



COMMONWEALTH of VIRGINIA

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The Honorable Gregory D. Habeeb
Member, House of Delegates
Post Office Box 882
Salem, Virginia 24153

Dear Delegate Habeeb:

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, under § 55-58.1, a Virginia limited liability partnership may serve as a trustee in a deed of trust on real property.

Response

It is my opinion that a registered limited liability partnership¹ organized under the laws of the Commonwealth may serve as a trustee under a deed of trust covered by § 55-58.1.²

Background

You relate that a bank would like to appoint a law firm, organized as a limited liability partnership, as the substitute trustee under a deed of trust held by the bank.

Applicable Law and Discussion

Section 55-58.1, which relates to the recording requirements of certain deeds of trust provides, in pertinent part, that “[n]o person not a resident of this Commonwealth may be named or act, in person or

¹ For purposes of this opinion, I am assuming that the “Virginia limited liability partnership” to which you refer is a “registered limited liability partnership,” meaning a partnership formed under the laws of the Commonwealth that is registered in accordance with the requirements of § 50-73.132 (2009). *See* VA. CODE ANN. § 50-73.79 (2009) (defining “registered limited liability partnership”).

² For purposes of this Opinion, I am assuming that the subject deed of trust falls within the purview of § 55-58.1 (2007). *See* 1967-68 Op. Va. Att’y Gen. 228, 229 (stating that whether a particular deed of trust falls within the statute can only be made by an examination of such deed of trust).

by agent or attorney, as the trustee of a security trust, either individually or as one of several trustees, the other or others of which are residents of this Commonwealth.”³

Although the Code does not define the term “person” specifically for purposes of § 55-58.1, § 1-230 provides a definition to be applied generally in the construction of all provisions of the Code.⁴ It establishes that “person” means “any individual, corporation, *partnership*, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.”⁵ The Virginia Uniform Partnership Act,⁶ in turn, defines “partnership” as an “association of two or more persons to carry on as co-owners a business for profit [...] and includes, for all purposes of the laws of this Commonwealth, a registered limited liability partnership.”⁷

Thus, applying these definitions to § 55-58.1,⁸ and barring any contrary or limiting provision in the partnership agreement or applicable law, a partnership formed under the laws of the Commonwealth, including a registered limited liability partnership, may serve as a trustee under a deed of trust covered by § 55-58.1.

Conclusion

Accordingly, it is my opinion that a registered limited liability partnership organized under the laws of the Commonwealth may serve as a trustee under a deed of trust covered by § 55-58.1.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli, II
Attorney General

³ Section 55-58.1(2).

⁴ See § 1-202 (2011) (“The rules and definitions set forth in this chapter shall be used in the construction of this Code and the acts of the General Assembly, unless the construction would be inconsistent with the manifest intention of the General Assembly”).

⁵ Section 1-230 (2011) (emphasis added). See also § 50-73.1 (Supp. 2011) (defining “person” to include a partnership for purposes of the Virginia Revised Uniform Limited Partnership Act, §§ 50-73.1 through 50-73.78); § 55-34.1 (2007) (defining “person” to include a partnership for purposes of the Uniform Custodial Trust Act, §§ 55-34.1 through 55-34.19).

⁶ VA. CODE ANN. §§ 50-73.79 through 50-73.150 (2009 & Supp. 2011).

⁷ See § 50-73.79.

⁸ Because the *Code of Virginia* constitutes a single body of law, the practice of referring to other Code sections as interpretive guides is well established and other sections may be looked to where the same phraseology is used. See *First Nat’l Bank of Richmond v. Holland*, 99 Va. 495, 504-05, 39 S.E. 126, 129-30 (1901) (examining various sections of the Code and history of legislation to determine whether terms “goods or chattels” were intended to embrace “choses in action”). See also 2001 Op. Va. Att’y Gen. 171, 172 (extending the definition of “person” in Title 1 to include limited liability companies and thereby concluding that a Virginia limited liability company may serve as a trustee in a deed of trust on real property covered by § 55-58.1).