

**REPORT OF THE
VIRGINIA COURT CLERKS ASSOCIATION
ON THE
PRESERVATION OF NON-ESSENTIAL RECORDS
(H. J. R. 21, 1960)**



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REPORT OF THE
VIRGINIA COURT CLERKS ASSOCIATION
ON THE
PRESERVATION OF NON-ESSENTIAL RECORDS

To:

HONORABLE J. LINDSAY ALMOND, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Sirs:

In compliance with House Joint Resolution No. 21, Acts of Assembly of 1960, which provides that a report be made to you by The Virginia Court Clerks' Association of its study concerning the preservation of certain documents filed in the offices of the Clerks of Courts of Record, including such drafts of legislation as it deems appropriate to effectuate its recommendations, I beg to submit the following.

Respectfully,

Lewis H. Vaden, President

Virginia Court Clerks Association

REPORT OF COMMITTEE ON PRESERVATION
OF NON-ESSENTIAL RECORDS

In accordance with the directive contained in Joint Resolution of the General Assembly No. 21, adopted at its 1960 session, directing the Virginia Court Clerks Association to make a study concerning the preservation of certain documents filed in the Offices of the Clerks of Courts of record, the Committee appointed by the Virginia Court Clerks Association hereby submits the following study and recommendations:

I.

SCOPE OF STUDY

House Joint Resolution No. 21, provides in substance for a study of the following:

(a) The statutes which set forth the period of time documents and other papers filed in the offices of Clerks of Courts of record establish and maintain a lien upon the property referred to in such documents; and the matter of whether or not legislation should be enacted to establish a point beyond which such Clerks would be permitted to destroy documents where the lien created thereunder no longer exists.

(b) In the case of other papers, the extent to which the public interest is protected by the requirements of continued preservation and whether legislation should be enacted to establish a point beyond which such Clerks would be permitted to destroy such documents when the public interest no longer requires the preservation of such records.

(c) This study is further limited in that it shall not involve documents relating to real estate, wills, probate, and other matters involving the personal rights or privileges of individuals, nor any papers or documents constituting a record of any proceedings in any Court served by such Clerk's Offices, provided, however, that the Virginia Court Clerks Association may include in such study and recommendations, the question of destruction, after an appropriate period, of criminal warrants involving misdemeanors and proceedings thereon.

II.

In the consideration of inquiry (a) above, we are limited to liens other than those affecting real estate. This would seem to resolve itself into the consideration of (1) crop liens, (2) chattel deeds of trust, and (3) conditional sales contracts.

1. CROP LIENS:

Discussion: Crop liens are controlled by § 43-27 of the Code of Virginia, which provides for the docketing of the written agreement creating such lien in the "Crop Lien Book" and duly indexing same. Such docketing creates legal notice to purchasers of the land whereon the growing crop is located, and creditors.

This lien is only upon the crop which may be made or seeded and/or fruit or other crops maturing during the year in or about the cultivation of which the advance so made has been, or was intended to be expended.

It seems questionable if the lien extends to the crop after the severance is made or the harvesting thereof. It would be most difficult to follow the identity of a crop once removed from the land whereon it was grown and placed in a storage warehouse or grainary. If this be so, it would appear that the extent of the effective life of the lien would be one year at the most, and any necessity or reason for the preservation of the lien would be eliminated.

Recommendation: That the destruction of the papers creating such crop liens be authorized after they have been filed and docketed more than 12 months, and that the docket books (Crop Lien Books) be destroyed after the last entry therein has been made more than 12 months.

Suggested legislation is hereto attached as Exhibit A.

2. CHATTEL DEEDS OF TRUST:

Discussion: All chattel deeds of trust other than agricultural chattel deeds of trust are now recorded and indexed in the current Deed Books and the originals returned to the grantee or beneficiary so that there is no practical way of deleting these from the permanent records of the Clerk's Office. There is not a great deal of activity in this field and remedial action is not deemed necessary.

2a. AGRICULTURAL CHATTEL DEEDS OF TRUST:

§ 43-53 of the Code of Virginia now requires the indexing and docketing of such instruments in a separate book entitled "Agricultural Chattel Deed of Trust Book" and the original copy of the instruments are filed in the Clerk's Office and there remain until payment, at which time they may be returned upon request.

As these liens cover almost all forms of agricultural livestock and equipment, the life or use of which may extend over a period of many years, the practical life of the lien is indeterminate.

The legal life would appear to be 20 years from the date of maturity of the obligation as in other deeds of trust controlled by §§ 8-11 and 12 of the Code of Virginia.

Recommendation: It is recommended that legislation be enacted permitting the destruction of the docket books and the original instruments after twenty years from the date of maturity of the obligation thereby secured.

Suggested legislation is hereto attached as Exhibit B.

III.

In the matter of "other papers" and the protection of the public interest by the preservation thereof, such "other papers" would primarily consist of the following:

- (1) Official receipt books and cancelled checks of the Clerk.
- (2) Settlement of accounts of Fiduciaries (personal representatives, curators, guardians, trustees, etc.) and their inventories and appraisements, accounts of sale, etc.
- (3) Delinquent tax records.
- (4) Conditional sales contracts.
- (5) Misdemeanor records.
- (6) Executions returned to the courts of record marked "no effects".
- (7) County Court records in civil cases not appealed.

1. OFFICIAL RECEIPT BOOKS, CANCELLED CHECKS OF FUNDS OF THE CLERKS OF COURTS OR RECORD:

Discussion: Under present law, there is no provision for the destruction of these records. While it is believed that very few Clerk's Offices have actually preserved all of these records since the establishment of the office, such records, like old soldiers, just fade away, unfortunately at the risk of the Clerk. Obviously, there must be some point in time when these records become valueless. This point would appear to be after audit, but we must realize that often a discrepancy, once determined, will run back into previously approved audits, and that some question may come up at a later date that would require reference to such receipts or cancelled checks.

Honorable J. Gordon Bennett has been consulted on this proposal and has suggested that the receipt books not be destroyed for a period of five (5) years after audit and that the cancelled checks and bank statements be preserved for ten (10) years after audit and further that such destruction be conditioned upon the consent or approval of his office. This would prevent the destruction of any material pertaining to matters that might be under investigation by his Department.

Recommendation: That legislation be enacted permitting the destruction of the official receipt books five (5) years after approval by audit

and that the cancelled checks and bank statements of the Clerks of Courts of record (specifically excluding records of funds under the control of the Court), ten (10) years after approval by audit, and with the consent of the Auditor of Public Accounts of Virginia.

Proposed legislation is hereto attached as Exhibit C.

2. SETTLEMENT OF ACCOUNTS OF FIDUCIARIES, INVENTORIES AND APPRAISMENTS.

Laws controlling same:

(a) § 26-35 of the Code of Virginia provides for the recordation of all fiduciary accounts confirmed in the will books or in a fiduciary book. (§ 26-36 further provides that the Court may require the filing of the account on special paper or form which may then be bound in a special book and indexed).

(b) § 17-46 provides that the judge may authorize the clerk to store in some suitable place, other than the Clerk's Office, after 15 years conditional sales, delinquent capitation tax books, and personal property books.

After 15 years, all inventories, appraisements, lists of sales and settlements of accounts of Executors, Administrators, curators, trustees and other fiduciaries which have been recorded per § 17-63 and all Bonds recorded in Bond Books per § 17-62 may, by order of Court, be stored in like manner.

(c) § 26-35.1 (1956) provides that after the filing, confirmation and recording of receipts in accordance with § 26-35 (Fiduciaries generally), the Clerk shall, on the request of the fiduciary, return the original to such fiduciary and further, that all reports remaining in the office three (3) years after confirmation may be destroyed, except in the case of the binding of the original in accordance with § 26-36.

(d) § 26-37 (1950), provides for the return of vouchers and allied papers to the fiduciary upon request after confirmation and that the Clerk, with the approval of the Court may destroy vouchers, *copies of settlements* and copies of other papers relating to estates, when the matters concerned have been closed with final settlement for more than five (5) years and appropriate recordations have been made.

(e) § 26-16.1 provides that all inventories filed with the Clerk and recorded per § 26-14 and 16 may, after recordation, be destroyed or returned to the fiduciary. All original accounts of *sale* filed with the Clerk and recorded per § 26-15 and 16, (relating to Trustees only) after same have been confirmed, recorded, and indexed, may be returned to the fiduciary upon his request. All original accounts of sale remaining after three (3) years from confirmation may be destroyed by the Clerk (except those recorded by binding).

Discussion: From the above, it is apparent that there is an overabundance of statute law concerning the disposition of these documents after they have been recorded. It would seem advisable to consolidate some of these statutes and have one statute dealing with the matter in clear and concise terms. Where the recordation is in the form of a facsimile copy by a photographic or duplication process, (thus eliminating the possibility of clerical error, denial of signature, etc.) it would seem that the fiduciary accounts, both trustees sales as well as other fiduciary

accounts could be returned upon request of the fiduciary or destroyed upon proper recordation.

Recommendation: That legislation be enacted repealing those portions of §§ 26-35.1; 26-37; and 26-16.1 dealing with the preservation of the original copies of inventories, appraisements, and fiduciary accounts including trustees sales and that a new statute be enacted providing for the return of all such papers after recordation to the fiduciary filing same upon his request, or if same be recorded, by facsimile reproduction process, same be destroyed if the return thereof was not requested at the time of filing for recordation, and in any event, to be destroyed after three (3) years.

Copy of proposed legislation is hereto attached as Exhibit D.

3a. CAPITATION TAX RECORDS AND PERSONAL PROPERTY BOOKS

Discussion: § 26-35 provides for storage of these records after 15 years, in some suitable place other than the Clerk's Office, upon order of the Court. Such "suitable place" is often unavailable and to make such truly suitable and the records therein accessible to the public would be tantamount to an addition or annex to the Clerk's Office. To stuff such records in some place with no security against molestation, deterioration or fire with no system or control for indexing purposes, would, in fact, be equivalent to destruction and merely a farce.

Therefore, to be realistic, we should admit that such records, once so stored, will never be of any practical use to the public and might as well be destroyed. Such records in the past may have had some public value for "ancestor hunters" but today, with full vital statistic records, social security records, such records now being compiled and preserved will not be used.

The personal property books are not prepared on quality paper and not bound for permanency and with any use would soon become illegible. Fortunately, they receive little or no use after the first year. This lack of use is further indication that the preservation of some would serve no public interest.

Recommendation: That such records be destroyed after six (6) years from penalty date.

Proposed legislation is attached hereto as Exhibit E.

3b. DELINQUENT REAL ESTATE TAX RECORDS

§ 58-984 of the Code of Virginia provides for the recordation of all delinquent taxes in the Clerk's Office in a book or visible card system. Statutes further provide that payments made to the treasurer after such recordation but prior to sale shall be reported to the Clerk's Office and so noted on the book or card system. Proper records or notations must also be made of any redemptions made after sales to the Commonwealth as well as redemptions from individuals after sale by the Commonwealth to them.

Discussion A vast majority of the delinquencies are paid to the Treasurer prior to sale of the land by the Commonwealth and such payments are so certified to the Clerk and noted on the records. The lien created by the delinquency is thus extinguished. It is not purchased or assigned but extinguished regardless of who may be the party making payment. Therefore, there is absolutely no necessity for the preservation

of this entry of delinquency and payment. To delete such entries from a bound book would be impossible but to remove same from the visible record system and destroy same would be quite simple and of great assistance in conserving space.

Recommendation: That § 58-984 be amended to permit the destruction of those records of delinquent taxes that have been paid to the Treasurer prior to sale, when such records are kept in the Clerk's Office by the visible card system.

Proposed legislation is hereto attached as Exhibit F.

4. CONDITIONAL SALES CONTRACTS

Discussion: Under current statutes (§ 17-46), conditional sales contracts that have been docketed more than 15 years may be stored in some suitable place other than the Clerk's Office after 15 years upon the authorization of the Judge. As previously discussed in dealing with other matters, this is not a real solution of the problem in that there is seldom a suitable place available nor does it offer any relief for posterity. Some Clerk's Offices are docketing and preserving these documents by the thousands each year and a cut-off date must be established.

This is one of the most space consuming records that the Clerks have to contend with and it is of vital importance to find some satisfactory solution to the problem. Conditional sales cover only personal property and the vast majority deal with items that have a useful life of not more than ten (10) years. Most such contracts mature in less than three (3) years. Even if the obligation contained in said contract was executed under seal, its legal enforceable life would only be ten (10) years after the maturity of the obligation thereby secured.

The Attorney General of Virginia was consulted in this matter and his advice is herein quoted: "I would suggest careful consideration of any legislation which would permit the destruction of such records prior to the expiration of a twenty year period from the date on which the contract was executed, since there is a possibility that the destruction of the records within a shorter period of time may defeat the rights of the contract." "Another way in which this matter might be handled would be to have a saving provision in the statute which would preserve the right in the contract to the parties thereto, notwithstanding the fact that the destruction of the same is done in accordance with the statute."

The second suggestion of the Attorney General seems to be the best.

Basically, the conditional sale concept was initiated and adopted to give a cheap informal method of preserving a lien or charge upon expendable personal property against other creditors or purchasers. Ninety-nine per cent of the property covered by these contracts fall within this category. Sometimes, large machinery of a rather permanent nature is also so covered. This type of machinery, duly installed in plants and semi-permanent locations should actually be covered by a lease-sale agreement or by a chattel deed of trust. The state of Virginia is losing a large source of revenue when it permits the legal protection of a \$250,000.00 transaction for a mere 50¢ docketing and filing fee. If this were handled as a deed of trust or lease, the recording tax to the commonwealth would amount to \$375.00. Under the present system, the Commonwealth, through the local governments is being put to excess expense to preserve millions of unnecessary documents in order to afford protection to a few that

are using the conditional sales system for purposes for which it was not intended.

Recommendation: That legislation be enacted permitting the destruction of all conditional sales contracts filed in the Clerks' Offices after 15 years, and further providing that such destruction shall not affect the rights of enforcement as between the parties to said contract.

Proposed legislation is hereto attached as Exhibit G.

5. MISDEMEANOR RECORDS—WARRANT AND MISCELLANEOUS PAPERS

Discussion: At the present time, the complete record of all misdemeanor trials must be permanently preserved. A brief consideration of the volume of such cases handled by the County and Municipal Courts and the terrific increase that has occurred in the past 15 years will make it obvious that these records are creating an ever increasing storage problem. In some courts they are collecting by the thousands per month. If these records were essential we would have to solve the problem in some very expensive manner, but there seems to be little or no public necessity for such preservation. It is not of earth shaking consequences that John Doe was convicted of failing to observe a stop sign or that 20 years ago he was charged with being drunk in public, and certainly, there is no need that these minor deviations from the straight and narrow path be preserved for posterity. Even the recording Angel must, from time to time, expunge his records of such trivial derelictions. Of course, these records must be kept a certain length of time but 20 years would seem to be entirely adequate. The lien of the unpaid judgments would expire at that time.

Recommendations: That legislation be enacted providing that all papers in all misdemeanor cases which had been tried may be disposed of 20 years after date of trial.

Proposed legislation is hereto attached as Exhibit H.

6. EXECUTIONS RETURNED TO COURTS OF RECORD MARKED, "NO EFFECTS"

Discussion: The lien of an execution or Fi. Fa. on tangible property ceases upon the return day thereof if no levy is made thereon. It's inchoate lien on intangibles extends for the full 20 years but the manner or nature of the return or disposition of the execution is not material. There is no current statute permitting the destruction of these executions returned, "No Effects" at any time and they are becoming a storage problem. Obviously, they have no permanent value so the sole question for determination is: When does the public interest or necessity for preservation cease?

The facts of issue of such execution and the fact of the "No Effects" return (which, incidentally, formally had an effect in the life of the judgment) duly noted in the Judgment Docket Lien and Execution Book would seem to establish the fact of such issuance and return and the necessity of preserving such original execution would cease.

Recommendation: That legislation be enacted permitting the destruction of all executions returned, "No Effects" after the issuance and nature of the return on such execution has been duly noted in the Judgment Lien Docket and Execution Book for a period of two (2) years.

Proposed legislation is hereto attached marked Exhibit I.

7. COUNTY COURT RECORDS IN CIVIL CASES NOT APPEALED

Discussion: While the above described papers are not within the scope of the inquiry and study as defined by House J. R. No. 21, the rapid accumulation of such papers poses a real and pressing problem, which, projected over the years, will readily be recognized as monumental.

§ 16.0-118 of the Code of Virginia provides for the destruction of certain of these papers or warrants. The major provision of that Section deals with those cases where "judgment was entered in such case but the right to issue an execution or bring a scire facias or an action on such judgment is barred by § 8-396 and 8-397 of the Code".

Because of the language of § 8-396, it is almost impossible for the clerk to determine when action is or is not barred on the warrant or judgment unless each is inspected on an individuals basis and checked against the Judgment Lien Docket and Execution Book, particularly in the case of those judgments granted prior to 1948. This would be so time consuming as to be impractical. Furthermore, the Clerk would have to make the legal determination of the enforceability of the judgment at his risk. It would therefore appear that the Clerks are in the situation of Mark Train's traveler when confronted with the sign, "Suffering stranger, proceed at your peril". The only practical solution is to devise some system whereby the civil warrants may be destroyed after having been filed in the Clerk's Office of the Court of record a fixed number of years.

To permit such procedure would probably require material changes in the statutes relative to judgments granted in Courts not of record. Present substantive law draws no distinction between the life of a judgment of a court of record and of a court not of record but the administrative handling of the two are quite different.

The court of record judgment is entered in the Judgment Lien Docket Book as a matter of course 21 days after being granted. The judgment of a court *not* of record is *never* required to be docketed in the Judgment Lien Docket Book but may be so docketed on an abstract or from the original warrant.

The routine procedure for such lower court warrants is that they are forwarded to the court of record in large batches, periodically, and there indexed in a separate book and filed. These records have no reference as to whether abstracts are also docketed in the Judgment Lien Docket Book. If in the Judgment Lien Docket Book by abstract, an execution or other proceedings may be issued therein. If not so docketed, presumably an execution could be issued on the original judgment but how such issuance and return would be shown is questionable. Under present statutes, executions can be issued for a two-year period from either the court of record or the court not of record. The court of record often winds up with the abstract docketed in the Judgment Lien Docket Book and filed, and the original warrant filed in the routine manner with the warrants that are periodically forwarded by the lower court.

To avoid confusion, no execution should be issued and no entry made in the Judgment Lien Docket Book by the court of record until the original papers are duly filed in said court and such warrant or papers should be placed in a separate file at the time of such docketing or issuance of execution.

All warrants or judgments filed in the court of record and not so docketed *should* be unenforceable after 10 years from the date of judgment and the destruction thereof permitted.

Under these circumstances, there would be two separate systems of files, one containing those live and enforceable judgments, good for twenty years, and the other containing those on which no action had been had for 10 years, most of which would have been satisfied, forgotten, parties removed or deceased, or incapable of satisfaction for some other reason.

Recommendation: That legislation be enacted limiting the enforceable life of civil judgments of courts not of record to 10 years, except that when said judgments have been duly filed and docketed in the Judgment Lien Docket Book of the court of record for such court not of record, within said 10 year period, the enforceable life of such judgment shall be controlled by §§ 8-396 and 8-397 of the Code, and provided further that such judgments which are no longer enforceable by reason of the 10 year limitation above described, may be destroyed by the clerk in whose office the same is filed.

Proposed legislation to accomplish the above is hereto attached as Exhibit J.

Respectfully submitted,

THOMAS R. MILLER

WILLIAM E. SANDIDGE

VIVIAN ANDERSON

WILLIAM COCKE

CHARLES N. BOOTH

JESSE CLIFT

H. C. DeJARNETTE, Chairman

§ 43-27.1. Any agreement evidencing a lien on crops required by § 43-27 to be docketed in a clerk's office may be destroyed by such clerk after twelve months from the date the same is docketed in his office. Any "Crop Lien Book", together with the index thereto, required by § 43-27 to be kept in a clerk's office, may be destroyed by such clerk after twelve months from the date the last entry has been made therein, provided the same is replaced with a similar book and index for the recordation of current liens.

Reference: Recommendation II-1, p. 2

§ 43-53.1. Any agricultural chattel deed of trust book, together with the index thereto, required by § 43-53 to be kept in the office of a clerk of court, and any instrument filed for docketing therein, or copy thereof, may be destroyed by such clerk after twenty years from the date of maturity of the most recent obligation evidenced thereby.

Reference: Recommendation II-2a, p. 3

§ 17-46.1. The clerk of each court of record shall maintain in his office all official receipt books showing receipt of any funds in his custody, all cancelled checks showing payments from any such funds, and all statements of bank accounts in which funds of the clerk's office are deposited. Such books, checks and statements shall be maintained until they have been audited by the Auditor of Public Accounts, and for a further period of five years, in the case of receipt books, and ten years, in the case of cancelled checks and bank statements. Thereafter the clerk may, with the approval of the Auditor of Public Accounts, destroy such records.

Reference: Recommendation III-1, p. 5

§ 26-37. *All inventories and original accounts of sales filed with the clerk as required by §§ 26-14 and 26-16, all reports filed with the clerk under § 26-35, when the same have been actually recorded by the clerk, compared, indexed, and confirmed as respectively required by law, and all vouchers or other evidence filed with the commissioner, the court or the clerk at the time of confirmation of an account, and not required as evidence of any further matter of inquiry pending before the court or the commissioner, shall upon request made at the time of filing the same be returned by the commissioner or by the clerk of the court to the fiduciary or other person who filed the same.*

The clerk of court, with the approval of the court, by an order duly entered may destroy * *any papers mentioned in the first paragraph of this section or any other papers relating to estates, when the matter concerned has been closed with final settlement for more than * three years and appropriate recordations have been made; provided, however, that nothing in this section shall apply to original documents recorded by binding.*

Note: §§ 26-16.1 and 26-35.1 of the Code of Virginia are to be repealed.

Reference: Recommendation III-2, p. 7

§ 17-46. The judge of any court in whose clerk's office any contract of sale, or sale, under the provisions of §§ 55-88 to 55-90 has been admitted to record may, when such contract of sale or sale has been on record for at least fifteen years in such clerk's office, * authorize and require such clerk, by an order of record, to * *destroy* all such contracts of sale, sales and books containing the same * *provided, that such destruction shall not*

affect the right of enforcement of any such contract as between the parties thereto.

Delinquent capitation tax books and personal property tax books maintained in any clerk's office may, with the approval of the State Tax Commissioner and the Auditor of Public Accounts be destroyed by such clerk after six years from the date on which penalty accrued on all delinquent taxes shown therein.

After a period of fifteen years * the court may * by order entered of record authorize and require the clerk, to store * at some suitable place other than in such clerk's office, *the books in which inventories, appraisements, lists of sales and settlements of accounts of executors, administrators, curators, trustees and other fiduciaries* * have been recorded as provided by § 17-63, and * *the bond books* * required by § 17-62*. Upon the entry of such order the clerk shall thereupon store such * books * in such manner as the court in the order may direct.

Reference: Recommendations III-3a, p. 8; III-4, p. 10

§ 58-985. All officers thereafter collecting any such delinquent taxes or levies on real estate shall at least monthly transmit to the clerk a list of the collections under oath, and the clerk shall record and index the list of payments in the book hereinbefore mentioned. *Where such list is kept in a visible card index file, the clerk may, at the time of entry of the records of payments, remove from the file the cards on which such payments have been noted; and such cards may, on certification by the Auditor of Public Accounts that the same are no longer needed for audit, be destroyed.*

Reference: Recommendation III-3b, p. 8

§ 8-417. Upon the return of such writ of fieri facias by the officer to the clerk's office or to the court to which it is returnable, it shall be the duty of the clerk thereof to enter the return of such officer on the execution book or judgment docket wherein such execution is entered, as the case may be, giving the date thereof. *Any such writ, returned by the officer with a notation that the money cannot be made may, when duly entered by the clerk on the execution book or judgment docket, be destroyed.*

Reference: Recommendation III-6, p. 12

§ 16.1-130. For each court not of record having jurisdiction of criminal matters there shall be a criminal docket, on which shall be entered all cases tried and prosecuted and all matters coming before the court, and the final disposition of the same, together with an account of costs and fines assessed. *Such dockets shall be maintained as public records for a period of twenty years, after which they may be destroyed.*

§ 16.1-138. In any case in which the defendant is permitted by the judge to pay in instalments any fine imposed upon him the papers may, if otherwise required to be returned to a court of record, be retained in the trial court for such period not in excess of three years after conviction as may be required for the payment of the fine or until the suspension is revoked. All papers in criminal proceedings which are not required to be returned to a court of record shall be properly indexed, filed and preserved in the trial court, *as public records for a period of twenty years, after which they may be destroyed.*

Reference: Recommendation III-5, p. 11

A BILL to amend and reenact §§ 16.1-116 and 16.1-118 of the Code of Virginia, relating to issuance of executions upon and abstracts of judgments in civil actions in courts not of record, and destruction of papers in such cases.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-116 and 16.1-118 of the Code of Virginia be amended and reenacted as follows:

§ 16.1-116. When a judgment has been rendered in a civil action in a court not of record and the papers in the action have been returned to the clerk of the circuit or corporation court for filing and preserving, executions upon and abstracts of the judgment may be issued by the clerk of such circuit or corporation court *within the periods permitted under §§ 8-396 and 8-397, provided, that such judgment has been duly entered in the judgment lien docket book of such court.* However, for a period of two years from the date of any such judgment, the judge or clerk of the court not of record may also issue executions upon and abstracts of the judgment.

§ 16.1-118. The clerk of any court of record to whose office papers in civil cases in the county court have been returned for indexing and preserving under § 16.1-115 may destroy the files, papers and records connected with any such civil case, if:

(1) Such case was dismissed without any adjudication of the merits of the controversy, and the final order entered was one of dismissal and one year has elapsed from the date of such dismissal; or

(2) Judgment was entered in such case but ** ten years have elapsed since entry of such judgment and the same has not been entered in the judgment lien docket book of the court to which the papers were returned;* or

(3) No service of the warrant or motion or other process or summons was had on any defendant and one year has elapsed from the date of such process or summons; and

(4) The destruction of such papers is authorized and directed by an order of the judge of the court in which they are preserved, which order may refer to such papers by any one or more of the above classifications, or to any group or kind of cases embraced therein, without express reference to any particular case.

Reference: Recommendation III-7, p. 14

