

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #3

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AUG 16 2 57 PM '93

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: WV Division of Banking TITLE NUMBER: 106

CITE AUTHORITY WV Code §31A-4-13, §31A-8-3 and §31A-2-4(c)(11)

AMENDMENT TO AN EXISTING RULE: YES  NO

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

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Sharon J. Bias

5.00

DATE: August 16, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Sharon G. Bias, Commissioner  
WV Division of Banking

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

1. Authorizing statute(s) citation WV Code §31A-4-13, §31A-8-3  
and §31A-2-4(c)(11)

2. a. Date filed in State Register with Notice of ~~Hearing~~: Comment Period:  
July 15, 1993

b. What other notice, including advertising, did you give  
of the hearing?

Sent to banking institutions on WV Division of Banking's  
"Official Notification" list and to WV Banker's Association  
and all thrifts and savings and loan associations.

c. Date of ~~hearing(s)~~: Comment Period:

July 15, 1993 to August 16, 1993

d. Attach list of persons who appeared at hearing, comments  
received, amendments, reasons for amendments.

Attached X No comments received                     

e. Date you filed in State Register the agency approved  
proposed Legislative Rule following public hearing:  
(be exact)

August 16, 1993

f. Name and phone number(s) of agency person(s) to contact  
for additional information:

Tim Winslow, General Counsel                      558-2294

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing: n/a

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached n/a

FILED

TITLE 106  
LEGISLATIVE RULES  
COMMISSIONER OF BANKING

AUG 16 2 57 PM '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 by financial institutions through foreclosure or surrender of deed or otherwise in satisfaction of debt previously contracted and the proper valuation by state-chartered banks of real estate obtained for sale or use.

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 property is surrendered by deed or otherwise obtained by the bank in satisfaction of debt previously contracted, the amount of the unpaid loan balance when the property is obtained for sale.

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

2.4. "Financial Institution" means those institutions defined as such in West Virginia Code 31A-1-2(1).

2.5 "Affiliate" means those persons or entities defined as such in West Virginia Code 31A-8-3(b).

§ 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 property is surrendered by deed or otherwise given to the bank in satisfaction of debt previously contracted, the amount of the unpaid loan balance.

3.3. Use of GAAP Principles-- 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, and in determining the proper accounting for the disposal of such real estate, state-chartered banks shall use "Generally Accepted Accounting Principles" (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. Holding Period

4.1. Pursuant to W. Va. Code § 31A-4-13(e) a state chartered bank may hold other real estate owned for a period not to exceed ten years, except that the Commissioner may approve a written request by the bank to extend the holding period for up to an additional two years, if:

4.1.1. The bank has made a good faith attempt to dispose of the other real estate owned within the ten year period; or

4.1.2. Disposal of the other real estate owned within the ten year period would be detrimental to the bank.

4.2. The holding period begins on the date that ownership of the property is originally transferred to the state-chartered bank except that:

4.2.1. The holding period for former banking premises begins on the date of relocation to new banking quarters. If there is no relocation or if the property was originally acquired for future expansion and will not be used as such, then the holding period begins on the date on which the bank decides that banking use is no longer contemplated.

4.2.2. Real estate acquired for future bank expansion should normally be used within three (3) years. Prior to acquisition of such real estate, the bank shall state, by board of directors resolution or other official action, definite plans for its use. The resolution or other official action shall be available to inspection by state and federal bank examiners.

4.3 A state-chartered bank may comply with its obligation to dispose of real estate obtained through foreclosure or surrender of deed or otherwise in satisfaction of debt previously contracted by retaining the property for its own use as bank premises or by transferring it to a subsidiary for use in the business of the subsidiary.

#### § 106-18-5. Appraisal requirements

5.1. Upon transfer to other real estate owned, a state chartered bank shall substantiate market value by obtaining an appraisal for the property or by obtaining an appropriate evaluation if an appraisal is not otherwise required by federal or state laws or regulations.

5.2. The state-chartered bank shall develop a prudent collateral evaluation policy that allows the bank to monitor the value of each parcel of other real estate owned in a manner consistent with prudent banking practice.

5.3. Provided however, that if a state-chartered bank already has a recent valid appraisal or an appropriate evaluation on a troubled real estate loan or on a loan secured by property designated as in-substance foreclosure under GAAP, then the bank is not required to obtain another appraisal or evaluation upon acquiring ownership. The bank shall, though, continue to follow its prudent collateral evaluation policy.

§ 106-18-6. Additional expenditures and notification

6.1. Additional expenditures on OREO-- Normal repairs and maintenance expenses shall be expensed when incurred as per Generally Accepted Accounting Principles (GAAP). For other real estate owned that is a development or improvement project, a state-chartered bank may only make further prudent advances to complete the project if they:

6.1.1. Are reasonably calculated to reduce any shortfall between the parcel's market value and the bank's recorded investment amount; and

6.1.2. Are not made for the purpose of speculation in real estate.

6.2. Notification procedures-- The bank shall notify the Commissioner in writing at least 30 days before implementing a development or improvement plan for other real estate owned that would cause the sum of the bank's recorded investment amount, and any unpaid prior liens on the property to exceed 10% of the bank's capital and surplus. The required notification must include any documentation necessary to demonstrate that the additional expenditure is consistent with the conditions and limitations in this section. If the Commissioner imposes no additional conditions or limitations on the bank's plan within 30 days following receipt of the bank's notification, then on the thirty-first day (or sooner if notified by the Commissioner) the bank may implement the plan to develop or improve the other real estate owned.

§ 106-18-7. Prohibited Conduct at Foreclosure and Other Real Estate Sales by Directors, Officers and Employees of a Financial Institution

7.1. Participation As Purchaser-- No director, officer, employee or affiliate of a financial institution shall, either directly or indirectly, purchase property for sale as the result of the financial institution's foreclosure upon that property without the prior approval of the disinterested members of the board of directors of such institution. Provided, however, that such purchase may be made by the institution's directors, officers, employees or affiliates if it is made in the name of, and on behalf of, the institution.

7.2. Inside Information-- No director, officer, employee or affiliate of a financial institution shall, in connection with a public foreclosure sale to be conducted by their institution, provide any person with non-public inside information held by the

institution for the purpose of assisting that person against others in making a foreclosure sale bid.

7.3. Beneficiary of Foreclosure Sale-- No director, officer, employee or affiliate of a financial institution shall conspire with another person to become the beneficial owner of property purchased by that other person at a foreclosure sale held by the institution. No prior agreement or arrangement shall be made whereby the director, officer, employee or affiliate of a financial institution pledges to purchase the foreclosed property from the buyer at a later date with the purpose of avoiding obtaining prior approval of such institution's board of directors as required in subsection 7.1 of this rule.

7.4. Prohibited Use of Property-- No director, officer, employee or affiliate of a financial institution shall use for any personal purpose other real estate owned by that institution. Nor shall they use such other real estate owned for any business purpose, except for incidental and temporary use related to the institution's business pending final disposition of the property, where the 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 institution is endeavoring to make bona fide efforts to sell such property.

7.5. Participation as a Broker-- No director, officer, employee or affiliate of a financial institution shall accept or agree to accept, directly or indirectly, any brokerage fee in connection with the sale by that institution of other real estate owned.

7.6. 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.

§ 106-18-8. 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.

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 Generally Accepted Accounting Principles ("GAAP") and federal banking laws concerning the appropriate method of accounting for the value and disposition of other real estate owned (OREO) by state-chartered banks. This rule specifies the method of such accounting.

This rule also sets forth prohibitions for various forms of insider self-dealing by financial institution directors, officers, employees and affiliates in handling or obtaining for personal use property acquired by an institution through foreclosure or surrender.

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

Amendments to Proposed 106 CSR 18 as Result of Comments  
and Reasons for the Amendments

One written comment was received and it is attached hereto. This comment filed by the WV Bankers Association concerned whether current law already adequately address insider abuse as relates to the holding and disposition of other real estate owned by financial institutions. As a result of these comments, changes were made narrowing the scope of the rules to apply only to clearly abusive situations.

Other amendments were made by the division to incorporate specific language mirroring GAAP and the federal regulations on other real estate owned as to holding period, appraisals, and additional expenditures.

Attendance at Public Hearing

No hearing held. N/A

Comments Received & Reply to Comments

See above.



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

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

JMR\lab

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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 S. Bump

# West Virginia Bankers Association, Inc.

Suite 1212 • Commerce Square • Charleston, WV 25301-1780 • (304) 343-8838

Thomas A. Winner  
President and CEO

August 12, 1993

Timothy G. Winslow, Esq.  
General Counsel  
West Virginia Division of Banking  
1900 Kanawha Boulevard, E.  
Building 3, Room 311  
Charleston, West Virginia 25305-0240

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

*Tom*  
Dear Mr. ~~Winslow~~:

The West Virginia Bankers Association (the "Association") appreciates the opportunity to comment on the above-referenced regulations (the "Proposed Regulations"). The Association has approximately 160 member banks of which approximately 50% are state chartered institutions. Accordingly, the Proposed Regulations are of interest to a significant portion of our membership.

A portion of the Proposed Regulations is the result of amendments made during the 1993 legislative session, the significance of which was to permit state chartered banks to account for real estate held for sale consistent with generally accepted accounting principles and applicable regulatory accounting policies. Accordingly, we concur with the provisions contained in § 106-18-3 dealing with valuation of real estate held by state chartered banks.

However, we are concerned and would like to comment on the provisions of § 106-18-4 addressing certain conduct prohibited to insiders, proposed pursuant to W.Va. Code § 31A-8-3(a)(2). These regulations are not proposed as a result of any new statutory language. First, the subject matter of this section is not at all related to the real property valuation issue and the title to the regulation gives no indication of the prohibited conduct provisions. Second, the nature of the activity prohibited by § 31A-8-3 and that contained in the Proposed Regulations are significantly different. Section 31A-8-3(a)(1) essentially prohibits bribery or extortion. Section 31A-8-3(a)(2) permits transactions with insiders if the required conflict of interest board procedures are followed. Section 31A-8-3(a)(3) precludes receiving discounted debt of the institution, an unusual and risky circumstance. The penalty for violation of the statute is criminal.

*West Virginia Bankers Association, Inc.*

Timothy G. Winslow, Esq.  
August 12, 1993  
Page 2

Conversely, the Proposed Regulations would absolutely prohibit and make criminal the very types of activities permitted, under appropriate circumstances, by § 31A-8-3(a)(2). Accordingly, we believe Section 106-18-4 to be inappropriate under the enabling statute and recommend its deletion in its entirety. Sufficient law exists with respect to the common law fiduciary obligations of insiders to their corporation as well as in federal law applicable to insured depository institutions (e.g., The Financial Institutions Reform, Recovery and Enforcement Act of 1989). This body of law does not prohibit such transactions and is sufficient to address the concerns underlying the Proposed Regulations.

Finally, we note that while officers and directors of national banks have fiduciary duties similar to those of state chartered banks, we are unable to identify prohibitions of the nature contained in the proposed regulations applicable to national banks. We believe that as a practical matter, the proposal will significantly deter desirable board participation in that it is often the case that board members and their businesses conduct legitimate business with their banks.

Thank you for your attention these comments, please call me if you have any questions.

Very truly yours,



Thomas A. Winner