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HOUSE BILL NO. 218

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 13, 2008)

(Patron Prior to Substitute—Delegate Kilgore)

A *BILL to amend and reenact §§ 17.1-223, 47.1-5, 47.1-8, as it is currently effective and as it shall become effective, 47.1-9, as it is currently effective and as it shall become effective, 47.1-13, 47.1-14, 47.1-16, as it is currently effective and as it shall become effective, and 55-106.2 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 47.1-13.1, relating to notaries public.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-223, 47.1-5, 47.1-8, as it is currently effective and as it shall become effective, 47.1-9, as it is currently effective and as it shall become effective, 47.1-13, 47.1-14, 47.1-16, as it is currently effective and as it shall become effective, and 55-106.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 47.1-13.1 as follows:

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

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

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

C. *A document which appears on its face to have been properly notarized in accordance with the Virginia Notary Act (§ 47.1-1 et seq.) shall be presumed to have been notarized properly and may be recorded by the clerk.*

D. 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.

§ 47.1-5. Application.

No person shall be commissioned as a notary public or *electronic notary public* pursuant to this title until he submits an application fee as set forth in § 2.2-409 and a complete and correct application to the Secretary of the Commonwealth, in a form prescribed by the Secretary, which shall include the oath of the applicant, signed and sworn before some officer authorized by law to administer oaths, that the answers to all questions on the application are true and complete to the best of his knowledge and that he is qualified to be appointed and commissioned as a notary public. *The Secretary may accept applications by electronic means.*

Any application fee shall be waived for an application filed by a clerk or deputy clerk of a circuit or general district court.

§ 47.1-8. (Effective until July 1, 2008) Commission to be issued, etc.

Upon receipt of a completed application, ~~proper endorsements~~ and the correct fee, the Secretary, if

60 satisfied the applicant is qualified to be registered and commissioned as a notary public *pursuant to*
61 *§§ 47.1-4 and 47.1-5*, shall prepare a notary commission for the applicant which shall include a
62 registration number and forward the commission *for a notary public or electronic notary public* to the
63 clerk of the circuit court in which the applicant shall elect to qualify. The Secretary shall thereupon
64 notify the applicant that the commission has been granted and where and how it may be secured.

65 § 47.1-8. (Effective July 1, 2008) Commission to be issued, etc.

66 Upon receipt of a completed application, ~~proper endorsements~~ and the correct fee, the Secretary, if
67 satisfied the applicant is qualified to be registered and commissioned as a notary public or electronic
68 notary public, shall prepare a notary commission for the applicant which shall include a registration
69 number and forward the commission *for a notary public or electronic notary public* to the clerk of the
70 circuit court in which the applicant shall elect to qualify. The Secretary shall thereupon notify the
71 applicant that the commission has been granted and where and how it may be secured. An electronic
72 notary public may act as a notary public in all respects upon being commissioned as an electronic notary
73 public.

74 § 47.1-9. (Effective until July 1, 2008) Oath of notary; duties of clerks.

75 Before receiving his commission, each person appointed a notary shall appear before the clerk of the
76 circuit court to which his commission has been sent, present sufficient satisfaction of evidence of
77 identity as defined in § 47.1-2, and make oath as follows:

78 "I,, solemnly swear (or affirm) under penalty of perjury, that I have carefully
79 read the notary laws of this Commonwealth, and am familiar with their provisions; that I will uphold the
80 Constitution of the United States and the Constitution and laws of the Commonwealth of Virginia; and
81 that I will faithfully perform, to the best of my ability, the duties of the office of notary public."

82 Such oath shall be signed by the applicant and attested by the clerk. ~~The clerk shall review and~~
83 ~~confirm that the notary has presented a statement signed by any clerk or deputy clerk of any general~~
84 ~~district court of this Commonwealth, or by any attorney for the Commonwealth or assistant attorney for~~
85 ~~the Commonwealth, or by the Attorney General or any of his assistants, or by any member of the~~
86 ~~General Assembly, that such official has examined the application and recommends the applicant for~~
87 ~~appointment.~~ The clerk shall thereupon issue to the applicant his commission as notary public. Within
88 fourteen days of such qualification, the clerk shall certify the fact of such qualification to the Secretary
89 of the Commonwealth.

90 No person shall be permitted to qualify who does not appear before the clerk within 60 days of his
91 appointment. The clerk of each circuit court shall, at least once each month, return to the Secretary all
92 commissions which have not been claimed within such 60-day period, and the Secretary shall forthwith
93 cancel the same.

94 § 47.1-9. (Effective July 1, 2008) Oath of notary; duties of clerks.

95 Before receiving his commission, each person appointed a notary or electronic notary shall appear
96 before the clerk of the circuit court to which his commission has been sent, present sufficient
97 satisfaction of evidence of identity as defined in § 47.1-2, and make oath as follows:

98 "I,, solemnly swear (or affirm) under penalty of perjury, that I have carefully
99 read the notary laws of this Commonwealth, and am familiar with their provisions; that I will uphold the
100 Constitution of the United States and the Constitution and laws of the Commonwealth of Virginia; and
101 that I will faithfully perform, to the best of my ability, the duties of the office of notary public."

102 Such oath shall be signed by the applicant and attested by the clerk. ~~The clerk shall review and~~
103 ~~confirm that the notary has presented a statement signed by any clerk or deputy clerk of any general~~
104 ~~district court of this Commonwealth, or by any attorney for the Commonwealth or assistant attorney for~~
105 ~~the Commonwealth, or by the Attorney General or any of his assistants, or by any member of the~~
106 ~~General Assembly, that such official has examined the application and recommends the applicant for~~
107 ~~appointment.~~ The clerk shall thereupon issue to the applicant his commission as notary public or
108 electronic notary public. Within fourteen days of such qualification, the clerk shall certify the fact of
109 such qualification to the Secretary of the Commonwealth.

110 No person shall be permitted to qualify who does not appear before the clerk within 60 days of his
111 appointment. The clerk of each circuit court shall, at least once each month, return to the Secretary all
112 commissions which have not been claimed within such 60-day period, and the Secretary shall forthwith
113 cancel the same.

114 § 47.1-13. Jurisdiction; Virginia notarial powers outside the Commonwealth.

115 A. The powers of any notary commissioned pursuant to this title may be exercised anywhere within
116 the Commonwealth of Virginia.

117 B. Any notary commissioned pursuant to this title may likewise perform notarial acts outside the
118 Commonwealth, where such notarial acts are performed in connection with any writing to be admitted to
119 record in the Commonwealth of Virginia.

120 C. An employee of the federal government authorized to perform notarial acts may perform notarial
121 acts ~~in the Commonwealth of Virginia~~ in accordance with this chapter.

§ 47.1-13.1. Notarial powers outside the Commonwealth for use in the Commonwealth.

A. Notarial acts may be performed outside the Commonwealth for use in the Commonwealth with the same effect as if performed by a notary public of the Commonwealth by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of the Commonwealth:

1. A notary public authorized to perform notarial acts under the laws of that jurisdiction;

2. A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;

3. An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed;

4. A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: a merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States; or

5. Any person authorized to perform acts in the place in which the act is performed.

B. A document notarized outside the Commonwealth by a notary public or other person referenced in subsection A which appears on its face to be properly notarized shall be presumed to have been notarized properly in accordance with the laws and regulations of the jurisdiction in which the document was notarized.

§ 47.1-14. Duty of care.

A. A notary shall exercise reasonable care in the performance of his duties generally. He shall exercise a high degree of care in ascertaining the identity of any person whose identity is the subject of a notarial act.

B. Unless such person is personally known by the notary, identity shall be ascertained upon presentation of satisfactory evidence of identity as defined in this title.

C. (Effective July 1, 2008) A notary performing electronic notarial acts shall keep, maintain, protect, and provide for lawful inspection an electronic record of notarial acts that contains at least the following for each notarial act performed: (i) the date and time of day of the notarial act; (ii) the type of notarial act; (iii) the type, title, or a description of the document or proceeding; (iv) the printed name and address of each principal; (v) the evidence of identity of each principal in the form of either a statement that the person is personally known to the notary, a notation of the type of identification document, which may be a copy of the driver's license or other photographic image of the individual's face, or the printed name and address of each credible witness swearing or affirming to the person's identity, and, for credible witnesses who are not personally known to the notary or electronic notary, a description of the type of identification documents relied on by the notary; and (vi) the fee, if any, charged for the notarial act. The electronic notary shall take reasonable steps to (i) ensure the integrity, security, and authenticity of electronic notarizations, (ii) maintain a backup for his electronic record of notarial acts, and (iii) ensure protection of such backup records from unauthorized use. *The electronic record of an electronic notarial act shall be maintained for a period of at least five years from the date of the transaction.*

D. (Effective July 1, 2008) A notary performing electronic notarial acts shall take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by its issuing or registering authority.

E. (Effective July 1, 2008) A notary performing electronic notarial acts shall keep his record, electronic signature, and physical and electronic seals secure under his exclusive control and shall not allow them to be used by any other notary or any other person.

F. (Effective July 1, 2008) A notary performing electronic notarial acts shall use the notary's electronic signature only for the purpose of performing electronic notarial acts.

G. (Effective July 1, 2008) A notary performing electronic notarial acts, immediately upon discovering that the notary's record, electronic signature, or physical or electronic seal has been lost, stolen, or may be otherwise used by a person other than the notary, shall (i) inform the appropriate law-enforcement agency in the case of theft or vandalism and (ii) notify the Secretary in writing and signed in the official name in which he was commissioned.

§ 47.1-16. (Effective until July 1, 2008) Notarizations to show date of act, official signature and seal, etc.

A. Every notarization shall include the date upon which the notarial act was performed, and the county or city and state in which it was performed.

B. A notarial act shall be evidenced by a notarial certificate signed by a notary in a manner that attributes such signature to the notary public identified on the commission.

183 C. Upon every writing which is the subject of a notarial act, the notary shall, after his certificate,
184 state the date of the expiration of his commission in substantially the following form:

185 "My commission expires the day of,"

186 Near the notary's official signature on the notarial certificate of a paper document, the notary shall
187 affix a sharp, legible, permanent, and photographically reproducible image of the official seal. ~~However,~~
188 ~~failure to affix an official seal shall not in any way impact the legality or efficacy of the paper~~
189 ~~document.~~

190 § 47.1-16. (Effective July 1, 2008) Notarizations to show date of act, official signature and seal, etc.

191 A. Every notarization shall include the date upon which the notarial act was performed, and the
192 county or city and state in which it was performed.

193 B. A notarial act shall be evidenced by a notarial certificate or electronic notarial certificate signed
194 by a notary in a manner that attributes such signature to the notary public identified on the commission.

195 C. Upon every writing which is the subject of a notarial act, the notary shall, after his certificate,
196 state the date of the expiration of his commission in substantially the following form:

197 "My commission expires the day of,"

198 Near the notary's official signature on the notarial certificate of a paper document, the notary shall
199 affix a sharp, legible, permanent, and photographically reproducible image of the official seal, or, to an
200 electronic document, the notary shall attach an official electronic seal. ~~However, in the case of a~~
201 ~~nonelectronic seal, failure to affix an official seal shall not in any way impact the legality or efficacy of~~
202 ~~the paper document.~~

203 D. The notary shall attach the official electronic signature and seal to the electronic notarial
204 certificate of an electronic document in a manner that is capable of independent verification and renders
205 any subsequent changes or modifications to the electronic document evident.

206 E. A notary's electronic signature and seal shall conform to generally accepted standards for secure
207 electronic notarization.

208 § 47.1-28. Willful misconduct a misdemeanor.

209 A. Any notary who knowingly and willfully commits any official misconduct under Chapter 5
210 (§ 47.1-24 et seq.) of this title shall be guilty of a Class 3 misdemeanor.

211 B. Any employer of a notary who willfully induces such notary to commit official misconduct under
212 Chapter 5 of this title shall be guilty of a Class 3 misdemeanor.

213 C. *Any person who knowingly and willfully misrepresents on an application for commission as a*
214 *notary whether they have been convicted of any felony under the laws of this Commonwealth, of any*
215 *other state, or of the United States shall be guilty of a Class 1 misdemeanor.*

216 § 55-106.2. Presumption that writings admitted to record are in proper form.

217 *A writing that is not properly notarized in accordance with the laws of the Commonwealth shall not*
218 *invalidate the underlying document, however, any such writing shall not be in proper form for*
219 *recordation. All writings admitted to record shall be conclusively presumed to be in proper form for*
220 *recording after having been recorded, and conclusively presumed to be in proper form for recording*
221 *after having been recorded for a period of three years, except in cases of fraud.*

222 **2. That any document notarized prior to July 1, 2008, shall not be affected or invalidated by**
223 **amendments to this Act effective July 1, 2008.**

224 **3. That any document notarized out of state prior to July 1, 2008, which does not have the**
225 **notarial certificate wording on the same page as the signature, but otherwise appears on its face to**
226 **be properly notarized, shall be presumed to have been notarized properly in accordance with the**
227 **laws and regulations of the jurisdiction in which the document was notarized.**