

Circuit Court and Records

LOB #177:

LANDS, JUDGMENTS AND ARCHIVES DIVISION

Purpose

Because all functions of the Clerk's Office are mandated by the Code of Virginia, the primary purpose is to observe all Code-mandated duties related to the land records of Fairfax. Title 55 of the Code of Virginia, titled "Property & Conveyances," sets out 712 pages of practice and procedure for Virginia Real Estate Law, which includes statutes governing liens on real property, home owners (and condo) associations, subdivision of real estate, clear title, and real estate settlement. Title 58 of the Code of Virginia, entitled "The Virginia Recordation Tax Act," establishes statutory guidelines for the Clerk in his capacity as the Fairfax Recorder of Deeds. §58.1-800 further articulates the requirements for validly recording a land transaction, which includes various grantor and grantee recording taxes and a comprehensive catalogue of statutory exemptions. The Clerk now receives almost 40 percent of its land recordings through its Electronic Filing System (EFS), prescribed by Code at §17.1-258:3. Code of Virginia §17.1-294 further allows these public records to be placed on the Court Public Access Network (CPAN) database, but the General Assembly mandates exactly how secure the Clerk must keep this public remote access.

Virginia is a "Race/Notice" state, which means that if a subsequent good faith buyer arrives at the Courthouse and records his deed to a property before an earlier owner has recorded his interest, the first to record prevails. In Virginia, timely recording of your home purchase in the Clerk's Land Records Division plays a critical role in ownership of real estate. Once settlement documents are recorded, the digitized images become immediately available on the Court's CPAN database, showing who actually owns the land and protecting your rights in the home. Taken together, these real estate and public records access laws serve to put the public on notice of all fee-simple, leaseholder, lien, or easement rights, as against property physically located in Fairfax.

Description

All deeds, deeds of trust, mortgages, and easements which impact the ownership of real property in Fairfax and the transfer of those interests, are laid out in the Code of Virginia at Title 55. Homeowners' and Condo Association Acts, which spell out which documents need to be recorded in the Land Records, as well as real estate statutes regarding the various clouds on clear title, and all general rules of recordation of real property (including Virginia's Electronic Recording Act, which guides our Electronic Filing System) are also found therein. The Clerk's Office is mandated by Chapter 6, of Title 55 to accept land documents at the recording counter. Some of Fairfax's oldest land documents, like the Lord Fairfax Land Grant of 1739 (transferring the area now known as Great Falls to John Colvill), are kept in the Court's Archives, observing national best practices for the preservation of historic records. The earliest Court and Land documents date to the very beginning of Fairfax County and are some of Fairfax's finest colonial-era holdings.

The Clerk's Land Records and the Circuit Court Archives counters are open Monday through Friday from 8am to 4:30pm, and serves the entire Fairfax community, whether they are landowners, homeowners, lessors, title companies, researchers or even Fairfax County agencies (dealing with easements and condemnations). The Clerk is mandated by Title 17.1, Chapter 2 of the Code of Virginia, to make these land transactions open and fully public records, which can be submitted electronically, and which are then immediately searchable through the CPAN database; searchable remotely by subscription, or for free on-site at the Courthouse.

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Benefits

Per Article VII, Section 4 of the Constitution of Virginia, the Clerk of Circuit Court is Constitutional Officer, who is mandated to perform his ministerial duties as the Recorder of Deeds under §55 and §58.1-800 of the Code of Virginia (Real Estate and Land Recordation) in order to protect the Constitutional rights of land ownership and free alienability of real property. Through a strict observance of the law of Virginia (state-mandates,) the Court records all deeds, mortgages, trusts, plats, leases, and certificates of satisfaction relating to real estate, which allows the citizens of Fairfax a public record of the chain of title for their homes. Electronic filing is offered, which now accounts for almost 40 percent of recordings, which reduces the need to physically appear at the courthouse. Regardless of whether e-filed or filed at the counters, all land documents become digital images, posted into CPAN in real-time at the moment of recording, and CPAN is available 24-hours a day, seven days a week. This public record access allows Fairfax residents to research boundary lines, encumbrances, and ensure clear title to their home, at any hour of the day or night, in real-time. A well-run land record system also allows the title industry to have confidence in their research of the chain of title for all Fairfax properties, which, in turn, makes the purchase and sale of a home easier and more affordable for the citizens of Fairfax. Moreover, accurate and complete public records of real property benefits both the locality's property taxing authority and the citizens, helping assess the fair market value of all real estate in Fairfax.

Mandates

As mentioned above, Title 55 of the Code of Virginia, titled "Property & Conveyances," sets out 712 pages of practice and procedure for Virginia Real Estate Law, which includes statutes governing liens on real property, home owners (and condo) associations, subdivision of real estate, clear title, and real estate settlement. Title 58 of the Code of Virginia, entitled "The Virginia Recordation Tax Act," establishes statutory guidelines for the Clerk in his capacity as the Fairfax Recorder of Deeds. §58.1-800 further articulates the requirements for validly recording a land transaction, which includes various grantor and grantee recording taxes and a comprehensive catalogue of statutory exemptions. The Clerk now receives almost 40 percent of its land recordings through its Electronic Filing System (EFS), prescribed by Code at §17.1-258:3. Code of Virginia §17.1-294 further allows these public records to be placed on the Court Public Access Network (CPAN) database, but the General Assembly mandates exactly how secure the Clerk must keep this public remote access.

Trends and Challenges

Since the Recession of 2008, commercial and residential real estate in Fairfax has made an anemic recovery. Nonetheless, it is the Court's expectation that, as the national and state-wide economic indicators improve gradually over the next five years, land transactions will increase. Moreover, as more mixed-use development emerges around new Metro stations, Fairfax will see more high-density homes purchased and sold. Since the addition of three, new electronic-filing industry partners to the Court's EFS system, the agency has seen a 15 percent increase in electronically-filed recordings; with an estimated increase of 50 percent by next year.

Effective October 1, 2015, the Title and Land Records industry has a new federal consumer protection law to comply with; the shorthand for this new federal law is "TRID" (TILA-RESPA Integrated Disclosure). While much of this consumer rights law governs settlement agents, one of the HUD-1 estimates regards the Fairfax Recordation Taxes to be paid at our Land Records Division. As that law takes effect, the agency will see an increase in customer inquiries on the coversheet calculations and estimated Recordation Tax obligations for Fairfax residential closings.

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Resources

Category	FY 2014 Actual	FY 2015 Actual	FY 2016 Adopted
LOB #177: Lands, Judgments and Archives Division			
FUNDING			
<u>Expenditures:</u>			
Compensation	\$1,264,278	\$1,234,992	\$1,303,320
Operating Expenses	215,595	242,552	220,647
Total Expenditures	\$1,479,873	\$1,477,544	\$1,523,967
General Fund Revenue	\$2,784,512	\$2,682,223	\$2,629,241
Net Cost/(Savings) to General Fund	(\$1,304,639)	(\$1,204,679)	(\$1,105,274)
POSITIONS			
Authorized Positions/Full-Time Equivalents (FTEs)			
<u>Positions:</u>			
Regular	24 / 24	24 / 24	24 / 24
Total Positions	24 / 24	24 / 24	24 / 24

Metrics

Metric Indicator	FY 2013 Actual	FY 2014 Actual	FY 2015 Actual	FY 2016 Estimate	FY 2017 Estimate
Land Transactions Recorded	248,584	154,777	149,726	150,000	150,000

The Fairfax housing market has failed to make a significant recovery after the Recession, and (except for the 2013 3 percent refinance boom) the Land Records Division has seen fewer filings, year over year; dropping to 149,726 in FY 2015. The Federal Reserve did not raise rates in the fall of 2015. When the Federal Reserve does raise rates, the Land Records Division usually sees an inverse effect on recordation volume; as interest rates increase, land transactions decline.

Grant Support

The purpose of the Archives grant is to conserve four documents that are housed in the Clerk's Historic Records Center: a test oath from 1752, a pew deed from 1774 and Court Order Books from 1749 and 1819. The Historic Records Center is open to the public for genealogy, local history and other research. Having these documents and books conserved will allow better access to the material in the office, will allow the agency to share the early history of Fairfax County more easily, and display the items more frequently.