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# Consumer Law in Virginia

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## Consumer Law in Virginia

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VIRGINIA LAWYERS PRACTICE HANDBOOK

# CONSUMER LAW IN VIRGINIA

*First Edition*

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# CHAPTER 1

## VIRGINIA CONSUMER LAW

### 1.1 INTRODUCTION

**1.101 Consumer Credit Transactions.** Over the years, Virginia has enacted numerous laws that require licensing and supervision of certain lenders and govern interest rates and charges on extensions of consumer credit. Virginia also has enacted a variety of laws pertaining to disclosures and other substantive requirements concerning consumer credit transactions. Identifying all of the applicable laws is difficult because many are contained in different parts of the Virginia Code.

Federal laws also contain many substantive and disclosure requirements applicable to consumer credit transactions. The most important of these laws are discussed in Chapter 2 of this book. Creditors who do business on a national scale undoubtedly receive advice from counsel about these uniform federal laws, but creditors also must comply with a variety of state laws that limit rates of interest and other fees and charges that may be imposed in many transactions, require state-specific disclosures, and have substantive consumer protection provisions. Creditors who fail to comply with these state requirements can incur substantial penalties, even though they may be in compliance with federal laws. For this reason, most creditors who make mortgage loans, buy paper from retailers, or otherwise extend consumer credit seek advice from Virginia lawyers and use state-specific forms evidencing their credit transactions.

Paragraph 1.2 summarizes the most important interest and usury laws relating to extensions of consumer credit that are not secured by a deed of trust. Paragraph 1.3 pertains to laws affecting mortgage lenders and mortgage brokers, and paragraph 1.4 contains a summary of laws applicable to lenders making loans under chapter 15 of title 6.2, “Consumer Finance Companies,” which superseded the former Consumer Finance Act as part of the 2010 revision of title 6.1 as title 6.2.

**1.102 Consumer Protection.** Although Virginia is generally a business-friendly state in the world of consumer financial services (namely, the only state with no class action procedure; no unfair or deceptive acts or practices law for mortgage lenders; no licensing or supervision requirements for sales finance entities; and no retail or motor vehicle installment sales acts),

Virginia has enacted a number of laws that are intended to protect consumers against unfair and deceptive trade practices. In recent years, it also has enacted legislation regulating short-term lenders (chapter 18 of title 6.2) and motor vehicle title lenders (chapter 22 of title 6.2), which impose licensing requirements on those lenders together with numerous business practices requirements. Paragraph 1.5 outlines miscellaneous Virginia statutes concerning consumer protection. Paragraph 1.6 describes Virginia laws pertaining to privacy, and paragraph 1.7 summarizes Virginia laws concerning electronic commerce.

The authors have chosen the Virginia laws summarized in this chapter based on their own judgment about which laws should be included, primarily to alert the reader to their existence. The chapter is not a thorough treatment of those laws but is intended to alert Virginia lawyers, whether they represent creditors or consumers, to various requirements of Virginia law. The focus is on requirements in the Virginia Code as opposed to common law fraud, breach of contract, or other remedies that transcend consumer law.

**1.103 Recodification.** Effective October 1, 2010, title 6.1 of the Virginia Code, “Banking and Finance,” was repealed and new title 6.2, “Financial Institutions and Services,” was enacted. Few substantive changes were made, but all citations in this chapter to title 6.1 have been changed to reflect the new section numbers in title 6.2.<sup>1</sup>

**1.104 General.** The Virginia Bureau of Financial Institutions (the Bureau) supervises mortgage lenders, mortgage brokers, short-term lenders, title lenders, and consumer finance companies, as well as banks and savings institutions. This chapter contains helpful information that first appeared in Bureau publications, including *The Compliance Connection*, which focuses on matters of interest to consumer finance lenders licensed under chapter 15 of title 6.2 (sections 6.2-1500 to 6.2-1543) and mortgage lenders and brokers licensed under chapter 16 of title 6.2 (sections 6.2-1600 to 6.2-1629).<sup>2</sup>

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<sup>1</sup> For additional information on the revision, see “The Revision of Title 6.1 of the Code of Virginia,” House Document 18, 2009 General Assembly.

<sup>2</sup> This chapter also includes information focused on short-term loans and motor vehicle title lenders that first appeared in the Bureau’s *Regulatory Report* (formerly *The Payday Press*).

## 1.2 REGULATION OF INTEREST RATES AND OTHER CHARGES

**1.201 Interest Rates—General.** The following sections of the Virginia Code establish what interest rate may be charged in a particular consumer credit transaction.

**A. Contract Rate.**<sup>3</sup> The contract rate of interest for a loan is 12 percent per year. This is the maximum rate that a lender may charge on a loan unless an exception permits a higher rate or bars a usury defense.

**B. Legal Rate.**<sup>4</sup> The legal rate of interest is six percent per year. This is the rate implied by law when the debtor is obligated to pay interest but no rate is specified in the contract.

**C. Open Accounts.**<sup>5</sup> If goods are sold or services provided on open account and there is no written agreement for closed-end credit under section 6.2-311 or for open-end credit under section 6.2-312, the creditor is entitled to charge interest of six percent if the purchaser fails to make payment within 60 days of the mailing or presentment of a billing statement or invoice. Interest may begin to accrue after the 60-day period.

**D. Judgment Rate.**<sup>6</sup> The judgment rate of interest is the higher of six percent per annum or the rate specified in the contract. If no rate is specified, interest at the judgment rate applies both to prejudgment interest pursuant to section 8.01-382 and to post-judgment interest. The rate of interest on a judgment is the rate in effect at the time the judgment is entered and is not affected by any subsequent changes to the statutory rate of interest.

**E. Loans of \$5,000 or More by Certain Lenders.**<sup>7</sup> No person may plead usury to avoid payment of interest or any other sum on a loan of \$5,000 or more made by a bank, savings institution, industrial loan association, or credit union.

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<sup>3</sup> Va. Code § 6.2-303(A).

<sup>4</sup> Va. Code § 6.2-301(A).

<sup>5</sup> Va. Code § 6.2-301(C).

<sup>6</sup> Va. Code § 6.2-302.

<sup>7</sup> Va. Code § 6.2-316.

**F. Permitted Charges.**<sup>8</sup> Section 6.2-303 permits the charging of whatever interest and other charges a borrower has agreed to pay if the borrower is not permitted to plead usury.

### **1.202 Charges by Financial Institutions.**

#### **A. Banks and Savings Institutions.**

**1. Foreign Banks and Savings Institutions.** For purposes of the chapter in the Code<sup>9</sup> containing Virginia's most important laws relating to money and interest, section 6.2-300 defines "banks" and "savings institutions" to include Virginia, national, and other states' institutions.

**2. Installment Loans.**<sup>10</sup> Under section 6.2-309, banks and savings institutions may impose finance charges and other charges and fees at the rates and in the amounts agreed to by the borrower. Similarly, the provisions of section 6.2-314 allow a subsidiary or affiliate of a bank or savings institution that is not a licensee under chapter 15 of title 6.2<sup>11</sup> to impose finance charges and other charges and fees at the rates and in the amounts agreed to by the borrower on loans payable in installments for the purpose of financing the purchase of a motor vehicle.

**3. Student Loans.**<sup>12</sup> Student loans made by banks and savings institutions may be enforced as agreed in the loan contract. Compounding of interest is expressly permitted.

**4. Demand Loans; Loans Payable Within One Year.**<sup>13</sup> Any bank, savings institution, or licensed stockbroker or broker dealing in options and futures may loan money or discount paper payable on demand or for periods of up to one year. The loan or discounting may be enforced as agreed in the contract of indebtedness. This presumably permits add-on loans.

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<sup>8</sup> Va. Code § 6.2-303(C).

<sup>9</sup> Chapter 3 of title 6.2, "Interest and Usury." See Va. Code § 6.2-300 *et seq.*

<sup>10</sup> Va. Code § 6.2-309.

<sup>11</sup> Chapter 15 of title 6.2 ("Consumer Finance Companies"), Va. Code § 6.2-1500 *et seq.*

<sup>12</sup> Va. Code § 6.2-323.

<sup>13</sup> Va. Code § 6.2-315.

**5. Federal Reserve Discount Rate.**<sup>14</sup> The Virginia Code permits the State Corporation Commission to confer upon Virginia banks the power to charge interest at the rate of one percent in excess of the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank for the Fifth Federal Reserve District. This permits state banks to make charges comparable to those imposed by national banks under federal statutes or regulations.

**6. Most Favored Lender Provision—Banks.**<sup>15</sup> In addition to permissible interest rates and charges specifically granted to banks, state banks may charge any rate of interest, finance charge, or other loan charge permitted to any other lender under the laws of Virginia other than those rates or charges that consumer finance companies may charge under section 6.2-1520. If a statute gives any lender the right to impose a charge, a bank may also impose the charge. For example, a bank may charge up to 18 percent interest and a two percent loan fee for single-payment loans since section 6.2-320(B) permits industrial loan associations to charge that interest and fee on single-payment loans.

**7. Controlled Subsidiaries of Virginia Banks.**<sup>16</sup> A controlled subsidiary corporation of a Virginia bank may charge and collect the finance charges and fees or interest rates that are authorized to banks.

**8. Most Favored Lender Provision—Savings Institutions.**<sup>17</sup> In addition to permitted interest rates and charges specifically granted to savings institutions, the institutions may charge any rate of interest, finance charge, or other loan charge permitted to any other lender under the laws of Virginia other than the rates and charges that consumer finance companies may charge under section 6.2-1520.

**9. Loans of \$5,000 or More.**<sup>18</sup> As noted earlier, loans of \$5,000 or more made by banks or savings institutions are not subject to a usury defense.

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<sup>14</sup> Va. Code § 6.2-805.

<sup>15</sup> Va. Code § 6.2-310.

<sup>16</sup> Va. Code § 6.2-885(C).

<sup>17</sup> Va. Code § 6.2-310.

<sup>18</sup> Va. Code § 6.2-316.

**10. Industrial Loan Associations.** Sections 6.2-1400 through 6.2-1421 of the Virginia Code cover powers of industrial loan associations. Section 6.2-1408 restricts an association to one office for the operation of its business.

**B. Credit Unions.**<sup>19</sup>

**1. Charges.** A credit union may make loans to its members and to other credit unions and charge interest as agreed by the borrower provided the interest is not charged in advance.<sup>20</sup> This presumably prohibits add-on interest.

**2. Open-End Credit.** Subsection C of section 6.2-318 regulates open-end credit plans offered by credit unions. In summary, (i) any rate of interest agreed to by the borrower may be charged, (ii) either an ending balance or an average daily balance may be used, (iii) a free ride equal to a billing cycle of at least 25 days is required for purchases made with a credit card, and (iv) statements must be sent within eight days (excluding Saturdays, Sundays, and holidays) of the billing date.

**3. Laws Governing Operations.** The operations of a credit union are governed by chapter 13 of title 6.2, “Credit Unions.”<sup>21</sup>

**1.203 Charges by Certain Other Lenders.** The Virginia General Assembly passed HB 789 and SB 421, during the 2020 legislative session, with Governor Northam signing it into effect on April 2020. The new legislation, known as the Fairness in Lending Act, aims to curb certain consumer lending practices by amending the Virginia Consumer Protection Act,<sup>22</sup> the Consumer Finance Act,<sup>23</sup> and other provisions of the Virginia Code related to consumer finance companies. The amendments are intended to increase consumer access to affordable credit and ensure that regulations apply equally to both Internet and brick-and-mortar lenders. Originally scheduled to go into effect on July 1, 2021, the legislation was amended to move the effective date for the legislation up by six months, to January 1, 2021.

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<sup>19</sup> Va. Code § 6.2-318.

<sup>20</sup> Va. Code § 6.2-318(B).

<sup>21</sup> Va. Code §§ 6.2-1300 to -1380.

<sup>22</sup> Va. Code § 59.1-196 *et seq.*

<sup>23</sup> Va. Code § 6.2-1500 *et seq.*