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TO: **ALL CREDIT UNIONS**

FROM: **COMPLIANCE & REGULATORY AFFAIRS**

SUBJECT: **VIRGINIA LAW UPDATE – 2013 LEGISLATIVE SESSION (EFFECTIVE JULY 1, 2013)**
(1) AMENDMENTS AFFECTING THE *VIRGINIA SMALL ESTATES ACT*
(2) AMENDMENTS IMPACTING ACCOUNTS & CHECKS
(3) VA-CHARTERED CUs—INVESTMENTS IN REAL ESTATE, OFFICE BUILDINGS, ETC.

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(1) AMENDMENTS AFFECTING THE *VIRGINIA SMALL ESTATES ACT*

Main Idea:	In the most recent Virginia legislative session, there were two legislative amendments affecting the Virginia Small Estates Act. The second amendment may also impact check payment and collection. The first amendment, sponsored by the League, amends Va. Code 6.2-1367 to clarify that both federal credit unions and Virginia credit unions, are subject to all provisions of the Virginia Small Estates Act. The amendment does not really change the law but, instead, corrects an error that had caused some confusion on the issue. The second amendment will add language to Va. Code 64.2-601 that addresses situations where the Small Estates Act affidavit is used not to claim *funds* belonging to the decedent but, instead, to claim a *check* that was previously made payable to the decedent. Although the amendment is found within the Virginia Small Estates Act, its effect is more likely to be seen in the payment and collection of checks. Both amendments are summarized in more detail below.
Effective:	Both amendments are effective July 1, 2013
Overview:	Although both amendments are relatively minor, a bit of background information is required to understand their significance. Most credit unions are aware of the following Virginia statutes that are very helpful in disbursing the funds of deceased members:

Va. Code 6.2-1365	This statute allows the credit union to release funds to the estate

	representative.
Va. Code 64.2-601	In cases where there is no estate representative and the estate does not exceed *$50K*, this statute *requires* the credit union to release funds to a "designated successor" upon presentation of a Small Estates Act affidavit, provided that all of the requirements of the statute are met.
Va. Code 64.2-602	In cases where there is no estate representative and the funds do not exceed *$15K*, this statute *allows* the credit union to release the proceeds to "any successor," provided that all of the requirements of the statute are met.

<u>First Amendment (Va. Code 6.2-1367)</u>
Virginia-chartered credit unions are subject to all three statutes, and quite some time ago, lawmakers added Va. Code 6.2-1367 to clarify that federally chartered credit unions are subject to all three statutes as well. The problem was that the text of the statute, as passed, specified only that federally chartered credit unions were subject to Va. Code 6.2-1365 and Va. Code 6.2-602. It did not say anything about Va. Code 6.2-601. That does not mean that federally chartered credit unions were exempt from Va. Code 6.2-601, but it did lead to some confusion on the issue. Because that code section provides *protection from liability* for any credit union that follows its procedures, the League proposed an amendment to Va. Code 6.2-1367 to clarify that Va. Code 6.2-601 (along with its protections from liability) does apply to federally chartered credit unions. That proposed amendment was passed and will become effective on July 1, 2013.

<u>Second Amendment (Va. Code 64.2-601)</u>
The other amendment will involve a change to Va. Code 64.2-601 to explain what happens when the a Small Estates Act affidavit is used not to claim funds belonging to the decedent but, instead, to claim a check that has been made payable to the decedent. An example would be a payroll check that has been written to the deceased.

As of July 1, 2013, a new subsection (e) will be added to Va. Code 64.2-601 that provides as follows:

> E. Upon the presentation of [a Small Estates Act affidavit that satisfies all of the requirements] . . . , the designated successor may endorse or negotiate any small asset that is a check, draft,

	or other negotiable instrument that is payable to the decedent. The League did not propose this amendment, and it is difficult to anticipate all of the scenarios where the new language may be applicable. It seems most likely to affect credit unions in the following scenarios: ▪ Where one of the credit union's members has written a check to the deceased person and the "designated successor" has presented that check to the credit union for final payment; ▪ Where the "designated successor" is a member of the credit union and is asking the credit union to collect one or more checks that are made payable to the deceased person. The new language of 64.2-601 seemingly gives the "designated successor" authority to endorse and negotiate checks that are *payable to the deceased* in those situations, as long as the successor has and presents a Small Estates Act affidavit that satisfies all of the requirements of 64.2-601. It does not give the successor authority over checks that are *payable to the estate of the deceased,* and it does not include language that would specifically require a credit union to pay the check (under first scenario) or collect the check (under the second scenario). It is recommended that, for the near future, credit unions contact their legal counsel for advice on how to proceed (and notify the League's compliance department), whenever they encounter a situation where a "designated successor" is trying to use the new provisions of Va. Code 64.2-601. Any credit union that cooperates with the designated successor in either of the two scenarios should, at the very least, retain a photocopy of the affidavit and verify the identity of the successor.
Further Research:	The legislative history of the first amendment, which includes links to copies of the text, is available here. The legislative history of the second amendment, which includes links to copies of the text, is available here.

(2) AMENDMENTS IMPACTING ACCOUNTS & CHECKS

Main Idea:	In the most recent legislative session, there were a few minor changes impacting accounts and checks. ▪ The first is an amendment that eliminates the requirement, under Va. Code 6.2-600, that checks be printed with the month and year when the account was opened. ▪ The second amends Va. Code 6.2-618 to eliminate the requirement, with respect to joint accounts, that financial institutions offer forms for both joint accounts with survivorship and joint accounts without survivorship. ▪ The third is the amendment to the Virginia Small Estates Act (already discussed above) that authorizes a deceased person's successor (in limited circumstances) to endorse and negotiate checks that are made payable to the deceased. The third amendment was already covered in full above and will not be covered again here. The first and second amendments will be summarized below.
Effective:	All changes become effective on July 1, 2013.
Statutes:	The first amendment affects Va. Code 6.2-600. The second amendment affects Va. Code 6.2-618.
Coverage:	All changes are applicable both to federally chartered and Virginia-chartered credit unions.
Overview:	<u>First Amendment (Va. Code 6.2-600)</u> The first amendment is simple, in that it will repeal (which means "delete") Va. Code 6.2-600, which had required that checks be printed with the month and year in which the account was opened. Anyone wanting to review the statute before it is repealed can find it online here. <u>Second Amendment (Va. Code 6.2-618)</u> The second amendment is somewhat more complicated. Under the existing law, financial institutions in Virginia that offer joint accounts are essentially *required* to offer them "with survivorship" and "without survivorship." That requirement is found in Va. Code 6.2-618, which essentially offers two ways to complying. The financial institution can

	either: (1) Maintain two joint account forms: one “with survivorship” and the other “without survivorship”; or (2) Maintain a single form that allows the member to select between “with survivorship” and “without survivorship” Under the existing version of Va. Code 6.2-618, any financial institution that maintains two separate forms (under option 1) is required to make both options available to anyone who opens an account. As of July 1, 2013, this portion of the statute will be revised as follows: **Section 6.2-618.** Identification of joint accounts. **A.** Every financial institution in the Commonwealth offering joint accounts to its depositors shall either: **1.** ~~**Maintain**~~ **Use** two separate forms for the creation of joint accounts, one of which shall be clearly labeled "JOINT ACCOUNT WITH SURVIVORSHIP" and the other of which shall be clearly labeled "JOINT ACCOUNT - NO SURVIVORSHIP," ~~**both of which shall be made available to all**~~ **provided that a financial institution electing to use separate forms is not required to maintain both forms or make both forms available to persons opening joint accounts and may, in its discretion, elect to make one or both forms available to** persons opening joint accounts; or **2.** ~~**Maintain**~~ **Use** one form for the creation of such accounts that shall contain the two labels "JOINT ACCOUNT WITH SURVIVORSHIP" and "JOINT ACCOUNT - NO SURVIVORSHIP," with appropriate blank space or lines beside such labels for the parties to sign in order to indicate the type of account desired, which signature requirement shall be in addition to any signature verification form. The effect of the amendments is that any financial institution that uses the first option—using one form for “with survivorship” and another form for “without survivorship”—no longer is required to offer both possibilities to its members. The amendments will not affect any financial institution that uses the second option—using one joint account form that allows members to select whether the account will be “with survivorship” or “without survivorship.” Under this type of account agreement, the financial

	agreement must still give the member the option to select between the two survivorship alternatives. Most credit unions use the second option and therefore would not be able, without significantly revising their joint account forms, to take that choice away from their members. Any credit unions who might be inclined to make such a change should research the issue thoroughly, because the League has not done any research, at this point, about whether any other statutes or regulations would prohibit the credit union from taking away this choice.
Further Research:	The legislative history of the first amendment is available here. The legislative history of the second amendment, which includes links to copies of the text, is available here.

(3) VA-CHARTERED CUs—INVESTMENTS IN REAL ESTATE, OFFICE BUILDINGS, ETC.

Main Idea:	The statutes that govern Virginia-chartered credit unions have been amended in a way that increases the limit on how much the credit union can invest in its real estate, office buildings, equipment, and furnishings. The amendment was proposed by the League. More details are provided below.
Effective:	July 1, 2013.
Statutes:	The affected statutes are Va. Code 6.2-1376 and Va. Code 6.2-1300.
Coverage:	These changes apply only to Virginia-chartered credit unions
Overview:	The amendment increases the maximum amount of a credit union's funds that may be invested in its real estate, office buildings, equipment, and furnishings, without the prior written authorization of the Commissioner of Financial Institutions. Under the existing law, at Va. Code 6.2-1376(9), such investments, in the aggregate, could not exceed 5 percent of the total *share accounts*. The amendment will increase this limit by recasting it as 5 percent of the total of *all share accounts and retained earnings*. Here is how Va. Code 6.2-1376(9) will be amended effective 7/01/2013:

	Section 6.2-1376. Authorized investments. The funds of a credit union that are not used in loans to members may be invested only: . . . **9.** In real estate, office buildings, equipment, and furnishings of the credit union **,** provided that the aggregate investment in all such fixed assets shall not exceed five percent of the total of the members' share accounts **and retained earnings** without the prior written authorization of the Commissioner; The measure sets the maximum amount of such investments at five percent of the total of members' share accounts and retained earnings. Currently, the cap is five percent of only such share accounts. Finally, the measure defines "retained earnings" as undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserves for losses, and other appropriations from undivided earnings as designated by management or the Bureau of Financial Institutions. The amendments will also amend Va. Code 6.2-1300 to add the following definition of “retained earnings.”: "Retained earnings" means undivided earnings, regular reserve, reserve for contingencies, supplemental reserves, reserves for losses, and other appropriations from undivided earnings as designated by management or the Bureau.
Further Research:	The legislative history of the amendment, which includes links to copies of the text, is available here.