

Circuit Court and Records

LOB #182:

CUSTODIAN OF THE PUBLIC RECORD

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 maintenance of the public record of Fairfax. Article VII, Section 4 of the Virginia Constitution establishes the Office of the Clerk of Court and the Code of Virginia prescribes the Clerk's duties as custodian of the permanent, public record. The Clerk administers both the public land record and records relating to all civil and criminal cases. The Clerk also certifies the complete trial court record when cases are appealed to the Supreme Court or Court of Appeals. By Code, the Clerks serves as custodian of ballots and other election materials. The Clerk is mandated to keep an Order Book, a Judgment Book, and a Warrant Book, so that all people can read what the judges have ordered to occur in a certain case or investigation. The purpose of the Clerk's custodial role is, in sum, to offer the public an open and transparent government.

The Code of Virginia mandates that the Clerk, in his custodial capacity, observe certain document retention schedules, and it prescribes preservation standards and information technology standards for electronic preservation of digitized land and case documents.

Taken together, Title 8 "Civil," Title 19 "Criminal," Title 17 "Circuit Courts," and Title 24 "Elections" comprise the working majority of such preservation, custodial, and public records guideposts. With almost 48 million digital images of public records in the Court Public Access Network (CPAN) which is available 24 hours a day, the Office of the Clerk is responsible for the largest Oracle database in Fairfax. The criticality of the Clerk's custodial function as it relates to real estate 'chain of title,' ballot preservation, and the trial court's 'chain of evidence' cannot be overstated.

Description

Because the Circuit Court is a "Court of Record" it empanels juries and issues Findings of Fact and Conclusions of Law which, depending on the type of case, are appealable to the Court of Appeals or the Virginia Supreme Court. The Clerk must compile, preserve, and certify the official court record. By the Code of Virginia, the Clerk of Circuit Court maintains all pre-trial motions, criminal discovery, Court orders and trial transcripts. During a trial, the Clerk's Office marks and admits into record, all physical and demonstrative exhibits, assuming the "chain of custody" for all evidence admitted in the trial. Serving as the official custodian of all the chain of evidence during bench and jury trials, the Clerk's Office records what has been introduced into evidence by the parties and admitted into the record by the judge. This official record of the Clerk, serves as the basis for any appeal. If a criminal or civil trial is appealed, the Clerk must certify all the pleadings, orders, exhibits, and transcripts are complete and accurate for the higher court to consider.

Because the Orders of the Fairfax Circuit Court can be mandatory, confiscatory, or penal in nature, and can immediately impact a citizen's civil rights, the Clerk is mandated to keep Search Warrants, Orders, and Judgments in a "well-bound book" or electronically, for open inspection by the public. As the custodian of this public record, the Clerk offers secure, remote access to money judgments, charters, marriage licenses, trade names, deeds, mortgages, and criminal and civil case digests. The same information is publically available at the courthouse for research, inspection and copying.

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The perpetual preservation of land records is critical to the clear chain of title for all landowners of real estate in Fairfax. Because Virginia is a Race/Notice state, interest in real estate is protected at the moment of recording in the Office of the Clerk. Because timing of recording a real estate transaction is critical to the Fairfax landowner's right to the property, and because an accurate public record of all recorded land transactions puts the public on notice of existing encumbrances, the Clerk, as custodian of the Fairfax Land Records, impacts every homeowner in Fairfax. In FY 2015 the Clerk's Office has added several, national electronic filing vendors to its Electronic Filing System (EFS), resulting in a 15 percent increase in the number of recordings arriving through the EFS e-filing portal; with this expansion of e-submitters, almost 40 percent of all recordings in Fairfax are e-filed.

In Virginia, the Code of Virginia mandates that the Registrar of Elections must deliver all ballots to the Clerk of Court after the polls close. The Clerk takes custody of the ballots and election materials for safekeeping. In the case of a recount, the Circuit Court already has custody of the election materials for the recount.

Benefits

The Clerk of Circuit Court is the Constitutional Officer who is mandated to perform duties as the Court's recipient, custodian, and manager of all complaints, pleadings, bills, warrants, affidavits, motions, exhibits, and transcripts that are submitted into the official court record, for the life of the litigation. Because of the profound impact that a Circuit Court can have on a citizens' civil liberties, the General Assembly has mandated that all Orders, Decrees, Judgments, and Search Warrants are to be open for inspection in the Clerk's Office. Likewise, the Clerk is mandated to make land records open and available for inspection precisely because the public is allowed to know who owns real estate in Fairfax and to what degree there are encumbrances on a parcel. A well-run, well-maintained and open land records system increases the citizen's likelihood of ascertaining lines of credit, or otherwise collateralizing their real estate. Having an open and transparent court system is a benefit to all citizens of Fairfax.

Mandates

As mentioned above, Article VII, Section 4 of the Virginia Constitution establishes the Office of the Clerk of Court and the Code of Virginia prescribes the Clerk's duties as custodian of the permanent, public record. The Clerk administers both the public land record and records relating to all civil and criminal cases. The Clerk also certifies the complete trial court record when cases are appealed to the Supreme Court or Court of Appeals. By Code, the Clerks serves as custodian of ballots and other election materials. The Clerk is mandated to keep an Order Book, a Judgment Book, and a Warrant Book, so that all people can read what the judges have ordered to occur in a certain case or investigation. The purpose of the Clerk's custodial role is, in sum, to offer the public an open and transparent government.

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Trends and Challenges

The newest trend in digital records preservation is the industry movement toward "cloud-based computing." While the cost-efficiency of this technology is worth exploring, security of the digital public record is the Clerk's priority. The Court's custodial function demands secure, on-site servers, and secure

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alternate-site servers. Another trend in records preservation and court management is paperless courts. The Clerk's Office is scanning all pleadings, motions, and orders for all public case files in the Court's custody. This e-document trend will only increase over the next few years, as the Court implements Electronic Case Filing. However, with this new technology (and all its efficiency) comes the attendant staff training and workflow reorganization, which will be a substantial amount of work on the part of the Office of the Clerk. The agency has already begun this process with the recently initiated "E-Order" process. The Clerk's Office emails Final Orders to the parties of record, substantially increasing the efficiency of getting important records to the citizens of Fairfax.

Resources

Category	FY 2014 Actual	FY 2015 Actual	FY 2016 Adopted
LOB #182: Custodian of the Public Record			
FUNDING			
<u>Expenditures:</u>			
Compensation	\$1,158,850	\$1,132,076	\$1,194,814
Operating Expenses	215,596	242,553	220,648
Total Expenditures	\$1,374,446	\$1,374,629	\$1,415,462
General Fund Revenue	\$0	\$0	\$0
Net Cost/(Savings) to General Fund	\$1,374,446	\$1,374,629	\$1,415,462
POSITIONS			
Authorized Positions/Full-Time Equivalents (FTEs)			
<u>Positions:</u>			
Regular	17 / 17	17 / 17	17 / 17
Exempt	5 / 5	5 / 5	5 / 5
Total Positions	22 / 22	22 / 22	22 / 22

Metrics

Metric Indicator	FY 2013 Actual	FY 2014 Actual	FY 2015 Actual	FY 2016 Estimate	FY 2017 Estimate
Total number of digital images/ public records	44,986,502	46,397,861	47,705,315	49,100,000	50,500,000

At the close of FY 2015, the Clerk had 47,705,315 public records available for inspection on the Court Public Access Network (CPAN) database. Every year, the Court sees approximately a 3 percent increase in total images; a trend which should hold true over the next several years.

As noted earlier in the Trends section of LOB #180, Courtroom Operations, Fairfax citizens have shown an overwhelming preference for electronic filing of their annual jury questionnaires. For the 2014 term of court, 19,285 citizens e-filed their survey; for the 2015 term 20,202 potential jurors e-filed; and already 18,364 people have e-filed their juror questionnaire in the not-yet completed 2016 term of court. Please note that the Circuit Court's Term of Court does not follow the County's fiscal year calendar.