

**PUBLIC RECORDS ACT**

**REPORT OF THE  
VIRGINIA ADVISORY LEGISLATIVE COUNCIL**

**To**

**THE GOVERNOR**

**And**

**THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 18**

**COMMONWEALTH OF VIRGINIA**  
**Department of Purchases and Supply**  
**Richmond**  
**1975**

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# **PUBLIC RECORDS ACT**

## **Report of the**

### **Virginia Advisory Legislative Council**

To: Honorable Mills E. Godwin, Jr., Governor of Virginia

and

The General Assembly of Virginia

Richmond, Virginia  
December, 1974

The Interim Report of the Virginia Advisory Legislative Council, issued in January 1974, concluded that the Commonwealth of Virginia is in substantial need of comprehensive public records legislation. The Council, at that time, felt that more time was necessary to create model legislation in this area. The General Assembly accepted the Council's recommendation for further study and through House Joint Resolution No. 91 continued the study.

### **HOUSE JOINT RESOLUTION NO. 91**

Continuing the Virginia Advisory Legislative Council's study of a Public Records Act for the Commonwealth.

Whereas, the 1973 General Assembly recognized the duty of the legislature to modernize the Code of Virginia to preserve the Commonwealth's public records for the administration of government and the study of its history and to protect the access of the public to such records without endangering the safety of the documents by directing the Virginia Advisory Legislative Council in House Joint Resolution No. 240 to study the desirability of a public records act; and

Whereas, the Virginia Advisory Legislative Council has made an exhaustive study and has concluded that a carefully drafted omnibus Public Records Act would be beneficial to the Commonwealth; and

Whereas, the Council concludes that additional time for research and study is necessary to formulate a workable legislative design; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to continue its study of public records preservation, the present provisions dealing with public records, and proposals for new provisions. All agencies of the State shall assist the Council in its study. The Council shall complete its study and submit its report to

the Governor and the General Assembly not later than November one, nineteen hundred seventy-four.

The Council appointed a study Committee chaired by Lewis A. McMurrin, Jr. which included David F. Thornton, Charles B. Cross, Jr., Walther B. Fidler, W. Franklin Gooding, W. Moscoe Huntley, Louis H. Manarin and C. Hardaway Marks. The Committee, in reaching its findings spent considerable time and effort studying public records legislation from other states. The Committee was also very fortunate to receive the help and cooperation of the State Library Board and various clerks of court. After studying the findings and suggestions of the Committee, the Council makes the following recommendations.

## **RECOMMENDATIONS**

The Council recommends:

- That a broad definition of "public records" be added to § 42.1-23 of the Code to define records under the records management provision;
- That there be enacted legislation which would provide for the prompt seizure and return of public records which have, without authorization, left possession of the State or local agency;
- That appropriations be approved to permit the rapid completion of the Department of Health's record management and preservation program for health and vital records;
- That there be enacted legislation which would permit the replacement of the current marginal release system for recording releases of deeds of trust and liens with a system utilizing recorded certificates of satisfaction and certificates of partial satisfaction; and
- That the Council's study on a Public Records Act be extended for the further study and development of comprehensive public records legislation.

## **DISCUSSION OF RECOMMENDATIONS**

The need for a comprehensive public records act, as fully discussed in the Council's Interim Report on the Public Records Act, still exists. Such legislation would not only assure the preservation of Virginia's heritage but would also result in substantial cost savings to the State through more efficient record storage and destruction practices. The Council has found that while the record ills of the Commonwealth are easily recognizable, the solution to these problems remains both elusive and complex. The Council, at this time, has recommendations for specific measures which speak

to some immediate needs in the area of public records but the needed comprehensive public records legislation has yet to be developed. The Council seeks to avoid burdening the State with the creation of still another independent State agency and is, therefore, faced with the problem of placing the administration of a comprehensive records program within the State's existing administrative structure. The Council feels that more time is necessary to develop such a program which would be acceptable to both State agencies and localities and which would still meet the established goals of record preservation and management efficiency. The Council, therefore, recommends that its study be extended to further study and develop comprehensive public records legislation.

Currently there are limited public records management programs administered by the State Library Board. On the local level, § 42.1-23.1 of the Code authorizes the Library Board to set up a program to inventory, schedule and microfilm records having permanent value. This program has been concentrated in the area of inventorying and microfilming the records in the courts of record since its inception in July 1972. To date, the records of sixteen courts have been completed and the work represents the microfilming of some 7,630 volumes on 3,815 reels of microfilm. Some 10,300 volumes and 2,100 linear feet of records have been transferred for storage. These will be scheduled for permanent storage, microfilming or destruction as the Code permits. As part of the program, existing security microfilm generated by the locality is being stored at no cost to the locality. Some 8,900 reels have been received, representing 17,800 volumes, and represent a savings in storage costs of \$5,000 annually to the locality. The program also provides advice and assistance to local records keepers relative to creation and maintenance of records systems and storage and retrieval of information.

The State Library Board is also administering a limited program of records management on the State agency level. This program, under § 42.1-23 of the Code, was established to work out cooperatively with other agencies the scheduling of records for retirement, microfilming, destruction, or transfer to the State archives for permanent retention. The State Library has no facilities for storing records for short periods of time in low-cost storage, and agencies presently must rent such space as they can. A large amount of microfilming is done by the State Library. In some cases, records are microfilmed that would not be microfilmed if a systematic records program were developed and if adequate records storage space were available. The Library now offers records scheduling services to other agencies and is just beginning to offer assistance in forms design and filing systems. During the 1973-74 fiscal year, the Library's records management program assisted 128 agencies and institutions; microfilmed 10,397,000 items; and, scheduled the discard and recycling of 15,000 linear feet of records no longer needed for any purpose.

The Council finds that these voluntary programs administered by the Library Board have been very successful but that there still remains a need for a definition of "public records". The Committee,

therefore, recommends that such a definition be added to § 42.1-23.

Currently State and local agencies lack an efficient process to retrieve public records which are improperly out of their possession. These records may have importance in the transaction of the agency's business or the records may have historical significance. The Council recommends the adoption of a summary repossession procedure which would meet this immediate need by compelling the prompt return of public records in unauthorized hands. The recommended procedure also includes a seizure provision to prevent the removal or destruction of the public records while the matter is before the court.

Also, as noted in the previous interim report, the need exists in the Department of Health for an adequate records management and preservation program. The Council again urges that adequate appropriations be approved by the Governor and the General Assembly to permit rapid completion of the Department of Health's record management and preservation program for health and vital records.

The Council in its interim report recommended that the traditional system of recording releases on existing deeds of trust and mortgages by marginal entries be replaced with a system that uses certificates of satisfaction. This legislation was not passed by the General Assembly but was carried over in the House. The Council found then, and still finds, that a traditional marginal release system compromises microfilm security programs. But the Council now feels that it is not necessary to make mandatory the replacement of the marginal release system with the certificate of satisfaction system. The Council recommends legislation which would merely permit a court to use the certificate of satisfaction system. This would sufficiently enable interested courts to efficiently undertake microfilm security programs, and yet would leave undisturbed established recording systems employed elsewhere.

In summary, the Council feels that the following are public record needs that must be immediately attended to: a definition of "public records" in § 42.1-23 of the Code; the efficient return of public records which are out of the State's possession; funds for the Department of Health's record program; and, legislation permitting the recording of releases of deeds of trust and liens through the use of certificates of satisfaction and certificates of partial satisfaction. The Council feels that the adoption of its recommendations would meet these needs. But the Committee firmly believes that ultimately the State's records management ills can only be effectively remedied through the development and adoption of comprehensive records management legislation. Therefore, the Council further recommends that its study be extended so that such legislation can be developed.

Respectfully submitted,  
Willard J. Moody, Chairman  
Edward E. Lane, Vice Chairman  
George E. Allen, Jr.  
Vincent F. Callahan, Jr.  
Archibald A. Campbell  
Joseph V. Gartlan, Jr.  
Jerry H. Geisler  
Robert R. Gwathmey, III  
C. Hardaway Marks  
Lewis A. McMurrin, Jr.  
William V. Rawlings  
James M. Thomson  
Lawrence Douglas Wilder  
Edward E. Willey



## APPENDIX I

A BILL to amend and reenact § 42.1-23 of the Code of Virginia, relating to public records management programs administered by the State Library Board.

Be it enacted by the General Assembly of Virginia:

1. That § 42.1-23 of the Code of Virginia is amended and reenacted as follows:

§ 42.1-23. State Library Board may conduct program to facilitate management of public records; public records defined.— The State Library Board is authorized to conduct, in cooperation with, and with the concurrence of State agencies, departments, commissions and institutions, a program designed to facilitate the management of public records, their creation, filing, microfilming and destruction.

*As used in this section "public records" means all written books, papers, letters, documents, photographs, tapes, microfiche, microfilm, photostats, sound recordings, maps, other documentary materials or information in any recording medium regardless of physical form or characteristics, including data processing devices and computers, made or received in pursuance of law or in connection with the transaction of public business by any agency of the State government or its political subdivisions.*

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## APPENDIX II

A BILL to amend the Code of Virginia by adding in Chapter 1 of Title 42.1 an article numbered 3.1, containing sections numbered 42.1-29 through 42.1-29.2, providing for a process for the prompt return of public records; penalty for violation.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 42.1 an article numbered 3.1, containing sections numbered 42.1-29 through 42.1-29.2, as follows;

### Article 3.1

#### Return of Public Records.

§ 42.1-29. Definitions.—As used in this article:

A. “public records” shall mean all written books, papers, letters, documents, photographs, tapes, microfiche, microfilm, photostats, sound recordings, maps, other documentary materials or information in any recording medium regardless of physical form or characteristics, including data processing devices and computers, made or received in pursuance of law or in connection with the transaction of public business by any agency of the State government or its political subdivisions;

B. “public official” shall mean all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the State government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the State government or its political subdivisions; and

C. “custodian” shall mean the public official in charge of an office having public records.

§ 42.1-29.1. Return of public records not in authorized possession.—The State Librarian or his designated representative such as the State Archivist or any public official who is the custodian of public records in the possession of a person or agency not authorized by the custodian or by law to possess such public records shall petition the circuit court in the city or county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such records. The court shall order such public records be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to

possess such public records. If the order of delivery does not receive compliance, the plaintiff shall request that the court enforce such order through its contempt power and procedures.

§ 42.1-29.2. Seizure of public records not in authorized possession.—A. At any time after the filing of the petition set out in § 42.1-29.1 or contemporaneous with such filing, the person seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to issue an order directed at the sheriff or other proper officer, as the case may be, commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth.

B. The judge aforesaid shall issue an order of seizure upon receipt of an affidavit from the petitioner which alleges that the material at issue may be sold, secreted, removed out of this State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if permitted to remain out of the petitioner's possession.

C. The aforementioned order of seizure shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner.

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### APPENDIX III

A BILL to amend and reenact §§ 17-60, 55-66.3, 55-66.4, 55-66.5, 55-66.6, and 55-66.7, as severally amended, of the Code of Virginia; and to amend the Code of Virginia by adding a section numbered 55-66.4:1, the amended and added sections relating to releases of liens.

Be it enacted by the General Assembly of Virginia:

1. That §§ 17-60, 55-66.3, 55-66.4, 55-66.5, 55-66.6 and 55-66.7, as severally amended, of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 55-66.4:1 as follows:

§ 17-60. Documents to be recorded in deed books.—All deeds, deeds of trust, deeds of release, *certificates of satisfaction or certificates of partial satisfaction*, quitclaim deeds, homestead deeds, grants, transfers and mortgages of real estate, releases of such mortgages, powers of attorney to convey real estate, leases of real estate, notices of lis pendens and all contracts in reference to real estate, which have been acknowledged as required by law, and certified copies of final judgments or decrees of partition affecting the title or possession of real estate, any part of which is situated in the county or city in which it is sought to be recorded, and all other writings relating to or affecting real estate which are authorized to be recorded, shall, unless otherwise provided, be recorded in a book to be known as the deed book.

§ 55-66.3. Marginal release of deed of trust or other lien.—When payment or satisfaction is made of a debt secured by mortgage, deed of trust, vendor's lien, or other lien, or when any one or more of the obligations representing at least twenty-five percent of the whole amount secured by any such lien, but less than the whole number of such obligations so secured, when the debt secured thereby is evidenced by two or more separate written obligations sufficiently described in the instrument creating the lien, shall have been fully paid, the lien creditor, unless he shall have delivered a proper release deed, shall cause such full payment or satisfaction, or partial payment or satisfaction, as the case may be, to be recorded on a *certificate of satisfaction or certificate of partial satisfaction in the clerk's office* or be entered on the margin of the page of the book where such encumbrance is recorded; and for any failure so to do after five days' notice, if the obligation, or obligations, secured by such lien, and fully paid as aforesaid, shall be left with the lien creditor, or with the clerk in whose office such encumbrance is recorded, until the lien is released as provided by this chapter, shall forfeit twenty dollars.

Such *certificate of satisfaction or marginal* entry of payment or satisfaction shall be signed by the creditor or his duly authorized agent, attorney or attorney-in-fact, or any person to whom the

instrument evidencing the indebtedness has been endorsed or assigned for the purpose of effecting such release and if such debt be evidenced by a separate obligation the note, bond or other evidence of debt secured by such lien, duly cancelled, shall be produced before the clerk in whose office such encumbrance is recorded, or an affidavit shall be filed, by the creditor, or his duly authorized agent, attorney or attorney-in-fact, with such clerk, to the effect that the debt therein secured and intended to be released or discharged has been paid to such creditor, his agent, attorney or attorney-in-fact, who was, when the debt was so satisfied, entitled and authorized to receive the same, and that such note, bond or other evidence of the debt secured by the lien has been cancelled and delivered to the person by whom it was paid or has been lost or destroyed and cannot be produced as herein required; or in the event the creditor or his duly authorized agent, attorney or attorney-in-fact is unable to make the affidavit above referred to and after the creditor or his duly authorized agent, attorney or attorney-in-fact has executed the entry of payment or satisfaction above referred to, an affidavit may be filed with the clerk by the lien debtor, or such other person as may have paid the same, to the effect that he fully paid such note, bond or other evidence of debt and that the same was duly cancelled and delivered to him and has been lost or destroyed and cannot be produced.

If such debt is not evidenced by a separate obligation an affidavit shall be filed by the creditor, his duly authorized agent or attorney or attorney-in-fact with such clerk to the effect that the debt therein secured and intended to be released or discharged has been paid to such creditor, his agent, attorney or attorney-in-fact, who was, when such debt was so satisfied, entitled and authorized to receive the same.

And when so signed and the signature thereto attested by such clerk, with a certificate that such note, bond or other evidence of debt duly cancelled was produced before such clerk, or that the affidavit hereinbefore required has been duly filed with such clerk, the same *certificate of satisfaction or marginal entry* shall operate as a release of the encumbrance as to which such payment or satisfaction is entered and, if the encumbrance be by deed of trust or mortgage, as a reconveyance of the legal title as fully and effectually as if such *certificate of satisfaction or marginal entry* were a formal deed of release duly executed and recorded.

As used in this section, the terms "lien creditor" and "creditor" shall be construed as synonymous and shall embrace the lien creditor or his successor in interest as evidenced by proper endorsement or assignment, general or restrictive, upon the note, bond or other evidence of debt.

§ 55-66.4. Partial satisfaction or release.—It shall be lawful for any such lienor to make a marginal release or record a *certificate of partial satisfaction* of any one or more of the separate pieces or parcels of property covered by such lien. It shall also be lawful for any such lienor to make a marginal release or record a *certificate of partial satisfaction* of any part of the real estate covered by such lien if a plat of such part or a deed of such part is recorded in the clerk's office and a

cross reference is made in the *marginal release or certificate of partial satisfaction* to the book and page where the plat or deed of such part is recorded. Such *marginal partial release or satisfaction or certificate of partial satisfaction* may be accomplished in manner and form hereinbefore in this chapter provided for making marginal releases or *certificates of satisfaction*, except that the creditor, or his duly authorized agent, shall make an affidavit to the clerk that such creditor is at the time of making such release the legal holder of the obligation, note, bond or other evidence of debt, secured by such lien, and when made in conformity therewith and as provided herein such partial satisfaction or release shall be as valid and binding as a proper release deed duly executed for the same purpose.

Any and all partial marginal releases made prior to July one, nineteen hundred sixty-six, in any county or city of this State, in conformity with the provisions of this chapter, either of one or more separate pieces or parcels of real estate or any part of the real estate covered by such lien, or as to one or more of the obligations secured by any such lien, or as to all of the real estate covered by such lien instrument, are hereby validated and declared to be binding upon all parties in interest; but this provision shall not be construed as intended to disturb or impair any vested right.

*§ 55-66.4:1. Permissible form for Certificate of Satisfaction or Certificate of Partial Satisfaction.—Any release by a certificate of satisfaction or certificate of partial satisfaction shall be in conformity with §§ 55-66.3 and 55-66.4 and shall conform substantially with the following forms:*

**CERTIFICATE OF SATISFACTION**

*Place of Record .....*

*Date of Deed of Trust .....*

*Deed Book ..... Page .....*

*Name(s) of Maker(s) .....*

*Name(s) of Holder(s) of Note(s) .....*

*Amount Secured .....*

*I/we,holder(s) of the above mentioned note(s) secured, produced before the clerk, do hereby certify that the same has/have been paid in full and the above mentioned deed of trust is released of record. The amount so secured by said note shall be credited on the back thereof in evidence of the release of this deed of trust.*

*Given under my/our hand(s) this .....day of .....19.....*

**(Note Holders)**

State of Virginia,

County/City of ..... to-wit:

Subscribed, sworn to and acknowledged before me by ..... this ..... day of ..... 19....

My Commission Expires: .....

.....  
Notary Public

or:

**CERTIFICATE OF PARTIAL SATISFACTION**

Place of Record.....

Date of Deed of Trust.....

Deed Book..... Page.....

Name(s) of Maker(s).....

Name(s) of Holder(s) of Note(s) .....

Amount Secured.....

The lien of the above mentioned deed of trust hereby secured is releaed insofar as the same is applicable to lot..... Subdivision..... in the Plan..... as shown on a plat of such subdivision recorded in deed book..... at page..... in clerk's office of this court. The amount so secured by such note shall be credited on the back thereof in evidence of the release of this deed of trust.

Given under my/our hand(s) this .....day of ..... 19.....

**(Note Holders)**

State of Virginia,

County/City of ..... to-wit:

Subscribed, sworn to and acknowledged before me by..... this..... day of ..... 19....

My Commission Expires: .....

.....  
Notary Public

or:

**CERTIFICATE OF PARTIAL SATISFACTION**

Place of Record.....

Date of Lien.....

Deed Book..... Page.....

Name of Maker(s).....

Amount Secured.....

*I/We, holder(s) of the above mentioned note(s) secured, produced before the clerk, do hereby certify that the same has/have been paid in full and the above mentioned lien is released pro tanto. The amount so secured by said note shall be credited on the back thereof in evidence of the partial satisfaction of the lien.*

*Given under my/our hand(s) this.... day of.... 19 .....*

**(Note Holders)**

State of Virginia,

County/City of ..... to-wit:

*Subscribed, sworn to and acknowledged before me by ..... this  
.....day of ..... 19...*

*My Commission Expires .....*

*Notary Public*

§ 55-66.5. Releases made by court.—(a) Any person who owns or has any interest in real estate or personal property on which such encumbrance exists may, after twenty days' notice thereof to the person entitled to such encumbrance, apply to the circuit or corporation court of the county or corporation in whose clerk's office such encumbrance is recorded or to the Chancery Court of the City of Richmond, if it be in the clerk's office of such court, to have the same released or discharged; and upon proof that it has been paid or discharged or upon its appearing to the court that more than twenty years have elapsed since the maturity of the lien or encumbrance, raising a presumption of payment which is not rebutted at the hearing, such court shall either order the same to be entered by the clerk on the margin of the page in the book wherein the encumbrance is recorded or order the clerk to record a certificate of satisfaction or a certificate of partial satisfaction, which marginal entry or certificate of satisfaction or certificate of partial satisfaction, when so made, shall operate as a release of such encumbrance.

All releases made prior to June twenty-four, nineteen hundred



and forty-four, by any court under this section upon such presumption of payment so arising and not rebutted shall be validated.

(b) If it be made to appear to the court that the person entitled to such encumbrance cannot with due diligence be located, and that notice has been given such person in the manner provided by § 8-76 or that tender has been made of the sum due thereon but the same has been refused for any reason by the party or parties to whom due, the court may in its discretion order the sum due to be paid into court, to be there held as provided by law, and to be paid upon demand to the person or persons entitled thereto, and thereupon the court shall order the same to be recorded as provided in subsection (a) hereof, which *marginal entry or certificate of satisfaction or certificate of partial satisfaction* shall operate as a release of the encumbrance.

§ 55-66.6. Marginal note required when release of lien recorded.—Whenever a release of a deed of trust or other obligation shall be admitted to record in the office of the county clerk of any county or in the office of the clerk of the corporation court of any city, or of the Chancery Court of the City of Richmond, or of any other court in which deeds are authorized to be admitted to record circuit court, such clerk shall make a memorandum on the margin of the page of the book upon which such deed or other obligation is recorded, stating that such deed or other obligation is released and referring to the page and number of the deed book upon which such release is recorded or *shall record a certificate of satisfaction or certificate of partial satisfaction, stating that such deed or other obligation is released.* If any clerk fail for ten days to do anything required of him by this section, he shall be liable for any damage which any person may sustain by reason of such failure and shall pay a fine of not less than twenty-five nor more than one hundred dollars.

§ 55-66.7. Clerk's fee for release.—The clerk's fee for a release, under the preceding sections of this chapter, on the margin of the page of the book wherein the encumbrance or lien is recorded shall be fifty cents when entered on the margin of the page of the book wherein the encumbrance or lien is recorded and shall be two dollars and fifty cents when recorded by a certificate of satisfaction or a certificate of partial satisfaction, which and shall be paid by the lien debtor.

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## APPENDIX IV

### HOUSE JOINT RESOLUTION NO.....

Continuing the Virginia Advisory Legislative Council's study of a Public Records Act for the Commonwealth.

Whereas, the 1973 and 1974 General Assemblies recognized the duty of the legislature to modernize the Code of Virginia to preserve the Commonwealth's public records for the administration of government and the study of its history and to protect the access of the public to such records without endangering the safety of the documents by directing the Virginia Advisory Legislative Council to study the desirability of a Public Records Act; and

Whereas, the Virginia Advisory Legislative Council has made an exhaustive study and has concluded that a carefully drafted omnibus Public Records Act would be beneficial to the Commonwealth; and

Whereas, the Council concludes that additional time for research and study is necessary to formulate a workable legislative design; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to continue its study of public records preservation, the present provisions dealing with public records, and proposals for new provisions. All agencies of the State shall assist the Council in its study. The Council shall complete its study and submit its report to the Governor and the General Assembly not later than November one, nineteen hundred seventy-five.



