



COMMONWEALTH of VIRGINIA

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The Honorable Judy L. Worthington
Clerk of the Circuit Court
Chesterfield County
Post Office Box 125
Chesterfield, Virginia 23832-0125

Dear Ms. Worthington:

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 inquire whether a judgment debtor may present a release from judgment to a circuit court clerk for entry. You further inquire what a circuit court clerk's duty is with respect to entering such a release presented by a judgment debtor. Lastly, you ask whether a circuit court clerk may be held liable if a release presented by a judgment debtor is subsequently determined to be fraudulent or erroneously recorded.

Response

It is my opinion that the *Code of Virginia* does not permit a judgment debtor to present a circuit court clerk a release of a judgment for entry without the court granting a motion made pursuant to Va. Code § 8.01-455. Because I have answered your first question in the negative, your second question is moot. Your final inquiry, whether or not a clerk would be entitled to the protections of sovereign immunity, is a fact-specific question that cannot be answered in the abstract.

Applicable Law and Discussion

Two Code provisions are relevant to your inquiry. First, § 8.01-454 provides, in relevant part:

In all cases in which payment or satisfaction of any judgment so docketed is made, which is not required to be certified to the clerk under § 8.01-455, it shall be the duty of the judgment creditor, himself, or by his agent or attorney, to cause such payment or satisfaction by the defendant, whether in whole or in part . . . to be entered within thirty days after the same is made, on such judgment docket. . . .

Second, § 8.01-455(A) provides, in relevant part:

A defendant in any judgment, his heirs or personal representatives, may, on motion, after ten days' notice thereof to the plaintiff in such judgment . . . apply to the court in which the judgment was rendered, to have the same marked satisfied, and upon proof that the judgment has been paid off or discharged, such court shall order such satisfaction to be entered on the margin of the page in the book wherein such judgment was entered, and a certificate of satisfaction to be entered on the margin of the page in the book wherein such judgment was

entered, and a certificate of such order to be made to the clerk of the court in which such judgment is required . . . to be docketed, and the clerk of such court shall immediately, upon the receipt of such certificate, enter the same in the proper column of the judgment docket opposite the place where such judgment is docketed.

In construing a statute, the plain meaning of the language determines the legislative intent unless a literal construction would lead to a manifest absurdity.¹ Statutes must be construed to give meaning to all of the words enacted by the General Assembly, and a court is “not free to add language, nor to ignore language, contained in statutes.”² Additionally, “a statute is not to be construed by singling out a particular phrase,” but must be construed as a whole,³ and related statutes must be considered together in construing their various material provisions.⁴

Applying these principles, I make two conclusions. First, a judgment creditor, who has received whole or partial payment of a judgment from a judgment debtor, has an obligation under § 8.01-454 “to cause such payment or satisfaction by the defendant . . . to be entered within thirty days after the same is made, on [the] judgment docket.” Second, a judgment debtor is not authorized to present a judgment release directly to the clerk, but rather, must proceed through the motion process set forth in § 8.01-455. If the circuit court grants the motion and orders the judgment marked satisfied, the clerk of court is responding to the order of the court and not any documentation presented to the clerk by the judgment debtor. Thus, the clerk is not empowered to mark a judgment satisfied based on documentation that is provided solely by the judgment debtor.

Because I conclude that the clerk is not empowered to enter a judgment release presented by the judgment debtor, your second question is moot. With regard to your third inquiry, concerning the potential liability of a circuit court clerk for an erroneous recording of an instrument, I note that the availability of the defense of sovereign immunity is necessarily a fact-specific question.⁵ Accordingly, I cannot answer it in the abstract.

Conclusion

Accordingly, it is my opinion that the *Code of Virginia* does not permit a judgment debtor to present a circuit court clerk a release of a judgment for entry without the court granting a motion made pursuant to § 8.01-455. Because I have answered your first question in the negative, your second question is moot. Your final inquiry, whether or not a clerk would be entitled to the protections of sovereign immunity, is a fact-specific question that cannot be answered in the abstract.

With kindest regards, I am

Very truly yours,


Kenneth T. Cuccinelli, II
Attorney General

¹ Halifax Corp. v. First Union Nat'l Bank, 262 Va. 91, 99-100, 546 S.E.2d 696, 702 (2001).

² Signal Corp. v. Keane Fed. Sys., 265 Va. 38, 46, 574 S.E.2d 253, 257 (2003).

³ Va. Elec. & Power Co. v. Citizens for Safe Power, 222 Va. 866, 869, 284 S.E.2d 613, 615 (1981).

⁴ See Colbert v. Commonwealth, 47 Va. App. 390, 395, 624 S.E.2d 108, 110 (2006).

⁵ See, e.g., 1997 Op. Va. Att'y Gen. 203, 207.