

# CODE OF VIRGINIA



## Title 41.1 Land Office

## **Title 41.1 - LAND OFFICE**

### **§ 41.1-1. Librarian of Virginia in charge of Land Office.**

The Librarian of Virginia shall be in charge of and keep and preserve all records of the Land Office.

Code 1950, § 41-1; 1952, c. 185; 1970, c. 291; 1998, c. [427](#).

### **§ 41.1-2. Act changing name of Denny Martin taken as true; records, etc., of Northern Neck and other lands.**

In all suits, either at law or in equity, in which title to any land is derived or sought to be derived from Lord Fairfax, through Denny Martin Fairfax, it shall not be necessary in order to make out a chain of title, to prove the act of Parliament authorizing Denny Martin, the devisee of Lord Fairfax, to take the name of Fairfax, but the same shall be presumed and taken to be true to the same extent as if a properly authenticated copy of such act had been adduced in evidence.

The records, documents, and entries of land granted by the former lord proprietor of the Northern Neck, and of all land granted, or to be granted, by the Commonwealth, shall be in the keeping of the Librarian of Virginia in the Land Office in the City of Richmond.

Code 1950, § 41-2; 1970, c. 291; 1998, c. [427](#).

### **§ 41.1-3. Grants of certain lands, etc., to be void; such lands, etc., under control of Governor.**

No grant shall be valid or effectual in law to pass any estate or interest in (i) any lands unappropriated or belonging to the Commonwealth, which embrace the old magazine at Westham, or any stone quarry now worked by the Commonwealth, or any lands which are within a mile of such magazine, or any such quarry; (ii) any ungranted beds of bays, rivers, creeks and the shores of the sea under § [28.2-1200](#); (iii) any natural oyster bed, rock, or shoal, whether such bed, rock, or shoal shall ebb bare or not; (iv) any islands created in the navigable waters of the Commonwealth through the instrumentality of dredging or filling operations; (v) any islands which rise from any lands which are property of the Commonwealth under § [28.2-1201](#); or (vi) any ungranted shores of the sea, marsh or meadowlands as defined in § [28.2-1500](#). Every such grant for any such lands, islands, bed, rock, or shoal shall be absolutely void; however, this section shall not be construed to affect the title to grants issued prior to March 15, 1932. Such magazine and every such stone quarry and the lands of the Commonwealth adjacent to or in their neighborhood, shall be under the control of the Governor, who may make such regulations concerning the same as he may deem best for the interests of the Commonwealth.

Code 1950, § 41-8; 1970, c. 291; 1991, c. 378; 1995, c. [850](#).

### **§ 41.1-4. Repealed.**

Repealed by Acts 1995, c. [850](#).

#### **§ 41.1-4.1. Repealed.**

Repealed by Acts 1992, c. 836.

**§ 41.1-5. Circuit courts authorized to dispose of waste and unappropriated lands.**

The circuit courts of the counties and cities in which waste and unappropriated lands are alleged to lie are vested with authority to sell and dispose thereof in proceedings brought under §§ [41.1-16](#) through [41.1-20](#); however, no sale or disposition shall be made of lands mentioned in § [28.2-1200](#) or of lands as to which a grant could not have been issued by the Librarian of Virginia under § [41.1-3](#).

Code 1950, § 41-8.2; 1952, c. 185; 1970, c. 291; 1991, c. 378; 1995, c. [850](#); 1998, c. [427](#).

**§ 41.1-6. Ratification of grants issued pursuant to § 41.1-3.**

Any grants for land heretofore issued by the Librarian of Virginia pursuant to § [41.1-3](#) are hereby ratified and confirmed and title is confirmed in the grantees thereof.

Code 1950, § 41-8.3; 1966, c. 427; 1970, c. 291; 1998, c. [427](#).

**§ 41.1-7. Copies of unsigned grants admissible in evidence; Commonwealth's right relinquished when certain taxes paid; correction of record.**

Where the records in the Land Office disclose the fact that the land warrants used as the foundation for a grant of any of the public lands of the Commonwealth, subject to grant, were fully paid for and that the right to such grant was finally and fully completed in the manner prescribed by law and a grant therefor made out and spread upon the record book in the Land Office, in due form of law and regular in every respect only that the name of the then Governor of Virginia was not recorded at the foot thereof on the record book, it shall be the duty of the Librarian of Virginia, upon the request of any person interested, to furnish a copy of such grant as it appears of record in the Land Office, together with a certificate to the effect that the land warrants upon which such grant was founded, were fully paid for; that the right to such grant had been finally and fully completed in the manner prescribed by law, and that the grant was regular in every respect except only that the signature of the Governor did not appear at the foot thereof on the record. Such copy and certificate shall be received in evidence in any legal proceeding in which the title to the land described in such grant, or any part thereof, is brought in controversy, and shall be prima facie evidence of title to such land; and when the land embraced in such grant, or any part thereof, shall have been regularly on the proper land books and the taxes and levies regularly assessed thereon and paid by the claimants thereof, claiming under such grant, for a continuous period of ten years, any title which may rest in the Commonwealth, to so much of the land as has been so on the land books and upon which the taxes and levies shall have been so paid, shall be relinquished to the person so claiming the same, and any such claimant of such land, on which the taxes and levies shall have been so paid, may file a petition in the circuit court of the county or city in which such land lies, after ten days' notice in writing to the attorney for the Commonwealth for such county or city who shall appear and defend the same on behalf of the Commonwealth and the county or city; and upon satisfactory proof of the fact that such land has so been on the land books of the county or city and all the taxes and levies regularly paid thereon for the period of time hereinbefore specified, and the production before the court of the copy of such grant and the certificate of the Librarian of Virginia, hereinbefore provided for, the court shall make an order which shall recite and set forth all of such facts so proved and shown, which order, when so made and entered of record on

the proper order book of the court, shall operate to effectually relinquish to the person so claiming such land through and under such grant, whatever right and title may rest in the Commonwealth, thereto; and a copy of such order shall be conclusive evidence of the better right of the claimant under such grant, in any caveat proceeding, or in any other controversy between such claimant and any other person claiming under a location of such land or any part thereof, made after the date of such order.

But nothing contained in this section shall in any manner affect any right adverse to any person claiming under such grant, which vested prior to June 22, 1926, nor divest the right or title, if any, of any junior grantee of any part of the land embraced within the exterior bounds of such grant, claiming under a junior grant which was regularly issued prior to June 22, 1926, or anyone holding or claiming through or under such junior grantee, but in any controversy between such adverse claimants or junior grantees, or persons claiming or holding through or under them, and any person holding or claiming through or under such grant as is first herein mentioned, the contesting parties shall be left to the strength of their respective rights and titles according to the nature of the case, independent of this section, and just as if it had not been enacted.

If it shall appear from the original of any such grant as is first hereinbefore referred to, that such original was actually signed by the Governor, the Librarian of Virginia shall, upon the presentation to him in the Land Office, of such original grant so signed, correct the record thereof so as to conform to such original grant, and affix thereto the date of such correction and a certificate of the fact that such original, duly signed by the Governor, had been presented to him.

Code 1950, § 41-9; 1970, c. 291; 1998, c. [427](#).

**§ 41.1-8. When grant invalid; when Commonwealth's right relinquished to land settled on.**

No grant of any land which shall have been settled continuously for five years previously, upon which taxes shall have been paid at any time within such five years by the person having settled the same, or any person claiming under him, shall be valid; and any title which the Commonwealth may have to such land shall be relinquished to the person in possession of the land claiming the same under such settlement and payment to the extent of the boundary line enclosing the same. But such boundary line shall not include more than 1,500 acres; and any person who has made such settlement and paid such taxes, or anyone claiming under him, may have the land surveyed, and prove the settlement and payment before the circuit court of the county where the land, or a greater part thereof, lies, whereupon such court shall order the plat and certificate of survey to be recorded. Such record shall be conclusive evidence in any controversy between the claimant thereunder and any person claiming under a location of the land made after the date of such order. This section shall relate as well to land forfeited for nonpayment of taxes, or for the failure to have the same entered on the commissioner's books, or both those causes, and to land escheated or escheatable, as to waste and unappropriated lands.

Code 1950, § 41-39; 1970, c. 291.

**§ 41.1-9. Lost records and papers in chains of title; bill in equity to establish ownership.**

If any record or paper constituting a link in the chain of title to any tract or parcel of land in this Commonwealth, has been or shall be lost or destroyed, and no authenticated copy thereof can be found, it shall be lawful for the person or persons, claiming the ownership of such tract or parcel of land, to file in the circuit court of the county, or circuit court of the city, in which such land, or the greater part thereof, is situated, a bill in equity, setting forth the circumstances of such loss or destruction, and giving a history of the title and possession of such tract or parcel of land, and a full description thereof, with the names of the persons in possession of the conterminous parcels. All persons appearing to have an interest in such lands, or to be in possession thereof, or of any adjoining parcel, shall be either plaintiffs or defendants, and the proceedings to mature the cause shall be the same as in other suits in equity, except that in every case there shall be an order of publication, setting forth briefly the purpose of the proceeding and notifying all persons interested to appear and look after their interests.

Code 1950, § 41-68; 1970, c. 291.

**§ 41.1-10. Same; order of court for survey.**

When the suit is ready for hearing, the court may make an order of survey, to be executed by such person as the court may appoint, requiring a complete survey and plat of the land in question to be made and returned, showing its connection with conterminous tracts, and any other circumstances necessary for its thorough identification.

Code 1950, § 41-69; 1970, c. 291.

**§ 41.1-11. Same; when and how testimony taken.**

Upon the return of such survey and plat, testimony may be taken as in other suits in equity, but no notice of the taking of such testimony need be given to any defendant who has not appeared and answered the bill.

Code 1950, § 41-70; 1970, c. 291.

**§ 41.1-12. Same; ownership certified by court; order as to costs.**

If, upon such survey and plat, and upon the other facts in the cause, the court shall be clearly satisfied of the ownership of the tract or parcel of land shown by such survey and plat, and that there is no controversy about such ownership, it shall certify the same of record, and shall make such order concerning the costs as may seem proper.

Code 1950, § 41-71; 1970, c. 291.

**§ 41.1-13. Bill in equity for repeal of grant.**

The Commonwealth, or any other party desiring to repeal, in whole or in part, any grant of land because it was obtained by fraud, or issued contrary to law, or to the prejudice of such party's equitable right, may file a bill in equity for that purpose in the circuit court of the county, or the circuit court of the city, in which the land, or some part thereof, lies, exhibiting with the bill a certified copy of the patent, and making all proper parties.

Code 1950, § 41-75; 1970, c. 291.

**§ 41.1-14. Nature of proceedings for repeal of grant.**

The proceedings thereupon shall be as in other suits in equity, and on the final hearing the court shall make such decree as law and equity may require.

Code 1950, § 41-76; 1970, c. 291.

**§ 41.1-15. Recording decree of repeal.**

Any decree for such repeal, in whole or in part, shall be certified to the Librarian of Virginia, and shall thereupon be recorded by the Librarian of Virginia in the manner prescribed in § [55.1-2423](#).

Code 1950, § 41-77; 1970, c. 291; 1982, c. 565; 1998, c. [427](#).

**§ 41.1-16. Sale of wastelands; proceeding by citizen resident; motion and deposit for costs; parties; copy of plat.**

Any citizen, resident of this Commonwealth, who has reason to believe that there are waste and unappropriated lands in this Commonwealth (not being excluded under § [41.1-3](#) from grant), shall have the right to file a proceeding in the name of the county or city seeking the sale and disposition of such land. The venue for such a proceeding shall be as specified in subdivision 3 of § [8.01-261](#). The proceeding shall be instituted by motion signed by the party who institutes the proceeding, or on his behalf, and shall be accompanied with a deposit to cover the costs of the proceeding but in no event to exceed \$100. Each landowner adjoining the tract in question shall be made a party to the proceedings.

He shall file with the motion a copy of a plat prepared by a licensed land surveyor giving the metes and bounds of the land alleged to be waste and unappropriated. A copy of the motion and plat shall be served upon each of the landowners adjoining the tract in question.

Code 1950, § 41-84; 1952, c. 185; 1970, c. 291; 1977, c. 624; 1995, c. [850](#).

**§ 41.1-17. Same; time and place of hearing.**

Upon the docketing of the motion, the court shall set a time and place to hear the merits of the proceeding. Such hearing shall be held not less than thirty nor more than sixty days from the date upon which the same was filed.

Code 1950, § 41-85; 1952, c. 185; 1970, c. 291.

**§ 41.1-18. Same; subsequent proceedings; disposition of proceeds of sale.**

Thereafter the proceedings shall conform, mutatis mutandis, to the provisions of Article 4 (§ [58.1-3965](#) et seq.) of Chapter 39 of Title 58.1 but on the motion of any party the sale of such land shall be public. From the proceeds of sale, after the expenses of suit and other costs incident to the sale, the person instituting the proceeding shall be reimbursed his deposit and costs expended up to the time the proceeding is docketed; but if such proceeds be insufficient to pay the expenses of suit and other costs incidental to the sale, the deficiency shall be paid by the person, county or city instituting the suit. The remainder left from the proceeds of sale after the payment of costs, expenses of suit and other expenses of sale shall be paid into the treasury of the county or city, as the case may be.

Code 1950, § 41-87; 1952, c. 185; 1970, c. 291.

**§ 41.1-19. Same; proceedings by governing body of county or city.**

The governing body of the county or city in which any waste or unappropriated land lies may, without deposit of costs, initiate proceedings under this chapter to have such lands sold under the provisions hereof.

Code 1950, § 41-88; 1952, c. 185; 1970, c. 291.

**§ 41.1-20. Same; sale extinguishes title and interest of Commonwealth.**

All right, title and interest of the Commonwealth, except as shown by an instrument recorded in the clerk's office of the court of the city or county in which deeds are admitted to record in which land is sold under the provisions hereof shall be extinguished by such sale.

Code 1950, § 41-89; 1952, c. 185; 1970, c. 291.