

01-006

PROPERTY AND CONVEYANCES: FORM AND EFFECT OF DEEDS AND COVENANTS.

CORPORATIONS: VIRGINIA LIMITED LIABILITY COMPANY ACT.

Authority of Virginia limited liability company to serve as trustee in deed of trust on real property.

The Honorable Albert Teich Jr.
Clerk, Circuit Court of the City of Norfolk
June 22, 2001

You ask whether § 55-58.1(2) of the *Code of Virginia* permits a Virginia limited liability company to serve as a trustee in a deed of trust on real property.

Under the Virginia Limited Liability Company Act, §§ 13.1-1000 through 13.1-1073, "a limited liability company is an unincorporated association with a registered agent and office."¹ Specifically, § 13.1-1009 provides that "[u]nless the articles of organization provide otherwise, every limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs." Such powers include the power to "receive and hold real and personal property as security for repayment."²

Section 55-58.1 contains certain requirements regarding the recordation of certain deeds of trusts and provides that "[n]o *person* not a resident of this Commonwealth may be named or act, in person or by agent or attorney, as the trustee of a security trust, either individually or as one of several trustees, the other or others of which are residents of this Commonwealth."³

The General Assembly does not define the term "person" as it is used in § 55-58.1.⁴ Section 1-13.19, however, defines "person," as applied generally in the construction of all provisions of the Code, to include "any individual, corporation, partnership, association, company, business, trust, joint venture or other legal entity."⁵ I am not aware of any statute that prohibits extension of the word "person" to include limited liability companies.⁶ Therefore, applying this definition to § 55-58.1, and assuming that the deed of trust falls within the purview of such statute,⁷ it is my opinion that a Virginia limited liability company may serve as a trustee in such deed of trust.⁸

¹Hagan v. Adams Property Associates, 253 Va. 217, 220, 482 S.E.2d 805, 807 (1997); see Va. Code Ann. § 13.1-1002 (Michie Repl. Vol. 1999) (defining "limited liability company"); §§ 13.1-1015 to 13.1-1018 (Michie Repl. Vol. 1999 & Supp. 2000).

²Va. Code Ann. § 13.1-1009(6) (Michie Repl. Vol. 1999).

³Va. Code Ann. § 55-58.1(2) (Michie Repl. Vol. 2000) (emphasis added).

⁴Compare Va. Code Ann. § 13.1-1069 (Michie Repl. Vol. 1999) (authorizing inclusion of "limited liability company" within definition of term "person" whenever such term is used in Code "to include both corporation and partnership").

⁵See 2000 Op. Va. Att'y Gen. 233, 234.

⁶*Compare* 1976-1977 Op. Va. Att'y Gen. 218, 219 (holding that word "person" may be extended to corporations for purposes of predecessor statute to § 58.1-3952).

⁷*See* 1967-1968 Op. Va. Att'y Gen. 228, 229 (noting that only examination of instrument itself can determine whether it falls within purview of § 55-58.1).

⁸You also inquire whether the limited liability company set forth in the deed of trust as the trustee is in compliance with the Code with respect to the location of its principal office. I am required to take notice that a clerk must record a document that meets basic statutory requirements without inquiry into the legal sufficiency of the writing; thus, it is not within the power of the clerk to determine whether an instrument presented for filing meets the requirements of any particular provision of law. *See* Op. Va. Att'y Gen.: 1986-1987 at 159, 160; 1971-1972 at 65, 65.

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