

REVISION OF TITLE 41 OF THE CODE OF VIRGINIA

**REPORT OF THE
VIRGINIA CODE COMMISSION
To
THE GOVERNOR
and
THE GENERAL ASSEMBLY OF VIRGINIA**



COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply

Richmond

1969

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To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

Richmond, Virginia, October 1, 1969

The General Assembly at its Regular Session of 1968 directed the Virginia Code Commission, by Chapter 679 of the Acts of that Session, to revise certain titles of the Code of Virginia, including Title 41 relating to "Land Office".

Extracts from Chapter 679 follow:

"§ 1. The Code of Virginia shall be gradually revised by revising one or more titles at a time. In revising each title, all other sections of the Code relating to the same subject matter shall be revised to the extent necessary. Experts shall be employed by the Virginia Code Commission to assist in the project. The Commission may also accept the services of qualified volunteers who are willing to serve without pay. Tentative drafts of proposed revision should be printed and circulated among interested persons and their comments solicited.

"§ 2. The Commission shall undertake the revision of Titles 27, 33, 34, 35, 36, 40, 41, 42, 43 and 53 of the Code of Virginia and submit to the Governor and the General Assembly on or before October one, nineteen hundred sixty-nine, a report of its recommendations, together with suggestive legislation necessary to carry such recommendations into effect. No substantive change shall be incorporated in such revisions, however, the Commission may suggest substantive change in each title being revised and submit separately legislation purposed to carry out each such recommendation."

Hugh Reid Thompson, Jr., Esquire, of the Richmond City Bar was retained as the Commission's general counsel for these undertakings.

The Virginia Code Commission examined the provisions of this Title in detail and consulted officials of the State agencies interested in and affected by this Title. The Commission met with Counsel on several occasions, and discussed in detail changes recommended by members of the Commission, by Counsel and by such officials.

As a result of its efforts, the Commission has caused counsel to prepare a draft of revision of Title 41 in the usual form, i.e., a bill suitable for introduction at the 1970 Session of the General Assembly of Virginia, together with a Table of Comparable Section. Source references and appropriate notes follow each section of the text.

The draft purports to reflect the Commission's careful consideration of all recommendations and suggestions either brought to its attention or resulting from its own observations, inquiries and deliberations. It incorporates, among others, the following changes:

1. The repeal of Title 41 and the enactment in lieu thereof of a new Title 41.1. In recent years activity under this title has dwindled almost to the vanishing point. Correspondingly, the provisions of the title have been substantially reduced. Although the title originally contained 89 sections and 3 were added (§§ 41-8.1, 41-8.2 and 41-8.3), only 23, or $\frac{1}{4}$, of them now remain. The result is an obsolete statutory vehicle to accommodate the remaining provisions.

2. The deletion of the provisions now found in §§ 41-72, 41-73, 41-74 and 41-86, which are obsolete and unnecessary.

3. The amendment of the following sections, as indicated:

§ 41-1 (§ 41.1-1) to delete obsolete transitional language;

§ 41-8 (§ 41.1-3) to prohibit the conveyance of certain unappropriated lands;

§ 41-8.1 (§ 41.1-4) to delete obsolete language;

§ 41-9 (§ 41.1-7) to make its provisions applicable to cities as well as to counties;

§ 41-39 (§ 41.1-8) to conform its language with current usage; and

§§ 41-8.2 (§ 41.1-5) and 41-84 (§ 41.1-16) to conform internal section references.

§ 41-87 (§ 41.1-18) to require the person, city or county bringing a suit for the sale of waste or unappropriated lands to pay the deficiency whenever the proceeds of sale are insufficient to pay costs and expenses;

§ 41-88 (§ 41.1-19) to delete obsolete language.

RECOMMENDATIONS

The Commission considers the accompanying draft of Title 41.1 as a substantial improvement over the present Title 41 and recommends its introduction at the 1970 Session of the General Assembly.

The Commission wishes to express appreciation for the valuable assistance rendered by Counsel in the preparation of this Revision, and for the cooperation of the officials of the State agencies affected by this Title.

Respectfully submitted,

A. L. PHILPOTT, *Chairman*
WILLIAM H. HODGES, *Vice-Chairman*
G. M. LAPSLEY, *Secretary*
FREDERICK T. GRAY
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TABLE OF COMPARABLE SECTIONS

TITLE 41	THIS REPORT
§ 41-1	§ 41.1-1
§ 41-2	§ 41.1-2
§ 41-3 to 41-7	Repealed
§ 41-8	§ 41.1-3
§ 41-8.1	§ 41.1-4
§ 41-8.2	§ 41.1-5
§ 41-8.3	§ 41.1-6
§ 41-9	§ 41.1-7
§ 41-10 to 41-38	Repealed
§ 41-39	§ 41.1-8
§ 41-40 to 41-67	Repealed
§ 41-68	§ 41.1-9
§ 41-69	§ 41.1-10
§ 41-70	§ 41.1-11
§ 41-71	§ 41.1-12
§ 41-72	Deleted
§ 41-73	Deleted
§ 41-74	Deleted
§ 41-75	§ 41.1-13
§ 41-76	§ 41.1-14
§ 41-77	§ 41.1-15
§ 41-78 to 41-83	Repealed
§ 41-84	§ 41.1-16
§ 41-85	§ 41.1-17
§ 41-86	Deleted
§ 41-87	§ 41.1-18
§ 41-88	§ 41.1-19
§ 41-89	§ 41.1-20

A BILL to revise, rearrange, amend and recodify the general laws of Virginia relating to the Land Office, and to that end to repeal Title 41 of the Code of Virginia, which title includes Chapters 1 to 9, inclusive, and Sections 41-1 to 41-89, inclusive, of the Code of Virginia, as amended, which title relates to the Land Office; to amend the Code of Virginia by adding thereto in lieu of the foregoing title, chapters and sections of the Code repealed by this Act, a new title numbered 41.1, which title includes new sections numbered 41.1-1 to 41.1-20, inclusive, relating to the Land Office; to provide how this Act shall be construed; and to prescribe the effective date of this Act.

Be it enacted by the General Assembly of Virginia:

1. That Title 41 of the Code of Virginia, which includes Chapters 1 to 9 and Sections 41-1 to 41-89, both inclusive, of the Code of Virginia, as amended, is repealed.
2. That the Code of Virginia be amended by adding thereto, in lieu of the title, chapters and sections of the Code of Virginia herein repealed, a new title numbered 41.1, and new sections numbered 41.1-1 to 41.1-20, inclusive, which new title and sections are as follows:

§ 41.1-1: **State Librarian in charge of Land Office.**—The State Librarian shall be in charge of and keep and preserve all records of the Land Office.

Source: § 41-1.

Note: This section is rewritten to delete the obsolete transitional language of § 41-1.

§ 41.1-2: Act changing name of Denny Martin taken as true; records, etc., of Northern Neck and other lands.—In all suits, either at law or in equity, in which title to any land is derived or sought to be derived from Lord Fairfax, through Denny Martin Fairfax, it shall not be necessary in order to make out a chain of title, to prove the act of Parliament authorizing Denny Martin, the devisee of Lord Fairfax, to take the name of Fairfax, but the same shall be presumed and taken to be true to the same extent as if a properly authenticated copy of such act had been adduced in evidence.

The records, documents, and entries of land granted by the former lord proprietor of the Northern Neck, and of all land granted, or to be granted, by the Commonwealth, shall be in the keeping of the State Librarian in the Land Office in the city of Richmond.

Source: § 41-2.

Note: No change.

—(§§ 41-3 to 41-7 were repealed in 1952).

§ 41.1-3: When not to issue grant; what grants to be void; lands, etc., under control of Governor.—No grant shall be valid or effectual in law to pass any estate or interest in any lands unappropriated or belonging to the Commonwealth, which embraces the old magazine at Westham, or any stone quarry now worked by the State, or any lands which are within a mile of such magazine, or any such quarry, or to pass any estate or interest in lands which are a common under § 62.1-1, or to pass any estate, or interest in any natural oyster bed, rock, or shoal, whether such bed, rock, or shoal shall ebb bare or not, or interest in any islands created in the navigable waters of the State through the instrumentality of dredging operations conducted by the United States between parallel or concentric lines fifteen hundred feet on either side of the channel axis, but every such grant for any such lands, islands, bed, rock, or shoal shall be absolutely void; provided, however, this section shall not be construed to affect the title to grants issued prior to March fifteenth, nineteen hundred and thirty-two. Such magazine and every such stone quarry and every such natural oyster bed, rock, or shoal, and the lands of the Commonwealth adjacent to or in their neighborhood, shall be under the control of the Governor, who may make such regulations concerning the same as he may deem best for the interests of the State.

Source: § 41-8.

Note: The words “No grant” have been substituted, at the beginning of the section, for the words “The State Librarian shall not issue any grant for land upon any survey heretofore made and not yet carried into grant (other than an inclusive survey), or made hereafter, unless there be indorsed on such survey an affidavit of the person applying for the grant, as well as that of the surveyor making the survey, that they verily believe that the land embraced in the survey has not been previously appropriated, or that it was, at the time of the entry thereof, liable to entry, or that such person has a bona fide title or claim to such land, and desires by a new grant to perfect or quiet his title or claim thereto; but upon making the affidavit, in either of the forms aforesaid, the State Librarian may issue a grant upon such survey, but no grant issued by him, either in consequence of any survey already made, or which may hereafter be made.” Additionally, § 41.1-3

deletes the last sentence of § 41-8, which is as follows: “In all cases excepted in this section, when a grant has not been actually issued, even though the party has paid the amount required for the warrant, no grant shall be issued by the State Librarian and the Comptroller is authorized and instructed, upon due application, to refund to the party or parties the amount so paid.” All of the language deleted is considered obsolete.

§ 41.1-4: Unappropriated marsh or meadow lands on Eastern Shore; common for fishing and hunting.—All unappropriated marsh or meadow lands lying on the Eastern Shore of Virginia, which have remained ungranted, and which have been used as a common by the people of this State, shall continue as such common, and remain ungranted. Any of the people of this State may fish, fowl, or hunt on any such marsh or meadow lands.

Source: § 41-8.1.

Note: The words “and no land warrant shall be located upon the same” have been deleted from the end of the first sentence of § 41-8.1.

§ 41.1-5: Circuit and corporation courts authorized to dispose of waste and unappropriated lands.—After July one, nineteen hundred fifty-two, the circuit and corporation courts of the counties and cities in which waste and unappropriated lands are alleged to lie are vested with authority to sell and dispose thereof in proceedings brought under §§ 41.1-15 to 41.1-19; provided that no sale or disposition shall be made of lands mentioned in § 62.1-1 or of lands as to which a grant could not have been issued by the State Librarian under §§ 41.1-3 or 41.1-4.

Source: § 41-8.2.

Note: Internal section references are conformed.

§ 41.1-6: Ratification of grants issued pursuant to § 41.1-3.—Any grants for land heretofore issued by the State Librarian pursuant to § 41.1-3 are hereby ratified and confirmed and title is confirmed in the grantees thereof.

Source: § 41-8.3.

Note: Internal section references are conformed.

§ 41.1-7: Copies of unsigned grants admissible in evidence; Commonwealth’s right relinquished when certain taxes paid; correction of record.—Where the records in the Land Office disclose the fact that the land warrants used as the foundation for a grant of any of the public lands of the Commonwealth, subject to grant, were fully paid for and that the right to such grant was finally and fully completed in the manner prescribed by law and a grant therefor made out and spread upon the record book in the Land Office, in due form of law and regular in every respect only that the name of the then Governor of Virginia was not recorded at the foot thereof on the record book, it shall be the duty of the State Librarian, upon the request of any person interested, to furnish a copy of such grant as it appears of record in the Land Office, together with a certificate to the effect that the land warrants upon which such grant was founded, were fully paid for; that the right to such grant had been finally and fully completed in the manner prescribed by law, and that the grant was regular in every respect except only that the signature of the Governor did not appear at the foot thereof on the record. Such copy and certificate shall be received in evidence in any legal proceeding in which the title to the land described in such grant, or any part thereof, is brought in contro-

versy, and shall be prima facie evidence of title to such land; and when the land embraced in such grant, or any part thereof, shall have been regularly on the proper land books and the taxes and levies regularly assessed thereon and paid by the claimants thereof, claiming under such grant, for a continuous period of ten years, any title which may rest in the Commonwealth, to so much of the land as has been so on the land books and upon which the taxes and levies shall have been so paid, shall be relinquished to the person so claiming the same, and any such claimant of such land, on which the taxes and levies shall have been so paid, may file a petition in the circuit court of the county or city or corporation court of the city if there be no circuit court, in which such land lies, after ten days' notice in writing to the attorney for the Commonwealth for such county or city who shall appear and defend the same on behalf of the Commonwealth and the county or city; and upon satisfactory proof of the fact that such land has so been on the land books of the county or city and all the taxes and levies regularly paid thereon for the period of time hereinbefore specified, and the production before the court of the copy of such grant and the certificate of the State Librarian, hereinbefore provided for, the court shall make an order which shall recite and set forth all of such facts so proved and shown, which order, when so made and entered of record on the proper order book of the court, shall operate to effectually relinquish to the person so claiming such land through and under such grant, whatever right and title may rest in the Commonwealth, thereto; and a copy of such order shall be conclusive evidence of the better right of the claimant under such grant, in any caveat proceeding, or in any other controversy between such claimant and any other person claiming under a location of such land or any part thereof, made after the date of such order.

But nothing contained in this section shall in any manner affect any right adverse to any person claiming under such grant, which vested prior to June twenty-second, nineteen hundred and twenty-six, nor divest the right or title, if any, of any junior grantee of any part of the land embraced within the exterior bounds of such grant, claiming under a junior grant which was regularly issued prior to June twenty-second, nineteen hundred and twenty-six, or any one holding or claiming through or under such junior grantee, but in any controversy between such adverse claimants or junior grantees, or persons claiming or holding through or under them, and any person holding or claiming through or under such grant as is first herein mentioned, the contesting parties shall be left to the strength of their respective rights and titles according to the nature of the case, independent of this section, and just as if it had not been enacted.

If it shall appear from the original of any such grant as is first hereinbefore referred to, that such original was actually signed by the Governor, the State Librarian shall, upon the presentation to him in the Land Office, of such original grant so signed, correct the record thereof so as to conform to such original grant, and affix thereto the date of such correction and a certificate of the fact that such original, duly signed by the Governor, had been presented to him.

Source: § 41-9.

Note: § 41-9 is amended to make it applicable to cities as well as counties.

— (§§ 41-10 to 41-14 were repealed in 1952).

— (§§ 41-15 to 41-38 were repealed in 1952).

§ 41.1-8: When location of warrant invalid; when Commonwealth's

right relinquished to land settled on.—No grant of any land which shall have been settled continuously for five years previously, upon which taxes shall have been paid at any time within such five years by the person having settled the same, or any person claiming under him, shall be valid; and any title which the Commonwealth may have to such land shall be relinquished to the person in possession of the land claiming the same under such settlement and payment to the extent of the boundary line enclosing the same. But such boundary line shall not include more than fifteen hundred acres; and any person who has made such settlement and paid such taxes, or any one claiming under him, may have the land surveyed, and prove the settlement and payment before the circuit court of the county where the land, or a greater part thereof, lies, whereupon such court shall order the plat and certificate of survey to be recorded. Such record shall be conclusive evidence in any controversy between the claimant thereunder and any person claiming under a location of the land made after the date of such order. This section shall relate as well to land forfeited for nonpayment of taxes, or for the failure to have the same entered on the commissioner's books, or both those causes, and to land escheated or escheatable, as to waste and unappropriated lands.

Source: § 41-39.

Note: At the beginning of the section, the words “No grant of” are substituted for the words “No location of any Land Office warrant upon.”

— (§§ 41-40 to 41-67 were repealed in 1952).

§ 41.1-9: (See § 41-68).

Source: § 41-68.

Note: No change.

§ 41.1-10: (See § 41-69).

Source: § 41-69.

Note: No change.

§ 41.1-11: (See § 41-70).

Source: § 41-70.

Note: No change.

§ 41.1-12: (See § 41-71).

Source: § 41-71.

Note: No change.

§§ 41-72 to 41-74, relating to the filing of copies of grants, caveats against new grants, the issuance of and evidence of title with respect to new grants, are deleted as obsolete.

§ 41.1-13: (See § 41-75).

Source: § 41-75.

Note: No change.

§ 41.1-14: (See § 41-76).

Source: § 41-76.

Note: No change.

§ 41.1-15: (See § 41-77).

Source: § 41-77.

Note: No change.

—(§§ 41-78 to 41-83 were repealed in 1952).

§ 41.1-16: Proceeding by citizen resident; motion and deposit for costs; parties; copy of plat.—Any citizen, resident of this State, who has reason to believe that there are waste and unappropriated lands in this State (not being a common under § 62.1-1 or excluded under §§ 41.1-3 and 41.1-4 from grant), shall have the right to file a proceeding in the name of the county or city in the circuit or corporation court of the county or city in which such land is alleged to lie, seeking the sale and disposition of such land. The proceeding shall be instituted by motion signed by the party who institutes the proceeding, or on his behalf, and shall be accompanied with a deposit to cover the costs of the proceeding but in no event to exceed one hundred dollars. Each landowner adjoining the tract in question shall be made a party to the proceedings.

He shall file with the motion a copy of a plat prepared by a licensed land surveyor giving the metes and bounds of the land alleged to be waste and unappropriated. A copy of the motion and plat shall be served upon each of the landowners adjoining the tract in question.

Source: § 41-84.

Note: Internal section references are conformed.

§ 41.1-17: (See § 41-85).

Source: § 41-85.

Note: No change.

—(§ 41-86 is deleted as unnecessary and obsolete).

§ 41.1-18: Subsequent proceedings; disposition of proceeds of sale.—Thereafter the proceedings shall conform, mutatis mutandis, to the provisions of article 6 of chapter 21 of Title 58 of the Code of Virginia but on the motion of any party the sale of such land shall be public. From the proceeds of sale, after the expenses of suit and other costs incident to the sale, the person instituting the proceeding shall be reimbursed his deposit and costs expended up to the time the proceeding is docketed; but if such proceeds be insufficient to pay the expenses of suit and other costs incidental to the sale, the deficiency shall be paid by the person, county or city instituting the suit. The remainder left from the proceeds of sale after the payment of costs, expenses of suit and other expenses of sale shall be paid into the Treasury of the county or city, as the case may be.

Source: § 41-87.

Note: In the second sentence, the words following the semicolon are added.

§ 41.1-19: Proceedings by governing body of county or city.—The governing body of the county or city in which any waste or unappropriated land lies may, without deposit of costs, initiate proceedings under this chapter to have such lands sold under the provisions hereof.

Source: § 41-88.

Note: The word “filing a plat of survey or” which followed the word “without” have been deleted.

§ 41.1-20: (See § 41-89).

Source: § 41-89.

Note: No change.

3. All acts or parts of acts inconsistent with the provisions of this act are repealed to the extent of such inconsistency.

4. Whenever in Title 41.1 any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 41, as such title existed prior to October 1, 1970, are transferred in the same or in modified form to a new section, article or chapter, and whenever any such former section, article or chapter is given a new number in Title 41.1, all references to any such former section, article or chapter of Title 41 appearing elsewhere in this Code than in this title shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

5. It is the intention of the General Assembly that this Act shall be liberally construed to effect the purposes set out herein, and if any clause, sentence, paragraph or section of this Act shall ever be declared unconstitutional, it shall be deemed severable, and the remainder of this Act shall continue in full force and effect.

6. This Act shall become effective October 1, 1970.

