



Fidelity National Title Insurance  
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## VIRGINIA UNDERWRITING BULLETIN

2015 - 4

July 2, 2015

### LEGISLATIVE UPDATE 2015

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The 2015 Virginia General Assembly gave us a number of important new laws related to real estate and title insurance. All are effective July 1, 2015. For more detailed information on these statutory changes, go to the General Assembly website at <http://viriniageneralassembly.gov/> and insert the bill number under "Track a 2015 Regular Session Bill."

**Mechanics Lien Waivers from Subcontractors.** Enacts new Va. Code §11-4.1:1 and amends Va. Code § 43-3 to provide that subcontractors and material suppliers may not waive their lien rights in a contract executed prior to providing any labor, services or materials, and any such provision is null and void. SB 891

**Sale of Real Estate by Heir or Devisee.** Amends Va. Code § 64.2-534 to clarify that real estate sold or conveyed as part of a decedent's estate is not liable to persons entitled to be paid out of such real estate if the sale was made more than one year after the death of the decedent, the conveyance was bona fide, and no debts or demands report has been filed prior to the sale. The bill returns the law to its state prior to the recodification of Title 64.1 in 2012. SB 1064

**Private Roads.** Enacts new Va. Code § 55-50.4, which provides that notwithstanding any provision of a recorded deed or plat to the contrary, a private road serving a subdivision of 50 or fewer lots may be dedicated for public use and may be taken into the secondary state highway system if, prior to making such dedication and before requirements for acceptance of the road into the secondary state highway system are met, the owner of the fee interest in such private road obtains the written consent of (i) every lot owner in the subdivision whose lot is served by the private road and (ii) the holder of any restrictive covenant or easement rights over and concerning the private road. Such consent shall be recorded in the land records of the clerk's office of the circuit court of the county wherein the private road is located. SB 1312

**Multijurisdictional Sale of Tax-Delinquent Property.** Amends Va. Code § 58.1-3965 to allow the suit for judicial sale of tax-delinquent property located in multiple jurisdictions to be brought in one locality. The consent of the treasurer of each locality within which the property is located is required. HB 1567

**Advertisement for Time-share Foreclosure.** Amends Va. Code § 55-59.3 to allow the optional streamlined advertisement of a time-share property being foreclosed upon. HB 1794

**Recording Tax Calculation.** Amends Va. Code § 58.1-803, -809 and -812 to provide that recordation tax on any deed of trust that modifies or is supplemental to an existing deed of trust will

be calculated only on that portion of the new face amount secured that is in addition to the “original debt or obligation” on which the tax has been paid, instead of on the “existing” debt or obligation, and regardless of whether the existing debt is with the same lender. This means that it will no longer be necessary to provide to the clerk any proof of the amount of the existing debt or outstanding principal balance. Instead, the supplemental instrument, or any cover sheet submitted with the supplemental instrument, shall include the original principal amount of the obligations secured by the prior instrument and the deed book and page number, or instrument number, of the prior instrument. The amendment also clarifies that on deeds of trust securing amounts greater than \$10 million, the tax shall be calculated using the rate scale in subsection F starting at the point on the scale that applies to the first dollar in excess of the amount of the original debt secured by the prior instrument. For example, if tax was paid on the original amount of \$9,000,000, and the modification increases the amount secured to \$15,000,000, the first \$1,000,000 of the increase will be taxed at the \$0 to \$10,000,000 scale, and \$5,000,000 will be taxed at the \$10,000,000 to \$20,000,000 scale.

In addition, the amendment extends the current treatment of a single deed of trust conveying property within and outside Virginia to separate deeds of trust conveying property in several states to secure the same obligation. HB 2161

**Note: Please check with your local clerk’s offices on to how to handle recordings under the amended statutes.**

**Tenants by the Entirety Protection from Creditors.** Amends Va. Code § 55-20.2 to clarify that the immunity from creditors of the proceeds of the sale of property held as tenants by the entireties also applies where the property was formerly held as tenants by entirety and then conveyed by the spouses to their joint or separate trusts, so long as 1) they remain married to each other; 2) it continues to be held in the trust or trusts, including where both spouses are the beneficiaries of one trust or where each spouse is the beneficiary of a separate trust. The amendment also provides that immunity may be waived as to any specific creditor under certain conditions. SB 762

Please contact your underwriting advisor with questions or comments on these statutory changes. View our Virginia Office Staff Directory at [www.va.fntg.com](http://www.va.fntg.com).

**Agency agreements require that agents follow all underwriting guidelines. Alerts and bulletins issued by the companies contain underwriting guidelines. All agency material, alerts and bulletins must be properly disseminated to your staff and retained for future review and reference.**

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Chicago Title Insurance Company  
Commonwealth Land Title Insurance Company  
Fidelity National Title Insurance Company  
**Virginia State Office: (800) 221-0509**