the amount secured under any such instrument, to execute, acknowledge and deliver for and on behalf of such bank or trust company a proper release deed for the property conveyed therein. And any such sale made by such receiver and any such deed or release executed by him, when so authorized and empowered, shall be as effective and as binding as if the same had been made or executed by such bank or trust company before the appointment of such receiver. And all sales which have been made by any such receivers within the State of Virginia and all such deeds and release deeds which have been executed by any such receivers within this State under the authority of the court by which they were appointed, since June nineteenth, nineteen hundred and thirty-six, shall be as effective and as binding as if the same had been made by such bank or trust company before the appointment of such receiver.

Source: § 6-117.

Comment: No change.

§ 6.1-104. Any receiver appointed under the provisions of this article shall be and become assignee of the assets and property of the bank or trust company of which he has been so appointed receiver, with power to prosecute and defend, in the name of the bank or trust company or in his name as such receiver or otherwise, in Virginia or elsewhere, all such suits as may be necessary to wind up the affairs and business of such bank or trust company, and to appoint such agents or attorneys for any such purpose as the court may approve.

Source: § 6-118.

Comment: No change.

§ 6.1-105. When any court of competent jurisdiction shall, on a proper application therefor, appoint a receiver for any State bank, banking institution, or trust company, such court may prescribe and direct, by order or decree entered of record, that the rate of interest to be paid

by such receiver upon the claims of depositors of such bank, or banking institution, or trust company, shall not exceed the current or contracted rate of interest paid by such State bank, banking institution or trust company on deposits and may also fix the interest to be so paid at such lower rate as such court may deem proper under all the circumstances of the case. In any such event such court shall also direct that any surplus remaining after the payment in full of such depositors, together with the interest thereon as so prescribed and fixed, shall be distributed pro-rata among the shareholders of such bank, banking institution, or trust company, as of the date of the appointment of such receiver.

Source: § 6-69.

Comment: No change.

§ 6.1-106. Whenever in a pending suit, having for its object the administration or liquidation of the assets of an insolvent bank or trust company operating in this State, the court shall have ordered the payment to creditors of dividends on, or other payments of, claims as therein ascertained and established, and the receiver, special commissioner or other person or officer charged with the duty of making the ordered payment to creditors shall have been unable to effect such payment by reason of inability to ascertain the address of any creditor or the failure of any creditor to apply to such disbursing official for payment when so directed by the order of the court or for any other similar reason; or whenever a trustee engaged in the voluntary liquidation of the assets of an involvent bank or trust company operating in this State by petition to any court of general jurisdiction in the county or city wherein the principal office of such insolvent bank or trust company is located, shall allege and show to the satisfaction of the court his inability to make payment to creditors for any of the reasons specified herein, the court, in its discretion, may enter an order directing its receiver, special commissioner or other person or officer charged with the duty of making such payment, or the trustee to publish in some newspaper, having a general circulation in the county or city where such suit or petition is pending, at least twice, a list of creditors to whom dividends or payments are due and unpaid and the amount thereof, together with a notice that any creditor therein named who shall fail to apply to the disbursing official for payment of the amount due him within six months from the date of the last publication of such notice will be barred from his right thereafter to receive payment of amounts then due and from participation in any future dividends or payments which may thereafter be ordered.

Source: § 6-58.

Comment: No change.

§ 6.1-107. If any bank or trust company under the circumstances referred to in the preceding section shall have been in liquidation for a period of more than ten years, and more than five years shall have elapsed since the date of the entry of the last court order directing the payment to creditors of dividends on or other payments of claims as therein ascertained and established, then it shall be unnecessay to publish a list of creditors to whom dividends or payments are due and unpaid and the amount thereof, and it shall only be necessary to publish a notice stating the total amount of dividends ordered paid and unclaimed and the fact that a list of such creditors may be seen at the office of the receiver, liquidating agent or other disbursing officer, and that any creditor who shall fail to apply to such disbursing official for payment of the amount due him within six

months from the date of the last publication of such notice will be barred from his right thereafter to receive payment of amounts then due and from participation in any future dividends or payments which may thereafter be ordered.

Source: § 6-59.

Comment: No change.

§ 6.1-108. Whenever there are two or more newspapers having general circulation in the county or city where such suit or petition as is referred to in § 6.1-106 is pending, the court, in its discretion, may, in lieu of the publication provided for therein or in § 6.1-107 direct that the list of creditors, together with the notice, shall be published once in at least two of such newspapers having general circulation in such county or city.

Source: § 6-60.

Comment: No change.

§ 6.1-109. After the lapse of six months from the date of the last publication of the notice prescribed by §§ 6.1-106, 6.1-107 or 6.1-108 the court shall enter an order barring the claims of all creditors who have not theretofore applied for payment of their claims, and thereafter no creditor who shall have failed to apply for payment within such period shall bring or maintain any action, suit or proceeding, nor shall any process issue for the enforcement of any claim to dividends or payments previously ordered paid to such creditor nor shall such creditor participate in future dividends or payments thereafter ordered in the suit or petition to be paid; provided, however, that the court in which any such suit or petition is pending may, in its discretion, before final distribution and for good cause shown, reinstate any claim barred as aforesaid.

Source: § 6-61.

Comment: No change.

§ 6.1-110. Any court in this State having jurisdiction to appoint receivers may, in its discretion, authorize any receiver appointed by such court for any bank or trust company, in pursuance of the provisions of this chapter:

(1) To make application for and contract for a loan from any corporation or agency authorized, among other purposes, to make loans upon the application of the receiver or liquidating agent of any bank that is closed, or in process of liquidation, secured by the assets of any such bank, if such corporation or agency is organized, or provided for by, or pursuant to, legislation enacted by the Congress of the United States, and if such loan shall be for the purpose of aiding in the reorganization or liquidation of any such bank, including the payment of liquidating dividends from the proceeds thereof, and

(2) To secure any such loan or advance by the pledge, hypothecation or mortgage of any or all of the assets of such bank or trust company, or in such other manner as such court, in its discretion, may authorize.

Any such court may also, in its discretion, authorize any such receiver so appointed by it, to invest any funds in the hands of such receiver, in bonds of the United States or of the State of Virginia.

Source: § 6-81.

Comment: No change.

§ 6.1-111. Every person, association or company who shall trade or deal as a bank or trust company, or carry on banking or do a trust business, without authority of law, and their officers and agents therein, shall be confined in jail not exceeding six months, and fined not less than one hundred nor more than five hundred dollars.

The Commission shall have authority to examine the accounts, books and papers of any person, co-partnership or corporation who it has reason to suspect is doing a banking business, in order to ascertain whether such person, co-partnership, or corporation has violated, or is violating, any provision of this title, and the refusal to submit such accounts, books and papers shall be prima facie evidence of such violation.

Source: § 6-133.

Comment: No change.

§ 6.1-112. No person, co-partnership or corporation not lawfully engaged in the banking business or trust business in this State and subject to the supervision of the Commission, by the provisions of this chapter or authorized to transact a banking business or trust business under the laws of the United States, shall make use of any office sign having thereon any artificial or corporate name or other words indicating that any such place or office is the place or office of a bank, savings bank, trust company, bank or place of banking. No person, co-partnership or corporation shall make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates, circulars or any written or printed paper whatever having thereon any artificial or corporate name or word indicating that such business is the business of a bank, savings bank, trust company or banker, or a place of banking. No person, co-partnership or corporation shall use the work "bank" "savings bank," "banking," "banker," or "trust," or the equivalent thereof in any foreign language, or the plural of any such word or words in any business or in connection with any business other than that of the business of banking.

Any person or persons violating the provisions of this § 6.1-5, either individually or as an interested party, in any co-partnership or corporation, shall be guilty of a misdemeanor.

The use of the above-mentioned terms in the name of any corporation or in connection with any other business shall not be prohibited where the context or remaining words show clearly and definitely that the corporation or business is not a bank or trust company, and is not carrying on a banking or trust business.

Source: § 6-134.

Comment: No change.

§ 6.1-113. Any bank or trust company violating the provisions of §§ 6.1-39 or 6.1-41 shall be liable to a fine of one thousand dollars, to be imposed and judgment entered therefor by the Commission, and enforced by its process.

Source: § 6-29.

Comment: No change.

§ 6.1-114. Any such bank or trust company failing to comply with any of the provisions of § 6.1-93, for a period of longer than thirty days, after being called upon by the Commission for a statement, or to do such

other act as is therein provided, shall be fined not less than one hundred nor more than one thousand dollars, and the Commission shall give notice of such default in a newspaper published as provided in § 6.1-93. Any officer of any such bank or trust company, who shall refuse to give any examiner the information or refuse to be sworn, as required by § 6.1-87, shall be fined not less than twenty-five nor more than one hundred dollars for such offense.

All records, reports and information concerning any bank, other than those required by law to be public, shall be open only to such officers and employees of the State as may have occasion and authority to inspect them in the performance of their duties, and to any officer or duly authorized agent of such bank or trust company, and the imparting of such information by any employee or officer of the State may be sufficient cause for his removal from the position he occupies under the State government.

Source: § 6-128.

Comment: Most changes are for conformity. Part of sentence that was deleted was because it should be covered in general penalties section.

§ 6.1-115. Any person who, with intent to defraud, shall make or draw or utter or deliver any check, draft, or order for the payment of money, upon any bank, banking institution, trust company, or other depository, knowing, at the time of such making, drawing, uttering or delivering, that the maker or drawer has not sufficient funds in, or credit with, such bank, banking institution, trust company, or other depository, for the payment of such check, draft or order, although no express representation is made in reference thereto, shall be guilty of larceny.

Any person who, under the provisions of this section, is guilty of grand larceny shall, in the discretion of the jury or the court trying the case without a jury, be confined in the penitentiary not less than one year nor more than five years, or be confined in jail not exceeding twelve months and fined not exceeding five hundred dollars.

The word credit, as used herein, shall be construed to mean any arrangement or understanding with the bank, trust company, or other depository for the payment of such check, draft or order.

Source: § 6-129.

Comment: No change.

§ 6.1-116. Any person who shall make, draw, or utter, or deliver any check, draft, or order for the payment of money, upon any bank, banking institution, trust company or other depository on behalf of any business firm or corporation, for the purpose of paying wages to any employee of such firm or corporation, or for the purpose of paying for any labor performed by any person for such firm or corporation, knowing, at the time of such making, drawing, uttering or delivering, that the account upon which such check, draft or order ise drawn has not sufficient funds, or credit with, such bank, banking institution, trust company or other depository, for the payment of such check, draft or order, although no express representation is made in reference thereto, shall be guilty of a misdemeanor.

The word credit, as used herein, shall be construed to mean any arrangement or understanding with the bank, banking institution, trust company, or other depository for the payment of such check, draft or order.

In addition to the criminal penalty set forth herein, such person shall be personally liable in any civil action brought upon such check, draft or order.

Source: § 6-129.1.

Comment: No change.

§ 6.1-117. In any prosecution or action under the preceding §§ 6.1-115 and 6.1-116 the making or drawing or uttering or delivery of a check, draft, or order, payment of which is refused by the drawee because of lack of funds or credit, shall be prima facie evidence of intent to defraud or of knowledge of insufficent funds in, or credit with, such bank, banking institution, trust company or other depository unless such maker or drawer, or someone for him, shall have paid the holder thereof the amount due thereon, together with interest, and protest fees (if any), within five days after receiving written notice that such check, draft, or order has not been paid to the holder thereof. Notice mailed by certified or registered mail, evidenced by return receipt, to the last known address of the maker or drawer shall be deemed sufficient and equivalent to notice having been received by the maker or drawer.

Source: § 6-130.

Comment: No change.

§ 6.1-118. In any civil action growing out of an arrest under §§ 6.1-115 or 6.1-116 evidence of statements or representations as to the status of the check, draft, order or deposit involved, or of any collateral agreement with reference to the check, draft, or order, shall be admissible unless such statements, or representations, or collateral agreement, be written upon the instrument at the time it is given by the drawer.

If payment of any check, draft, or order for the payment of money be refused by the bank, banking institution, trust company or other depository upon which such instrument is drawn, and the person who drew or uttered such instrument be arrested or prosecuted under the provisions of §§ 6.1-115 or 6.1-116 for failure or refusal to pay such instrument, the one arrested or caused such person to be arrested and prosecuted, or either, shall be conclusively deemed to have acted with reasonable or probable cause in any suit for damages that may be brought by the person who drew or uttered such instrument, if the one who arrested or caused such person to be arrested and prosecuted, or either, shall have, before doing so, presented or caused such instrument to be presented to the depository on which it was drawn where it was refused, and then waited five days after notice, as provided in § 6.1-117, without the amount due under the provisions of such instrument being paid.

Source: 6-131.

Comment: No change.

§ 6.1-119. Any person who shall wilfully and maliciously make, circulate or transmit to another, any statement, rumor or suggestion, written, printed or by word of mouth, which is directly or by reference derogatory to the financial condition or affects the solvency or financial standing of any bank or trust company doing business in this State, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement or rumor, shall be guilty of a misdemeanor, and upon conviction

thereof, shall be sentenced to pay a fine of not more than one thousand dollars, or to be confined in jail not more than one year, or both.

Source: § 6-132.

Comment: Deletion for conformity.

§ 6.1-120. Whoever, being an officer, employee, agent or director of a bank, certifies a check drawn on such bank and wilfully fails forthwith to charge the amount thereof against the account of the drawer thereof, or wilfully certifies a check drawn on such bank when the drawer of such check has not on deposit with the bank the amount of money subject to the payment of such check and equivalent to the amount therein specified, shall be guilty of a misdemeanor.

Source: § 6-136.

Comment: No change.

§ 6.1-121. Except as otherwise provided, any officer, director, employee, or attorney of any bank who stipulates for or receives or consents or agrees to receive any fee, commission, gift or thing of value from any person, firm or corporation, for procuring or endeavoring to procure for such person, firm or corporation, or for any other person, firm or corporation, any loan from or the purchase or discount of any paper, note, draft, check, bond, stock, security or bill of exchange by any such bank shall be deemed guilty of a misdemeanor and shall be imprisoned not more than one year in jail or fined not more than one thousand dollars, or both; provided that the above prohibition shall not apply to any officer or director, who is a member of a firm of licensed brokers, in buying for or from or selling to, or for the account of, a banking institution, of which he may be an officer or director, in the ordinary course of business, bonds, stocks or other evidences of debt at the usual rate of commission for such service.

Source: § 6-137.

Comment: No change.

§ 6.1-122. Any officer, director, agent or employee of any bank who embezzles, abstracts, or wilfully misapplies any of the moneys, funds or credits of, or in the possession or control of such bank, shall be guilty of larceny and punished as provided by law. Any officer, director, agent or employee of any bank who issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, decree or other instrument in writing, or who makes any false entry in any book, report or statement of such bank, with intent in any case to injure or defraud such bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such bank, or the State Corporation Commission, or any agent or examiner authorized to examine the affairs of such bank, and any person, who, with like intent, aids or abets any such officer, director, agent or employee of such bank, in any such violation, shall be guilty of a felony and upon conviction thereof shall be confined in the penitentiary not less than one year or more than ten years, or be confined in jail not exceeding twelve months and fined not exceeding Five Thousand Dollars.

Any such officer who knowingly makes a false statement of the condition of any such bank or institution, shall be deemed guilty of a felony and upon conviction shall be fined not less than One Hundred nor more than

Five Thousand Dollars, and be imprisoned in the penitentiary not less than one nor more than ten years.

Source: §§ 6-128, 138.

Comment: Certain penalty provisions are placed in § 6.1-122 for clarity.

§ 6.1-123. Any officer, director, agent or employee of any bank who knowingly violates or who knowingly causes any bank to violate any provision of this chapter, or knowingly participates or knowingly acquiesces in any such violation, shall, unless other punishment be provided for the offense of such officer, agent or employee, be guilty of a misdemeanor and be punished accordingly. The provisions of this section shall not affect the civil liability of any such officer, director, agent or employee.

Source: § 6-139.

Comment: No change.

§ 6.1-124. Any officer or director of any bank and any private banker or broker or any employee of any such bank, banker or broker, who shall take and receive, or permit to be received, a deposit from any person with the actual knowledge that the bank, banker or broker is at the time insolvent, shall be guilty of embezzlement, and shall be punished by a fine double the amount so received, and be confined in the penitentiary not less than one nor more than three years, in the discretion of the jury, for each offense. On the trial of any indictment under this section it shall be the duty of any such bank, banker or broker, its agent or officers, to produce in court on demand of the attorney for the Commonwealth, all books and papers of such bank, banker or broker, to be read as evidence on the trial of such indictment; but in determining the question of the solvency of any bank, the capital stock thereof shall not be considered as a liability due by it.

Source: § 6-3.

Comment: No change.

§ 6.1-125. (Reserved)

CHAPTER 3

VIRGINIA SAVINGS AND LOAN ACT

§ 6.1-126. The short title of the law embraced in this chapter is Virginia Savings and Loan Act.

Source: § 6-201.1.

Comment: No change.

§ 6.1-127. The powers, privileges, duties and restrictions conferred and imposed upon any savings and loan association existing under the laws of this State on July first, nineteen hundred and sixty are hereby abridged, enlarged or modified, as each particular case requires, to conform to the provisions of this chapter, but nothing in this chapter shall affect the legality of any investment heretofore made or transaction heretofore had under authority of any provision of law in force when such investment was made or transaction had.

Notwithstanding any other provision of law with respect to the rates of interest which may be charged, an association which on September one, nineteen hundred fifty-nine, was operating on a share accumulation loan plan whereby its earnings were equitably distributed to both its borrowers and its shareholders may continue to operate upon the same plan.

Source: § 6-201.2.

Comment: No change.

§ 6.1-128. The provisions of this chapter apply to federal associations insofar as this State has the power to enact legislation with regard to them.

Source: § 6-201.3.

Comment: No change.

§ 6.1-129. As used in this chapter, unless a different meaning is required by the context, (1) *"Commission"* means the State Corporation Commission; (2) the word *"association"* means a savings and loan association incorporated in Virginia under this chapter or prior acts relating thereto whether called savings and loan associations, or building and loan associations or building associations, and a savings and loan association incorporated under the laws of the United States and authorized to conduct its business as a savings and loan association in Virginia; (3) the word *"members"* means all persons having savings accounts in and all borrowers from and obligors of the association; (4) the word *"shares"* means the interest of a member having a savings account in the association and the the word *"shareholder"* means a member having such interest; (5) the words *"shares of stock"* mean the shares of capital stock issued by a stock savings and loan association subject to the provisions of the Virginia Stock Corporation Act and the word *"stockholder"* means a person holding shares of stock; (6) the words *"State association"* means a savings and loan association incorporated under the laws of the State of Virginia; (7) the words *"federal association"* means a savings and loan association incorporated under the laws of the United States and authorized to conduct its business as a savings and loan association in the State of Virginia; (8) the expression *"improved real estate"* means real estate on which is located or will within twelve months be located, a home or a combination home and business structure; (9) the expression *"other improved real estate"* means real estate other than "improved real estate" which produces or will within twelve months produce sufficient income to maintain the property and retire the loan in accordance with the terms thereof; (10) the term *"short term savings shares"* means a savings account which by its terms will be withdrawn in less than twenty-four months from the date on which the account is opened.

Comment: No change.

§ 6.1-130. All savings and loan associations which are organized and operated exclusively for the benefit of their members and which do not issue shares of stock shall be deemed to be mutual savings and loan associations. All other associations shall be deemed to be stock savings and loan associations.

Source: § 6-201.5.

Comment: No change.

§ 6.1-131. The provisions of the Virginia Stock Corporation Act shall apply to all stock savings and loan associations in all cases not inconsistent with the provisions of this chapter. The provisions of the Virginia Nonstock Corporation Act shall apply to all mutual savings and loan associations in all cases not inconsistent with the provisions of this chapter.

Source: § 6-201.6.

Comment: No change.

§ 6.1-132. Mutual savings and loan associations heretofore incorporated under the Virginia Stock Corporation Act or prior laws relating to stock corporations shall be subject to and governed by the provisions of the Virginia Nonstock Corporation Act.

Source: § 6-201.7.

Comment: No change.

§ 6.1-133. Individuals may form a stock savings and loan association upon being incorporated as provided in the Virginia Stock Corporation Act. Individuals may form a mutual savings and loan association upon being incorporated as provided in the Virginia Nonstock Corporation Act.

Source: § 6-201.8.

Comment: No change.

§ 6.1-134. Every association hereafter incorporated under the laws of this State shall have as a part of its corporate name the words "building and loan association," or "savings and loan association." But no association need comply with the provisions of subdivision (a) of § 13.1-6.

Source: § 6-201.9.

Comment: No change.

§ 6.1-135. The articles of incorporation of a savings and loan association shall provide that it is organized primarily for the purpose of enabling its members to borrow its funds upon giving security therefor by first mortgages or first deeds of trust upon real estate, for purchasing, making improvements, or removing encumbrances on real estate, and for the accumulation of savings and earnings thereon. Any such association may operate under such plan or plans as its articles of incorporation or by-laws provide. Every association shall within 30 days from the adoption thereof file with the Commission a copy of its by-laws and every amendment thereof.

Source: § 6-201.10.

Comment: No change.

§ 6.1-136. In stock savings and loan associations the right to vote shall be limited to stockholders and may not be conferred on members. In mutual savings and loan associations the right of members to vote may not be conferred or limited by the articles of incorporation, and each shareholder shall be entitled to one vote for each one hundred dollars or fraction thereof in his account on the books of the association and each borrowing or obligor member shall be entitled to cast one vote. Any member who is a shareholder and a borrower or obligor shall be entitled to cast his votes as a shareholder and as a borrower or obligor. But, in no case shall any member be entitled to cast more than 50 votes. Each member may cast his

vote in person or by proxy. Every proxy shall be in writing and shall, unless otherwise specified in the proxy, remain in full force and effect until revoked in writing.

Source: § 6-201.11.

Comment: No change.

§ 6.1-137. Shares of stock issued by an association shall have a par value of not less than ten dollars each and shall be paid for in full in cash at not less than par upon issuance. An association may not purchase, redeem or otherwise reacquire shares of stock that it has issued and may not accept its shares of stock as security.

Source: § 6-201.12.

Comment: No change.

§ 6.1-138. No association shall agree to pay a fixed amount of dividends upon any shares issued by it.

Dividends upon all shares issued by it may be declared from time to time and shall be at the same dividend rate regardless of the class or kind of shares except that an association may omit dividend payments on share accounts of fifty dollars or less and may omit or may make lower dividend payments on short term savings shares; and except that an association may pay a bonus on all other shares issued by it at least twelve months prior to the date of such bonus, if the holder of such shares has made no withdrawals from his share account during the twelve months prior to the declaration of the bonus.

Source: § 6-201.13.

Comment: No change.

§ 6.1-139. An association may make a service charge of not more than One Dollar ($1.00) in any calendar year against any share account, if at the time any such charge is made:

(1) The association is not required to pay a dividend on such account;

(2) No dividend has been paid on such account for a period of at least thirty-six (36) months next preceding the date on which such charge is made; and

(3) Thirty (30) days prior to making the first service charge, the association has mailed to the shareholder, at his last known address, a notice that service charges will be made in accordance with this section.

Source: New.

Comment: Savings and Loan League recommends this section. This allows a savings and loan to handle small, inactive accounts.

§ 6.1-140. A subscriber for shares shall not be obligated beyond the amount actually paid in on such shares. Shareholders shall not be liable for debts of the association and shares shall not be subject to assessment, but, in case of the insolvency of an association, all creditors of the association other than shareholders shall be paid in full before any distribution is made to shareholders.

Source: § 6-201.14.

Comment: No change.

§ 6.1-141. Shares may be repurchased and cancelled as the by-laws direct. No shares in a mutual association may be repurchased at the request of the association unless, at the time of the repurchase, the assets of the association are greater than its liabilities due its members and other creditors; and no shares in such association may be repurchased at the request of the association in contemplation of dissolution. However, if shares in a mutual association are repurchased at the request of the association in contemplation of dissolution the holder of such shares at the time of the repurchase may demand the right to receive the liquidating dividends in excess of the repurchase price of his shares that he would have received if his shares had not been repurchased.

Source: § 6-201.15.

Comment: No change.

§ 6.1-142. An association may hold, convey and encumber all property, real or personal, acquired in the due course of its business, but may not engage in any mercantile, manufacturing or industrial business, or in the business of buying and selling land or constructing houses or other buildings except as acquired in the due course of business on account of debts due it.

Source: § 6-201.16.

Comment: No change.

§ 6.1-143. To cover the costs of investigating and processing the loan, an association may charge and collect in advance from the borrower a fee not to exceed Fifty Dollars ($50.00) or two and one half per cent (2½%) of the principal amount of the loan, whichever is the greater, on construction loans, and, on all other loans secured by real estate a fee not to exceed Twenty Dollars ($20.00) or one per cent (1%) of the principal amount of the loan, whichever is greater, unless the laws of this state shall otherwise provide for a higher amount, in which case the latter shall be applicable. An association also may require the borrower to pay the reasonable and necessary charges in connection with making the loan, including the cost of title examination, title insurance, recording fees, taxes, insurance, including mortgage guaranty insurance, appraisals, credit reports, surveys, drawing of papers and closing the loan. An association also may charge a reasonable penalty to a borrower for making a late payment on his loan provided the amount of the penalty is specified in the contract between the association and the borrower.

Such charges shall not be considered in determining whether a contract for a loan or forebearance of money or other things is illegal within the meaning of Title 6.1 of the Code.

Source: § 6-201.17.

Comment: Recommended by the Savings and Loan League. Deletes old references to National Housing Act, etc., which seemed to have misled and inserts FHA and VA percentages for clarity. "Mortgage guaranty insurance" has been added to make sure "insurance" includes it.

§ 6.1-144. Any association in connection with making loans secured by deed of trust is empowered to elect a trustee or trustees at such times and for such terms as may be prescribed by its charter or by-laws; and all the rights, titles, duties and obligations of such a trustee relating to loans secured by deed of trust shall pass by operation of law to his successor or successors in office and every right of the association required to be

exercised by or through such trustee or trustees, whether it be the sale of property or some other act or acts, shall be done, enforced and carried out by the trustee or trustees in office at the time when such rights are exercised by or for the association. All sales or conveyances heretofore or hereafter made by a trustee or trustees appointed in the manner designated above shall be as valid and binding as though the sale or sales, conveyance or conveyances had been made by the trustee or trustees named in the deed or deeds of trust. A majority of the trustees in office are empowered to conduct sales and make conveyances in pursuance thereof with the same force and effect as though all the trustees had acted; and when there are two trustees wither one may act.

Source: § 6-201.18.

Comment: No change.

§ 6.1-145. Notwithstanding any restriction in its articles of incorporation limiting the number, kinds and classes of shares that it may issue, every association may issue as many shares of any kind or class as its board of directors, by resolution or by-law, determines to issue.

Source: § 6-201.19.

Comment: No change.

§ 6.1-146. An association is empowered to become a member of the Federal Home Loan Bank and the Federal Savings and Loan Insurance Corporation, and to conform to the provisions, rules and regulations thereof.

Source: § 6-201.20.

Comment: No change.

§ 6.1-147. (Reserved)

§ 6.1-148. An association shall have the right to establish rules governing withdrawals of shares and may from time to time fix the period of notice required to be given for withdrawal.

Source: § 6-201.21.

Comment: No change.

§ 6.1-149. Shares issued in the name of a trustee for a named beneficiary, when the association has no knowledge or notice of the terms of the trust, shall, in the event of the death of the trustee, be the sole property of the beneficiary and may be withdrawn by him, if he is eighteen years of age or over, without the intervention of a guardian.

Source: § 6-201.22.

Comment: No change.

§ 6.1-150. Shares may be issued in the name of a minor, and a receipt executed by him shall be a valid and sufficient release and discharge of the association for the amounts paid to him.

Source: § 6-201.23.

Comment: No change.

§ 6.1-151. When shares are issued in the names of two or more persons, withdrawable by either or by the survivor or survivors, such shares shall be vested in such persons as joint tenants, and the share balances in such account may be paid by the association to any one of such persons or to any one of the survivors, without liability to the others. But if any such person notifies the asssociation in writing not to permit withdrawals by any other such person, the association may refuse, without liability, to honor any withdrawal order pending determination of the rights of the parties. An association paying a survivor in accordance with the provisions of this section shall not thereby become liable for any estate or inheritance taxes. The hypothecation to an association of all or part of such shares signed by any person who is authorized in writing to make withdrawals from the account shall, unless the association has been advised specifically to the contrary, be a valid pledge to the association of those shares and shall not operate to sever the joint ownership of all or any part of such shares.

Source: § 6-201.24.

Comment: No change.

§ 6.1-152. An association may pay any share balance due a deceased person, or any person under disability, to the personal representative, guardian, curator or committee of such person upon a letter of qualification as such personal representative, guardian, curator or committee, issued by any court of competent jurisdiction of this State, and such letter shall be sufficient authority for such payment. Any association making such payment shall no longer be liable for the amount thereof to any person whomsoever. The presentation of a duly certified letter of qualification as personal representative, guardian, curator or committee shall be conclusive proof of the jurisdiction of the court issuing the same.

Source: § 6-201.25.

Comment: No change.

§ 6.1-153. When the share balance of a deceased person upon whose estate there has been no qualification does not exceed one thousand dollars, it shall be lawful for the association, after one hundred twenty days from the death of such person, to pay such balance to his next of kin, whose receipt therefor shall be a full discharge and acquittance of the association as to all persons on account of such balance.

Source: § 6-201.26.

Comment: No change.

§ 6.1-154. Shares may be issued to a shareholder payable on his death to a named survivor or survivors. The shareholder may withdraw any or all of such shares during his lifetime, and after his death the association may pay the share balance in such account to the named survivor or survivors.

Source: § 6-201.26:1.

Comment: No change.

§ 6.1-155. Shares issued by savings and loan associations shall not be treated as shares of capital stock for the purpose of computing the franchise tax imposed by § 58.456.

Source: 6-201.27.

Comment: No change.

§ 6.1-156. Every association shall build a reserve (viz. net worth) of at least 10% of its total resources; and for the purpose of building this reserve it shall set aside amounts equal to at least 5%, of its annual net income during every year that the reserve is less than 10% of its total resources, provided, however, that whenever the reserve of any association at the end of its fiscal year is less than 5% of its share accounts at the beginning of such fiscal year such association shall set aside at such time and at each closing date thereafter an amount at least equal to 25% of its net income or such part of such 25% as may then be sufficient to cause the amount of such reserve account to equal at least 5% of its share accounts at the beginning of said fiscal year. In the case of stock savings and loan associations, the capital stock account, to the extent that the capital has not been impaired, shall be treated as part of the reserve. Provided further that the Commission may temporarily reduce the reserve requirements for an association if it finds such reduction to be in the best interest of the association and its members. An association may retain its undivided profits in such amounts as may from time to time be fixed by resolution of its board of directors.

Source: § 6-201.28.

Comment: No change.

§ 6.1-157. The assets of an association may be invested in the following ways and in such ways only:

(a) In real estate and in equipment necessary for the conduct of its business. Such association may invest in an office building or buildings and appurtenances for the transaction of such association's business, or for the transaction of such business and for rental, provided that no such investment may be made without the prior approval of the Commission if the total amount of the investment exceeds the aggregate amount of the association's general reserve and surplus. In the case of stock associations, the capital stock account, to the extent that the capital has not been impaired, shall be treated as a part of general reserve.

(b) In obligations of or obligations guaranteed as to principal and interest by the United States or any agency thereof or of the State of Virginia or any of its political subdivisions.

(c) In stock or obligations of Federal Home Loan Banks; in stock or obligations of the Federal Savings and Loan Insurance Corporation; in obligations of the Federal National Mortgage Association through making non-refundable contributions; in certificates of deposit, time deposits, savings accounts, or demand deposits of banks insured by the Federal Deposit Insurance Corporation; and, to the extent of not more than fifteen per cent of its total assets, in shares of other State associations or Federal associa-

(c-1) In the purchase of stock or membership in industrial development corporations and in loans to such corporations to the extent provided by law at any time that the general reserves, surplus and undivided profits of the association aggregate a sum in excess of five per centum of its withdrawable accounts.

(c-2) In the purchase of stock and other securities or obligations of a service corporation in an amount not to exceed one per cent of its assets; provided that it may not invest in any such service corporation unless it uses or intends to use the services of such service corporation. It may not invest in more than one such service corporation without the consent of the State Corporation Commission. For purposes of this section, a service

corporation is defined as one engaged primarily in rendering services, other than the renting of the association's premises or the furnishing of furniture or fixtures, to two or more associations. Stock in a Federal Home Loan Bank shall not be considered stock of a service corporation within the meaning of this section.

(d) In loans fully secured by shares of the association.

(e) In loans secured by first liens on improved real estate. No such loans shall exceed Forty Thousand Dollars ($40,000.00) on each home or combination of home and business property securing the same. No such loan shall exceed ninety per cent (90%) of the value of the real estate as appraised by a competent appraiser up to Thirty-five Thousand Dollars ($35,000.00) and eighty per cent (80%) of such value on the amount in excess of Thirty-five Thousand Dollars ($35,000.00).

Provided that loans insured or guaranteed by a Federal agency may be made on such terms as are acceptable to the insuring or guaranteeing agency. At least sixty per cent (60%) of the assets shall be invested in such loans, unless, because of exceptional conditions in the real estate market, the Commission permits an association to deviate from this requirement.

Every such loan shall provide that the borrower shall make regular periodic payments of principal and interest, in equal or unequal amounts, the first payment being due not later than twelve (12) months from the date of the first advance in the case of a loan made for the purpose of financing the construction of a home or a combination home and business structure and sixty (60) days from the date of the loan in the case of other loans, until the mortgage indebtedness and the disbursements, if any, made by the association for the payment of taxes, insurance premiums, and other items, together with interest thereon, have been fully paid; provided, however, that no subsequent periodic payment of principal and interest shall be greater than any previous periodic payment of principal and interest, and that no such loan shall be for a longer time than thirty (30) years. Loans insured or guaranteed by a Federal agency may be repayable upon such terms as are acceptable to such agency. The association may compute, charge, and collect interest on monthly balances by computing the same on the preceding monthly balance and adding such interest to that balance plus advances for taxes, insurance and other lawful charges accruing since the preceding balance, less credits for payments made by the borrower.

(f) Up to twenty per cent (20%) of the assets may be invested in secured or unsecured loans for maintenance, repair, modernization, improvement and equipment of improved real estate or other improved real estate. Such loans shall be payable monthly and shall not be for a term longer than eight (8) years and shall not exceed Five Thousand Dollars ($5,000.00).

An association may charge and collect in advance the legal rate of interest upon the entire amount of such loan.

(g) Up to twenty per cent (20%) of the assets may be invested in other loans secured by a first lien on improved real estate or other improved real estate. No such loans shall be for a term longer than thirty (30) years not in excess of seventy-five per cent (75%) of the value of the real estate as appraised by a competent appraiser.

(h) Up to five per cent (5%) of the assets may be invested in other loans secured by a first lien on unimproved real estate.

(i) Up to five per cent (5%) of the assets may be invested in loans, obligations, and advances of credit made for the payment of expenses of college or university education. Such loans may be secured, partly secured, or unsecured, and the association may require a co-maker or co-makers, insurance, guarantee under a governmental student loan guarantee plan, or other protection against contingencies. The borrower shall certify to the association that the proceeds of the loan are to be used by a full time student solely for the payment of expenses of college or university education. For the purpose of this section, the term "College or University education" means education at an institution which provides an educational program for which it awards a Bachelor's Degree, or provides not less than a two year program which is acceptable for full credit toward such a degree.

Source: § 6-201.29 and STATE CORPORATION COMMISSION ORDER dated April 6, 1965, in case No. 17314.

Comment: Change conforms identically to that of above mentioned order which brought investment limits into line with Federal Savings and Loans.

Note: Subsection (e) line 7, the League recommends "*and* eighty per cent" instead of "*or* eighty per cent" for clarity. Another change is the addition of subsection C-2 which provides for service corporations. This change gives State savings and loans a power presently had by Federals.

§ 6.1-158. In addition to the investment powers specifically granted to associations by the provisions of this Chapter, the Commission may by appropriate regulation amend the investment powers of State associations so as to allow such associations competitive investment power with any other association as defined in § 6.1-129 engaged in a similar business in this State, with respect to investment permitted under subsections b, c, c-1, c-2, e, f, g and i of § 6.1-157, nor shall the twenty per cent limitation of said subsection g be increased. Such authority to the Commission shall not be construed in any manner to confer authority to restrict or limit or diminish any right or powers specifically given associations by the Code of Virginia. The Commission shall adopt such regulations only after public hearing thereon, notice of which shall be sent to every savings and loan association authorized to conduct its business in Virginia. Such regulations shall be effective upon their adoption, and shall continue in effect until ninety days following the adjournment sine die of the next regular session of the General Assembly of Virginia following their adoption, after which new regulations may be adopted pursuant to the provisions of this section.

Source: § 6-201.29.1.

Comment: Only change is in reference to preceding sections. The scope of this section is enlarged by adding new subsections under § 6.1-157.

§ 6.1-159. (Reserved)

§ 6.1-160. Any note evidencing an installment loan made by an association may provide that the entire unpaid balance thereof, at the option of the holder, shall become due and payable upon default in payment of any installment without impairing the negotiability of the note, if otherwise negotiable.

Source: § 6-201.30.

Comment: No change.

§ 6.1-161. A borrower may anticipate the payment of any loan secured by a first mortgage or deed of trust on real estate on any installment due date; but in case of prepayment before maturity, the borrower shall pay such an amount for the privilege as has been agreed upon, but in no event in excess of a sum equal to two per centum of the amount of such prepayment.

Source: § 6-201.31.

Comment: No change.

§ 6.1-162. (a) State Associations and Federal Associations, as defined in § 6.1-129 (6) and (7), may purchase from each other or participate with each other or with banks insured by the Federal Deposit Insurance Corporation in loans on real estate. An association may participate in the making of or purchase a participation in a loan on real estate made by a savings and loan association that is not authorized to do business in Virginia, not to exceed fifty per cent of the amount of the loan, irrespective of where the security for such loan is located, provided that the aggregate amount of such interest in all such loans shall not exceed twenty per cent of the association's assets. An association may sell a participation in a loan made or to be made by it on real estate to a savings and loan association that is not authorized to do business in Virginia, provided that the loan is collected and serviced by the Virginia association. An association that is not authorized to do business in Virginia shall not be deemed to be doing business in Virginia shall not be deemed to be doing business in Virginia solely because of such participation.

(b) An association may purchase any loan it may legally make.

(c) An association shall not engage in the mortgage brokerage business; but an association may sell any loan made by it provided that it is sold without recourse against the association.

Source: § 6-201.32.

Comment: No change.

§ 6.1-163. An association may not make a loan to a director, officer or employee of the association or to any attorney regularly serving the association in his capacity as such, or to any partnership in which any such director, officer, employee or attorney has any interest, nor to a corporation in which any such person is a stockholder except that a loan may be made to a corporation in which no such person owns more than 15% of the total outstanding stock and in which the stock owned by all such persons does not exceed 25% of the total outstanding stock. Provided, that nothing herein contained shall prohibit an association from making a loan on the security of the shares of such persons in the association or on the security of a first lien on the home or combination of home and business property owned and occupied by such director, officer, employee or attorney.

Source: § 6-201.33.

Comment: No change.

§ 6.1-164. The affairs of every association shall be managed by a Board of Directors of not less than five (5) persons, a majority of whom shall be residents of this state. Every director shall be the owner and have in his personal possession or control, share or shares of stock in the association of which he is a director and for which has been paid into the treasury of the association not less than Five Hundred Dollars ($500.00), and

such shares or share of stock must be unpledged (except as required to be pledged to a Federal Home Loan Bank) and unencumbered at the time of his becoming a director and during the whole of his term as such. The office of any director violating the provisions of this section shall immediately become vacant. In the case of shares a director shall own such share either in his sole name or jointly with his spouse. In the case of shares of stock a director shall own such shares of stock in his sole name.

Source: § 6-201.34.

Comment: The section allows a director to hold his required shares jointly with his spouse but stock must be in his sole name.

§ 6.1-165. The board of directors of every association shall meet at least once in each month. A majority of the whole board shall be necessary for the lawful transaction of business, except that the members or stockholders, by by-law, may fix any number not less than five as a quorum; provided however, that associations with total assets of less than $500,000 may meet once in every three months unless the Commission for good cause requires them to meet monthly.

Source: § 6-201.35.

Comment: No change.

§ 6.1-166. The directors of each association shall require a bond with corporate surety from each of the active officers and employees of the association as an indemnity for any loss the association may sustain as a result of his fraud, dishonesty, theft or embezzlement; provided that in lieu of individual bonds a blanket bond with corporate surety covering all active officers and employees of the association may, with the approval of the board of directors, be obtained. The Commission shall annually examine all such bonds and pass on their sufficiency and either the board of directors or the Commission may require new or additional bonds at any time. The corporate surety shall have a license issued by the Commission.

Source: § 6-201.36.

Comment: No change.

§ 6.1-167. The directors of every such association shall, at least once in each calendar year, cause an examination to be made of the association, and review the internal controls of the association. A statement of the results of such examination and review shall be recorded with the proceedings of the board.

Source: § 6-201.37.

Comment: No change.

§ 6.1-168. A mutual savings and loan association shall give notice of its meetings of members as required by § 13.1-124, and, in addition, a copy of the notice shall be posted in a conspicuous place in each office of the association during the fourteen days preceding the date of the meeting.

Source: § 6-201.38.

Comment: No change.

§ 6.1-169. (a) Every member shall have the right to inspect such books and records of an association as pertain to his loan or savings account. Otherwise, the right of inspection and examination of the books and

records shall be limited to the Commission or its duly authorized representatives, to persons duly authorized to act for the association, and to any federal instrumentality duly authorized to make such inspection. The accounts and loans of members shall be kept confidential by the association, its directors, officers and employees and by the Commission and its agents and representatives. No other person shall have access to the books and records of the association or shall be given a partial or complete list of members except upon express authority of the board of directors.

(b) If any member desires to communicate with the other members of the association with reference to any vote or question to come before a meeting of members, the association shall promptly furnish, upon request, a statement of the approximate number of members of the association and an estimate of the cost of preparing and mailing such communication. The requesting member may then submit the communication to the Commission which, if it finds that the communication should be considered by the members, shall direct the association to forthwith prepare and mail the same to the members, upon the requesting member's or members' payment of the expenses of preparation and mailing.

Source: § 6-201.39.

Comment: No change.

§ 6.1-170. Before any association may begin business, it shall obtain from the Commission a certificate of authority to do so; and prior to the issuance of such certificate, the Commission shall ascertain that (1) all applicable provisions of law have been complied with; (2) shares to the value of at least $50,000 have been purchased by members who have promised in writing not to withdraw any shares for at least one year, or shares of stock to the value of at least $50,000 have been purchased by stockholders, and the purchase price has been paid into the treasury of the association in cash; (3) regulations governing directors of the association have been complied with; (4) there is public need for savings and loan facilities or additional such facilities in the community where the savings and loan association is proposed to be located; (5) the officers and directors of the proposed association are of (i) moral fitness, (ii) financial responsibility, and (iii) business ability.

Any interested person may appeal to the Supreme Court of Appeals from any order of the Commission granting or denying such certificate of authority. If a certificate is finally denied, the association shall return to the purchasers the amounts they have paid for shares or shares of stock, less such sums as have been necessarily and prudently expended in seeking to obtain a certificate; and the directors individually, jointly and severally, shall be liable for any failure of the association so to do. This liability may be enforced by a suit in equity instituted by one or more of the purchasers on behalf of all against the association and one or more of its directors.

Source: § 6-201.40.

Comment: No change.

§ 6.1-171. The main office of a savings and loan association is the office at which it first commences to do business. No savings and loan association may establish a branch office nor may it engage in business in more than one place, except that the Commission, when satisfied that the public convenience and necessity will be served, may authorize an association to establish a branch or branches.

The Commission may authorize the removal of a main or branch office to another location when it is satisfied that the new location will serve the public convenience and necessity better than the old location.

Source: § 6-201.41.

Comment: No change.

§ 6.1-172. Two or more mutual associations or two or more stock associations may consolidate or merge, subject to the approval of the Commission, when the Commission finds that the merger or consolidation will promote the best interests of the members and the convenience of the public. The order approving the consolidation or merger shall specify which office is to be the main office and which office or offices may be operated as branch offices.

Source: § 6-201.42.

Comment: No change.

§ 6.1-173. A mutual State association may convert into a federal association as follows:

(1) At any meeting of the members called and held in accordance with the Virginia Nonstock Corporation Act to consider such action, the members, by an affirmative vote of those holding and voting two thirds of the votes present in person or by proxy, may resolve to concert the association into a federal association;

(2) A copy of the minutes of the meeting duly certified by the president or vice-president and the secretary or assistant secretary of the State association shall be transmitted to the Commission;

(3) Thereafter, the State association shall take such action as is ciation; and the association shall thereupon cease to be a State association.

(4) It shall file with the Commission a certified copy of the charter issued to it by the Federal Home Loan Bank Board, or a certificate of the Board showing the organization of the State association as a federal association; and the association shall thereupon cease to be a State association.

(5) No State association shall convert into a federal association until it has been in operation as a State association for a period of at least five years.

Source: § 6-201.43.

Comment: No change.

§ 6.1-174. When such conversion becomes effective, the State association shall cease to be a Virginia corporation and all its property shall by operation of law and without any further act or deed continue to be vested in it under its new name as a federal association and under its federal charter; and the federal association shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by it as a State association. Such federal association, at the time of the taking effect of the conversion, shall become and continue responsible for all of the obligations of the State association including taxes and other liabilities created by law or incurred by it before becoming a federal association to the same extent as though the conversion had not taken place.

Source: § 6-201.44.

Comment: No change.

§ 6.1-175. A federal association doing business in this State may become a State association as follows:

(1) It shall take such action as will effect its dissolution as a federal association on a specified date;

(2) Its directors, before its dissolution becomes effective, shall organize a corporation under this chapter and the Virginia Nonstock Corporation Act; and

(3) The new corporation shall apply for a certificate of authority to do business under § 6.1-170.

Source: § 6-201.45.

Comment: No change.

§ 6.1-176. The association shall transact no business as a State association other than that relating to its organization until its certificate of authority to do business has been granted and its dissolution as a federal association has become effective.

Source: § 6-201.46.

Comment: No change.

§ 6.1-177. As soon as the certificate of authority to do business has been granted and its dissolution as a federal association has become effective, all the property of the federal association shall by operation of law and without any further act or deed, be vested in and become the property of the State association, which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held or enjoyed by the federal association; and the State association shall become and continue responsible for all the obligations, duties and agreements of the federal association including taxes and other liabilities created by law or incurred by it before becoming a State association to the same extent as though the conversion had not taken place.

Source: § 6-201.47.

Comment: No change.

§ 6.1-178. No person except corporations chartered and conducting the savings and loan business under the authority of the laws of this State, or corporations hereafter incorporated under the laws of this State for such purposes, shall engage in the savings and loan association business in this State; but nothing in this chapter shall prevent any person from lending money on real estate or personal security or collateral, or from guaranteeing the payment of bonds, notes, bills and other obligations, or from purchasing or selling stocks and bonds. No savings and loan association shall be incorporated in this State with authority to conduct its business outside of this State, nor shall any savings and loan association incorporated under the laws of any other state be authorized to do business in this State.

Source: § 6-201.48.

Comment: No change.

§ 6.1-179. (a) No person not engaged in the business of a savings and loan association in this State under the provisions of this chapter shall use any sign having thereon any assumed or corporate name containing the

words "savings and loan," "building and loan," or other words indicating that its office is the office of a savings and loan association; nor shall any such person use or circulate any written or printed material having thereon any assumed or corporate name or word or words indicating that the business of such person is that of a savings and loan association.

The provisions of this section as to the use of a corporate name shall not apply to any industrial loan association which was authorized to do business in this State on January one, nineteen hundred sixty, and which on that date had the words "savings and loan" or "building and loan" as a part of its corporate name.

(b) The use of any of these terms in the name of any other corporation or in connection with any other business is not prohibited when additional words show clearly and definitely that the corporation is not, and that the business is not that of, a savings and loan association.

(c) Any person violating the provisions of this section, either individually or as a partner or as a director or officer of a corporation, shall be guilty of a misdemeanor.

Source: § 6-201.49.

Comment: No change.

§ 6.1-180. The Commission is authorized and directed to examine the accounts, books and papers of any person who it has reason to believe is doing the business of a savings and loan association without legal authority so to do, and the refusal to submit such accounts, books and papers shall be a misdemeanor.

Source: § 6-201.50.

Comment: No change.

§ 6.1-181. Every person who does the business of a savings and loan association without authority of law, and every officer and agent who knowingly participates therein, shall be guilty of a misdemeanor.

Source: § 6-201.51.

Comment: No change.

§ 6.1-182. Whoever, directly or indirectly, wilfully and knowingly makes or transmits to another, circulates, or counsels, aids, procures or induces another to make, transmit or circulate any false or untrue statement, rumor or suggestion derogatory to the financial condition, solvency or financial standing of any savings and loan association doing business in this State, or who knowingly counsels, aids, procures or induces another to make, transmit or circulate any false or untrue statement, rumor or suggestion derogatory to the financial condition, or of derogatory character with respect to the earnings or management of the business, of any such association, shall be guilty of a misdemeanor.

Source: § 6-201.52.

Comment: No change.

§ 6.1-183. No association shall, without the written approval of the Commission, make any representation, oral or written, that any of its shares are insured or guaranteed unless such shares are insured or guaran-

teed by an instrumentality of this State or of the United States. No association shall publish any misleading advertisement.

Source: § 6-201.53.

Comment: No change.

§ 6.1-184. The Commission shall have supervision over all savings and loan associations incorporated under the laws of this State and the Commission shall, not less than once in each year and at such other times as in its discretion it deems necessary, without previous notice, examine each such association.

A copy of the report of all examinations shall be furnished to the association and such report shall be presented by the president to the directors at their next meeting.

Source: § 6-201.54.

Comment: No change.

§ 6.1-185. For the purpose of defraying the expenses of such supervision and examination the Commission shall, on the first day of July of each year, assess against every such association fees as follows: A minimum fee of seventy-five dollars ($75.00) which shall cover the first fifty thousand dollars of assets or less, to which shall be added in the case of each association, according to its total assets, as shown by its statement of financial condition made to the Commission as of the next preceding December thirty-one, additional fees as follows: For the amount by which its total assets exceed fifty thousand dollars and do not exceed one million dollars, two dollars fifty cents on each ten thousand dollars or fraction thereof; for the amount by which its total assets exceed one million dollars and do not exceed three million dollars, one dollar on each ten thousand dollars or fraction thereof; and for all assets over three million dollars, one dollar on each twenty thousand dollars or fraction thereof. Every association having a branch or branches shall be assessed twenty-five dollars per year for each branch.

All fees so assessed shall be paid into the State treasury on or before the thirty-first day of July following. The Commission shall mail the assessment to each association on or before the tenth day of July of each year, and give notice thereof to the Comptroller, and it shall be the duty of the Comptroller to furnish the Commission with the names of the associations which fail to pay the assessment on or before July thirty-first.

Before investigating an application for a certificate of authority pursuant to § 6.1-170 the Commission shall charge a fee of two hundred and fifty dollars.

Before investigating an application for authority to establish a branch pursuant to § 6.1-171 the Commission shall charge a fee of one hundred dollars. But no fee shall be charged for investigating an application for authority to change the location of an existing main office or branch office.

Source: § 6-201.55.

Comment: No change.

§ 6.1-186. The officers, directors and employees of every association shall, upon the demand of the person designated to make any examination under the provisions of this chapter, give to such examiner full access to all money, books, papers, notes, bills and other evidences of debt of the

association and shall disclose fully and truly all of its indebtedness and liability, and shall furnish the Commission with all information which it deems necessary to a full investigation into the affairs of the association.

The Commission is empowered to examine under oath any and all of the directors, officers, clerks, and employees of the association touching any matter or thing connected with the operation of the association. Any examiner is authorized to administer oaths to the persons examined.

Source: § 6-201.56.

Comment: No change.

§ 6.1-187. Every association shall furnish the Commission within thirty days after the close of its fiscal year a statement of its financial condition on forms supplied by the Commission; and, in addition, shall either mail to each of its members or shall publish in some newspaper having general circulation in the county or city where its business is carried on a statement in condensed form of its financial condition. Such statements shall be made and published in accordance with forms prescribed by the Commission, certified under oath by the president or treasurer of the association, and attested by at least three of its directors. Insofar as practicable, the reports requested by this section shall conform to those required of associations insured by any instrumentality of the federal government.

Every association shall make such other reports as the Commission may from time to time require.

Source: § 6-201.57.

Comment: No change.

§ 6.1-188. The Commission may require an association to have an audit made of its books, records and methods of operation, whenever it appears to the Commission that the system of internal controls is not adequate or that the association is engaging in dangerously unsound practices or that the financial condition of the association makes it necessary.

Source: § 6-201.58.

Comment: No change.

§ 6.1-189. The Commission shall prepare and make available to each member of the board of directors of every association a statement describing generally their duties and responsibilities. The statement shall include a brief outline of the examining procedure employed by the Commission, an explanation of the distinction between an examination and an audit, and any information which the Commission deems necessary to apprise the directors of the necessity for an adequate system of internal controls.

Source: § 6-201.59.

Comment: No change.

§ 6.1-190. If the Commission finds: (1) That the laws of this State are not being fully observed by an association, or (2) that the association has failed to comply with the lawful orders of the Commission, or (3) that the reserve of the association is insufficient for the protection of shareholders, the Commission shall give immediate notice thereof to the officers and directors of the association; and, if necessary to conserve the assets of the association and protect the interests of its shareholders, the Commission may, after reasonable notice to the association and opportunity for it

to be heard: (1) Close the association for a period not exceeding sixty days, which period may be further extended for a like period or periods as the Commission deems necessary; (2) require the officers and directors of the association to liquidate, insofar as is required, its outstanding loans; (3) require that all lawful orders of the Commission be complied with; (4) require the association to make reports daily or at such other times as it may require as to the results achieved in carrying out its orders; or (5) if the Commission determines that a receiver should be appointed, it may close the doors of the association and apply to the proper court for the appointment of a receiver to take charge of its business and assets and to wind up its affairs. Proceedings for the appointment of a receiver of an association shall not be entertained by any court except on the application of the Commission.

Source: § 6-201.60.

Comment: No change.

§ 6.1-191. The Commission may impose, enter judgment for, and enforce by its process, a fine of not more than one thousand dollars against any association or against any of its directors, officers or employees for violating any lawful order of the Commission; and may remove from office any director or officer who a second time violates any such order but in all cases the defendant shall have an opportunity to be heard and to introduce evidence, and the right to appeal as in other cases.

Source: § 6-201.61.

Comment: No change.

§ 6.1-192. Any officer or agent of such an association who knowingly makes a false statement of the condition of the association to the Commission shall, upon conviction thereof, be fined not less than one hundred nor more than one thousand dollars, or be confined in the penitentiary not less than one nor more than ten years, or both.

Source: § 6-201.62.

Comment: No change.

§ 6.1-193. An association may remain closed on any one or more or all Saturdays as the association by resolution of its directors may from time to time determine. Any Saturday on which an association shall remain closed shall, as to such association, constitute a legal holiday, and any act authorized, required or permitted to be performed at, by or with respect to any such association on a Saturday on which the office of the association is so closed, may be performed on the next succeeding business day and no liability or loss of rights of any kind shall result from such delay.

Source: § 6-201.63.

Comment: No change.

§ 6.1-194. (Reversed)

§ 6.1-195. (Reserved)

CHAPTER 4

CREDIT UNIONS

§ 6.1-196. Any eight persons, residents of this State, may by executing and filing the articles provided for in Article 3 (§§ 13.1-48 et seq.) of Chapter 1 of Title 13.1 except as otherwise herein provided, establish a corporation for the purpose of accumulating and investing the savings of its members, making loans to members for provident purposes and generally conducting a credit union as hereinafter provided in this Chapter. Every corporation organized under this Chapter shall include in the corporate name the two words "credit union" as well as some other distinguishing word or words. But no such corporation need comply with the provisions of subparagraph (a) of § 13.1-6.

Source: §§ 6-202 and 204.

Comment: These two sections have been combined. There have been no changes in substance.

§ 6.1-197. Immediately after the granting of the certificate of incorporation of a credit union by the State Corporation Commission, the incorporators or members shall adopt a set of by-laws in conformance with this chapter, and shall file a copy of the same with the Commission. When the by-laws are filed with and approved by the Commission, the minimum amount of capital stock subscribed for, and all requirements of law as to organization are complied with, the Commission shall thereupon issue a certificate authorizing the credit union to commence business. Provided, however, that the Commission shall not issue a certificate of authority to do business to a credit union when it has reason to believe that the corporation is formed for any other than legitimate credit union business, or that the moral fitness, financial responsibility, or business qualifications of the persons named as officers and directors are not such as to command the confidence of the community in which the credit union proposes to operate.

Source: § 6-205.

Comment: No change.

§ 6.1-198. The by-laws of every credit union shall specify:

(1) The date of the annual meeting, which shall be in January, February or March, of each calendar year, and the requirements as to notice and manner of conduct of such meeting;

(2) The number of directors, which shall be not less than five all of whom must be shareholders and members of the corporation, the powers and duties of the directors, the maximum compensation and the duties of all officers;

(3) The conditions and qualifications for membership, which shall limit the membership to persons having a specified common bond of interest, members of their families, associations of such persons, and employees of the credit union;

(4) The number of members of the credit committee and of the supervisory committee, with their respective powers and duties;

(5) The conditions upon which shares may be issued, transferred and withdrawn;

(6) The charges, if any, to be made for failure to meet obligations punctually;

(7) The conditions upon which deposits may be received and withdrawn, and whether the corporation shall have the power to borrow;

(8) The manner in which the funds of the corporation may be invested;

The conditions upon which loans may be made and repaid;

(10) The method of receipting for money paid in on account of shares, deposits or loans;

(11) The manner in which the reserve fund shall be accumulated; and

(12) The manner in which dividends shall be determined and paid out.

Any by-law may be amended by the Commission by order entered on its order book and certified to the credit union. Before entering any such order the Commission shall notify the credit union of the proposed amendment and afford it an opportunity to be heard thereon.

Source: § 6-207.

Comment: No change.

§ 6.1-199. The by-laws when so approved and filed shall be the by-laws of the corporation and no amendments shall be operative unless the same shall conform to the provisions of this chapter and be approved by the Commission.

Source: § 6-208.

Comment: No change.

§ 6.1-200. The credit union may receive the savings of its members in payment for shares or on deposit and may loan to its members or may undertake such other activities relating to the purposes of the corporation as its charter or by-laws may authorize, not inconsistent with the provisions of this chapter.

Source: § 6-209.

Comment: No change.

§ 6.1-201. If the by-laws so provide, a credit union shall have the power to rediscount, as hereinafter provided, or to borrow money from any source in addition to receiving deposits as indicated in § 6.1-214, but the aggregate amount of rediscounts and borrowings shall at no time exceed the sum total of the capital, surplus and reserve funds of such borrowing credit union.

Source: § 6-210.

Comment: No change.

§ 6.1-202. Notes, drafts and bills of exchange, executed for the purpose of this chapter, having a maturity not to exceed six months, and endorsed by a national bank or a State bank or trust company, may be rediscounted in the open market by a credit union. The total of such paper outstanding shall at no time exceed the paid-in capital and surplus; pro-

vided, however, that the Commission, in its discretion, may extend this limit temporarily; and provided further, that the limitation here fixed shall not be considered money borrowed under § 6.1-201.

Source: § 6-211.

Comment: No change.

§ 6.1-203. A credit union may change its place of business on written notice to and approval of the Commission.

Source: § 6-212.

Comment: No change.

§ 6.1-204. The membership of the corporation shall consist of the incorporators and such eligible persons, societies, associations, partnerships and corporations, subject to approval by the board, who have subscribed for one or more shares and have paid for the same in whole or in part, together with the entrance fee as provided in the by-laws, and have complied with such other requirements as the certificate of organization and by-laws may contain.

Source: § 6-213.

Comment: No change.

§ 6.1-205. A member may be expelled by a two-thirds vote of the membership present at a special meeting called to consider the matter, but only after a hearing. A member may withdraw from a credit union as hereinafter provided, by filing a written notice of his intention so to do.

All amounts paid in on shares of an expelled or withdrawing member, with any dividends credited to his shares to the date of expulsion or withdrawal, shall be paid to such member in the order of expulsion or withdrawal and only as funds therefor become available, after deducting any amounts due to the corporation by such member. All deposits of an expelled or withdrawing member, with any interest accrued, shall be paid to such member subject to sixty days' notice and after deducting any amounts due the corporation by such member. Such member when withdrawing shares or deposits shall have no other or further right in such credit union or to any of its benefits, but such expulsion or withdrawal shall not operate to relieve such member from any remaining liability to the corporation.

Source: § 6-217.

Comment: No change.

§ 6.1-206. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. The par value of the shares shall be five dollars per share and shall be paid for in money only. Shares may be subscribed for and paid in such manner as the by-laws shall prescribe, not inconsistent with the provisions of this chapter. A credit union shall have a lien on the shares of any member and upon any dividends payable thereon for, and to the extent of, any loan made to him and of any dues and fines payable by him. A credit union may, upon the resignation or expulsion of a member, cancel the shares of such member and apply the withdrawal value of such shares towards the liquidation of such member's indebtedness.

Shares may be issued or transferred only to members of the credit union or to other credit unions. Shares that are not fully paid may not be

transferred. The fee for transferring one or more shares at one time from one transferor to one transferee shall not exceed twenty-five cents.

Source: § 6-214.

Comment: No change.

§ 6.1-207. Shares of a credit union may be issued and deposits received in the name of a minor, and such shares and deposits may be withdrawn by such minor, and in such case payments made on such withdrawals shall be valid. If shares are held or deposits made in trust the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such beneficiary. Such shares and deposits may, upon the death of the trustee, be withdrawn by the person for whom the shares were held or for whom such deposits were made.

Source: § 6-215.

Comment: No change.

§ 6.1-208. For failure by any member of a credit union to meet his payments on shares when due, such charges and other penalties may be imposed upon the delinquent member as the by-laws provide. Such charges shall not exceed one and one-half per centum per month or a fraction thereof on amounts due, except that a minimum charge of five cents per month or fraction thereof may be imposed.

Source: § 6-216.

Comment: No change.

§ 6.1-209. The fiscal year of every credit union shall end at the close of business on the thirty-first day of December. The annual meeting of the corporation shall be held as provided in the by-laws of the corporation. Special meetings may be held by order of the directors or of the supervisory committee, and shall be held upon request in writing of ten per centum of the members. Notice of all meetings of the corporation shall be given in the manner prescribed in the by-laws. At all meetings of members a member shall have but one vote, irrespective of the number of shares held. Except as hereinafter provided, no shareholder may vote by proxy, but a society, association, co-partnership or corporation, having membership in the credit union may be represented by one person authorized by such society, association, co-partnership or corporation to so represent it; provided, however, that at any meeting called for the purpose of amending the charter or certificate of incorporation any shareholder may vote by proxy for or against such amendment, but for no other purpose; and the affirmative votes of two-thirds of the members of the credit union shall be necessary and sufficient to approve the amendment irrespective of the number of shares held by each. At any meeting the members may decide upon any question of interest to the corporation and overrule the board of directors, and by a three-fourths vote of those present and represented, provided the notice of the meeting shall have specified the question to be considered, may vote to amend the by-laws.

Source: § 6-218.

Comment: No change.

§ 6.1-210. At the annual meeting of such credit union the members shall elect a board of directors of not less than five members, a credit

committee and a supervisory committee of not less than three members each. However, in the discretion of the members the board of directors as such may also be the credit committee. Except as herein specified, no member of the board of directors shall be a member of either of such committees, nor shall one person be a member of more than one of such committees, and all members of committees and all directors, as well as all officers whom they may elect, shall be sworn, and shall hold their several offices for such term as may be determined by the by-laws.

The oath required of each director, officer and member of committee, shall be the oath of the individual taking the same that he will, as far as the duty devolves upon him, diligently and honestly administer the affairs of such corporation and will not knowingly violate or willingly permit to be violated any of the provisions of law applicable to such corporation, and that he is the owner in good faith and in his own right on the books of the corporation of at least one share therein. Such oath shall be subscribed by the individual making it and certified by the officer before whom it is taken and shall immediately be transmitted to the Commission and filed and preserved in its office.

§ 6.1-211. At their first meeting in the fiscal year, the board of directors of such credit union shall elect from their number a president, vice-president, secretary and treasurer. The offices of secretary and treasurer may, if the by-laws so provide, be held by one person; and other officers may be elected in the discretion of the directors.

The board of directors shall have the general management of the affairs, funds and records of the corporation, and shall meet as often as may be necessary. Unless the by-laws shall specifically reserve all or any of these duties to the members it shall be the special duty of the directors: (1) To act upon all applications for membership and the expulsion of members; (2) to fix the amount of the surety bond which shall be required of each officer having the custody of funds, the surety on the bond to be some solvent surety company licensed to do business in Virginia and the amount thereof to be approved by the Commission; (3) to determine from time to time the rate of interest which shall be allowed on deposits and charged on loans; (4) to fix the maximum number of shares which may be held by, and the maximum amount which may be lent to, any one member; (5) to declare dividends; (6) to recommend amendments to the by-laws; (7) to fill vacancies in the board of directors or in the credit committee until the election and qualification of successors; (8) to have charge of the investment of the funds of the corporation; and (9) to perform such other duties as the members may from time to time authorize.

No member of the board of directors shall receive any compensation for his services as a member of such board. The members of the credit or supervisory committee of any corporation established hereunder having assets in excess of fifty thousand dollars may receive for their services, as such members, such compensation as the board of directors may determine.

Source: § 6-220.

Comment: No change.

§ 6.1-212. The credit committee of such credit union shall approve every loan or advance made by the corporation to members. Every application for a loan shall be made in writing on a form prepared by the board

of directors and shall state the purpose for which the loan is desired and the security offered. No loan shall be made unless it receives the unanimous approval of those members of the credit committee who are present when it is considered, which number shall constitute at least a majority of the members of the committee, nor if any member of the committee shall disapprove thereof; but the applicant for a loan may appeal from the decision of the credit committee to the board of directors. The credit committee shall meet as often as may be required. Due notice of each such meeting shall be given to each member of the committee.

Source: § 6-221.

Comment: No change.

§ 6.1-213. The supervisory committee of such credit union shall inspect the securities, cash and accounts of the corporation. At any time the supervisory committee, by unanimous vote, may, if it deems such action necessary to the proper conduct of the credit union, suspend any officer or director or any member of the credit committee and shall, if any such officer, director or member of the committee be so suspended, call the members together to act on such suspension as hereinafter provided. The members at such meeting may sustain such suspension and remove such officer permanently or may reinstate such officer. By a majority vote they may call a meeting of the shareholders to consider any violation of this chapter or of the by-laws, or any practice of the corporation which, in the opinion of the committee, is unsafe and unauthorized. Within seven days after the suspension of the credit committee, or any member thereof, or of any director or officer, the supervisory committee shall cause notice to be given of a special meeting of the members to take action relative to such suspension. The supervisory committee shall fill vacancies in their own number until the next meeting of the members.

At the close of each fiscal year, the supervisory committee shall make or cause to be made a thorough audit of the receipts, disbursements, income, assets and liabilities of the corporation for such fiscal year, and shall make a full report thereon to the directors. Such report shall be read at the annual meeting of the members and shall be filed and preserved with the records of the corporation.

Source: § 6-222.

Comment: No change.

§ 6.1-214. A credit union may receive the savings and deposits of its members, members of their families, associations of such persons, and employees of the credit union, and other credit unions, in such amounts and upon such terms as the board of directors may determine and the by-laws shall provide.

Source: § 6-223.

Comment: No change.

§ 6.1-215. A credit union may lend to its members at reasonable rates of interest, or invest, as hereinafter provided, the funds accumulated by it. The rates of interest shall not exceed one per centum per month computed on unpaid balances.

Source: § 6-224.

Comment: No change.

§ 6.1-216. The capital, deposits, undivided profits and reserve fund of the corporation may be invested in the following ways, and in such ways only:

(1) Lent to members of the corporation in accordance with the provisions of this chapter;

(2) Deposited to the credit of the corporation in other credit unions or in State banks or trust companies incorporated under the laws of this State, or in national banks operating in this State;

(3) Not more than ten per centum of the capital stock and reserve fund of a credit union may be invested in the stock of other credit unions;

(4) Lent to other credit unions if provided—and under conditions set forth in the by-laws:

(5) Invested in United States government bonds or in bonds of the State of Virginia, or any subdivisions thereof, including revenue bonds thereof.

(6) Invested in shares of any building and loan association of this State, and in shares of any federal savings and loan association lawfully engaged in business in this State under supervision of the Commissioner of Banking or of a corresponding federal authority.

Source: § 6-225.

Comment: No change.

§ 6.1-217. As provided in § 6.1-216 a credit union may loan to its members for such purposes and upon such security and terms as the by-laws shall provide and the credit committee shall approve; but security must be taken for any loan (except to another credit union) in excess of six hundred dollars. Endorsement of a note or assignment of shares in any credit union shall be deemed security within the meaning of this section.

The supervisory committee shall appoint a substitute to act on the credit committee in the place of any member in case such member makes application to borrow money from a credit union or become surety for any other member whose application for a loan is under consideration.

All officers and members of any committee in any way knowingly permitting or participating in making a loan of funds of a credit union to a non-member thereof shall be guilty of a misdemeanor. The credit union shall have the right to recover the amount of such illegal loans from the borrower or from any officer or member of a committee who knowingly participated in the making thereof, or from all of them jointly.

A borrower may repay the whole or any part of his loan on any day on which the office of the corporation is open for the transaction of business.

Source: § 6-226.

Comment: No change.

§ 6.1-218. All entrance fees, transfer fees and fines shall, after payment of the organization expenses, be added to the reserve fund of the corporation. At the close of each fiscal year there shall be set apart to the reserve fund ten per centum of the gross income of the corporation which has accumulated during the year, until the reserve fund is equal to twenty per centum of the total assets, exclusive of the reserve fund. Upon recom-

mendation of the board of directors the members, at an annual meeting, may increase the proportion of earnings to be set apart to the reserve fund. Losses incurred in any form may be charged to the reserve fund. Any sums recovered on items previously charged to it shall be credited to the reserve fund, except when the reserve equals twenty per centum of the total assets exclusive of the reserve fund. The reserve fund, including any excess from June twenty-ninth, nineteen hundred forty-eight, shall belong to the corporation and shall be held to meet contingencies and shall not be distributed to the members except on dissolution of the corporation.

Source: § 6-227.

Comment: No change.

§ 6.1-219. At the close of the fiscal year a credit union may declare a dividend from its net earnings. Dividends shall be paid on all fully paid shares outstanding at the close of the fiscal year, but shares which become fully paid during the year shall be entitled only to a proportional part of such dividend calculated from the first day of the month following such payment in full.

Source: § 6-228.

Comment: No change.

§ 6.1-220. Corporations organized under the provisions of this chapter shall be subject to such supervision and examination as the Commission may, in its discretion, deem necessary. Every such corporation shall make a report of condition to the Commission on the dates of the second and last calls made on State banks. These reports shall be signed by the president and the treasurer or secretary, or by a majority of the members of the supervisory committee, and they shall make such other reports as the Commission shall at any time demand. Any such corporation which neglects or refuses to make any report called for shall be subject to a fine, to be imposed by the Commission, of not more than ten dollars for each day or such neglect, unless excused by the Commission for good cause shown.

Source: § 6-229.

Comment: No change.

§ 6.1-221. Each credit union shall be examined at least once a year, but the Commission may, in its discretion, order other examinations. The examiners shall be given free access to all books, papers, securities and other sources of information in respect to such corporation. At the time of each examination the Commission shall charge an examination fee of twenty-five dollars, which shall cover the first three thousand dollars of assets or less, to which shall be added in the case of each credit union, according to its total assets, as follows: for the amount by which its total assets exceed three thousand dollars and do not exceed thirty thousand dollars, one dollar for each one thousand dollars or fraction thereof; and, for the amount by which its total assets exceed thirty thousand dollars, sixty cents for each one thousand dollars or fraction thereof. For the purpose of making such examination the Commission may subpoena and examine personally witnesses on oath, whether such witnesses are members of the corporation or not, and may require the production of any documents, whether such documents are documents of the corporation or not.

All expenses incident to any special examination which may be necessary may be ordered to be paid by the credit union so examined.

Source: § 6-230.

Comment: No change.

§ 6.1-222. In the event that any credit union shall neglect or refuse to make its reports as provided in this chapter for more than fifteen days, or in the event that any such corporation shall fail to pay such charges as are required under this chapter, including any charges for delay in filing reports, the Commission shall give notice to such corporation of its intention to revoke the certificate of approval of such corporation for such neglect or failure, and if such neglect or failure continues for fifteen days after such notice, then the Commission may revoke or suspend the license of the corporation. And, in such event, the Commission may, in its discretion, close such corporation and take possession of its property and business until such time as it may see fit to allow the corporation to resume business, or may proceed to finally liquidate such business, as may seem proper.

Source: § 6-231.

Comment: No change.

§ 6.1-223. In the event that it appear to the Commission that any such corporation is violating any provisions of this chapter, it may, after a hearing or an opportunity for a hearing has been given to such corporation, direct that it discontinue the illegal methods or practices mentioned in the order. If any credit union is insolvent, or has failed or refused to comply with the provisions of this chapter, the Commission may take possession of the business and property of such corporation and retain such possession until such time as it may permit such corporation to resume business, or until its affairs are finally liquidated under order of the Commission; or the Commission may apply to any court in this Commonwealth having jurisdiction to appoint receivers for the appointment of a receiver to take charge of the business and assets and to wind up the affairs and business of any such corporation. Such receiver when appointed shall become and be assignee of the assets of such corporation.

Source: § 6-232.

Comment: No change.

§ 6.1-224. The use by any person, co-partnership, association or corporation, except corporations formed under the provisions of this chapter and associations or corporations whose membership or constituency consists exclusively of credit unions or members of credit unions, of any name or title which contains the words "credit union," shall be a misdemeanor, and punishable by a fine of not less than ten nor more than one hundred dollars for each day of the illegal use of such name, and may be enjoined by any court having equity jurisdiction over the party.

Source: § 6-203.

Comment: No change.

§ 6.1-225. All credit unions organized under the laws of this State and doing business purely as credit unions shall be exempt from the payment of any franchise tax.

Source: § 6-233.

Comment: No change.

§ 6.1-226. A credit union which makes loans only to its stockholders or members shall pay an annual State license tax as follows:

Five dollars where the actual paid in capital is not in excess of twenty thousand dollars; ten dollars where the actual paid in capital is over twenty thousand dollars and not in excess of fifty thousand dollars; twenty dollars where the actual paid in capital is over fifty thousand dollars and not in excess of one hundred thousand dollars; and an additional sum of thirty cents per thousand for each one thousand dollars of actual paid in capital in excess of one hundred thousand dollars.

Such license tax shall be in lieu of all taxation for State purposes which but for this section would be imposed upon the paid in capital of such credit union.

Source: § 6-234.

Comment: No change.

CHAPTER 5

INDUSTRIAL LOAN ASSOCIATIONS

§ 6.1-227. Industrial loan associations may be incorporated under the provisions of the Virginia Stock Corporation Act and shall have all the general powers and be subject to all the restrictions contained in that Act, except as herein otherwise provided. But no such corporation need comply with the provisions of subdivision (a) of § 13.1-6.

No such corporation incorporated prior to July one, nineteen hundred sixty, shall use in its corporate name or title, nor shall it do business under the name of "bank," "savings bank," "banker," "trust company," "trust" or other words of similar import.

Source: §§ 6-242, and 6-244.

Comment: Sections combined for clarity and unnecssary language deleted.

§ 6.1-228. Industrial loan associations incorporated after July one, nineteen hundred sixty, shall have all the powers conferred on banks by the Virginia Banking Act, shall be subject to all restrictions applicable to banks, and shall for the purposes of State supervision and control be banks.

Source: §§ 6-245 and 6-250.

Comment: These sections made an industrial loan subject to same restrictions as a bank. This section does the same in more concise language.

§ 6.1-229. An association that had no certificates of investment issued and outstanding on the first day of January, nineteen hundred fifty-nine, may not sell certificates of investment.

Source: § 6-255.

Comment: Section clarifies those associations which may not sell certificates of investment. No substantive change.

§ 6.1-230. An association that had certificates of investment issued and outstanding on the first day of January, nineteen hundred fifty-nine,

may become a bank on complying with all the provisions of the Virginia Banking Act.

Source: § 6-245.

Comment: No substantive change. Clarifies association that may become a bank. Was extracted from § 6-245.

§ 6.1-231. An association that had certificates of investment issued and outstanding on the first day of January, nineteen hundred fifty-nine, may sell certificates of investment upon either the fully paid or partial payment system.

Source: § 6-255.

Comment: Separated from § 6.1-229 for clarity.

§ 6.1-232. An association that has certificates of investment issued and outstanding shall not:

1. Advertise that it is subject to regulation or supervision by the State Corporation Commission or the Bureau of Banking, or publish any advertisement suggesting that it is engaged in the business of banking or that it receives deposits;

2. Advertise that it carries insurance unless its certificates of investment are insured or guaranteed by a State or federal agency or an insurance company authorized to do business in Virginia;

3. Own any shares of stock issued by any other corporation except to the extent legal for banks;

4. Invest more than 80% of the amount of its outstanding certificates of investment in loans secured by liens on real estate;

5. Make any loan secured by liens on real estate in excess of that per cent of the appraised value permitted to banks;

6. Issue certificates of investment for the purpose of borrowing money from financial institutions;

7. Issue a certificate of investment paying a higher rate of interest than four and one half per cent per annum, except that notwithstanding this limitation it may pay at any time an interest rate equal to the highest rate paid by any State savings and loan association located in the same community in the State of Virginia.

Source: § 6-251.

Comment: No substantive change. Last line of old section placed at beginning.

§ 6.1-233. An industrial loan association shall not have more than one office for the conduct of its business; and shall not move its office without first satisfying the State Corporation Commission that moving its office will promote the convenience of its customers.

Source: New.

Comment: This section prohibits an association having more than one office. This was previously done by § 6-248. It also spells out requirements for moving the office.

§ 6.1-234. An industrial loan association may charge in advance the legal rate of interest upon the entire amount of the loan, and such loans

may be repaid in weekly, monthly or other periodical installments, with the privilege to the association to declare the entire unpaid balance due and payable in the event of default in the payment of any installment for a period of thirty days; and such associations may also charge an investigation fee not exceeding two per centum of the amount of the loan. In the event the combined charges for interest and investigation fee would not amount to one dollar, such industrial loan association shall be entitled to a minimum charge of one dollar in lieu thereof. It may fix in its by-laws such fines as it will charge for the nonpayment of any installments of any loan; but such fines shall not be more than ten percent of the amount of the payment in which default is made, and shall not be cumulative.

No loans shall be made for a longer period than ten years, nor for a greater amount in the aggregate to any person, firm or corporation than twenty per cent of the paid in capital stock and capital surplus of the association.

Source: §§ 6-250, 6-253 and 6-254.

Comment: No substantive changes have been made. Sections have been combined for clarity.

§ 6.1-235. Every such industrial loan association shall have at least five directors, each of whom shall own in his own right and have in his personal possession or control shares of stock in the association of which he is a director aggregating at least one hundred dollars in par value, and which must be unpledged and unencumbered at the time of his becoming a director and during the whole of his term as such. Each director shall take and subscribe an oath to that effect, and that he will diligently and honestly administer the affairs of such industrial loan association as such director. Such oath shall be transmitted within sixty days from his election to the Commission. Any director violating the provisions of this section shall thereby vacate his office and the remaining directors shall proceed forthwith to fill such vacancy. Such directors shall require of all active officers of such industrial loan association bonds in such sums as may be prescribed by the Commission in some surety company authorized to do business in this State.

Source: § 6-252.

Comment: No change.

§ 6.1-236. Every industrial loan association incorporated under this chapter shall pay an annual State license tax of two dollars per thousand for each one thousand dollars of actual paid-in capital; and the license taxes prescribed by this section shall be in lieu of all taxes for State purposes which, but for this section, would be imposed upon the capital of such industrial loan association.

Source: § 6-256.

Comment: No change.

§ 6.1-237. The State Corporation Commission shall have supervision of all industrial loan associations, and may require of them statements of their financial condition at such times as to the Commission may seem proper.

Each industrial loan association shall be examined at least once a year, but the Commission may, in its discretion, order other examinations; and the examiners shall be given free access to all books, papers, securities and other sources of information in respect to such association.

Every such industrial loan association shall pay for its examination a fee equal to one and a half times the fee prescribed for the examination of banks.

In the event that any industrial loan association shall fail or refuse to make its reports to the Commission or shall fail to pay the charges for its examination, or shall violate any of the provisions of this chapter, the Commission may revoke or suspend the license of such association; and may, in its discretion, close such association and take possession of its property and business until such time as it may see fit to allow the association to resume business, or may proceed to finally liquidate such business, as to it may seem proper.

Source: § 6-257.

Comment: One sentence deleted which referred to application for certificate under § 6-248, which is obsolete.

§ 6.1-238. It shall be the duty of each industrial loan association to make the statements required by the preceding section to the Commission, upon request, general or special, and for a failure so to do for a period of thirty days after such request, any such association shall be fined not less than one hundred dollars nor more than one thousand dollars by the Commission, unless in answer to a rule for that purpose, good cause be shown against it.

Source: § 6-258.

Comment: No change.

§ 6.1-239. Each official communication directed by the Commission to any industrial loan association, or to any officer thereof, relating to an examination or investigation conducted or made by the Commission, or containing suggestions or recommendations as to the conduct of the association, shall, if required by the authority submitting the same, be submitted by the officer or director receiving it to the executive committee or board of directors of such association and duly noted in the minutes of the meeting at which it is so submitted. The receipt and submission of such notice to the executive committee or board of directors shall be certified to the Commission, within such time as it may require, by at least three members of such committee or board. Any such association failing to comply with the provisions of this section within thirty days after being called upon by the Commission for such certificate shall be fined not less than one hundred nor more than one thousand dollars, such fine to be imposed and judgment entered by the Commission and enforced by its process.

Source: § 6-259.

Comment: No change.

§ 6.1-240. If, upon the examination of any industrial loan association as provided for in § 6.1-237 the Commission shall ascertain that the laws of the State relating to industrial loan associations are not being fully observed, or that any irregularities are being practiced, or that the capital has been or is in danger of being impaired, the Commission shall give immediate notice thereof to the officers of such association and demand that such irregularies shall be promptly corrected, or that the impairment of the capital stock shall be made good, and upon failure of the association so to do within a reasonable time, not exceeding thirty days after such notice, may provide for the appointment of a receiver to take charge of the

business affairs and assets of such association and to wind up its affairs as hereinafter provided.

Source: § 6-260.

Comment: No change.

§ 6.1-241. If, however, upon the examination of any such association, it shall be found to be insolvent, or it is deemed necessary by the Commission for the protection of the public interests, the Commission may at once close the doors of such association without any notice whatever, and the Commission shall take charge of the books, assets and affairs of such association until the appointment of a receiver as provided by law.

Source: § 6-261.

Comment: No change.

§ 6.1-242. The Commission shall, whenever, in its judgment, it is necessary for the protection of the interests of the State or of the creditors of any such association doing business in this State, apply to any court in this Commonwealth having jurisdiction to appoint receivers, for the appointment of a receiver to take charge of the business affairs and assets and to wind up the affairs and business of any such association failing to comply with the requirements of the Commission, or found upon examination to be insolvent or unable to meet its obligations and the legal demands made upon it in the ordinary course and conduct of its business.

Such receiver when appointed shall be and become assignee of the assets and property of such association, and shall be vested with all the power and authority conferred upon or exercised by receivers for banks of discounts and deposit and trust companies under the Virginia Banking Act, or under general law.

Source: § 6-262.

Comment: No change.

§ 6.1-243. (Reserved)

CHAPTER 6

SMALL LOAN ACT

§ 6.1-244. The short title of the law embraced in this chapter is the Small Loan Act.

Source: § 6-274.

Comment: No change.

§ 6.1-245. As used in this chapter, unless a different meaning or construction is clearly required by the context:

(1) *"Person"* includes individuals, co-partnerships, associations, trusts, corporations, and all other legal and commercial entities;

(2) *"License"* means a single license issued hereunder with respect to a single place of business;

(3) *"Licensee"* means a person to whom one or more licenses have been issued; and

(4) *"Commissioner"* means the Commissioner of Banking as defined by the law as of the particular time.

Source: § 6-275.

Comment: No change.

§ 6.1-246. Nothing in this chapter shall be so construed as to impair or affect the obligation of any contract of loan between any licensee and any borrower which was lawfully entered into prior to July first, nineteen hundred and forty-four.

Source: § 6-276.

Comment: No change.

§ 6.1-247. All provisions of this chapter are cumulative to all consistent provisions and requirements of existing laws relevant to the subject matter of this chapter and the operation and effect of all such provisions and requirements are hereby reserved except as repealed expressly or by implication because of irreconcilable inconsistency.

Source: § 6-277.

Comment: No change.

§ 6.1-248. This chapter or any part of it may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee thereunder provided that the cancellation or alteration shall not impair or affect the obligation of any preexisting lawful contract between any licensee and any borrower.

Source: § 6-278.

Comment: No change.

§ 6.1-249. No person shall engage in the business of lending in amounts of six hundred dollars or less, and charge, contract for, or receive, directly or indirectly, on or in connection with any loan, any interest, charges, compensation, consideration or expense which in the aggregate are greater than the rate otherwise permitted by law except as provided in and authorized by this chapter and without first having obtained a license from the Commission.

Source: § 6-279.

Comment: No change.

§ 6.1-250. No person doing business under the authority of any law of this State or of the United States relating to banks, savings banks, trust companies, building and loan associations, industrial loan associations, or credit unions shall be eligible to become a licensee under this chapter nor shall this chapter apply to any business transacted by any person under the authority of and as permitted by any such law, nor to any bona fide pawnbroking business transacted under pawnbroker's license, nor to anyone operating in accordance with the specific provisions of any other law heretofore or hereafter enacted.

Source: § 6-280.

Comment: No change.

§ 6.1-251. The provisions of § 6.1-249 shall apply to any person who seeks to evade its application by any device, subterfuge, or pretense whatsoever including, but not thereby limiting the generality of the foregoing: the loan, forbearance, use, or sale of credit (as guarantor, surety, endorser, comaker, or otherwise), money, goods, or things in action; the use of collateral or related sales or purchases of goods or services, or agreements to sell or purchase, whether real or pretended; receiving or charging compensation for goods or services, whether or not sold, delivered, or provided; and the real or pretended negotiation, arrangement, or procurement of a loan through any use or activity of a third person, whether real or fictitious.

Source: § 6-281.

Comment: No change.

§ 6.1-252. Any contract of loan in the making or collection of which any act has been done which violates § 6.1-249 shall be void and the lender shall not collect, receive, or retain any principal, interest, or charges whatsoever, and any amount paid on account of principal or interest on any such loan shall be recoverable by the person by or for whom payment was made.

Source: § 6-282.

Comment: No change.

§ 6.1-253. No licensee shall use a firm, corporate, or assumed name which contains any of the following words: "savings," "trust," "trustee," "bank," "banker," "banking," "investment," "thrift," "building," or "industrial," unless such name shall have been authorized and in use by the licensee on or before January first, nineteen hundred and forty-four.

Source: § 6-283.

Comment: No change.

§ 6.1-254. Application for a license to make loans under this chapter shall be in writing, under oath, and in the form prescribed by the Commission, and shall contain: (1) The name, residence and business addresses of the applicant, and if the applicant is a co-partnership or association of every member, and if a corporation of each officer and director; (2) the county or municipality, with street and number, if any, where the business is to be conducted; (3) all other information as may be required by the Commission.

And the application shall be accompanied by payment of the sum of fifty dollars as a fee for investigating the application and by the additional sum of one hundred and fifty dollars as a license fee for the period ending on the last day of the current calendar year, except that when the license is issued after June Thirtieth in any year, the license fee shall be seventy-five dollars.

Source: § 6-284.

Comment: Only change is in last portion of second paragraph. Now it is clear as to the license fee charged if license granted after June 30th. This is recommended by Bureau of Banking and the Consumers Finance Association.

§ 6.1-255. Upon the filing of the application and the payment of the fees, the Commission shall make an investigation of the facts concerning the application and the requirements provided for in § 6.1-256. At least twenty days before granting such application, the Commission shall mail a notice of the receipt of the application to each licensee having a place of business in the community where the applicant proposed to do business. The Commission may make such investigations relative to the application and the requirements as it deems fit, and it shall grant or deny each application for a license within sixty days from the date it is filed together with all required information and fees unless the period be extended by order of the Commission reciting the reasons for the extension.

Source: § 6-285.

Comment: No change.

§ 6.1-256. If the Commission finds (1) that the financial responsibility, experience, character, and general fitness of the applicant, or of the members if the applicant be a co-partnership or association, or of the officers and directors if the applicant be a corporation, are such as calculated to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently within the purpose of this chapter, (2) that allowing the applicant to engage in business will promote the convenience and advantage of the community in which the licensed office is to be located, (3) that the applicant has available, for the operation of the business at the specified location, liquid assets of at least forty thousand dollars if the specified location is in a city with a population of more than fifteen thousand, or of at least twenty thousand dollars if the location is not in a city with a population of more than fifteen thousand, and (4) that all of the prerequisites to obtaining the license prescribed by § 6.1-254 have been complied with, (the foregoing facts being conditions precedent to the issuance of a license under this chapter), it shall issue and deliver to the applicant a license to make loans in accordance with the provisions of this chapter at the location specified in the application, provided, however, if any licensee shall sell his outstanding loan contracts and surrender his license, the Commission shall issue a license to the purchaser of said contracts to make loans under this chapter in the same community without reference to whether the convenience and advantage of said community will be promoted thereby, if said purchaser shall qualify in all other respects for the issuance of said license.

Source: § 6-286.

Comment: No change.

§ 6.1-257. If the Commission does not so find it shall thereupon deny the application and notify the applicant of the denial, returning the license fee but retaining the investigation fee.

Source: § 6-287.

Comment: No change.

§ 6.1-258. The license shall contain the address at which the business is to be conducted, the full name of the licensee, or if the licensee is a co-partnership or association the names of the members, and if a corporation the date and place of incorporation. It shall be kept con-

spicuously posted in the place of business of the licensee, and it shall not be transferable or assignable.

Source: § 6-288.

Comment: No change except to delete old last sentence which required posting of certain sections of the Code. This was recommended by the Bureau of Banking.

§ 6.1-259. Each license shall remain in full force and effect until surrendered, revoked, or suspended as provided by this chapter. Every licensee shall, on or before the tenth day of each December, pay to the Commission the sum of one hundred and fifty dollars for each license held by him, as an annual license fee for the succeeding calendar year.

Source: § 6-289.

Comment: No change.

§ 6.1-260. The Commission, upon ten days' written notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, may revoke any license issued hereunder if it finds that:

(1) The licensee has failed to pay the annual license fee or to comply with any order of the Commission lawfully made pursuant to and within the authority of this chapter; or

(2) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation lawfully made by the Commission under § 6.1-302 or

(3) Any fact or condition exists which clearly would have warranted the Commission in refusing originally to issue the license, except that no license shall be revoked solely upon a finding by the Commission that the business of the licensee is not promoting the convenience and advantage of the community in which the licensed officer is located.

Source: § 6-290.

Comment: No change.

§ 6.1-261. If the Commission finds that probable cause for revocation of any license exists and that enforcement of the law requires immediate suspension of the license pending investigation, it may, upon three days' written notice and a hearing, by the Commission or by the Commissioner, enter an order suspending the license for a period not exceeding thirty days.

Source: § 6-291.

Comment: No change.

§ 6.1-262. Whenever the Commission revokes or suspends a license issued pursuant to this chapter it shall forthwith enter its findings and an order to that effect and shall compile a record containing (1) a summary of the evidence, (2) the findings with respect thereto, (3) the order, and (4) the reasons supporting the revocation or suspension. And it shall serve a copy upon the licensee.

Source: § 6-292.

Comment: No change.

§ 6.1-263. Any licensee may surrender any license by delivering it to the Commission with written notice of its surrender, but the surrender shall not affect his civil or criminal liability for acts previously committed.

Source: § 6-293.

Comment: No change.

§ 6.1-264. No revocation, suspension, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

Source: § 6-294.

Comment: No change.

§ 6.1-265. The Commission may reinstate any suspended license or issue a new license to a person any license of whom has been revoked if no fact or condition then exists which clearly would have warranted the Commission in refusing originally to issue a license under this law.

Source: § 6-295.

Comment: No change.

§ 6.1-266. Not more than one place of business shall be maintained under the same license, but the Commission may issue more than one license to the same licensee upon compliance, as to each additional license, with all applicable provisions of this law governing issuance of a single license.

Source: § 6-296.

Comment: No change.

§ 6.1-267. No licensee shall conduct the business of making loans under this chapter within any office, suite, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction with any other business, unless authority to do so is first given by the Commission or by the Commissioner. Upon receipt of written application for such authority the Commission or the Commissioner shall investigate the facts and, if it be found that the character of the licensee and the nature of the other business warrant belief that the conduct of the other business would not conceal or facilitate violation or evasion of this chapter or of regulations lawfully made thereunder, it or he shall in writing, grant the authority applied for. If it is not so found it or he shall deny such authority in writing.

Source: § 6-297.

Comment: No change.

§ 6.1-268. No licensee shall conduct the business of making loans provided for by this chapter under any other name or at any place of business within this State other than those designated in the license.

Source: § 6-298.

Comment: No change.

§ 6.1-269. No change in the place of business of a licensee to a location outside of the original county, city, or town shall be permitted under the same license. When a licensee wishes to change his place of business to a new location or street address within the same county, city, or town, he shall give written notice to the Commission which shall investigate the facts, and, if it shall find that the proposed location is reasonably accessible to borrowers under existing loan contracts, it shall permit the change, and shall issue and deliver to the licensee an amended license covering the new location or address, which shall be authority for operation at the new location. If the Commission does not so find it shall deny the licensee permission to make the change.

Source: § 6-299.

Comment: No change.

§ 6.1-270. Nothing in this chapter shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is situated.

Source: § 6-300.

Comment: No change.

§ 6.1-271. The Commission shall investigate from time to time the economic conditions and other factors relating to and affecting the business of making loans under this chapter, and shall ascertain all pertinent facts necessary to determine what maximum rates of charge should be permitted. Upon the basis of such ascertained facts, and subject to the restrictions, provisions and limitations imposed by this chapter, the Commission shall determine and fix by regulation or order the maximum rates of charge in connection with such loans which will induce efficiently managed commercial capital to be invested in such business in sufficient amounts to make available adequate credit facilities to individuals seeking such loans, and which will afford those engaged in such business a fair and reasonable return upon the assets; provided, however, that the Commission shall not fix any such rates of charge in excess of two and one-half per centum a month on that part of the unpaid principal balance of any loan not in excess of three hundred dollars, and one and one-half per centum a month on any remainder of such unpaid principal balance. Subject to such limitation as to maximum rates, the Commission may from time to time, upon the basis of changed conditions or facts, redetermine and refix any such maximum rates of charge, but, before determining or redetermining any such maximum rates, the Commission shall give reasonable notice of its intention to consider doing so to all licensees and a reasonable opportunity to be heard and introduce evidence with respect thereto and such notice shall also be published once each week for two consecutive weeks in some newspaper published in or having a general circulation in the county, city, or town in which any small loan licensee has an office. Any such changed maximum rates of charge shall not affect pre-existing loan contracts lawfully entered into between any licensee and any borrower.

Source: § 6-301.

Comment: No change.

§ 6.1-272. Until such time as different rates are fixed by the Commission in accordance with the preceding section, every licensee may contract for and receive on any loan of money, not exceeding six hundred

dollars in amount, charges at rates not exceeding two and one-half per centum a month on that part of the unpaid principal balance of any loan not in excess of three hundred dollars, and one and one-half per centum a month on any remainder of such unpaid principal.

Source: § 6-302.

Comment: No change.

§ 6.1-273. If judgment be obtained against any party on any loan made under the provisions of this chapter neither the judgment nor the loan shall carry, from the date of the judgment, any charges against any party to the loan other than court costs and interest on the amount of the judgment at six per centum per annum.

Source: § 6-303.

Comment: No change.

§ 6.1-274. Any loan made under the provisions of this chapter which is properly scheduled in a bankruptcy proceeding shall bear interest against any party to the loan from ninety days after the date of adjudication, whether there is an ultimate discharge or an extension, if any interest be allowable at all, at six per centum per annum only; but this location shall not apply either when the bankrupt is not entitled to a discharge, or the particular obligation is not dischargeable under the provisions of the Bankruptcy Act as now or hereafter amended.

Source: § 6-304.

Comment: No change.

§ 6.1-275. After ninety days from the date of the death of the borrower no other charges than interest at six per centum per annum shall be computed or collected from any party to the loan upon the unpaid principal balance of the loan.

Source: § 6-305.

Comment: No change.

§ 6.1-276. For the period beginning twenty-three months after the date of making any loan contract under the provisions of this chapter, no further charges than interest at six per centum per annum shall be computed or collected from any party to the loan upon the unpaid principal balance of the loan.

Source: § 6-306.

Comment: No change.

§ 6.1-227. Charges on loans made under this chapter shall not be paid, deducted, or received in advance, nor compounded. If part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the loan contract may include any unpaid charges on the prior loan which have accrued within sixty days before the making of the new loan contract. The inclusion of these charges shall not be made oftener than once each six months, the six months' period to be computed from the date of entering into the new loan contract; and the foregoing privilege is intended for the convenience of the borrower and is not to be construed or applied to validate

a general course of dealings by a licensee with the intent and for the purpose of profit. Charges on loans shall (1) be computed and paid only as a percentage per month of the unpaid principal balance or portion thereof, (2) be so expressed in every obligation signed by the borrower, and (3) be computed on the basis of the number of days actually elapsed. For the purpose of computing charges, whether at the maximum rate or less, a month shall be any period of thirty consecutive days and the rate of charge for each day shall be one thirtieth of the monthly rate.

Source: § 6-307.

Comment: No change.

§ 6.1-278. In addition to the charges herein provided for no further or other amount whatsoever for any examination service, brokerage, commission, fine, notarial fee, recordation fee or other thing or otherwise shall be directly or indirectly charged, contracted for or received. If any amount other than or in excess of the charges permitted by this chapter is charged, contracted for, or received, except as the result of an accidental and bona fide error of computation which was not made pursuant to a regular course of dealing, the contract of loan shall be void, and the licensee shall have no right to collect or receive or retain any principal, or charges whatsoever and any amounts paid on account of principal or interest shall be recoverable by the person by or for whom payment was made; and the licensee and the several members, officers, directors, agents and employees thereof who participated in the violation shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not more than five hundred dollars and not less than fifty dollars, or by imprisonment of not more than six months, or by both, in the discretion of the court or jury.

Source: § 6-308.

Comment: No change.

§ 6.1-279. Every licensee shall maintain at all times the minimum assets prescribed by this chapter for each license, either in liquid form available for the operation of or actually used (whether pledged or not) in the conduct of the business at the location specified in each license.

Source: § 6-309.

Comment: No change.

§ 6.1-280. No licensee or other person subject to this chapter shall advertise, display, distribute or broadcast, or cause or permit to be advertised, displayed, distributed or broadcast, in any manner, whatsoever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for loans in the amount or of the value of six hundred dollars or less. The Commission may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as it deems necessary to prevent misunderstanding by prospective borrowers, and it may permit or require licensees to refer in their advertising to the fact that their business is under State supervision, subject to conditions imposed by it to prevent false, misleading or deceptive impression as to the scope or degree of protection provided by this chapter.

Source: § 6-310.

Comment: No change.

§ 6.1-281. No licensee shall take a lien upon real estate as security for any loan made under the provisions of this chapter, except a lien arising upon rendition of a judgment; and any such lien taken in violation of the provisions of this section shall be void.

Source: § 6-311.

Comment: No change.

§ 6.1-282. Every licensee shall:

(1) At the time any loan is made, deliver to the borrower, or if there are two or more borrowers to one of them, a passbook or statement on which shall be printed in the English language a copy of §§ 6.1-271 through 6.1-278 or so much as is designated by the Commission, in type not smaller than eight point, which statement or passbook shall disclose in clear and distinct terms the amount and date of the loan, a clear description of the payments required, the type of security, if any, for the loan, the names and addresses of the licensee and of the principal debtor on the loan contract and the agreed rate of charge;

(2) When each payment is made on account of any loan, enter the payment on the statement or on the passbook, specifying the amount applied to charges and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, and, if neither the statement nor the passbook be produced, and only in such case, a receipt, containing the foregoing items, shall be given and in such case the requisite entries shall be made on the statement or passbook at the first opportunity;

(3) Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply the payment first to all charges in full at the agreed rate up to the date of the payment;

(4) Upon repayment of the loan in full, mark plainly every obligation and security signed by an obligor with the word "Paid" or "Cancelled," release any mortgage, mark satisfied any judgment, restore any pledge, and cancel and return any note and any assignment given to the licensee; and

(5) In the event of collection by foreclosure sale or otherwise, pay and return to the borrower or to whomsoever is entitled thereto any surplus arising after the payment of the expenses of collection, sale or foreclosure and satisfaction of the debt.

Source: § 6-312.

Comment: No change.

§ 6.1-283. No licensee shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding, and any such confession of judgment or power of attorney to confess judgment shall be void.

Source: § 6-313.

Comment: No change.

§ 6.1-284. No licensee shall take any note, promise to pay, or instrument of security that does not give the amount of the loan, a clear description of the installment payments required, and the agreed rate of

charge, nor any instrument in which blanks are left to be filled in after execution.

Source: § 6-314.

Comment: Old last sentence was deleted. It had required that a duplicate copy of the note be given to the borrower. The Bureau of Banking recommends that this be deleted as unnecessary.

§ 6.1-285. No licensee shall enter into any contract of loan under this chapter providing for installment payments extending more than twenty-one calendar months from the date of making the contract, and every contract shall provide for repayment of the amount loaned in substantially equal installments, either of principal or of principal and charges in the aggregate, at approximately equal periodic intervals of time. But nothing contained in this chapter shall prevent a loan being considered a new loan because the proceeds of the loan are used to pay an existing contract.

Source: § 6-315.

Comment: No change.

§ 6.1-286. No licensee shall permit any person, as borrower, or as endorser, guarantor or surety for any borrower, or otherwise, or any husband and wife, jointly or severally, to become obligated, directly or contingently, or both, (a) to the licensee at any time in a sum of more than six hundred dollars in principal, nor (b) under more than one contract of loan at the same time for the purpose of obtaining a higher rate of charge than would otherwise be permitted by this chapter; provided however, if a licensee purchases all, or substantially all, the loan contracts of another licensee and has at the time of the purchase loan contracts with one or more of the borrowers whose loans are purchased, the purchaser shall be entitled, to collect the principal and charges according to the terms of each loan contract, but the purchaser shall not refinance or make a new loan to any such borrower except in accordance with the provisions of this chapter.

If two or more licensees are under the same ownership, or under common control, then such of their offices as are located in the same political subdivision of the State, or within five miles of each other, shall be treated as one licensee for the purpose of this section.

Source: § 6-316.

Comment: No change.

§ 6.1-287. No licensee shall combine or conspire with another licensee to cause the same person, or a husband and wife, to borrow less than six hundred dollars from each of them for the purpose of requiring the payment of a higher rate of charge than would be permitted if one of said licensees had loaned all, or as much as six hundred dollars of, the amounts borrowed from both licensees.

Source: § 6-316.1.

Comment: No change.

§ 6.1-288. The payment of six hundred dollars or less in money, credit, goods or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commission, or

other compensation for services, whether earned or to be earned, shall for the purposes of this chapter be deemed a loan of money secured by the sale, assignment, or order, and the amount by which the compensation so sold, assigned or ordered paid exceeds the amount of consideration actually paid shall for the purpose of this chapter be deemed interest or charges upon the loan from the date of the payment to the date the compensation is payable, which amount shall not, in any case, be more than is sufficient to yield, to the licensee making the loan, interest on his investment at the rate of ten per centum per annum. Such transactions shall in all other respects be governed by and subject to the provisions of this chapter.

Source: § 6-317.

Comment: No change.

§ 6.1-289. No assignment of or order for payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee, shall be valid unless the amount of the loan is paid to the borrower simultaneously with its execution; nor shall any such assignemtn or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower be valid unless it is in writing, signed in person by the borrower, and not by an attorney, or if the borrower is married unless it is signed in person by both husband and wife, and not by an attorney, provided nothing in this chapter shall have the effect of impairing in any manner any rights on the part of any one as to exemptions under the poor debtors law or under any other applicable exemption law as now or hereafter enacted; but written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of the assignment, order, mortgage, or lien; and the provisions of this section are in addition to, and not in derogation of, the general statutes pertaining to the subject.

Source: § 6-318.

Comment: No change.

§ 6.1-290. A valid assignment or order for the payment of future salary, wages, commissions, or other compensation for services, may be given as security for a loan made by any licensee, notwithstanding the provisions of any other law to the contrary, and under the assignment or order, not to exceed ten per centum of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of the salary, wages, commission, or other compensation for services, from the time that a copy of the assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon the loan and a printed copy of § 6.1-289 and this section, is served upon the employer.

Source: § 6-319.

Comment: No change.

§ 6.1-291. No loan made outside this State in the amount of six hundred dollars or less for which greater rates of interest, consideration or charges, than is permitted by the law applicable to such loan in the state in which the loan was made, has been charged, contracted for, or received shall be collected in this State and every person in any wise

participating in an effort to enforce the collection of such loan in this State shall be subject to the provisions of this chapter.

Source: § 6-320.

Comment: No change.

§ 6.1-292. All powers and duties of regulation and supervision conferred and imposed by this chapter are, except as otherwise specifically stated, vested in and imposed upon the Commission, but it may delegate to the Commissioner the exercise of such of these powers and the performance of such of these duties as it deems proper, subject to its supervision and control.

Source: § 6-321.

Comment: No change.

§ 6.1-293. The Commission shall collect and turn into the State treasury all license and other fees and all amounts so collected and the unexpended balances thereof may be used only for the payment of the expenses of the administration of this chapter and of the performance of other functions of the bureau of Banking of the Commission. The Commission may employ such examiners or clerks to assist it and the Commissioner as it from time to time deems necessary and may fix their compensation. All salaries and expenses necessarily incurred in the administration of this chapter shall be paid out of the license and other fees collected and turned into the State treasury under the provisions of this chapter, upon the basis of duly verified itemized vouchers, approved by the Commission. The Comptroller shall issue his warrant on the State Treasurer for, and the State Treasurer shall pay, the salaries and expenses out of the proceeds in the State treasury from these fees, in accordance with appropriations as from time to time made.

Source: § 6-322.

Comment: No change.

§ 6.1-294. For the purpose of discovering violations of this chapter or securing information lawfully required under it, the Commission or its duly authorized representative may at any time investigate the loans, books and records of any person who is engaged, or appears to the Commission to be engaged, in the business of making small loans as defined and described in, and required to be licensed and supervised under, this chapter, particularly in § 6.1-249 or who advertises for, solicits, or holds himself out as willing to make, loans in amounts of six hundred dollars or less, or who the Commission has reason to believe is violating any provision of this chapter, whether such person shall act or claim to act under or without the authority of this chapter, or as principal, agent, broker or otherwise. In furtherance of the investigation the Commission through its duly authorized representatives shall have and be given free access to the offices, places of business, books, papers, accounts, records, files, safes, and vaults of all such persons, and shall have authority to require attendance of witnesses and to examine under oath any person whose testimony may be required relative to any such loans or business or to the subject matter of the investigation, examination or hearing.

Source: § 6-323.

Comment: No change.

§ 6.1-295. Before making an investigation as provided for in the preceding section as to any person not licensed nor an applicant for a license under this law a formal order shall be entered by the Commission specifically directing the investigation to be made, commanding submission by the person whose business is to be investigated, and setting forth all other details necessary to clearness and certainty, and no such order may be entered except upon at least one affidavit, which may be given by any member of the personnel of the Commission or by any other person, or upon documentary data, or upon admissions of the person to be investigated, or upon any combination of the foregoing, satisfactorily establishing, prima facie, facts sufficient to warrant the investigation provided for by the preceding section. But if the person involved consents to the investigation being made the foregoing requirements may be dispensed with and the investigation may be made upon formal or informal direction of the Commission or by, or upon the direction of, the Commissioner.

Source: § 6-324.

Comment: No change.

§ 6.1-296. In any case of compulsory investigation, as provided for in § 6.1-294 of the business of a person not a licensee nor an applicant for a license under this law, no prosecution of the person so investigated for any crime, penalty, or forefeiture provided for by this chapter may be maintained. But nothing in this section shall prevent prosecution for the violation of any other criminal law or of any other law providing for penalty or forfeiture, nor shall the immunity from prosecution provided for hereby extend to any officer, agent or employee of the person whose business is so investigated, except that in so far as the Commission requires, as it may do, verbal testimony to be given by any one not a licensee or an applicant under this chapter there shall be no prosecution of, nor proceeding against, the person so compelled to testify for any crime committed, or for imposition of any penalty or any forfeiture incurred in connection with, the subject matter as to which such testimony is compelled to be given.

Source: § 6-325.

Comment: No change.

§ 6.1-297. Notwithstanding any such compulsory investigation or verbal testimony, civil rights, not involving penalty or forfeiture, on the part of any one and the right to injunctive relief as provided for in § 6.1-303 may be enforced and the facts discovered and disclosures made in the course of any such investigation shall be available against the person so investigated or so compelled to testify in any proceeding involving any ordinary civil right or for obtaining an injunction under this chapter.

Source: § 6-326.

Comment: No change.

§ 6.1-298. At least once each year, and at such other times as deemed necessary, the Commission, through the Commissioner or his duly authorized representative, shall make an examination of the affairs, business, office and records of each licensee in so far as they pertain to any business licensed under this chapter. It shall be the duty of the licensee to furnish promptly by mail or otherwise such facts and state-

ments in connection with his business transacted in Virginia as the Commission deems proper to require at any time.

Source: § 6-327.

Comment: No change.

§ 6.1-299. At the time of examination, the Commissioner of Banking shall charge an examination fee of twenty dollars; but if the loan balance of such licensee exceeds fifty thousand dollars, the examination fee shall be twenty dollars for the first fifty thousand dollars of loan balance and forty cents for each thousand dollars, or fraction thereof, of loan balance in excess of fifty thousand dollars.

Source: § 6-328.

Comment: No change.

§ 6.1-300. The licensee shall keep and use in his licensed place of business such books, accounts and records as in the opinion of the Commission will enable it to determine whether the licensee is complying with the provisions of this chapter and with rules and regulations lawfully made under the provisions of this chapter. Every licensee shall preserve the books, accounts, and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein. No note or security taken under this chapter shall be hypothecated or deposited outside this State, nor within the State except under an agreement permitting the Commission or its duly authorized representatives to examine the papers so hypothecated or deposited.

Source: § 6-329.

Comment: No change.

§ 6.1-301. Each licensee shall annually, on or before the first day of March, file a report with the Commission giving such relevant information as may reasonably be required concerning his business and operations during the preceding calendar year as to each licensed place of business conducted by him within the State. Reports shall be made under oath and shall be in the form prescribed by the Commission which shall make and publish annually an analysis and recapitulation of the reports.

Source: § 6-330.

Comment: No change.

§ 6.1-302. The Commission is empowered to promulgate rules and regulations for the enforcement of this chapter, in addition thereto and consistent therewith, in the manner required by law. Every regulation, every administrative ruling, and every requirement of general application shall be in writing and be entered and maintained as a public record in an indexed permanent book with the date of each suitably indicated. A copy of each regulation and order promulgating it shall be mailed to all licensees at least ten days before the effective date thereof, and a copy of each other order affecting persons other than licensees shall be mailed to the person or persons immediately affected thereby but without a required period of notice except as and when other procedure is required by law.

Source: § 6-331.

Comment: No change.

§ 6.1-303. In addition to all other powers granted under this chapter, the Commission may, whenever it has reasonable cause to believe that any person, not licensed under this chapter, is violating or is threatening to or intends to violate any provision of this chapter or any order or regulation lawfully made pursuant to the authority of this chapter, certify the facts to the Attorney General and request him to examine the same, and if in his judgment the facts justify it the Attorney General shall institute and prosecute injunction proceedings in the circuit court of the city of Richmond, in the name of the Commonwealth at the relation of the Commission, and that court may enjoin and restrain any such person from engaging in or continuing any such violation or from doing any act or acts in furtherance thereof. In any such suit a decree or order may be entered awarding such preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction, or final injunction, the court shall have the power and jurisdiction to impound, and to appoint a receiver for, the property and business of the defendant, including books, papers, documents, and records pertaining thereto, or so much thereof as the court deems reasonably necessary to prevent further violation of this chapter through or by any means of the use of such property and business. The receiver, when appointed and qualified, shall have such powers and duties as to custody, collection, administration and liquidation of the property and business as from time to time are conferred upon him by the court.

Source: § 6-332.

Comment: No change.

§ 6.1-304. No person shall be entitled to refuse to testify in a suit brought under the preceding section because his testimony would tend to incriminate himself or subject him to penalty or forfeiture but if called to testify by the Commonwealth or by the court trying the case he may not thereafter be prosecuted for any crime or subjected to any penalty or forfeiture growing out of the transaction concerning which he testifies.

Source: § 6-333.

Comment: No change.

§ 6.1-305. On application of any person, and payment of the costs, the Commission shall furnish such person with a certified copy of any order or regulation made or any license issued by it or by the Commissioner under its authority. Such copy shall be prima facie evidence in any court or proceeding of the fact of the making of the order or of the issuance of the license or regulation.

Source: § 6-334.

Comment: No change.

§ 6.1-306. In addition to any other remedy he may have any licensee or any other person considering himself aggrieved by any action of the Commissioner hereunder pursuant to authority conferred upon him or delegated to him by the Commission may, within thirty days of the action complained of, file a petition as a matter of right with the Commission to review the action. The proceeding on review shall be de novo and the record and summary of the evidence before, and findings of,

the Commissioner shall be admissible as evidence before the Commission.

Source: § 6-335.

Comment: No change.

§ 6.1-307. From any action taken by the Commission hereunder, whether upon petition from action taken by the Commissioner, or otherwise, any licensee, or any other person in interest considering himself aggrieved, may, as a matter of right, appeal to the Supreme Court of Appeals in the manner provided by law.

Source: § 6-336.

Comment: No change.

§ 6.1-308. Any person and the several members, officers, directors, agents, and employees thereof, who violate or participate in the violation of any provision of § 6.1-249 shall be guilty of a misdemeanor and upon conviction shall be punishable by fine of not more than five hundred dollars and not less than fifty dollars, or by imprisonment of not more than six months, or by both fine and imprisonment, in the discretion of the jury or court.

Source: § 6-337.

Comment: No change.

§ 6.1-309. Any lender violating any provision of this chapter, either knowingly or without the exercise of due care to prevent the violation, shall be subject to a fine, to be imposed by the Commission, of not less than ten dollars nor more than five hundred dollars; and if any lender, in the making or collection of any contract of loan violates, either knowingly or without the exercise of due care to prevent the violation, any provision of §§ 6.1-382 through 6.1-285 he may recover or retain only the principal amount of the loan and any interest paid shall be recoverable.

Source: § 6-338.

Comment: No change.

§ 6.1-310. (RESERVED)

CHAPTER 7

MONEY AND INTEREST

§ 6.1-311. The money of account of this State shall be the dollar, cent and mill. All accounts by public officers shall be so kept.

Source: § 6-339.

Comment: No change.

§ 6.1-312. No writing shall be invalid, nor the force of any account or entry be impaired, because a sum of money is expressed therein otherwise than in such money or account.

Source: § 6-340.

Comment: No change.

§ 6.1-313. In any suit for a sum of money expressed in any foreign currency or otherwise than in the money of account of this State, the jury, if there be one impaneled for any other purpose, and if not, the court, shall ascertain the value in the money of account of the sum so expressed, making such allowance for the difference of exchange as shall be just; and the judgment or decree may either be for what may be so ascertained, or for the sum of money expressed as aforesaid to be discharged by the sum so ascertained; provided that as to any such suit involving an instrument to which § 3-107 of the Uniform Commercial Code is applicable, the provisions of that section shall apply.

Source: § 6-341.

Comment: No change.

§ 6.1-314. No association or company (unless authorized by law) shall issue, with intent that the same be circulated as currency, any note, bill, scrip, or other paper or thing; or otherwise deal, trade or carry on business as a bank of circulation. All contracts made for forming any such association or company shall be void.

Source: § 6-342.

Comment: No change.

§ 6.1-315. All contracts and securities that may originate from, or be made or obtained in whole or in part by means of any such dealing, trade or business, shall be void. If any person pay any money or other valuable thing on account of any such contract or security, he, or his personal representative, or assignee, may, by suit brought within one year after such payment, recover back the amount or value of such payment from the person to whom, or to whose use, it may have been made, or from his representative.

Source: § 6-343.

Comment: No change.

§ 6.1-316. The capital stock of every such association or company, whether paid up or merely subscribed, shall belong to the Commonwealth; and the Attorney General, whenever informed of the existence of any such association or company, shall institute a suit in a court of equity, held in the city of Richmond, for the purpose of recovering such capital stock. In such suit, all or any of the members of such association or company, and any officer, agent, or manager thereof, may be made defendants, and compelled to exhibit all their books and papers, and an account of everything necessary to enable the court to enter a proper decree. But no disclosure made by a defendant in such suit, and no book or paper exhibited by him in answer to the bill, or under the order of the court, shall be used as evidence against him in any case at law.

Source: § 6-344.

Comment: No change.

§ 6.1-317. Every member of any such association or company, made defendant in any such suit in equity, shall be held liable to the Commonwealth, and be decreed against for his proportion of the capital stock held in such association or company by him, or by any person for his use or benefit, at the institution of such suit, or at the time of the decree. Such decree against any defendant shall be a bar to a proceeding against him for any act done in violation of § 6.1-314.

Source: § 6-345.

Comment: No change.

§ 6.1-318. Legal interest shall continue to be at the rate of six dollars upon one hundred dollars for a year, and proportionately for a greater or less sum, or for a longer or shorter time; and no person upon any contract shall take for the loan or forbearance of money or other

Source: § 6-346.

Comment: No change.

§ 6.1-319. All contracts and assurances made, directly or indirectly, for the loan or forbearance of money or other thing, at a greater rate of interest than is allowed by the preceding section, shall be deemed to be for an illegal consideration as to the excess beyond the principal amount so loaned or forborne.

Source: § 6-347.

Comment: No change.

§ 6.1-320. Any bank, or any broker duly licensed to transact business as a stockbroker or as a broker dealing in options and futures under the provisions of Title 58, may loan money or discount bonds, bills, notes or other paper at a rate not exceeding one-half of one per centum for thirty days, and may charge a minimum loan or discount fee of one dollar on loans or discounts, and may receive such interest in advance; provided, however, that any bank may charge in advance the legal rate of interest upon the entire amount of any loan payable in weekly, monthly or other periodical installments, and any note evidencing such an installment loan may provide that the entire unpaid balance thereof, at the option of the holder, shall become due and payable upon default in payment of any stipulated installment, without impairing the negotiability of such note, if otherwise negotiable; and provided, further that any bank may charge a rate not exceeding one per centum per month on daily balances, or on maximum calendar or fiscal monthly balances, under a written contract for revolving credit on any plan which permits an obligor to avail himself of the credit so established, and may also charge as a service fee a sum not exceeding twenty-five cents for each check, draft or other order on the credit so established; and provided, further, that agricultural credit corporations or associations organized under the laws of this State may charge interest or discount on loans made for agricultural purposes at a rate not exceeding one and one-half per centum per annum in excess of the rate charged such agricultural credit corporations or associations by federal intermediate credit banks, at the time such loans are made, or said agricultural credit corporations or associations may in their discretion charge the rate of interest prescribed by § 6.1-318 and in either case, such agricultural credit corporations or associations may charge a minimum loan or discount fee of one dollar on loans or discounts for thirty

days or more and may receive such interest or discount in either case in advance.

Source: § 6-348.

Comment: No change.

§ 6.1-321. In addition to the charged permitted by § 6.1-320 a bank may charge an investigation fee not exceeding two per centum of the amount of the loan on loans not exceeding one thousand dollars with a minimum charge of one dollar.

Source: § 6-348.1.

Comment: No change.

§ 6.1-322. A broker-dealer licensed by the State Corporation Commission and registered with the Securities and Exchange Commission who extends credit to a customer on pledged securities as permitted under the provisions of the Securities and Exchange Act of 1934, as amended, may charge the customer on his debit balances that are payable on demand such rate of interest as may be mutually agreed on, but not to exceed a monthly charge at a rate of one and one-quarter per centum per annum of the debit balances above the interest rate charged broker-dealers by banks doing business in this State on loans collateralized by securities.

Source: § 6-348.2.

Comment: No change.

§ 6.1-323. Any person, firm, association or corporation principally engaged in the business of making real estate mortgage or deed of trust loans for resale may make an initial service, investigation or processing fee not exceeding one per centum of the amount of the loan, on loans payable in installments or otherwise and having a final maturity date of ten years or more from the date thereof. Such a fee shall not be considered in determining whether a contract for a loan or forbearance of money or other things is illegal within the meaning of Chapter 7 (§ 6.1-311 et seq.), Title 6.1 of the Code.

Source: § 6-348.3.

Comment: The word "charge" has been replaced by the word "fee." This change also carries over into the next section. It appears that as used in these sections "charge" means "fee" and the present wording has caused confusion.

§ 6.1-324.

(1) Any bank or any other lender engaged in making loans to finance the construction or improvement of business, residential or farm real estate may charge a borrower and collect in advance, supervision and inspection fees not to exceed two and one-half percentum of the amount of the loan. In lieu of charging such fee for supervision and inspection of construction or improvement, such bank or lender may require the borrower to pay the actual cost and expenses of such supervision and inspection.

(2) Any bank or lender engaged in making real estate mortgages or deed of trust loans may charge a borrower and collect in advance processing and investigation fees not to exceed one percentum of the amount of the loan. If the bank or lender provides both construction financing under subsection (1) hereof, and permanent financing under

this subsection, its fees shall not exceed the maximum amount allowable under subsection (1).

(3) Any such bank or lender may also require the borrower to pay to or for the account of the person entitled thereto the reasonable and necessary charges of third persons or other out-of-pocket expenses in connection with making the loan, including the cost of title examination, title insurance, recording fees, taxes, insurance, including mortgage guaranty insurance, appraisals, credit reports, surveys, and attorney's fees.

(4) Such bank or lender may also charge a reasonable penalty to a borrower for making a late payment on his loan provided the amount of the penalty is specified in the contract between the bank or lender and the borrower.

(5) Such fees and charges shall not be considered in determining whether a contract for a loan or forbearance of money or other things is illegal within the meaning of this Title; provided, however, the fees permitted under subsections (1) and (2) may not be made in addition to fees otherwise lawful under § 6.1-323 and § 6.1-328.

Source: § 6-348.4.

Comment: In subsections (1) and (2) "charge" has been changed to "fee" as in preceding section. Also in (1) and (2) old references to FHA and VA for determination of percentage fees has been dropped as in the Savings & Loan Act. These references have been found to be extremly confusing. Subsection (5) changed to include "fees" and to limit proviso to subsections (1) and (2) instead of covering whole section. "Mortgage Guaranty Insurance" has been added to insurance to make it clear that it has been added.

§ 6.1-325. Any defendant may plead in general terms that the contract or assurance on which the action is brought was for the payment of interest at a greater rate than is allowed by law, to which plea the plaintiff shall reply generally, but may give in evidence, upon the issue made up thereon, any matter which could be given in evidence under a special replication. Under the plea aforesaid, the defendant may give in evidence any fact showing or tending to show that the contract or assurance, or other writing upon which the action was brought, was for an usurious consideration. When the issue on such plea is found for the defendant, or if no such plea is made, and the contract or assurance be in writing and shows that usurious interest has been therein contracted for, judgment shall be rendered for the principal sum only.

Source: § 6-349.

Comment: No change.

§ 6.1-326. If an excess beyond the lawful interest be paid in any case for the loan or forbearance of money or other thing, the person paying the same may in a suit or action brought within one year thereafter recover the full amount of such payment from the person with whom the contract was made or to whom the assurance was given; and it may be so recovered from such person notwithstanding the payment of the excess be made to his indorsee or assignee. If property has been conveyed to secure the payment of the debt and a sale thereof is about to be made, or is apprehended, an injunction may be awarded to prevent such sale pending the suit or action.

§ 6.1-327. No corporation shall, by way of defense or otherwise, avail itself of any of the provisions of the preceding sections of this chapter, to avoid or defeat the payment of any interest which it has contracted to pay; nor shall anything contained in any of such sections be construed to prevent the recovery of such interest, though it be more than legal interest and though that fact appear on the fact of the contract.

Source: § 6-351.

Comment: No change.

§ 6.1-328. If the rate of interest specifically set forth in the bond, note or other evidence of indebtedness, exclusive of other charges set forth in the securing deed of trust, does not exceed the legal rate prescribed in § 6.1-318, no person shall, by way of defense or otherwise, avail himself of any of the provisions of this Chapter, to avoid or defeat the payment of any interest or fee which he shall have contracted to pay on any loan or forbearance of money insured by the Federal Housing Administration, or the Commissioner thereof, under or pursuant to the provisions of the National Housing Act, approved June 27, 1934, and amendments thereto, or guaranteed by the Veterans Administration, or the Administrator thereof, under and pursuant to Title 38 of the United States Code, and amendments thereto; nor shall anything contained in this chapter be construed to prevent the recovery of such interest or fee from any person who shall have contracted to pay the same.

Source: § 6-351.1.

Comment: Word "charge" deleted and "fee" inserted as in two preceding sections.

§ 6.1-329. Nothing in the act of incorporation of any insurance, banking, or other corporation, shall be construed as giving authority (unless expressly given), to charge, take, or receive, for the loan or forbearance of money or other thing, more than the legal rate of interest.

Source: § 6-352.

Comment: No change.

§ 6.1-330. (RESERVED)

CHAPTER 8

SAFE DEPOSIT OR STORAGE BUSINESS

§ 6.1-331. Whenever any amount due for the use of any safe or box, in the vaults of any safe deposit company, bank, trust company, or other corporation conducting a safe deposit business, shall have remained unpaid for a period of two years, such company, bank, trust company, or other corporation may, at the expiration of such period, send to the person, partnership or corporation in whose name such safe or box stands on its books a notice in writing in a securely closed, postpaid, registered letter, directed to such renter or lessee at his last known postoffice address, notifying such renter or lessee that if the amount due for the rental of such safe or box shall not be paid within sixty days from the date of sending such notice, the company, bank, trust company, or other corporation will then cause such safe or box to be opened, and the

contents thereof to be inventoried, sealed, and placed in one of the general safes or boxes of the company, bank, trust company, or other corporation.

Source: § 6-263.

Comment: No change.

§ 6.1-332. When a safety deposit box shall have been hired, or shall hereafter be hired, from any bank or trust company transacting business in this State, under the name of two or more persons, with the right of access being given to either, or with access to either the survivor or survivors of such persons, any one or more of such persons, whether the other or others be living or not shall have the right of access to such deposit vault, and may remove therefrom the contents of such box; and in case of such removal such bank or trust company shall be exempt from any liability for permitting such person access thereto.

Source: § 6-264.

Comment: No change.

§ 6.1-333. In any case where a company, bank, trust company or other corporation having for rent safe deposit boxes is served with notice of lien of fieri facias or other process under §§ 8-406, 8-411, 8-412, 8-431 to 8-433, or 58-1010, or a summons in garnishment in which a renter or lessee of a safe deposit box is named defendant or judgment debtor it shall be the duty of such company, bank, trust company, or other corporation to deny such renter or lessee access to the safe deposit box rented or leased in the name of the defendant or judgment debtor unless otherwise directed by a court of competent jurisdiction or by the judgment creditor. Any bank so denying access shall not be liable for any loss occasioned thereby to such renter or lessee.

Source: § 6-264.1.

Comment: No change.

§ 6.1-334. Upon the expiration of sixty days from the date of mailing the notice required by § 6.1-331 and the failure within such period of time of the renter or lessee in whose name the safe or box stands on the books of the company, bank, trust company, or other corporation to pay the amount due for the rental thereof to the time of payment, together with legal interest thereon, the company, bank, trust company, or other corporation may, in the presence of a notary public not in its employ, and of its president or any vice-president, assistant secretary, assistant treasurer, secretary, treasurer, cashier or assistant cashier, cause such safe or box to be opened, and the contents thereof, if any, to be removed, inventoried and sealed up by such notary public in a package, upon which the notary shall distinctly mark the name of the renter or lessee in whose name the safe or box stood on the books of the company, bank, trust company or other corporation, and the date of removal of the property.

Source: § 6-265.

Comment: No change.

§ 6.1-335. When a package has been marked for identification by a notary public as required under the provisions of the preceding section, it shall, in the presence of any one of the above-named officers of the company, bank, trust company or other corporation, be placed by the

notary public in one of the general safes or boxes of the company, at a rental not to exceed the original rental of the safe or box which was opened, and shall remain in such general safe or box for a period of not less than two years, unless sooner removed by such renter or lessee.

Source: § 6-266.

Comment: No change.

§ 6.1-336. The notary public who shall have placed a package as required under the provisions of the preceding section shall thereupon file with the company a certificate, under seal, which shall fully set out the date of the opening of such safe or box, the name of the renter or lessee in whose name it stood and a list of the contents, if any. Such certificate shall be sworn to by such notary public and shall be prima facie evidence of the facts therein set forth in all proceedings at law and in equity wherein evidence of such facts would be competent. A copy of such certificate shall, within ten days thereafter, be mailed to the renter or lessee in whose name the safe of box so opened stood on the books of the company, bank, trust company, or other corporation, at his last known post office address, in a securely closed, postpaid, registered letter, together with a notice that the contents will be kept, at the expense of such renter or lessee, in a general safe or box in the vaults of the company, bank trust company, or other corporation, for a period of not less than two years, unless sooner removed by such renter or lessee.

Source: § 6-267.

Comment: No change.

§ 6.1-337. At any time after the mailing of such notice as is required by the preceding section and before the expiration of two years, such renter or lessee may require the delivery of the contents of the safe or box as shown by the certificate, upon the payment of all rentals due at the time of opening the safe or box, the cost of opening the safe or box, the fees of the notary public for issuing his certificate thereon, and the payment of all charges accrued during the period the contents remained in the general safe or box of the company, bank, trust company, or other corporation, together with legal interest on such rentals, costs, fees, and charges.

Source: § 6-268.

Comment: No change.

§ 6.1-338. After the expiration of two years from the time of mailing the certificate provided for under § 6.1-336, if such renter or lessee has not obtained delivery of such contents as aforesaid, the company, bank, trust company or other corporation shall mail in a securely closed, postpaid, registered letter, addressed to such renter or lessee at his last known post office address, a notice stating that two years have elapsed since the opening of the safe or box and the mailing of a certificate thereof, and that the company, bank, trust company, or other corporation will sell all the property or articles of value set out in such certificate at a time and place stated in such notice, not less than sixty days after the time of mailing such notice, and stating the amount which shall have then become due for rental, up to the time of opening such safe or box, the cost of opening the same and the further cost of safekeeping of its contents for the period since the opening of the safe or box. Unless such renter or lessee

shall pay on or before the day mentioned all such sums, and all the charges accruing to the time of payment, together with legal interest on such sums and charges, the company, bank, trust company, or other corporation may sell all the property or articles of value set out in such certificate for cash, at public auction, at the time and place stated in such notice, provided a notice of the time and place of sale has been published twice, not more than twenty days prior to the sale, in a newspaper published in the city, town, or county where the sale is held, or, if there be no such newspaper published in such city, town or county, then in a newspaper published in the city, town, or county nearest thereto having such newspaper.

Source: § 6-269.

Comment: No change.

§ 6.1-339. From the proceeds of any sale held pursuant to the provisions of the preceding section, the company, bank, trust company, or other corporation, shall deduct all its charges, as stated in such notice, together with any further charges that shall have accrued since the mailing thereof, including reasonable expenses for notices, advertising and sale, together with legal interest on all such charges. The balance, if any, of such proceeds, shall be deposited to the credit of such renter or lessee, and the same shall be paid to such renter or lessee or his assignee, or legal representative, on demand and upon production of satisfactory evidence of identity. The company, bank, trust company or other corporation shall be liable to such renter or lessee for interest on any balance so deposited at the rate of three per centum per annum.

Source: § 6-270.

Comment: No change.

§6.1-340. Whenever the contents of any such safe or box opened under the provisions of this chapter shall consist either wholly or in part of documents or letters or other papers of a private nature, or articles having a pretium affectionis, such documents, letters, papers or articles shall not be sold, but shall be retained by the company, bank, trust company or corporation, but without liability.

Source: § 6-271.

Comment: No change.

§ 6.1-341. The provisions of this chapter shall not preclude any other remedy by action or otherwise now existing for the enforcement of the claims of such company, bank, trust company, or other corporation against the person, partnership, or corporation in whose name such safe or box stood, nor bar the right of such company, bank, trust company, or other corporation to recover so much of the debt due it as shall not be paid by the proceeds of the sale of the property deposited with it.

Source: § 6-272.

Comment: No change.

§ 6.1-342. In any case where such company, bank, trust company, or other corporation, shall have received for safekeeping from any person, partnership, or corporation, any package or box to be stored in its general vault, and the rental for such storage shall have remained unpaid for a

period of three years, such company, bank, trust company, or other corporation, shall have the right to open such package or box and to have the contents thereof inventoried, upon compliance substantially with the procedure as to witnesses, notices, and certificates hereinbefore provided with reference to the opening of any safe deposit vault or box. Should the rental or other charges for the safekeeping of such package or box and the charges incident to the opening of the same remain unpaid for a period of two years from the date of such opening, the contents thereof may be sold upon compliance substantially with the procedure hereinbefore provided for the sale of the contents of any safe deposit vault or box, and the proceeds of such sale shall be treated in the same manner hereinbefore provided for the treatment of the proceeds of sale of the contents of any safe deposit vault or box.

Source: § 6-273.

Comment: No change.

CHAPTER 9

REAL ESTATE INVESTMENT TRUSTS

§ 6.1-343. This chapter may be referred to as the "Virginia Real Estate Investment Trust Act".

Source: § 6-577.

Comment: No change.

§ 6.1-344. As used in this chapter the term:

(1) *"Real estate investment trust"* or *"trust"* means a trust created under this chapter (a) for the primary purpose of acquiring ownership or co-ownership of one or more of the following: (i) land or improvements thereon and the development and management thereof, (ii) obligations secured by deeds of trust, mortgages or other lien instruments on real estate, (iii) personal property, whether or not constituting fixtures, incidental to the operation of real estate in which the trust has an interest, and (iv) leases of and other limited interests in real estate, and (b) which provides in the declaration of trust that the property and business of the trust shall be held and managed by trustees who are residents of Virginia and for the issuance of transferable certificates of interest.

(2) *"Certificate of interest"* or *"certificates of interest"* means a certificate or certificates issued by a trust evidencing a beneficial interest therein.

(3) *"Trustees"* means the trustees of real estate investment trust.

Source: § 6-578.

Comment: No change.

§ 6.1-345. (1) Two or more individuals may form a trust by executing and acknowledging a declaration of trust which shall set forth:

(a) The name of the trust, which shall include the words "real estate trust".

(b) The character of the business to be conducted.

(c) The location of its principal office.

(d) The name and residence address of each of the initial trustees.

(e) The terms, conditions and limitations under which certificates of interest may be issued by the trustees.

(f) The powers and duties of the trustees and the rights of the holders of certificates of interest.

(g) The tenure of office of the trustees and the method of determining succession.

(h) The duration of the trust, or a statement that the duration of the trust is unlimited.

(i) Any other provisions not inconsistent with law which may be deemed desirable.

(2) The declaration of trust so executed and acknowledged shall be filed for record in the office of the clerk of the court in which deeds to real estate are recorded, located where the principal office of the trust is located.

(3) The clerk with whom the declaration of trust is filed for record shall keep a book in which all such declarations of trusts and all amendments and supplements thereto shall be recorded showing the date of filing and shall keep an index in which shall be entered in alphabetical order the name of the trust and the names of each of the trustees.

Source: § 6-579.

Comment: No change.

§ 6.1-346. All amendments of and supplements to the declaration of trust shall be in writing and shall be executed, acknowledged and filed for record as provided with respect to the declaration of trust.

Source: § 6-580.

Comment: No change.

§ 6.1-347. The principal office of the trust shall be located in Virginia. If the principal office of the trust is changed a certificate showing such change shall be executed and acknowledged by one or more trustees and filed for record in the place where the declaration of trust was last filed for record, and the declaration of trust as amended and supplemented shall be filed for record in the office of the clerk of the court in which deeds to real estate are recorded, located where the principal office of the trust has been moved. If any change is made in the personnel of the trustees a certificate showing such change shall be executed and acknowledged by one or more trustees and filed for record in the office where the declaration of trust was last filed for record.

Source: § 6-581.

Comment: No change.

§ 6.1-348. Certificates of interest may be issued by the trustees from time to time for such consideration as they may deem desirable, subject to any limitation contained in the declaration of trust. Each holder of a beneficial interest in the trust shall be entitled to a certificate

of interest. No certificate of interest shall be issued that is not fully paid and nonassessable.

Source: § 6-582.

Comment: No change.

§ 6.1-349. (1) The declaration of trust may provide that the right of acquisition, management and disposition of property of the trust and the conduct of its business and to appoint or elect successor trustees shall be vested exclusively in the trustees and that in the conduct of the affairs of the trust, pursuant to the provisions of the declaration of trust, and in the appointment or election of trustees, the holders of certificates of interest shall have a limited or no vote.

(2) The declaration of trust may provide that any number of trustees, not less than two, may exercise any or all rights of the trustees, that property of the trust may be held in the name of the trust, and that any contract, deed, deed of trust, mortgage or other document executed in the name of the trust by any two trustees shall be effective and binding on the trust.

Source: § 6-583.

Comment: No change.

§ 6.1-350. (1) Creditors of the trust and others having claims against the trust shall be entitled to seek recovery only out of the assets of the trust, and the trustees and holders of certificates of interest shall not be liable to such creditors or other claimants.

(2) The declaration of trust may provide that the trustees shall not be liable to the trust or to the holders of certificates of interest except for negligence or misconduct and that the trust will indemnify each of the trustees against expenses incurred by him in defending any claim arising out of his trusteeship except claims as to which he shall be finally adjudged to be liable for negligence or misconduct.

Source: § 6-584.

Comment: No change.

§ 6.1-351. The duration of a trust may be unlimited and a trust shall not be deemed to violate any rule against perpetuities or accumulations or to unlawfully suspend the power of alienation.

Source: § 6-585.

Comment: No change.

3. All acts and parts of acts, all sections of the Code of Virginia, and all provisions of municipal charters inconsistent with the provisions of this act are, except as otherwise provided, repealed to the extent of such inconsistency.

4. The repeal of Title 6 effective as of July 1, 1966, shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing on or before such date, or any prosecution, suit or action pending on that date. Except as in this act otherwise provided, neither the repeal of Title 6 of the Code of Virginia nor the enactment of Title 6.1 shall apply to offenses committed prior to July 1, 1966, and prosecutions for such offenses shall be governed by the prior law, which is continued in effect for that purpose.

For the purposes of this act, an offense was committed prior to July 1, 1966 if any of the essential elements of the offense occurred prior thereto.

5. Whenever in Title 6.1 any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 6, as such title existed prior to July 1, 1966, are transferred in the same or in modified form to a new section, article or chapter of Title 6.1, and whenever any such former section, article or chapter of Title 6 is given a new number in Title 6.1, all references to any such former section, article or chapter of Title 6 appearing elsewhere in the Code of Virginia than in Title 6.1 shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

6. It is the intention of the General Assembly that this act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this act shall continue in full force and effect.

7. This act shall become effective on July 1, 1966.