



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable J. Chapman Petersen
Member, Senate of Virginia
Post Office Box 1066
Fairfax, Virginia 22038

Dear Senator Petersen:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask what constitutes a “principal office” under § 55-58.1(2) of the *Code of Virginia*. You further inquire specifically whether a “principal office” requires more than a registered office at which none of the duties of a trustee are performed or managed in order to foreclose on homes in Virginia under a deed of trust.

Response

It is my opinion that, for purposes of § 55-58.1(2), “principal office” may be defined according to the definition of this term provided in Title 13.1 of the *Code of Virginia*. It is further my opinion that a corporation’s registered office does not satisfy the requirements of § 55-58.1(2) unless such office also meets the definition of “principal office.”

Applicable Law and Discussion

Section 55-58.1(2) provides, in pertinent part, that “[n]o corporation may be named or act as the trustee or as one of the trustees of a security trust unless it is chartered under the laws of this Commonwealth or of the United States of America, and unless its principal office is within this Commonwealth.”¹ Thus, to serve as a trustee, a corporation must meet two requirements: 1) it must be chartered either under Virginia or federal law, and 2) it must maintain its principal office within the Commonwealth.

The General Assembly does not define the term “principal office” in Title 55. In the absence of a statutory definition, the plain and ordinary meaning of a term is controlling, given the context in which it

¹ A “security trust” includes “a deed of trust, mortgage, bond or other instrument, . . . under which the title to real . . . property . . . , wholly situate in and including no property situate outside of the Commonwealth of Virginia, is conveyed, transferred, encumbered or pledged to secure the payment of money or the performance of an obligation” VA. CODE ANN. § 55-58.1(1) (2007).

is used.² The term “principal office” is defined elsewhere in the Code, and this statutory definition may be looked to as an interpretative guide for determining the plain and ordinary meaning of the phrase as it is used in § 55-58.1(2).³ Title 13.1, which governs corporations generally, provides that a “principal office” is

the office, in or out of the Commonwealth, where the principal executive offices of a domestic or foreign corporation are located, or, if there are no such offices, the office, in or out of the Commonwealth, so designated by the board of directors. The designation of the principal office in the most recent annual report filed pursuant to § 13.1-775 shall be conclusive for purposes of this chapter.^{4]}

Because the *Code of Virginia* constitutes a single body of law and other sections may be looked to where the same phraseology is used,⁵ I conclude that an office in Virginia meeting this definition satisfies the requirement of § 55-58.1(2) that a corporation acting as a trustee of a security trust maintain its principal office “within this Commonwealth.”⁶

Under Virginia law, all corporations, whether chartered by or doing business in the Commonwealth, must maintain a registered office within the Commonwealth.⁷ Provided it is within the Commonwealth, a registered office “may be the same as *any* of its places of business[.]”⁸ To qualify as a trustee under § 55-58.1, on the other hand, a corporation must maintain its *principal* office in the Commonwealth. I therefore conclude that unless the corporation’s registered office is also its principal office, as defined above, it would not serve to meet the requirements of § 55-58.1(2).

² See *Sansom v. Bd. of Supvrs.*, 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999); *Hubbard v. Henrico Ltd. P’ship*, 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998); *Commonwealth v. Orange-Madison Coop. Farm Serv.*, 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980). See also 2012 Op. Va. Att’y Gen. No. 11-129, available at <http://www.ag.virginia.gov/Opinions%20and%20Legal%20Resources/Opinions/2012opns/11-129-Norment.pdf>; 1987-88 Op. Va. Att’y Gen. 423, 426-27.

³ See *First Nat’l Bank of Richmond v. Holland*, 99 Va. 495, 504, 39 S.E. 126, 129-30 (1901). See also 1975-76 Op. Va. Att’y Gen. 3, 4-5.

⁴ See VA. CODE ANN. §§ 13.1-603 (2011) (defining “principal office” for stock corporations) and 13.1-803 (2011) (for the same definition of “principal office” in the context of nonstock corporations). See also BLACK’S LAW DICTIONARY 1083 (6th ed. 1990) (“[t]he principal office of a corporation is its headquarters, or the place where the chief or principal affairs and business of the corporation are transacted. Usually, it is the office where the company’s books are kept, where its meetings of stockholders are held, and where the directors, trustees, or managers assemble to discuss and transact the important general business of the company; but no one of these circumstances is a controlling test. . . . The office (in or out of the state of incorporation) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.”).

⁵ See *First Nat’l Bank of Richmond*, 99 Va. at 504, 39 S.E. at 129-30.

⁶ I note that prior opinions of this Office have concluded, based on the broad definition of “person” provided in § 2.2-230, that certain limited liability companies and limited liability partnerships may serve as trustees pursuant to § 55-58.1. See 2001 Op. Va. Att’y Gen. 171; 2012 Op. Va. Att’y Gen. No. 11-131, available at <http://www.ag.virginia.gov/Opinions%20and%20Legal%20Resources/Opinions/2012opns/11-131%20Habeeb.pdf>. Nonetheless, according to the plain terms of the statute, the principal office requirement of § 55-58.1(2), and thus this opinion, applies only to corporations. Section 55-58.1(2) separately requires that any “person” who is to be named or is to act as a trustee of a security trust must be a resident of the Commonwealth.

⁷ See §§ 13.1-634; 13.1-763; 13.1-833 (2011) (requiring all domestic stock corporations, foreign corporations, and domestic nonstock corporations, respectively, to maintain a registered office and agent).

⁸ *Id.* (emphasis added).

Nonetheless, as a final comment, I must note that whether any particular facility or operation satisfies such criteria and thereby constitutes a principal office is a fact-specific determination beyond the scope of this Opinion.⁹

Conclusion

Accordingly, it is my opinion that, for purposes of § 55-58.1(2), “principal office” may be defined according to the definition of this term provided in Title 13.1 of the *Code of Virginia*. It is further my opinion that a corporation’s registered office does not satisfy the requirements of § 55-58.1(2) unless such office also meets the definition of “principal office.”

With kindest regards, I am,

Very truly yours,

A handwritten signature in blue ink that reads "Ken C II". The signature is stylized, with the first name "Ken" and the last name "C" being prominent, followed by "II".

Kenneth T. Cuccinelli, II
Attorney General

⁹ See, e.g., 1991 Op. Va. Att’y Gen. 122, 124 and opinions cited therein for matters that require factual determinations.