

01-060

NOTARIES AND OUT-OF-STATE COMMISSIONERS: POWERS AND DUTIES.

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

Notary public commissioned by State of Maryland is not authorized to notarize in Commonwealth documents for recordation in Virginia circuit court clerk's office.

The Honorable Marilyn L. Wilson
Clerk, Circuit Court of Amelia County
April 8, 2002

Issue Presented

You ask whether a notary public commissioned by the State of Maryland is authorized to notarize in the Commonwealth documents for recordation in a Virginia circuit court clerk's office.

Response

It is my opinion that a notary public commissioned in the State of Maryland is not authorized to notarize in the Commonwealth documents for recordation in a circuit court clerk's office in Virginia.

Facts

You state that a deed of gift has been presented to the clerk's office for recordation. You further advise that the deed of gift was notarized in Virginia by a notary public commissioned in the State of Maryland, and not in Virginia. Thus, you inquire whether such deed of gift may be admitted to record in the deed book as a properly acknowledged document.¹

Applicable Law and Discussion

The Uniform Recognition of Acknowledgments Act² authorizes notarial acts performed outside the Commonwealth for use in the Commonwealth to have the same effect as if performed by a notary public of this Commonwealth, if the notary public performing such acts is "authorized to perform notarial acts in the place in which the act is performed."³ Again, this statute recognizes that a notary public must possess threshold jurisdictional authority to perform notarial acts in such jurisdiction.

A notary public commissioned by the State of Maryland is authorized to perform the functions of the office of notary public "in any other county or city than the county or city for which the notary is appointed."⁴ Furthermore, the *Notary Public Handbook* for the State of Maryland provides:

A notary public commission issued by the State of Maryland does not authorize the holder to act as a notary public in another state or the District Columbia. Similarly, a notary public of another state may not act as a notary public in Maryland, unless the person also holds a commission issued by Maryland.^{5]}

Therefore, a notary public commissioned in Maryland is not authorized by that state to notarize documents in the Commonwealth for recording in the clerk's office of a circuit court of the Commonwealth.

Section 55-106 provides, in part:

Except when it is otherwise provided, the circuit court of any county or city, or the clerk of any such court, or his duly qualified deputy, in his office, shall admit to record any such writing as to any person whose name is signed thereto with an original signature, except as provided in § 55-113, when it shall have been acknowledged by him, or proved by two witnesses as to him in such court, or before such clerk, or his duly qualified deputy, in his office, or the manner prescribed in §§ [sic] Articles 2 (§ 55-113 et seq.), 2.1 (§ 55-118.1 et seq.), and 3 (§ 55-119 et seq.) of [Chapter 6 of Title 55].

The use of the word "shall" in a statute generally implies that its terms are intended to be mandatory, rather than permissive or directive.⁶

Your facts indicate that a deed of gift presented for recordation is notarized in Virginia by a notary public commissioned in the State of Maryland, and not in Virginia. Consequently, the instrument does not appear to have been acknowledged in the manner prescribed in Articles 2, 2.1, and 3, Chapter 6 of Title 55.

Conclusion

Accordingly, it is my opinion that a notary public commissioned by the State of Maryland is not authorized to notarize in the Commonwealth documents for recordation in a Virginia circuit court clerk's office.

¹Chapter 6 of Title 55, § 55-106 to 55-142.9, of the *Code of Virginia* provides for the recordation of properly acknowledged deeds in circuit courts of the Commonwealth.

²Va. Code Ann. tit. 55, ch. 6, art. 2.1, §§ 55-118.1 to 55-118.9 (Michie Repl. Vol. 1995 & Supp. 2001).

³*Id.* § 55-118.1(1) (Michie Repl. Vol. 1995).

⁴Md. Code Ann. [extent of authority of notaries public] § 18-109 (2001).

⁵Sec'y St., Notary Public Handbook: State of Maryland, pt. II, ¶ 13, at 3 (2000).

⁶See *Andrews v. Shepherd*, 201 Va. 412, 414, 111 S.E.2d 279, 281-82 (1959); see also *Schmidt v. City of Richmond*, 206 Va. 211, 218, 142 S.E.2d 573, 578

(1965); Op. Va. Att'y Gen.: 1998 at 56, 58; 1996 at 178, 178; 1991 at 238, 240; 1989 at 250, 251-52; 1985-1986 at 133, 134.

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