

**WEST VIRGINIA CORPORATION ACT AND WEST VIRGINIA
BANKING CODE CONSIDERATIONS IN FORMING A STATE
CHARTERED BANK**

1. The general corporation laws of the State shall govern banking institutions and the chartering thereof, except as otherwise provided in or where inconsistent with the provisions of the State Banking Code. West Virginia Code Section 31A-4-1.
2. The exclusive right to the use of a corporate name may be reserved pursuant to West Virginia Code Section 31-1-12 for a period of one hundred twenty (120) days with the Secretary of State's office.
3. The proposed bank shall have as a part of its name one or more of the following words: "Bank", "Bank Company", "Banking Association", "Trust Company", "Banking and Trust Company" or "Bank and Trust Company". West Virginia Code Section 31A-4-5. NOTE: Please consult with the staff of the West Virginia Division of Banking prior to finalizing name selection.
4. The corporate name shall contain the word "corporation", "company", "incorporated" or "limited", or shall contain an abbreviation of one of such words. West Virginia Code Section 31-1-11(a)(1).
5. The corporate name shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation. West Virginia Code Section 31-1-11(a)(2).
6. The corporate name shall not be the same as, or deceptively similar to, the name of any domestic corporation or any foreign corporation authorized to conduct affairs or do or transact business in this State. West Virginia Code Section 31-1-11(a)(3).
7. The banking institution shall not be incorporated unless it has a minimum bona fide subscribed capital stock. West Virginia Code Section 31A-4-3(a). If the bank is to be a member of the Federal Reserve System, please make sure it meets the minimum capital requirements of the Federal Reserve as well as the state.
8. Banking institutions shall issue but one class of stock and the shares shall have a nominal or par value of not less than one dollar (\$1.00) nor more than one hundred dollars (\$100.00) each, and as to each banking institution each share shall be equal in all respects with any other share. West Virginia Code Section 31A-4-3(c). This Code provision is not consistent with the general corporate laws of this State and thus, according to West

Virginia Code Section 31A-4-1, supersedes West Virginia Code Section 31-1-78 which indicates that a West Virginia corporation can have more than one class of stock.

9. A state bank may be organized by five or more incorporators, a majority of whom shall be residents of the State of West Virginia. West Virginia Code Section 31A-4-5. This Code provision is not consistent with the general corporate laws of this State and thus, according to West Virginia Code Section 31A-4-1, supersedes West Virginia Code Section 31-1-26 which indicates that a West Virginia corporation needs only one incorporator.
10. In addition to a formal application, the incorporators shall file with the West Virginia Board of Banking and Financial Institutions ("Board of Banking") articles of incorporation, in duplicate. These articles of incorporation shall follow the form prescribed by the Secretary of State for chartering corporations. The information set forth in the articles shall include the following:

The name of the proposed bank;

The community and county in which the bank is to be located, together with the post-office address of the place of business of the bank;

Whether such bank proposes also to engage in the trust business;

The name, residence and occupation of each incorporator, and the amount of capital stock subscribed and paid for by each;

The names of the persons who are to serve as officers and directors of the banking institution and the official position proposed to be held by each; and,

The total authorized capital stock of the institution. West Virginia Code Section 31A-4-5.

11. Furthermore, the requirements of West Virginia Code Section 31-1-27 should be followed with regard to what shall be included in the articles of incorporation:

Name of the Corporation;

Period of duration, which may be perpetual;

Purpose or purposes for which the corporation is organized;

Address of its principal office, and the name and address of the person to whom shall be sent notice or process served upon;

The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as such directors;

The name and addresses of each incorporator;

The aggregate number of shares which the corporation shall have authority to issue and the par value of each share;

Any provision limiting or denying to shareholders the preemptive right to acquire additional unissued shares of the corporation; and,

Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provision which under this article is required or permitted to be set forth in the bylaws.

12. The articles of incorporation shall contain a statement of the name and address of the person who, or the firm which, prepared such articles of incorporation. West Virginia Code Section 31-1-27(f).
13. The articles of incorporation shall be signed and acknowledged by each of the incorporators and, when filed with the Board of Banking, shall be accompanied by an examination and investigation fee of \$5,000, payable to the West Virginia Division of Banking. West Virginia Code Section 31A-4-5.
14. The incorporators shall designate by name and give the address of the attorney, agency or other responsible party with whom the Board of Banking may communicate, on whom the Board of Banking may call for further information, and to whom the Board of Banking may officially report as to action on the articles of incorporation. West Virginia Code Section 31A-4-5.
15. When the articles of incorporation and the application form FDIC 6200/05A have been filed with the Board of Banking, the Board shall make a careful examination and investigation pursuant to West Virginia Code Section 31A-4-6.
16. The Board of Banking shall complete its examination and investigation within ninety (90) days from the date the articles of incorporation are filed with the Board of Banking. However, the Board of Banking can extend that ninety (90) day period for an additional thirty (30) days if it requests in writing additional information and disclosures. West Virginia Code Section 31A-4-7.
17. Upon completion of such examination, the Board of Banking shall forthwith make and proceed to give notice, hold a hearing and enter an order approving or disapproving the application. West Virginia Code Section 31A-4-7.

18. If the Board of Banking order disapproves the application, the articles of incorporation and any other papers filed therewith shall thereupon be promptly returned to the attorney, agent or other responsible person representing the incorporators in the application. West Virginia Code Section 31A-4-7.
19. If the Board of Banking order approves the application, the articles of incorporation with a certified copy of the Board's order and the accompanying corporation charter fees shall thereupon be transmitted to the Secretary of State for processing as in the case of any other corporate application. West Virginia Code Section 31A-4-7.
20. Upon issuance of a certificate of incorporation by the Secretary of State, the banking institution shall record the certificate, or a duly certified copy thereof, in the office of the clerk of the county commissioner of the county in which such principal office is located. West Virginia Code Section 31-1-28(b).
21. After the issuance of a certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be called by a majority of incorporators. At this organizational meeting, bylaws shall be adopted and officers elected. West Virginia Code Section 31-1-30.
22. Upon issuance of the certificate of incorporation by the Secretary of State, the incorporators of the banking institution shall promptly comply with West Virginia Code Section 31A-2-5.