



# Legal Update 2023

Virginia Bankers Association

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# LEGAL UPDATE 2023

- General Assembly 2023 Session
- Virginia Treasury Board (SPDA)
- Regulation F

# CDFI Fund (HB1411 & SB1320)

§ 36-140.01. *Virginia Community Development Financial Institutions Fund and Program; report.*

A. *For the purposes of this section:*

- *"Financing" means (i) loans, grants, or forgivable loans that are used to start, expand, or support small businesses or nonprofit organizations; to provide operating and working capital to small businesses; or for property renovation or development or (ii) ancillary services related to such loans, grants, or forgivable loans, including technical assistance and credit counseling.*
- *"Qualifying institution" means a community development financial institution (CDFI), community development bank (CDB), or community development credit union that the Secretary of Commerce and Trade finds is (i) legally qualified to do business within the Commonwealth, (ii) subject to oversight by the applicable federal or state financial institution or insurance regulatory agencies, and (iii) eligible for certification by the U.S. Department of Treasury as a CDFI.*

**C. 1. *There is hereby created the Virginia Community Development Financial Institutions Program to provide grants and loans to qualifying institutions to provide financing to support small businesses, housing development and rehabilitation projects, and community revitalization real estate projects in the Commonwealth. In providing financing to small businesses, qualifying institutions shall emphasize microfinancing.***

# Nondisclosure / Confidentiality Agreement (HB1895 Substitute)

§ 40.1-28.01. Nondisclosure or confidentiality agreement; provisions regarding sexual assault or sexual harassment; condition of employment.

A. No employer shall require an employee or a prospective employee to execute or renew any provision in a nondisclosure or confidentiality agreement, *including any provision relating to nondisparagement*, that has the purpose or effect of concealing the details relating to a claim of sexual assault pursuant to § 18.2-61, 18.2-67.1, 18.2-67.3, or 18.2-67.4 *or a claim of sexual harassment as defined in § 30-129.4* as a condition of employment. Any such provision is against public policy and is void and unenforceable.

B. This section shall in no way limit other grounds that exist at law or in equity for the unenforceability of any such agreement or any provision of such agreement.

# Alcoholic beverage control; mixed beverage carrier license, airport passenger lounge. (HB 1753 & SB 1100)

## § 4.1-206.3.

(A)(4). Mixed beverage carrier licenses to (i) persons operating a common carrier of passengers by train, boat, bus, or airplane, which shall authorize the licensee to sell and serve mixed beverages anywhere in the Commonwealth to passengers while in transit aboard any such common carrier, and in designated rooms of establishments of air carriers at airports in the Commonwealth *and (ii) financial institutions, subsidiaries of a financial institution, or persons approved by the applicable airport authority that have entered into a contract with a financial institution or subsidiary of a financial institution to operate a passenger lounge, which shall authorize the licensee to sell and serve mixed beverages in designated areas of a passenger lounge for ticketed air carrier passengers that is located within an airport in the Commonwealth.*

# Financial institutions; certain investments by banks permitted (HB1778 & SB1182)

§ 6.2-874. Prohibited uses of bank's own stock; other investments or loans.

- A. No bank shall:
  - 1. Acquire or own its own stock except to protect itself against loss from debts previously contracted, in which case the stock shall be disposed of within 12 months after it is acquired, and except as herein permitted;
  - 2. Make loans collaterally secured by the stock of the bank, except that this section shall not affect the validity of any such security agreement between the bank and its borrower; or
  - 3. Invest any of its funds in:
    - a. Shares of stock of any other corporation;
    - b. Any security of a limited liability company; or
    - c. Any notes or other obligations that are secured by real estate on which the bank is prohibited by § 6.2-878 from making any loans secured thereby.

## § 6.2-874 B. The prohibitions in subsection A shall not prevent any bank from:

15. Acquiring, *investing in*, owning, and holding, *directly or indirectly*, **subject to such conditions as the Commissioner may prescribe, ~~shares of stock in~~ equity investments** in a corporation, a limited partnership, a limited liability company, or another entity organized as (i) a community development corporation; (ii) an **entity formed primarily to support community-based economic development**; (iii) an entity qualifying for the new markets tax credit under 26 U.S.C. § 45D; (iv) an entity formed for a predominantly civic, community, or public purpose that (a) primarily benefits low-income and moderate-income individuals, (b) primarily benefits low-income and moderate-income areas, (c) primarily benefits areas targeted for redevelopment by a government entity, or (d) is a qualified investment under 12 C.F.R. § 25.23 for the purposes of the Community Reinvestment Act of 1977, 12 U.S.C. § 2901 et seq.; or (v) an entity making qualified rehabilitation expenditures with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in 26 U.S.C. § 47, or a similar state historic tax credit program, as provided for in § 619(d)(1)(E) of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 1851(d)(1)(E);

18. Establishing, acquiring, investing in, owning, and holding shares of a **rural business investment company** or any entity established to invest solely in a rural business investment company as permissible under 7 U.S.C. § 2009cc-9(a)(1)(A) and 7 U.S.C. § 2009cc-9(b);

19. Engaging, directly or indirectly, in any **tax equity finance transaction** permissible for a national bank or federal savings association under 12 C.F.R. § 7.1025. The authority to engage in tax equity finance transactions under this section is separate from and does not limit any investment authorities available to a bank. A tax equity finance transaction is subject to the substantive legal requirements of a loan; or

20. **Acquiring, investing in, owning, and holding shares, directly or indirectly, subject to such conditions as the Commissioner may prescribe, in any community and economic development entity, community development project, or other public welfare investment, provided that the investment is in compliance with 12 C.F.R. Part 24.**

# BANK FRANCHISE TAX (HB1896 & SB1182)

§ 58.1-1206. Deductions from gross capital.

A. There shall be deducted from the gross capital otherwise ascertainable under § 58.1-1205:

1. The assessed value of real estate if otherwise taxed in ~~this~~ *the* Commonwealth which is owned by such bank, or is used or occupied by such bank, if held in the name of a majority-owned subsidiary of the bank or of a bank holding company which owns a majority of the capital stock of such bank or of any wholly-owned subsidiary of the bank holding company which owns the majority of the capital stock of such bank and the assessed value, up to the amount of the unencumbered equity, of real estate in the nature of improvements which are owned by the bank, or used or occupied by the bank and held by a majority-owned subsidiary or a bank holding company or a wholly-owned subsidiary of a bank holding company, even if assessed in the name of some other person because of the ownership of the underlying land by such person. Real estate used or occupied by a subsidiary or originally conveyed as collateral for loans made by a subsidiary of the bank and reacquired upon foreclosure of mortgage loans will be deemed to be used or occupied by the bank. The deduction for assessed value of real estate shall be the most recent assessment made prior to January 1 of the current bank franchise tax year for real estate owned by the bank or affiliate on January 1 of the current year. *Any locality shall provide electronic access to banks for real estate assessment records for such real estate referenced by this section at their request.*

# BANK FRANCHISE TAX (HB1896 & SB1182)

§ 58.1-1207. Filing of return and payment of tax.

A. Each bank as defined in § 58.1-1201 as of January 1 of each year shall prepare and file *electronically* with the commissioner of the revenue or comparable assessing officer of the county, city or town where the principal office of the bank is located on or before March 1, a return ~~in duplicate which~~ *that* shall set forth the tax on net capital as computed under this chapter. ~~The return shall be in a form prescribed by the Department of Taxation~~ *The Department of Taxation shall maintain a secure online portal to receive returns and other required submissions under this chapter in a manner prescribed by the Department for use by commissioners of the revenue or other assessing officers of any locality in accepting filed returns and certifying and transmitting returns to the Department.* The commissioner of the revenue or comparable assessing officer shall certify a copy of the bank's return and schedules and shall forthwith transmit such certified copy to the Department of Taxation. Additionally, ~~a~~ *an* ~~an~~ *electronic* copy of the real estate deduction schedules and the apportionment under § 58.1-1211 shall be filed with the appropriate assessing officer of each political subdivision imposing a tax on the ~~filing~~ bank. Such return shall set forth the tax on net capital owing to each such political subdivision as computed under this chapter and shall include the listing of the real estate, as assessed for the prior year, as well as a description of the total of the obligations of the United States and the average percentage thereof on the four dates prescribed in subdivision 3 of § 58.1-1206. Every bank, on or before June 1 of each year, shall pay into the state treasury the state taxes ~~assessed~~ under this chapter and into the treasurer's office or other official of the local political subdivisions all taxes assessed by such political subdivision.

*B. In accordance with procedures established by the Tax Commissioner, any bank may elect an extension of time within which to file the tax return required under this chapter to the date 60 days after such due date. Such form shall be submitted to the Department of Taxation and the commissioner of the revenue or other assessing officer of any locality in which the bank is required to file.*

# BANK FRANCHISE TAX (HB1896 & SB1182)

§ 58.1-1212. Record of deposits through branches required.

Each bank in ~~this~~ *the* Commonwealth that has as of the beginning of any tax year a bank located in any county, incorporated town or city other than the county, incorporated town or city wherein such bank's principal office is located, shall maintain a record of the deposits through each such branch as of the beginning of the tax year. Each bank shall also *electronically* submit to the commissioner of the revenue or other assessing officer of the locality wherein such principal office is located a report of such deposits with the return required under § 58.1-1207.

# Emergency relief payments; automatic exemption from creditor process. (HB1972 & SB812)

§ 8.01-512.4. Notice of exemptions from garnishment and lien.

No summons in garnishment shall be issued or served, nor shall any notice of lien be served on a financial institution pursuant to § 8.01-502.1, unless a notice of exemptions and claim for exemption form are attached. The notice shall contain the following statement:

## NOTICE TO JUDGMENT DEBTOR

### HOW TO CLAIM EXEMPTIONS FROM GARNISHMENT AND LIEN

The attached Summons in Garnishment or Notice of Lien has been issued on request of a creditor who holds a judgment against you. The Summons may cause your property or wages to be held or taken to pay the judgment.

The law provides that certain property and wages cannot be taken in garnishment. Such property is said to be exempted. A summary of some of the major exemptions is set forth in the request for hearing form. There is no exemption solely because you are having difficulty paying your debts.

If you claim an exemption, you should (i) fill out the claim for exemption form and (ii) deliver or mail the form to the clerk's office of this court. You have a right to a hearing within seven business days from the date you file your claim with the court. If the creditor is asking that your wages be withheld, the method of computing the amount of wages that are exempt from garnishment by law is indicated on the Summons in Garnishment attached. You do not need to file a claim for exemption to receive this exemption, but if you believe the wrong amount is being withheld you may file a claim for exemption.

On the day of the hearing you should come to court ready to explain why your property is exempted, and you should bring any documents that may help you prove your case. If you do not come to court at the designated time and prove that your property is exempt, you may lose some of your rights.

It may be helpful to you to seek the advice of an attorney in this matter.

### REQUEST FOR HEARING-GARNISHMENT/LIEN EXEMPTION CLAIM

I claim that the exemption(s) from garnishment or lien that are checked below apply in this case:

#### MAJOR EXEMPTIONS UNDER FEDERAL AND STATE LAW

# Emergency relief payments; automatic exemption from creditor process. (HB1972 & SB812)

21. Child support payments (§ 20-108.1, Code of Virginia).

22. Support for dependent minor children (§ 34-4.2, Code of Virginia). To claim this exemption, the debtor shall attach to the claim for exemption form an affidavit that complies with the requirements of subsection B of § 34-4.2 and two items of proof showing that the debtor is entitled to this exemption.

~~23. Emergency relief payments (§ 34-28.3, Code of Virginia).~~

~~24. Other (describe exemption): \$ \_\_\_\_\_~~

I request a court hearing to decide the validity of my claim. Notice of the hearing should be given me at:

\_\_\_\_\_

(address) (telephone no.)

The statements made in this request are true to the best of my knowledge and belief.

\_\_\_\_\_

(date) (signature of judgment debtor)

2. That § 34-28.3 of the Code of Virginia is repealed.

# Emergency relief payments; automatic exemption from creditor process. (HB1972 & SB812)

## REPEALED:

### § 34-28.3. Emergency relief payments exempt.

A. For the purposes of this section, "emergency relief payment" means a 2020 recovery rebate for individuals and qualifying children provided pursuant to § 2201 of the federal Coronavirus Aid, Relief, and Economic Security Act (P.L. 116-136) or any future federal payments or rebates provided directly to individuals for economic relief or stimulus due to the COVID-19 pandemic.

B. All emergency relief payments paid to individuals shall be automatically exempt from the creditor process. Any financial institution, as defined by § 6.2-100, receiving such payments directly from the federal government shall exempt such payments from the creditor process if (i) the payment is marked by the federal government as an "emergency relief payment" or includes some other unique identifier that is reasonably sufficient to allow the financial institution to identify the funds as an emergency relief payment or (ii) the federal government or account holder receiving the emergency relief payment gives notice to the financial institution of such payment. In exempting emergency relief payments on deposit from the creditor process, a financial institution shall look back two months preceding the date of receipt of service of the creditor process. The financial institution shall perform a one-time account review separately for each account in the name of an account holder who is subject to the creditor process without consideration for any other attributes of the account or the creditor process, including (a) the presence of other funds, from whatever source, that may be commingled in the account with funds from an emergency relief payment; (b) the existence of a co-owner on the account; and (c) the balance in the account, provided the balance is above zero dollars on the date of account review. After conducting the account review, a financial institution shall exempt from the creditor process the lesser of the sum of all posted emergency relief payments to an account between the close of business on the beginning date of the lookback period and the open of business on the ending date of the lookback period or the balance in an account when the account review is performed.

# Virginia Small Estate Act; funeral expenses and disposition. (HB2128 & SB870)

§ 64.2-604. Payment or delivery of small asset; funeral expenses and disposition.

~~Thirty-A. Notwithstanding the provisions of this article, 30 days after the death of a decedent upon whose estate there shall have been no application for the appointment of a personal representative pending or granted in any jurisdiction, any person holding having possession of a small asset belonging to the decedent may~~ *shall, at the request of a successor, pay or deliver to the licensed funeral service establishment handling the funeral, if there is one, and the disposition of the decedent so much of the small asset as does not exceed the amount given priority by § 64.2-528 to the undertaker or mortuary handling the funeral of the decedent, and a receipt of the payee shall be a full and final release of the payor as to such sum and has not already been so paid upon being presented an affidavit made by the licensed funeral service establishment, at the request of a successor, stating:*

- 1. That it is the licensed funeral service establishment handling the funeral, if there is one, and the disposition of the decedent;*
- 2. The legal name and business address of the licensed funeral service establishment;*
- 3. The amount given priority by § 64.2-528, or the amount due to it for the funeral, if there is one, and the disposition of the decedent reduced by any other payments it has received or expects to receive;*
- 4. The reasons and supporting evidence that the person to whom the affidavit will be presented is in possession of a small asset belonging to the decedent; and*
- 5. That a successor has represented to it in writing that at least 30 days have elapsed since the decedent's death and no application for the appointment of a personal representative is pending, has been granted, or is expected in any jurisdiction.*

# Virginia Small Estate Act; funeral expenses and disposition (HB2128 & SB870)

*B. 1. Any person paying or delivering a small asset pursuant to this section is discharged and released to the same extent as if that person dealt with the personal representative of the decedent and a receipt of the payee shall be a full and final release of the payor as to such sum. Such person is not required to see the application of the small asset or to inquire into the truth of any statement in any affidavit presented pursuant to subsection A.*

*2. If any person to whom an affidavit is presented pursuant to subsection A refuses to pay or deliver any small asset belonging to the decedent of which he is in possession pursuant to this section, it may be recovered, or its payment or delivery compelled, and damages may be recovered, on proof of rightful claim in a proceeding brought for that purpose by or on behalf of the licensed funeral service establishment. However, no such damages may be recovered if it is established in such proceeding that the refusal to pay or deliver the small asset was made in good faith.*

*C. Any licensed funeral service establishment to whom payment or delivery of a small asset has been made under this section is answerable and accountable therefor to any personal representative of the decedent's estate or to any successor having an equal or superior right.*

Guardian ad litem; appointment, requested information, records, or reports. (HB2063 )

§ 6.2-103.1. Financial institutions to furnish certain information as part of adult protective services investigation.

Notwithstanding any other provision of law, any financial institution subject to the provisions of this title shall cooperate in any investigation of alleged adult abuse, neglect, or exploitation conducted by a local department of social services pursuant to Chapter 16 (§ 63.2-1600 et seq.) of Title 63.2 and shall make any financial records or information relevant to such investigation available to the local department *and to any court-appointed guardian ad litem for the adult who is the subject of such adult protective services investigation* upon request to the extent allowed under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and 12 U.S.C. § 3403. *Absent gross negligence or willful misconduct, any financial institution and its staff shall be immune from civil or criminal liability for providing information or records to the local department of social services or to a court-appointed guardian ad litem pursuant to this section.*

# Guardian ad litem; appointment, requested information, records, or reports. (HB2063 )

§ 64.2-2003. Appointment of guardian ad litem.

*D.-A Any individual or entity with information, records, or reports relevant to a guardianship or conservatorship proceeding, including any (i) health care provider and, local school division, or local department of social services; (ii) criminal justice agency as that term is defined in § 9.1-101, unless the disclosure of such information, records, or reports would impede an ongoing criminal investigation or proceeding; and (iii) financial institution as that term is defined in § 6.2-100, investment advisor as that term is defined in § 13.1-501, or other financial service provider shall disclose or make available to the guardian ad litem, upon request, any information, records, and reports concerning the respondent that the guardian ad litem determines necessary to perform his duties under this section to the extent allowed under the Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.) and 12 U.S.C. § 3403. The request from the guardian ad litem shall be accompanied by a copy of the court order (a) appointing the guardian ad litem for the respondent and (b) that allows the release of the respondent's nonpublic personal information to the guardian ad litem. All such information, records, and reports shall be provided to the guardian ad litem at no charge. Disclosures, records, and reports can be provided in electronic form to the guardian ad litem and may be accompanied by a statement of expenses or an invoice, which shall be filed with the report of the guardian ad litem to be considered by the court when awarding costs among the parties pursuant to § 64.2-2008. Absent gross negligence or willful misconduct, the person or entity making disclosures, and their staff, shall be immune from civil or criminal liability for providing information or records to a court-appointed guardian ad litem pursuant to this section.*

# Agricultural land; definitions, ownership by foreign adversaries prohibited, report. (SB1439 & HB2325)

*§ 55.1-508. Foreign adversary acquisition of agricultural land prohibited.*

*A. Notwithstanding any other provision of law, on and after January 1, 2023, no foreign adversary shall acquire or transfer any interest in agricultural land in the Commonwealth.*

*B. This section shall not apply to (i) any interest in agricultural land held by a foreign adversary prior to January 1, 2023, or (ii) any federally recognized Indian tribe or its government units and enterprises.*

*C. Any transfer of an interest in land in violation of this section shall be void.*

*D. This section shall not be applied in a manner inconsistent with any provision of any treaty between the United States and another country.*

# Agricultural land; definitions, ownership by foreign adversaries prohibited, report. (SB1439 & HB2325)

## § 55.1-507. Definitions.

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

*"Agricultural land" means real estate used for an agricultural operation in the Commonwealth.*

*"Agricultural operation" means any operation devoted to the bona fide production of crops, animals, or fowl, including the production of fruits and vegetables of any kind; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; and the production and harvest of products from silvicultural activity.*

*"Controlling interest" means either possession of more than 50 percent of the ownership interests in an entity or a percentage ownership in an entity of 50 percent or less if such owner directs the business and affairs of such entity without the requirement or consent of any other party.*

*"Department" means the Department of Agriculture and Consumer Services.*

*"Foreign adversary" means any foreign government or nongovernment person determined by the U.S. Secretary of Commerce to have engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and safety of United States persons.*

*"Interest" means any estate, remainder, or reversion, or portion of the estate, remainder, or reversion, or an option pursuant to which one party has a right to cause legal or equitable title to agricultural land to be transferred.*

# Agricultural land; definitions, ownership by foreign adversaries prohibited, report. (SB1439 & HB2325)

## § 55.1-509. *Reporting requirements.*

*A. Based on the reports submitted to it pursuant to the federal Agricultural Foreign Investment Disclosure Act, 7 U.S.C. § 3501 et seq., and other information the Department, at its discretion, deems appropriate, the Department shall compile an annual report in consultation with the appropriate state agencies and boards for each calendar year containing all of the following, if available:*

- 1. The total amount of agricultural land that is under foreign ownership;*
- 2. The percentage change in foreign ownership of agricultural land in the Commonwealth for each year over the prior 10 years;*
- 3. The purpose for which foreign-owned agricultural land in the Commonwealth is being used currently. To the extent such information is available, the Department shall also include any significant recent changes or trends in the uses of foreign-owned agricultural land in the Commonwealth;*
- 4. With the assistance of relevant state agencies, information regarding the extent of, and any recent changes in, foreign ownership of energy production, storage, or distribution facilities in the Commonwealth to the extent such information is available; and*
- 5. Any legislative, regulatory, or administrative policy changes the Department recommends in light of the information in this report.*

*B. The Department shall publish its inaugural report pursuant to subsection A on its website no later than July 1, 2023, and each subsequent report pursuant to subsection A no later than July 1 of each following year...*

# Settlement Agent Release of Judgment Liens. (HB2184)

§ **55.1-3101**. *Release of judgment lien by settlement agent; notice to lien creditor.*

*A. A settlement agent may release property from a judgment lien in accordance with the provisions of this section if (i) the settlement agent has made a written request for a payoff amount from the lien creditor and his counsel of record, if any, as reflected in the judgment, judgment abstract, or any certificate of extension filed in the land records; (ii) the lien creditor (a) has not responded to such request within 15 days or (b) is unable to be located by the settlement agent after attempts at notice are made as provided in subsection B; (iii) the settlement agent has delivered or attempted to deliver a notice of intent to release pursuant to subsection C and the lien creditor has not responded as required by this section; and (iv) the owner of the property attests in an affidavit that (a) the owner has paid all or a portion of the judgment but in good faith does not have knowledge of the judgment balance or (b) the owner is not the judgment debtor and has no knowledge of the judgment balance. In such affidavit, such owner shall attest that he has exercised due diligence to locate the creditor and obtain a payoff amount, if the judgment is outstanding, and that all attempts to reach such creditor have been unsuccessful.*

*B. A settlement agent intending to release a specific piece of property from a judgment lien pursuant to this section shall deliver or attempt to deliver to the lien creditor and his counsel of record, if any, by certified mail, commercial overnight delivery service, or the United States Postal Service, a notice of intent to release and a copy of the release to be recorded.*

# Settlement Agent Release of Judgment Liens. (HB2184)

**§ 55.1-3101 C.** *The notice of intent to release shall contain (i) the name and current contact information of the settlement agent; (ii) a copy of the recorded judgment or judgment abstract and a copy of any related recorded assignment or notice of assignment of the judgment; and (iii) the street address, tax parcel number, or other identifying information for the property that is the subject of the release. The notice of intent to release shall conform substantially to the following form:*

## **NOTICE OF INTENT TO RELEASE**

*Notice is hereby given to you concerning the judgment lien described on the certificate of release, a copy of which is attached to this notice, as follows:*

- 1. The settlement agent identified below made a written request more than 15 days ago for payoff amounts related to the judgment lien cited in the attached recorded abstract of judgment incident to the conveyance or encumbrance of certain property identified below. Said payoff has not been provided as of the date of this notice.*
- 2. The undersigned will release only the property from the judgment lien described in this notice unless, within 30 days from the date of notice, the lien creditor sends to the undersigned by (i) certified mail, return receipt requested; (ii) commercial delivery service for same day or next business day delivery; (iii) the United States Postal Service for next business day delivery, or (iv) electronic mail or facsimile transmittal to the electronic mail address or fax number provided by the settlement agent a notice stating that the lien creditor objects to the release of the property from the judgment lien without payment to the lien creditor and provides a complete payoff amount. Notice shall be sent to the address stated on this form.*

*(Name of settlement agent)*

*(Virginia RESA registration number of settlement agent)*

*(Address of settlement agent)*

*(Telephone number, fax number, and email address of settlement agent)*

# Settlement Agent Release of Judgment Liens. (HB2184)

*§ 55.1-3101 D. For the purposes of this chapter, a settlement agent shall maintain, for the lifetime of the judgement lien, all documents related to exercising due diligence to locate the creditor.*

# Settlement Agent Release of Judgment Liens. (HB2184)

§ 55.1-3102. *Certificate of release and affidavit of settlement agent.*

*A. If, within 30 days following the date of notice of the notice of intent to release pursuant to § 55.1-3101, the lien creditor has not sent by (i) certified mail, return receipt requested, (ii) commercial delivery service for same day or next business day delivery, (iii) the United States Postal Service for next business day delivery, or (iv) electronic mail or facsimile transmittal to the electronic mail address or fax number provided by the settlement agent a complete payoff amount, the settlement agent may execute, acknowledge, and file with the clerk of court of the jurisdiction in which the property is located a certificate of release. Such certificate of release shall include (a) an affidavit pursuant to subsection B, (b) a copy of the notice of intent to release in accordance with § 55.1-3101, and (c) the owner's affidavit pursuant to § 55.1-3101. The certificate of release shall include the settlement agent's registration number issued by a licensing authority as defined in § 55.1-1000. The certificate of release shall note that the settlement agent has the authority to execute the certificate of release pursuant to this section. After filing or recording the certificate of release, the settlement agent shall mail a copy of such certificate of release to the lien creditor. Failure to mail a copy of the recorded certificate of release to the lien creditor shall not affect the validity of a certificate of release that otherwise satisfies the requirements of this section and shall release the property from the judgment lien as provided by this section.*

## Settlement Agent Release of Judgment Liens. (HB2184)

*B. The certificate of release shall include an affidavit that certifies that (i) the settlement agent has not received a payoff amount as shown on the recorded abstract of judgment from the lien creditor, his assignee, or his representative, nor has the settlement agent received any objection to the release of the property from the judgment lien; (ii) the person executing the certificate of release is the settlement agent; (iii) the notice of intent to release was delivered to the lien creditor or delivery was attempted at the address shown on the recorded abstract of judgment and the settlement agent has received evidence of such delivery or attempted delivery; and (iv) the property is released from the judgment lien. The certificate of release and accompanying affidavit shall conform substantially to the following form...*

# Settlement Agent Release of Judgment Liens. (HB2184)

## **§ 55.1-3103.** *Effect of filing of certificate of release.*

*A certificate of release filed or recorded with the clerk of court in the jurisdiction in which the property is located, provided that such certificate of release satisfies all the requirements prescribed in § 55.1-3102, shall operate as a release of a judgment lien of the specified property. Such certificate of release shall not be construed to release any other real property owned by the judgment debtor or judgment debtors at the time of filing or any future interest in real property acquired by such judgment debtor or judgment debtors. In the absence of gross negligence or willful misconduct, the clerk of the circuit court of any jurisdiction shall be immune from civil liability arising from any act or omission relating to such clerk's compliance with the provisions of this chapter.*

## **§ 55.1-3104.** *Liability for execution, filing, recording wrongful or erroneous certificate.*

*A. A certificate of release executed and filed or recorded wrongfully or erroneously by a settlement agent shall not relieve a party or his successor, assignee, or representative from obligation or liability for the debt or other obligations secured by the judgment lien.*

*B. A settlement agent who negligently executes and files or records an erroneous certificate of release shall be liable to the lien creditor for actual damages sustained due to the recording of such certificate of release. The minimum amount of such actual damages shall be the amount received by the owner of the property in the settlement and shall not exceed the outstanding balance of the unpaid judgment at the time of the sale of the property, plus attorney fees.*

*C. The procedure authorized by this chapter for the release of a judgment lien shall constitute an optional method of accomplishing a release of a judgment lien secured by property in the Commonwealth. The nonuse of the procedure authorized by this subsection for the release of a judgment lien shall not give rise to any liability or any cause of action whatsoever against a settlement agent by any obligated party or anyone succeeding to or assuming the interest of the obligated party.*

*2. That the provisions of this act may be applied to a judgment lien created or recorded prior to July 1, 2023.*

# Real Estate Appraiser Board; appraisal experience. (HB1418)

§ 54.1-2013.2. *Practical Applications of Real Estate Appraisal Program experience accepted.*

A. *For purposes of this section:*

*"Appraisal Foundation" means the foundation incorporated as an Illinois Not for Profit Corporation on November 30, 1987, to establish and improve uniform appraisal standards by defining, issuing, and promoting such standards.*

*"Appraiser Qualifications Board" means the board created by the Appraisal Foundation to (i) establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing, and promoting such qualification criteria; (ii) disseminate such qualification criteria to states, governmental entities, and others; and (iii) develop or assist in the development of appropriate examinations for qualified appraisers.*

*"Certified Residential PAREA Program" or "Licensed Residential PAREA Program" means a Practical Applications of Real Estate Appraisal experience training program approved by the Appraiser Qualifications Board that utilizes simulated experience training and serves as an alternative to the traditional supervisor and trainee method of achieving appraisal experience.*

*B. The Board shall accept evidence of the successful completion of a Licensed Residential PAREA Program or a Certified Residential PAREA Program to satisfy the experience requirements established in Board regulations promulgated pursuant to § 54.1-2013 as a condition of licensure as a licensed residential real estate appraiser, certified residential real estate appraiser, or certified general real estate appraiser.*

# Real Estate Appraiser Board; appraisal experience. (HB1418)

## § 54.1-2013.2.

*C. Applicants completing a Licensed Residential PAREA Program shall receive credit for:*

- 1. One-hundred percent of the experience required by Board regulations as a condition of licensure as a licensed residential real estate appraiser;*
- 2. Sixty-seven percent of the experience required by Board regulations as a condition of licensure as a certified residential real estate appraiser; or*
- 3. Thirty-three percent of the experience required by Board regulations as a condition of licensure as a certified general real estate appraiser.*

*D. Applicants completing a Certified Residential PAREA Program shall receive credit for:*

- 1. One-hundred percent of the experience required by Board regulations as a condition of licensure as a licensed residential real estate appraiser or certified residential real estate appraiser; or*
- 2. Fifty percent of the experience required by Board regulations as a condition of licensure as a certified general real estate appraiser.*

# Real state settlement agent fees; informed consent. (HB1888)

## § 55.1-1006. Choice of settlement agent.

A purchaser or borrower in a transaction related to real estate in the Commonwealth shall have the right to select the settlement agent to provide escrow, closing, or settlement services in connection with the transaction. The seller in such a transaction may not require the use of a particular settlement agent as a condition of the sale of the property. Nothing in this chapter shall prohibit a seller from retaining an attorney licensed pursuant to Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1 to represent his interests and provide legal advice pertaining to escrow, closing, or settlement services. Such representation may include deed preparation, fee negotiation, and review of applicable documents and advising the seller on any legal matters related to the settlement or closing process. *The settlement agent may not collect any fees from a represented seller payable to the settlement agent or its subsidiaries, affiliates, or subcontractors without first obtaining the written consent of the seller's counsel.*

## § 55.1-1007. Disclosure.

All contracts involving the purchase of real estate containing not more than four residential dwelling units shall include in at least 10-point boldface type the following language:

"Choice of Settlement Agent: Chapter 10 (§ 55.1-1000 et seq.) of Title 55.1 of the Code of Virginia provides that the purchaser or borrower has the right to select the settlement agent to handle the closing of this transaction. The settlement agent's role in closing this transaction involves the coordination of numerous administrative and clerical functions relating to the collection of documents and the collection and disbursement of funds required to carry out the terms of the contract between the parties. If part of the purchase price is financed, the lender for the purchaser will instruct the settlement agent as to the signing and recording of loan documents and the disbursement of loan proceeds. No settlement agent can provide legal advice to any party to the transaction except a settlement agent who is engaged in the private practice of law in Virginia and who has been retained or engaged by a party to the transaction for the purpose of providing legal services to that party. *No settlement agent may collect any fees from a represented seller payable to the settlement agent or its subsidiaries, affiliates, or subcontractors without first obtaining the written consent of the seller's counsel.*

# Credit unions; virtual currency custody services. (HB1727)

Section 6.2-1302.1 of the Code is amended to permit a credit union in the Commonwealth to engage in virtual currency custody services:

- Provided the credit union has adequate protocols in place to effectively manage the associated risks and comply with applicable laws.
- Prior to offering virtual currency custody services, the credit union has carefully examined the risks in offering such services through a methodical self-assessment process.
- To engage in such services, the credit union must implement effective risk management systems, maintain adequate insurance coverage, and maintain a service provider oversight program.
- Credit unions may provide such services in a fiduciary or nonfiduciary capacity; however, no credit union shall provide virtual currency custody services in a fiduciary capacity without first obtaining authorization to do so from the State Corporation Commission.

## No ESG or Anti-ESG This Year

- HB 2335 (Durant)/ SB 1437 (McDougle) – **Virginia Retirement System Divestments:**
- Unless the Board of Trustees of the Virginia Retirement System can demonstrate that a social investment would provide a superior rate of return compared to a similar investment that is not a social investment with a similar time horizon and risk, neither the Board nor any external fiduciary utilized by the Board may invest or make recommendations regarding state funds for the purpose of social investment.
- HB 2335 failed out of the House Appropriations Committee. SB 1437 failed by a 16-0 vote in the Senate Finance and Appropriations Committee after VRS raised significant concerns about implementation and preservation of their fiduciary duty.

# HB2335 & SB1437 (FAILED ANTI-ESG BILLS)

§ 51.1-124.30. Board as trustee of funds; investments; standard of care; liability for losses.

A. The Board shall be the trustee of the funds of the Retirement System that it administers and of those resulting from the abolished system. Subject to the provisions of this chapter, the Board shall have full power to invest and reinvest such funds as authorized by law. *Except as otherwise provided in a state investment policy and unless the Board can demonstrate that a social investment would provide a superior rate of return compared to a similar investment that is not a social investment and has a similar time horizon and risk, neither the Board nor any external fiduciary utilized by the Board may invest or make recommendations regarding state funds for the purpose of social investment. For purposes of this this section, "social investment" means an investment that is based on environmental, socially responsible, and governance criteria in the investment, commitment, voting of shares, or engagement with portfolio companies with public funds for a purpose of obtaining an effect other than a maximized return for the Retirement System.*

# Failed Bill - HB2417 Dogs and cats; financing for rental, sale, etc., prohibited.

§ ~~3.2-6513.2~~. Rental, lease, or financing of dog or cat prohibited; civil penalty.

A. As used in this section, "covered person" means any pet shop, commercial dog breeder, pet dealer, firm, or other pet selling business.

B. The rental ~~or~~, leasing, *or financing* of a dog or cat to a Virginia consumer, including by a purported sale of the animal in such a manner as to vest less than full equity in the consumer at the time of the purported sale, is prohibited.

~~C. No covered person shall offer in Virginia an agreement for the transfer or sale of a dog or cat to the consumer in which the animal is subject to repossession in any manner upon default of the agreement by the consumer.~~

~~D. No financial institution, as defined in § 6.2-100, access partner, as defined in § 6.2-1500, or covered person shall offer, *arrange, broker, negotiate, place, find, or service in Virginia a any type of loan, credit, or financing agreement for the financing, rental, lease, or sale, or other transfer of a dog or cat* where the animal is subject to repossession upon default under the terms of the financing agreement.~~

# TREASURY SPDA

## Amendments Coming to Virginia Security for Public Deposits Act (1 VAC 75-20-10, et seq.):

- **Changes to Eligible Collateral.**
  - Eliminate corporate bonds/notes as eligible collateral for Pooled qualified public depositories (QPDs) to be consistent with eligible collateral for Dedicated (Opt-out) QPDs
  - Introduce a 10% haircut on Virginia municipal securities and a 20% haircut on Other States' municipal securities for Pooled QPDs to be consistent with municipal security haircuts in place for Opt-out QPDs and to address concerns with pricing and liquidity of municipal securities in the event they need to be liquidated due to a QPD failure
- **Compliance Requirements for QPDs and Escrows.**
  - Outline steps to be taken if a QPD fails to meet collateralization and reporting requirements
  - Formalize current practices in place for many years but not formally documented in the Regulations
- **Use of Treasury's web-based Public Funds Search feature.**
  - Require public funds depositors to check their account balances on the Public Funds Search feature quarterly
  - Assures all public funds are being reported, and with correct balances, to Treasury Board
  - Assures public funds are properly collateralized in accordance with the SPDA

# HEMP & MARIJUANA

- **Industrial Hemp is Legal**
  - To grow, process or deal in industrial hemp in Virginia, you must obtain an Industrial Hemp Grower Registration from the Virginia Department of Agriculture and Consumer Services (VDACS). Individuals with a felony controlled substance conviction within 10 years of the date of application for an industrial hemp registration are not eligible for an industrial hemp registration.
- **Medical Marijuana is Legal**
  - One pharmaceutical processor and up to five cannabis dispensing facilities for each health service area established by the Board of Health (§ 54.1-3442.6 of the Code).
- **Recreational Marijuana is NOT Legal**

# NOTIFICATION OF COMPUTER SECURITY INCIDENT

- The OCC, Board, and FDIC have issued a final rule that requires a banking organization to notify its primary Federal regulator of any “computer-security incident” that rises to the level of a “notification incident,” as soon as possible and no later than 36 hours after the banking organization determines that a notification incident has occurred. The final rule also requires a bank service provider to notify each affected banking organization customer as soon as possible when the bank service provider determines that it has experienced a computer-security incident that has caused, or is reasonably likely to cause, a material service disruption or degradation for four or more hours.

# Regulation F Updates

- Implements the Fair Debt Collection Practices Act of 1977.
- Covers debt collectors and debts as defined in the FDCPA with no expansion of the definition. First-party creditors, like banks who collect their own debts, are not “debt collectors”, but mortgage servicers are not excluded from the definition, so it is unclear whether the Rule’s requirements and prohibitions apply to mortgage servicing operations.

# Regulation F - Why should banks care?

- Banks should be knowledgeable about the Rule's detailed requirements in order to have proper oversight in place for any third-party debt collectors hired to collect bank debts.
- Consider following Regulation F's debt collection practices as added protection against allegations of unfair or deceptive collection tactics, under other laws and regulations.

# Regulation F Updates

- Applies only to debts of a natural person.
- Communication is the conveying of information regarding a debt directly or indirectly to any person through any medium, including any oral, written, or electronic. Examples of communication include contact in person or by telephone, audio recording, paper document, mail, email message, text message, social media message, or other electronic media.
- Requires a debt collector to include a clear and conspicuous opt-out notice in electronic communications and electronic attempts to communicate with a consumer.

# Regulation F Updates

- Requires that a debt collector provide a consumer with five categories of validation information in regard to the consumer's debt at the outset of debt collection communications.
- Rule provides a model notice for such disclosures that, if used, grants the debt collector a safe harbor for compliance with the validation information content and format requirements.
- Allows any person to request that a debt collector not use or stop using a particular medium of communication (e.g., email, email messages to a specific address, telephone calls, or telephone calls to a specific number) to collect a debt.

# Regulation F Prohibitions

- The Rule places limits on the time, place, and number of communications that can be made to consumers regarding a debt.
- “Consumer” includes the debtor and that person’s spouse, parent (if the debtor is a minor), legal guardian, executor or administrator of the estate of a deceased consumer, and confirmed successor in interest.
- Debt collectors are not permitted, with limited exceptions, to communicate with a third party about a consumer’s debt.
- Debt collectors are not allowed to contact consumers through a social media platform if the communication or attempt to communicate is viewable by the general public or the consumer’s social media contacts.

# Regulation F Prohibitions

- Debt collectors cannot make telephone calls repeatedly or continuously with the intent to annoy, abuse, or harass.
- Presumption of compliance by following the “seven in seven” guideline: (i) placing a telephone call to a particular person no more than seven times within seven consecutive calendar days, and (ii) after having a live telephone conversation with a person, not calling them again for seven consecutive calendar days.
- Prohibits communications at inconvenient times or places (before 8:00 a.m. and after 9:00 p.m. local time at the consumer’s location), after a consumer has refused to pay, or after a consumer has requested a debt collector halt communications.

# Regulation F Prohibitions

- If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wants the debt collector to cease further communication, with limited exception, the debt collector must not communicate or attempt to communicate further with the consumer with respect to such debt. (Notice can be a text message or social media message if debt collector accepts those types of electronic communications from consumers)
- Prohibits communicating or attempting to communicate with a consumer at the consumer's workplace if the debt collector knows or has reason to know that the employer prohibits the consumer from receiving such communications.

# RESOURCES

- VBA Legal & Regulatory Links
  - <https://www.vabankers.org/legal-regulatory-resources>
- February 2022 Legal Line Article
  - <https://www.vabankers.org/article/speedy-reporting-computer-security-incidents>
- February 2023 Legal Line Article
  - <https://www.vabankers.org/article/bellbottoms-vegan-leather-regulation-f-gets-modern-makeover>
- Virginia Treasury Board (SPDA)
  - <https://www.trs.virginia.gov/Operations>

# Thank You!

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