

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 48

An Act to amend and reenact §§ 55-114.1, 55-115, 55-123, 55-125, 55-125.1, 55-126, 55-127, 55-129, 55-130, 55-131, 55-132, 55-134, 55-134.1, 55-134.2, 55-135, 55-137.1 and 55-137.2 of the Code of Virginia, relating to acknowledgments; validation.

[H 2158]

Approved February 28, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-114.1, 55-115, 55-123, 55-125, 55-125.1, 55-126, 55-127, 55-129, 55-130, 55-131, 55-132, 55-134, 55-134.1, 55-134.2, 55-135, 55-137.1 and 55-137.2 of the Code of Virginia are amended and reenacted as follows:

§ 55-114.1. Acknowledgments by persons subject to Uniform Code of Military Justice; validation of certain acknowledgments.

Such court or clerk shall also admit any such writing to record as to any person whose name is signed thereto and who at the time of such acknowledgment:

(1) Was a member of any of the armed forces of the United States, wherever they may have been, or
(2) Was employed by, or accompanying such armed forces outside the United States and outside the Canal Zone, Puerto Rico, Guam and the Virgin Islands, or

(3) Was subject to the Uniform Code of Military Justice of the United States outside of the United States, upon the certificate of any person authorized to take acknowledgments under § 936 (a) of Title 10 of United States Code Annotated as ~~that section existed on October 30, 1963~~ amended.

Such certification shall be in substantially the same form as required by § 55-115 of this Code.

Any acknowledgment ~~heretofore~~ taken *before July 1, 1995*, which is in substantial conformity with this section is hereby ratified, validated and confirmed.

§ 55-115. Acknowledgments taken before commissioned officers in military service.

Such court or clerk shall also admit any such writing to record as to any person whose name is signed thereto who at the time of such acknowledgment was in active service in the armed forces of the United States, or as to the consort of such person, upon the certificate of any commissioned officer of the army, navy, marine corps, coast guard, any state national guard that is federally recognized or other branch of the service of which such person is a member, that such writing had been acknowledged before him by such person. Such certificate shall be written upon or annexed to such writing and shall be substantially to the following effect:

In the army (or navy, etc.) of the United States.

I,, a commissioned officer of the army (or navy, marine corps, coast guard or other branch of service) of the United States with the rank of lieutenant (or ensign or other appropriate rank) whose home address is, do certify that E.F. (or E.F. and G.H., and so forth), whose name (or names) is (or are) signed to the writing above (or hereto annexed), bearing date on the day of, and who, or whose consort, is a private (corporal, seaman, captain or other grade or rank) in the army (or navy, etc.) of the United States, and whose home address is, has (or have) acknowledged the same before me.

Given under my hand this day of

Such acknowledgment may be taken at any place where the officer taking the acknowledgment and the person whose name is signed to the writing may be. Such commissioned officer may take the acknowledgment of any person in any branch of the armed forces of the United States, or the consort of such person.

Every acknowledgment executed prior to ~~January 1, 1972~~ *July 1, 1995*, in substantial compliance with the provisions of this section is hereby validated, ratified and confirmed, notwithstanding any error or omission with respect to any address, grade or rank.

§ 55-123. Validation of acknowledgments when seal not affixed.

When a certificate of acknowledgment was made prior to ~~January 1, 1989~~ *July 1, 1995*, to any instrument in writing required by this chapter to be acknowledged and the notary or other official whether of this or some other state taking same failed to affix his official seal to such certificate of acknowledgment when a seal was necessary, the certificate of acknowledgment shall be as valid for all purposes as if such seal had been affixed, and the deed shall be, and shall since such date have been, notice to all persons as effectually as if such seal had been affixed, provided that such acknowledgment was in other respects sufficient.

§ 55-125. Acknowledgment taken by trustee in deed of trust; later date.

Any certificate of acknowledgment of any deed of trust, taken and certified prior to ~~January 1, 1989~~

July 1, 1995, by a person named as trustee therein who was, at the time of taking the acknowledgment, an officer authorized by law to take acknowledgments of deeds, is declared to be as valid and of the same force and effect as if such person had not been a trustee in the deed of trust. Subject to the provisions of § 55-106.2, however, this section shall not affect any right or remedy of any third party, which accrued after the recordation of the deed of trust and before ~~January 1, 1989~~ *July 1, 1995*.

§ 55-125.1. Certain acknowledgments taken and certified before July 1, 1995.

All certificates of acknowledgments to deeds and other writings, taken and certified prior to ~~January 1, 1989~~ *July 1, 1995*, by commissioners of deeds of states other than Virginia, appointed or commissioned by the governor of such state, and by notaries public appointed or commissioned by the Governor of Virginia, or appointed or commissioned under the laws of any state other than this Commonwealth, or any other officer authorized under this chapter to take and certify acknowledgments of deeds and other writings, which omit the citation of the date of the deed or certificate where it is clear from the content of the entire certificate and the instrument which has been acknowledged that the identity of the instrument or the certificate is the same, or if it can reasonably be inferred from the certificate of the person recording the instrument or other writing that the certificate refers to the same instrument, shall be held and the same hereby declared valid and effective in all respects, if otherwise valid according to the law then in force, or otherwise appear valid upon their face, and all such deeds and other writings which have been admitted to record in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded if such recordation be otherwise valid according to the law then in force.

§ 55-126. Acknowledgments taken by certain justices of the peace, mayors, etc.

All certificates of acknowledgment to deeds and other writings taken and certified prior to ~~January 1, 1989~~ *July 1, 1995*, by justices of the peace, mayors of cities or towns and police justices and civil and police justices who by virtue of their offices had the powers and authority of justices of the peace, when such justices of the peace, mayors, police justices or civil and police justices are designated in the certificates of acknowledgments as mayors, police justices or civil and police justices shall be held, and the same are hereby declared, valid and effective in all respects, if otherwise valid according to the law then in force.

§ 55-127. Acknowledgments taken by officers after expiration of terms.

All certificates of acknowledgment to deeds and other writings taken and certified prior to ~~January 1, 1989~~ *July 1, 1995*, by commissioners of deeds of states other than Virginia, appointed or commissioned by the governor of such state, and by notaries public appointed or commissioned by the Governor of Virginia, or appointed or commissioned under the laws of any state other than this Commonwealth, or any other officer authorized under this chapter to take and certify acknowledgments to deeds and other writings who took and certified such acknowledgments after their term of office had expired, shall be held and the same are hereby declared valid and effective in all respects, if otherwise valid according to the law then in force or appear to be valid upon their face; and all such deeds and other writings which have been admitted to record in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded if such recordation be otherwise valid according to the law then in force.

§ 55-129. Acknowledgments before foreign officials who failed to affix seals.

All certificates of acknowledgment to deeds and other writings made and certified prior to ~~January 1, 1989~~ *July 1, 1995*, before officials in any foreign country authorized by law to take and certify such acknowledgments, to which such officials failed to affix their official seals, shall be held, and the same are hereby declared, valid and effective in all respects if otherwise valid according to the law then in force.

§ 55-130. Acknowledgments taken by notaries in foreign countries.

All certificates of acknowledgment to deeds and other writings taken and certified prior to ~~January 1, 1989~~ *July 1, 1995*, by notaries public residing in foreign countries shall be held, and the same are hereby declared, valid and effective in all respects, if otherwise valid according to the law then in force.

§ 55-131. Acknowledgments taken by officer who was husband or wife of grantee.

Any certificate of acknowledgment to a deed or other writings taken prior to ~~January 1, 1989~~ *July 1, 1995*, by a notary public or other officer duly authorized to take acknowledgments, who at the time of taking such acknowledgment was the husband or wife of the grantee in the deed or other instrument, shall be held, and the same is hereby declared, valid and effective in all respects, if otherwise valid according to the law then in force. All acknowledgments of conveyances to a fiduciary taken before an officer, who is the husband or wife of the same and who has no beneficial or monetary interest other than possible commissions or legal fees shall be conclusively presumed valid.

§ 55-132. Acknowledgment when notary certifies erroneously as to expiration of commission.

All certificates of acknowledgment to deeds and other writings taken and certified prior to ~~January 1, 1989~~ *July 1, 1995*, by a notary public appointed or commissioned by the Governor, or appointed or commissioned under the laws of any state other than the Commonwealth of Virginia, who mistakenly or by error certified that his commission had expired at the time he made such certificate, when in fact his commission had not at that time expired, shall be held, and the same are hereby declared, valid and

effective in all respects if otherwise valid according to the law of the Commonwealth then in force, and the date and life of the notary's commission may be proved aliunde his certificate in any proceeding in which the capacity or authority of such notary is or shall be questioned; and all such deeds and other writings which have been admitted to record in any clerk's office in the Commonwealth, upon such certificates, shall be held to be duly and regularly recorded if such recordation be otherwise valid according to the law then in force.

§ 55-134. Acknowledgments taken before notary whose commission has expired; later date; intervening vested rights saved.

All certificates of acknowledgment to deeds and other writings taken and certified prior to ~~January 1, 1989~~ *July 1, 1995*, by notaries public appointed or commissioned by the Governor, who took and certified such acknowledgments after their term of office had expired, shall be held, and the same are hereby declared, valid and effective in all respects, if otherwise valid according to the law then in force, and all such deeds and other writings which have been admitted to record in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded, if such recordation be otherwise valid according to the law then in force; however, nothing in this section shall be so construed as to affect any intervening vested rights.

§ 55-134.1. Acknowledgments taken before notary who was appointed but failed to qualify; vested rights saved.

All certificates of acknowledgment to deeds and other writings taken and certified prior to ~~January 1, 1989~~ *July 1, 1995*, by a person who was appointed as a notary public by the Governor but who failed to qualify as provided by law shall be held, and the same are hereby declared valid and effective in all respects, if otherwise valid, and all such deeds and other writings which have been admitted to record in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded, if such recordation be otherwise valid according to law; however, nothing in this section shall be so construed as to affect any intervening vested rights.

§ 55-134.2. Acknowledgments taken before a notary at large who failed to cite the jurisdiction in which the acknowledgment was taken; vested rights saved.

All certificates of acknowledgment to deeds and other writings taken and certified prior to ~~January 1, 1989~~ *July 1, 1995*, by a person who was appointed a notary public for the Commonwealth at large by the Governor, but who failed to include in such certificates of acknowledgment the city or county in which the notarial act was performed, shall be held, and the same are hereby declared, valid and effective in all respects, if otherwise valid, and all such deeds and other writings which have been admitted to record in any clerk's office in the Commonwealth upon such certificates shall be held to be duly and regularly recorded, if such recordation be otherwise valid according to law; however, nothing in this section shall be so construed as to affect any intervening vested rights.

§ 55-135. Deeds defectively executed by corporation.

Any deed of conveyance of real estate executed in Virginia prior to ~~January 1, 1989~~ *July 1, 1995*, by a corporation of this Commonwealth, when the certificate of acknowledgment of such deed fails to state the representative capacity of the party signing the same for the corporation, shall be held and the same is hereby declared a valid and effective conveyance in every respect, if otherwise valid according to the law in force at the time the deed was executed, if such corporation, since making such conveyance has been dissolved or otherwise gone out of existence.

§ 55-137.1. Recordation certificate not signed by clerk.

All deeds, orders of probate, fiduciary accounts and all other papers and writings received prior to ~~January 1, 1989~~ *July 1, 1995*, by any clerk of any court of this Commonwealth and transcribed, or purported to be transcribed, in the proper book or books in such clerk's office provided by law for the transcribing and recordation of such deeds, orders of probate, fiduciary accounts or other papers and writings, the certificate of receipt and of recordation of which had not received the attesting signature of such clerk on the date aforesaid, and which had not on such date been verified as required by § 17-77, shall prima facie be, and deemed to be, as truly received, recorded and verified as if the same had been so attested by the signature of such clerk.

Every clerk of any court of this Commonwealth, in whose office any such deed, order of probate, fiduciary account or other paper or writing as is mentioned in the preceding paragraph has been transcribed upon the proper book or books in such office, provided by law therefor, and which transcription has not received the attesting signature of the clerk who recorded the same, upon production before such clerk of the original of such deed, order of probate, fiduciary account or paper or writing shall verify the accuracy of such transcription by a careful examination and comparison of such transcription with the original paper so recorded and thereupon the clerk shall attest such transcription by signing thereto the name of the clerk who received the original paper for record and his own name as follows:

"Teste, former clerk per
., his successor."

And the clerk shall likewise note such verification and the date thereof upon the margin of the record. For such service the clerk shall receive a fee of twenty-five cents, to be paid by the person for

whose benefit the service was performed, and the record, so certified and verified, shall have the same effect as if it had been properly certified and verified by the clerk who received the same and who should have so certified and verified the same.

This section shall have a retroactive effect.

§ 55-137.2. Same; when clerk has died.

Any deed or other instrument or writing spread before ~~January 1, 1989~~ *July 1, 1995*, upon the proper deed book in the clerk's office of the circuit court of any county or any court of record of any city, when the clerk of such court failed to sign the certificate of recordation thereof and afterwards died and any will or other instrument or writing spread before ~~January 1, 1989~~ *July 1, 1995*, upon the proper will book in any such clerk's office, when such clerk failed to sign the certificate of probate and recordation thereof and afterwards died shall be as valid, and of the same force and effect, as if such certificate of recordation, or certificate of probate and recordation, had been signed by such clerk at the time such deed, will or other instrument or writing was so spread of record.