



The Virginia State Banker

Regulatory news for Virginia State-chartered Banks

E.J. Face, Jr., Commissioner

Bureau of Financial Institutions - State Corporation Commission



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REASON PREVAILS? WE HOPE SO.

Below is an abbreviated version of the press release covering a 33-page policy statement to address commercial real estate loan workouts.

Financial Regulators Adopt Guidance on Prudent Commercial Real Estate Loan Workouts

The Federal Financial Institutions Examination Council (FFIEC) released a policy statement on October 30, 2009 supporting prudent commercial real estate (CRE) loan workouts. This policy statement provides guidance for examiners and for financial institutions that are working with CRE borrowers who are experiencing diminished operating cash flows, depreciated collateral values, or prolonged delays in selling or renting commercial properties. The financial regulators recognize that prudent loan workouts are often in the best interest of both financial institutions and borrowers, particularly during difficult economic conditions. This policy

statement details risk-management practices for loan workouts that support prudent and pragmatic credit and business decision making within the framework of financial accuracy, transparency, and timely loss recognition.

The policy statement includes examples of CRE loan workouts. The examples, provided for illustrative purposes only, reflect examiners' analytical processes for credit classifications and assessments of institutions' accounting and reporting treatments for restructured loans. The policy statement reiterates existing guidance that examiners are expected to take a balanced approach in assessing institutions' risk-management practices for loan workout activities.

Policy Statement on Prudent Commercial Real Estate Loan Workouts:
http://www.ffiec.gov/guidance/cre10300_2.pdf

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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NEW “BUSINESS GOOD SAMARITAN” LAW EFFECTIVE JULY 1, 2009

The following information was provided by Marc Follmer, Deputy Assistant to the Governor for Commonwealth Preparedness.

Virginia’s new Business Good Samaritan law provides qualified immunity from negligence liability for business entities and nonprofit organizations that assist in preparing for and responding to an emergency posed by a natural disaster, emerging infection, or terrorist event. The new law does not extend liability protection to gross negligence, recklessness, or willful misconduct.

Hurricane Katrina powerfully demonstrated the need to partner with private business and nonprofit organizations to maximize response capability and effectiveness. Virginia’s new Business Good Samaritan law (House Bill 1983 (2009) sponsored by Delegate Jennifer McClellan) closes a significant gap in liability exposure to private and nonprofit organizations that provide assistance to the Commonwealth at its request during emergencies. Key elements of the new law and guidelines for businesses and nonprofit organizations to be covered by the liability protections are shown below.

Key Elements

1. Extends “Good Samaritan-type” protection to business and nonprofit entities acting in good faith during an emergency.

As a policy matter, this simple change puts businesses and nonprofits on the same footing as individuals, who are encouraged by law to act in good faith to assist others in emergencies.

2. Coverage triggered by the Governor’s emergency declaration.

Coverage for businesses and nonprofits would be automatically activated when the Governor declares an emergency. No federal declaration is required. Private and nonprofit sector leaders can feel comfortable with coverage being triggered by a Governor-declared emergency.

3. Applies only to those emergency activities conducted in coordination with state or local government.

The liability protection would *not* extend to private and nonprofit organizations acting unilaterally and without coordination with the Commonwealth or local government. Response activities must be conducted at the request and direction of the Virginia Department of Emergency Management or a county or city employee whose responsibilities include emergency management. This provision encourages the desired cooperation between the public, private, and nonprofit sectors.

4. Includes pre-event training activities that take place prior to the declared emergency.

Liability protection for business and nonprofit organizations would extend to pre-event training activities, provided the training simulates conditions of an actual emergency. This provision is designed to encourage the development of pre-event memoranda of understanding between public, private, and nonprofit entities as well as training and practice events among such stakeholders.

5. Gross Negligence, Recklessness, Willful Misconduct and Products Liability not covered.

The new law does not provide liability protection to cover gross negligence, recklessness, or willful misconduct. Additionally the immunities of the new law do not extend to any manufacturer or to any retailer or distributor substantially involved in the manufacture or design of any product or good.

Text of the new Business Good Samaritan Law

Code of Virginia § 44-146.23. Immunity from liability.

F. No individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, fraternal organization, religious organization, charitable organization, or any other legal or commercial entity and any successor, officer, director, representative, or agent thereof, who, without compensation other than reimbursement for actual and necessary expenses, provides services, goods, real or personal property, or facilities:

1. Pursuant to a Governor-declared emergency or during a formal exercise or training of the Virginia Department of Emergency Management or a responsible county or city emergency management entity; and
2. At the request and direction of the Virginia Department of Emergency Management or a county or city employee whose responsibilities include emergency management;

shall be liable for the death of or injury to any person or for the loss of, or damage to, the property of any person where such death, injury, loss, or damage was proximately caused by the circumstances of the actual emergency or its subsequent conditions, or the circumstances of the formal exercise or training if such formal exercise or training simulates conditions of an actual emergency. This subsection shall not preclude liability for civil damages as a result of gross negligence, recklessness, or willful misconduct.

(continued on page 3)

CERTIFICATE OF DEPOSIT ACCOUNT REGISTRY SERVICE® (CDARS®)

Recently, the Bureau received an inquiry from one of our state banks concerning the interplay between the provisions of § 6.1-61 of the Code of Virginia, the Virginia bank lending limit statute, and the CDARS system. The latter is a program under which banks may place customers' funds in certificates of deposit issued by other banks to enable its customers to maximize FDIC deposit insurance coverage for its bank deposit investments. The inquiring bank wished to extend a line of credit to its customer in excess of its loan limit to one borrower to be

secured by certificates of deposit placed in other banks through the CDARS system. The bank wanted to know whether it could do so on the basis of the loan limit exception in subdivision A (8) for obligations secured by certificates of deposit of "the lending bank," believing its recourse to the "spread" deposits was equivalent to that available to it for deposits held within the bank.

The Bureau and its counsel considered the relationships created between the inquiring bank, an intermediary bank, and the banks holding

the deposits under the CDARS program. Ultimately, the Bureau concluded that the "spread" deposits did not constitute certificates of deposit of the "lending bank" for purposes of the exception in subdivision A (8) of the lending limit statute. Thus, the proposed equity line to be extended to the bank's customer would have exceeded its lending limit under the statute, and other qualifying security under subsection A would be required to support the proposed equity line.

SEMINAR ON LICENSING FOR MORTGAGE LOAN ORIGINATORS

There will be a presentation by senior Bureau staff on the licensing requirements for mortgage loan originators (MLOs), including descriptions and instructions on how to use the Nationwide Mortgage Licensing System (NMLS), at a meeting organized by various industry associations. MLOs as well as management of mortgage companies and banks are encouraged to attend. The Bureau is now

accepting MLO applications through NMLS. A meeting is scheduled on December 2 at VBA Headquarters, 4490 Cox Road, Glen Allen, sponsored by the Virginia Bankers Association and Virginia Mortgage Lenders Association.

Please check the Web sites of the sponsoring organizations for further details.

NEW "BUSINESS GOOD SAMARITAN" LAW *(continued)*

The immunities of this subsection shall not extend to any manufacturer or to any retailer or distributor substantially involved in the manufacture or design of any product or good. The provisions of this subsection shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the

Workers' Compensation Act (§ [65.2-100](#) et seq.), or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress. The immunity provided by this subsection shall be in addition to, and not in lieu of, any immunities provided by § [8.01-225](#).

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 Web site at <http://www.scc.virginia.gov/bfi>.
