



### *State of Virginia Modifies Provisions Regarding Recorded Writings*

**By Louis Danastorg**

Virginia has amended its provisions relating to the form and effect of deeds, deeds of trust, and the recordation of deeds and deeds of trust.

#### Section 17.1-223: Duty of Clerk to Record Writing and Make Index

Writings authorized by law to be recorded shall be recorded with all its certificates by or under the direction of the clerk. The clerk has the authority to reject any writing for recordation unless a cover sheet is submitted with the writing; however, this authority is limited if:

- a) An individual party's surname, only, is underscored or written entirely in capital letters in the first clause of the writing that identifies parties' names;
- b) Each page is numbered;
- c) The amount of consideration and the actual value of the property conveyed is stated on the first page;
- d) Applicable US or VA law is clearly stated on the face of the writing;
- e) Each party is identified in the first clause as grantor, grantee, or both, as applicable.

Once such writing has been recorded it may be returned to any party having been identified as a grantee. The individual that prepares the writing shall ensure that it meets the above requirements and:

- a) All social security numbers are removed;
- b) States on the first page the name of the title insurance underwriter, or a statement that such is unknown;
- c) States on the first page that the writing was prepared by the owner of real property or by a licensed attorney.

Any writing that appears to have been properly notarized shall be presumed properly notarized and may be recorded. If the writing is accepted in the deed books it shall be deemed to have been validly recorded. Upon admittance for recording the clerk shall endorse thereon the day and time of recordation.

#### Section 17.1-227: Documents to be recorded in Deed Books; Social Security Numbers

Writings related to and affecting real property shall be recorded in a book to be known as the deed book, such books must be indexed and preserved by the clerk. The clerk may refuse to accept any instrument that includes a social security number. The writing's preparer is responsible for removing any social security numbers from the instrument.

#### Section 17.1-227.1: Use of Cover Sheets

Clerks may require that any writing affecting real property be submitted with a cover sheet detailing information to aid the clerk in properly indexing the instrument. The cover sheet may include:

- a) The names of each party to be index as grantor, then grantee, and the surname of each;
- b) The amount of consideration and the actual property value;
- c) Applicable VA law;
- d) Tax map reference number or parcel identification number;
- e) The name and current address of the person to return the instrument.

The cover sheet may be recorded with the instrument but may not be considered a page with respects to any filing fees. The cover sheet is provided for information purposes and facilitating the recording process. The cover sheet shall not be considered to convey any interest in real property or in any way affect the interpretation of the instrument it is submitted with, regardless of whether the cover sheet is recorded.

#### Section 17.1-249: General Indexes

The clerk shall keep alphabetical key-table general indexes to all deed books. The clerk shall enter daily the instruments admitted to record into either the general index or daily index. All deed books shall be numbered or otherwise designated. The clerk may immediately index instruments upon receipt into the daily index, and shall index in the general index within 90 days after its admission to record.

A deed of trust made to one or more trustees to secure payment of a debt shall be sufficiently indexed if the clerk enters it in the appropriate places in the general index. Every deed in which a vendor's lien is reserved shall be indexed twice to show the conveyance and the reservation of the lien, as if it were a grant of such lien.

#### Section 55-58.1: Requirements for Trustees

No person may be named or act as a trustee of a deed of trust unless the person is a resident of VA. No corporation or other entity may be named or act as a trustee unless it is organized under VA law or US federal law. A deed of trust shall state the full residence or business address of the trustees named therein to receive all notices on the deed. Any deed of trust shall be conclusively presumed to comply with all relevant requirements and validly recorded if it is admitted by the clerk for recordation.

#### Section 55-58.2: Credit Line Deeds of Trust

A credit line deed of trust shall set forth on the first page: "THIS IS A CREDIT LINE DEED OF TRUST." Such phrase will put all parties on notice that advances or other extensions of credit are to be made at times against the security described in the credit line deed of trust. Such instrument shall specify the maximum aggregate amount of principal to be secured at any one time.

From the date and actual time of recording, the credit line deed of trust shall have priority as to all other deeds and other instruments, which are unrecorded as of such date and time of recording and which the beneficiary has no knowledge or notice. If a judgment creditor gives written notice to the beneficiary of record, such credit line deed of trust shall have no priority as to such judgment for any advances or extensions of credit from the day following notification, except for those that have been unconditionally and irrevocably committed prior to such date.

#### Section 55-58.3: Priority of Residential Refinance Mortgage over Subordinate Mortgage

Upon refinancing a prior mortgage, a subordinate mortgage shall retain the same subordinate status with respect to the refinanced mortgage, provided that:

- a) The first page of the refinanced mortgage must contain statutory language reflecting the nature and purpose of the instrument;
- b) The principal amount of the refinance does not exceed the outstanding balance of the prior mortgage plus \$5000;
- c) The interest rate stated on the refinance does not exceed the interest rate recorded with prior mortgage.

These provisions shall not apply to subordinate mortgages securing promissory notes payable to any county, city, etc. or government agency if such is financed pursuant an affordable housing unit ordinance.

#### Section 55-106: When and Where Writings Admitted to Record

The circuit court of any county or city, or the clerk, shall admit to record any writing as to any person whose name is signed with an original signature that has been acknowledged or proved by two witnesses.

#### Section 58.1-811: Exemptions

Section 58.1-811 identifies when particular taxes imposed by sections 58.1-801, 58.1-803, 58.1-804, and 58.1-807 shall not apply to any deed conveying an interest in real estate, mortgage, or lease of real estate. Refer to section 58.1-811 of the VA Code for the complete list of tax exemptions.



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