

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 744

An Act to amend and reenact § 55-108 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 2 of Title 17.1 an article numbered 4.1, consisting of sections numbered 17.1-258.2 through 17.1-258.5, and adding in Chapter 6 of Title 55 an article numbered 7, consisting of sections numbered 55-142.10 through 55-142.15, relating to electronically recording real property documents.

[S 992]

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1. That § 55-108 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 2 of Title 17.1 an article numbered 4.1, consisting of sections numbered 17.1-258.2 through 17.1-258.5, and adding in Chapter 6 of Title 55 an article numbered 7, consisting of sections numbered 55-142.10 through 55-142.15, as follows:

Article 4.1.

Electronic Filing.

§ 17.1-258.2. Definition.

As used in this article, "electronic filing of documents" means the filing or recordation with a circuit court clerk of written information as defined in § 1-13:32, for the purpose of creating an electronic record as defined in subdivision 7 of § 59.1-480.

§ 17.1-258.3. Electronic filing of documents authorized.

A clerk of circuit court may establish a system for electronic filing or recordation of documents pursuant to the Uniform Electronic Transactions Act (§ 59.1-479 et seq.). Once established, any person, as defined in subdivision 11 of § 59.1-480, may electronically file land records, instruments, judgments, and UCC financing statements. Electronic filing of papers in civil or criminal actions shall be governed by Rule 1:17 of the Rules of Supreme Court of Virginia. The circuit court clerk shall enter into an agreement with each person whom the clerk authorizes to file documents electronically, specifying the electronic filing procedures to be followed, including, but not limited to, security procedures, as defined in the Uniform Electronic Transactions Act, for transmitting notarized documents.

§ 17.1-258.4. Signature; when effective as original.

A. If the electronically filed document contains an electronic signature pursuant to the Uniform Electronic Transactions Act (§59.1-479 et seq.), any statutory requirement for original signature shall be deemed to be satisfied.

B. Any statutory requirement for a document to be notarized shall be deemed satisfied by the appropriately executed electronic signature of such notary.

§ 17.1-258.5. Application.

All documents recorded on or after July 1, 2004 that comply with the provisions of this article shall be conclusively presumed to be in proper form for recording, except in cases of fraud.

§ 55-108. Standards for writings to be docketed or recorded.

Except as provided in Article 4.1 (§ 17.1-258.2 et seq.) of Title 17.1, all writings which are to be recorded or docketed in the clerk's office of courts of record in ~~this~~ the Commonwealth shall be an original or first generation printed form, or legible copy thereof, pen and ink or typed ribbon copy, and shall meet the standards for instruments as adopted under §§ 17.1-227 and 42.1-82 of the Virginia Public Records Act (§ 42.1-76 et seq.).

If a writing which does not conform to the requirements of this statute or the standards for instruments adopted under §§ 17.1-227 and § 42.1-82 of the Virginia Public Records Act is accepted for recordation, it shall be deemed validly recorded and the clerk shall have no liability for accepting such a writing which does not meet the enumerated criteria in all the particulars.

Article 7.

Real Property Electronic Recording Act.

§ 55-142.10. Definitions.

As used in this article, terms shall have the meanings given them in § 59.1-480 unless otherwise defined below:

"Clerk" means a clerk of the circuit court.

"Land records" means any writing authorized by law to be recorded, whether made on paper or in electronic format, which the clerk records affecting title to real property.

§ 55-142.11. Validity of electronically filed and recorded land records.

A. If a law requires, as a condition for recording, that a land record be an original, on paper or other tangible medium, or in writing, an electronic land record satisfying this act satisfies the law.

B. If a law requires, as a condition for recording, that a land record be signed, an electronic signature satisfies the law.

C. A requirement that a land record or a signature associated with a land record be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the land record or signature. A physical or electronic image of a stamp, impression, or seal is not required to accompany an electronic signature.

§ 55-142.12. Recording land records.

A. A clerk of circuit court who implements any of the functions described in this section shall do so in compliance with standards established by the Virginia Information Technologies Agency.

B. A clerk of circuit court may receive, index, store, archive, and transmit electronic land records.

C. A clerk of circuit court may provide for access to, and for search and retrieval of, land records by electronic means.

D. A clerk of circuit court who accepts electronic land records for recording shall continue to accept paper land records and shall place entries for both types of land records in the same index.

E. A clerk of circuit court may convert paper records accepted for recording into electronic form. The clerk of circuit court may convert into electronic form land records recorded before the clerk of circuit court began to record electronic records.

F. Any fee or tax that a clerk of circuit court is authorized to collect may be collected electronically.

§ 55-142.13. Uniform standards.

In consultation with the circuit court clerks, the Executive Secretary of the Supreme Court, and interested citizens and businesses, the Virginia Information Technologies Agency shall develop standards to implement electronic recording of real property documents. The Agency shall consider standards and practices of other jurisdictions; the most recent standards promulgated by national standard-setting bodies, such as the Real Property Records Industry Association, views of interested persons and other governmental entities; and needs of localities of varying sizes, population, and resources.

§ 55-142.14. Uniformity of application and construction.

In applying and construing this act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 55-142.15. Relation to Electronic Signatures in Global and National Commerce Act.

To the extent allowed by law, this act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. § 7001(c)) or § 104 of that act (15 U.S.C. § 7004), or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).

2. That the provisions of §§ 17.1-258.2 through 17.1-258.5, 55-108 and 55-142.13 shall become effective on July 1, 2005.

3. That the provisions of §§ 55-142.10, 55-142.11, 55-142.12, 55-142.14 and 55-142.15 shall not become effective unless reenacted by the 2006 General Assembly.