

**PROPERTY AND CONVEYANCES: RECORDATION OF DOCUMENTS - UNIFORM
RECOGNITION OF ACKNOWLEDGMENTS ACT.**

TRADE AND COMMERCE: ELECTRONIC SIGNATURES.

**Person acknowledging instrument must appear before person taking acknowledgment.
Notary public may not acknowledge "electronic signature."**

The Honorable Anne P. Petera

Secretary of the Commonwealth

June 25, 1999

You ask whether, pursuant to § 55-118.3 of the *Code of Virginia*, a notary public may acknowledge an electronic signature, as that term is defined and used in Chapter 39 of Title 59.1.¹

Section 59.1-467 defines the term "electronic signature," for the purposes of Chapter 39 of Title 59.1, to mean "any electronic identifier intended by the person making, executing, or adopting it to authenticate and validate a record." Section 59.1-469 permits electronic signatures to be used by "every agency, department, board, commission, authority, political subdivision or other instrumentality of the Commonwealth" "[c]onsistent with other applicable law" and in accordance with the criteria established in the statute.²

The Uniform Recognition of Acknowledgments Act is set forth in Article 2.1, Chapter 6 of Title 55³ (the "Act"). Pursuant to § 55-118.1 of the Act, notaries public are authorized to take proof of acknowledgments of instruments. Section 55-118.3 of the Act requires a notary public taking an acknowledgment to certify that:

- (1) The person acknowledging appeared before him and acknowledged he executed the instrument; and
- (2) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

The Act defines the phrase "acknowledged before me" to mean:

- (1) That the person acknowledging appeared before the person taking the acknowledgment,
- (2) That he acknowledged he executed the instrument,
- (3) That, in the case of:
 - (i) A natural person, he executed the instrument for the purposes therein stated;

(ii) A corporation, the officer or agent acknowledged he held the position or title set forth in the instrument and certificate, he signed the instrument on behalf of the corporation by proper authority, and the instrument was the act of the corporation for the purpose therein stated;

(iii) A partnership, the partner or agent acknowledged he signed the instrument on behalf of the partnership by proper authority and he executed the instrument as the act of the partnership for the purposes therein stated;

(iv) A person acknowledging as principal by an attorney in fact, he executed the instrument by proper authority as the act of the principal for the purposes therein stated;

(v) A person acknowledging as a public officer, trustee, administrator, guardian, conservator or other representative, he signed the instrument by proper authority and he executed the instrument in the capacity and for the purposes therein stated; and

(4) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate^[4]

"[T]he primary objective of statutory construction is to ascertain and give effect to legislative intent."⁵ Under applicable rules of statutory construction, the General Assembly is presumed to be aware of the law existing at the time it adopts a statute.⁶ The General Assembly is also presumed to be aware of its own previous enactments.⁷ To determine legislative intent in this instance, statutes dealing with the same subject matter should be construed together to achieve a harmonious result, resolving conflicts to give effect to each statute, to the maximum extent possible.⁸ Another accepted principle of statutory construction is that, when it is not clear which of two statutes applies, the more specific statute prevails over the more general.⁹ Also, when statutes provide different procedures on the same subject matter, the more general gives way to the more specific.¹⁰ Section 55-118.3 specifically applies to acknowledgments taken by notaries public, while § 59.1-469 generally applies only to the authentication and validation of records "[c]onsistent with other applicable law." Section 55-118.3 is thus the more specific statute in this instance and is plain and unambiguous in the requirement "[t]hat the person acknowledging appeared before the person taking the acknowledgment."¹¹

I am therefore, of the opinion that, pursuant to § 55-118.3, a notary public may not acknowledge an "electronic signature" as that term is defined in § 59.1-467.

¹Sections 59.1-467 to 59.1-469.

²The criteria established in § 59.1-469 "to ensure the authenticity and validity of electronic signatures" are that the signatures must be: "(i) unique to the signer, (ii) capable of verification, (iii) under the signer's sole control, (iv) linked to the record in such a manner that it can be determined if any data contained in the record was changed subsequent to the electronic

signature being affixed to the record, and, (v) created by a method appropriately reliable for the purpose for which the electronic signature was used."

³Sections 55-118.1 to 55-118.9.

⁴Section 55-118.5.

⁵Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

⁶See Cape Henry v. Natl. Gypsum, 229 Va. 596, 600, 331 S.E.2d 476, 479 (1985).

⁷17 M.J. *Statutes* § 46 (Repl. Vol. 1994 & Supp. 1998); Op. Va. Att'y Gen.: 1998 at 19, 21; 1994 at 60, 62.

⁸VEPCO v. Prince William Co., 226 Va. 382, 387-88, 309 S.E.2d 308, 311 (1983); 1991 Op. Va. Att'y Gen. 7, 8; *id.* at 159, 160; see also Prillaman v. Commonwealth, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957) (statutes relating to same subject are not to be considered in isolation but must be construed together to produce harmonious result that gives effect to all provisions if possible).

⁹See Op. Va. Att'y Gen.: 1990 at 227, 228; 1987-1988 at 276, 277; 1980-1981 at 330, 331.

¹⁰See Davis v. Davis, 206 Va. 381, 386, 143 S.E.2d 835, 839 (1965); 1976-1977 Op. Va. Att'y Gen. 93, 94.

¹¹Section 55-118.5(1). When the language of a statute is plain and unambiguous, and its meaning is clear and definite, it must be given effect. Temple v. City of Petersburg, 182 Va. 418, 29 S.E.2d 357 (1944); 1997 Op. Va. Att'y Gen. 16, 17.