



# COMMONWEALTH of VIRGINIA

Office of the Attorney General

Mark R. Herring  
Attorney General

202 North Ninth Street  
Richmond, Virginia 23219  
804-786-2071  
Fax 804-786-1991  
Virginia Relay Services  
800-828-1120  
7-1-1

September 1, 2016

Ms. Brett C. Glymph  
Executive Director, Virginia Outdoors Foundation  
39 Garrett Street, Suite 200  
Warrenton, Virginia 20186

Dear Ms. Glymph:

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

## Issue Presented

You ask whether the term “deed” as used in § 58.1-817 of the *Code of Virginia* should be construed to include any instrument conveying an interest in real property, including deeds of trust and leases for purposes of determining when certain fees imposed upon deed recordation are proper.

## Applicable Law and Discussion

Section 58.1-817, a provision of the Virginia Recordation Tax Act, establishes a \$1 fee to help provide state funding for open-space preservation. This fee is imposed on “every deed admitted to record in those jurisdictions in which open-space easements are held by the Virginia Outdoors Foundation” [“VOF”].<sup>1</sup> When a deed is recorded in one of these jurisdictions, the circuit clerk collects the fee, which is later distributed to the VOF for the agency to “accept, hold and administer . . . in accordance with its purposes and powers.”<sup>2</sup>

While it imposes an open-space preservation fee on “deeds” recorded in certain jurisdictions, § 58.1-817 does not define that term. It is well-established, however, that “[w]hen a word which has a known legal meaning is used in a statute[,] it must be assumed that the term is used in its legal sense, in

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<sup>1</sup> VA. CODE ANN. § 58.1-817 (2013). I note that the Virginia Outdoors Foundation is a body politic “established to promote the preservation of open-space lands and to encourage private gifts of money, securities, land or other property to preserve the natural, scenic, historic, scientific, open-space and recreational areas of the Commonwealth.” VA. CODE ANN. § 10.1-1800 (2012).

<sup>2</sup> VA. CODE ANN. § 58.1-817.

the absence of an indication of a contrary intent.”<sup>3</sup> The Supreme Court of Appeals of Virginia has stated, “A deed is the method by which title of real estate is transferred from one person to another.”<sup>4</sup> Black’s Law Dictionary defines a deed as “[a] written instrument by which land is conveyed [or] any written instrument that is signed, sealed, and delivered and that conveys *some interest* in property.”<sup>5</sup> Under the Restatement of Property, a “deed” is a written instrument that transfers some form of interest (or “title”) to real estate, whether the interest conveyed constitutes the full bundle of sticks commonly conceived of as full ownership of real property, or only a portion thereof.<sup>6</sup>

With respect to a deed of trust, about which you inquired, I note that, as a loan security instrument, it conveys legal title in real property from a borrower to a trustee, who holds the title on behalf of the lender until the loan is repaid,<sup>7</sup> with the borrower retaining equitable title.<sup>8</sup>

The Supreme Court of Virginia’s recent decision in *Deutsche Bank v. Arrington*<sup>9</sup> considered whether deeds of trust constitute “deeds” for purposes of § 55-52, Virginia’s after-acquired property statute. In holding that they do constitute deeds, the Court cited Black’s Law Dictionary approvingly for the proposition that a “deed” includes “any written instrument that is signed, sealed, and delivered and that conveys some interest in property,”<sup>10</sup> further noting that nothing in the relevant chapter of the *Code* “indicates that the General Assembly intended to restrict the meaning of the word ‘deed’ . . . to exclude deeds of trust.”<sup>11</sup> It is thus established under Virginia law that a deed of trust is a type of “deed.”

With respect to leases, that term is defined in Black’s Law Dictionary as “a contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration.”<sup>12</sup> Section 55-57 of the *Code of Virginia* provides the form for a “deed of lease.” It is thus evident that a lease falls within the definition of “deed,” as set forth above, in that it is a “written instrument that conveys some interest in property.”<sup>13</sup>

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<sup>3</sup> THE AM. & ENGLISH ENCYCLOPEDIA OF LAW 607 (David S. Garland & Lucius P. McGehee eds., 2nd ed. 1904); *see also, e.g.*, *Roberson v. Wampler*, 104 Va. 380, 382 (1905) (discussing the “well-settled rule of construction that . . . unless [a contrary intention is manifest], . . . words of a definite legal signification are to be understood as used in their definite legal sense”).

<sup>4</sup> *American Net and Twine Co. v. Mayo*, 97 Va. 182, 186 (1899) .

<sup>5</sup> BLACK’S LAW DICTIONARY 501 (Bryan A. Garner et al. eds., 10th ed. 2014) (emphasis added); *see also* 2002 Op. Va. Att’y Gen. 18, 22 n.3 (“A ‘deed’ is defined at common law as ‘any written instrument that is signed, sealed, and delivered and that conveys some interest in property.’”).

<sup>6</sup> *See, e.g.*, RESTATEMENT (FIRST) OF PROP. § 10, note on the use of the word “title” in the Restatement (discussing “title” generally as a term used to denote the existence of a specified interest in land) (AM. LAW INST. 1936); *Am. Net & Twine Co. v. Mayo*, 97 Va. 182, 186 (1899) (stating a deed “is the method by which the title of real estate is transferred”).

<sup>7</sup> *See, e.g.*, *Lawyers Title Ins. Corp.*, 254 Va. 388, 392 (1997).

<sup>8</sup> *See, e.g.*, *High Knob Assocs. v. Douglas*, 249 Va. 478, 484 n.4 (1995); *Everette v. Woodward*, 162 Va. 419, 426 (1934).

<sup>9</sup> 290 Va. 109 (2015).

<sup>10</sup> *Id.* at 116 (quoting BLACK’S LAW DICTIONARY 501 (Bryan A. Garner et al. eds., 10th ed. 2014)).

<sup>11</sup> *Id.*

<sup>12</sup> BLACK’S LAW DICTIONARY 1024 (Bryan A. Garner et al. eds., 10th ed. 2014).

<sup>13</sup> *See supra* note 5.

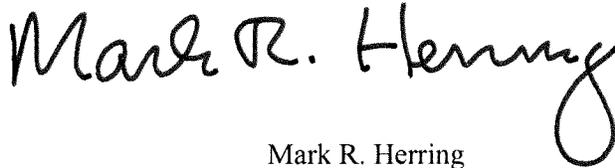
Finally, whether any other instrument should be deemed a “deed” under § 58.1-817 is a question determined by applying the established legal definition of “deed” set forth above to the terms of the particular instrument. It is, therefore, a question of fact. Attorneys General consistently have declined to render official opinions on specific factual matters.<sup>14</sup>

#### Conclusion

Accordingly, it is my opinion that the term “deed” as used in § 58.1-817 should be construed to include deeds of trust and leases, so long as the instruments are recorded in a jurisdiction in which open-space easements are held by the Virginia Outdoors Foundation. I express no opinion about whether any other type of instrument is a “deed” for this purpose.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Mark R. Herring". The signature is written in a cursive style with a large, looping "H" and a long, sweeping underline that extends to the right.

Mark R. Herring  
Attorney General

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<sup>14</sup> 2009 Op. Va. Att’y Gen. 80, 81 and n. 17.