

2008 SESSION

HOUSE SUBSTITUTE
REPRINT

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HOUSE BILL NO. 1106

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 1, 2008)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend and reenact §§ 8.01-446, 8.01-446.1, 8.01-449, 17.1-223, 17.1-225, 17.1-226, 17.1-227.1, 17.1-228, 17.1-244, 17.1-249, 17.1-258.3, 17.1-258.4 and 17.1-276 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 17.1-258.3:1 and by adding in Article 8 of Chapter 2 of Title 17.1 a section numbered 17.1-295, relating to electronic filing of land records; digital reproduction; recordation of judgments; secure remote access; deed cover sheets; fees collected by clerks.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-446, 8.01-446.1, 8.01-449, 17.1-223, 17.1-225, 17.1-226, 17.1-227.1, 17.1-228, 17.1-244, 17.1-249, 17.1-258.3, 17.1-258.4 and 17.1-276 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 17.1-258.3:1 and by adding in Article 8 of Chapter 2 of Title 17.1 a section numbered 17.1-295 as follows:

§ 8.01-446. Clerks to keep judgment dockets; what judgments to be docketed therein.

The clerk of each court of every circuit shall keep in his office, in a well-bound book, or by microphotographic or electronic process allowed by § 17.1-240, a judgment docket, in which he shall docket, without delay, any judgment for a specific amount of money rendered in his court, and shall likewise docket without delay any judgment for a specific amount of money rendered in this Commonwealth by any other court of this Commonwealth or federal court, when he shall be required so to do by any person interested, on such person delivering to him an authenticated legible abstract of it and also upon the request of any person interested therein, any such judgment rendered by a district court judge whose book has been filed in his office under the provisions of Title 16.1 or of which a legible abstract is delivered to him certified by the district court judge who rendered it; provided, that judgments docketed in the clerk's office of the Circuit Court of the City of Williamsburg and the County of James City shall be docketed and indexed in one book. A specific judgment for money shall state that it is a judgment for money in a specific amount in favor of a named party, against a named party, with that party's address, if known, and it shall further state the time from which the judgment bears interest. An order of restitution docketed pursuant to § 19.2-305.2 shall have the same force and effect as a specific judgment for money and shall state that it is an order of restitution in a specific amount in favor of a named party, against a named party, with that party's address, if known, and it shall further state the time from which the judgment bears interest. If the clerk determines that an abstract is not legible, the clerk shall refuse to record it and shall return it to the person who tendered the abstract for recording.

§ 8.01-446.1. Keeping of docket books by clerk of court using micrographic process; form.

Whenever judgments are docketed in the judgment lien book in the office of the clerk of the circuit court and are recorded by a procedural micrographic process as provided in § 17.1-240, or by any other method or process which renders impractical or impossible the subsequent entry of notations upon the docketed judgment, an appropriate certificate of assignment, release, partial release, certified copy of any order, or other separate instrument setting forth the necessary information as provided in this section shall be recorded and indexed according to law. Such instrument shall conform substantially with the following form:

TYPE OF FILING (Check One)

() Assignment ORIGINAL BOOK # PAGE

() Release (or instrument no)

() Partial Release ORIGINAL DATE DOCKETED:

() Credit(s)

() Additional Debtor(s)

() New Name of Debtor

Date of Judgment:

Amount of Judgment:

Plaintiff(s):

Defendant(s):

Assignee (If assignment):

Payments (If credits): AMOUNT DATE PAID

(Complete below if additional debtor or change of name of debtor)

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59 Debtor:
60 Social Security Number of Debtor (*Last Four Digits*)(If known):
61 Given under my hand this day of,
62
63 (Plaintiff) (Attorney for Plaintiff)
64 (Authorized Agent for Plaintiff)
65 Any judgment creditor who knowingly gives false information upon such
66 certificate made under this section shall be guilty of a Class 1 misdemeanor.
67 § 8.01-449. How judgments are docketed.

68 A. The judgment docket required by § 8.01-446 may be kept in a well-bound book, or any other
69 media permitted by § 17.1-240. The date and time of docketing shall be recorded with each judgment
70 docketed. The clerk of the circuit court of any county using card files on July 1, 1975, may continue to
71 use the card file system. The docketing may be done by copying the wording of the judgment order
72 verbatim or by abstracting the information therefrom into a book or into fixed fields of an electronic
73 data storage system. Where a procedural microphotographic system is used, the docketing may be done
74 by recording and storing a retrievable image of the judgment order, judgment abstract, or other source
75 document such as a certificate of assignment or release. Where an electronic imaging system is used, the
76 document image shall be stored in a data format which permits recall of the image. *Any judgment*
77 *docketed pursuant to this subsection shall contain the information required by subsection B.*

78 B. Where a well-bound book is used for the judgment docket there shall be stated in separate
79 columns (i) the date and amount of the judgment, (ii) the time from which it bears interest, (iii) the
80 costs, (iv) the full names of all the parties thereto, including the address, date of birth and the last four
81 digits of the social security number, if known, of each party against whom judgment is rendered, (v) the
82 alternative value of any specific property recovered by it, (vi) the date and the time of docketing it, (vii)
83 the amount and date of any credits thereon, (viii) the court by which it was rendered and the case
84 number, and (ix) when paid off or discharged in whole or in part, the time of payment or discharge and
85 by whom made when there is more than one defendant. And in case of a judgment or decree by
86 confession, the clerk shall also enter in such docket the time of day at which the same was confessed, or
87 at which the same was received in his office to be entered of record. There shall also be shown on such
88 book the name of the plaintiff's attorney, if any.

89 C. Error or omission in the entry of the address or addresses or the social security number or
90 numbers of each party against whom judgment is rendered shall in no way affect the validity, finality or
91 priority of the judgment docketed.

92 D. Beginning July 1, 2010, any judgment made available to subscribers via secure remote access
93 pursuant to § 17.1-294 shall contain only the last four digits of the social security number of any party.
94 However, the information otherwise required in the judgment docket pursuant to ~~subsection B~~ of this
95 section shall be provided.

96 E. The attorney or party who prepares or submits the judgment for recordation has the responsibility
97 for ensuring that only the last four digits of the social security number are included in the judgment
98 prior to the instrument's being submitted for recordation. The clerk has the authority to reject any
99 judgment that does not comply with the provisions of this section.

100 § 17.1-223. Duty of clerk to record writings, etc., and make index.

101 A. Every writing authorized by law to be recorded, with all certificates, plats, schedules or other
102 papers thereto annexed or thereon endorsed, upon payment of fees for the same and the tax thereon, if
103 any, shall, when admitted to record, be recorded by or under the direction of the clerk on such media as
104 are prescribed by § 17.1-239. However, the clerk has the authority to reject any writing for filing or
105 recordation unless (i) each individual's surname only, where it first appears in the writing, is underscored
106 or written entirely in capital letters, (ii) each page of the instrument or writing is numbered, (iii) the
107 Code section under which any exemption from recordation taxes is claimed is clearly stated on the face
108 of the writing, (iv) the names of all grantors and grantees are listed as required by §§ 55-48 and 55-58,
109 *and if a cover sheet is used pursuant to § 17.1-227.1, that the names of all grantors and grantees on the*
110 *face of such writing are the same on the cover sheet*, and (v) the first page of the document bears an
111 entry showing the name of either the person or entity who drafted the instrument, except that papers or
112 documents prepared outside of the Commonwealth shall be recorded without such an entry. Such
113 writing, once recorded, shall be returned to the grantee unless otherwise indicated clearly on the face of
114 the writing including an appropriate current address to which such writing shall be returned.

115 B. The attorney or party who prepares the writing for recordation shall ensure that the writing
116 satisfies the requirements of subsection A and that (i) the social security number is removed from the
117 writing prior to the instrument being submitted for recordation, (ii) a deed conveying not more than four
118 residential dwelling units states on the first page of the document the name of the title insurance
119 underwriter insuring such instrument or a statement that the existence of title insurance is unknown to

the preparer.

C. If the writing or deed is accepted for record and spread on the deed books, it shall be deemed to be validly recorded for all purposes. Such books shall be indexed by him as provided by § 17.1-249 and carefully preserved. Upon admitting any such writing or other paper to record the clerk shall endorse thereon the day and time of day of such recordation. More than one book may be used contemporaneously under the direction of the clerk for the recordation of the writings mentioned in this section whenever it may be necessary to use more than one book for the proper conduct of the business of his office. After being so recorded such writings may be delivered to the party entitled to claim under the same.

§ 17.1-225. Remote access to nonconfidential court records.

The clerk of the circuit court of any county or city may provide remote access, including Internet access, to all nonconfidential court records maintained by his office and described in § 17.1-242. The clerk shall be responsible for insuring that proper security measures are implemented and maintained to prevent remote access users from obtaining any data that are confidential under this Code and to prevent the modification or destruction of any records by remote access users. For purposes of this section, remote access users are those individuals who are not employees of the clerk's office. *Secure remote access to land records shall be governed by § 17.1-294.*

§ 17.1-226. Remote access to certain agencies from clerk of court.

The governing body of any ~~county or city~~ *locality* may give the clerk of its circuit court, ~~pursuant to § 17.1-225, the authority to provide remote access users with~~ information from ~~county, city or~~ local agencies *that the clerk may provide to remote access users.*

§ 17.1-227.1. Use of cover sheets on deeds or other instruments by circuit court clerks.

Circuit court clerks may require that any deed or other instrument conveying or relating to an interest in real property be filed with a cover sheet detailing the information contained in the deed or other instrument necessary for the clerk to properly index such instrument. The cover sheet shall be developed in conjunction with the Supreme Court of Virginia. *The attorney or party who prepares or submits the cover sheet on any deed or other instrument conveying or relating to an interest in real property for recordation has the responsibility for ensuring the accuracy of the information contained in the cover sheet.*

The cover sheet shall not be included as a page for determining the amount of any applicable filing fees pursuant to subdivision A 2 of § 17.1-275, nor shall the cover sheet be construed to convey title to any interest in real property or purport to be a document in the chain of title conveying any interest in real property.

§ 17.1-228. Recording releases of deeds of trust, partial releases of deeds of trust, court ordered releases, or other liens or assignments in cities and counties using microfilm.

Notwithstanding any other provision of law, whenever the writings required by law to be recorded in the deed book in the office of the clerk of the circuit court of any city or county are recorded by a microphotographic process or by any other method or process which renders impractical or impossible the subsequent entering of marginal notations upon a recorded instrument, an appropriate certificate, certificate of satisfaction, certificate of partial satisfaction, certified copy of order, or other separate instrument setting forth the necessary information shall be recorded and indexed according to law.

When existing deed books in the office of the clerk of the circuit court of any county or city are to be microfilmed *or digitally reproduced* for security purposes, the clerk may provide that marginal notations to accomplish the release of deeds of trust or other liens shall not be made in such deed book so microfilmed *or digitally reproduced*.

§ 17.1-244. Books, etc., in clerks' offices rebound, transcribed, microfilmed or digitally reproduced; credit given to transcripts, etc.

Any court of record or, if so designated by the judge, the clerk thereof may cause any of the books or records in the clerk's office which may be in need thereof to be rebound, transcribed, microfilmed or digitally reproduced. The same faith and credit shall be given to such transcript or reproductions from the microfilm *or digitally reproduced record* as the book or record transcribed would have been entitled to.

§ 17.1-249. General indexes for clerks' offices; daily index.

A. There shall be kept in every clerk's office modern, family name or ledgerized alphabetical key-table general indexes to all deed books, miscellaneous liens, will books, judgment dockets and court order books. The clerk shall enter daily either in such general indexes or in the daily index to instruments admitted to record every deed, corrected or amended deed, deed of release, deed of trust, contract of sale, or any addendum or memorandum relating to any of these instruments, indexing each instrument in the names of all parties listed in the first clause of each instrument as required by §§ 55-48 and 55-58. Any clerk, deputy clerk, or employee of any clerk who so indexes any such instrument shall index any name appearing in the first clause of the original instrument, *unless the*

181 *instrument is submitted for recordation with a cover sheet pursuant to § 17.1-227.1, in which case, the*
182 *instrument may be indexed by the information contained in the cover sheet. The clerk shall comply with*
183 *the provisions § 17.1-223.*

184 B. A deed made to one or more trustees to secure the payment of an indebtedness, and any
185 certificate of satisfaction or certificate of partial satisfaction, assignment, loan modification agreement,
186 substitution of trustees or similar instrument subsequently recorded with respect to such deed, shall be
187 sufficiently indexed if the clerk enters in the appropriate places in the general index to deeds provided
188 for in subsection A the names of the grantor and the name of the beneficiary or, in lieu of the name of
189 the beneficiary, the first listed trustee as grantee. The beneficiary need not be named in the first clause
190 of the deed as a condition of recordation.

191 C. A deed made by a person in a representative capacity, or by devisees or coparceners, shall be
192 indexed in the names of the grantors and grantees and the name of the former record title owner listed
193 in the first clause of the instrument.

194 D. The general indexes of civil causes shall be sufficiently kept if the clerk indexes such causes
195 under the short style or title thereof, except that in multiple suits brought under § 58.1-3968, the names
196 of all of the defendants disclosed by the pleadings shall be entered in the general index or book.

197 E. Every deed of conveyance of real estate in which a vendor's lien is reserved shall be double
198 indexed so as to show not only the conveyance from the grantor to the grantee in the instrument, but
199 also the reservation of the lien as if it were a grant of the same from the grantee to the grantor by a
200 separate instrument and the fact of the lien shall be noted in the index.

201 F. All deed books, miscellaneous liens, will books, judgment dockets, and court order books shall be
202 numbered or otherwise adequately designated and the clerk upon the delivery of any writing to him for
203 record required by law to be recorded shall duly index it upon the general index in the manner
204 hereinbefore required. When the writing has been actually transcribed on the book, the clerk shall add to
205 the general index the number of the book in which, and the page on which, the writing is recorded.

206 G. The clerk on receipt of any such writing for record may immediately index it in a book to be
207 known as the "daily index of instruments admitted to record" and within 90 days after its admission to
208 record the clerk shall index all such writings indexed in the daily index in the appropriate general index
209 as hereinbefore provided. The daily index book shall, at all times, be kept in the office of the clerk and
210 conveniently available for examination by the public. During the period permitted for transfer from the
211 daily index to the general index, indexing in the daily index shall be a sufficient compliance with the
212 requirements of this section as to indexing.

213 H. The judge of any circuit court may make such orders as he deems advisable as to the time and
214 method of indexing the order books in the clerk's office of the court and may dispense with a general
215 index for order books of the court.

216 I. The clerk may maintain his indexes on computer, word processor, microfilm, microfiche, or other
217 micrographic medium and, in addition, may maintain his grantor and grantee indexes on paper.

218 § 17.1-258.3. Electronic filing in civil or criminal actions.

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

227 § 17.1-258.3:1. *Electronic filing of land records.*

228 *A clerk of a circuit court may provide a network or system for electronic filing of land records in*
229 *accordance with the Uniform Real Property Electronic Recording Act (§ 55-142.10 et seq.) and the*
230 *provisions of Article 2.1 (§ 55-66.8 et seq.) of Chapter 4 of Title 55 regarding the satisfaction of*
231 *mortgages. The clerk may charge a fee to be assessed for each instrument recorded electronically in an*
232 *amount not to exceed \$5 per document. The fee shall be paid to the clerk's office and deposited by the*
233 *clerk into a special nonreverting local fund to be used to cover operational expenses of such network or*
234 *system. Operational expenses of such network or system shall include, but not be limited to, computer*
235 *support, maintenance, enhancements, upgrades, and replacements, and consulting services. The clerk*
236 *shall enter into an electronic filing agreement with each filer in accordance with Virginia Real Property*
237 *Electronic Recording Standards established by the Virginia Information Technologies Agency. Nothing*
238 *herein shall be construed to prevent the clerk from entering into agreements with designated application*
239 *service providers to provide all or part of the network or system for electronic filing of land records as*
240 *provided herein.*

241 § 17.1-258.4. Signature; when effective as original.

242 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 *pursuant to the Virginia Notary Act (§ 47.1-1 et seq.)*.

§ 17.1-276. Fee allowed for providing secure remote access to land records.

~~Any~~ A clerk of the circuit court who provides ~~electronic~~ secure remote access, including access through the Internet, to nonconfidential court records or other records and records pursuant to §§ ~~17.1-225 and 17.1-226~~ 17.1-294 may charge a fee established by the clerk or by the agency of the county, city or town providing computer support to cover the operational expenses of such electronic access, including, but not limited to, computer support, maintenance, enhancements, upgrades, and replacements, and consulting services. ~~The fee may be assessed for each inquiry, upon actual connect time, or as a flat rate fee.~~ A flat fee may be assessed for each subscriber, as defined in § 17.1-295, in an amount not to exceed \$50 per month. ~~If charged, the~~ The fee shall be charged each user, paid to the clerk's office, and deposited by the clerk into a special nonreverting local fund to be used to cover the operational expenses of such electronic access, as defined herein. ~~In addition, the clerk may charge users a clerk's fee not to exceed \$25 per month.~~ The circuit court clerk shall enter into an agreement with each person whom the clerk authorizes to have remote access, in accordance with the security standards established by the Virginia Information Technologies Agency.

§ 17.1-295. Definitions.

As used in this title:

"Electronic recording of land records" means the networks or systems maintained by a clerk of the circuit court, or the clerk's designated application services providers, for the submittal of instruments for electronic filing of land records in accordance with the Uniform Real Property Electronic Recording Act (§ 55-142.10 et seq.) and the provisions of Article 2.1 (§ 55-66.8 et seq.) of Chapter 4 of Title 55 regarding the satisfaction of mortgages.

"Public access" means that the clerk of the circuit court has made available to subscribers that are other than governmental agencies, secure remote access to land records maintained by the clerk in accordance with § 17.1-294.

"Secure remote access" means public access by electronic means on a network or system to land records maintained by the clerk of the circuit court or the clerk's designated application service providers, in compliance with the Secure Remote Access Standards developed by the Virginia Information Technologies Agency.

"Subscriber" means any person who has entered into a subscriber agreement with the clerk of the circuit court authorizing the subscriber to have secure remote access to land records maintained by the clerk or the clerk's designated application services providers. If the subscriber is an entity with more than one person who will use the network or system to access land records maintained by the clerk, or the clerk's designated application services providers, each individual user shall execute a subscriber agreement and obtain a separate "user id" and "password" from the clerk. The subscriber is responsible for the fees due under this title and the proper use of the secure remote access system pursuant to the subscriber agreement, applicable Virginia law, and Secure Remote Access Standards developed by the Virginia Information Technologies Agency.