



The Virginia State Banker

Regulatory news for Virginia State-chartered Banks

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Bureau of Financial Institutions - State Corporation Commission



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BREACH OF PERSONAL INFORMATION NOTIFICATION

Effective July 1, 2008, the Virginia General Assembly enacted legislation to address notification requirements in response to breaches of personal information. The goal of the legislation is to enhance identity theft prevention for Virginia residents through timely notification of individuals whose personal information may be at risk of being used to commit identity theft or other fraud. The legislation's focus is breaches of computerized data which may potentially affect numerous individuals en masse. The legislation specifies conditions where residents of the Commonwealth along with the Office of the Attorney General must be notified in the event of a breach.

The legislation also grants the State Corporation Commission exclusive responsibility for enforcement of violations of the legislation for state-chartered or -licensed financial institutions. This legislation overlaps requirements of Title V of the Gramm-Leach-Bliley Act which addresses disclosure of non-public information. All state-chartered banks have been subject to compliance with the Gramm-Leach-Bliley Act and promulgated rules, regulations, and guidelines for approximately the last seven years. A link to review the recently enacted notice of database breach legislation in its entirety follows:

<http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0801>

The Virginia State Banker is published by the Virginia Bureau of Financial Institutions to provide useful information to the banks and savings institutions that it regulates, and any of their related interests. Reader comments and suggestions are welcome and should be addressed to Ginger Sandler, Bureau of Financial Institutions, P.O. Box 640, Richmond, Virginia 23218-0640, or via e-mail ginger.sandler@scc.virginia.gov.

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VIRGINIA BANK DIRECTORS' COLLEGE

The Virginia Bureau of Financial Institutions, the Federal Reserve Bank of Richmond, and the FDIC will present the *Essential Principles* session of the Virginia Bank Directors' College at the Boar's Head Inn, Charlottesville, on October 29 and 30, 2008.

The *Essential Principles* session provides newer bank directors' with an overview of their responsibilities. This information also may provide a significant learning experience for the more experienced director who has not previously attended. This year's

program includes presentations on CAMELS ratings, director responsibilities, risk management, and "red flags."

Program brochures were mailed in late July. If you need additional information, please call Betty Nolan at (804) 371-9704.

VIRGINIA BUSINESSES AND ORGANIZATIONS: GET READY NOW!

Small businesses, corporations, nonprofit organizations, mobile businesses, farms/agricultural enterprises, home-based businesses, faith-based organizations, tourism, retail, and service industries. All of these have one thing in common: they are equally susceptible to emergency situations. If your organization is faced with an emergency — such as a hurricane, a bomb threat, terrorist activity, or a chemical spill — make sure you and your colleagues are prepared.

The Virginia Department of Emergency Management has developed the Web site <http://www.vaemergency.com/business/>

to help you prepare for, respond to, and recover from disasters. It explains types of emergencies and the problems they pose; gives information on how to prepare for them and recover from them; and helps you put it all together in an emergency preparedness plan.

Virginia 1st is an emergency preparedness organization being formed to assist the financial sector in preparing for these types of situations. Look for more information in the "Business Continuity Planning" article below.

Get your business ready.

The Virginia Business Emergency Survival Toolkit can help your company plan for, respond to and recover from emergencies and disasters.

Prepare
Plan
Stay Informed



www.vaemergency.com/business

25%
Businesses that close during a disaster and never reopen.

93%
Companies that go out of business within five years of a significant data loss.

BUSINESS CONTINUITY PLANNING - VIRGINIA 1st

Bankers who participated in the FDIC's *Protecting the Financial Sector – Establishing Regional Recovery Coalitions* last October in Williamsburg may be interested to know Virginia has a coalition in

process. Applications for **Virginia 1st** can be obtained from Gill Hundley at Valley Bank in Roanoke. Membership in this organization will give you an advantage in planning for and reacting to disasters in your trade area. It also

will be looked upon favorably by the Bureau and federal bank regulators when reviewing a bank's business continuity planning.

NEW BANK OPENINGS AND APPLICATIONS

Four banks have opened in Virginia so far this year, and a fifth has filed an application for regulatory approval. On March 18, 2008, the State Corporation Commission approved the application of Virginia Partners Bank for a certificate of authority to commence banking business in Fredericksburg. The state member bank opened for business on July 8, 2008 with \$21 million in capital. The senior officers are John H. Chichester, Chairman of the Board; William B. Young, Chief Executive Officer; and Lloyd B. Harrison, III, President.

Frontier Community Bank, with \$10.5 million in capital, opened for business in Waynesboro on February 6, 2008; Wayne L. Turner is President and Chief Executive Officer.

Community Capital Bank of Virginia, with \$7.1 million in capital, opened for business in Christiansburg, Montgomery County, on August 20, 2008. Community Capital Bank of Virginia was created as a state-wide community development financial institution pursuant to a

mandate from the Virginia General Assembly. Jane N. Henderson is the President and Chief Executive Officer.

The Commission also approved the application of WashingtonFirst Bank, a Washington D.C. bank, to relocate in Virginia under a state charter. The bank relocated to Reston, Fairfax County, on April 25, 2008. WashingtonFirst Bank had assets totaling \$262.5 million and equity totaling \$26.2 million as of March 31, 2008. Shaza L. Andersen is the bank's Chief Executive Officer.

On June 24, 2008, the Bureau accepted for filing the application of First Financial Bank for a certificate of authority to conduct banking business in Fairfax. The proposed bank will begin operations with \$18.1 million in capital pending approval by regulators. Organizing directors are Charles E. Curtis, Chairman of the Board; C. Kevin Curtis, President and Chief Executive Officer; John L. Albrigo, M.D.; John T. DeBell, Sr.; Michael C. Martin; Stephen A. Masciola; Scott C. Plein; T. Earl Rogers; Danny G. Snow; Ronald W. Tydings; and Richard A. Whealen. First Financial Bank will apply for membership to the Federal Reserve System.



SENATE BILL 797

Senate Bill 797—passed by the 2008 Virginia General Assembly and signed by Governor Kaine on April 23, 2008—provides a grace period for homeowners facing foreclosure, among other things. We recognize the majority of our Virginia-chartered banks do not have these “sub-prime” or “high-risk” mortgage loans on their books.

While there is no requirement borrowers with other types of real estate loans entering into foreclosure must be extended this accommodation, the following guidelines to be posted on the Virginia Foreclosure Prevention Task Force Web site are provided for your review (www.dhcd.virginia.gov/VFPTF).

Compliance with SB 797

What does the bill accomplish?

SB 797 recognizes that foreclosures are costly for both lenders and borrowers, and therefore provides borrowers with an additional grace period to negotiate mortgages with lenders so as to help avoid foreclosure. While this bill benefits both parties, it mandates action on the part of lenders to notify borrowers in advance with particular information.

What is required for compliance?

At least 10 business days before a lender or servicer of a "high-risk mortgage loan" sends notification of a loan acceleration due to a breach of contract, the lender or servicer must send the following information to the borrower (via *first-class mail* to the last known address):

1. An itemization of all past due amounts causing the loan to be in default;
2. Any other charges that must be paid in order to bring the loan current;
3. That there may be options available to avoid foreclosure, and that the borrower may discuss such options with the mortgage lender or servicer or a counseling agency approved by the United States Department of Housing and Urban Development;
4. The address and telephone number of the mortgage lender or servicer or its agent that will attempt to work with the borrower to avoid foreclosure;
5. The name, address, and telephone number of three or more HUD-approved counseling agencies;
6. The date by which the borrower shall reply to the notice;
7. That if the borrower contacts the mortgage lender or servicer on or before the date specified in the notice, using the phone number specified to request additional time to pursue options to avoid foreclosure, the mortgage lender or servicer shall provide the borrower at least 30 additional calendar days from the date of such call before sending the borrower a notice of acceleration; and
8. That if the borrower fails to contact the mortgage lender or servicer by the date specified in the notice, the mortgage lender or servicer may, at its option, send a notice of acceleration and require immediate repayment of all sums owed under the loan agreement.

Additionally, if the borrower does contact the lender or servicer with a request for additional time to avoid foreclosure, the lender or servicer may not send another notification of loan acceleration *for at least 30 days*.

What is a “high-risk mortgage loan”?

“High-risk mortgage loan” means a mortgage loan secured by a first lien on residential real property owned and occupied as the primary dwelling unit of the owner as of the date the loan was originated. Furthermore, the loan must not be: (i) in active bankruptcy or (ii) in active foreclosure with sale scheduled to occur in less than 30 days. Further still, the loan must either have: (1) an interest rate, in effect as of the date of default, that exceeds the yield on United States Treasury securities having comparable periods of maturity by five percentage points or more as of the date of default under the terms of such loan, or (2) total points and fees payable on the loan at or before loan closing of greater than seven percent of the total loan amount as shown on the borrower's note or debt instrument. If the loan's maturity is exactly halfway between security maturities, the interest rate on the loan will be compared with the yield for Treasury securities having a lower yield.

NOTICE

Pursuant to Section 55-59.1:1 of the Code of Virginia, you are hereby notified:

1. That the past due amounts causing the loan to be in default are as follows:

- a. Monthly payments of principal and interest for the months of _____ \$ _____;
- b. _____ \$ _____;
- c. _____ \$ _____;

2. That other charges that must be paid in order to bring the loan current are as follows:

- a. Late charges \$ _____;
- b. _____ \$ _____;
- c. _____ \$ _____;

3. That there may be options available to avoid foreclosure, and that you may discuss such options with your mortgage lender or servicer or a counseling agency approved by the United States Department of Housing and Urban Development (HUD);

4. That the address and telephone number of your mortgage lender or servicer or its agent that will attempt to work with you to avoid foreclosure is _____

_____;

5. That the name, address, and telephone number of three or more HUD-approved counseling agencies operating within the Commonwealth are as follows:

- a. _____

- b. _____

- c. _____

- d. _____

- e. _____

6. That the date by which you shall reply to this notice is _____;

7. That if you contact your mortgage lender or servicer on or before the date specified in this notice, using the telephone number specified in this notice, to request additional time to pursue options to avoid foreclosure, your mortgage lender or servicer shall provide you at least 30 additional calendar days from the date of such telephone contact before sending you a notice of acceleration;

8. That if you contact your mortgage lender or servicer to request additional time to pursue options to avoid foreclosure, you shall (i) make a good faith effort to work actively with the HUD-approved counselor, your mortgage lender or servicer on ways to repay amounts due under the loan and avoid foreclosure and (ii) provide your monthly income and expenses to the HUD-approved counselor, your mortgage lender or servicer (examples of income include current or expected monthly income such as employment income, benefit statements from social security, disability unemployment, retirement, or public assistance, and examples of expenses include any second mortgage or other loan payments, property taxes and insurance, total automobile payments, monthly utility payments, and monthly food and household expenses); and

9. That if you fail to contact your mortgage lender or servicer by the date specified in this notice, your mortgage lender or servicer may, at its option, send a notice of acceleration and require immediate repayment of all sums owed under the loan agreement.

IMPORTANT TELEPHONE NUMBERS

- Banks and Savings Institutions (804) 371-9704
- Consumer Finance and Mortgage Companies (804) 371-9701
- Licensing (applications, name changes, annual reports) (804) 371-9690
- Consumer Complaints (804) 371-9705
- Corporate Information (SCC Clerk's Office) (804) 371-9733
- Bureau's FAX number (804) 371-9416
- TDD (804) 371-9206

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Check out our website at <http://www.scc.virginia.gov/bfi>.
