

Greetings! If you are a regular reader of *Virginia Banking*, you likely noticed a new name and face as you turned or scrolled to this Legal Line article. I joined the Virginia Bankers Association (VBA) in April and am looking forward to sharing important legal topics in banking with you.

In its 2018 session, the General Assembly passed a number of bills that affect the business of banking. Many of those bills were signed into law by the Governor and became effective July 1, 2018. Below are summaries of the most pertinent changes. For more information regarding recent amendments to the Code of Virginia (Code) related to banking, please see the 2018 VBA General Counsel's Report which can be found on the VBA website.

Bank Accounts and Dormancy. Section 55-210.3:01 of the Code was amended to clarify 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 bank may reverse or cancel dormancy charges or retroactively credit interest upon the request of the owner if the bank also does so for all such property that becomes subject to certain statutory reporting requirements regarding unclaimed property. If the bank elects not to reverse or cancel dormancy charges or retroactively credit interest with respect to any such property, then the bank 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 bank 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 provisions of the act are declarative of existing law.

Bank Stock Ownership by Directors. Section 6.2-862 of the Code was amended to allow a bank director to own as the "sole owner" 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.

Bank Branches. Section 6.2-834 of the Code was amended to permit a bank to operate a branch office under a name that is not identical to the bank's name, if permission is first obtained from the State Corporation Commission's Bureau of Financial Institutions and if the branch name contains language clearly indicating that it is a branch office of the bank or a division of the bank.

Foreclosure and Unlawful Detainer. Sections 8.01-126 and 8.01-130 of the Code were amended so that 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.

Foreclosure and Notice of Sale When Owner is Deceased. Sections 55-59.1 and 55-64 of the Code were amended regarding the notice of sale under a deed of trust and the payment of surplus after a sale. 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 to any heirs 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.

Wills and Revocable Trusts. Sections 64.2-412, 64.2-415, 64.2-416, and 64.2-418 were amended and § 64.2-404.1 added to the Code to eliminate inconsistencies between wills and revocable trusts. The following are extended 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. In addition, courts now possess the power to reform the terms of a decedent's will to correct mistakes or to achieve a decedent's tax objectives. The provisions of the law 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 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.

Trust Decanting and Fiduciary. Sections 64.2-701 and 64.2-779.5 of the Code were amended to reinstate 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. The decanting power may be exercised by a majority of the authorized fiduciaries and a court may appoint a special fiduciary to exercise the decanting power. Note that the bill contained an emergency clause and this act has been in force since its passage on March 23, 2018.

Orders of Publication to Enforce a Tax Lien. Section 8.01-321 of the Code was amended to require that 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 be published only once. Previously, the order was required to be published at least once a week for two successive weeks.

Annual Reports of Corporations. Section 13.1-775 of the Code was amended to eliminate 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.

Notaries and Fee Agreements with Employers. Section 47.1-20 of the Code was amended to allow an employer to require a notary in its employment to surrender to the employer a fee charged for a notarial act that is performed during the course of the employment.

Qualification of Fiduciary Without Security. Section 64.2-1411 of the Code was amended to allow a circuit court or circuit court clerk to permit 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.

For more information about this article or other legal banking issues, contact DeMarion Johnston, VBA General Counsel, at djohnston@vabankers.org or (804) 819-4714. This article has been prepared for informational purposes only and is not legal advice.