

# COMMONWEALTH OF VIRGINIA



## Information Technology Resource Management Standard

### VIRGINIA REAL PROPERTY ELECTRONIC RECORDING STANDARD

Virginia Information Technologies Agency (VITA)

## PUBLICATION VERSION CONTROL

ITRM Publication Version Control: It is the user's responsibility to ensure they have the latest version of the ITRM publication. Questions should be directed to the ~~Associate Director~~ Manager for ~~Policy, Practice and~~ Enterprise Architecture (~~PPA~~) (EA) at VITA's Relationship Management Governance (RMG) ~~Strategic Management Services (SMS)~~. ~~SMS~~ EA will issue a Change Notice Alert, post it on the VITA Web site, and provide an email announcement to the Circuit Court Clerks, as well as other parties ~~PPA~~ EA considers to be interested in the change.

This chart contains a history of this ITRM publication's revisions.

Version	Date	Purpose of Revision
Original	05/01/2007	Base Document
00.1	12/08/2017	<i>This administrative update is necessitated by changes in the Code of Virginia and organizational changes in VITA. No substantive changes were made to this document.</i>

## PREFACE

### **Publication Designation**

SEC505-00.1

### **Subject**

Virginia Real Property Electronic Recording Standard

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### **Supersedes**

~~None~~ Virginia Real Property Electronic Recording Standard SEC 505-00

### **Scheduled Review:**

One (1) year after the effective date, then every two years thereafter.

### **Authority**

*Code of Virginia Article 7 of Title 55 of the Code of Virginia* Real Property Electronic Recording Act; §55-142.13 Uniform Standards to Implement Electronic Recording of Real Property Documents

*Code of Virginia, Article 2.1 of Title 55 of the Code of Virginia;* §55-66.14 Uniform Standards to Implement Electronic Recording of Real Property Documents

### **Scope**

This Standard is applicable to all Clerks of the Circuit Courts (hereinafter collectively referred to as "Clerks") that:

- i. accept and record land records electronically pursuant to the Real Property Electronic Recording Act, Section 55-142.10 through 55-142.15; and
- ii. accept and record land records electronically pursuant to the Residential Mortgage Satisfaction Act, Sections 55-66.3 through 55-66.5, and 55-66.8 through 55-66.15.

### **Value Statement**

Section 55-142.10 through 55-142.15: This Standard for the electronic acceptance and recordation of land records facilitates real estate transactions in the Commonwealth. It brings Virginia in line with the recommendations for a uniform set of laws across the country for the electronic filing of land records, so once a real estate transaction goes to settlement, the attorney or settlement agent can file the documents for recordation directly from their office, streamlining the

real estate settlement process for the benefit of citizens of the Commonwealth and users of the electronic filing system.

Sections 55-66.3 through 55-66.5 and 55-66.8 through 55-66.15: This Standard for the electronic acceptance and recordation for the release of mortgage, rescinding erroneously recorded certificates of satisfaction, requirements on secured creditors, and the form and effect of satisfaction facilitates real estate transactions in the Commonwealth. It brings Virginia in line with the recommendations for a uniform set of laws across the country for the electronic filing of land records, so once a real estate transaction goes to settlement, the attorney or settlement agent can file the documents for recordation directly from their office, streamlining the real estate settlement process for the benefit of citizens of the Commonwealth and users of the electronic filing system.

### **Purpose**

This Standard for the electronic acceptance and recordation of land records and for the release of mortgages, rescinding erroneously recorded certificates of satisfaction, requirements on secured creditors, and the form and effect of satisfaction facilitates real estate transactions in the Commonwealth. It brings Virginia in line with the recommendations for a uniform set of laws across the country for the electronic filing of land records, so once a real estate transaction goes to settlement, the attorney or settlement agent can file the documents for recordation directly from their office, streamlining real estate settlement process for the benefit of citizens of the Commonwealth and users of the electronic filing system.

### **Responsibilities**

*(Italics indicate quote from the Code of Virginia requirements)*

#### **Virginia Information Technologies Agency (VITA)**

In accordance with the *Code of Virginia*, VITA is responsible developing "...standards to implement electronic recording of real property documents" in consultation with the circuit court clerks, the Executive Secretary of the Supreme Court, interested citizen and businesses.

#### **All Circuit Court Clerks**

Responsible for complying with Standard SEC505-00 issued by the Chief Information Officer of the Commonwealth of Virginia upon implementation by the Clerk of a system for electronic filing of land records documents.

***Related ITRM Policies,  
Standards, and Guidelines***

[Security Standard for Restricted Remote Access to Documents on Court-Controlled Websites \(SEC503-02\)](#) Revised 03/28/2005

[Information Technology Security Policy \(ITRM Policy SEC500-02\)](#) Effective 07/01/2006

[Information Technology Security Standard \(ITRM Standard SEC501.01\)](#) Effective 07/01/2006

[Information Technology Security Risk Management Guideline \(ITRM Guideline SEC506-01\)](#) Effective 12/11/2006

Useful templates may be downloaded from the Information Security section of the [ITRM Policies, Standards and Guidelines](#) page on the VITA Web site.

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# 1. INTRODUCTION

## 1.1 Acknowledgements

The Commonwealth of Virginia would like to acknowledge the following organizations that contributed staff, information and documents in the development of the Virginia Electronic Recording Standard.

- Executive Secretary of the Supreme Court of Virginia
- National Notary Association
- Property Records Industry Association
- State Compensation Board
- Stonewall Title and Escrow
- Trust Properties, Inc.
- Virginia Association of Mortgage Brokers
- Virginia Bankers Association
- Virginia Bar Association
- Virginia Court Clerks' Association
- Virginia Information Technologies Agency
- Virginia Land Title Association
- Virginia Real Estate Attorneys League

## 1.2 How to Use this Standard

This Standard implements the electronic recording of real property documents pursuant to Articles 2.1 and 7 of Title 55 of the *Code of Virginia* and is intended to be read in conjunction with the *Code*, copies of which are provided in Appendixes A & B.

## 1.3 Definitions<sup>1</sup>

### 1.3.1. Clerk

“Clerk” means a Clerk of the Circuit Court.

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<sup>1</sup> Source: Sections 55-142.10 through 55-142.15, 55-66.3 through 55-66.5, and 55-66.8 through 55-66.15 of the *Code of Virginia*.

### 1.3.2. Document

“Document” means information that is:

- A. inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form, and
- B. eligible to be recorded in the land records maintained by the clerk.

### 1.3.3. Electronic

“Electronic”, as defined in Uniform Electronic Transactions Act ([§59.1-479](#) et seq.), means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

### 1.3.4. Electronic Document

“Electronic document” means a document received by the clerk in electronic form.

### 1.3.5. Electronic Signature

“Electronic signature,” as defined in Uniform Electronic Transactions Act ([§59.1-479](#) et seq.), means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

### 1.3.6. eRecording System

The “eRecording system” is the automated electronic recording system implemented by the Clerk for the recordation of electronic documents among the land records maintained by the Clerk.

### 1.3.7. Land Records Document

“Land records document” means any writing authorized by law to be recorded, whether made on paper or in electronic format, which the Clerk records affecting title to real property, as otherwise provided in the *Code of Virginia*. (See: *Code of Virginia Article 7 of Title 55 of the Code of Virginia* “Real Property Electronic Recording Act;” [§55-142.13](#) “Uniform Standards to Implement Electronic Recording of Real Property Documents” and *Article 2.1 of Title 55 of the Code of Virginia; §55-66.14* “Uniform Standards to Implement Electronic Recording of Real Property Documents.”).

### 1.3.8. Notification

“Notification” means a document containing information required under this Standard and provided by the person required to provide the information.

### 1.3.9. Filer

“Filer” means an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, public body, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity who files an electronic document among the land records maintained by the clerk.

### 1.3.10. Electronic Notarization

“Electronic notarization” means an official act by a notary public in accordance with §47.1 et seq. and §55-118.3 of the *Code of Virginia* with respect to an electronic document.

### 1.3.11. Electronic Notarial Certificate

“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 or certified by the notary public in a particular electronic notarization. A physical or electronic image of a stamp or seal need not accompany the notary’s electronic signature or electronic notarial certificate.

## **2. VIRGINIA REAL PROPERTY ELECTRONIC RECORDING REQUIREMENTS**

### **2.1 Technical Requirements**

The following technical requirements address the implementation of an eRecording system in the Office of the Clerk of the Circuit Court. This Standard addresses the functional requirements that must be met by any eRecording system. However, an eRecording system vendor may achieve the functional requirements by a variety of technical approaches. This Standard seeks to ensure the integrity of electronic documents filed in an eRecording system and to provide methodologies for electronic filing that achieves the same or greater level of quality assurance while creating efficiencies in the use of technology over the current paper system.

This Standard acknowledges that a clerk may implement an eRecording system for the electronic filing of land records documents, but is not required to do so. If an eRecording system is utilized, however, it shall be in accordance with this Standard.

### **2.2 Electronic Filing and Transmission**

Electronic filing and transmission is the process by which information is delivered by electronic means rather than in the conventional paper form. This is limited to any land records documents, as defined in the Code of Virginia.

### **2.3 Levels of Document Intelligence**

An eRecording system shall be designed to accommodate one or more of the following levels of document intelligence.

#### **2.3.1. Level One**

A document created in paper, signed in ink, converted into an electronic format, and sent to the clerk's office for recording in an electronic format (usually as a .TIFF or .PDF file) without indexing the information required by the clerk's office.

#### **2.3.2. Level Two**

A document created in paper, signed in ink, converted into an electronic format, and sent to the clerk's office for recording in an electronic format (usually as a .TIFF or .PDF file). The indexing information required by the clerk's office is sent in a separate file along with the electronic document.

### 2.3.3. Level Three

A document created electronically, digitally signed and sent to the clerk's office for recording in an electronic format. The indexing required by the clerk's office is not "tagged" within the document. Instead, the indexing data is sent in a separate file along with the actual document and can be read automatically by the clerk's system and automatically placed into the clerk's indexes.

### 2.3.4. Level Four

A document created electronically, digitally signed and sent to the clerk's office for recording in an electronic format. The indexing data required by the clerk's office is "tagged" within the document as the document is being created by the preparer. When the electronic document is received by the clerk's office, the clerk's system automatically reads the "tagged" indexing and places it into the clerk's indexes.

## 2.4 Electronic Signature

The eRecording system shall accommodate electronic signatures pursuant to Virginia's Uniform Electronic Transactions Act (§[59.1-479](#) et seq.).

## 2.5 Electronic Notarization

The eRecording system shall accommodate electronic notarization of documents otherwise in accordance with Title 47.1 of the Code of Virginia.

The clerk's eRecording system shall provide for notarized electronic documents in a manner that complies with the following sections of the *Code of Virginia*: the electronic filing requirements (§17.1-258.4B), the Notary Public Law (§47.1 et seq.), the Real Property Electronic Recording Act (§55-142.11C), the Uniform Recognition of Acknowledgments Act (§55-118.1 et seq.), and the Uniform Electronic Transactions Act (§[59.1-479](#) et seq.).

### 2.5.1 Standards for electronic notarization

Electronic notarial certificate requirements. When performing an electronic notarization, a notary public shall complete an electronic notarial certificate, which shall be attached to, or logically associated with, the document and shall be in a form that is independently verifiable and will be invalidated if the underlying document is improperly modified.

### 2.5.2 Personal appearance requirement.

A notary public shall not perform an electronic notarization if the principal does not appear in person before the notary public at the time of notarization, unless otherwise authorized by law to do so. [Source: § 55-118.3; §55-118.5; *A Handbook for Virginia Notaries Public*]

### 2.5.3 Electronic signature appropriate for the electronic notarization of land records

When performing an electronic notarization, the notary public shall use an electronic signature that is: (i) unique to the notary public, (ii) capable of independent verification, (iii) under the notary public's sole control, (iv) attached to, or logically associated with, the electronic document in such a manner that it can be determined if any data contained in the electronic document has been changed subsequent to the electronic notarization, and (v) otherwise in accordance with the Code of Virginia.

### 2.5.4 Liability, sanctions and remedies for improper electronic notarizations

The liability, sanctions and remedies for the improper performance electronic notarizations are the same as described and provided in §§ 47.1-1 (et. seq.) for the improper performance of non-electronic notarizations.

## 2.6 Document and System Security Requirements

The eRecording system shall comply with the requirements of Section 2.6. There are security standards established by the Commonwealth, such as the *Information Technology Security Standard* (ITRM SEC501-01), security standards established by local governments, security standards established by various agencies of the federal government and recommended "best practices" for security standards established by various national proprietary organizations. VITA recognizes that the Office of the Circuit Court Clerk is part state and part local, thus it is not required that a particular clerk's office follow the requirements in the [Information Technology Security Standard](#) (ITRM SEC501-1) in their entirety but rather, based on each clerk's risk assessment and Business Impact Analysis, be guided by the various sections referenced below in this Standard when they establish their system security. It is likely that a particular clerk's office, since the clerk's land records databases are part of the overall electronic database of that particular locality, would comply with the security standards established by that particular local government.

VITA was tasked by the General Assembly with establishing the “Virginia Real Property Electronic Recording Standard”, which is set out in this document. Each clerk is required to comply with the Virginia Real Property Electronic Recording Standard.

As part of the Virginia Real Property Electronic Recording Standard, it is necessary for each clerk to have security standards in place. The requirement of Section 2.6 of the Virginia Real Property Electronic Recording Standard is that each clerk have security standards in place that at a minimum address the items listed in Sections 2.6.1 through 2.6.6. To facilitate understanding of the security standards contained in Sections 2.6.1 through 2.6.6, reference is made in each Section to appropriate section in the *Information Technology Security Standard* ([ITRM SEC501-01](#)). However, there is no requirement that the clerk comply with the VITA Security Standards.

#### 2.6.1. option:

The eRecording system will be designed to

- A. Support, at a minimum 128-bit file and image encryption over a secure network.
- B. Provide for the periodic updates to encryption by the eRecording system vendor.
- C. Comply with U.S Government restrictions on the export of encryption technologies.
- D. Advise the filer of their liabilities and responsibilities for keeping their keys secure.
- E. Provide a secure key management system for the administration and distribution of cryptographic keys.
- F. Require all encryption keys to be generated through an approved encryption package and securely stored.

(See [ITRM SEC501-01](#) – Section 6.3 “Encryption”).

#### 2.6.2 Authentication

The eRecording system will be designed to control interactive access to the eRecording system through user authentication processes that:

- A. Utilize a process of requesting, granting, administering and terminating accounts (collectively referred to as account management).

- B. Address the purpose, scope, roles and responsibilities, and requirements for the account management process.
- C. Designate one or more individuals who are responsible for the development and implementation of the account management practices.
- D. Provide account management procedures, to manage system accounts, including establishing, activating, modifying, reviewing, disabling and removing accounts.
- E. Provide for secure delivery of the filer's initial password(s) and prohibit transmission of Identification and Authentication information (e.g., passwords) without the use of industry accepted encryption standards (see: 2.6.1 "Encryption").

(See [ITRM SEC501-01](#) – Sections 5.2 "Account Management," 5.3 "Password Protection" and 5.4 "Remote Access")

### 2.6.3 Authenticity of the electronically filed document

The eRecording system will be designed to verify that the document has not been altered during transmission by utilizing protocols that identify the Filer.

(See [ITRM SEC501-01](#) – Sections 4.3 IT Systems Interoperability Security," 5.2 "Account Management," 5.3 "Password Protection" and 5.4 "Remote Access")

### 2.6.4 Private key

The eRecording systems will be designed to have a key management system in place for the secure administration and distribution of cryptographic keys. All keys shall be generated through an encryption package and securely stored.

The eRecording system will authenticate the filer's private key. The filer will establish internal controls to assure the security of the private key is not compromised and certify compliance as part of the electronic filing Agreement as otherwise provided herein. If the security of the private key is compromised, the filer has the responsibility to promptly notify the information technology contact person as identified by the Electronic Filing Agreement who will discontinue use of the compromised private key. The filer will obtain a replacement private key in order to have

access restored to the eRecording system. The filer will address the breach of internal controls to prevent a similar occurrence in the future. If the compromise of security occurs within the eRecording system, the clerk or vendor, as appropriate, will promptly address the compromise of security and the breach of internal controls to prevent a similar occurrence in the future. For purposes of these Standards, “compromise of security” shall mean when the security of the private key could be used by someone other than the authorized user for the filer or could be used for purposes not permitted by these Standards.

(See [ITRM SEC501-01](#) – Sections 5.2 “Account Management,” 5.3 “Password Protection” and 5.4 “Remote Access”)

#### 2.6.5 Protection of electronic filings:

The eRecording system will be designed to mitigate against system and security failures that:

- A. Provides for a Risk Analysis (RA) to identify potential threats to the system and the environment in which it operates, to determine the likelihood that threats will materialize, to identify and evaluate system and environmental vulnerabilities, and to determine the loss impact if one or more vulnerabilities are exploited by a potential threat. The RA will:
  - i. Define a formal risk management process for eRecording system, consisting of four distinct formal phases:
    - a. Evaluation phase: Risk assessment of the system and the environment in which it operates.
    - b. Decision phase: Management decision regarding vulnerabilities to mitigate and acceptance of residual risks based on the RA recommendations.
    - c. Implementation phase: Implementation of security controls as recommended by the risk mitigation plan and as approved by management.
    - d. Reassessment phase: Recurring reassessments of the eRecording system’s security posture after recommended controls were implemented, in response to newly discovered threats and vulnerabilities, in response to new mandates, and periodically as specified in this section of this Standard.
  - ii. Provide for an independent evaluator to conduct a formal risk assessment on the eRecording system and the environment in which it operates once every three years.

- iii. Provide for an independent evaluation before the end of the three year cycle, if the clerk's office determines that the eRecording system or the environment has undergone a significant change that may affect the system's security posture.
  - iv. Require the clerk's office to conduct an annual a self assessment to ensure the eRecording system's security posture has not deteriorated.
  - v. Require the clerk's office to conduct a risk assessment that produces a "risk assessment report" to the clerk.
- B. Provides requirements to insure consistent governance and oversight of the entire contingency planning process that:
- i. Enables the clerk's office to recover critical information technology resources should a contingency occur.
  - ii. Designate an employee as the "Contingency Planning Manager" to serve as the focal point developing a contingency plan which includes business impact analysis, business continuity, and disaster recovery planning activities, and who will be responsible for developing, implementing, testing, training and periodically updating the clerk's office contingency plans.

(See [ITRM SEC501-01](#) – Sections 2.3 "Business Impact Analysis," 2.4 "IT System and Data Sensitivity Classification," 2.6 "Risk Assessment" and 2.7 "Security Audit")

#### 2.6.6 Compliance with the Library of Virginia Standards for Archival of Documents.

The electronic documents filed utilizing the eRecording system and maintained by the clerk, shall be in accordance with the archival standards as recommended by [The Library of Virginia](#) pursuant to [§ 17.1-240](#).

## 2.7 Electronic Recording and Transmission Process Requirements

The eRecording System shall provide a mechanism to ensure:

### 2.7.1 Acceptance of electronic file submissions and system availability

The clerk or its service provider will advise its subscribers to the eRecording system the hours during which electronic documents may be

submitted for recordation among the land records and will make every effort to notify its subscribers as to times when the eRecording system is not available due to normal repair, maintenance, malfunction or other reasons.

#### 2.7.2 Notification of receipt of electronic documents

Upon the submission of an electronic document, the clerk will provide an electronic or other written notification to the filer indicating that the electronic document has been received by the clerk, but not recorded. The electronic or other written notification will include the date and time of the receipt of the electronic document. The eRecording system may generate an automated electronic notification which complies with this requirement.

#### 2.7.3 Time of recording of electronic documents

Electronic documents received by the clerk are deemed “recorded” as of the date and time stated on the electronically recorded document. The clerk will provide an electronic or other written notification to the filer when an electronic document has been recorded.

#### 2.7.4 Quality

The eRecording system will seek to achieve the same or greater level of quality assurance while creating efficiencies in the use of technology over the current paper system.

#### 2.7.5 Criteria for rejection

Electronic documents submitted for recordation through the eRecording System will be rejected if they fail to meet the: (i) image or file format specifications; (ii) security requirements of the eRecording System; (iii) the requirements otherwise provided in the Code of Virginia, or (iv) the standards established by the clerk’s office for electronic document or submissions which contain an electronic virus.

#### 2.7.6 Notification of rejection

If an electronic document is rejected, an electronic or other written notification of rejection will be provided to the filer.

#### 2.7.7 Secure remote access and public access

Secure remote access to electronic documents recorded through the eRecording System is provided in accordance with §§ 2.2-3808.2 and

17.1-279 of the *Code of Virginia* as well as the *Security Standard for the Restricted Remote Access to Documents on Court-Controlled Websites* (SEC503-02). In addition, public access to electronic and paper records are required by statute to be available in the clerk's office as public records.

#### 2.7.8 Service help

The eRecording System will provide the filer with instructions for electronically submitting an electronic document, and contact information for assistance including the person to contact for information technology assistance (the "Information Technology Contact Person") and the person to contact for administrative assistance (the "Administrative Contact Person") in the Clerk's Office.

#### 2.7.9 Payment of filing fees

The eRecording System will accommodate payment of recordation taxes, recording fees or clerks' fees assessed by the Code of Virginia for recordation of electronic documents. The clerk or its service provider will provide an electronic or other written receipt to the filer indicating that the payment for the recordation of the electronic document has been received and processed by the clerk. The eRecording System may generate an automated electronic report which complies with this requirement

Methods for payment of recordation taxes, recording fees or clerks' fees assessed by the *Code of Virginia* may be by any commercially acceptable means pursuant to §2.2-614.1 of the Code of Virginia. The clerk will provide filers with a list of payment methods which may be used for the recordation of electronic documents among the land records. These methods may include, but included but are not limited to:

- i. Prepaid account (without commingling escrow funds);
- ii. Electronic funds transfer (EFT);
- iii. Credit cards;
- iv. Debit cards;
- v. Electronic check;
- vi. Check.

Any method of payment not authorized by [§2.2-614.1](#) or any other provision of the Code of Virginia must be approved by the Auditor of Public Accounts. Electronic funds transactions (EFT) shall comply with the provisions of Virginia's Uniform Electronic Transaction Act (UETA) [§ 59.1-479 et seq.](#) of the *Code of Virginia*.

Where applicable, notices required under this section may be:

- i. Set out in the electronic filing agreement;
- ii. Combined into a single notice; or
- iii. Posted to a portion of the eRecording system where filers can check the status of their filings.

## 2.8 Indexing Requirements

The eRecording System shall have the capacity at a minimum to process documents that are compatible with the indexing requirements. The requirements are currently established by the Property Recording Industry Association (PRIA) for file formatting, PRIA eRecording XML Standard v2.4.1, and they are made a part of the *Virginia Real Property Electronic Recording Standard* by this reference.

A copy of the current *PRIA eRecording XML Standard v2.4.1* may be found on the PRIA Website at: [www.pria.us](http://www.pria.us). If PRIA revises the current version of its XML standard, the revised version will be evaluated for inclusion in a future version of this Standard.

The eRecording System shall otherwise comply with the requirements of the *Code of Virginia*.

## 2.9 Electronic Filing Agreement

Each Circuit Court Clerk shall require any Filers intending to file electronic documents with the clerk's office to complete an electronic filing agreement. An example of an electronic filing agreement is in Appendix C.

At a minimum the electronic filing agreement shall address the following:

### 2.9.1 Documents permitted to be electronically filed

The agreement will specifically identify the types and levels of electronic documents permitted to be electronically filed, which may be amended from time to time by the clerk.

### 2.9.2 Payment of filing fees

The agreement will require payment of recordation taxes, recording fees or clerks' fees assessed by the Code of Virginia and establish the manner and method of such payment, which may be amended from time to time by the clerk.

### 2.9.3 Notarization

The agreement will provide that electronic documents to be recorded among the land records shall comply with the requirements for notarization pursuant to Virginia's Electronic Filing requirements (§17.1-258.4B), Virginia's Notary Public Law (§47.1 et seq.), Virginia's Real Property Electronic Recording Act (§55-142.11C), and Virginia's Uniform Recognition of Acknowledgments Act (§55-118.1 et seq.).

### 2.9.4 Notification of submission for recordation

The agreement will provide that the clerk will issue an electronic or other written notification including the date and time of the receipt of the electronic document to the filer that the electronic document has been received by the clerk.

### 2.9.5 Notification of rejection

The agreement will provide that electronic documents submitted for recordation through the eRecording System will be rejected if they fail to: (i) meet the image or file format specifications; (ii) meet the security requirements of the eRecording System; (iii) comply with the requirements as otherwise provided in the Code of Virginia; (iv) comply with the standards established by the Clerk's office for electronic document or submissions which contain an electronic virus.

### 2.9.6 Indexing requirements

The agreement will provide that the eRecording System shall have the capacity to process documents that are compatible with the Indexing Requirements established by the Property Recording Industry Association (PRIA) for file formatting, which are attached in Appendix D.

### 2.9.7 Effective date and duration of agreement

The agreement will establish an effective date and duration.

### 2.9.8 Filer contact information

The agreement will require filers intending to record electronic documents provide full contact information of persons to contact including the "Administrative Contact Person" and the "Information Technology Contact Person."

### 2.9.9 Liabilities and responsibilities of the filer

The agreement will require filers to be responsible for keeping their encryption keys secure (2.6.1. E herein); establishing internal controls to assure that the security of the private key is not compromised; charge them with the responsibility to notify the clerk's office of a compromise; and the responsibility to address any breach of internal controls (2.6.4 herein).

#### 2.9.10. Clerk to advise filer of liabilities and responsibilities

The agreement will require the clerk to advise the filer of the liabilities and responsibilities hereunder.

#### 2.9.11 Breach of agreement by filer

If a filer fails to take immediate corrective and remedial action for any such compromise, the Clerk may revoke the filer's privileges to file electronically.

### 3. APPENDIXES

#### 3.1 Appendix A: Real Property Electronic Recording Act, Code of Virginia, Chapter 744

*An Act to amend and reenact § [55-108](#) of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 2 of Title 17.1 an article numbered 4.1, consisting of sections numbered [17.1-258.2](#) through [17.1-258.5](#), and adding in Chapter 6 of Title 55 an article numbered 7, consisting of sections numbered [55-142.10](#) through [55-142.15](#), relating to electronically recording real property documents.*

[S 992]

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1. That § [55-108](#) of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 2 of Title 17.1 an article numbered 4.1, consisting of sections numbered [17.1-258.2](#) through [17.1-258.5](#), and adding in Chapter 6 of Title 55 an article numbered 7, consisting of sections numbered [55-142.10](#) through [55-142.15](#), as follows:

*Article 4.1.  
Electronic Filing.*

§ [17.1-258.2](#). *Definition.*

*As used in this article, “electronic filing of documents” means the filing or recordation with a circuit court clerk of written information as defined in § [1-13:32](#), for the purpose of creating an electronic record as defined in subdivision 7 of § [59.1-480](#).*

§ [17.1-258.3](#). *Electronic filing of documents authorized.*

*A clerk of circuit court may establish a system for electronic filing or recordation of documents pursuant to the Uniform Electronic Transactions Act (§ [59.1-479](#) et seq.). Once established, any person, as defined in subdivision 11 of § [59.1-480](#), may electronically file land records, instruments, judgments, and UCC financing statements. Electronic filing of papers in civil or criminal actions shall be governed by Rule 1:17 of the Rules of Supreme Court of Virginia. The circuit court clerk shall enter into an agreement with each person whom the clerk authorizes to file documents electronically, specifying the electronic filing procedures to be followed, including, but not limited to, security procedures, as defined in the Uniform Electronic Transactions Act, for transmitting notarized documents.*

§ [17.1-258.4](#). *Signature; when effective as original.*

A. *If the electronically filed document contains an electronic signature pursuant to the Uniform Electronic Transactions Act (§[59.1-479](#) et seq.), any statutory requirement for original signature shall be deemed to be satisfied.*

B. *Any statutory requirement for a document to be notarized shall be deemed satisfied by the appropriately executed electronic signature of such notary.*

§ [17.1-258.5](#). *Application.*

*All documents recorded on or after July 1, 2004 that comply with the provisions of this article shall be conclusively presumed to be in proper form for recording, except in cases of fraud.*

§ [55-108](#). 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, all writings which are to be recorded or docketed in the clerk's office of courts of record in ~~this~~ the Commonwealth 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 which does not conform to the requirements of this statute or the standards for instruments adopted under §§ [17.1-227](#) and § [42.1-82](#) of the Virginia Public Records Act is accepted for recordation, it shall be deemed validly recorded and the clerk shall have no liability for accepting such a writing which does not meet the enumerated criteria in all the particulars.

*Article 7.  
Real Property Electronic Recording Act.*

§ [55-142.10](#). *Definitions.*

*As used in this article, terms shall have the meanings given them in § [59.1-480](#) unless otherwise defined below:*

*"Clerk" means a clerk of the circuit court.*

*"Land records" means any writing authorized by law to be recorded, whether made on paper or in electronic format, which the clerk records affecting title to real property.*

§ [55-142.11](#). *Validity of electronically filed and recorded land records.*

A. *If a law requires, as a condition for recording, that a land record be an original, on paper or other tangible medium, or in writing, an electronic land record satisfying this act satisfies the law.*

*B. If a law requires, as a condition for recording, that a land record be signed, an electronic signature satisfies the law.*

*C. A requirement that a land record or a signature associated with a land record be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the land record or signature. A physical or electronic image of a stamp, impression, or seal is not required to accompany an electronic signature.*

§ [55-142.12](#). *Recording land records.*

*A. A clerk of circuit court who implements any of the functions described in this section shall do so in compliance with standards established by the Virginia Information Technologies Agency.*

*B. A clerk of circuit court may receive, index, store, archive, and transmit electronic land records.*

*C. A clerk of circuit court may provide for access to, and for search and retrieval of, land records by electronic means.*

*D. A clerk of circuit court who accepts electronic land records for recording shall continue to accept paper land records and shall place entries for both types of land records in the same index.*

*E. A clerk of circuit court may convert paper records accepted for recording into electronic form. The clerk of circuit court may convert into electronic form land records recorded before the clerk of circuit court began to record electronic records.*

*F. Any fee or tax that a clerk of circuit court is authorized to collect may be collected electronically.*

§ [55-142.13](#). *Uniform standards.*

*In consultation with the circuit court clerks, the Executive Secretary of the Supreme Court, and interested citizens and businesses, the Virginia Information Technologies Agency shall develop standards to implement electronic recording of real property documents. The Agency shall consider standards and practices of other jurisdictions; the most recent standards promulgated by national standard-setting bodies, such as the Real Property Records Industry Association, views of interested persons and other governmental entities; and needs of localities of varying sizes, population, and resources.*

§ [55-142.14](#). *Uniformity of application and construction.*

*In applying and construing this act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.*

§ [55-142.15](#). *Relation to Electronic Signatures in Global and National Commerce Act.*

*To the extent allowed by law, this act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. § 7001(c)) or § 104 of that act (15 U.S.C. § 7004), or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).*

2. That the provisions of §§ [17.1-258.2](#) through [17.1-258.5](#), [55-108](#) and [55-142.13](#) shall become effective on July 1, 2005.
3. That the provisions of §§ [55-142.10](#), [55-142.11](#), [55-142.12](#), [55-142.14](#) and [55-142.15](#) shall not become effective unless reenacted by the 2006 General Assembly.

### 3.2 Appendix B: Residential Mortgage Satisfaction Act, Code of Virginia, Chapter 749

*An Act to amend and reenact §§ [55-66.3](#) and [55-66.5](#) of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 55 an article numbered 2.1, consisting of sections numbered [55-66.8](#) through [55-66.15](#), relating to mortgage satisfaction.*

[S 1005]

Approved March 26, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ [55-66.3](#) and [55-66.5](#) of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 55 an article numbered 2.1, consisting of sections numbered [55-66.8](#) through [55-66.15](#), as follows:

§ [55-66.3](#). Release of deed of trust or other lien.

A. 1. *Except as provided in Article 2.1 of this chapter*, after full or partial payment or satisfaction has been made of a debt secured by a mortgage, deed of trust, vendor's lien, or other lien, or any one or more obligations representing at least 25 percent of the total amount secured by such lien, but less than the total number of the obligations so secured, or the debt secured is evidenced by two or more separate written obligations sufficiently described in the instrument creating the lien, has been fully paid, the lien creditor shall issue a certificate of satisfaction or certificate of partial satisfaction in a form sufficient for recordation reflecting such payment and release of lien. This requirement shall apply to a credit line deed of trust prepared pursuant to § [55-58.2](#) only when the obligor or the settlement agent has paid the debt in full and requested that the instrument be released.

If the lien creditor receives notice from a settlement agent at the address identified in its payoff statement requesting that the certificate be sent to such settlement agent, the lien creditor shall provide the certificate, within 90 days after receipt of such notice, to the settlement agent at the address specified in the notice received from the settlement agent.

If the notice is not received from a settlement agent, the lien creditor shall deliver, within 90 days after such payment, the certificate to the appropriate clerk's office with the necessary fee for recording by certified mail, return receipt requested, or when there is written proof of receipt from the clerk's office, by hand delivery or by courier hand delivery.

If the lien creditor has already delivered the certificate to the clerk's office by the time it receives notice from the settlement agent, the lien creditor shall deliver a copy of the certificate to the settlement agent within 90 days of the receipt of the notice at the address for notification set forth in the payoff statement.

If the lien creditor has not, within 90 days after payment, either provided the certificate of satisfaction to the settlement agent or delivered it to the clerk's office with the necessary fee for filing, the lien creditor shall forfeit \$500 to the lien obligor. No settlement agent or attorney may take an assignment of the right to the \$500 penalty. Following the 90-day period, if the amount forfeited is not paid within 10 business days after written demand for payment is sent to the lien creditor by certified mail at the address for notification set forth in the payoff statement, the lien creditor shall pay any court costs and reasonable attorney's fees incurred by the obligor in collecting the forfeiture.

2. If the note, bond or other evidence of debt secured by such mortgage, deed of trust, vendor's lien or other lien referred to in subdivision 1 or any interest therein, has been assigned or transferred to a party other than the original lien creditor, the subsequent holder shall be subject to the same requirements as a lien creditor for failure to comply with this subsection, as set forth in subdivision 1.

B. The certificate of satisfaction shall be signed by the creditor or his duly authorized agent, attorney or attorney-in-fact, or any person to whom the instrument evidencing the indebtedness has been endorsed or assigned for the purpose of effecting such release. An affidavit shall be filed or recorded with the certificate of satisfaction, by the creditor, or his duly authorized agent, attorney or attorney-in-fact, with such clerk, stating that the debt therein secured and intended to be released or discharged has been paid to such creditor, his agent, attorney or attorney-in-fact, who was, when the debt was satisfied, entitled and authorized to receive the same.

C. And when so signed and the affidavit hereinbefore required has been duly filed or recorded with the certificate of satisfaction with such clerk, the certificate of satisfaction shall operate as a release of the encumbrance as to which such payment or satisfaction is entered and, if the encumbrance be by deed of trust or mortgage, as a reconveyance of the legal title as fully and effectually as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

D. As used in this section:

"CRESPA" means the Consumer Real Estate Settlement Protection Act (§ [6.1-2.19](#) et seq.).

"Lien creditor" and "creditor" shall be construed as synonymous and mean the holder, payee or obligee of a note, bond or other evidence of debt and shall embrace the lien creditor or his successor in interest as evidenced by proper endorsement or assignment, general or restrictive, upon the note, bond or other evidence of debt.

"Mortgage" means any mortgage, deed of trust or vendor's lien.

"Obligor's designee" shall include an attorney or other settlement agent closing a transaction which results in the obligor's loan being paid off.

"Payoff letter" means a written communication from the lien creditor or servicer stating, at a minimum, the amount outstanding and required to be paid to satisfy the obligation.

"Satisfactory evidence of the payment of the obligation secured by the mortgage" means (i) any one of (a) the original canceled check or a copy of the canceled check, showing all endorsements, payable to the lien creditor or servicer, as applicable, (b) confirmation in written or electronic form of a wire transfer to the bank account of the lien creditor or servicer, as applicable, or (c) a bank statement in written or electronic form reflecting completion of the wire transfer or negotiation of the check, as applicable; and (ii) a payoff letter or other reasonable documentary evidence that the payment was to effect satisfaction of the obligation secured or evidenced by the mortgage.

"Servicer" means a person or entity that collects loan payments on behalf of a lien creditor.

"Settlement agent" has the same meaning ascribed thereto in § [6.1-2.20](#), provided that a person shall not be a settlement agent unless he is registered pursuant to § [6.1-2.26](#) and otherwise fully in compliance with the applicable provisions of Chapter 1.3 (§ [6.1-2.19](#) et seq.) of Title 6.1.

#### E. Release of lien by settlement agent.

A settlement agent may release a mortgage in accordance with the provisions of this subsection (i) if the obligation secured by the mortgage has been satisfied by payment made by the settlement agent and (ii) whether or not the settlement agent is named as a trustee under the deed of trust or otherwise has received the authority to release the lien.

##### 1. Notice to lienholder.

a. After or accompanying payment in full of the obligation secured by a mortgage, a settlement agent intending to release a mortgage pursuant to this subsection shall deliver to the lien creditor by certified mail or guaranteed overnight delivery service a notice of intent to release the mortgage with a copy of the payoff letter and a copy of the release to be recorded as provided in this subsection.

b. The notice of intent to release shall contain the name of the lien creditor and the servicer if loan payments on the mortgage are collected by a servicer, the name of the settlement agent, and the date of the notice. The notice of intent to release shall conform substantially to the following form:

#### NOTICE OF INTENT TO RELEASE

Notice is hereby given to you concerning the (mortgage) described on the (release of mortgage), a copy of which is attached to this notice, as follows:

1. The undersigned has paid the obligation secured by the (mortgage) described above.

2. The undersigned will release the (mortgage) described in this notice unless, within 90 days from the date this notice is mailed by certified mail or guaranteed overnight delivery service, the undersigned has received by certified mail or guaranteed overnight delivery service a notice stating that a release of the (mortgage) has been recorded in the clerk's office or that the obligation secured by the (mortgage) described above has not been paid, or the lien creditor or servicer otherwise objects to the release of the mortgage. Notice shall be sent to the address stated on this form.

(Signature of settlement agent)

(Address of settlement agent)

(Telephone number of settlement agent)

(Current Virginia CRESPA registration number of settlement agent)

2. Certificate of satisfaction and affidavit of settlement agent.

a. If, within 90 days following the day on which the settlement agent mailed or delivered the notice of intent to release in accordance with this subsection, the lien creditor or servicer does not send by certified mail or guaranteed overnight delivery service to the settlement agent a notice stating that a release of the mortgage has been recorded in the clerk's office or that the obligation secured by the mortgage has not been paid in full or that the lien creditor or servicer otherwise objects to the release of the mortgage, the settlement agent may execute, acknowledge and file with the clerk of court of the jurisdiction wherein the mortgage is recorded a certificate of satisfaction, which shall include (i) the affidavit described in subdivision 2 b of this subsection and (ii) a copy of the notice of intent to release that was sent to the lender. The certificate of satisfaction shall include the settlement agent's currently active CRESPA registration number issued by the Virginia State Bar and shall note that the individual executing the certificate of satisfaction is doing so pursuant to the authority granted by this subsection. After filing or recording the certificate of satisfaction, the settlement agent shall mail a copy of the certificate of satisfaction to the lien creditor or servicer. The validity of a certificate of satisfaction otherwise satisfying the requirements of this subsection shall not be affected by the inaccuracy of the CRESPA registration number placed thereon or the failure to mail a copy of the recorded certificate of satisfaction to the lien creditor or servicer and shall nevertheless release the mortgage described therein as provided in this subsection.

b. The certificate of satisfaction used by the settlement agent shall include an affidavit certifying (i) that the settlement agent has satisfied, and possesses satisfactory evidence of payment of the obligation secured by the mortgage described in the certificate; (ii) that the lien of the mortgage may be released; (iii) that the person executing the certificate is the settlement agent or is duly authorized to act on behalf of the settlement agent; and (iv) that the notice of intent to release was delivered to the lien creditor or servicer and the settlement agent received evidence of receipt of such notice by the lien creditor or servicer. The affidavit shall be substantially in the following form:

## AFFIDAVIT OF SETTLEMENT AGENT

The undersigned hereby certifies that, in accordance with the provisions of § [55-66.3](#) of the Code of Virginia of 1950, as amended and in force on the date hereof (the Code) (a) the undersigned is a settlement agent as defined in subsection D of § [55-66.3](#) of the Code or a duly authorized officer, director, member, partner or employee of such settlement agent; (b) the settlement agent has satisfied the obligation secured by the mortgage and possesses satisfactory evidence of the payment of the obligation secured by the mortgage described in the certificate recorded herewith; (c) the settlement agent delivered to the lien creditor or servicer in the manner specified in subdivision E 1 of § [55-66.3](#) of the Code the notice of intent to release and possesses evidence of receipt of such notice by the lien creditor or servicer; and (d) the lien of the mortgage is hereby released.

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(Authorized signer)

### 3. Effect of filing.

When filed or recorded with the clerk's office, a certificate of satisfaction that is executed and notarized as provided in this subsection, and accompanied by (i) the affidavit described in subdivision 2 b of this subsection, and (ii) a copy of the notice of intent to release that was sent to the lender, lien creditor or servicer shall operate as a release of the encumbrance described therein and, if the encumbrance is by deed of trust or mortgage, as a reconveyance of the legal title as fully and effectively as if such certificate of satisfaction were a formal deed of release duly executed and recorded.

### 4. Effect of wrongful or erroneous certificate; damages.

a. The execution and filing or recording of a wrongful or erroneous certificate of satisfaction by a settlement agent does not relieve the party obligated to repay the debt, or anyone succeeding to or assuming the responsibility of the obligated party as to the debt, from any liability for the debt or other obligations secured by the mortgage that is the subject of the wrongful or erroneous certificate of satisfaction.

b. A settlement agent that wrongfully or erroneously executes and files or records a certificate of satisfaction is liable to the lien creditor for actual damages sustained due to the recording of a wrongful or erroneous certificate of satisfaction.

c. The procedure authorized by this subsection for the release of a mortgage shall constitute an optional method of accomplishing a release of a mortgage secured by property in ~~this~~ *the* Commonwealth. The nonuse of the procedure authorized by this subsection for the release of a mortgage shall not give rise to any liability or any cause of action whatsoever against a settlement agent or any title insurer by any obligated party or anyone succeeding to or assuming the interest of the obligated party.

## 5. Applicability.

- a. The procedure authorized by this subsection for the release of a mortgage may be used to effect the release of a mortgage after July 1, 2002, regardless of when the mortgage was created, assigned or satisfied by payment made by the settlement agent.
- b. This subsection applies only to transactions involving the purchase of or lending on the security of real estate located in ~~this~~ *the* Commonwealth containing not more than four residential dwelling units.
- c. The procedure authorized by this subsection applies only to the full and complete release of a mortgage. Nothing in this subsection shall be construed to authorize the partial release of property from a mortgage or otherwise permit the execution or recordation of a certificate of partial satisfaction.
- d. No settlement agent utilizing the process provided in this subsection for release of a mortgage may take an assignment from a lien obligor or his designee of the right to collect the \$500 penalty established in subsection A of this section.

§ [55-66.5](#). Releases made by court; costs and attorneys' fees.

A. Any person who owns or has any interest in real estate or personal property on which such encumbrance exists may, after ~~twenty~~ 20 days' notice thereof to the person entitled to such encumbrance, apply to the circuit court of the county or city in whose clerk's office such encumbrance is recorded to have the same released or discharged. Upon proof that the encumbrance has been paid or discharged or upon a finding by the court that more than ~~fifteen~~ 15 years have elapsed since the maturity of the lien or encumbrance, raising a presumption of payment which is not rebutted at the hearing, such court shall order the clerk to record a certificate of satisfaction or a certificate of partial satisfaction which, when so recorded, shall operate as a release of such encumbrance.

All releases made prior to June 24, 1944, by any court under this section upon such presumption of payment so arising and not rebutted shall be validated.

B. If the court finds that the person entitled to such encumbrance cannot with due diligence be located, and that notice has been given such person in the manner provided by § [8.01-319](#) or [55-66.10](#) or that tender has been made of the sum due thereon but has been refused for any reason by the party or parties to whom due, the court may in its discretion order the sum due to be paid into court, to be there held as provided by law, and to be paid upon demand to the person or persons entitled thereto. The court shall order the same to be recorded as provided in subsection A hereof, which certificate of satisfaction or certificate of partial satisfaction shall operate as a release of the encumbrance.

C. Upon a finding by the court that the holder of a mortgage or deed of trust which has been fully paid or discharged has unjustifiably and without good cause failed or refused

to release such mortgage or deed of trust, the court, in its discretion, may order that costs and reasonable attorneys' fees be paid to the petitioning party. This subsection shall not preclude a separate suit by the petitioning party for actual damages sustained by reason of such failure or refusal to release the encumbrance.

*Article 2.1.  
Mortgage Satisfaction.*

§ [55-66.8](#). *Applicability.*

*The procedure authorized by this article for the release of a mortgage may be used to effect the release of a mortgage regardless of when the mortgage was created, assigned, or satisfied by payment made by the settlement agent. The procedure authorized by this section for the release of a mortgage shall constitute an optional method of accomplishing a release of a mortgage secured by property in the Commonwealth.*

§ [55-66.9](#). *Definitions.*

*As used in this article, unless the context requires otherwise:*

*"Address for giving a notification" means, for the purpose of a particular type of notification, the most recent address provided in a document by the intended recipient of the notification to the person giving the notification. If the person giving the notification knows of a more accurate address, the term means that address.*

*"Day" means calendar day.*

*"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.*

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

*"Entitled person" means a person liable for payment or performance of the obligation secured by the real property described in a security instrument or the landowner.*

*"Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.*

*"Landowner" means a person that, before foreclosure, has the right of redemption in the real property described in a security instrument. The term does not include a person that holds only a lien on the real property.*

*"Notification" means a document containing information required under this article and signed by the person required to provide the information.*

*"Organization" means a person other than an individual.*

*"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.*

*"Recording data" means the date and deed book and page number that indicate where a document is recorded in the land records of the clerk of the circuit court pursuant to Chapter 6 (§ [55-106](#) et seq.).*

*"Residential real property" means real property that is used primarily for a dwelling for personal, family, or household purposes and is improved by one to four dwelling units.*

*"Secured creditor" means a person who holds or is the beneficiary of a security interest or that is authorized both to receive payments on behalf of a person that holds a security interest in residential real estate and to record a satisfaction of the security instrument upon receiving full performance of the secured obligation. The term does not include a trustee under a security instrument. The term includes "lien creditor" as defined in the Consumer Real Estate Settlement Protection Act (CRESPA) (§ [6.1-2.19](#) et seq.).*

*"Secured obligation" means an obligation the payment or performance of which is secured by a security interest.*

*"Security instrument" means an agreement, however denominated, that creates or provides for a security interest, whether or not it also creates or provides for a lien on personal property.*

*"Security interest" means an interest in residential real property created by a security instrument, securing payment, or performance of an obligation.*

*"Sign" means, with present intent to authenticate, accept, or adopt a document:*

- 1. To execute or adopt a tangible symbol; or*
- 2. To attach to or logically associate with the document an electronic sound, symbol, or process.*

*"State" means a state of the United States, District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.*

*"Submit for recording" means to deliver, with required fees and taxes, a document sufficient to be recorded under this article, to the office of the clerk of the circuit court pursuant to Chapter 6 (§ [55-106](#) et seq.).*

§ [55-66.10](#). *Notification; manner of giving and effective date.*

A. *A person gives a notification by:*

1. *Depositing it with the United States Postal Service or with a commercially reasonable delivery service, properly addressed to the recipient's address for giving a notification, with first-class postage or cost of delivery properly addressed to the recipient's address for giving a notification;*
2. *Sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient's address for giving a notification, but only if the recipient agreed to receive notification in that manner; or*
3. *Causing it to be received at the address for giving a notification within the time that it would have been received if otherwise given pursuant to subdivision A 1.*

B. *A notification is effective:*

1. *The day after it is deposited with a commercially reasonable delivery service for overnight delivery;*
2. *Three days after it is deposited with the United States Postal Service, first-class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery;*
3. *The day it is given, if given pursuant to subdivision A 2; or*
4. *The day it is received, if given by a method other than as provided in subdivision A 1 or A 2.*

C. *If this article or a notification given pursuant to this article requires performance on or by a certain day and that day is a Saturday, Sunday, or legal holiday under the laws of this state or the United States, the performance is sufficient if performed on the next day that is not a Saturday, Sunday, or legal holiday.*

§ [55-66.11](#). *Document of rescission; effect; liability for wrongful recording.*

A. *In this section, "document of rescission" means a document stating that an identified satisfaction or affidavit of satisfaction of a security instrument was recorded erroneously, the secured obligation remains unsatisfied, and the security instrument remains in force.*

B. *If a person records a satisfaction or affidavit of satisfaction of a security instrument in error, the person may execute and record a document of rescission. Upon recording, the document rescinds an erroneously recorded satisfaction or affidavit.*

C. *A recorded document of rescission has no effect on the rights of a person who:*

1. *Acquired an interest in the real property described in a security instrument after the recording of the satisfaction or affidavit of satisfaction of the security instrument and before the recording of the document of rescission; and*

2. *Would otherwise have priority over or take free of the lien created by the security instrument under the laws of the Commonwealth of Virginia.*

*D. A person, other than the clerk of the circuit court or any of his employees or other governmental official in the course of the performance of his recordation duties, who erroneously or wrongfully records a document of rescission is subject to liability under § [55-66.3](#).*

§ [55-66.12](#). *Secured creditor to submit satisfaction for recording; liability for failure.*

*A. A secured creditor shall submit for recording a satisfaction of a security instrument within 90 days after the creditor receives full payment or performance of the secured obligation. If a security instrument secures a line of credit or future advances, the secured obligation is fully performed only if, in addition to full payment, the secured creditor has received a notification requesting the creditor to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument.*

*B. A secured creditor who is required to submit a satisfaction of a security instrument for recording and fails to do so by the end of the period specified in subsection A is subject to liability under § [55-66.3](#).*

§ [55-66.13](#). *Form and effect of satisfaction.*

*A. A document is sufficient to constitute a satisfaction of a security instrument if it conforms substantially in form and content to the requirements of § [55-66.4:1](#) and it:*

1. *Identifies the security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded;*

2. *States that the person signing the satisfaction is the secured creditor;*

3. *Contains a legal description of the real property identified in the security instrument, but only if a legal description is necessary for a satisfaction to be properly indexed;*

4. *Contains language terminating the effectiveness of the security instrument; and*

5. *Is signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property.*

*B. The clerk of the circuit court shall accept for recording a satisfaction document, unless:*

- 1. An amount equal to or greater than the applicable recording fees and taxes is not tendered;*
- 2. The document is submitted by a method or in a medium not authorized by the laws of the Commonwealth of Virginia; or*
- 3. The document is not signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property.*

§ [55-66.14](#). *Uniform standards.*

*In consultation with the circuit court clerks, the Executive Secretary of the Supreme Court, and interested citizens and businesses, the Virginia Information Technology Agency shall develop standards to implement electronic recording of real property documents. The Agency shall consider standards and practices of other jurisdictions; the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association; views of interested persons and other governmental entities; and needs of localities of varying sizes, population, and resources.*

§ [55-66.15](#). *Relation to Electronic Signatures in Global and National Commerce Act.*

*To the extent permitted by law, this article modifies, limits, and supersedes the Federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., except that nothing in this article modifies, limits, or supersedes §§ 7001(c) and 7004 of that Act or authorizes electronic delivery of any of the notices described in § 7003(b) of that Act.*

- 2. That the provisions of this act, excluding section [55-66.14](#), shall not become effective unless reenacted by the General Assembly.*

### 3.3 Appendix C: Example of an Electronic Filing Agreement Electronic Filing Agreement<sup>2</sup>

The agreement is made between [Name] (County) (City) Circuit Court Clerk's Office (hereinafter "Clerk's Office") and \_\_\_\_\_ (hereinafter "Filer"), having its principal place of business at:

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The parties hereby enter into this Agreement, pursuant to § [17.1-258.2](#) through [17.1-258.5](#) of the *Code of Virginia*, for the purpose of granting Filer the right to electronically record land records documents, as defined in § [2.2-3808.2](#), with the Clerk's Office and to establish a method of payment for such filings. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **FILING/RECORDING ELECTRONIC DOCUMENTS.** Filer may electronically submit land records documents for recordation using the eRecording System listed in Exhibit A, attached hereto and incorporated by reference herein.
  2. **AGREEMENT TO PAY.** Filer agrees to pay recordation taxes, recording fees or clerks' fees assessed by the Code of Virginia in accordance with the procedures set out in Exhibit B.
  3. **NOTARIZATION AND ACKNOWLEDGEMENT.** Land records documents in order to be recorded shall comply with the requirements for notarization pursuant to §47.1 et. Seq. and §55-118.3 of the *Code of Virginia*.
  4. **NOTIFICATION OF SUBMISSION OF ELECTRONIC DOCUMENTS FOR RECORDATION.** The Clerk will provide an electronic or other written notification of including the date and time of the receipt of the electronic document to the Filer that the electronic document has been received by the Clerk, but not recorded.
  5. **REJECTION OF DOCUMENTS.** Electronic documents submitted for recordation through the eRecording System will be rejected if they fail to meet the image or file format specifications or security requirements of the eRecording System, or for failure to comply with the requirements as otherwise provided in the Code of Virginia. If an electronic document is rejected, an electronic or other written notification of rejection will be provided to the Filer.
  6. **TIME OF RECORDATION OF ELECTRONIC DOCUMENTS.** Electronic documents received by the Clerk are deemed filed as of the time the Clerk provides an electronic or other written notification to the Filer that an electronic document has been recorded.
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7. APPLICATION OF VIRGINIA LAW. The parties agree that, unless otherwise specified herein, the provisions of Virginia law shall apply including but not limited to the Virginia Uniform Electronic Transactions Act, the Virginia Uniform Real Property Recording Act and the Virginia Mortgage Satisfaction Act.

8. INDEXING REQUIREMENTS. Filer agrees to abide by the Indexing Requirements as published by the Clerk's Office. The current Indexing Requirements are attached hereto as Exhibit C and are incorporated by reference herein. The Indexing Standards are compatible with those established by the Property Industry Association (PRIA) for file formatting. Any changes to the Indexing Standards will be posted on the eRecording System.

9. EFFECTIVE DATE: This Agreement shall be effective upon execution of this Agreement by both parties, as evidenced by the later of the dates reflected below, and shall be effective for an initial term of one year.

10. AUTOMATIC RENEWAL. This Agreement shall automatically renew for a term of one year, unless either party gives a written notice to the other at least sixty (60) days in advance of the end of the initial or renewal term of this Agreement.

11. CONTACTS FOR FILER: Filer shall provide the Clerk's Office with an Administrative Contact (an individual familiar with the process of executing and filing Certificates of Satisfaction) and a Technical Contact (an individual familiar with the Filer's computing environment and capable of resolving any technical issues):

a. Administrative Contact Name: \_\_\_\_\_

i. Phone Number:

ii. Fax Number:

iii. Mailing Address:

iv. E-mail Address:

v. Other Contact Number(s):

b. Technical Contact Name: \_\_\_\_\_

i. Phone Number:

ii. Fax Number:

iii. Mailing Address:

iv. E-mail Address:

v. Other Contact Number(s):

WITNESS OUR SIGNATURES:

FILER: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

CLERK OF THE CIRCUIT COURT:

By: \_\_\_\_\_

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