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HOUSE BILL NO. 2064

Offered January 13, 2021

Prefiled January 12, 2021

A BILL to amend and reenact §§ 17.1-223, 47.1-2, 47.1-16, and 55.1-606 of the Code of Virginia, relating to electronic notary; remote notarization; emergency.

Patrons—Simon, Kory, Convirs-Fowler, Coyner, Keam, Lopez and Murphy

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-223, 47.1-2, 47.1-16, and 55.1-606 of the Code of Virginia are amended and reenacted 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, unless a cover sheet is submitted with the writing in accordance with § 17.1-227.1, the clerk has the authority to reject any writing for recordation unless (i) as to any individual who is a party to such writing, the surname only of such individual is underscored or written entirely in capital letters in the first clause of the writing that identifies the names of the parties; (ii) each page of the writing is numbered consecutively; (iii) in the case of a writing described in § 58.1-801 or 58.1-807, the amount of the consideration and the actual value of the property conveyed is stated on the first page of the writing; (iv) the laws of the United States or the Commonwealth under which any exemption from recordation taxes is claimed is clearly stated on the face of the writing; and (v) the name of each party to such writing under whose name the writing is to be indexed as grantor, grantee, or both is listed in the first clause of the writing that identifies the names of the parties and identified therein as grantor, grantee, or both, as applicable. Such writing, once recorded, may be returned to any party to such writing who is identified therein as a grantee unless otherwise indicated clearly on the face of the writing, or any cover sheet, 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 residential property containing 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, and (iii) a deed conveying residential property containing not more than four residential dwelling units states on the first page of the document that it was prepared by the owner of the real property or by an attorney licensed to practice law in the Commonwealth where such statement by an attorney shall include the name and Virginia State Bar number of the attorney who prepared the deed, provided, however, that clause (iii) shall not apply to deeds of trust or to deeds in which a public service company, railroad, or cable system operator is either a grantor or grantee, and it shall be sufficient for the purposes of clause (iii) that deeds prepared under the supervision of the Office of the Attorney General of Virginia so state without the name of an attorney or bar number.

C. *The clerk's office shall record a paper copy of an electronic document, provided that such copy (i) otherwise meets the requirements of this section for recordation and (ii) is certified to be a true and correct copy of the electronic original by the attorney, settlement agent, or other party who submits the document for recordation.*

D. A writing that 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~~ *shall* be recorded by the clerk, *if such document otherwise meets the requirements of this section for recordation.*

~~D.~~ *E.* If the writing is accepted for recordation in the deed books, it shall be deemed to be validly recorded for all purposes. Such books shall be indexed by the clerk 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 the clerk's office.

§ 47.1-2. Definitions.

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As used in this title, unless the context demands a different meaning:

"Acknowledgment" means a notarial act in which an individual at a single time and place (i) appears in person before the notary and presents a document; (ii) is personally known to the notary or identified by the notary through satisfactory evidence of identity; and (iii) indicates to the notary that the signature on the document was voluntarily affixed by the individual for the purposes stated within the document and, if applicable, that the individual had due authority to sign in a particular representative capacity.

"Affirmation" means a notarial act, or part thereof, that is legally equivalent to an oath and in which an individual at a single time and place (i) appears in person before the notary and presents a document; (ii) is personally known to the notary or identified by the notary through satisfactory evidence of identity; and (iii) makes a vow of truthfulness or fidelity on penalty of perjury.

"Commissioned notary public" means that the applicant has completed and submitted the registration forms along with the appropriate fee to the Secretary of the Commonwealth and the Secretary of the Commonwealth has determined that the applicant meets the qualifications to be a notary public and issues a notary commission and forwards same to the clerk of the circuit court, pursuant to this chapter.

"Copy certification" means a notarial act in which a notary (i) is presented with a document that is not a public record; (ii) copies or supervises the copying of the document using a photographic or electronic copying process; (iii) compares the document to the copy; and (iv) determines that the copy is accurate and complete.

"Credential analysis" means a process or service that independently affirms the veracity of a government-issued identity credential by reviewing public or proprietary data sources and meets the standards of the Secretary of the Commonwealth.

"Credible witness" means an honest, reliable, and impartial person who personally knows an individual appearing before a notary and takes an oath or affirmation from the notary to confirm that individual's identity.

"Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, including a record as defined in the Uniform Electronic Transactions Act (§ 59.1-479 et seq.).

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

"Electronic notarial act" or "electronic notarization" means an official act by a notary under § 47.1-12 or as otherwise authorized by law that involves electronic documents.

"Electronic notarial certificate" means the portion of a notarized electronic document that is completed by the notary public, bears the notary public's signature, title, commission expiration date, and other required information concerning the date and place of the electronic notarization, and states the facts attested to or certified by the notary public in a particular notarization. *The "electronic notarial certificate" shall indicate whether the notarization was done in person or by remote online notarization.*

"Electronic notary public" or "electronic notary" means a notary public who has been commissioned by the Secretary of the Commonwealth with the capability of performing electronic notarial acts under § 47.1-7.

"Electronic notary seal" or "electronic seal" means information within a notarized electronic document that confirms the notary's name, jurisdiction, and commission expiration date and generally corresponds to data in notary seals used on paper documents.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document.

"Identity proofing" means a process or service that independently verifies an individual's identity by reviewing public or proprietary data sources and meets the standards of the Secretary of the Commonwealth.

"Notarial act" or "notarization" means any official act performed by a notary under § 47.1-12 or 47.1-13 or as otherwise authorized by law.

"Notarial certificate" or "certificate" means the part of, or attachment to, a notarized document that is completed by the notary public, bears the notary public's signature, title, commission expiration date, notary registration number, and other required information concerning the date and place of the notarization and states the facts attested to or certified by the notary public in a particular notarization.

"Notary public" or "notary" means any person commissioned to perform official acts under the title, and includes an electronic notary except where expressly provided otherwise.

"Oath" shall include "affirmation."

"Official misconduct" means any violation of this title by a notary, whether committed knowingly, willfully, recklessly or negligently.

"Personal knowledge of identity" or "personally knows" means familiarity with an individual

resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

"Principal" means (i) a person whose signature is notarized or (ii) a person, other than a credible witness, taking an oath or affirmation from the notary.

"Record of notarial acts" means a device for creating and preserving a chronological record of notarizations performed by a notary.

"Remote online notarization" means an electronic notarization under this chapter where the signer is not in the physical presence of the notary.

"Satisfactory evidence of identity" means identification of an individual based on (i) examination of one or more of the following unexpired documents bearing a photographic image of the individual's face and signature: a United States Passport Book, a United States Passport Card, a certificate of United States citizenship, a certificate of naturalization, a foreign passport, an alien registration card with photograph, a state issued driver's license or a state issued identification card or a United States military card or (ii) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the notary and who personally knows the individual or of two credible witnesses unaffected by the document or transaction who each personally knows the individual and shows to the notary documentary identification as described in clause (i). In the case of an individual who resides in an assisted living facility, as defined in § 63.2-100, or a nursing home, licensed by the State Department of Health pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 or exempt from licensure pursuant to § 32.1-124, an expired United States Passport Book, expired United States Passport Card, expired foreign passport, or expired state issued driver's license or state issued identification card may also be used for identification of such individual, provided that the expiration of such document occurred within five years of the date of use for identification purposes pursuant to this title. In the case of an electronic notarization, "satisfactory evidence of identity" may be based on video and audio conference technology, in accordance with the standards for electronic video and audio communications set out in subdivisions B 1, ~~B~~ 2, and ~~B~~ 3 of § 19.2-3.1, that permits the notary to communicate with and identify the principal at the time of the notarial act, provided that such identification is confirmed by (a) personal knowledge, (b) *an oath or affirmation of a credible witness, or (c) at least two of the following: (1) credential analysis of an unexpired government-issued identification bearing a photograph of the principal's face and signature, (2) identity proofing by* an antecedent in-person identity proofing process in accordance with the specifications of the Federal Bridge Certification Authority~~,~~ or ~~(c)~~ *other identity proofing method as defined in this section, or (3)* a valid digital certificate accessed by biometric data or by use of an interoperable Personal Identity Verification card that is designed, issued, and managed in accordance with the specifications published by the National Institute of Standards and Technology in Federal Information Processing Standards Publication 201-1, "Personal Identity Verification (PIV) of Federal Employees and Contractors," and supplements thereto or revisions thereof, including the specifications published by the Federal Chief Information Officers Council in "Personal Identity Verification Interoperability for Non-Federal Issuers."

"Seal" means a device for affixing on a paper document an image containing the notary's name and other information related to the notary's commission.

"Secretary" means the Secretary of the Commonwealth.

"State" includes any state, territory, or possession of the United States.

"Verification of fact" means a notarial act in which a notary reviews public or vital records to (i) ascertain or confirm facts regarding a person's identity, identifying attributes, or authorization to access a building, database, document, network, or physical site or (ii) validate an identity credential on which satisfactory evidence of identity may be based.

§ 47.1-16. 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. *Every electronic notarial certificate shall include the county or city within the Commonwealth where the electronic notary public was physically located at the time of the notarial act. The electronic notarial certificate shall indicate whether the notarization was done in person or by remote online notarization.*

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

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

"My commission expires the _____ day of _____, _____"

Near the notary's official signature on the notarial certificate of a paper document, the notary shall affix a sharp, legible, permanent, and photographically reproducible image of the official seal, or, to an electronic document, the notary shall attach an official electronic seal.

D. The notary shall attach the official electronic signature and *electronic* seal to the electronic

notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent changes or modifications to the electronic document evident.

E. ~~A~~ *An electronic* notary's electronic signature and *electronic* seal shall conform to the standards for electronic notarization developed in accordance with § 47.1-6.1.

§ 55.1-606. 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 *and for electronically signed or electronically notarized documents described in § 17.1-223*, all writings that are to be recorded or docketed in the clerk's office of courts of record 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 that does not conform to the requirements of this section or the standards for instruments adopted under § 17.1-227 and under § 42.1-82 of the Virginia Public Records Act (§ 42.1-76 et seq.) is accepted for recordation, it shall be deemed validly recorded and the clerk shall have no liability for accepting such a writing that does not meet the enumerated criteria in all the particulars.

The clerk of the circuit court of any jurisdiction shall be immune from suit arising from any acts or omissions relating to recordation of paper copies of electronically notarized documents pursuant to this section unless the clerk was grossly negligent or engaged in willful misconduct.

2. That an emergency exists and this act is in force from its passage.