

Virginia Real Estate Practices



Closing Costs — Payment Splits

The buyer customarily pays for the title insurance premiums, as well as state and county taxes on both the deed and the loan amount, although each of these is negotiable by contract. By law, seller pays grantor's tax. See VA Code Section 58.1-801.

Closing Customs

Real estate closings are conducted by attorneys and title companies with the services of local attorneys if necessary. Conveyance documents are prepared by attorneys. Loan documents may be prepared by the lender. For one to four family residential properties, settlement agents must register with the Virginia Bureau of Insurance as a settlement agent and comply with regulations promulgated by the BOI and VA Code Sections 55-525.16 through 55-525.32. Go to <http://www.scc.virginia.gov/boi/pro/resa/overview.aspx> for further information.

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Document of Conveyance

Conveyance is by general warranty deed or special warranty deed.

Document of Encumbrance

The deed of trust is the security instrument and is subject to statutory requirements as to content. Recording clerks have the authority to reject any writing unless all pages, including the first page, are numbered and exemptions from recording taxes are set forth on the first page. Secured amount must appear in the body of the trust document, return address in margin with tax map I.D. number. Surnames of the parties must be underscored or in capital letters. See VA Code Section 17.1-223 for a full list. Private power of sale is authorized. Trustee recited must be a Virginia resident, but may be either an individual, or a Virginia corporation, LLC or partnership. The address and zip code of the trustee must be shown on the instrument.

Credit Line Deeds of Trust are defined and regulated under VA. Code § 55-58.2.

Clerk's recording fee ranges begin at \$32.00 and go up for each document, depending on number of pages and applicable local fees.

Foreclosure Procedures

Foreclosure requires about two months for completion, from notice to the owner through publication and sale to the closing, although the time span may vary considerably depending upon local practice. Notice requirements and other statutory regulation of foreclosures appear in Va. Code § 55-59.1, et seq.

Most foreclosures are non judicial foreclosures conducted by Substitute Trustees employed by offices or law firms specializing in non-judicial foreclosures, who may handle hundreds of sales a month. The formula for a non-judicial foreclosure is dictated by the Code of Virginia with some additional instructions included in a section located at the end of a Virginia Deed of Trust form named "NON-UNIFORM COVENANTS." Primary points are:

- Establishment of Substitute Trustees, if necessary
- Determination of any title issues which could "chill the sale"
- Advertisement of the sale in the proper jurisdiction for the proper days
- Notice of the proper parties pursuant to the Code
- Calculation of dates correctly from notice to advertisement to sale
- Crying of the Sale at the appropriate Courthouse

Because non-judicial foreclosure is not a Court procedure, particular errors in the procedure can void the sale or render it voidable. Contesting of the sale will usually happen shortly after the sale.



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Leasehold Tax

The state tax is \$2.50 per \$1,000 of consideration (rounded to the next highest \$100.00), with a county tax equal to one-third of state tax (approximately \$0.833/1,000) rounded to the next highest \$100.00 (Va. Code § 58.1-807). The tax is based upon lesser of gross rentals due during the term or actual value of the property leased.

Clerk's recording fee ranges from \$31.00 to \$67.00 per document, depending on the number of pages, and applicable local fees. Check with recording jurisdiction to confirm.

See online calculator at http://webdev.courts.state.va.us/cgi-bin/DJIT/ef_djs_ccdeed_calc.cgi.

Miscellaneous Information

All names to be indexed must appear in the first clause of the document and the last name ONLY of both the grantors and the grantees must be underlined or typed in all capital letters with their names typed under the signature lines. Corporations and partnerships are generally either underlined or typed in all capital letters. All pages of a document to be recorded must be numbered. The first page of the document must include the name of either the person or entity who drafted the instrument, except for documents prepared outside of Virginia. (VA Code §17.1-223)

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. (Va. Code § 17.1-227.1)

Mortgage Tax

The state tax is \$2.50 per \$1,000 of consideration (rounded to the next highest \$100.00), with a county/local tax equal to one-third of state tax (approximately \$0.833/1,000) rounded to the next highest \$100.00 (Va. Code § 58.1-803). Secured amount must appear in the body of the deed of trust document, return address in margin with tax map I.D. number. There are maximum limits to mortgage tax, with state tax being calculated as follows:

- On the first \$10 million of value, \$2.50 upon every \$1,000 or portion thereof;
- On the next \$10 million of value, \$2.20 upon every \$1,000 or portion thereof;
- On the next \$10 million of value, \$1.90 upon every \$1,000 or portion thereof;
- On the next \$10 million of value, \$1.60 upon every \$1,000 or portion thereof; and
- On all over \$40 million of value, \$1.03 upon every \$1,000 or portion thereof.

Local tax maximum would be calculated at one-third of the same formula above.

Clerk's recording fee ranges from \$31.00 to \$67.00 per document, depending on number of pages and applicable local fees.

On deeds of trust which are supplemental to, or which modify the terms of an existing debt with the same lender, on which the recordation tax has already been paid, the tax shall be paid only on that portion of the face amount



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of the obligation secured thereby which is in addition to the amount of the existing debt secured by a deed of trust on which tax has been paid. The instrument shall certify the amount of the existing debt.

On deeds of trust, the purpose of which is to refinance an existing debt, which debt is secured by a deed of trust on which the recordation tax has been paid, the tax shall be paid in accordance with the following schedule:

On the first \$10 million of value as determined pursuant to this section, 18 cents (\$0.18) upon every \$100 or portion thereof;

On the next \$10 million of value as determined pursuant to this section, 16 cents (\$0.16) upon every \$100 or portion thereof;

On the next \$10 million of value as determined pursuant to this section, 14 cents (\$0.14) upon every \$100 or portion thereof;

On the next \$10 million of value as determined pursuant to this section, 12 cents (\$0.12) upon every \$100 or portion thereof; and

On all over \$40 million of value as determined pursuant to this section, 10 cents (\$0.10) upon every \$100 or portion thereof, incorporated into this section.

The instrument shall certify the deed book and page number of the recorded instrument on which the tax for the original debt was paid.

Notary Requirements

Every notarization shall include the date upon which the notarial act was performed, the county or city and state in which it was performed, and 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. 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. However, failure to affix an official seal shall not in any way impact the legality or efficacy of the paper document.

Virginia has a notary saving statute which states "All writings admitted to record shall be conclusively presumed to be in proper form for recording after having been recorded for a period of three years, except in cases of fraud." [§ 55-106.2](#). Notary errors falling into this category will not be a cloud on title.

Virginia also recognizes and accepts notarizations performed in other jurisdictions, provided they are valid and effective in the jurisdiction where notarized.



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Virginia

Real Estate Practices

Real Estate Taxes

Tax payment dates vary widely across the state. Always check with local taxing authority for applicable tax information. . All real estate taxes have super priority in Virginia and are a lien superior to all other interests once due and payable. There are many jurisdictions throughout the state who also have special municipal specific taxes (recycling, special tax districts) and/or utility service fees which enjoy the same priority as real estate taxes. Care should be taken to ascertain all applicable taxes and utility fees.

Title Insurance Forms

Title insurance policy and endorsement forms must be filed with the State Insurance Department Bureau of Insurance in accordance with § 38.2-4606 prior to use. ALTA policies and endorsements are used. The policy is issued upon closing. The following policy forms are available in Virginia: ALTA Loan Policy (6-17-06)

ALTA Owner's Policy (6-17-06)

ALTA Short Form Residential Loan Policy (6-17-06)

ALTA Expanded Coverage Residential Loan Policy (10-13-01)

ALTA Short Form Expanded Coverage Residential Loan Policy (10-17-92) Eagle Protection Added (2-10-97)

ALTA Homeowner's (EAGLE) Policy (10-17-98)

ALTA Residential Limited Coverage Junior Loan Policy (10-19-96)

ALTA Residential Limited Coverage Mortgage Modification Policy (12-1-14)

ALTA U.S. Policy (9-28-91)

Title Insurance Rates

Title insurance rates are published, and title insurers are prohibited from charging more than the published rates. These rates are negotiable. Special rates are offered for concurrent issuance of lender's and owner's policies. Residential refinancing of an existing loan is eligible for a lower premium called a refinance rate.. A special hazardous risk premium is charged for construction loans and for sales of property from an estate in certain circumstances.

Transfer Tax

The state recordation tax is \$.25 cents per \$100 of consideration or actual value, whichever is greater (rounded to the next highest \$100.00), with a county/local tax equal to one-third of state tax (approximately \$0.0833/100) rounded to the next highest \$100.00 (Va. Code § 58.1-801). Sales price or consideration must be typed in the margin of the deed, along with tax map I.D. number, return address and grantee address.

Clerk's recording fees vary. Please call the clerk's office for more specific information.

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All underlined documents are searchable within the system.



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