

New Virginia Laws Affecting Banking

The Virginia General Assembly session has concluded for 2017, and a variety of new and amended Virginia statutes will take effect July 1, 2017. Here is a summary of a few that will be of interest to bankers.

Statute of limitations for non-negotiable CDs. Sections 8.3A-118 and 8.3A-118.1 of the Code of Virginia were amended to confirm that the six-year statute of limitations that applies to negotiable certificates of deposit also applies to non-negotiable certificates of deposit. A Virginia bank recently settled a dispute where a former customer argued the existing statute of limitations only applied to negotiable CDs, and therefore no statute of limitations applied to non-negotiable CDs. The Virginia Bankers Association successfully lobbied for this change to protect banks from similar arguments in the future.

Adult financial exploitation. Two bills targeting adult financial exploitation may impact bankers. First, § 63.2-1605 was amended to require adult protective services to inform law-enforcement agencies of all reported cases of suspected adult financial exploitation. Previously, APS was only required to report cases involving \$50,000 or more to law enforcement. Banks may (but are not required to) report suspected adult financial exploitation to APS, and are immune for liability if they do report. Banks considering a voluntary report to APS, may want to consider that APS will now be required to inform law enforcement of all such reports.

Second, §§ 63.2-100 and 63.2-1606 were amended to broaden the definition of "adult exploitation" for the purposes of social services laws by (i) including unauthorized, improper, or fraudulent use of an adult's funds, property, benefits or other assets, in addition to illegal use of such items, and (ii) expanding protected adults to all adults 60 years of age or older, in addition to incapacitated adults. Among other things, perpetrators include persons serving in a fiduciary capacity who intentionally breach a fiduciary obligation to an adult. These changes may be beneficial to banks as they broaden the scope of matters that can be voluntarily reported to APS with immunity, but could be problematic if reporting becomes mandatory in the future years. The VBA will monitor developments in this area and advocate for positive legislative proposals.

Payroll data breaches. An amendment to § 18.2-186.6 requires employers to notify the Attorney General of a breach of computerized employee payroll data, and the Attorney General must then notify the Department of Taxation. This legislation is designed to combat tax fraud. The VBA was successful in amending the legislation to clarify that the reporting obligation does not apply to customer payroll data (such as tax returns, Form W-2s or paystubs) that banks may have in their loan or account files. Breaches involving customer information must continue to be reported in accordance with existing breach notification laws.

Residential rental property foreclosures. Amendments to the Virginia landlord tenant laws provide that a foreclosure of a residential rental property will (i) convert the tenants' leases to month-to-month leases until the successor owner gives notice of termination, and (ii) convert any property management agreement into a month-to-month agreement until the new owner terminates the agreement. There were reports of tenants and property managers being confused about when and to whom to direct lease payments immediately after foreclosure sales. The

amendments provide clarity for tenants and property managers, but allow new owners to quickly terminate those arrangements if desired.

Real estate evaluations by licensed real estate appraisers. A shortage of licensed real estate appraisers is delaying appraisals and loan closings in many regions of Virginia. To combat this problem, § 54.1-2010 was amended to allow licensed real estate appraisers to provide less intensive and less costly real estate evaluations in transactions where a formal real estate appraisal is not required, without complying with industry standards for formal appraisals.

Trusts, estates and fiduciary matters. Trust companies and fiduciaries will be interested in two bills. First, in situations where specifically devised real or personal property passes to a beneficiary subject to a mortgage or lien, § 64.2-531 was amended to provide a process to either (i) assign the underlying debt to the beneficiary and release the estate or (ii) sell the subject property and use the proceeds to satisfy the debt. This prevents issues that arise when the subject property is foreclosed on years after other assets in the estate have been distributed and are no longer available to satisfy a foreclosure deficiency.

Second, Virginia adopted the Uniform Fiduciary Access to Digital Assets Act, which provides rules governing how individuals may grant fiduciaries (executors, personal representatives, trustees, guardians or conservators) access to the individual's digital assets (computer files, web domains, virtual currency, and on-line accounts such as social media accounts or cloud-based remote storage accounts). The Act also provides rules that govern when and how service providers that hold digital assets (such as social media companies and cloud-based storage providers) must provide those assets to fiduciaries. The digital assets covered by the Act may include electronic bank account information or statements, but do not include the funds or other assets in those accounts, which are not electronic assets. The fiduciaries' rights to those underlying non-electronic funds or assets continue to be governed by existing state laws that govern the rights and obligations of fiduciaries to such assets. Virginia's existing law governing fiduciaries' access to digital assets was repealed.

Historic rehabilitation tax credit limit. In an effort to balance the budget, legislators amended § 58.1-339.2 to limit the amount of historic rehabilitation tax credits that may be claimed by a taxpayer to \$5.0 million per year for taxable years 2017 and 2018. While this change does not directly impact banks, it could negatively impact the profitability of some development projects banks finance. The VBA will monitor any impact this legislation may have on bank lending and support further legislation in this area if necessary.

For more information about these and other new Virginia laws affecting banking, contact Mel Tull, VBA General Counsel, at mtull@vabankers.org or (804) 819-4710.

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