

## THE EVOLUTION OF E-COMMERCE IN VIRGINIA REAL PROPERTY TRANSACTIONS

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The General Assembly amended section 17.1-258.3:1 of the Virginia Code in 2017 to provide that “[a]ny clerk of a circuit court with an electronic filing system established in accordance with this section may charge a fee not to exceed \$5 per instrument for every land record filed by paper.”<sup>1</sup> The amendment also deleted the five-dollar fee that Code section previously authorized for electronic recordation of any instrument.<sup>2</sup> The obvious purpose of the amendment is to encourage electronic filing of land records where possible.

The 2017 amendment of Virginia Code section 17.1-258.31 continues a nearly twenty-year evolution of Virginia real property law, bringing it into the electronic age. Virginia enacted the Uniform Electronic Transactions Act the same year the United States Congress enacted the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”).<sup>3</sup> At least since 2000, then, electronic transactions generally have been recognized in Virginia under both state and federal law.

Enabling legislation for electronic filing of documents with circuit court clerks went through a transitional period in the early

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1. Act of Feb. 20, 2017, ch. 90, 2017 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 17.1-258.3:1 (Cum. Supp. 2017)).

2. *Id.*

3. Act of Apr. 9, 2000, ch. 995, 2000 Va. Acts 2216 (codified as amended at VA. CODE ANN. §§ 59.1-479 to -498 (Repl. Vol. 2014 & Cum. Supp. 2017)); Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001–06, 7021, 7031 (2000). The act adopting the Uniform Electronic Transactions Act in Virginia also repealed sections of the Virginia Code previously dealing with electronic signatures, formerly Virginia Code sections 59.1-467, 59.1-468, and 59.1-469. Ch. 995, 2000 Va. Acts 2216.

2000s until 2005 when applicable code sections, Virginia Code sections 17.1-258.2 through 17.1-258.5, were enacted along with the Uniform Real Property Electronic Recording Act, found in Virginia Code sections 55-142.10 through 55-142.15.<sup>4</sup> The Virginia General Assembly re-enacted the Uniform Real Property Electronic Recording Act in 2006 as required.<sup>5</sup> Virginia Code section 17.1-258.3:1, which further authorized circuit court clerks to establish their electronic recording systems for land records, was not enacted until 2008.<sup>6</sup>

The General Assembly authorized electronic notarization in 2007, and the legislation became effective July 1, 2008.<sup>7</sup> Remote electronic notarization was authorized in 2011, with some aspects of the legislation not becoming effective until July 1, 2012.<sup>8</sup>

So, it now would be possible under Virginia law for a real estate document in electronic form to be signed and acknowledged electronically, notarized electronically (even remotely), and recorded electronically. However, based on the author's experience, few, if any, real estate transactions in Virginia are entirely electronic. Real estate, being, after all, "real," remains somewhat removed from modern electronic commerce in the digital world, at least in Virginia.

Nonetheless, the Virginia real estate practitioner should be familiar with the statutory framework for conducting their practice in electronic commerce. As noted above, the General Assembly and Governor seemed to want to encourage greater use of electronic filing, at least, by amending the filing fee statute in 2017 to require

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4. Act of Mar. 26, 2005, ch. 744, 2005 Va. Acts 1156, 1156-58 (codified as amended at VA. CODE ANN. §§ 17.1-258.2 to -258.5 (Repl. Vol. 2015); *id.* §§ 55-142.10 to -142.15 (Repl. Vol. 2012)).

5. Act of Apr. 5, 2006, ch. 745, 2006 Va. Acts 1036 (codified as amended at VA. CODE ANN. §§ 55-142.10 to -142.15 (Repl. Vol. 2012)). The previous code sections dealing with electronic filing expired in 2004 but were re-adopted by the 2005 legislature as Virginia Code sections 17.1-258.2 through 17.1-258.5 and did not need to be re-enacted in 2006. Ch. 744, 2005 Va. Acts 1156, 1156-58.

6. Act of Apr. 11, 2008, ch. 823, 2008 Va. Acts 1565, 1568 (codified as amended at VA. CODE ANN. § 17.1-258.3:1 (Cum. Supp. 2017)); Act of Apr. 11, 2008, ch. 833, 2008 Va. Acts 1757, 1760 (codified as amended at VA. CODE ANN. § 17.1-258.3:1 (Cum. Supp. 2017)).

7. Act of Mar. 12, 2007, ch. 269, 2007 Va. Acts 369, 371 (codified as amended at VA. CODE ANN. § 47.1-7 (Repl. Vol. 2013)); Act of Mar. 20, 2007, ch. 590, 2007 Va. Acts 800, 802-03 (codified as amended at VA. CODE ANN. § 47.1-7 (Repl. Vol. 2013)).

8. Act of Mar. 26, 2011, ch. 731, 2011 Va. Acts 1210, 1211-12 (codified as amended at VA. CODE ANN. § 47.1-2 (Repl. Vol. 2013 & Cum. Supp. 2017); *id.* § 47.13 (Repl. Vol. 2013)); Act of Apr. 6, 2011, ch. 834, 2011 Va. Acts 1455, 1455-57 (codified as amended at VA. CODE ANN. §§ 47.1-2, -13 (Repl. Vol. 2013 & Cum. Supp. 2017)).

the extra five dollars for paper filing (and eliminating the additional fee for electronic filing) where electronic filing is available.

Electronic filing, then, may be the first type of electronic transaction a real estate practitioner should understand, even though it would be near the last step in completing a real estate transaction. Both article 4.1 of Title 17.1 and article 7 of Title 55 of the Virginia Code govern electronic filing of land records in Virginia.<sup>9</sup>

Virginia circuit court clerks are not required to provide either an electronic filing system, generally, or an eRecording System<sup>10</sup> for land records. Both sections 17.1-258.3:1 and 55-142.12 of the Virginia Code provide that a clerk of a circuit court “may” implement such a system.<sup>11</sup> If the clerk of a circuit court does provide an eRecording System, the system must comply with the Virginia Real Property Electronic Recording Standards established by the Virginia Information Technologies Agency.<sup>12</sup> Also, no clerk can require land records to be filed electronically.<sup>13</sup>

But, as noted above, the 2017 amendment of section 17.1-258.3:1 alters filing fees to encourage electronic recording.<sup>14</sup> Anyone who files a document electronically (a “filer” under Virginia Code section 55-142.10) must enter into an electronic filing agreement with the clerk.<sup>15</sup>

The requirement for each filer to enter into an electronic filing agreement with the circuit court clerk of each locality with an eRecording System where documents will be filed electronically may be an impediment to settlement agents and attorneys filing land record documents electronically. Although most settlement

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9. VA. CODE ANN. § 17.1-258.2 (Repl. Vol. 2015); *id.* § 55-142.10 (Repl. Vol. 2012). “[E]lectronic filing of documents” simply means “the filing or recordation with a circuit court clerk of written information as defined in § 1-257, for the purpose of creating an electronic record as defined in subdivision 7 of § 59.1-480.” *Id.* § 17.1-258.2 (Repl. Vol. 2015). An “[e]lectronic record” means “a record created, generated, sent, communicated, received, or stored by electronic means.” *Id.* § 59.1-480(7) (Repl. Vol. 2014 & Cum. Supp. 2017).

10. An “eRecording System” is an “automated electronic recording system implemented by the clerk for the recordation of electronic documents among the land records maintained by the clerk.” *Id.* § 55-142.10 (Repl. Vol. 2012).

11. *Id.* § 17.1-258.3:1 (Cum. Supp. 2017); *id.* § 55-142 (Repl. Vol. 2012 & Cum. Supp. 2017).

12. *Id.* § 55-142.12(A) (Repl. Vol. 2012); *id.* § 17.1-258.3:1(A) (Cum. Supp. 2017).

13. *Id.* § 17.1-258.3:1(A) (Cum. Supp. 2017); *id.* § 55-142.12 (Repl. Vol. 2012).

14. See Act of Feb. 20, 2017, ch. 90, 2017 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 17.1-258.3:1 (Cum. Supp. 2017)).

15. VA. CODE ANN. § 55-142.10 (Repl. Vol. 2012); *id.* § 17.1-258.3:1 (Cum. Supp. 2017); see *id.* § 55-142.12(A) (Repl. Vol. 2012).

agents and attorneys provide escrow, closing, and settlement services for real property transactions in more than one locality, their volume of business in each may not justify the cost and hassle of entering into electronic filing agreements with all of them.

One way to resolve this practical problem would be for a settlement agent or attorney to utilize a third-party vendor for the electronic recordation of settlement documents. Then, just the third-party vendor would be the filer required to enter into an electronic filing agreement with each circuit court clerk who provides an eRecording System wherever the vendor offers electronic recording services.

Settlement agents and attorneys are able to use third-party vendors to file and record documents electronically. Under section 55-525.11 of the Virginia Code, one of the duties of a settlement agent is simply to “cause recordation” of the settlement documents required to be recorded, not necessarily to record the documents.<sup>16</sup> Likewise, “[e]scrow, closing, or settlement services” provided by settlement agents pursuant to chapter 27.3 of Title 55 of the Virginia Code, dealing with Real Estate Settlement Agents, include “handling *or arranging for* the recording of documents.”<sup>17</sup> Thus, just as many settlement agencies and attorneys use title companies or independent title searchers to update title and record paper documents, they should be able to use third-party service providers to record documents electronically.

The Virginia Bureau of Insurance (“Bureau”) offered title company settlement agents guidance on the use of third-party vendors for electronic recordation of settlement documents in a letter dated January 4, 2017.<sup>18</sup> Although the Bureau’s letter indicated it “is permissible to use a third-party vendor to electronically record settlement documents,” the letter also cautioned that title settlement agents “must structure these arrangements in such a way that the settlement agent remains compliant with all escrow and recording requirements.”<sup>19</sup>

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16. *Id.* § 55-525.11 (Repl. Vol. 2012).

17. *Id.* § 55-525.16 (Repl. Vol. 2012 & Cum. Supp. 2017) (emphasis added).

18. BUREAU OF INS., VA. STATE CORP. COMM’N, PROHIBITION AGAINST REBATING ELECTRONIC RECORDING (2017) [hereinafter BUREAU OF INS.], <https://www.scc.virginia.gov/boi/pro/resa/inf382-4614.pdf>.

19. *Id.*

The Bureau's guidance letter may discourage title company settlement agents from recording settlement documents electronically. Specifically, the letter stated that "a title settlement agent should not permit any third party to debit the settlement agent's main escrow account for recording fees."<sup>20</sup> The Bureau indicated that practice would violate the settlement agent's statutory obligation to handle settlement funds in a fiduciary capacity under Virginia Code section 55-525.24.<sup>21</sup> It is not clear whether the concern was limited to permitting a third party to debit the escrow account for an uncertain amount, but there does not seem to be any reason electronic payment of a specified amount would be any different than "wiring" a loan payoff, for example, or payment of other settlement costs electronically.

According to the Bureau's letter, a title company settlement agent could either establish a separate escrow account for Virginia recordings or pay the vendor by checks drawn on the main real estate settlements escrow account.<sup>22</sup> Presumably, a separate escrow account for Virginia recordings still would be subject to applicable escrow accounting procedures and requirements, which includes keeping detailed ledgers and records for each transaction.<sup>23</sup>

The Bureau also admonished title company settlement agents that they would remain responsible for recordation of settlement documents and disbursement of settlement funds within two business days of settlement (although that time limit actually only applies to residential real estate settlements under Virginia Code sections 55-525.11 and 55-525.9).<sup>24</sup>

The concept of a "[r]ecord" or "[d]ocument" being information either "inscribed on a tangible medium" (e.g., paper) or "stored in an electronic or other medium and . . . retrievable in perceivable form" is expressed in both the Uniform Real Property Electronic Recording Act and the Uniform Electronic Transactions Act.<sup>25</sup> An "[e]lectronic document" is just "a document *received* by the clerk in electronic form" under the Uniform Real Property Electronic

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20. *Id.*

21. *Id.*; see VA. PROF'L CONDUCT R. 1.15 (Repl. Vol. 2017).

22. BUREAU OF INS., *supra* note 18.

23. See VA. CODE ANN. § 55-525.24 (Cum. Supp. 2017); R. 1.15 (Repl. Vol. 2017).

24. BUREAU OF INS., *supra* note 18; VA. CODE ANN. §§ 55-525.9, -525.11 (Repl. Vol. 2012).

25. VA. CODE ANN. § 55-142.10 (Repl. Vol. 2012); *id.* § 59.1-480(13) (Repl. Vol. 2014 & Cum. Supp. 2017).

Recording Act.<sup>26</sup> Thus, for purposes of electronic filing of land records, a document originally could be information<sup>27</sup> either “inscribed on a tangible medium”—a paper document—or stored in an electronic medium and retrievable in perceivable form.<sup>28</sup> The document, whether *originally* in paper or electronic form, may then be submitted in electronic form for recordation as an electronic document.

Again, a circuit court clerk may, but is not required to, implement an eRecording System in compliance with standards established by the Virginia Information Technologies Agency.<sup>29</sup> If a clerk does implement an eRecording System, the clerk must “continue to accept paper land records and shall place entries for both types of land records in the same indices.”<sup>30</sup>

In case there was any question, a circuit court clerk can also convert paper land records, including documents recorded previously, to electronic form.<sup>31</sup> Recording fees and taxes can be collected electronically.<sup>32</sup> A circuit court clerk also “may provide for access to, and for search and retrieval of, land records by electronic means.”<sup>33</sup> A settlement agent or attorney should not record settlement documents electronically if the land records cannot be searched electronically by remote access through the time of e-recording.

The Uniform Real Property Electronic Recording Act “modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.),” except as specified in the Uniform Real Property Electronic Recording Act.<sup>34</sup> However, if there was any question as to whether the Uniform Electronic Transactions Act applies to Virginia real property trans-

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26. *Id.* § 55-142.10 (Repl. Vol. 2012) (emphasis added).

27. “Information” means “data, text, images, sounds, codes, computer programs, software, databases, or the like.” *Id.* § 59.1-480(9) (Repl. Vol. 2014 & Cum. Supp. 2017). For information to be “perceivable” in a circuit court clerk’s eRecording System, one would expect it to be mostly text, with some images, data, and, perhaps, sounds.

28. *Id.* § 59.1-480(13) (Repl. Vol. 2014 & Cum. Supp. 2017); *id.* § 55-142.10 (Repl. Vol. 2012).

29. *Id.* § 55-142.12(A)–(B) (Repl. Vol. 2012); *see id.* § 17.1-258.3:1(A) (Cum. Supp. 2017).

30. *Id.* § 55-142.12(D) (Repl. Vol. 2012).

31. *Id.* § 55-142.12(E) (Repl. Vol. 2012).

32. *Id.* § 55-142.12(F) (Repl. Vol. 2012).

33. *Id.* § 55-142.12(C) (Repl. Vol. 2012).

34. *Id.* § 55-142.15 (Repl. Vol. 2012).

actions, the Uniform Real Property Electronic Recording Act expressly validates electronic documents, electronic signatures, and electronic notarizations for land records.<sup>35</sup>

Likewise, the Uniform Electronic Transactions Act gives legal recognition to electronic records, electronic signatures, and electronic contracts, providing that

- (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- (c) If a law requires a record to be in writing, an electronic record satisfies the law.
- (d) If a law requires a signature, or provides for certain consequences in the absence of a signature, an electronic signature satisfies the law.<sup>36</sup>

However, parties must agree to transact business electronically. The Uniform Electronic Transactions Act “applies only to transactions between parties each of which has agreed to conduct transactions by electronic means.”<sup>37</sup> And “[a] party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means.”<sup>38</sup> Neither of those provisions can be waived by agreement.<sup>39</sup>

An electronic record or signature can be attributed legally to a person if it was the “act of the person [which] may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.”<sup>40</sup> In the context of real estate transactions, such a showing would include notarization of the record or document, including electronic notarization.

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35. *Id.* § 55-142.11 (Repl. Vol. 2012). The Uniform Real Property Electronic Recording Act also references Uniform Electronic Transactions Act definitions of “Electronic” and “Electronic signature.” *Id.* § 55-142.10 (Repl. Vol. 2012).

36. *Id.* § 59.1-485 (Repl. Vol. 2014 & Cum. Supp. 2017).

37. *Id.* § 59.1-483(b) (Repl. Vol. 2014 & Cum. Supp. 2017).

38. *Id.* § 59.1-483(c) (Repl. Vol. 2014 & Cum. Supp. 2017).

39. *Id.* § 59.1-483(b)–(c) (Repl. Vol. 2014 & Cum. Supp. 2017).

40. *Id.* § 59.1-487(a) (Repl. Vol. 2014). A “[s]ecurity procedure” is “a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record,” which can include the use of “algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.” *Id.* § 59.1-480(14) (Repl. Vol. 2014 & Cum. Supp. 2017).

The Virginia Notary Act, Virginia Code section 47.1-2, remained essentially unchanged from 1980 until 2007 when identical House Bill 2058 and Senate Bill 826, enacted by the General Assembly, introduced the concept of electronic notarization under Virginia law, effective July 1, 2008.<sup>41</sup> The 2007 legislation codified many common law concepts regarding notarial acts and extended those concepts to electronic transactions and documents.<sup>42</sup>

Not every notarial certification of a notarial act by a notary public applicable to a document in electronic form necessarily is an electronic notarial act. Until a document is “created, generated, sent, communicated, received, or stored by electronic means,” by definition, it is not an electronic document for purposes of notarization under the Virginia Notary Act.<sup>43</sup> Regular notarization of a non-electronic document is just performed by a notary under the provisions of that act, generally. Once notarized, a document then can be converted to an electronic document by electronic means (e.g., scanning to a PDF).

In order to perform electronic notarial acts (i.e., notarial acts involving documents already in electronic form), a Virginia notary public must be commissioned as a notary public “with the capability of performing electronic notarial acts under § 47.1-7” of the Virginia Code.<sup>44</sup> An electronic notary public, then, is essentially a notary public also commissioned to perform notarial acts by electronic means, including electronic signatures.

Section 47.1-7 of the Virginia Code imposes additional requirements for a notary to be commissioned as an electronic notary public. Those requirements include registering with the Secretary of the Commonwealth on a form, which includes “[a] general description of the technology or technologies the registrant will use to create an electronic signature in performing official acts” and “[c]ertification of compliance . . . with electronic notary standards developed in accordance with § 47.1-6.1.”<sup>45</sup>

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41. H.B. 2058, Va. Gen. Assembly (Reg. Sess. 2007) (enacted as Act of Mar. 12, 2007, ch. 269, 2007 Va. Acts 369); S.B. 826, Va. Gen. Assembly (Reg. Sess. 2007) (enacted as Act of Mar. 20, 2007, ch. 590, 2007 Va. Acts 800).

42. H.B. 2058, Va. Gen. Assembly (Reg. Sess. 2007) (enacted as Act of Mar. 12, 2007, ch. 269, 2007 Va. Acts 369); S.B. 826, Va. Gen. Assembly (Reg. Sess. 2007) (enacted as Act of Mar. 20, 2007, ch. 590, 2007 Va. Acts 800).

43. VA. CODE ANN. § 47.1-2 (Repl. Vol. 2013 & Cum. Supp. 2017).

44. *Id.*

45. *Id.* § 47.1-7(A)(2)–(3) (Repl. Vol. 2013). The electronic notary application form must



*The Virginia Electronic Notarization Assurance Standard*, published by the Secretary of the Commonwealth in accordance with Virginia Code section 47.1-6.1 and dated January 21, 2013, sets forth those standards.<sup>46</sup> The electronic notarization standard covers electronic notarization generally, official electronic signature and seal requirements, online notarization, and notarized electronic document requirements. It focuses on confirming the legitimacy of the notary who signed the record and establishing the integrity of the signed record itself.<sup>47</sup> The electronic notarization standard adopts “a digital certificate in a public key infrastructure [as] the technology best suited *today* to achieve these aims.”<sup>48</sup>

The Secretary of the Commonwealth published the electronic notarization standard on January 21, 2013, several months after the General Assembly’s authorization of remote electronic notarization in Virginia became effective on July 1, 2012.<sup>49</sup> As of June 30, 2017, four states—Montana, Nevada, Texas, and Ohio—have joined Virginia in recognizing remote notarization.<sup>50</sup> While remote electronic notarizations may be valid under Virginia law, several other states continue to question the validity and recordability of documents notarized remotely, and title insurers may limit the use of remote electronic notarization until it is more widely accepted.<sup>51</sup>

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be electronically signed and transmitted to the Secretary of the Commonwealth. *Id.* § 47.1-7(B) (Repl. Vol. 2013).

46. VA. SEC’Y OF THE COMMONWEALTH, *THE VIRGINIA ELECTRONIC NOTARIZATION ASSURANCE STANDARD 1* (2013), <https://commonwealth.virginia.gov/media/2090/VAe-NotarizationStandard2013Version10.pdf>. Reflecting government policy favoring electronic commerce, the electronic notarization standard expresses an intention that “notaries in the Commonwealth of Virginia should transition to performing electronic notarizations that have the same legal effect and admissibility as currently presumed by their physical-world counterparts.” *Id.*

47. *Id.* (“Legitimacy involves verifying the identity of the electronic notary who created the electronic signature and the electronic notary’s official status. Integrity involves corroborating that the presented record accurately reflects the data and form of the record originally electronically signed by the electronic notary.”).

48. *Id.*

49. Act of Mar. 26, 2011, ch. 731, 2011 Va. Acts 1210, 1213 (codified as amended at VA. CODE ANN. § 47.1 (Repl. Vol. 2013 & Cum. Supp. 2017)); Act of Apr. 6, 2011, ch. 834, 2011 Va. Acts 1455, 1458 (codified as amended at VA. CODE ANN. § 47.1 (Repl. Vol. 2013 & Cum. Supp. 2017)).

50. Michael Lewis, *Another State Says Yes to Webcam Notarizations*, NAT’L NOTARY ASS’N: NOTARY BULL. (Aug. 3, 2017), <https://www.nationalnotary.org/notary-bulletin/blog/2017/06/two-states-approve-webcam-notarization>; see Press Release, John R. Kasich, Governor of Ohio, Kasich Signs Am. Sub. H.B. 49 and Executive Order (June 30, 2017), <http://www.governor.ohio.gov/MediaRoom/PressReleases/TabId/200/ArticleId/718/kasich-signs-am-sub-hb-49-and-executive-order.aspx> (making Ohio the fifth state, as of June 30, 2017, to authorize the use of remote notarization).

51. See Press Release, Am. Land Title Ass’n, American Land Title Association Supports

From the author's experience, parties commonly agree to sign real estate contracts electronically in Virginia, especially in residential transactions. Even commercial real estate contracts often have provisions for electronic forms to be as valid as "those inscribed on a tangible medium." But documents involved in real property transactions resulting from those electronic contract documents typically are not executed by electronic signatures or notarized electronically. Parties usually execute closing documents with tangible "wet" signatures in the presence of a notary public who performs the requisite notarial acts and completes and signs notarial certificates in non-electronic form.<sup>52</sup>

Traditional practices, then, remain the norm in Virginia real estate transactions. But those practices may be changing as digital-age consumers become parties to most real property transactions in Virginia. Virginia government evidently wants to encourage more electronic commerce in the real estate business. It now may cost five dollars more to record a paper document—i.e., one "inscribed on a tangible medium"—than an electronic document in a circuit court clerk's office with an eRecording System.<sup>53</sup>

Virginia notaries "should transition to performing electronic notarizations" according to the Secretary of the Commonwealth.<sup>54</sup> And electronic notarization really only applies to electronic documents signed electronically, after all, so the policy of the Secretary of the Commonwealth effectively endorses the use of electronic documents signed electronically.

Especially if real estate settlement agents and attorneys use third-party electronic recording service vendors, and avoid the need to enter into electronic filing agreements with all the circuit court clerks with whom they do business, electronic filing of land record documents may modernize the closing process and expedite post-closing follow-up. If parties are willing to pay for the advantages of electronic recording and those services can be billed separately for separate transactions, particularly if those fees are

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Effort to Improve Real Estate Closing Process (Feb. 15, 2017), <https://www.alta.org/publications/press-release.cfm?American-Land-Title-Association-Supports-Effort-to-Improve-Real-Estate-Closing-Process> ("Though states have long accepted traditional notarizations conducted in other states, it is currently unclear as to whether remote electronic notarizations will receive the same treatment.").

52. These practices are common in the author's experience.

53. Act of Feb. 20, 2017, ch. 90, 2017 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 17.1-258.3:1 (Cum. Supp. 2017)).

54. See *supra* note 4.

not substantially more than the electronic filing fee savings enacted in 2017, then we can expect to see increased use of electronic recording in Virginia.

On the other hand, current technologies may not make electronic transactions as secure as traditional transactions. Cyber fraud in real estate transactions has become a major concern. Recently, the computer systems of several title companies across the country were breached, and phishing attempts appearing to attach documents generated by one of the major electronic document service vendors were sent to many people in the real property title and settlement industry.<sup>55</sup>

Real estate practice may be particularly at risk simply because it involves relatively large amounts of money for transactions being conducted primarily by individuals and relatively small businesses. The apocryphal answer to the question of why criminals rob banks—“because that’s where the money is”—is applicable to modern real estate practice. To put things in perspective, compare the cost of even a relatively expensive passenger vehicle with the cost of an average home in most markets. It is easy to see why residential real estate transactions become attractive targets.

The Virginia enabling legislation discussed here can address some of the issues of legitimacy and integrity of electronic transactions, but until the systems in which those transactions are conducted can be made as secure as traditional land records and document systems, real estate practitioners may remain slow to embrace e-commerce in real property transactions. However, the sheer volume of real property transactions and the increasing complexity of real estate transaction documentation may necessitate increased reliance on the authority of that enabling legislation. Many Virginia circuit court clerks simply cannot continue to maintain physical land records systems within the confines of their offices.

The legislative framework for conducting real estate practice electronically in Virginia has come a long way since the General Assembly adopted the Uniform Electronic Transactions Act in 2000. It remains to be seen if that framework will support the real estate transactions it was intended to enable.

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55. See Press Release, Am. Land Title Ass’n, Phishing for Wire Transfer (Aug. 1, 2017), <http://www.alta.org/news/news.cfm?20170801-phishing-for-Wire-Transfers>.