

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: WV Division of Banking TITLE NUMBER: 106
RULE TYPE: Legislative; CITE AUTHORITY WV Code §31A-4-13, §31A-8-3 and §31A-2-4(c)(11)
AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 18

TITLE OF RULE BEING PROPOSED: Legislative Rule Pertaining to Acquisition of Property by Financial Institutions and Valuation of Real Estate Owned by State-Chartered Banks.

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON Aug. 16, 1993 AT 8:30 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

WV Division of Banking
State Capitol Complex
Building #3, Room 311
Charleston, WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

Sharon J. Bell

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Legislative Rule Pertaining to Acquisition of Property by Financial Institutions and Valuation of Real Estate Owned by State Chartered Banks.

Type of Rule: x Legislative Interpretive Procedural

Agency WV Division of Banking

Address State Capitol Complex

Building #3, Room 311

Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

To permit state chartered banks to follow GAAP in accounting for real estate owned and to limit bank official's ability to acquire real estate from the financial institution with which they are associated.

Rule Title: Legislative Rule Pertaining to Acquisition of Property by Financial Institutions and Valuation of Real Estate Owned by State Chartered Banks.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None, although the state chartered bank may account for real estate more appropriately under GAAP.

C. Economic Impact on Citizens/Public at Large.

Citizens may be better protected if they have real estate foreclosed upon by a West Virginia bank.

Date: July 14, 1993

Signature of Agency Head or Authorized Representative

Sharon J. B...

LEGISLATIVE RULES
COMMISSIONER OF BANKING

LEGISLATIVE RULE PERTAINING TO
ACQUISITION OF PROPERTY BY FINANCIAL INSTITUTIONS
AND VALUATION OF REAL ESTATE
OWNED BY STATE-CHARTERED BANKS

Summary of Proposed Rule

This rule is required by the passage of HB 2595 amending W. Va. Code § 31A-4-13 concerning the proper valuation of real estate held for sale or for use by state-chartered banks. The main purpose of the amendment was to conform state law with federal banking laws concerning the appropriate method for setting the book value of other real estate owned (OREO) by banks. This rule specifies the method of such valuation.

This rule also sets forth prohibitions for various forms of insider self-dealing by bank directors and officers in handling or obtaining for personal use property acquired by a bank through foreclosure or surrender.

TITLE 106
LEGISLATIVE RULES
COMMISSIONER OF BANKING

FILED
Jul 15 11 32 AM '93

SERIES 18
LEGISLATIVE RULE PERTAINING TO
ACQUISITION OF PROPERTY BY FINANCIAL INSTITUTIONS
AND VALUATION OF REAL ESTATE
OWNED BY STATE-CHARTERED BANKS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 106-18-1. General.

1.1. Scope-- These regulations establish rules on the acquisition of property through foreclosure by financial institutions and the proper valuation of real estate obtained for sale or use by state-chartered banks.

1.2. Authority-- W. Va. Code §§ 31A-4-13, 31A-8-3, and 31A-2-4(c)(11).

1.3. Filing Date--

1.4. Effective Date--

§ 106-18-2. Definitions.

2.1. "Fair Value" means the amount, minus estimated expenses to sell, that the bank could reasonably expect to receive for the property in a current sale between a willing buyer and a willing seller, other than in a forced or liquidation sale.

2.2. "Cost" means the amount paid by the bank to purchase the property minus depreciation if the property is held for use by the bank and is not an asset held for sale; and means the amount paid by the bank to obtain the property at foreclosure, or in the event the collateralized property is surrendered by deed or otherwise obtained by the bank, the amount of the unpaid loan balance when the asset is held for sale.

2.3. "Other Real Estate Owned" means real estate obtained by the bank as a result of a loan default or repayment of debt which is held for sale by the bank; and includes all such property so designated and otherwise set forth in federal banking laws and regulations.

§ 106-18-3. Valuation of Real Estate Held by State-Chartered Banks

3.1. Real Estate Held For Use-- In determining the value that a state-chartered bank places on its books for a real estate asset which it holds for use to conduct its banking business, the bank shall calculate such amount as the lesser of fair market value or cost, such cost being the price paid by the bank to purchase the property minus depreciation.

3.2. Real Estate Held For Sale-- In determining the value that a state-chartered bank places on its books for a real estate asset which it obtained by foreclosure or otherwise obtained and holds for sale, the bank shall calculate such amount as the lesser of fair market value or cost, such cost being the price paid to obtain the property at foreclosure, or in the event the collateralized property is surrendered by deed or otherwise given to the bank, the amount of the unpaid loan balance.

3.3. Use of GAAP Principals-- In determining the value of other real estate owned by the bank and held for sale, as well as the value of real estate held by the bank for its own use, state-chartered banks shall use "Generally Accepted Accounting Principals" (GAAP) as set forth by the American Institute of Certified Public Accountants (AICPA).

3.4. Conformity With Federal Law-- Notwithstanding any contrary provision of this rule, state-chartered banks shall follow federal banking law and regulations in determining their real estate's fair value and cost.

§ 106-18-4. Prohibited Conduct at Foreclosure Sales by
Directors and Officers of a Financial Institution

4.1. Participation As Purchaser-- No director or officer of a financial institution shall, either directly or indirectly, purchase property held by that financial institution for sale as the result of the financial institution's foreclosure upon that property. Provided, however, that such purchase may be made by the financial institution's directors or officers if it is made in the name of, and on behalf of, the financial institution.

4.2. Inside Information-- No director or officer of a financial institution shall, in connection with a public foreclosure sale conducted, or to be conducted by their financial institution, provide any person with non-public inside information held by the financial institution for the purpose of assisting that person against others in making a foreclosure sale bid.

4.3. Beneficiary of Foreclosure Sale-- No director or officer of a financial institution shall conspire with another to become the beneficial owner, primary beneficial user, or co-beneficial user of property purchased by another at a foreclosure sale held by the financial institution on which they serve. No prior agreement or arrangement shall be made whereby the director or officer at a financial institution pledges to purchase the foreclosed property from the buyer at a later date.

4.4. Prohibited Use of Property-- No director or officer of a financial institution shall use for any personal purpose property held for sale by that financial institution. Nor shall they use

such property for any business purpose, except for incidental and temporary use related to the financial institution's business pending final disposition of the property, where the financial institution is endeavoring to make bona fide efforts to sell such property. Provided, however, that nothing herein shall prohibit a financial institution from collecting rent or lease payments from any third-party originally owed to the debtor for use of the property pending final disposition of the property, where the financial institution is endeavoring to make bona fide efforts to sell such property.

4.5. Participation as a Broker-- No director or officer of a financial institution shall accept or agree to accept, directly or indirectly, any brokerage fee or legal fee in connection with the sale by that financial institution of property obtained through foreclosure or surrender of a deed in relation to a loan or credit repayment default. Except on such terms as those fees are specifically permitted to be paid to a financial institution's officers or directors under state or federal law.

4.6. Violation and Penalty-- Violation of this section of the rule will be considered a violation of W. Va. Code § 31A-8-3 and will be subject to all the penalties provided therefore.

§ 106-18-5. Severability.

If any word, phrase, or provision of this rule shall be held to be invalid, the remainder of the rule shall not be affected thereby.



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

State Capitol, Room M-146
Charleston, West Virginia 25305-0310
Telephone: (304) 558-0400
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

July 15, 1993

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUL 15 11 32 AM 1993

FILED

Sharon G. Bias
Commissioner
Banking
Building 3, Room 311-A
State Capitol Complex
Charleston, West Virginia 25305

Re: Proposed Rule - Title 106, Series 18
Legislative Rule Pertaining to Acquisition of Property by
Financial Institutions and Valuation of Real Estate Owned
by State-Chartered Banks

Dear Commissioner Bias:

Pursuant to West Virginia Code Section 5F-2-2(a)(12), I hereby
consent to the proposal of the rule specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

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