



Legislation Signed in Response to Virginia Supreme Court's Game Place Decision

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On February 13, 2019, the Governor signed into law House Bill 2287. This legislation negates the potential adverse consequences of the Virginia Supreme Court's May 2018 decision in *The Game Place, L.L.C. v. Fredericksburg 35, LLC*.^[1]

The Game Place Decision

In its opinion, the Court held that the Statute of Conveyances, Va. Code §55-2, required that a lease of real property for a term of more than five (5) years be in the form of a "deed." Under the Court's opinion, to constitute a "deed" a lease must satisfy one of the following formalities: (i) an appropriate seal must be affixed to the lease; (ii) the words "this deed" or "this indenture" must be included in the body of the instrument; or (iii) the signature of the landlord must be properly notarized. Any lease that did not comply with this requirement could be repudiated by either landlord or tenant. Moreover, until repudiated, the lease became a periodic tenancy (in most cases, a month-to-month tenancy). The effect of the decision, therefore, exposed countless commercial leases in Virginia to the threat of repudiation by either party if the lease failed to satisfy Statute of Conveyances formalities.

House Bill 2287

In response to *The Game Place* opinion, the Virginia Bar Association -- with input from Williams Mullen attorneys -- drafted legislation to address the adverse consequences of the Court's decision. Senator Mark Obenshain and Delegate Jay Leftwich advanced legislation through the General Assembly amending the Statute of Conveyances. The General Assembly passed HB 2287 on February 6, 2019, and the Governor signed it into law on February 13, 2019, whereupon the legislation took immediate effect due to an emergency clause.

As amended by this legislation, the Statute of Conveyances now offers important protections and improved clarity for commercial lease transactions. For lease agreements signed after the effective

date of the legislation (and regardless of the length of lease term), these conveyances are valid even if not in the form of a deed. For lease agreements previously entered into and in effect as of the date of the legislation, but which did not satisfy the Statute of Conveyances prior to the legislation, these conveyances are valid even if not in the form of a deed. The bill also cleaned up other provisions of the Code of Virginia, such as deleting references to deeds of lease and the requirements of seals placed on leases.

Following *The Game Place* decision and prior to this legislation, many commercial landlords and tenants sought to negotiate amendments to lease agreements with language to confirm their effectiveness under the Statute of Conveyances. In many cases this belt-and-suspenders approach may no longer be necessary, given the expansive nature of the clarifications provided by this legislation. For guidance regarding the implications of this legislation for a specific transaction or document, please contact a member of the Finance and Real Estate team at Williams Mullen.

For the full text of House Bill No. 2287, please click [here](#).

[1] *The Game Place, L.L.C. v. Fredericksburg 35, LLC*, 813 S.E.2d 312 (Va. 2018).

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