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2012 Virginia Legislation of Interest to Financial Institutions

This is a brief summary of significant bills enacted in the 2012 Virginia General Assembly Session affecting financial institutions. Unless otherwise noted, each bill will become effective July 1, 2012.

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| H.B. 708 and S.B. 121 | <i>Bank-Owned Real Estate</i> – These bills remove the 10-year limitation on the period of time in which a state bank may hold real estate acquired in satisfaction of a debt. The legislation permits state banks to hold such real estate indefinitely without writing down its value. |
| H.B. 648 and S.B. 416 | <i>Confession of Judgment by Substitute Attorney-in-Fact</i> – These bills allow a person entitled to payment under a note to appoint a substitute for any attorney-in-fact specifically named in the note to confess judgment. Such substitution must be made by an instrument naming such substitute that is recorded in the circuit court clerk's office where the judgment is to be confessed. If the note does not contain a notice informing the debtor that a substitute attorney-in-fact may be appointed by the person entitled to payment under the note, then within 10 days after the instrument appointing the substitute attorney-in-fact is recorded, the person shall send notice of the appointment by certified mail to the debtor's last known address as it appears in such person's records. |
| S.B. 51 | <i>Article 9 of the Uniform Commercial Code ("UCC")</i> – This bill incorporates amendments to UCC Article 9 (Secured Transactions) as recommended by the National Conference of Commissioners on Uniform State Laws. The amended sections: (i) update certain definitions; (ii) incorporate safe harbor provisions for electronic chattel paper under the Uniform Electronic Transactions Act; (iii) amend the laws of perfection and priority to increase the likelihood that a security interest will be perfected under certain conditions; (iv) set out the sufficiency requirements for a financing statement to include the name of the debtor; (v) delete prescribed forms for financing statements; and (vi) provide technical amendments and transition provisions. The legislation takes effect July 1, 2013. |
| H.B. 558 | <i>Virginia Housing Development Authority; Mortgage Credit Certificates</i> – This bill permits the Virginia Housing Development Authority to use its bond authority to issue mortgage credit certificates. The legislation has an emergency clause making it effective upon its passage. |
| H.B. 286 and S.B. 561 | <i>Garnishments</i> – These bills allow costs incurred by a judgment creditor in connection with a garnishment to be collected in a subsequent garnishment attempt that is based on the same judgment. |

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| H.B. 1168 | <i>Multi-State Trust Institutions</i> – This bill clarifies that federal savings banks, with or without an office or branch in Virginia, may engage in fiduciary activities in the Commonwealth. |
| H.B. 761 | <i>Clerk Authority to Reject Deeds Not Prepared by Virginia Attorney</i> – This bill authorizes circuit court clerks to reject for filing or recording a deed unless such deed states on the first page that it was prepared either by the owner of the property or an attorney licensed to practice law in the Commonwealth, with such attorney's name and Virginia State Bar number. (There is an exemption for deeds involving a public service company, railroad, or cable system operator.) |
| H.B. 214 and S.B. 132 | <i>Credit Unions</i> – These bills clarify the procedure under which the Commissioner of Financial Institutions will review proposed amendments to a credit union's articles of incorporation or bylaws to expand the credit union's field of membership. |
| H.B. 570 and S.B. 75 | <i>Mortgage Loan Originators</i> – These bills exempt employees of bona fide nonprofit organizations from the licensing and registration requirements applicable to mortgage loan originators. The State Corporation Commission is directed to prescribe regulations as to whether an organization is a bona fide nonprofit organization. The legislation makes other technical changes consistent with federal rules under the Secure and Fair Enforcement for Mortgage Licensing Act. |
| S.B. 124 | <i>Mortgage Lender and Mortgage Broker Act; Criminal Background Checks</i> – This bill conforms Virginia law regarding the licensure of mortgage lenders and mortgage brokers to the practice of conducting criminal background checks through the Nationwide Mortgage Licensing System and Registry. The legislation eliminates an existing provision that allows a mortgage lender's or mortgage broker's members, senior officers, directors, and principals to avoid a criminal background check during the licensing phase by acquiring a licensee after the license has been issued, and permits the Central Criminal Records Exchange to disclose criminal background information to the State Corporation Commission. |
| H.B. 572 and S.B. 76 | <i>Mortgage Loan Originator Licensing for Owner Financing</i> – These bills exempt persons who make loans or extend credit for any part of the purchase price of real property owned by such person, from the licensing and other requirements applicable to mortgage loan originators. |

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