

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 164

An Act to amend and reenact §§ 28.2-600, 28.2-607, 28.2-608, 28.2-613, and 28.2-625 of the Code of Virginia, relating to oyster planting grounds; lease assignments.

[S 1413]

Approved February 27, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-600, 28.2-607, 28.2-608, 28.2-613, and 28.2-625 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-600. Riparian planting ground assignments; eligibility; fee.

Any owner of land bordering on a body of water in the oyster-growing area of this Commonwealth whose shore front measures at least 205 feet at the low-water mark, who has not had as much as one-half acre of ground already assigned him on the front, or whose lease has terminated and is not to be renewed, may apply for planting grounds to the Commissioner. The Commissioner shall assign to him such ground ~~wherever the owner may designate~~ within his riparian waters, *subject to the Commissioner's discretion with respect to the precise location*, and provided the ground does not encroach into an existing oyster-planting ground lease assigned under Article 2 (§ 28.2-603 et seq.) ~~of this chapter~~. The fee for such assignment shall be \$1.50. Such ground shall not exceed one-half acre, and shall not be less than 105 feet wide along the shore, beginning at low-water mark, extending out not more than 210 feet, or to the middle of the channel or body of water, whichever is the shorter distance. The grounds shall be surveyed, plotted, marked, assigned, and recorded as provided for assignments to persons in Article 2 (§ 28.2-603 et seq.) ~~of this chapter~~. Any riparian assignment that was duly recorded in the clerk's office of the county or city where the grounds are located, or at the Commission office prior to July 1, 1986, shall continue in effect.

§ 28.2-607. Survey and marking of ground.

If a protest is not filed in the Commission office within ~~sixty~~ 60 days after posting of the notice of application, the Commissioner shall select a surveyor to survey the grounds and make a plat in duplicate. The surveyor shall forward the plat of survey to the Commissioner. If no protest to the application or surveying of ground is made within ~~thirty~~ 30 days after the plat of survey is recorded in the Commissioner's office, the ground applied for shall be assigned provided that:

1. The application and assignment complies with all applicable provisions of law and, in the judgment of the Commissioner, the assignment is in the public interest. *In making that determination, the Commissioner shall consider (i) the factors set out in subsection A of § 28.2-1205 and (ii) the public benefits and impacts of shellfish aquaculture.*

2. All fees, and costs, and the annual rent have been paid for the lease of the ground. The ground shall be marked at the expense of the applicant.

The grounds shall be marked in accordance with Commission regulations for marking oyster grounds.

§ 28.2-608. Application, surveying, and recording fees.

Any applicant for general oyster-planting ground or for riparian oyster ground shall pay (i) an application fee of ~~twenty-five dollars~~ \$300 if the application is for less than five acres, \$500 if the application is for five to 25 acres, and \$1,000 if the application is for more than 25 acres; and (ii) the Commission's surveying costs including the cost of the survey and of preparing the original and one copy of the plat; and ~~(iii) the cost of recording each assignment or transfer and plat in the Commission office~~. The fee for recording each assignment shall be \$1.50. No ground shall be assigned until all the prescribed fees have been paid.

§ 28.2-613. Duration of lease.

Each assignment of general oyster-planting ground shall continue in force for ~~ten~~ 10 years from the date of assignment, unless the assignment is terminated; ~~however, assignments issued between July 1, 1976, and July 1, 1980, shall continue in force for twenty years from the date of assignment~~. The interest in such ground is chattel real.

Upon the death of the renter, testate as to the lease, it shall vest in the named beneficiary subject to the rights of creditors, if he is a resident of this Commonwealth, provided that he files an application for transfer with the Commission within ~~eighteen~~ 18 months after the date of death. If the named beneficiary is not a resident he shall have ~~eighteen~~ 18 months after the date of death to transfer the lease to a qualified holder.

Upon the death of the renter, intestate as to the lease, the lease shall vest in the personal representative, who shall transfer the lease to a qualified holder within ~~eighteen~~ 18 months.

If there is no qualification on the renter's estate within one year of his death, the Commission may within six months thereafter transfer the lease to a qualified holder upon receipt of a transfer duly

executed by all of the lawful heirs of the renter.

If there is no transfer under any of the above, the ground shall become vacant and open to assignment.

Upon expiration of the initial or any subsequent term of the assignment, the Commission shall, on application of the holder, renew the assignment for an additional ~~ten-year~~ 10-year term. The Commission shall not renew or extend an assignment where there has been no significant production of oysters or clams, no reasonable plantings of oysters, clams or cultch or no significant oyster or clam aquaculture operation, during any portion of the ~~ten-year~~ 10-year period immediately prior to the application for renewal, unless the Commission finds that there was good cause for the failure to produce or plant oysters, clams or cultch or finds that the assignment is directly related to and beneficial to the production of oyster-planting grounds immediately adjacent to the assignment. In determining whether there was good cause for the failure to produce or plant oysters, clams, or cultch, in addition to other factors, the Commission shall ~~consider~~ *decide whether the renewal is in the public interest considering the factors in subsection A of § 28.2-1205, the prevalence of the diseases MSX and Dermo, the public benefits and impacts of shellfish aquaculture, and whether the oyster-planting ground has traditionally produced commercial quantities of oysters or clams. The Commission shall set by regulation a fee structure for renewal fees to be paid by applicants. Such fees shall seek to reflect the cost to the Commission of processing the renewal application, but shall not exceed \$300.*

§ 28.2-625. Transfer or assignment.

A person holding an existing lease of oyster-planting ground may transfer or assign all or any part of the lease to another under the following conditions and provisions:

1. The transfer or assignment may be made only to a resident of the Commonwealth, or a firm or corporation authorized by Virginia laws to occupy and hold oyster-planting ground.
2. The application for transfer or assignment shall be in the form prescribed by the Commissioner and shall be filed with the Commission.
3. The Commissioner shall require a new survey if no survey exists of the exact parcel or parcels of grounds to be transferred or assigned.
4. The cost of any new surveys required under this section shall be borne by the person making the transfer, and the cost and fees shall be the same as for surveys made by the Commissioner.
5. The application shall be accompanied by the transfer fee of ~~five dollars if the parcel or parcels are ten acres or less and ten dollars if the parcel or parcels are more than ten acres~~ *\$300 for each lease less than five acres, \$500 for each lease of five to 25 acres, and \$1,000 for each lease greater than 25 acres.*
6. The Commissioner shall record in his office the application for transfer or assignment with any correction or new plat he deems necessary *only if the Commissioner believes that the transfer or assignment is in the public interest after considering the factors in subsection A of § 28.2-1205 and the public benefits and impacts of shellfish aquaculture. No lease shall be transferred if the leaseholder has been denied renewal under § 28.2-613.*
7. The transfer or assignment shall constitute a new lease of the tract or parcel assigned and any ground remaining under the old lease.

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