



# COMMONWEALTH of VIRGINIA

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The Honorable Terry H. Whittle  
Clerk of Court  
Winchester Circuit Court  
Frederick-Winchester Judicial Center  
5 North Kent Street  
Winchester, Virginia 22601

Dear Mr. Whittle:

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 docketing procedure provided by § 8.01-446, which requires the deliverance of “an authenticated legible abstract” of judgment, allows a circuit court clerk to refuse to docket a certified copy of a final judgment order issued by a U.S. Bankruptcy Court when such a document is presented to the clerk’s office.

## Response

It is my opinion that § 8.01-446 requires the clerk of court to accept such a certified copy, provided the copy otherwise provides the information required by § 8.01-449.

## Applicable Law and Discussion

Article VII, § 4 of the Constitution of Virginia establishes the office of “a clerk, who shall be clerk of the court in the office of which deeds are recorded” and mandates that the duties of the office “shall be prescribed by general law or special act.” As a general rule, circuit court clerks have no inherent powers, and the scope of their powers must be determined by reference to applicable statutes.<sup>1</sup> There are several hundred specific statutes that prescribe the duties of the clerk, which include the recording of deeds, orders, financing statements and other instruments.<sup>2</sup> The manner in which these duties are performed are a function of management, tradition, custom and local practice.<sup>3</sup> Considerable deference is given to decisions made by clerks and, “in the absence of a constitutional or statutory provision to the

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<sup>1</sup> See 2003 Op. Va. Att’y Gen. 60, 61.

<sup>2</sup> See “Circuit Court Clerk’s Duties List” of the Office of the Executive Secretary of the Supreme Court of Virginia, <http://www.courts.state.va.us/courts/circuit/resources/cccdl.pdf>.

<sup>3</sup> See 2002 Op. Va. Att’y Gen. 62, 62; 2006 Op. Va. Att’y Gen. 99, 100.

contrary, constitutional officers have exclusive control over the operation of their offices.”<sup>4</sup> The clerk, as a constitutional officer, “is free to discharge his prescribed powers and duties in the manner in which he deems appropriate” unless limited by law.<sup>5</sup> If a statute specifically directs the manner in which a clerk performs a duty, the clerk must comply with the statute.

Section 8.01-446 provides, in pertinent part, that “[t]he clerk of each court of every circuit shall ... docket, without delay, any judgment for a specific amount of money rendered in this Commonwealth by any other court of this Commonwealth or federal court, when he shall be required to do so by any person interested, on such person delivering to him an authenticated legible abstract of it[.]” Section 8.01-477 provides further that “judgments and decrees rendered in the circuit court of appeals or a district court of the United States within this Commonwealth may be docketed and indexed ... in the same manner and under the same rules and requirements of law as judgments and decrees of courts in this Commonwealth.”

The Code does not define “abstract of judgment.” I therefore accord the term its plain meaning. *Black’s Law Dictionary* defines it simply as a “copy or summary of a judgment that, when filed with the appropriate public office, creates a lien on the debtor’s nonexempt property.”<sup>6</sup> Similarly, an “abstract” is defined as a “statement summarizing the important points of a text,”<sup>7</sup> or a “concise statement of a text, esp. of a legal document; a summary.”<sup>8</sup> As such, entitling a document a “certified copy” rather than an “abstract of judgment” does not render it insufficient for docketing pursuant to § 8.01-446.

The Code, however, does require that the document delivered for docketing contain certain information.<sup>9</sup> Pursuant to § 8.01-449(B), the following, where applicable, is necessary for the clerk to record the judgment: 1) the court and case number in which the judgment was entered; 2) the date and amount of the judgment; 3) the time from which the judgment bears interest; 4) any costs; 5) the names of all the parties as well as the addresses, dates of birth and last four social security number digits of all parties against whom judgment has been entered; 6) the alternative value of any specific property recovered by it; and 7) the amount and date of any credits applied to the judgment.<sup>10</sup> Thus, provided the certified copy of judgment from the bankruptcy court contains the required information, it qualifies as an abstract of judgment under the *Code of Virginia*.

I note further that, although the Code does grant clerks of court the explicit authority to reject presented documents and to refuse to record them, that authority is limited to instances where either the clerk finds the “abstract” to be illegible or the judgment does not comply with the provisions of § 8.01-449.<sup>11</sup> Otherwise, the Code provides that the clerk of court “shall docket, without delay”<sup>12</sup> conforming

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<sup>4</sup> See 2009 Op. Va. Att’y Gen. 56, 57.

<sup>5</sup> See 1984-85 Op. Va. Att’y Gen. 284, 284.

<sup>6</sup> BLACK’S LAW DICTIONARY 9 (7th ed. 1999) (emphasis added).

<sup>7</sup> THE AMERICAN HERITAGE COLLEGE DICTIONARY 6 (3rd ed. 1997).

<sup>8</sup> BLACK’S LAW DICTIONARY at 9. See also VA. CODE ANN. § 55-108 (2007) (providing “all writings which are to be recorded or docketed in the clerk’s office . . . shall be an original or first generation for, or legible copy thereof[.]”).

<sup>9</sup> See, e.g., VA. CODE ANN. § 16.1-96 (2010) and 1981 Op. Va. Att’y Gen. 63 (both referring to § 8.01-449 to determine the contents of an abstract of judgment).

<sup>10</sup> VA. CODE ANN. § 8.01-466 similarly requires that money judgments state the specific amount owed, the date from which the judgment bears interest, the names of the parties and the address of the judgment debtor.

<sup>11</sup> Sections 8.01-446 (Supp. 2010); 8.01-449(E) (Supp. 2010).

documents so that the clerk has an affirmative duty to docket an authenticated judgment when presented by an interested person.<sup>13</sup>

**Conclusion**

Accordingly, it is my opinion that, so long as the information required by § 8.01-449 is contained in the certified copy of judgment from the bankruptcy court, that certified copy constitutes an authenticated "abstract of judgment" for purposes of § 8.01-446, so that the clerk of court is required to docket it according to standard procedures.

With kindest regards, I am

Very truly yours,



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Attorney General

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<sup>12</sup> Section 8.01-466. The "[u]se of the word 'shall' in a statute generally indicates that its procedures are intended to be mandatory, rather than permissive or directive." 1985-86 Op. Va. Att'y Gen. 119, 120 (citations omitted).

<sup>13</sup> See 1972-73 Op. Va. Att'y Gen. 74.