

00-021

NOTARIES AND OUT-OF-STATE COMMISSIONERS (VIRGINIA NOTARY ACT): APPOINTMENT.

No statutory requirement for particular form of notary seal. Presence or absence of words "Commonwealth of Virginia" does not affect legal sufficiency of notary's seal. Any instructions that may be included in handbook prepared for notaries by Secretary of Commonwealth regarding form of notary seal are not tantamount to statutory requirement for form of such seal.

The Honorable L. Preston Bryant Jr.
Member, House of Delegates
May 15, 2000

You inquire concerning the legal sufficiency of a notary seal appearing on a deed that references "Lynchburg, Virginia," but does not contain the words "Commonwealth of Virginia." You also inquire concerning the authority of the Secretary of the Commonwealth to mandate a particular form of such seal.

You relate that a deed involving the transfer of real property in North Carolina was signed in Virginia and duly notarized by a Virginia notary. You further relate that the notary's seal references "Lynchburg, Virginia," and contains no reference to the "Commonwealth of Virginia." You inquire whether such seal is legally sufficient.¹

A 1945 opinion of the Attorney General addresses a similar factual situation.² The opinion concludes that there is no requirement that a notary's seal be affixed to the acknowledgement in order for a deed to be recorded, and thus, is surplusage.³ Furthermore, the opinion notes that there is no Virginia statute requiring a notary's seal to be in any particular form.⁴ I concur with the conclusion of the 1945 opinion. The notary seal in issue in the 1945 opinion is similar to the one you present in that it reflected nothing more than the words "Notary Public."⁵ The inquiry was whether the notary's name was required to be on the seal.⁶ The opinion concludes that, in the absence of statutory requirements regarding a notary public's seal, "anything that comes within the purview" of the statutes governing the acknowledgments of notaries public⁷ is sufficient, and the name does not have to be on the seal.⁸ Similarly, it is my opinion that the presence or absence of the words "Commonwealth of Virginia" does not affect the legal sufficiency of the notary's seal.

With respect to the authority of the Secretary of the Commonwealth relative to notaries public, the Virginia Notary Act⁹ sets forth the procedure for commissioning an individual to be a notary pursuant to the Governor's power to appoint such notaries.¹⁰ Although the duty to prepare a notary commission for an applicant falls on the Secretary,¹¹ I can find no statute that prescribes a particular form for the notary's seal. Section 47.1-11 of the

Code of Virginia authorizes the Secretary to prepare a handbook for notaries containing information the Secretary "shall deem useful." It is my opinion that instructions contained in such handbook regarding the form of a notary's seal, if any, are not tantamount to a statutory requirement for that form of a notary's seal.

¹You do not indicate any conflicts with North Carolina law and thus I assume there are none. *Compare* 1971-1972 Op. Va. Att'y Gen. 61, 62 (concluding that power of attorney signed by several persons and acknowledged before several out of state notaries, some of whom used their seals and some who did not, should be recorded under § 55-118.1 authorization for clerk to accept instruments acknowledged by notaries of other states).

²1944-1945 Op. Va. Att'y Gen. 102.

³*Id.*

⁴*Id.*

⁵*Id.*

⁶*Id.*

⁷Tit. 47.1, Va. Code Ann. §§ 47.1-1 to 47.1-33 (entitled Virginia Notary Act).

⁸1944-1945 Op. Va. Att'y Gen., *supra* note 2, at 102.

⁹*See cite supra* note 7.

¹⁰*See* §§ 47.1-3 to 47.1-11.

¹¹*See* § 47.1-8.