REVISION OF CHAPTER 7 OF TITLE 6

REPORT OF THE VIRGINIA CODE COMMISSION

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA

Senate Document No. 38

COMMONWEALTH OF VIRGINIA

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REVISION OF CHAPTER 7 of TITLE 6

REPORT OF THE VIRGINIA CODE COMMISSION

To: Honorable Mills E. Godwin, Jr., Governor of Virginia

and

The General Assembly of Virginia

The Virginia Code Commission appointed a committee to study sections of the Code of Virginia relating to money and interest generally to determine whether or not such sections should be rearranged and revised for purposes of clarity. The following report and bill represent the results of that committee's labors as they were adopted by the Commission.

The difference between "clarifying" amendments and "substantive" amendments is a thin line. For example, the amendment to § 6.1-327 relating to entities which may not plead usury included partnerships which are required to file under the Virginia statute but omitted to include partnerships formed under the laws of a state other then Virginia, Such a foreign partnership might have a business transaction in Virginia but not be required to file under the Virginia statutes relating to partnerships. While it is believed that this amendment eliminates an unintended inconsistency, it is hard not to characterize this as substantive.

The statutes relating to interest have been subdivided into twelve different articles as follows:

Article 1		General
Article 2		Interest Rates Generally and Judgment Rates
Article 3		Add-on Interest
Article 4		Revolving and Monthly Rates
Article 5	-	Other Charges on Real Estate Loans
Article 6		Late Charges
Article 7		Prepayment and Acceleration Laws
Article 8	-	Transactions Not Subject to Usury or Subject to Special Usury Limitation
Article 9		Borrowers Not Entitled to Plead Usury
Article 10	-	Usury Penalties

After first attempting to include the statutes relating to charges by small loans in the general interest statutes, it was thought that these were too specialized and involved to include among the statutes relating to interest generally and that it would be neater and more logical to leave them in the Small Loan Act. Otherwise, statutes relating to specialized charges by banks, savings and loans, credit unions and industrial loan associations have been included in general interest statutes.

This report follows the general setup by Articles as outlined above and discusses the sections in the same order as the proposed appearance in the new articles. Nevertheless, reference is to the existing statutory enumeration for quick reference. The sections numbers in proposed Chapter 7.2 will be, for the purposes of this report, referred to by their last digits. For example "§ 6.1-330.6" will be referred to as "§ 6."

Article 1. §§ 6.1-311 and 6.1-312 relating to the money of account in Virginia have been combined (§ 6). In § 6.1-313 (§ 7) a more specific reference to the Uniform Commercial Code has been included. §§ 6.1-314 through 6.1-317 were combined in one section (§ 8), making it a fairly comprehensive statute dealing with companies formed to issue money or other media of circulation. In part, these sections relate to the same problem dealt with in §§ 6.1-370 through 6.1-379 regulating the issuance and sale of money orders.

Article 2. At one time, the "legal" rate in Virginia signified the rate on judgments, the maximum contract rate (in the absence of an exception) and the rate which was implied when the parties referred to requiring the payment of interest without making reference to an exact rate. With the increase of the contract rate to 8 per centum in 1968 and the increase of the judgment rate to 8 per centum in 1974, the "legal rate" became in effect the rate which was implied when there was a contract to pay interest that did not specify a rate. Even this would not be true in the case of a negotiable instrument, in which case a uniform act specifies the judgment rate as the rate implied when no express rate is specified. See Code of Virginia, § 8.3-118(d). For these reasons, there has been added a sentence to § 6.1-318 (§ 9) setting forth the effect of the "legal rate" as basically an implied rate.

Judgment rates are fixed by § 8-223. The Commission is of the opinion that the basic provisions of § 8-223 should be in Title 8 but recommend that the second sentence should be amended by deletion of the words, "of eight per centum per annum," with substitution of the language "as provided in § 6.1-330.10", and that a new section specify that the judgment rate is 8 per centum per annum (§ 10). Note that the lower judgment rate of 6 per centum on judgments in favor of small loan companies is retained. See the reference to § 6.1-273.

The contract rate of 8 per centum in § 6.1-319 (§ 11) is maintained by the reenactment of this section. It is noted that the conversion of "points" to an annual interest rate differs from the method of determination of such rate under the federal truth-in-lending statutes.

Article 3. The statutes relating to add-on interest for banks (§ 6.1-320), for savings and loan associations (§ 6.1-195.34), for industrial loan associations (§ 6.1-234) and for unlicensed and unsupervised second mortgage lenders (§ 6.1-330) are to be combined into one article (§ 13, § 14, § 15, and § 16).

Also included in this article is § 6.1-324.1 (§ 17) requiring any

extender of consumer cedit to quote the cost in terms of annual percentage rate and not solely in terms of an add-on or discount installment rate. The application of this present section to installment rates is clear, but its application to monthly rates, the effect of interest collected in advance and to rates effected by "seller" points is imprecise. Subsection B of § 17 codifies an opinion of the Attorney General to the effect that a lender may quote the effective annual percentage rate in an add-on installment note, all as contemplated by the federal truth-in-lending statutes.

The prior section which relates solely to savings and loan associations, § 6.1-195.34, uses the words "charge and collect in advance", whereas the bank statute, § 6.1-320, the industrial loan statute, § 6.1-234, and the unregulated second mortgage lender statute, § 6.1-330, refer only to "charge in advance".

"Charge in advance", as defined in the latter two sections, has been incorporated in the definition section (§12) as applicable to all statutes.

The bank, industrial loan, and unregulated second mortgage lender statutes refer to an investigation fee of 2 per centum whereas the savings and loan section refers to an initial service charge of 2 per centum. The Commission first rephrased "investigation fee" as "investigation and processing fee" because it was thought that the latter term was more properly descriptive, but later concluded that the words "service charge" which are used in the savings and loan statutes were more descriptive.

The rights of accleration upon default in the case of industrial loan associations were also defined in the section relating to interest and were left there rather than being moved to Article 7 which deals with prepayment and acceleration (Cf. § 34). Both § 6.1-234 and § 6.1-320 retain the language that the right of acceleration does not impair negotiability. § 6.1-195.36 relating to acceleration clauses in notes held by a savings and loan associations has also been moved to Article 7 (§ 29).

§ 6.1-330 relating to second mortgage loans by unlicensed and unsupervised lenders is included under the provisions relating to add-on loans (§ 16). The savings and loan section, § 6.1-195.37, has become new § 35. § 6.1-330 contains a provision that rates or a charge should not be made more often than once each eighteen months by renewal or additonal loan. The Commission agreed that provision, that rendered a contract null and void if more than one charge was imposed during such period, was too harsh for the evil it was designed to prevent and that it constituted a trap for the unwary or uninitiated. For example, if an unregulated lender made a loan to one borrower on rented residential property, then a second loan on additional residential property within an eighteen month period could be void, although otherwise in compliance with the statute. This has been rewritten in § 16 to indicate that the investigation fee may not be charged except to the extent that new money is advanced within such eighteen-month period. It was also thought that the statute provided a stumbling block for legitimate lenders who were willing to renew a loan at the request of the

borrower who was having unanticipated difficulties. This would appear to prohibit renewal of a loan even at the same rate, although the borrower could go to another lender (if available) to obtain a new loan at perhaps a higher rate.

The Commission also thought it advisable to include a new counterpart of § 6.1-330.3 at this point in the statutes, as well as following the null and void penalty imposed by § 6.1-330.2 in Article 10. § 6.1-330 provides that second mortgage statutes, i.e., the authority to charge and the penalty, are not applicable to lenders licensed by and under the supervision of the State Corporation Commission or the federal government. Technically, at the federal level banks, savings and loan associations and credit unions obtain a certificate of convenience and necessity and are "issued" articles of association whereas at the State level they are "licensed." It was thought that all of these were intended to be within the phrase "licensed and supervised" and the clarifying language makes this abundantly clear. (This was ultimately moved to § 25, with a cross-reference in the instant § 16.)

Article 4. The 1 per centum per month permitted on revolving credit extended by banks in § 6.1-320 was incorporated in a new section relating only thereto (§ 19). This statute has been utilized on check credit plans and cash advances under credit cards and involves no twenty-five-day free peiod as in the case of § 6.1-362 (§ 20). The "investigation" fee is now a "service charge".

§ 6.1-215 (§ 18) relating only to credit unions has been included as amended by the Commission to permit any credit union to make loans to any other credit union as otherwise authorized by statute. The 1 per centum per month is not only permissive but is a limitation.

There is an amendment to § 6.1-362 (§ 20) to make it clear that the bill must be mailed within the eight-day period specified therein. An over-technical reading of "not less than eight days" would have led one to the view that mailing after the eight-day period, not during, was required. "Fiscal" month has become "billing" month.

In 1974, the General Assembly enacted Virginia's first statutory limitation of the time-price doctrine, under which courts held that interest and usury laws do not apply to sales, as opposed to loans. This section was further amended by changing the words "fiscal month" to "billing month" and providing for prepayment and rebates on pre-computed transactions in determination of the standard Rule of 78's. The section contains the new prepayment language.

It was arguable that the 2 per centum per month on the prior month's balance contemplated credit for prepayments. Nevertheless, the statute did not require the taking of an early payment or prepayment. The prepayment is now directed on precomputed transactions, with the seller or lender being allowed a minimum acquisition charge which must be covered before credit for prepayment is mandatory.

The reference to the usury penalties is retained in subsection E. because time-price transactions are not subject to the usury penalty in absence of statute.

Other amendments make it crystal clear that a late charge under § 6.1-2.2 (§ 26) is not a prohibited "additional charge... for the extension of credit". A further amendment makes it clear that charges for insurance items are not "for the extension of credit" if the buyer is not required to obtain these through the seller in question.

Notice that if credit life insurance or accident and health insurance is required, whether or not obtained or obtainable through the borrower, the premium must be included within the 2 per centum per month maximum. Property insurance may be required, as in automobile financing, and comes within the 2 per centum per month maximum only if its acquisition through the seller is required.

The provisions relating to leases of consumer goods have been rewritten and hopefully improved.

Article 5. § 6.1-324 (§ 22) previously permitted "supervision and processing and inspection" fees on construction loans and "processing and investigation fees" on real estate loans. Now they are denominated "serice charges". The reference to an prohibition against doubling up under § 6.1-323 has been deleted and the Commission proposes the repeal of that section. § 6.1-323 permits a 1 percent charge by a mortgage banker who closes loans primarily for purposes of resale and since under § 6.1-324 this can be made without regard to the intention of the lender to resell, it was felt that § 6.1-323 was obsolete.

This section is followed by the comparable savings and loan section which is § 6.1-195.17 (§ 23). The basic differences are that the savings and loan statute contains minimum fees of $50.00 on construction loans and $20.00 on other real estate loans. The general statute requires the expenses to be reimbursed to be "out-of-pocket", whereas the savings and loan statute refers to "reasonable and necessary charges...including the cost of" several items. For example, under the general statute, § 6.1-324, the lender might not charge for an in-house appraisal because it was not out-of-pocket. The general statute also refers to "attorney's fees" while the savings and loan statute refers to "drawing of papers and closing the loan".

The savings and loan statute parallels the federal regulation governing federal savings and loan associations. Generally it was thought that State chartered associations should have the same privilege.

Part of § 6.1-330 (§ 24), the Second Mortgage Act is included here. Although this section uses the term "actual cost" the second sentence together with the insurance sentence, makes it clear that in second mortgage transactions subject to this section, there may be no brokers or finder's fee if this would cause the amount paid by

the borrower to exceed, together with interest, 7 percent add-on plus 2 percent service charge.

Article 6. Presently there are at least four sections relating to late charges. § 6.1-232 relates to "installment debt" and permits a penalty of 5 per centum. The industrial loan section, § 6.1-234, permits a 10 percent late payment penalty without regard to whether the debt is an installment debt or a single maturity debt. §§ 6.1-324(4) and 6.1-197.17 permits late payments on real estate mortgages by banks, lenders, and savings and loan associations, if the penalty is reasonable and specified in the contract between the lender and the borrower. The Commission made the requirement of specification in the contact between the creditor and the debtor of general application, and the 5 per centum maximum of general application, and reduced the industrial loan association penalty from 10 per centum to 5 per centum (§ 26). It was thought that the enactment of § 6.1-2.2 and the specification of the 5 percent penalty had fixed the outer limits of "reasonable" under the real estate sections involved.

The definition of "timely payment" is new.

Article 7. § 27 is lifted from § 6.1-319.1 which permits prepayment of real estate loans of less than $75,000.00 at a maximum penalty of 1 per centum.

The provision regarding the effect of a form which violates the statutory limitation on prepayments is thought to state the existing rule which renders invalid only the prepayment provisions and does not taint the overall loan as usurious. A violation of this provision would most likely occur in the case of an out-of-State lender using a form not tailored to Virginia law.

Another amendment makes it clear that if the lender uses a form with a prepayment penalty in it, the prepayment penalty is invalidated but the loan remains otherwise untainted as to usury limitations.

§ 30 relating only to prepayment to industrial loan associations by natural persons was lifted from § 6.1-234. There is a reference to the Rule of 78's as illustrated in § 32.

The prepayment rights afforded unregulated second mortgage lenders in accordance with the Rule of 78's in § 6.1-330 are also included in § 31.

It should be noted that there is now pending in the Virginia Supreme Court a case appealing a lower court decision holding that reference to the Rule of 78's thereto is not a proper disclosure for purposes of the federal Truth-in-Lending Act.

Included with the article on prepayment and acceleration is § 11-4.2 relating to the right of a buyer of consumer goods to refinance (§ 36). Although this is an extention of payment, as opposed to early payment (whether prepayment or acceleration), it is believed that this placement is logical. The section is silent as to

interest or finance charge factors in the continuing payments, although it is arguable that the permitted 10 per centum increase in installments is possibly a finance charge. It is suggested that the statute be clarified by providing that the seller may impose a service charge (if one prefers the language of § 6.1-362.1) or a finance charge (truth-in-lending language) not to exceed by 10 per centum the amount under the initial transaction. Since the statute relates to buyers of consumer goods, a truth-in-lending disclosure would have been given in every case specifying the annual percentage rate.

Article 8. The language "unless otherwise regulated by provisions of this Title" was deleted from § 6.1-319.1 (§ 37) because its purpose or effect was uncertain. There was some thought that this may be a reference to the small loan statutes, but since small loan companies are prohibited from taking such deeds of trust on real estate, the language is unnecessary. With the deletion of this language the inclusion of § 6.1-320 is no longer necessary in the "notwithstanding provisions". The provisions relating to permissive prepayment to a maximum of 1 per centum have been moved to the prepayment section (§ 27). Subsection (b)(ii) of § 37 contains a reference to § 6.1-319.3 (§44), thereby permitting fluctuating interest rates on real estate loans for business and investment purposes if the initial balance exceeds $5,000.00. This is the present purport of § 6.1-319.3 and in particular the language "any other section relating to usury".

Much time was given to a definition of first deed of trust for purposes of this statute, and the definition found in subsection (iii) is the result. Under this definition, it now seems clearer that a judgment lien or lease which is superior to the lien of a first deed of trust renders the deed of trust no less a first deed of trust for usury purposes. This discussion also went into the situation where a first deed of trust and a later second deed of trust are held by the same lender. For purposes of the regulatory statutes relating to permitted ratios of the percentage of appraised value, regulatory officials have been fairly unanimous in permitting the second deed of trust lien to be treated as a first deed of trust lien when the prior deed of trust lien is held by the same lender. This definition would permit a lender to make a second deed of trust loan to the same borrower as if it were a first deed of trust for usury purposes. This can be effected now by requiring pay off of the first deed of trust and combining of the indebtedness in one deed of trust, which could otherwise be evidenced by a first deed of trust and a second deed of trust. The making of subsequent advances by a mortgage lender to a borrower is not uncommon and this should encourage the practice, without the necessity of a complete refinancing. The definition becomes more involved When applied to the owner of the real estate who is not the original grantor or mortgagor but who has assumed liability for the indebtedness upon acquisition. It should also be noticed that the statute would not apply in such case if the party has merely taken subject to the first lien and has not assumed primary responsibility therefor.

§ 6.1-328 (§ 38) was amended by the insertion of the language "or any other sum" to conform with the statutory language under § 6.1-319.3 (§ 44). Under the unregulated Second Mortgage Act (§ 16),

the penalty for violation is that the loan is null and void. This amendment makes it crystal clear that if one cannot plead usury as to the interest, he can not do so to the principal.

The provisions of § 6.1-320 which permit a bank or broker to collect interest in advance for a period up to one year on a 360-day basis and to collect certain minimum charges, which might not be imposed except after ninety days, were extracted and put in one section. The provisions of § 6.1-321 relating to a 2 percent investigation fee were incorporated in the same section, with the denomination of the "investigation fee" as a "service charge". There is also included in this section an amendment proposed by the Virginia Bankers Association, making it clear that the 2 percent service charge may not be imposed more than once a year, which amendment is believed to be either clarifying or limiting.

The amendment to § 6.1-322 (§ 42) is in accord with prior commercial practice. The references to the interest rate charged broker-dealers in Virginia may have been proper at a time when an agreement as to prime rate among lenders was not recognized as a violation of the anti-trust laws. The statute is now tied to the rate actually paid by the relending broker-dealer to a Virginia bank. A check of the various banking organizations confirmed the fact that such rates fluctuate not only from bank to bank, but also between customers at the same bank, depending upon the character of the credit and deposit balances.

Article 9. In addition to certain punctuation changes in § 6.1-327 (§ 43), there were two changes made. One was to make clear the limitation against pleading usury applied to principal as well as interest as in the case of § 6.1-328 (§ 38). Two of the cases which have gone to the Virginia Supreme Court under the second mortgage usury statutes involved corporations. The second amendment to the statute is referred to in the opening paragraph of this report, and it would place partnerships formed under the law of another state, but not required to file under § 50-44, et seq., or § 50-74, et seq., under the same limitations as to the plea of usury. Particularly in transactions involving Virginia lenders and partnerships near the State line could this arise. It could also arise where a loan to a partnership was secured by collateral, such as real estate in Virginia, and the activities were not such as to require a filing under §§ 50-74 or 50-44.

The "any other sum" language may also have connotations in matters other than principal and interest, such as late payment penalties under § 6.1-2.2 (§ 26). It is thought that such late payments in excess of 5 per centum would be an "other sum" under these statutes.

§ 6.1-327.1 eliminating the plea of usury on business loans of $5,000.00 or more secured by second mortgages would be repealed as encompassed in the broader language of § 6.1-319.3 (§ 44), which eliminated the existence of a second mortage as a criterion for denial of the right to plead usury on business loans.

Article 10. The normal penalties for usury (1) forfeiture of all

accrued interest and (2) recovery of twice the usury interest paid within two years has been maintained (§§ 45 and 46).

The repeal of § 6.1-363 is recommended because the Commission believes that it is clear that the penalties of the usury statutes apply to violations of the open-end credit statute, § 6.1-362. This was included in such statutes prior to the enactment of § 6.1-362 relating to interest and usury and was to make clear that which was already clear that loans in excess of the statutory rate were unsurious, in the absence of some other statute such as the corporate usury section.

The null and void penalty for violation of the Second Mortgage Act (§ 16) by unlicensed and unsupervised lenders has been retained (§ 47).

DRAFT OF PROPOSED CHAPTER 7.2

Money and Interest

Contents

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A BILL to amend the Code of Virginia by adding in Title 6.1 a Chapter 7.2, consisting of sections numbered 6.1-330.6 through 6.1-330.48; and to amend and reenact §§ 6.1-195.17, 6.1-195.34, 6.1-217, 6.1-234, 6.1-324 and 8-223, as severally amended, of the Code of Virginia; and to repeal §§ 6.1-2.2, 6.1-2.3, 6.1-2.4, 6.1-195.36, 6.1-195.37, 6.1-215, 6.1-234.1, Chapter 7 of Title 6.1, consisting of sections numbered 6.1-311 through 6.1-328, Chapter 7.1 of Title 6.1, consisting of sections numbered 6.1-330 through 6.1-330.5, Chapter 10 of Title 6.1, consisting of sections numbered 6.1-362 through 6.1-363, and § 11-4.2, as severally amended, of the Code of Virginia; the added, amended and repealed sections relating to interest generally.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 6.1 a Chapter 7.2, consisting of sections numbered 6.1-330.6 through 6.1-330.48, as follows:

CHAPTER 7.2.

MONEY AND INTEREST.

Article 1.

General.

§ 6.1-330.6. The money of account of this State shall be the dollar, cent and mill. All accounts by public officers shall be so kept; provided, however, that 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 of account.

Source: §§ 6.1-311 and 6.1-312.

§ 6.1-330.7. 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 § 8.3-107 of the Uniform Commercial Code is applicable, the provisions of that section shall apply.

Source: § 6.1-313.

§ 6.1-330.8. A. 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.

B. All contract and securities that may originate from, or be made or obtained in whole or in part by means of any illegal currency 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.

C. 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.

D. 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 subsection A of this section.

Source: §§ 6.1-314 through 6.1-317.

Article 2.

Interest Rates Generally and on Judgments.

§ 6.1-330.9. The legal rate of interest shall be six per centum per annum. Except as provided in §§ 8.3-118(d) and 8-223, the legal rate of interest shall be implied where there is no express contract to pay interest at a specified rate.

Source: § 6.1-318.

§ 6.1-330.10. Judgment rate of interest.—The judgment rate of interest shall be eight per centum per annum except as provided in § 6.1-273.

Source: § 8-223.

§ 6.1-330.11. Contracts for more than legal rate of interest.—Except as otherwise permitted by law, no contract shall be made, for the loan or forbearance of money at a greater rate of interest than eight per centum per annum, including points expressed as a percentage of the loan divided by the number of years of the loan contract. For the purpose of this section the term "points" is defined as the amount of money, or other consideration received by the lender, from whatever source, as a consideration for making the loan and not otherwise expressly permitted by statute.

For contracts which may be at a greater interest than eight per centum per annum, reference is hereby made to Article 3 relating to add-on rates, Article 4 relating to involving monthly rates, Article 5 relating to other charges on real estate loans, Article 6 relating to late charges, Article 9 relating to transactions not subject to usury or subject to special limitations to usury, Article 10 enumerating borrowers not entitled to plead usury and to Article 12. Further reference is hereby made to Chapter 6, §§ 6.1-244 to 6.1-310

relating to powers of small loans generally.

Source: § 6.1-319

Article 3.

Add-on Interest.

§ 6.1-330.12. For the purposes of this article the phrase "charge in advance", when applied to installment loans, means that the interest may be added to the principal amount of the note but may not be deducted from it.

Source: §§ 6.1-234 and 6.1-330.

§ 6.1-330.13. Any bank may charge in advance at a rate of interest of seven per centum per annum 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.

In addition to the charges permitted by this section a bank may impose a service charge not exceeding two per centum of the amount of the loan.

Source: §§ 6.1-320 and 6.1-321.

§ 6.1-330.14. On loans for (i) maintenance, repair, alteration, modernization, landscaping, improvement, furnishing and equipment of improved real estate or other improved real estate and (ii) mobile homes, a savings and loan association may charge in advance interest at the rate of seven per centum per annum upon the entire amount of such loans and may also make a service charge not exceeding two per centum of the amount of the loan.

Source: § 6.1-195.34(i) and (j).

§ 6.1-330.15. An industrial loan association may charge in advance at a rate of interest of seven per centum per annum 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 impose a service charge not exceeding two per centum of the amount of the loan.

Source: § 6.1-234.

§ 6.1-330.16. A. Any person, other than lenders licensed by and under the supervision of the State Corporation Commission or the federal government or otherwise enumerated in §§ 6.1-330.25 and 6.1-330.48, may charge in advance at a rate of interest of not greater than seven per centum per annum upon the entire amount of the loan, and such loans may be repaid in weekly, monthly or other periodic installments, with the privilege of the lender 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, if such loan is secured in whole or in part by a subordinate mortgage or deed of trust on residential real estate improved by the construction thereon of housing consisting of four or less family dwelling units. For the purposes of this Chapter 7.2 relating to interest, a subordinate mortgage or deed of trust is one subject to a prior mortgage or deed of trust in existence at the time of the making of

the loan secured by such subordinate mortgage.

The lender may also impose a service charge not exceeding two per centum of the amount of the loan provided that such service charge shall not be made more often than once each eighteen months except to the extent that new money is advanced within such eighteen-month period by a renewal or additional loan. These provisions shall apply whether payable directly to the lender or to a third party in connection with such town.

As an alternative to the charges permitted above, any such lender upon a making of a loan secured as provided, may impose charges under § 6.1-330.11 or as otherwise permitted by law.

B. No charge may be made if the loan is not made.

C. Nothing contained herein shall prohibit charges for such mortgages or deeds of trust being made pursuant to any other statute.

D. The provisions of this section shall not apply to any loan by any lender enumerated in § 6.1-330.25.

Source: § 6.1-330 (a), (d) and (e).

§ 6.1-330.17. Cost of consumer credit to be quoted in terms of annual percentage rate. A. For the purposes of this article: 1. Any bank, savings and loan association or other legal entity regularly engaged in loaning money or extending consumer credit as defined in 15 United States Code Annotated § 1602 shall quote the cost of such consumer credit to a prospective debtor or borrower in terms of an annual percentage rate and not solely in terms of an add-on or discount installment rate to be charged to the prospective debtor or borrower, in any oral or written communication or advertisement and in oral response to an inquiry from a potential debtor or borrower concerning the cost of such credit. Computation of the annual percentage rate pursuant to the provisions of 15 United States Code Annotated § 1606 shall be deemed to be in compliance with this section with respect to such computation.

2. Any such bank, savings and loan association or other legal entity which makes a loan or extends credit in violation of the provisions of this section shall be liable to the debtor or borrower for twice the amount of the finance charges, but in no event less than one hundred dollars or more than one thousand dollars, if an action to enforce such penalty is commenced within one year from the date of the alleged violation. No penalty shall be assessable or recoverable where a penalty is properly assessable under the provision of 15 United States Code Annotated § 1640.

B. Any note or other evidence of a loan providing for an add-on or discount rate may state therein the annual percentage rate computed in accordance with 15 United States Code Annotated § 1606.

Source: 6.1-324.1

Article 4.

Revolving and Monthly Rates.

§ 6.1-330.18. A credit union may make loans to its members, and to other credit unions doing business in Virginia, at reasonable rates of interest not exceeding one per

centum per month, computed on unpaid balances.

Source: New (This is basically § 6.1-215.)

§ 6.1-330.19. 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. In addition to the charges permitted by this section a bank may impose a service charge not exceeding two per centum of the amount of the loan.

Source: §§ 6.1-320 and 6.1-321.

§ 6.1-330.20. Open end sales and loan plans. —Any seller or lender engaged in the extension of credit under an open-end credit or similar plan under which a service charge is imposed upon the cardholder or consumer if the unpaid balance is not paid in full within a period of twenty-five days from billing date, may charge and collect a service charge at a rate not to exceed one and one-half per centum per month, computed at the option of the seller or lender on either (1) the average daily balance for the period ending on one billing date or (2) the balance existing on the billing date of the month, or (3) any other balance which does not result in the seller or lender charging and receiving any sum in excess of what would be charged and received in (1) or (2) above; provided that no service charge shall be charged unless the bill is mailed not later than eight days (excluding Saturdays, Sundays and holidays) after the billing date. For the purposes of this section the average daily balance for any period shall be that amount which is the sum of the actual amounts outstanding each day during the period, divided by the number of days in the period.

Source: § 6.1-362.

§ 6.1-330.21. A. The time-price doctrine as heretofore recognized by the law of Virginia is hereby abrogated insofar as it relates to the sale or lease of consumer goods as defined in § 8.9-109 of this Code.

B. Any seller of consumer goods as defined in § 8.9-109 of this Code who extends credit under a closed-end installment credit plan or arrangement may impose a service charge not to exceed two per centum per month on the balance at the end of the billing period next preceding each successive payment. No additional charge shall be made for the extension of credit under such a plan or arrangement. If the total service charge on the transaction is precomputed according to the actuarial method, the service charge may be calculated on the assumption that all scheduled payments will be made when due. The balance on which such service charge may be imposed may include the deferred portion of the sales price of the consumer goods and costs and charges incidental to the transaction including any insurance premium financed in connection therewith. The borrower shall have the right to prepay on precomputed transactions and rebates shall be determined in accordance with the Rule of 78, as illustrated in § 6.1-330.32 of the sum of the digits method; the seller may also condition such rebate upon the earning of a minimum of twenty-five dollars in service charges, which amount to the extent not earned may be withheld from the rebate required hereunder. A late charge pursuant to § 6.1-330.26 may be imposed.

C. Any lessor of consumer goods as defined in § 8.9-109 of this Code may impose a service charge of two per centum per month on the balance at the end of the month next preceding each successive payment provided (i) that the lease agreement is in the form of a bailment or lease of such goods (ii) it is stated in the lease that the lessee will become or has the option to become the owner of such goods for no other consideration or for nominal consideration if he fully complies with his obligations and (iii) the lessor extends

credit under a closed-end installment credit plan or arrangement. No additional charge, other than a late charge under § 6.1-330.26 may be had for the extension of credit under such lease.

D. Premium for credit life insurance and credit accident and health insurance purchased by the debtor are not to be construed as an additional charge for the extension of credit if such insurance coverage is purchased voluntarily by the debtor. Premiums for property insurance on the goods purchased are not to be construed as additional charges for extension of credit unless the seller requires the purchase of such insurance from or through the seller.

E. Where a service charge is made by any seller or lessor in excess of that permitted by this section, the provisions relating to usury set forth in §§ 6.1-330.45 and 6.1-330.46 shall apply.

Source: § 6.1-362.1

Article 5.

Other Charges on Real Estate Loans.

§ 6.1-330.22. Fees and charges which may be made on certain real estate loans.—A. Any bank or any other lender engaged in making loans to finance the construction or improvement of real estate may charge a borrower and collect in advance, service charges not to exceed two and one half per centum of the amount of the loan. In lieu of such service charges, such bank or lender may require the borrower to pay the actual cost and expenses of supervision and inspection.

B. Any bank or lender engaged in making real estate mortgages or deed of trust loans may impose on the borrower and collect in advance a service charge not to exceed one per centum of the amount of the loan. If the bank or lender provides both construction financing under subsection A. hereof, and permanent financing under this subsection, its charges shall not exceed the maximum amount allowable under subsection A.

C. Any bank or lender may 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 and filing fees, taxes, insurance, including mortgage guaranty insurance, appraisals, credit reports, surveys, and attorney's fees.

D. 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.

Source: § 6.1-324.

§ 6.1-330.23. Fees and charges in connection with loans.—To cover the costs of investigating and processing the loan, a savings and loan association may charge and collect in advance from the borrower a service charge not to exceed fifty dollars or two and one-half per centum of the principal amount of the loan, whichever is the greater, on construction loans, and, on all other loans secured by real estate a service charge not to exceed twenty dollars or one per centum 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 and filing fees, taxes, insurance, including mortgage guaranty insurance, appraisals, credit reports, surveys, drawing of papers and closing the loan.

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.

Source: § 6.1-195.17.

§ 6.1-330.24. A. Any lender making a loan secured by a subordinate mortgage may require the borrower to pay, in addition to the service charge and interest permitted by § 6.1-330.16, the actual cost of title examination, title insurance, recording fees, surveys, attorneys' fees, and appraisal fees. No other charges of any kind shall be imposed on or be payable by the borrower either to the lender or any other party in connection with such loan; provided, however, late charges in the amount specified in § 6.1-330.26 may be made and, upon default, the borrower may be subject to court costs, attorney's fees, trustee's commission and other expenses of collection as otherwise permitted by law. Broker's or finder's fees may be paid by the lender from the service charge or interest permitted under § 6.1-330.16 or may be paid by the borrower if the total interest, service charge, broker's fees, finder's fees or commissions do not exceed the amount of service charges and interest permitted under § 6.1-330.16.

B. Evidence of fire and extended coverage insurance may be required by the lender of the borrower and the premium shall not be considered as a charge. Decreasing term life insurance, in an amount not exceeding the amount of the loan and for a period not exceeding the term of the loan, may also be required by the lender of the borrower and the premium shall not be considered as a charge. At the option of the borrower accident and health insurance may be provided by the lender, and the premium therefor shall not be considered a charge. Proof of all insurance issued in connection with loans subject to this chapter shall be furnished to the borrower within ten days from the date the loan is closed.

C. No charge may be made if the loan is not made.

D. This section shall not apply to any loan made by any lender enumerated in § 6.1-330.25.

Source: § 6.1-330.

§ 6.1-330.25. §§ 6.1-330.16, 6.1-330.22 and 6.1-330.31 shall not apply to loans made by any lender licensed by, and under the supervision of the State Corporation Commission or the federal government, or to loans made by State and national banks, State and federal savings and loan associations and State and federal credit unions. §§ 6.1-330.16 shall not apply to a seller in a real estate sales transaction who takes a subordinate mortgage on such real estate.

Source: § 6.1-330.3.

Article 6.

Late Charges.

§ 6.1-330.26. Any lender or seller may impose a late charge for failure to make timely payment of any installment due on a debt, whether installment or single maturity, provided that such late charge does not exceed five per centum of the amount of such installment payment and that the charge is specified in the contract between the lender or seller and

the debtor. For the purposes of this section "timely payment" is defined as one made by the date fixed for payment or within a period of seven calendar days after such due date. Late charges shall not be deemed to include charges imposed upon acceleration of the entire debt by reason of a default by the debtor.

The limitations in this section shall apply to installment debts created after July one, nineteen hundred seventy-five.

Source: § 6.1-2.2.

Article 7.

Prepayment and Acceleration Laws.

§ 6.1-330.27. Every contract, except as provided in §§ 6.1-330.28, 6.1-330.29 and 6.1-330.30 or not otherwise governmentally regulated as to prepayment privilege, made for the loan or forbearance of money and secured by a first deed of trust or first mortgage on real estate, where the amount loaned or forborne is less than seventy-five thousand dollars, shall permit the prepayment of the unpaid principal at any time and no penalty in excess of one per centum of the unpaid principal balance shall be allowed. Any prepayment penalty provision in violation of this section shall be unenforceable as to the amount in excess of one per centum of such balance.

Source: § 6.1-319.1.

§ 6.1-330.28. A borrower from a credit union may prepay the whole or any part of his loan at any time, without penalty.

Source: § 6.1-217 (third paragraph).

§ 6.1-330.29. Anticipating payment of loan.—A borrower may anticipate the payment of any loan from a savings and loan association 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: § 6.1-195.37.

§ 6.1-330.30. Any natural person borrowing from an industrial loan association shall have the right to anticipate payment of his debt at any time without penalty and in cases where interest has been added to the face amount of the note receive a rebate by way of credit for any unearned interest, which rebate shall be computed in accordance with the Rule of 78 as illustrated in § 6.1-330.32 which shall be subject to reduction by an anticipation premium equal to that portion of the contract interest allocable under such rule to the next six payments.

Source: § 6.1-234.

§ 6.1-330.31. Any borrower under any loan described in § 6.1-330.16 shall have the right to anticipate payment of his debt in whole or in part at any time and in cases where the interest has been added to the face amount of the note shall receive a rebate by way of credit for any unearned interest, which rebate shall be computed in accordance with the Rule of 78 as illustrated in § 6.1-330.32.

The provisions of this section shall not apply to any loan made by any lender enumerated in § 6.1-330.25.

Source: § 6.1-330.

§ 6.1-330.32. The Rule of 78.—A. The Rule of 78 is so named because the months of one year, i.e. one through twelve added together, total seventy-eight.

B. To determine the amount of the rebate of unearned interest under the Rule of 78 on a loan where payment is anticipated:

1. Determine the number of months over which the loan is to be repaid according to its terms. Write the numbers in sequence and add (for example, for a four-year loan write the numbers one through forty-eight). The total will be the denominator of a fraction to be determined below.

2. Determine the number of months remaining on the loan after payment is anticipated. Write in inverse sequence and add (for example, for a four-year loan anticipated after the third month, write the numbers forty-five back to one). The total will be the numerator of the fraction of which subparagraph 1 above is the denominator.

3. Multiply the original amount of interest that would have been paid over the life of the loan by the fraction derived as above, such figure, so determined, is the amount to be rebated.

Payment anticipated between scheduled payment dates shall not be considered but instead the succeeding scheduled payment date shall be used in the above determination, notwithstanding any contrary provision of law.

Source: § 6.1-330.5.

§ 6.1-330.33. Prepayment penalties not to be collected in certain circumstances.—No lender shall collect or receive any prepayment penalty on loans secured by real property comprised of not more than four family residential dwelling units, if said prepayment results from the enforcement of the right to call the loan upon the sale of the real property which secures said loan. If the loan is prepaid because of sale to a person whom the lender has rejected as a grantee or failed to approve within fifteen days after receipt by it of written request for approval, such prepayment shall be presumed to result from enforcement of the right to call the loan.

Source: § 6.1-2.3.

§ 6.1-330.34. Acceleration clause in note evidencing installment loan.—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: § 6.1-195.36.

§ 6.1-330.35. Mortgage, etc., to contain notice that debt is subject to call or modification on conveyance of property.—Where any loan is made secured by a mortgage or deed of trust on real property comprised of not more than four family residential dwelling units and the note, or mortgage or deed of trust evidencing such loan contains a provision that the holder of the note secured by such mortgage or deed of trust may accelerate payment of or renegotiate the terms of such loan upon sale or conveyance of

the security property or part thereof, then the mortgage or deed of trust shall contain in the body or on the margin thereof a statement, either in capital letters or underlined, which will advise the borrower as follows: "Notice - The debt secured hereby is subject to call in full or the terms thereof being modified in the event of sale or conveyance of the property conveyed."

Source: § 6.1-2.4.

§ 6.1-330.36. Right of buyer of consumer goods to refinance certain payments; agreements as to fluctuation in schedule of payments.—A. In any sales transaction, except one pursuant to an open-end account, involving exclusively consumer goods as defined in § 8.9-109(1) of this Code wherein credit is extended and a security interest in consumer goods is taken, any installment payment, other than a down payment made prior to or contemporaneously with the execution of an agreement evidencing the transaction, which is more than ten per centum greater than the regular or recurring installment payments, shall be subject to the right of the buyer to refinance such a payment or payments on the basis of an extended period of time and additional payments, which will allow the unpaid balance to be paid in as few periodic payments not more than ten per centum greater than the regularly scheduled installment payments as are required to pay such balance. Such additional payments shall be considered and treated as part of the original transaction.

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

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

Source: § 11-4.2.

Article 8.

Transactions Not Subject to Usury or Subject to Special Limitations as to Usury.

§ 6.1-330.37. A. Notwithstanding the provisions of §§ 6.1-330.9, 6.1-330.11 and 6.1-330.41 or any other provision relating to interest or usury contracts made for the loan or forbearance of money, secured or to be secured by a first deed of trust or first mortgage on real estate, may be lawfully enforced at the interest rate stated therein on the principal amount loaned or forborne or contracted to be lent or forborne.

B. For the purpose of this section and §§ 6.1-330.27 and 6.1-330.16: (i) real estate shall be deemed to include a leasehold estate of not less than twenty-five years; (ii) an interest rate which varies in accordance with any exterior standard, or which cannot be ascertained from the contract without reference to any exterior circumstances or documents, shall not be an "interest rate stated therein." A rate which varies with regard to such exterior standard shall not be enforceable in excess of the rate permitted by § 6.1-330.11, unless such loan is made to a person described in § 6.1-330.43 or is insured or guaranteed as provided in § 6.1-330.38 or is in the initial amount of five thousand dollars or more and is

for business or investment purposes under § 6.1-330.44; and (iii) the terms "first deed of trust" or "first mortgage" shall include all deeds of trust and mortgages, and amendments thereto, which are made by the same grantor or mortgagor, secure notes held by the same holder, convey substantially the same real estate, and are superior to all other deeds of trust or mortgages on the real estate. The terms "grantor" or "mortgagor" shall include an owner of the real estate and his spouse who has assumed such responsibility for the obligation on such deed of trust or mortgage.

Source: § 6.1-319.1.

§ 6.1-330.38. 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 or any other sum 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 twenty-seven, nineteen hundred thirty-four, 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, or insured or guaranteed by any similar federal governmental agency or organization, including the Secretary of Housing and Urban Development or his designees or delegates or made pursuant to the requirements of the Federal Home Loan Mortgage Corporation, or made, directly or indirectly, or assisted in any manner by the Virginia Housing Development Authority pursuant to the provisions of Chapter 1.2 (§ 36-55.24 et seq.) of Title 36; 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: § 6.1-328.

§ 6.1-330.39. Rate allowed to certain lenders on loans secured by savings accounts.— Notwithstanding the provisions of § 6.1-330.11, any bank, savings and loan association or other lending institution licensed and supervised by this State or the federal government may charge a rate of interest on any loans secured in full by a passbook savings account, a savings certificate, a certificate of deposit or any other evidence of savings account which is not in excess of three per centum above the rate of interest paid to the depositor on such account or certificate or may charge at a rate otherwise permitted by law to such lender.

Source: § 6.1-319.2.

§ 6.1-330.40. 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 make loans for agricultural purposes whether or not secured, at a rate not to exceed twelve per centum per annum or as otherwise permitted by law.

Any 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 § 6.1-330.9 and in either case, such agricultural credit corporations or associations may charge a minimum loan or discount fee of five dollars on loans or discounts for thirty days or more and may receive such interest or discount in either case in advance.

Source: §§ 6.1-319.1 and 6.1-320.

§ 6.1-330.41. 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 the rate of eight per centum per annum computed on a basis of a three-hundred-sixty-day year for periods of up to one year, and may charge a minimum loan or discount fee of five dollars on loans or discounts, which minimum fee may not be charged on a renewal except after the passage of ninety days after the last imposition of such minimum charge, and may receive such interest in advance. In addition to these charges, a bank may impose a service charge not exceeding two per centum of the amount of the loan. Such service charge shall not be imposed on any renewal or extension, except after the passage of three hundred sixty days since the prior imposition.

Source: § 6.1-320 and § 6.1-321.

§ 6.1-330.42. 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 such broker-dealer by a bank doing business in this State on loans collateralized by securities.

Source: § 6.1-322.

Article 9.

Borrowers Not Entitled to Plead Usury.

§ 6.1-330.43. Corporations, partnerships, professional associations, real estate investment trusts and certain joint ventures not allowed to plead usury.—No corporation, partnership which is required to file a certificate pursuant to Chapter 2 (§ 50-44 et seq.) or Chapter 3 (§ 50-74 et seq.) of Title 50 of this Code or which is formed under laws other than those of this State, professional association, or real estate investment trust, or joint venture organized for the purpose of holding, developing and managing real estate for profit, shall, by way of defense or otherwise, avail itself of any of the provisions of this chapter to avoid or defeat the payment of any interest or any other sum which it has contracted to pay; nor shall anything contained in any of such sections be construed to prevent the recovery of such interest or any other sum, though it be more than legal interest and though that fact appears on the face of the contract.

Source: § 6.1-327.

§ 6.1-330.44. Defense of usury not applicable to certain business loans.—No person shall, by way of defense or otherwise, avail himself of the provisions of §§ 6.1-330.45, 6.1-330.46 and 6.1-330.47, or any other section relating to usury to avoid or defeat the payment of interest, or any other sum, when such loan is made to an individual or individuals or other entity for the acquisition or conduct of a business or investment as sole proprietor, owner, joint venturers or owners provided the initial amount of the loan is five thousand dollars or more.

For the purposes of this section, if a borrower shall represent in his own handwriting the purposes of the loan, such representation shall be conclusive and binding upon him.

For the purposes of this section, unless a loan is for family, household, or personal purposes (which shall not include a passive or active investment), it shall be deemed to be for business or investment purposes within the meaning of this section.

Source: § 6.1-319.3

Article 10.

Usury - Penalty.

§ 6.1-330.45. Plea of usury; evidence; judgment.—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: § 6.1-325.

§ 6.1-330.46. Recovery of twice total usurious interest paid; limitation of action; injunction to prevent sale of property pending action.—If an excess beyond the rate of interest permitted by the applicable statute be paid in any case for the loan or forbearance of money, the person paying the same may in a suit or action brought within two years from the time the usurious transaction occurred recover twice the total of the interest paid from the person taking or receiving the same. 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.

Source: § 6.1-326.

§ 6.1-330.47. Contracts, etc., in violation of chapter, waivers and releases void.—A. Any contract, note, mortgage, or deed of trust made or received and providing for interest charges in excess of those permitted by § 6.1-330.16, except as hereinafter provided, shall be null and void and unenforceable by the lender or by his assignees, who are agents or principals of the lender.

The provisions of this section shall not apply to any contract or note, or mortgage or deed of trust securing such obligation, which has been assigned to a person who is not the agent or principal of the lender, if such assignee has taken the note or obligation in good faith and in reasonable reliance upon the provisions of § 6.1-330.44.

B. Any agreement whereby the borrower waives the benefits of this chapter or releases any rights he may have acquired by the virtue thereof shall be deemed to be against public policy and void.

Source: § 6.1-330.1.

§ 6.1-330.48. §§ 6.1-330.16, 6.1-330.23 and 6.1-330.31 shall not apply to loans made by any lender licensed by, and under the supervision of, the State Corporation Commission or the federal government nor to loans made by State and national banks, State and federal

savings and loan associations and State and federal credit unions.

Source: § 6.1-330.3.

2. That §§ 6.1-195.17, 6.1-195.34, 6.1-217, 6.1-234, 6.1-324 and 8-223, as severally amended, of the Code of Virginia are amended and reenacted as follows:

§ 6.1-195.17. Charges in connection with loans.—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 or two and one-half percent 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 or one per centum 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 forbearance of money or other things is illegal within the meaning of this title.~~

§ 6.1-195.34. Investment of assets.—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 and in real estate to be held for its future accommodation. Such association may invest in an office building or buildings and appurtenances for the transaction of such association's business, or for the transaction of such business and for rental, 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 the Federal Home Loan Banks; in stock or obligations of the Federal Savings and Loan Insurance Corporation; in stock or obligations of the Federal National Mortgage Association, the Government National Mortgage Association or any successor or successors thereto; 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 percent of its total assets, in savings accounts of other insured State or federal associations.

(d) 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.

(e) In the purchase of stock and other securities or obligations of a service corporation or corporations in accordance with rules and regulations promulgated by the Commissioner which are now in effect and as they may be hereafter amended. Such investment shall not exceed one per centum of the assets of the association unless the Commissioner, with the approval of the Commission, shall find that additional such investment is required in order to allow service corporations in which State associations own all or part of the capital stock to be comparable with those owned by federal associations. Provided, however, that the Commissioner may not allow such investments in excess of five percent of an association's assets. Stock in a Federal Home Loan Bank shall not be considered stock of a service corporation within the meaning of this section.

(f) In such stock, securities and other obligations as may be approved from time to time by the Commissioner.

(g) In loans fully secured by savings accounts of the association. An association may charge interest at a rate not to exceed three per centum more than the rate being paid on savings accounts securing such loans at the time the loans are made.

(h) In loans secured by first liens on improved real estate. Except as hereinafter provided, no such loans shall exceed seventy-five thousand dollars on each home or combination of home and business property securing the same. No such loan of forty-five thousand dollars or less shall exceed ninety-five per centum of the appraised value of the real estate. If the amount of the loan is greater than forty-five thousand dollars, but is not more than fifty-five thousand dollars, the total amount of the loan shall not exceed ninety per centum of the appraised value of the real estate. To the extent any such loan exceeds fifty-five thousand dollars, the amount of the loan in excess of fifty-five thousand dollars shall not exceed eighty per centum of the appraised value of the real estate in excess of sixty-one thousand, one hundred twelve dollars. 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 and provided further that an association may fully participate in such other housing programs which have been approved for investment by federal associations as may be permitted from time to time by the Commissioner. At least sixty per centum of the assets shall be invested in loans under this subsection, 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 thirty-six 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 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 the loan contract shall not require any subsequent periodic payment of principal to be greater than any previous periodic payment of principal. No such loan shall be for a longer term than thirty 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 and adding advances for taxes, insurance and other lawful charges accruing since the preceding balance, and subtracting payments made by the borrower.

An association may make a loan in excess of seventy-five thousand dollars under this subsection provided that it is included in the twenty per centum of assets limitation of subsection (k) of this section to the extent of such excess for so long as the principal amount of such loan exceeds seventy-five thousand dollars.

(i) Up to twenty per centum of the assets may be invested in secured or unsecured loans for maintenance, repair, alteration, modernization, landscaping, improvement, furnishing, 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 years and shall not exceed ten thousand dollars; provided, that any such loan that is accepted for insurance under the provisions of the National Housing Act or for insurance or guarantee under the provisions of the Serviceman's Readjustment Act of 1944 or chapter 37 of Title 38, United States Code, may be made for such amount and repayable upon such terms and within such periods as are acceptable to the insuring or guaranteeing agency.

~~An association may charge and collect in advance interest at the rate of seven per centum per annum upon the entire amount of such loans and may also make a service charge not exceeding two per centum of the amount of the loan.~~

(j) Up to five per centum of the assets may be invested in loans on mobile homes, provided that such loan must be secured by a first lien on such mobile home, and the mobile home must be maintained as a residence of the borrower or a relative of the borrower, and the mobile home must be located in a park or on other real estate within the association's regular lending area. Such loans shall be payable monthly, and shall not be for a term longer than twelve years on new homes and eight years on used homes.

~~An association may charge and collect in advance interest at the rate of seven per centum per annum upon the entire amount of such loans and may also make a service charge not exceeding two per centum of the amount of the loan.~~

(k) Up to twenty per centum 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 years nor in excess of seventy-five per centum of the value of the real estate as appraised by a competent appraiser, except that such loans may be made not in excess of eighty per centum of the value of the real estate as appraised by a competent appraiser if it is real estate upon which is located or will within twelve months be located one or more single family dwellings or dwelling units for not more than four families in the aggregate.

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

(m) Up to five per centum 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 comaker or comakers, 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 a full credit towards such a degree.

(n) Any loan made under the provisions of this section for the purpose of construction may be combined into a single loan with the permanent financing, and the term of the permanent financing should be considered to begin at the end of the term allowed for construction, provided, that the construction loan is not for a term more than thirty-six months.

(o) The Commissioner, with the approval of the Commission, may by regulation change any of the above categories of investments as to the amount, duration or terms thereof and in addition may by regulation adopt other categories of loans or investments which may be made and he may place such limitations upon the same as he may deem necessary. It is the purpose of this subsection that the Commissioner, with the approval of the Commission, allow such investments under such terms and conditions as he may deem necessary to permit a State association to have powers comparable with those allowed to federal associations. Such regulations shall be effective upon their adoption and shall continue in effect until amended by the Commissioner or revoked by action of the General Assembly of Virginia. Any investment made by an association which was in compliance with the law or regulations of the Commissioner in existence at the time

such investment was made will remain a legal investment even though the power to make such investments in the future is amended by regulation.

§ 6.1-217. Loans generally.—No loan which is not adequately secured by endorsement, assignment of shares or other collateral may be made to an individual if, upon making it, he would be indebted to the credit union on unsecured loans to him in an aggregate amount which would exceed two thousand five hundred dollars, or two and one-half per centum of its outstanding shares and reserve fund, whichever is less; but in no case shall the limit be less than two hundred dollars.

No loan may be made to an individual if, upon making the loan, he would be indebted to the credit union on loans to him in an aggregate amount which would exceed two hundred dollars or ten per centum of its outstanding shares and reserve fund, whichever is greater. If the borrower or endorser is a member of the credit committee the loan must be approved by the supervisory committee instead of by the credit committee.

~~A borrower may repay the whole or any part of his loan at any time.~~

No loan shall be made to an individual who is not a member of the credit union. If the credit committee should knowingly approve such a loan, its members shall be jointly and severally liable to the credit union for the immediate repayment thereof.

§ 6.1-234. Interest in advance; installment payments; acceleration upon default; investigation fees; fines; anticipating payment; duration and amount of loan.— ~~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 bylaws 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.~~

~~As used in this section the phrase "charge in advance" when applied to installment loans means that the interest may be added to the principal amount of the note but may not be deducted from it.~~

~~Any natural person borrowing from an industrial loan association shall have the right to anticipate payment of his debt at any time and shall receive a rebate for any unearned interest, which rebate shall be computed in accordance with the Standard Rule of 78 and shall be reduced by an anticipation premium equal to that~~

~~portion of the contract interest allocable under such rule to the next six payments~~.

No ~~loans~~ *loan made by an industrial loan association* 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 percent of the paid-in capital stock and capital surplus of the association.

§ 6.1-324. Fees and charges which may be made on certain real estate loans.—(1) Any bank or any other lender engaged in making loans to finance the construction or improvement of real estate may charge a borrower and collect in advance, supervision and inspection fees not to exceed two and one half per centum 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 per centum 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 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.

§ 8-223. Verdict to fix period at which interest begins; judgment for interest.—Except as otherwise provided in § 3-122 of the Uniform Commercial Code, in any action whether on contract or for tort, the jury may allow interest on the sum found by the verdict, or any part thereof, and fix the period at which the interest shall commence. If a verdict be rendered which does not allow interest, the sum thereby found shall bear interest from its date, at the rate ~~of eight per centum per annum~~ *as provided in § 6.1-330.10,* and judgment shall be entered accordingly. In any suit in equity, or in an action or motion founded on contract, when no jury is impaneled, decree or judgment may be rendered for interest on the principal sum

recovered, until such decree or judgment be paid; and when there is a jury, which allows interest, the judgment shall, in like manner, be for such interest until payment.

3. That §§ 6.1-2.2, 6.1-2.3, 6.1-2.4, 6.1-195.36, 6.1-195.37, 6.1-215, 6.1-234.1, Chapter 7 of Title 6.1, consisting of sections 6.1-311 through 6.1-328, Chapter 7.1 of Title 6.1, consisting of sections numbered 6.1-330 through 6.1-330.5, Chapter 10 of Title 6.1, consisting of sections numbered 6.1-362 through 6.1-363 and § 11-4.2, as severally amended, of the code of Virginia are repealed.