

# **VIRGINIA BANKERS ASSOCIATION**

## **Counsel's Report**

### **2018 Session of the Virginia General Assembly**

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## **Report on Legislation Affecting Banking**

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This report summarizes legislation of interest to the banking industry passed during the 2018 session of the Virginia General Assembly and signed into law by the Governor. All legislation will become effective July 1, 2018, unless otherwise noted. The report is divided into five sections by subject matter:

- A. Banking and Finance
- B. Real Estate
- C. Wills, Trusts, and Estates
- D. Civil Procedure and Remedies
- E. Miscellaneous

Many of these summaries are based on summaries prepared by the Division of Legislative Services of the General Assembly. The work of the Division is gratefully acknowledged. The information contained in this report is provided as a service to the banking industry in Virginia and does not constitute legal advice or opinion. Please consult an attorney for advice on specific matters. The text contained in this report is not the official text of the Code of Virginia (the “Code”). The full text of the Code and the legislation summarized herein is available at <https://law.lis.virginia.gov/vacode>.

## A. BANKING AND FINANCE

### 1. H.B. 433 – Banks and credit unions; closure; appointment of receiver.

*Amends §§ 6.2-912, 6.2-913, 6.2-926, and 6.2-1313*

Enables the State Corporation Commission to close a state-chartered bank or credit union if its net worth ratio falls to less than two percent, if it is approaching insolvency and has no reasonable prospect for rehabilitation, or if closure is necessary for the protection of the public interest. Requires the Richmond Circuit Court to appoint the FDIC or NCUA as receiver if the FDIC or NCUA is willing to accept the appointment.

### 2. H.B. 686 and S.B. 253 - Unclaimed property; deposits with financial institutions; charges and interest.

*Amends § 55-210.3:01*

Clarifies the criteria that must be met for a bank or other financial organization to impose charges or cease to pay interest on a dormant or inactive account that differ from those imposed on active accounts. The holder may reverse or cancel dormancy charges or retroactively credit interest upon the request of the owner if it also does so for all such property that becomes subject to certain statutory reporting requirements regarding unclaimed property. If the holder elects not to reverse or cancel dormancy charges or retroactively credit interest with respect to any such property, then it is not required to reverse or cancel dormancy charges or retroactively credit interest for property that becomes subject to the reporting requirements regarding unclaimed property. A holder may also reverse or cancel dormancy charges or retroactively credit interest with respect to any or all such property to correct a documented internal error without becoming required to reverse or cancel dormancy charges or retroactively credit interest for all such property that becomes subject to unclaimed property reporting requirements. An enactment clause states that the measure is declarative of existing law.

### 3. H.B. 789 and S.B. 260 - Banks; stock ownership by directors.

*Amends § 6.2-862*

A bank director is deemed to be the sole owner of shares in the bank that are deposited by the director in a living trust, or inter vivos trust, as to which the director is a trustee and retains an absolute power of revocation.

### 4. H.B. 1208 and S.B. 244 - Banks; branch offices.

*Amends § 6.2-834*

Authorizes a bank to operate a branch office under a different name if permission is first obtained from the State Corporation Commission and if such name contains language clearly indicating that it is a branch office of the bank or a division of the bank.

## **B. REAL ESTATE**

### **1. H.B. 311 - Unlawful detainer; foreclosure.**

*Amends §§ 8.01-126 and 8.01-130*

A former owner who remains in possession of a single-family residential dwelling unit on the date of a foreclosure sale becomes a tenant at sufferance. The successor owner may file an unlawful detainer action three days after giving the tenant written termination notice. The tenant shall be responsible for payment of fair market rental from the date of the foreclosure until the date the tenant vacates the dwelling unit, as well as damages, and for payment of reasonable attorney fees and court costs.

### **2. H.B. 594 and S.B. 451 – Local government; authority to require abatement of criminal blight on real property.**

*Amends § 15.2-907*

Authorizes any locality to enact an ordinance that requires corrective action to address criminal blight conditions on certain real property. Criminal blight is defined to include conditions on real property that endanger residents of the community by the regular presence of persons using the property for controlled substance use or sale and other criminal activities, specifically commercial sex trafficking or prostitution or repeated acts of the malicious discharge of a firearm within a building or dwelling. Current law allows local governments to enact an ordinance for taking action against a property owner with regard to illegal drug activity on such real property within the locality.

### **3. H.B. 674 and S.B. 443 – Virginia Real Estate Time-Share Act; Common Interest Community Board; developer may obtain surety bond or letter of credit.**

*Amends § 55-375*

A developer, in lieu of escrowing deposits made in connection with the purchase or reservation of a time-share product, may obtain a corporate surety bond or letter of credit with the Common Interest Community Board where the time-share project consists of more than 25 units. Currently, the developer is required to escrow the individual deposits for every purchase and file with the Board a bond or letter of credit or cash for the purpose of protecting all deposits.

### **4. H.B. 755 and S.B. 422 – Foreclosure; notice of sale when owner is deceased.**

*Amends §§ 55-59.1 and 55-64*

When the owner of a property to be sold by a trustee pursuant to a deed of trust is deceased, the notice of the sale shall be delivered to the last known address of the deceased owner, any personal representative of the deceased's estate, and any heirs of the deceased as recorded in the land records where the property is located. The trustee of a deed of trust for property that is sold after the death of the owner shall include (i) any remaining subsequent debts and obligations secured by the deed and (ii) any liens of record inferior to the deed of trust under which the sale is made, with lawful interest, in

the list of debts to be paid off using any surplus from the sale prior to paying the remainder of the surplus to the decedent's personal representative.

**5. H.B. 823 and S.B. 319 – General contractors; waiver or diminishment of lien rights; subordination of lien rights.**

*Amends §§ 43-3 and 43-21*

A general contractor may not waive or diminish his lien rights in a contract in advance of furnishing any labor, services, or materials. Notwithstanding the prohibition against waiving or diminishing such a lien right, a general contractor may, prior to or after providing any labor, services, or materials, contract to subordinate his lien rights to prior and later recorded deeds of trust, provided that such contract is (i) in writing and (ii) signed by any general contractor whose lien rights are being subordinated pursuant to such contract.

**6. H.B. 855 and S.B. 197 - Landlord and tenant law; notice requirements; landlord's acceptance of rent with reservation.**

*Amends §§ 55-225.47 and 55-248.34:1*

Changes the landlord and tenant law notice requirements for landlords to accept full or partial rent while continuing to proceed with a court action to obtain an order of possession and subsequent eviction by creating a single notice and removing the requirement for second notice for the time period between entry of an order of possession and prior to eviction. Provides that the landlord may accept full or partial payment of rent and still receive an order of possession and proceed with eviction if the landlord states in the written notice to the tenant that any payment of rent, damages, money judgment, award of attorney fees, and court costs would be accepted with reservation and not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. Also provides that if a dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, written notice of acceptance of rent with reservation need not be given to any public agency paying a portion of the rent under the rental agreement.

**7. H.B. 856 – Unlawful detainer; execution of writ of possession.**

*Amends § 8.01-129*

Permits a judge, upon request of the plaintiff, to issue a writ of possession immediately upon entry of judgment in an unlawful detainer case. The sheriff is required to serve notice of the writ, including the date and time of eviction, on the defendant at least 72 hours prior to execution of the writ. A sheriff shall not evict the defendant from the dwelling unit sooner than the expiration of the defendant's 10-day appeal period.

**8. H.B. 857 – Landlord and tenant law.**

*Amends §§ 55-222, 55-225, 55-225.01, 55-225.4, 55-225.6, 55-225.7, 55-225.10, 55-225.19, 55-225.24, 55-225.26, 55-225.30, 55-246.1, 55-248.3:1, 55-248.7:2, 55-248.9:1, 55-248.13:3, 55-248.15:1, and 55-248.16; adds §§ 55-225.12:1, 55-225.13:1, 55-225.22:1, 55-225.49, 55-225.50, and 55-248.21:3*

Removes remaining differences between general landlord and tenant provisions and the Virginia Residential Landlord and Tenant Act by conforming provisions pertaining to residential dwelling units in the following areas: (i) termination of a nonresidential tenancy by self-help eviction or by filing an unlawful detainer action; (ii) tenant obligations to maintain a dwelling unit; (iii) notice to the tenant in the event of foreclosure; (iv) wrongful failure to supply heat, water, hot water, or essential services; (v) prohibited provisions in the rental agreement; (vi) early termination of a rental agreement by military personnel; and (vii) remedies for the landlord's failure to deliver possession. Includes the following additional changes to the landlord and tenant law: (a) clarifies the lease termination process; (b) provides that if a tenant allows his renter's insurance to lapse, the landlord may provide coverage and require the tenant to pay the premium; (c) establishes protection for landlords who provide tenant information to a federal census official; (d) authorizes a landlord or property manager to appear in court to seek final rent and damages related to a dwelling unit; and (e) clarifies remedies for a tenant's failure to prepare the dwelling unit for insecticide or pesticide applications.

**9. H.B. 864 and S.B. 514 – Real Estate Board; powers and duties; escrow funds; education.**

*Amends §§ 54.1-2105.01, 54.1-2105.03, 54.1-2105.1, 54.1-2137, 55-519, 55-520, and 55-525; adds § 54.1-2108.2*

Among other things, establishes notice provisions and required procedures to be followed in the case of escrow funds held by a real estate broker in the event of termination of a real estate purchase contract.

**10. H.B. 1453 - Real estate appraisers; evaluations.**

*Amends § 54.1-2009; adds § 54.1-2017.1*

Changes the definition of "evaluation" from an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real property to an opinion of the market value of real property or real estate that may be utilized in connection with a real estate-related financial transaction where an appraisal by a state-certified or state-licensed appraiser is not required by the state or federal financial institution's regulatory agency engaging in, contracting for, or regulating such real estate-related financial transaction or regulating the financial institution or lender engaged in or about to engage in such real estate-related financial transaction. Requires that an evaluation meet the format requirements of the federal Interagency Appraisal and Evaluation Guidelines, include sufficient information in clear and understandable language to allow a person to understand the opinion of the market value of real property

or real estate, and contain the statement: "This is not an appraisal performed in accordance with the Uniform Standards of Professional Appraisal Practice."

## C. WILLS, TRUSTS, AND ESTATES

### 1. H.B. 746 - Wills and revocable trusts; eliminating certain inconsistencies.

*Amends §§ 64.2-412, 64.2-415, 64.2-416, and 64.2-418; adds § 64.2-404.1*

Eliminates certain inconsistencies between wills and revocable trusts by extending to revocable trusts (i) revocation of benefits to a spouse and appointments to a spouse as a fiduciary upon divorce or annulment, (ii) the default rules for nonademption of certain bequests, (iii) the default rules related to the lapsing of a failed devise or bequest to the residue, and (iv) the anti-lapse rule that provides that a testamentary disposition fails when the taker predeceases the testator. Provides that a court may modify the terms of a decedent's will to correct a mistake to conform to the decedent's intent, as proved by clear and convincing evidence. If shown by clear and convincing evidence, a court may modify the terms of a decedent's will to achieve the decedent's tax objectives in a manner that is not contrary to the decedent's probable intention. Under current law, such reformation is allowed to modify the terms of a trust for similar purposes. The provisions of the bill related to modification of a will apply retroactively to wills executed prior to July 1, 2018, and judicial proceedings commenced prior to July 1, 2018, except that such modification shall not be made if a judicial proceeding has been commenced prior to July 1, 2018, and the court finds that modification would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of the parties.

### 2. H.B. 754 – Elective share claim; calculation of the augmented estate.

*Amends §§ 64.2-308.9 and 64.2-308.10*

A surviving spouse claiming an elective share does not have the right to claim a share of the decedent spouse's separate property at death but that the decedent spouse may satisfy the surviving spouse's right to claim a share of marital property with such separate property.

### 3. H.B. 1142 – Qualification of fiduciary without security.

*Amends § 64.2-1411*

A circuit court or circuit court clerk may allow a fiduciary to qualify by giving bond without surety when there are no assets or the asset or amount coming into the possession of such fiduciary does not exceed \$25,000.

### 4. S.B. 913 – Uniform Trust Decanting Act.

*Amends § 64.2-701. Adds §§ 64.2-779.1 through 64.2-779.25. Repeals § 64.2-778.1*

Codifies the Uniform Trust Decanting Act, which governs a trustee's ability to distribute assets from one trust into a second trust.

**5. S.B. 78 - Trust decanting; authorized fiduciary.**

*Amends §§ 64.2-701 and 64.2-779.5*

Reinstates the restriction in Virginia's former trust decanting law that limits the type of fiduciary who may exercise the decanting power to a disinterested trustee. Reinstates the former provisions that state that the decanting power may be exercised by a majority of the authorized fiduciaries and that the court has the power to appoint a special fiduciary to exercise the decanting power. The bill contained an emergency clause and this act has been in force since its passage.

**D. CIVIL PROCEDURE AND REMEDIES**

**1. H.B. 1023 – Issuance of foreign subpoenas; clerk of court.**

*Amends § 8.01-412.10*

No foreign subpoena issued in the Commonwealth pursuant to the Uniform Interstate Depositions and Discovery Act (§ 8.01-412.8 et seq.) may be issued by any person other than the applicable circuit court clerk of court in the Commonwealth.

**2. H.B. 1024 - Attorney fees for prevailing party; more than one attorney.**

*Amends § 17.1-625*

Repeals the provision that allows only the fee of one attorney to be taxed by the court, even if the recovering party had more than one attorney.

**3. S.B. 71 – Service of process on domestic limited liability company.**

*Amends § 8.01-299*

Extends to domestic limited liability companies the rules for service of process on a domestic corporation.

**4. S.B. 108 - Orders of publication to enforce tax lien; limited-value property.**

*Amends § 8.01-321*

An order of publication for the enforcement of a lien for taxes owed on real property that has a value of \$50,000 or less need be published only once. Under current law, such order is required to be published at least once a week for two successive weeks.

**E. MISCELLANEOUS**

**1. H.B. 431 – Enterprise Zone Grant Program; designation of enterprise zone; amendments to the size of an enterprise zone.**

*Amends §§ 59.1-542 and 59.1-544*

Codifies the minimum size and maximum size of enterprise zones under the Enterprise Zone Grant Program administered by the Department of Housing and Community

Development. Provides that amendments to an enterprise zone that include the elimination of an area or areas from the zone shall not exceed the maximum size provisions and shall be reviewed by the Department with the potential impact on affected businesses and property owners given primary consideration.

**2. H.B. 828 and S.B. 268 - Personal property tax; computer equipment and peripherals used in data centers.**

*Amends §§ 58.1-3503 and 58.1-3506*

Creates a separate classification of tangible personal property, for valuation purposes, for computer equipment and peripherals used in a data center. The classification specifies that the computer equipment and peripherals shall be valued by means of a percentage or percentages of original cost or by any other method that reasonably may be expected to determine fair market value.

**3. H.B. 1205 – Nonstock corporations; members' meetings.**

*Amends §§ 13.1-838, 13.1-839, 13.1-842, 13.1-844.2, and 13.1-845*

Authorizes the board of directors of a nonstock corporation to determine that any meeting of members may be held by means of remote communication, as long as the articles of incorporation or bylaws do not require the meeting to be held at a place.

**4. H.B. 1343 – Notaries; fee agreements with employer.**

*Amends § 47.1-20*

Allows an employer to require a notary in his employment to surrender to such employer a fee, if charged, provided that the notarial act for which the fee is charged is performed during the course of the employee's employment. Current law prohibits an employer from requiring the surrender of any such fee.

**5. H.B. 1368 – Group accident and sickness insurance; eligibility for continuation of coverage.**

*Amends § 38.2-3541*

Disqualifies a discharged employee from continuation of health insurance coverage under his former employer's group policy if the employee was discharged as a result of gross misconduct. The provision does not apply if the employer is required to provide for continuation of coverage under its group health plan pursuant to the federal Consolidated Omnibus Budget Reconciliation Act of 1985.

**6. H.B. 1559 and S.B. 974 - Stock corporations; action by shareholders without meeting.**

*Amends § 13.1-657*

Creates an exception to the provision that authorizes shareholders of a corporation to act without a meeting by less than unanimous written consent of the shareholders. The exception states that if the articles of incorporation or bylaws of a public corporation allow the holders of 30 percent or fewer of all votes entitled to be cast to demand the calling of a special meeting of shareholders, such provision authorizing less-than-unanimous shareholder action shall not apply. A public corporation is a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. The measure does not apply if a public corporation's articles of incorporation authorized action by shareholders by less than unanimous consent as of April 1, 2018.

**7. S.B. 387 - Annual reports of corporations.**

*Amends § 13.1-775*

Eliminates the requirement that a corporation authorized to issue one or more classes of shares list the number of shares of each class on its corporate annual report.