Real Estate Board is required to exclude accrued interest from Virginia Real Estate Transaction Recovery Fund in determining fund balance; must assess each active regulant amount sufficient to bring fund principal to required $400,000 minimum balance, provided assessment does not exceed $20 during biennial license period.

The Honorable Eric Cantor
Member, House of Delegates
September 13, 1996

You ask whether the Real Estate Board (the "Board") is required to exclude accrued interest from the total balance in the Virginia Real Estate Transaction Recovery Fund ("fund") to determine the balance of the fund.¹

You advise that the fund is separated for accounting purposes into principal of approximately $283,000, and accrued interest of approximately $503,000, for a combined total of approximately $786,000. You note that § 54.12113(C) of the Code of Virginia requires that the fund maintain a minimum balance of $400,000.² You observe that should accrued interest be excluded from the balance of the fund, the Board is required to impose a mandatory assessment of twenty dollars per regulant in the Commonwealth, which assessment will raise an additional estimated $700,000 to be added to the fund.

When a statutory provision is clear and unambiguous, the plain meaning of the provision must be accepted.³ Legislative intent is determined from the plain meaning of the words used.⁴

Section 54.12113(C) provides that "[t]he minimum balance of the fund shall be $400,000." (Emphasis
added.) The use of "shall" indicates that the balance of moneys maintained in the fund must be not less than $400,000. The term "balance of the fund" is defined as "cash, securities that are legal investments for fiduciaries under the provisions of subdivisions (1), (2), and (4) of § 2640, and repurchase agreements secured by obligations of the United States government or any agency thereof." "Balance of the fund" "shall not mean accrued interest." It is well-settled that "[i]f the language of a statute is plain and unambiguous, and its meaning perfectly clear and definite, effect must be given to it." Therefore, I am of the opinion that the Board is required to exclude accrued interest from the fund to determine the total amount of moneys in that fund.

In the facts you present, the principal of the fund is approximately $283,000, an amount less than $400,000. Under § 54.12113(C), the Director of the Department of Professional and Occupational Regulation is required to immediately inform the Board, which shall assess each active regulant, within thirty days of determining the fund to be less than the required minimum balance, "a sum sufficient to bring the balance of the fund to an amount of not less than $400,000, when combined with similar assessments of other regulants." Consequently, I am of the opinion that the Board must assess an amount sufficient to bring the fund principal from $283,000 to the required minimum balance of $400,000; provided, further, that the Board may not assess regulants more than twenty dollars during the biennial license period and may, in its discretion, assess less than twenty dollars per regulant if that is sufficient to reach the statutorily required fund balance.

1"Each initial regulant at the time of licensure, and each inactive regulant who applies to reinstate his license on an active status shall be assessed twenty
dollars, which shall be specifically assigned to the fund. Initial payments may be incorporated in any application fee payment and transferred to the fund by the Director [of the Department of Professional and Occupational Regulation] within thirty days." VA. CODE ANN. § 54.12113(A).

Section 54.12112 defines the term "fund" to mean "the Virginia Real Estate Transaction Recovery Fund," and the term "regulant" to mean "a person, partnership, association, corporation, agency, firm or any other entity licensed by the Real Estate Board as a real estate broker or real estate salesperson."

2The first two sentences of § 54.12113(C) state: "The minimum balance of the fund shall be $400,000. Whenever the Director determines that the balance of the fund is or will be less than such minimum balance, the Director shall immediately inform the Board, which shall assess each regulant, excluding inactive regulants, within thirty days of such determination, a sum sufficient to bring the balance of the fund to an amount of not less than $400,000, when combined with similar assessments of other regulants."


5The use of the word "shall" in a statute generally implies that its terms are intended by the General Assembly to be mandatory, rather than permissive or directive. See Schmidt v. City of Richmond, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965); Andrews v. Shepherd, 201 Va. 412, 41415, 111 S.E.2d 279, 28182 (1959); Op. Va. Att'y Gen.: 1995 at 118, 119; id. at 123, 124; 1989 at 250, 25152; 1985-1986 at 133, 134.

6Section 54.12112.
7Id. (emphasis added).


9Section 54.12113(C) further provides that "[n]o regulant shall be assessed a total amount of more than twenty dollars during any biennial license period or part thereof, the biennial periods expiring on June 30 of each even-numbered year."