

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

Form #6

Do Not Mark In this Box

**FILED**

APR 18 9 42 AM '94

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Division of Banking TITLE NUMBER: 106

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) SB 1005

SECTION 64-3-2-(m), PASSED ON March 16, 1994

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: May 19, 1994



Authorized Signature

FILED

TITLE 106  
LEGISLATIVE RULES  
COMMISSIONER OF BANKING

APR 18 9 42 AM '94

SERIES 18  
ACQUISITION OF PROPERTY BY FINANCIAL INSTITUTIONS OF WEST VIRGINIA  
AND VALUATION OF REAL ESTATE  
OWNED BY STATE-CHARTERED BANKS  
SECRETARY OF STATE

§ 106-18-1. General.

1.1. Scope-- This rule regulates certain conduct in the acquisition of property by financial institutions through foreclosure or surrender of deed or otherwise in satisfaction of debt previously contracted and establishes standards for the proper valuation by state-chartered banks of real estate obtained for sale or use.

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

1.3. Filing Date-- April 18, 1994

1.4. Effective Date-- May 19, 1994

§ 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 actually paid by the bank to obtain the property at foreclosure plus the bank's unpaid loan balance, 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 held for sale.

2.3. "Other Real Estate Owned" or "OREO" 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 in accordance with Generally Accepted Accounting Principals (GAAP).

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 the amount as the lesser of fair value or cost, the 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 the amount as the lesser of fair value or cost, the cost being the price actually paid to obtain the property at foreclosure plus the bank's unpaid loan balance, 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.

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, and in determining the proper accounting for the disposal of the real estate, 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. 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: 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.

4.3. Real estate acquired by a state-chartered bank 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.

4.4. A state-chartered bank may comply with its obligation to dispose of other 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 upon the approval of the institution's board of directors

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

5.1. Upon transfer to other real estate owned, a state chartered bank shall substantiate fair 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 fair 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-- Banks shall expense normal repairs and maintenance costs when incurred as per Generally Accepted Accounting Principals (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 OREO Sales by Directors, Officers, Employees and Affiliates 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 the 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 foreclosing on the property.

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 the 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 the other real estate owned for any business purpose, except as permitted by the procedure in section 4.4 of this rule, or 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 in this rule prohibits 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 the 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-- Any person violating this section of the rule will be considered in 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 is held to be invalid, the remainder of the rule shall, to the fullest extent possible, not be affected by that holding.

JH. 57.

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H. B. 4240

(By Delegates Gallagher, Douglas, Compton,  
Huntwork, Burk and Faircloth  
(Introduced January 31, 1994; referred to the  
Committee on Banking and Insurance then the  
Judiciary)

10 A BILL to amend and reenact section two, article three, chapter  
11 sixty-four of the code of West Virginia, one thousand nine  
12 hundred thirty-one, as amended, relating to authorizing the  
13 division of banking to promulgate legislative rules relating  
14 to the acquisition of property by financial institutions and  
15 the valuation of real estate owned by state-chartered banks.

16 Be it enacted by the Legislature of West Virginia:

17 That section two, article three, chapter sixty-four of the  
18 code of West Virginia, one thousand nine hundred thirty-one, as  
19 amended, be amended and reenacted, to read as follows:

20 ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND  
21 ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

22 §64-3-2. Division of banking.

23 (a) The legislative rules filed in the state register on the  
24 eleventh day of June, one thousand nine hundred eighty-two,

1 relating to commissioner of banking (communication terminals and  
2 interchange systems), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 fifteenth day of December, one thousand nine hundred  
5 eighty-three, relating to the commissioner of banking (consumer  
6 credit sales), are authorized.

7 (c) The legislative rules filed in the state register on the  
8 nineteenth day of August, one thousand nine hundred eighty-three,  
9 relating to the commissioner of banking (legal lending limit),  
10 are authorized.

11 (d) The legislative rules filed in the state register on the  
12 seventh day of November, one thousand nine hundred eighty-six,  
13 modified by the commissioner of banking to meet the objections of  
14 the legislative rule-making review committee and refiled in the  
15 state register on the eleventh day of December, one thousand nine  
16 hundred eighty-six, relating to the commissioner of banking  
17 (implementing the West Virginia community reinvestment act), are  
18 authorized.

19 (e) The legislative rules filed in the state register on the  
20 twenty-fifth day of October, one thousand nine hundred  
21 eighty-eight, modified by the commissioner of banking to meet the  
22 objections of the legislative rule-making review committee and  
23 refiled in the state register on the seventh day of December, one  
24 thousand nine hundred eighty-eight, relating to the commissioner

1 of banking (subsidiary bank holding the stock of its parent  
2 company as collateral), are authorized.

3 (f) The legislative rules filed in the state register on the  
4 twelfth day of August, one thousand nine hundred ninety-one,  
5 modified by the division of banking to meet the objections of the  
6 legislative rule-making review committee and refiled in the state  
7 register on the fifteenth day of November, one thousand nine  
8 hundred ninety-one, relating to the division of banking (West  
9 Virginia consumer credit and protection act), are authorized.

10 (g) The legislative rules filed in the state register on the  
11 ninth day of August, one thousand nine hundred ninety-one,  
12 modified by the division of banking to meet the objections of the  
13 legislative rule-making review committee and refiled in the state  
14 register on the fifteenth day of November, one thousand nine  
15 hundred ninety-one, relating to the division of banking (lease  
16 financing transactions), are authorized.

17 (h) The legislative rules filed in the state register on the  
18 ninth day of August, one thousand nine hundred ninety-one,  
19 modified by the division of banking to meet the objections of the  
20 legislative rule-making review committee and refiled in the state  
21 register on the fifteenth day of November, one thousand nine  
22 hundred ninety-one, relating to the division of banking  
23 (operation of state-chartered financial institutions in West  
24 Virginia), are authorized.

1 (i) The legislative rules filed in the state register on the  
2 twelfth day of August, one thousand nine hundred ninety-one,  
3 modified by the division of banking to meet the objections of the  
4 legislative rule-making review committee and refilled in the state  
5 register on the fifteenth day of November, one thousand nine  
6 hundred ninety-one, relating to the division of banking (West  
7 Virginia industrial bank and industrial loan company act), are  
8 authorized.

9 (j) The legislative rules filed in the state register on the  
10 twelfth day of August, one thousand nine hundred ninety-one,  
11 modified by the division of banking to meet the objections of the  
12 legislative rule-making review committee and refilled in the state  
13 register on the fifteenth day of November, one thousand nine  
14 hundred ninety-one, relating to the division of banking (West  
15 Virginia consumer credit and protection act and the money and  
16 interest article of chapter forty-seven), are authorized.

17 (k) The legislative rules filed in the state register on the  
18 ninth day of August, one thousand nine hundred ninety-one,  
19 modified by the division of banking to meet the objections of the  
20 legislative rule-making review committee and refilled in the state  
21 register on the fifteenth day of November, one thousand nine  
22 hundred ninety-one, relating to the division of banking  
23 (permissible additional charges in connection with a consumer  
24 credit sale), are authorized.

1       (1) The legislative rules filed in the state register on the  
2 twenty-sixth day of June, one thousand nine hundred ninety-two,  
3 modified by the division of banking to meet the objections of the  
4 legislative rule-making review committee and refiled in the state  
5 register on the seventeenth day of August, one thousand nine  
6 hundred ninety-two, relating to the division of banking (general  
7 rules implementing the West Virginia community reinvestment act),  
8 are authorized.

9       (m) The legislative rules filed in the state register on the  
10 sixteenth day of August, one thousand nine hundred ninety-three,  
11 modified by the division of banking to meet the objections of the  
12 legislative rule-making review committee and refiled in the state  
13 register on the twenty-first day of October, one thousand nine  
14 hundred ninety-three, relating to the division of banking  
15 (acquisition of property by financial institutions and valuation  
16 of real estate owned by state-chartered banks), are authorized.

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18       NOTE: The purpose of this bill is to authorize the Division  
19 of Banking to promulgate legislative rules relating to the  
20 acquisition of property by financial institutions and the  
21 valuation of real estate owned by state-chartered banks.

22

23       Strike-throughs indicate language that would be stricken from  
24 the present law, and underscoring indicates new language that  
25 would be added.

SENATE BILL NO. 155

(By Senators Manchin, Anderson, Grubb, Macnaughton  
and Minard)

[Introduced January 31, 1994; referred to the  
Committee on

BANKING AND INSURANCE

Judiciary

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KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

FAX: (304) 558-0900

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770



TO: Tim Winslow

AGENCY: Commissioner of Banking

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: May 2, 1994

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 18 TITLE: 106 Commissioner of Banking

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: Timothy C. Winslow

TITLE OF PERSON SIGNING: General Counsel

DATE: May 4, 1994

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.



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

April 18, 1994

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

Re: Final Filing of ORE Rule--Title 106, Series 18

Dear Commissioner Bias:

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

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

Sincerely Yours,

A handwritten signature in cursive script that reads "John M. Ranson".

John M. Ranson  
Cabinet Secretary

JMR:ss

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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Corporations: (304) 558-8000



## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

FAX: (304) 558-0900

March 18, 1994

Tim Winslow  
Banking  
Bldg. 3, Rm. 311  
State Capitol  
Charleston, WV 25305

**SB 1005** authorizing, **Title 106, Series 18, Pertaining to Acquisition of Property by Financial Inst. & Valuation of Real Estate owned by State-Chartered Banks**, passed the Legislature on **March 16, 1994**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 1005, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 1005** section **64-3-2(m)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

**\*\*\*IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You  
Administrative Law Division