WEST VIRGINIA CODE: §31A-4-24

§31A-4-24. Capital notes and debentures; retirement; not subject to assessment.

With the written approval of the commissioner of banking and with the approval of its board of directors and stockholders, any banking institution may at any time issue and sell either its nonconvertible capital notes or nonconvertible debentures or both its nonconvertible capital notes and nonconvertible debentures. In connection with his approval or disapproval of the issuance of the notes or debentures, the commissioner of banking shall take into consideration the financial condition of the banking institution, the need of expanded banking capital in the town, city or community in which the banking institution is located, the objects and purposes to be accomplished by issuance of the notes or debentures, and such other economic and monetary factors as he in his judgment and discretion, may deem to be proper bases for his action.

The word "capital," as used in the laws of this state relating to banking, shall be construed to include the amount of outstanding capital notes and debentures legally issued by the banking institution for all purposes. Such capital notes and debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors, but shall in no case be subject to any assessment. The holders of such capital notes and debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of the banking institution, and shall not be held liable for assessments to restore any impairments in the institution's capital. The capital stock of the banking institution shall not be considered to be impaired when the amount of such capital notes and debentures as represented by cash or sound assets exceeds any impairment found by the commissioner of banking. If any such impairment in the institution's capital be found by the commissioner of banking, before any such capital notes or debentures are retired or paid by the bank, any existing deficiency of the bank's capital, disregarding the notes or debentures, must be paid in cash, to the end that the sound capital assets shall at least equal the capital stock of the banking institution.

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