

Chapter 7 - Suits/Action Types (C)

Change of Sex

Upon petitioning request of a person and in accordance with requirements of the Board, the State Registrar shall issue a new certificate of birth to show a change of sex of the person and, if a certified copy of a court order changing the person's name is submitted, to show a new name. Requirements related to obtaining a new certificate of birth to show a change of sex shall include a requirement that the person requesting the new certificate of birth submit a form furnished by the state registrar and completed by a health care provider from whom the person has received treatment stating that the person has undergone clinically appropriate treatment for gender transition. Requirements related to obtaining a new certificate of birth to show a change of sex shall not include any requirement for evidence or documentation of any medical procedure.

Note: As of 7/1/2020 an application to amend a birth certificate to indicate a change of sex will be filed directly with the Virginia Department of Health for persons born in the Commonwealth.

An individual born in another state or country and residing in the Commonwealth, may petition the Circuit Court, in the jurisdiction in which they reside, for a change of sex on their birth certificate.

Document Type

No Form Petition

Filing Type

COS

Procedures

- Step 1** Clerk receipts filing fees, assigns case number, and indexes and docket the case.
- Step 2** Clerk submits petition and any evidence received to judge for entry of order.
- Step 3** Judge reviews the petition and documents and may decide a hearing is necessary.

Comment: If Judge decides a hearing is necessary, notify all necessary parties of date and time of hearing.

- Step 4** Court enters order granting or denying the petition.
- Step 5** Clerk certifies a copies of the Order and Petition and provides to the petitioner to file with the appropriate State Registrar of Vital Records if granted.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Forms

Forms are not provided.

Reference(s)

[Va. Code §§ 32.1-261, 32.1-269](#)
[12VAC5-550-320](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(26)
Courts Technology Fund	Va. Code § 17.1-275 (26)
CHMF	Va. Code § 17.1-281
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
Technology Trust Fund	Va. Code § 17.1-279
Writ Tax	Va. Code § 58.1-1727
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

Child Abuse Or Neglect – Unfounded Complaint

Any person who is the subject of an unfounded complaint or report of child abuse or neglect may petition the circuit court for release of the records of the investigation of the local department of social services. The court shall review the record to determine if there is a reasonable question of fact as to whether the report or complaint was made in good faith or with malicious intent, and that disclosure of the identity of the complainant would not be likely to endanger the life or safety of the complainant.

Document Type

Petition

Filing Type

CAN

Procedures

Step 1 Petitioner files petition with the clerk of the court.

Comments: Venue: Jurisdiction in which the report of complaint was made.

Declarations of Petition: Set out in [Va. Code § 63.2-1514](#)

Note:

- The clerk has no duty to verify the accuracy of the petition.
- The petition does not have to be submitted under oath.
- No certificate of mailing or service is required.

Step 2 Clerk receipts for money, issues receipt, opens file and sends the case to the judge.

Step 3 The Court “shall,” request and the department shall provide to the court its records of investigation. This may be done by court order.

Step 4 The Court performs an in-camera review of the records.

Comments: Definition – “in camera” In chambers, secretly. The Petitioner is entitled to present evidence in support of the petition.

Step 5 If the Court grants the petition, it “shall” provide to the petitioner a copy of the records of the investigation.

Comments: The clerk will probably be directed to make a copy of the records. This should be done under the direction of a court order.

Step 6 The clerk indexes and images/scans all orders entered by the Court.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk’s office.

Reference(s)

[Va. Code § 63.2-1514 \(D\)](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(26)
Courts Technology Fund	Va. Code § 17.1-275 (26)
CHMF	Va. Code § 17.1-281
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
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Civil Commitment for Sexually Violent Predators

In 2003, the General Assembly enacted the Civil Commitment for Sexually Violent Predators Act ([Code of Virginia §37.2-900](#), et seq). The purpose of the Act is to confine sexually violent predators for treatment even after their sentences have run.

Each month the Director of the [Department of Corrections](#) is to review the database of inmates convicted of certain sexual offenses. The names, scheduled release dates and copies of the files of all such inmates who are scheduled for release from prison within ten (10) months from the date of the review and who meet certain criteria shall be forwarded by the Director to the Commitment Review Committee (CRC). It is the job of the CRC to make an assessment of each such inmate and make a recommendation for further treatment or for civil commitment proceedings. At that point the Attorney General will decide whether or not to proceed with a Petition. Court clerks (and others) may be requested to supply records to the CRC, Attorney General and/or DOC within twenty (20) days.

The Attorney General's Office initiates the proceeding and should provide step by step instructions for the Clerk's Office, especially if the case is the first one filed in that jurisdiction.

Document Type

Petition

Filing Type

CSVP

Procedures

Step 1 The [Attorney General's Office](#) files a Petition for Civil Commitment as a Sexually Violent Predator with the Clerk, along with an Explanation of Process and Rights.

Comments: The Petition is to be filed in circuit court in which the Respondent was last convicted of a sexually violent offense or in which he was deemed unrestorably incompetent and referred for commitment review.

Step 2 The Clerk sets up a civil case and assigns a civil file number.

Comments: Because the Commonwealth is filing the suit, no fee is charged.

Step 3 The Clerk prepares process to be served personally by the Sheriff on the Defendant in the correctional institution where he is housed. The Defendant is to be served with the Petition for Civil Commitment as a Sexually Violent Predator and the Explanation of process and Rights.

Step 4 The original Appointment of Counsel Order prepared by the Attorney General is presented by the Clerk to the Judge for entry.

Comments: Copies are sent to the following:

- Defendant
- Attorney General
- Court-appointed Attorney
- Any others as directed in the Order

The Respondent may hire counsel if he so desires.

Step 5 The original Transportation Order prepared by the Attorney General is presented by the Clerk to the Judge for entry.

Comments: Copies are sent to the following:

- Defendant
- Attorney General
- Court-appointed Attorney
- Any others as directed in the Order

Step 6 After counsel has been appointed for the Respondent, the Sheriff is to personally serve Respondent's counsel with copies of the following:

- Petition for Civil Commitment as a Sexually Violent Predator
- Explanation of Process and Rights
- Appointment of Counsel Order
- Transportation Order
- Probable Cause Order (unsigned)
- A copy of the Acts of Assembly as it relates to Code of Virginia §37.2-900 et seq.
- Copies of three (3) United States Supreme Court cases discussing comparable sexually violent predator acts in Kansas and Washington
- The Civil Commitment of Sexually Violent Predators Summary
- A Brief regarding probable cause

Step 7 As soon as possible, deliver copies of the following documents to the Judge that will preside over the case:

- Petition for Civil Commitment as a Sexually Violent Predator
- Explanation of Process and Rights
- Appointment of Counsel Order
- Transportation Order
- Probable Cause Order (unsigned)
- A copy of the Acts of Assembly as it relates to Code of Virginia §37.2-900 et seq.
- Copies of three (3) United States Supreme Court cases discussing comparable sexually violent predator acts in Kansas and Washington
- The Civil Commitment of Sexually Violent Predators Summary
- A Brief Regarding Probable Cause

Comments: The Attorney General's Office provides all necessary copies.

Step 8 Schedule a probable cause hearing within ninety days of the date the Petition is filed.

Comments: Follow local practice in setting the probable cause hearing. The respondent may waive the right to this probable cause hearing.

Step 9 If the Judge finds probable cause, the Probable Cause Order prepared by the Attorney General will be entered. If the Respondent requests the appointment of an expert to assist in his defense, the Judge shall make the appointment.

Comments: The Judge may allow each expert appointed to be paid up to \$5,000 and up to \$750/day for testimony, to be paid out of the criminal fund. No fee from the criminal fund is allowed if the expert is regularly employed by the Commonwealth.

Step 10 If probable Cause has been found, a trial date will be set. Either side may request trial by jury.

Comments: The trial should be held within one hundred twenty (120) days of completion of the probable cause hearing. Either side may be granted a continuance beyond this date for good cause shown or by agreement of the parties. The jury is to be composed of seven (7) persons from a panel of thirteen (13) and the verdict must be unanimous.

Step 11 Counsel for the respondent and any expert retained or appointed may receive copies of any victim impact statement or any presentence report. However, they are prohibited from any dissemination of the reports. THE RESPONDENT IS NOT PERMITTED TO POSSESS OR COPY A VICTIM IMPACT STATEMENT. [Va. Code § 37.2-901](#)

Step 12 If the Judge or the jury finds the Respondent to be a sexually violent predator, the Respondent will be committed for treatment, with a review hearing every twelve (12) months for five (5) years and at biennial intervals thereafter. Or, the case may be continued for forty-five to sixty days to obtain evidence of alternative treatment.

Comments: At the conclusion of the testimony on possible alternatives to commitment, the court may find that the respondent meets the criteria for conditional release and shall be processed for conditional release as sexually violent predator.

Step 13 If the Respondent is found NOT to be a sexually violent predator, he is to be released from custody if his mandatory release date has passed.

Comments: Use the same release forms you would use for criminal cases, i.e. DC-353, RELEASE ORDER. The Respondent may need to be returned to the correctional institution to be released.

Step 14 The Attorney General may appeal a denial of probable cause, a denial of civil commitment or conditional release, or discharge or placement on conditional release after an annual review. [Va. Code § 37.2-920](#).

Comments: If the Supreme Court of Virginia issues a mandate, the trial court shall immediately issue an emergency custody order to any local law-enforcement official to take the person into custody and held in the local correctional facility pending further proceedings.

Step 15 The Commission may petition the circuit court for release of the sexually violent predator.

Comments: The defendant is either released conditionally or unconditionally or the petition is denied.

Step 16 If the defendant is released conditionally and violates any condition term, the court will receive an emergency custody order and a copy of the petition to have the respondent returned to custody. The hearing should be given priority on the court's docket.

Comments: The emergency custody order and copy of the petition may be filed, issued, served or executed by electronic means.

Step 17 If recommitted, the respondent may petition the circuit court for a re-release.

Step 18 The conditional release may be modified by petition from the Department, the supervising parole or probation officer, the Attorney General, or the person on conditional release or by the Court's own motion based on reports of the Department or the supervising parole or probation officer.

The court may issue a proposed order for modification or removal of conditions. The court shall provide notice of the order and their right to object to it within 21 days of its issuance to the person, the Department or parole or probation officer, the Attorney General, and the attorney for the Commonwealth for the locality that is the location of the respondent's residence.

The proposed order shall become final if no objection is filed within 21 days of its issuance. If an objection is so filed, the court shall conduct a hearing at which the person on conditional release, the Attorney General, the Department or the parole or probation officer, and the attorney for the Commonwealth for the locality that is the location of the respondent's residence shall have an opportunity to present evidence challenging the proposed order.

At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release.

Fees/Taxes/Other Monies Assessed

None

Form(s)

Initiating documents are provided from the Commitment Review Committee.

Reference(s)

[Va. Code § 37.2-900, et seq](#)

Civil Contempt

Civil Contempt consists of the failure to do something that the party has been ordered by the court to do for the benefit or advantage of another party before the court. On a finding of civil contempt, the person charged may be imprisoned for an indefinite time or fined, or both. If imprisoned, he will be released upon compliance with the court order; if the person has been fined, he can purge himself of the contempt since the fine and imprisonment are intended as punishment, rather than as coercive measures.

Indirect contempt (outside the presence of the judge) is used to compel a person to comply with a prior order of the court, order to turn over property or to refrain from doing an act. Punishment is typically conditional; a fixed or growing fine and/or an indefinite jail sentence until the person complies with the order of the court. In a civil contempt proceeding for failure to pay child support, if a circuit judge concludes that counsel for the respondent is required, payment from the Criminal Fund will be allowed for an attorney appointed to represent an indigent respondent.

For direct contempt (an act or commission committed in the presence of the judge), the court may punish the person summarily, i.e. until a witness answers a question he has been ordered to answer or until a document is produced, etc.

Document Type

Petition to Show Cause

Filing Type

CCON

Procedures

The following procedures are recommended if **Indirect Contempt**.

Step 1 Petitioner, in whose favor an order has been entered, files a petition to show cause why person should not be held in contempt for violation of the court's order.

Step 2 For civil contempt in a pending action, no new case is opened. For civil contempt in an ended case, the Clerk sets up the civil contempt action as a subsequent action of the original case.

Comments: It is recommended that the Clerk cross-reference the prior chancery case in the Case Management System to a new civil action.

Step 3 Notice given to all parties.

Step 4 Plenary hearing held.

Step 5 Final order is indexed and recorded with certified copies sent to all parties.

Fees/Taxes/Other Monies Assessed

Indirect Contempt

[Circuit Court Civil Filing Fee Calculation](#)

Direct Contempt

No fees assessed.

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 18.2-456](#)[Va. Code § 20-115](#)

See CONTEMPT - Code of Virginia - Index
 United Mine Workers v. Clinchfield Co. 12 Va. App. 123 (1991)
 United Mine Workers v. Covenant Co. 12 Va. App. 135 (1991)
 Eddens v. Eddens 188 Va. 511 (1948)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(26)
Courts Technology Fund	Va. Code § 17.1-275 A(26)
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Law Library	Va. Code § 42.1-70
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Legal Aid	Va. Code § 17.1-278
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Writ Tax	Va. Code § 58.1-1727
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

Complaint – Legal Cause Of Action Or Equitable Action

A legal cause of action filed in a court of record seeking a judgment for money damages, to establish boundaries, ejectment, unlawful detainer, detinue, a refund of taxes, and declaratory judgments.

Also, a type of pleading in circuit court to commence a suit in equity, against all parties made defendants thereto, such as partition, divorce actions, establish/impeach will, contract (seeking specific performance), contract (seeking damages and performance), and any other remedies for which the filing of a complaint is prescribed.

Document Type

Complaint

Filing Type

COM

Procedures

- Step 1** Clerk receives Complaint.
- Note:** Any divorce petitions, pleadings, motions, orders, or decrees, including any agreements of the parties or transcripts, shall not contain the social security number of any party or of any minor child of any party, or any financial information of any party that provides identifying account numbers for specific assets, liabilities, accounts, or credit cards. Such information if required by law to be provided to a governmental agency or required to be recorded for the benefit or convenience of the parties, shall be

contained in a separate addendum filed by the attorney or party. Such separate addendum shall be used to distribute the information only as required by law. Such addendum shall otherwise be made available only to the parties, their attorneys, and to such other persons as the court in its discretion may allow. The attorney or party who prepares or submits a petition, pleading, motion, agreement, order, or decree shall ensure that any protected information is removed prior to filing with the clerk and that any separate addendum is incorporated by reference into the petition, pleading, motion, agreement, order or decree. [Va. Code § 20-121.03](#). See Form CC-1426, [ADDENDUM FOR PROTECTED IDENTIFYING INFORMATION](#)

Comments: Plaintiff must provide the clerk with as many copies of the complaint as there are defendants to be served. Rule 3:4.

Addendum:

- The addendum should be placed in an envelope marked “confidential” and allowed for inspection by only those parties identified by statute.
- If the case is remanded, a copy of the addendum should be sent to the J&DR Court along a certified copy of the final decree. The copy of the addendum should be sent to the J&DR Court in an envelope marked “confidential”.
- The addendum should not be imaged or scanned.

Step 2 Clerk collects applicable fees, opens file and docket the case, and issues any requested process.

Comments: Clerk may request that a Cover Sheet be submitted along with the Complaint. Reference CC-1416, [COVER SHEET FOR FILING CIVIL ACTIONS](#).

Step 3 The clerk shall issue a summons and attach it to a copy of the complaint together with a proof of service used by the process server to note the date, place, how and to whom the summons was served.

Comments: Rules 3:5 and 3:6. Clerk may request written statement from plaintiff if service is not requested at the time of filing.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Form CC-1400, Summons - Civil Action
 Form CC-1405, Proof of Service
 Form CC-1426, [ADDENDUM FOR PROTECTED IDENTIFYING INFORMATION-CONFIDENTIAL](#)
 Form DC-418, [AFFIDAVIT- DEFAULT JUDGMENT SERVICEMEMBERS CIVIL RELIEF ACT](#)

Reference(s)

[Va. Code § 8.01-15.2](#)
 Rule of Supreme Court of Virginia - Part 3

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee (legal)	Va. Code § 17.1-275 A(13)
Clerk's Fee (equitable)	Va. Code § 17.1-275 A(26)
Courts Technology Fund	Va. Code § 17.1-275 (13)(26)
CHMF	Va. Code § 17.1-281
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
Technology Trust Fund	Va. Code § 17.1-279
Writ Tax	Va. Code § 58.1-1727
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

Compromise Settlement

An action to compromise and settle a matter involving damage to the person or property of a person under a disability or death by a wrongful act. This action is sometimes referred to as an "Infant Settlement" or an "Agreed Settlement".

Document Type

Petition

Filing Type

COMP

Procedures

Step 1 Clerk receives petition from attorney or applicant.

Comments: Petition requests the court to approve a proposed settlement of the claims of the injured or deceased person.

Note: A petition can be filed in any circuit court if an action to recover damages is not pending in another circuit court. [Va. Code § 8.01-424](#).

Step 2 Clerk collects and receipts for fees, costs and taxes paid.

Comments: Clerk's fee is not dependent upon amount of proposed settlement, but is set by [Va. Code § 17.1-275A\(13\)\(a\)](#) at \$50.00. Clerk receipts using Account Code 304.

Step 3 Clerk sets up case with CIVIL case number, docket case and prepares case file.

Comments: If action or suit involves fiduciaries, style of case: "(Name of fiduciary), (type of fiduciary relationship), (Name of the subject of the fiduciary relationship)."

Step 4 Clerk prepares process and sends notice of hearing to all parties of interest as requested by the petitioner or as directed by the court.

Step 5 Hearing held.

Step 6 Court directs the proceeds of the compromise agreement.

Comments: Payment(s) will be made:

- to the court ([Va. Code § 8.01-600](#));
- to a duly qualified fiduciary (once adequacy of surety has been determined);
- to the circuit court in which the fund became due and distributed to the person whom due, if competent or to another person directed by the court to administer the funds to the person entitled to the fund without the intervention of a fiduciary ([Va. Code § 8.01-606](#)); or
- to the person who is entitled to the fund, if not more than \$25,000 or to a fiduciary, if over \$25,000 (if agreement of settlement provides for payments over a time period in the future) if amount is secured by bond or will be paid by an insurance company authorized to do business in the Commonwealth.

Fees/Taxes/Other Monies Assessed

Petition For Court Approval Of Settlement - No Action Filed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 8.01-6.3](#)

[Va. Code § 8.01-85](#)

[Va. Code § 8.01-424](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<u>Va. Code § 17.1-275 A(13)</u>
Courts Technology Fund	<u>Va. Code § 17.1-275 (13)(26)</u>
Technology Trust Fund	<u>Va. Code § 17.1-279</u>
Writ Tax	<u>Va. Code § 58.1-1727</u>

Concealed Handgun Permit**Application for Concealed Handgun Permit**

Any person twenty-one years of age or older may apply in writing to the clerk of the circuit court of the county or city in which he resides, or if he is a member of the United States Armed Forces, the county or city in which he is domiciled, for a five-year permit to carry a concealed handgun. There shall be no requirement regarding the length of time an applicant has been a resident or domiciliary of the county or city.

Note: A member of the U. S. armed forces has a ninety-day grace period within which to renew a concealed handgun permit. The grace period begins when the person returns from deployment. [Va. Code § 18.2-308.02](#).

The application shall be on a form prescribed by the [Department of State Police](#), in consultation with the Supreme Court, requiring only that information necessary to determine eligibility for the permit. Additionally, the application shall request but not require that the applicant provide an email or other electronic address where a notice of permit expiration can be sent. The applicant shall present one valid form of photo identification issued by a governmental agency of the Commonwealth or by the U.S. Department of Defense or U.S. State Department (passport).

CONFIDENTIALITY CONSIDERATIONS: The clerk of court shall withhold from public disclosure the applicant's name and any other information contained in a permit application or any order issuing a concealed handgun permit, except that such information shall not be withheld from any law-enforcement officer acting in the performance of his official duties or from the applicant with respect to his own information. The prohibition on public disclosure

of information under this subsection shall not apply to any reference to the issuance of a concealed handgun permit in any order book before July 1, 2008; however, any other concealed handgun records maintained by the clerk shall be withheld from public disclosure.

[Va. Code § 18.2-308.02](#)

Document Type

Application

Filing Type

CHP – Concealed Handgun Permit
CHPR – Replacement for Change of Address
CHPL – Replacement for Lost or Destroyed
CHPN – Replacement for Change of Name

Procedures

Step 1 Applicant presents application for permit along with any additional requirements as necessary.

Step 2 The clerk shall enter on the application the date on which the completed application is received from the applicant.

Comments: An application is deemed complete when all information required to be furnished by the applicant is delivered to and received by the clerk of court before or concomitant with the conduct of a state or national criminal history records check.

Step 3 Clerk collects and receipts for money paid.

Comments: Clerk's fee - \$10 (315 or 304)
State Police fee - \$5 (104)
Law Enforcement fee – up to \$35 (237, 246, 247).

Note: It is not recommended the \$5 fee for paper filing be assessed in courts that use the Virginia Judiciary Electronic Filing System (VJEFS).

Step 4 Clerk creates index or compiles method to keep up with application timeframes from date received.

Step 5 Application, supporting documentation and background results may be reviewed by the judge and/or the clerk, provided that the clerk has been authorized by the judge to approve such applications. While either a judge or authorized clerk may approve an application, only a judge may deny and application.

Comments: If authorized, the clerk can issue concealed handgun permits, without judicial review provided:

- the applicant has submitted a complete application;
- the criminal history records check does not indicate a disqualification; and
- Clerk consults with local law enforcement to ensure that there are no outstanding questions or issues concerning the application.

A criminal history check may reveal that a pre-7/1/11 child protective order is in effect. The report will not indicate whether the order was issued in an abuse and neglect context, which may prevent the issuance of a concealed handgun permit. It is recommended that the court schedule a hearing as soon as possible upon receipt of application and background check that reveals a pre-7/1/11 child protective order, to determine if applicant is eligible or not for a concealed handgun permit.

[Virginia Code §18.2-308.09](#) lists the circumstances such as convictions of criminal offenses that disqualify a person from obtaining a concealed weapons permit. In at least one instance federal law appears to be more restrictive than state law. 18 U.S.C. § 922(g)(9) bars individuals who have ever been convicted of a federal law or state misdemeanor crime of domestic violence from possessing, shipping, transporting or receiving any firearm or ammunition. More information may be found by consulting the Federal Code or the [Bureau of Alcohol, Tobacco, Firearms and Explosives](#) web site or the information found in the [Federal Firearms Law: Domestic Violence Offender Gun Ban](#) brochure.

Step 6 Denial of application. Only a circuit court judge may deny an application, and the reason for a denial must be stated in the order. If an application is denied, the clerk must give written notice to the applicant of his/her right to an *ore tenus* hearing with a circuit court judge, as well as the applicant's opportunity to request review by the Court of Appeals. The applicant may be represented by counsel, but counsel shall not be appointed.

An applicant's request for a hearing in circuit court must be made within twenty-one days of the order denying the application. An applicant's request for review by the Court of Appeals must be made within sixty days of the expiration of time for requesting a

hearing in circuit court, or within sixty days of entry of a final order by a circuit court judge following the hearing. [Virginia Code § 18.2-308.08](#)

Step 7 *De facto permit.* If the court has not issued the permit or determined that the applicant is disqualified within 45 days of the date of receipt noted on the application, the clerk shall certify on the application that the 45-day period has expired, and mail or send via electronic mail a copy of the certified application to the applicant within five business days of the expiration of the 45-day period. The certified application shall serve as a de facto permit, which shall expire 90 days after issuance, and shall be recognized as a valid concealed handgun permit when presented with a valid government-issued photo identification . . . until the court issues a five-year permit or finds the applicant to be disqualified. If the applicant is found to be disqualified after the de facto permit is issued, the applicant shall surrender the de facto permit to the court and the disqualification shall be deemed a denial of the permit and a revocation of the de facto permit. [Va. Code 18.2-308.05](#)

Step 8 If granted, clerk shall issue the permit via United States mail.

Comments: State Police is to be notified of issuance of permit.

Form(s)

Application – SP-248 (not provided by clerks' office)

Reference(s)

[Va. Code § 18.2-308.02, et seq.](#)

Renewal of Concealed Handgun Permit

If the new five-year permit is issued while an existing permit remains valid, the new five-year permit shall become effective upon the expiration date of the existing permit, provided that the application is received by the court at least 90 days but no more than 180 days prior to the expiration of the existing permit.

Note: The “Issued On” date for the renewal permit granted during the 90-180 day timeframe should be the day the existing permit expires, regardless of the date the court signs the renewal order.

Any person who previously has been issued a Virginia concealed handgun permit may submit an application to renew the permit via the United States mail. A photocopy of the applicant's valid photo identification must be included.

The applicant may obtain his criminal history and submit it with the application and applicable fee; or the applicant may mail the application to the clerk with the fee, the clerk will receipt and forward to local law enforcement for the criminal history.

A criminal history must be submitted. If the application is incomplete or the fee is incorrect, the clerk shall promptly notify the applicant. The Clerk may send the application back to the applicant or hold until receipt of the proper information or fee. [Va. Code § 18.2-308.010](#).

Proof of demonstrated competence to handle a firearm shall not expire.

If the clerk has an electronic system for, and issuance of, concealed handgun permits and such system has the capability of sending electronic notices to permit holders and if a permit holder requests such notice on the concealed handgun application form, the clerk that issued the permit shall notify the permit holder by electronic mail at least 90 days prior to the permit expiration date that the permit will expire. The failure of a clerk to send the notice required by this subsection or the failure of the permit holder to receive such notice shall not extend the validity of the existing permit beyond its expiration date.

Replacement Permit for a Change of Address

[Va. Code § 18.2-308.011](#)

Upon presentation by the permit holder of the valid permit and written notice of a change of address on a form provided by the Department of State Police, the court that issued the current permit shall issue a replacement permit specifying the permit holder's new address.

This notification of a new address to the court is not mandatory. The following are recommended procedures:

- Step 1** Clerk is presented with valid permit and written notice of change of address on the form from VSP. **Note:** The issuing court is the proper jurisdiction for this process.

When a Virginia resident moves to another state and wishes to update their address, they will return to the issuing court. It is treated the same as an in-state address change. (Upon expiration of the Virginia CHP, the individual may apply for a non-resident permit through the VSP.)

- Step 2** Using the CL screen, it is recommended that the clerk use the base case number for the valid permit and enter -01 for the replacement permit.

Comments: The FAS receipt type of CHPR should be used.

- Step 3** Clerk re-issues permit, using the original issue date. **Note:** The issue date is only changed when a criminal background check is initiated.
- Step 4** Clerk may collect an amount not to exceed \$10.00 (\$5.00 clerk, \$5.00 VSP). Receipt will populate with 304 and 104 account codes.
- Step 5** Clerk shall notify VSP of new address of permit holder.

Replacement Permit for Lost or Destroyed Permit, Change of Name

Upon presentation to the issuing Clerk that a permit has been lost or destroyed, or that the permit holder has undergone a legal name change, the clerk shall issue a replacement permit. Although not statutorily required, the Clerk may wish to check with local law enforcement to determine that the permit has not been revoked or surrendered due to a protective order or other disqualifying event. The replacement permit shall have the same expiration date as the permit that was lost, destroyed or issued under a previous name. [Va. Code § 18.2-308.011](#).

- Step 1** The clerk that issued the original permit is presented with a notarized statement, by the permit holder, that the permit was lost or destroyed or that the permit holder has undergone a legal name change.

Comments: The clerk or deputy clerk could administer an oath and notarize a written statement.

- Step 2** Using a CL case number, it is recommended that the clerk use the base case number for the valid permit and enter -01 for the replacement permit.

Comments: The FAS receipt type of CHPL should be used for a LOST permit, and CHPN should be used for a NAME CHANGE permit.

- Step 3** Clerk re-issues permit, using the original issue date. The replacement permit shall be issued within 10 days of receiving the notarized statement.

- Step 4** Clerk may collect an amount not to exceed \$5.00. Receipt will populate with 304 account code.

Comments: Clerk shall notify VSP if the permit was replaced due to a name change.

Denial of Concealed Handgun Permit - Petition for Review

Only a circuit court judge may deny an application, and the reason for a denial must be stated in the order. If an application is denied, the clerk must give written notice to the applicant of his/her right to an *ore tenus* hearing with a circuit court judge, as well as the applicant's opportunity to request review by the Court of Appeals. The applicant may be represented by counsel, but counsel shall not be appointed.

An applicant's request for an *ore tenus* hearing with a circuit court judge must be made within twenty-one days of the order denying the application. An applicant's request for review by the Court of Appeals must be made within sixty days of the expiration of time for requesting an *ore tenus* hearing, or if a hearing is held in circuit court, within sixty days of entry of the final order of the circuit court following the hearing. [Va. Code § 18.2-308.08](#)

Document Type

Petition for Review

Filing Type

CHP

Procedures

Step 1 Applicant presents a typewritten statement directly with the Court of Appeals stating that they wish the Court to review the decision of the circuit court denying the permit.

Comments: Petitioner must accompany the petition with a copy of all original papers filed in the circuit court. Circuit court clerk would charge \$0.50 per page (not including the one attested copy of the final order for which there is no charge). [Va. Code § 17.1-275 \(8\)](#).

Notes:

- If decision to deny the permit is reversed upon appeal, costs will be reimbursed.
- The applicant will be required to pay a fee of \$10.00 for the petition for review directly to the Clerk of the Court of Appeals.

Step 2 Court of Appeals reviews petition.

Step 3 If Court of Appeals reverses Order of the circuit court, circuit court will be directed to issue permit.

Form(s)

None

Reference(s)

[Va. Code § 18.2-308.08](#)

Revocation/Suspension of Concealed Handgun Permit

[Virginia Code § 18.2-308.013](#) provides for a mandatory suspension or forfeiture of a concealed handgun permit for an individual who has:

- been convicted of an offense that would disqualify that person from obtaining a permit under [Va. Code §18.2-308.09](#);
- made a materially false statement in the application;
- is adjudicated legally incompetent or mentally incapacitated ([Va. Code §§ 18.2-308.1:2](#) or [18.2-308.1:3](#))

Upon conviction of a disqualifying event the defendant shall forfeit his permit and surrender it to the Court. [Virginia State Police](#) shall notify the court having issued the permit of such disqualifying event. Upon receipt of such notice of conviction, the court shall revoke the permit of the person disqualified and shall promptly notify Virginia State Police and the person whose permit was revoked of the revocation.

The Court may wish to issue a show cause summons for a hearing to be served upon the permittee ordering the permittee to appear and show cause why the permit should not be revoked or suspended as required by law.

[Virginia Code § 18.2-308.013](#) also provides for a discretionary suspension or forfeiture of a concealed handgun permit for an individual who:

- has a pending felony charge or;
- a charge pending for an offense listed in subdivision 14 or 15 of [§ 18.2-308.09](#)

Upon information provided to the issuing court, by the State Police, another court, local law enforcement officials, or the Commonwealth's Attorney, of the above, the Court should:

- issue a show cause summons to be served upon the permittee ordering the permittee to appear for a hearing and show cause why the permit should not be revoked or suspended;
- upon a finding the permit should be revoked or suspended, order the permittee to surrender the permit and issue and order suspending or revoking the permit, and;

- the clerk should forward certified copies of the order to State Police (CCRE), local law enforcement officials and the Commonwealth's Attorney.

Note: No fees apply.

Condemnation/Eminent Domain/Inverse Condemnation and Related Procedures

An action to condemn private land for the benefit of the public. There are two types of condemnation: 1) highway condemnations by VDOT or localities and 2) those in which a governmental entity, a government utility company or a private utility company condemns lands for public use.

Document Type

Land Recordings

Often, the first indication that a court receives that land is to be taken is when a Certificate of Take or a Certificate of Deposit is offered for recording in the land records. The purpose of this type of recording is to allow the filer to enter on the landowner's property immediately and begin work. When the Certificate of Take is presented, a check for the estimated value of the land to be taken is given to the court to be held for the benefit of the landowner. At times, a Certificate of Deposit is recorded. In this instance, the filer keeps the money "on deposit" until ordered by the court to pay it over to the court for the benefit of the landowner. *The procedures relating to these matters are discussed in Circuit Court Clerk's Deed Book Manual.*

Case Filings

The following provide procedures that highlight many of the court procedures for civil filings relating to the taking of land for public use. *The taking of a particular piece of property may involve only one of the petition types or a combination of the petition types that follow. Further, in instances where multiple petitions are filed, the filing order of those petitions will vary from case to case.*

In many instances, the petitioner and the landowner cannot agree upon the "just compensation" for the land to be taken. When this occurs, a condemnation petition is filed, and the issue of compensation is decided by a panel of condemnation jurors or by the court. For those actions filed on or after July 1, 2010, the landowner has the option to choose between commissioners and juries to hear the case. [Va. Code § 25.1-227.2, 25.1-228, 25.1-229](#)

Comment: The parties may agree upon five or nine persons qualified to act as commissioners. If they cannot agree upon five or nine qualified persons, then each party shall present to the court a list containing at least eight qualified persons. From such lists, the court shall select the names of thirteen potential commissioners and at least two alternates. At least 30 days prior to their service, such persons shall be summonsed to appear.

The jury commissioners shall select as condemnation jurors persons who are residents of the county or city in which the property to be condemned, or the greater portion thereof, is situated. All of the persons included on the list of condemnation jurors shall be freeholders of property within the jurisdiction. Except as otherwise provided, the provisions of [Va. Code §§ 8.01-345, 8.01-346, 8.01-347, 8.01-356, and 8.01-358](#) relating to procedures for preparing this list from which members will be chosen, penalties for failure to appear and *voir dire* examination shall apply to condemnation jurors mutatis mutandis.

Sometimes, the parties have come to an agreement on the amount of compensation, so an agreed upon settlement petition is filed with the court. The judge enters an order formalizing the agreement.

At times, after the recording of either a Certificate of Take or Deposit, the landowner will file a drawdown petition in order to have the immediate use of the money being held for his benefit. This is not a final settlement of the matter and does not indicate that the landowner is in agreement with the amount of money paid.

Occasionally, the filer of a Certificate of Take or Deposit will seek to revise, modify, or void the certificate on record and will file a revision petition. Upon the showing of proper evidence, the court will enter an order allowing a modified certificate to be recorded.

Summary Condemnation “Quick Take” Procedures

Chapter 3 of the Title 25.1 ([Va. Code § 25.1-300](#) et seq.) sets forth a summary procedure under which certain “authorized condemners” can obtain title to real property immediately. To be an “authorized condemner,” an entity must be specifically empowered by statute to acquire property pursuant to Chapter 3 of Title 25.1.

No entity may use the summary procedure until it attempts to purchase the affected property through negotiation. [Va. Code § 25.1-303](#) (referencing [Va. Code §§ 25.1-204](#) and [25.1-417](#)). [Virginia Code § 25.1-203](#) allows any condemnor entitled to use summary condemnation proceedings to enter any property for the purpose of performing an inspection after giving the owner fifteen days notice for the purpose of inspecting the property. The consent of the owner is not required.

Who may use summary condemnation “quick take” procedures:

Authorized Condemnors empowered by statute to acquire property pursuant to Chapter 1, Article 7 of Title 33.2 include the Commonwealth Transportation Commissioner

Authorized Condemnors empowered by statute to acquire property pursuant to Chapter 3 of Title 25.1 include:

- Localities;
 - Only to condemn easements for streets and roads, drainage facilities, oyster bottoms, water supply and sewage disposal systems and water, sewer, and governmentally owned gas and utility lines and pipes. [Va. Code § 15.2-1902](#)
 - May not use the summary procedures to condemn the property of public service corporations, [Va. Code § 15.2-1904](#), or to condemn a water or sewage treatment system in its entirety. [Va. Code § 15.2-1902 \(2\)](#)
- Electric Authorities;
 - Governed by Chapter 54 of Title 15.2 ([Va. Code § 15.2-5400](#)) have eminent domain power and may employ summary condemnation proceedings.
 - May not use their eminent domain power to acquire existing power supply facilities or power supply plants held for future use. [Va. Code § 15.2-5425](#).
 - May not exercise eminent domain powers outside of their territorial limits unless they obtain the consent of the affected locality or a court order waiving the requirement for such consent.
- Sanitary Districts;
 - May employ summary condemnation to acquire land for the purpose of constructing water lines, sewer lines, water

treatment plants, and sewage treatment plants. [Va. Code §§ 21-118 \(10\)\(b\)](#) and [21-118 \(10\)\(C\)](#).

- Summary procedures may not be used to acquire existing waterworks systems. [Va. Code § 21-118\(10\)\(a\)](#).
- Jamestown-Yorktown Foundation. Entity's use of summary condemnation procedures is limited only by a requirement that such use advance the purposes of the agency.
- Department of Conservation and Recreation. Entity's use of summary condemnation procedures is limited only by a requirement that such use advance the purposes of the agency.

Inverse Condemnation [Va. Code § 25.1-420](#)

A declaratory judgment proceeding instituted per [Va. Code §8.01-187](#), by the owner of any right, title or interest in real property pursuing a claim that that a person's property has been taken or damaged and compensation has not been paid. Refer to above statutes and Declaratory Judgment this manual, chapter for more complete explanation of this action type.

Definitions

Commonwealth – [Va. Code § 33.2-1019](#)

- "Certificate" means an instrument that, when recorded in the office of the clerk of the circuit court wherein condemnation proceedings are pending or are to be instituted by the Commissioner, terminates the interest or estate of the owner of the property described therein and vests defeasible title to such property or interest or estate of the owner in the Commonwealth. "Certificate" includes a certificate of deposit and a certificate of take.
- "Certificate of deposit" means a certificate issued by the Commonwealth Transportation Commissioner and countersigned by the State Treasurer, stating that any sum or sums designated therein shall be paid pursuant to the order of the court, and which is filed by the Commissioner with the court wherein condemnation proceedings are pending or are to be instituted in lieu of the payment of funds into court, as provided in subdivision A 2.
- "Certificate of take" means a certificate recorded by the Commissioner with the court wherein condemnation proceedings are pending or are to be instituted, in connection with which the

Commissioner has deposited funds with the court as provided in subdivision A 1.

Non-Commonwealth – [Va. Code § 25.1-300](#)

- “Certificate “ an instrument that, when recorded in the office of the clerk of the circuit court wherein condemnation proceedings are pending or are to be instituted by an authorized condemnor, terminates the interest or estate of the owner of the property described therein and vests defeasible title to such property or interest or estate of the owner in the authorized condemnor. “Certificate” includes a certificate of deposit and a certificate of take.
- “Certificate of Deposit“ a certificate filed by an authorized condemnor with the court wherein condemnation proceedings are pending or are to be instituted, stating that any sum or sums designated therein shall be paid pursuant to the order of the court, and which is filed in lieu of the payment of funds into court as provided in subdivision [Va. Code § 25.1-305 \(A\)\(2\)](#).
- “Certificate of Take“ a certificate recorded by an authorized condemnor with the court wherein condemnation proceedings are pending or are to be instituted, in connection with which the authorized condemnor has deposited funds with the court as provided in subdivision [Va. Code § 25.1-305 \(A\)\(1\)](#).

Filing Type

FAS = CDC (State), changes to COND when transferring to CCMS
 FAS = CDE (Electric Authority, changes to COND when transferring to CCMS
 FAS = CDL (Locality), changes to COND when transferring to CCMS

Procedures

Summary Condemnation

Step 1 Authorized condemnor gives notice to the owner or tenant of the freehold by registered mail, if known, that a certificate will be filed with respect to such person’s property. [Va. Code § 25.1-306](#).

Step 2 Authorized Condemnor shall either:
 Pay into the court wherein condemnation proceedings are pending, or are to be instituted

OR

File a Certificate of Deposit with the court wherein condemnation proceedings are pending, or are to be instituted, issued by the authorized condemnor. [Va. Code §§ 25.1-305](#) and [33.2-1019](#).

Comments: The amount to be paid into the court shall be the amount that the authorized condemnor estimates to be the fair value of the land taken, or interest therein sought, and damage done, which estimate shall be based on a bona fide appraisal if required by [Va. Code § 25.1-417](#).

Certificate shall set forth the description of the property being taken or damaged, and the owner or owners, if known, of such property.

Step 3 If the condemning authority makes a payment into court, it shall also record a Certificate of Take as provided in [Va. Code § 25.1-307](#) or [Va. Code § 33.2-1021](#) in the clerk's office where the deed to the target property is recorded. [Va. Code §§ 25.1-305 \(C\)](#) and [33.2-1019](#).

Comments: Certificate shall set forth the description of the property being taken or damaged, and the owner or owners, if known, of such property.

The effect of recordation of Certificate of Deposit of Take is provided in [Va. Code § 25.1-308](#). See also [Va. Code § 33.2-1021](#).

Step 4 Clerk records and indexes the Certificate of Deposit or the Certificate of Take. If funds are deposited with the certificate, clerk receipts funds to Account Code 517.

Comments: Per [Va. Code § 8.01-600 \(B\) \(2\)](#), the requirement to invest money under control of court does not apply to money deposited in the clerk's office prior to final disposition of cases involving eminent domain. However, if the clerk does invest the funds, any interest accrued on the funds is payable to the person(s) entitled to receive such funds. [Va. Code § 25.1-310\(E\)](#). After commencement of condemnation proceedings, the Court may order investment of the funds pending the resolution of the proceeding, and the clerk may be required to deposit funds paid to the credit of the court in an account of a type that bears interest. [Va. Code § 25.1-224\(E\)](#).

- Commonwealth:
 - Clerk's fee does not apply
 - Grantor/Grantee taxes do not apply
 - TTF does not apply
- Locality:
 - Clerk's fee does not apply
 - Grantor/Grantee taxes do not apply
 - TTF does not apply
- All others:
 - Clerk's fee does apply
 - Grantor/Grantee taxes do not apply
 - TTF does apply

Step 5 The clerk shall record the certificate in the Deed Book and index it in the names of both (i) The person or persons who owned the land before the recordation of the certificate; and (ii) The authorized condemnor.

Comments: If the property affected by the certificate is situated in two or more localities, the clerk of the court wherein the certificate is recorded shall certify a copy of such certificate to the clerk of the court of the locality in which any portion of the property lies. The clerk shall record the same in the Deed Book and index it in the manner prescribed in [Va. Code §§ 25.1-307 \(B\)](#), [25.1-309](#) and [33.2-1027](#).

Determination of Final Compensation

While the transfer of title in summary condemnation proceedings is immediate, the amount paid into court by the condemnor is only a preliminary determination of compensation. The acceptance of such funds by the original owner does not limit the owner's right to obtain a subsequent determination of the compensation to which he is entitled. [Va. Code § 25.1-311](#).

There are three mechanisms through which the determination of final compensation may occur:

- The authorized condemnor and the original owner may agree as to the amount of compensation to be paid. [Va. Code §§ 25.1-317](#) and [33.2-1027](#).

- The authorized condemnor may institute formal condemnation proceedings if either: (i) it is unable to agree upon the amount of compensation with the original owner or (ii) one or more owners cannot be ascertained or are under a disability. [Va. Code §§ 25.1-313](#) and [33.2-1027](#).

Note: The authorized condemnor may institute a formal condemnation proceeding at any time after a certificate of take is filed and, if no compensation agreement has been reached, is required to institute such a proceeding within sixty days after the completion of construction on the condemned property.

- Formal condemnation proceedings may be instituted by the original owner if no compensation agreement has been reached and either: (i) one year has passed since the condemnor took possession of the property or (ii) Sixty days have passed since the condemnor completed the contemplated improvements to the property. [Va. Code §§ 25.1-318](#) and [33.2-1029](#).

Reconciliation

If the amount of compensation fixed by a formal condemnation proceeding differs from the preliminary compensation given by the condemnor, it is necessary to reconcile the two amounts.

If the final compensation is greater than the preliminary compensation, the condemnor must pay into court the difference between the final and preliminary compensation plus interest thereon.

If the final award of compensation is less than the preliminary compensation and an owner has received a distribution of compensation (See the next section), the condemnor may obtain a judgment against any owner the difference between the amount the owner received and the amount to which he is entitled, plus interest thereon.

Note: In all cases, interest is assessed at the general account's primary liquidity portfolio rate.

Distribution of Funds

Any person shown by the Certificate of Take to be entitled to compensation may petition the court for the distribution of some or all of such funds. The court must distribute the funds to the person indicated on the Certificate of

Take unless the record shows any dispute as to the ownership of such funds or the condemnor shows cause why the funds should not be distributed.

Disputes over the ownership of compensation are resolved using the same principles that apply to compensation paid for properties subjected to formal condemnation procedures. Va. Code §§ 25.1-310 (H) and 33.2-1023. The owner is entitled to any interest that accrues on funds deposited into court. If the compensation is represented by a Certificate of Deposit, the compensation must be paid into court within thirty days of the entry of the final order fixing compensation.

Furthermore, when the compensation is represented by a certificate of deposit, the condemnor must pay the owner(s) interest upon the Certificate of Deposit from the time the petition was filed until the funds are ultimately paid into court. Va. Code §§ 25.1-310 (G) and 33.2-1023. However, this type of interest does not accrue if the condemnor is enjoined from improving the subject property. *Id.* Interest is computed using the primary liquidity portfolio rate for the general account.

The following procedures are recommended when a petition for distribution of funds is filed with the clerk:

Step 1 Petition for the distribution of all or any part of the funds is filed by any person shown by a certificate to be entitled to funds deposited with the court or represented by a Certificate of Deposit. [Va. Code §§ 25.1-310 \(A\)](#) and [33.2-1023](#).

Comments: A copy of such petition shall be served on either (i) the attorney of record for the petitioner, if a condemnation proceeding is pending; or (ii) if such a proceeding is not pending, an officer or agent of the authorized condemnor who is authorized to accept service of process in any court proceeding on behalf of the authorized condemnor. [Va. Code §§ 25.1-310 \(B\)](#) and [33.2-1023](#).

The copy of the petition shall be served with a notice returnable to the court not less than twenty-one days after such service, to show cause, if the authorized condemnor can, why such amount should not be distributed in accordance with the petition. [Va. Code §§ 25.1-310 \(C\)](#) and [33.2-1023](#).

Step 2 Clerk collects and receipts for fees and sets up a CIVIL matter.

Step 3 If the authorized condemnor does not, on or before the return day of the petition, show such cause, and if the record in the proceeding does not disclose any denial or dispute with respect thereto, the court shall enter an order directing the distribution of such amount. [Va. Code §§ 25.1-310 \(D\)](#) and [33.2-1023](#).

Note: If authorized condemnor does show cause, GO TO STEP 4.

Comments: In the case of a nonresident petitioner the court may in its discretion require a bond before ordering the distribution.

Step 4 If the authorized condemnor shows such cause, or if the record in the proceeding discloses any denial or dispute as to the persons entitled to such distribution or to any interest or share therein, the court shall direct such proceedings as are provided by [Va. Code § 25.1-240](#) (Commonwealth) or [Va. Code § 25.1-241](#) for the distribution of awards. [Va. Code §§ 25.1-310 \(H\)](#) and [33.2-1023](#).

Step 5 Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

Comments: Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Amendment to Certificate

The court may enter an order permitting the reformation, alteration, revision, amendment or invalidation, in whole or in part, of the certificate or to correct mistakes in the description of the property affected by such certificate, the name or names of the owner or owners in the certificate. An amended certificate shall not include any property not included in the original certificate.

The following procedures are recommended when a petition for distribution of funds is filed with the clerk:

Step 1 Petition is filed by the authorized condemnor with the court setting forth any error made in such certificate or necessity of change. [Va. Code §§ 25.1-312\(C\)](#) and [33.2-1024](#).

Step 2 Clerk collects and receipts for fees and sets up a CIVIL matter.

Step 3 Court denies petition or may enter an order permitting the reformation, alteration, revision, amendment or invalidation, in whole or in part, of the certificate. [Va. Code §§ 25.1-312 \(D\)](#) and [33.2-1024](#).

Step 4 Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. This order, together with any revised certificate that may be necessary should also be recorded in the Deed Book. [Va. Code §§ 25.1-312 \(C\)](#) and [33.2-1024](#).

Comments: Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Agreed Upon Settlement

At any time after the recordation of a certificate, but prior to the institution of condemnation proceedings, if the authorized condemnor and the owner of the property taken or damaged agree as to compensation for the property taken and damages, if any, caused by such taking, the authorized condemnor shall file with the court a petition so stating.

The following procedures are recommended when a petition for agreed upon settlement is filed with the clerk.

Step 1 Petition is filed by the authorized condemnor together with a copy of the agreement. [Va. Code §§ 25.1-317 \(A\)](#) and [33.2-1027](#).

Comments: If condemnation proceedings are already pending at the time such agreement is reached, the authorized condemnor shall not be required to file a petition, but shall file a motion to dismiss the condemnation proceedings containing an averment that such agreement has been reached.

Step 2 Clerk collects and receipts for fees and sets up a CIVIL matter.

Step 3 Court enters order.

Comments: Upon entry of such order, the condemning authority shall be relieved of further obligation by virtue of having filed a certificate of deposit with the court.

Step 4 Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. This order should also be recorded in the Deed Book.

Comments: Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Step 5 Clerk sends certified copy of order to be recorded in the clerk's office of each court in which the certificate is recorded.

Petition by Owner for Determination of Just Compensation

The owner of property that an authorized condemnor has entered and taken possession of pursuant to the provisions of this chapter may petition the circuit court of the locality in which the greater portion of the property lies for the empanelment of a jury to determine just compensation for the property taken and damages done, if any, to such property.

Petition is filed if:

- The owner and the authorized condemnor have not reached an agreement as to compensation and damages, if any; and
- The authorized condemnor
 - Has not completed the construction of the contemplated improvements upon the property after a reasonable time for such construction has elapsed; or
 - Has not instituted condemnation proceedings within
 - Sixty days after completion of the construction of the contemplated improvements upon the property; or
 - 180 days after the authorized condemnor has entered upon and taken possession of the property, regardless of whether the construction of the contemplated improvements has been completed.

The following procedures are recommended when a petition for determination of just compensation is filed with the clerk.

Step 1 Petition is filed by the landowner. [Va. Code §§ 25.1-318 \(A\)](#) and [33.2-1029](#).

Comments: A copy of such petition shall be served upon the authorized condemnor at least ten days before it is filed in the court.

Step 2 Clerk collects and receipts for fees and sets up a Miscellaneous CIVIL matter.

Step 3 The authorized condemnor files an answer thereto within five days after the filing of the petition.

Step 4 Court denies petition or impanels a jury, as requested in the owner's petition, to ascertain the amount of compensation to be paid for the property taken and damages done, if any.

Comments: Procedures would continue under [Va. Code § 25.1-230](#) - Measure of just compensation; oaths of members of body determining just compensation.

Step 5 Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

Comments: Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Condemnation Proceedings

Proceedings for condemnation shall be initiated by filing a petition complying with the requirements of [Va. Code §§ 25.1-206](#) and [33.2-1032](#) in the circuit court of the county or city wherein such property, or the greater portion thereof proposed to be condemned is situated, unless otherwise specified by law. The petition shall include a caption wherein the person vested by law with power to exercise the right of eminent domain shall be the petitioner. The named defendants shall be at least one of the owners of some part of or an interest in the property to be taken or damaged, and the property to be

taken designated generally by kind, quantity and location.

Pursuant to Va. Code § 25.1-205.1, upon the filing of a petition initiating a condemnation proceeding, the court shall refer the parties to a dispute resolution orientation session. Parties must notify the court in writing if the dispute is resolved prior to the return date set by the court. Further participation in a dispute resolution proceeding shall be by consent of all parties. Form DC-400, Mediation Orientation Order of Referral may be used.

Determination of just compensation may be by a panel of commissioners, a jury or the court, if neither a panel of commissioners nor a jury is appointed or empaneled.

Note: A public utility shall not be required, as a prerequisite to its filing of its petition for the condemnation of property necessary for ordinary extensions or improvements of its facilities within the territory in which it is lawfully authorized to operate, for use in public utility service, to obtain a certificate from the State Corporation Commission under the Utility Facilities Act.

The following procedures are recommended when condemnation proceedings are initiated by a non-Commonwealth entity.

Step 1 Petition, verified by affidavit of a duly authorized officer, agent or attorney for the petitioner is filed with the circuit court clerk. [Va. Code § 25.1-206](#).

Comments: The petitioner shall furnish the clerk one copy of the petition and all exhibits thereto and such additional copies of the petition as may reasonably be needed by the clerk or any defendant. The same petition may join one or more separate pieces, tracts, parcels or lots of land, whether in the same or different ownership and whether or not sought for the same use; however, the court, on its own motion or on motion of any party in furtherance of convenience or to avoid prejudice, may order a severance and separate trial of any claim or claims or of any issue or issues. [Va. Code § 25.1-208](#). **Note:** Contents of petition prescribed by [Va. Code §§ 25.1-206](#) and [33.2-1033](#).

Step 2 Clerk collects and receipts for funds received, including sheriff fee, if not Commonwealth, locality or political subdivision and sets up a Civil case. See "Fee Schedule" appendix, this manual.

Step 3 Petitioner gives the owners twenty-one days notice of the filing of such petition and of its intention to apply to the court to

ascertain just compensation for the property to be taken or affected as a result of the taking and use by the petitioner of the property to be so acquired. [Va. Code § 25.1-209](#).

Comments: The notice, along with a copy of the petition, shall be served on the owners. **Note:** The notice may also include notice of the petitioner's application for the right of entry as provided in [Va. Code § 25.1-223](#), if such application is included in the petition as authorized by [Va. Code § 25.1-207](#).

Step 4 If notice made by Order of Publication, the clerk shall mail a copy of the notice by publication to any owner who cannot be personally served but whose place of residence is then known. [Va. Code § 25.1-210 \(A\)](#). **Note:** The form of the notice by publication to which shall be attached the signature of the clerk, or the deputy clerk for and on behalf of the clerk, shall be substantially as provided in [Va. Code § 25.1-211](#).

Comments: Such order shall be published in a newspaper published in the county or city where the property or major portion thereof is located, or if there is no such newspaper then in a newspaper having a general circulation in such city or county, once a week for not less than two successive calendar weeks and shall be posted on the front door of the courthouse within ten days after the entry of the order of publication. **Note:** Costs of publication will be paid by petitioner. [Va. Code § 17.1-626](#).

Step 5 Within twenty-one days of service owner files answer to make any objection or defense. [Va. Code § 25.1-213](#).

Comments: Owner will also make his election to have the proceeding heard by the court or by a jury.

Step 6 The owner or the petitioner in any condemnation proceeding may request and, if requested, the court shall order a pre-trial settlement conference. [Va. Code § 25.1-219](#).

Comments: If requested, such conference shall be held within the thirty days preceding the scheduled trial date.

Step 7 Petitioner may file an application with the court to gain right to enter upon property. [Va. Code § 25.1-223](#).

Comments: Notice of application shall be served upon owners of the property in the same manner as the notice of petition.

Step 8 The court, after twenty-one days following service of the petitioner's application, and after a hearing thereon, denies or approves the petitioner's application. **Note:** Court may require the petitioner to give a surety bond with Clerk of Court in an amount and with such surety as the court may determine.

Comments: Court approves if found that:

- A public necessity or an essential public convenience requires such entry for such purposes;
- An emergency exists justifying such entry before the time when just compensation can be determined and the amount so determined paid into court; and
- The interests of the owners of such property will be adequately protected by (i) the payment into court for the benefit of the owners of the amount of the offer made in accordance with [Va. Code § 25.1-204](#) or (ii) if no offer is required by that section, by the payment into the court of the amount of a good faith estimate of the value of the property.

Step 9 The clerk shall deposit the funds so paid to the credit of the court in an account of a type that bears interest. [Va. Code § 25.1-224 \(E\)](#).

Comments: At any time after such payment into court, a party whose property or interest therein is to be taken or damaged may apply to the court for the withdrawal of his share thereof in the manner provided in [Va. Code § 25.1-243](#).

Step 10 Determination of just compensation may be by the court or by a jury.

Step 11 Upon the return of the report of the body determining just compensation, and the confirmation, alteration or modification thereof in the manner provided in this chapter, the sum so ascertained by the court as compensation and damages, if any, to the property owners may be paid into court. [Va. Code § 25.1-237](#).

Step 12 The order confirming, altering or modifying the report of just compensation shall be final. [Va. Code § 25.1-239](#).

Comments: Any party aggrieved thereby may apply for an appeal to the Supreme Court and a supersedeas may be granted in the same manner as is now provided by law and the Rules of Court applicable to civil cases. An order setting aside the report and awarding a new trial of the issue of just compensation shall not be a final order for the purposes of appeal.

Step 13 Funds deposited into court are disbursed pursuant to [Va. Code § 25.1-240](#).

Comments: In order to enable the court to determine the proper disposition of the fund and any interest accrued thereon, the court may appoint a Commissioner in Chancery to take evidence upon the conflicting claims. If the fund, exclusive of interest, is \$500 or more, the costs incident to or arising out of a trial or a determination of such issues or out of a determination of the ownership of the fund and any interest accrued thereon or the distribution thereof shall not be taxed against the petitioner. If the fund, exclusive of interest, is less than \$500, such costs shall be taxed against the petitioner. [Va. Code § 25.1-241](#).

Step 14 At any time after payment into court of the sum ascertained in the report of the award of just compensation, a party whose property or interest therein is to be taken or damaged may apply to the court for the withdrawal of all, or any portion of his pro rata share, of the amount deposited for his interest in the property to be taken or damaged, together with his pro rata share of any interest accrued thereon. [Va. Code § 25.1-243](#).

Step 15 Clerk shall make and certify a copy of so much of the orders, judgments and proceedings in the case as shall show such condemnation, including a plat and description of the property condemned, and any such contract, if any there be, as is mentioned in [Va. Code § 25.1-236](#).

Step 16 Clerk records such material in the Deed Book [Va. Code § 25.1-247](#).

Comments: If any portion of the land lies in two or more localities, the clerk shall certify a copy of the proceedings to the clerk of the court of each locality. The clerks shall record and index the copy as provided in subsection A.

Fees/Taxes/Other Monies Assessed

- Filed by Commonwealth or Locality
None
- Filed by Electric Authority, Sanitary District, etc.
[Circuit Court Civil Filing Fee Calculation](#)
- Agreed Settlement/Drawdown/Amendment of Certificate
[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

No forms provided by clerk's office. Court may use DC-400, MEDIATION ORIENTATION ORDER OF REFERRAL

Reference(s)

- [Va. Code § 8.01-187](#)
- [Va. Code § 8.01-316](#)
- [Va. Code § 8.01-238](#)
- [Va. Code § 17.1-618](#)
- [Va. Code § 25.1-100](#)
- [Va. Code § 25.1-205.1](#)
- [Va. Code §§ 25.1-209, 25.1-213, 25.1-214, 25.1-219, 25.1-220, 25.1-227.1, 25.1-227.2](#)
- [Va. Code § 25.1-235](#)
- [Va. Code § 25.1-300](#) et seq.
- [Va. Code § 33.2-1001](#) et seq.
- [Va. Code §§ 33.2-1023, 33.2-1024, 33.2-1027](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(31)
Courts Technology Fund	Va. Code § 17.1-275 (13)(26)
CHMF	Va. Code § 17.1-281
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
Technology Trust Fund	Va. Code § 17.1-279
Writ Tax	Va. Code § 58.1-1727
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

Confession of Judgment

An action in which the defendant, debtor or attorney-in-fact (i.e., Designated agent or the judgment debtor) provides written confession of a claim against the debtor/defendant and consents to entry of judgment in favor of the creditor/plaintiff. The judgment lien runs from the time docketed in the Judgment Lien Docket of the clerk's office in which land of the defendant lies.

Note: Suit, motion or action does not have to be pending in circuit court.

Document Type

Confession of Judgment

Filing Type

CJ

Procedures

- Step 1** Debtor/defendant (or attorney-in-fact for debtor) appear before clerk to confess judgment. [Va. Code § 8.01-435](#) et seq. Plaintiff/Creditor may or may not appear.

Comments: Only the debtor, defendant or attorney-in-fact may confess judgment. However, the payee, obligee or person entitled to payment under the note or bond may appoint a substitute for any attorney-in-fact authorized to confess judgment named in the note or bond. Such substitute attorney in fact shall be specifically named in an instrument and recorded and indexed in the land records prior to the confession of judgment being filed in the clerk's office. CC-1420, Confession of Judgment must contain the book/page and/or instrument number where the substitute attorney in fact was recorded.

- Step 2** Creditor/plaintiff prepares Confession of Judgment (Form CC-1420) or presents pre-prepared form. [Va. Code § 8.01-436](#).

Comments: Creditor needs to file note (bond or other obligation), if there be such, with the Confession of Judgment. Clerk endorses upon confession a certificate notifying the date and time the judgment was confessed. **Note:** bond or other evidence of debt must contain (in bold-face print) IMPORTANT NOTICE: This instrument contains a confession of judgment provision which constitutes a waiver of important rights you may have as a debtor

and allows the creditor to obtain a judgment against you without any further notice.

[Va. Code § 8.01-415.](#) See form CC-1420, [CONFESSION OF JUDGMENT/CERTIFICATE OF CLERK.](#)

Step 3 Clerk ensures signing by debtor (or attorney-in-fact for debtor) acknowledges the debt/judgment. [Va. Code § 8.01-436](#)

Comments: In cases where there is an attorney-in-fact, the clerk should make sure who the attorney-in-fact is and verify in which clerk's office the judgment is to be confessed.

Step 4 Clerk endorses certificate portion of Form CC-1420. [Va. Code § 8.01-437.](#)

Step 5 Clerk assigns a case number and prepares file.

Step 6 Clerk collects fees, costs and taxes and issues receipt.

Comments: Clerk should collect costs for mailing to debtor if debtor is out-of-state. Clerk charges two Technology Trust Fund Fees (Code 106), one \$5 TTF fee for filing the confessed judgment and one \$5 TTF fee for docketing. [Va. Code §§ 17.1-275 A\(14\)](#) & [17.1-279.](#)

Step 7 Clerk records and indexes the confessed judgment in the Civil Order Book. Noting the date and time of day of confession in order book. [Va. Code § 8.01-434](#)

Step 8 Clerk docket judgment in Judgment Lien Docket Book. [Va. Code § 8.01-440.](#)

Step 9 Clerk prepares and signs Clerk's order. Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. [Va. Code §§ 8.01-431](#) and [8.01-432.](#)

Comments: Clerk may use form CC-1420, [Confession of Judgment/Certificate of Clerk.](#) Abstract of such judgment may be issued immediately. [Va. Code § 8.01-461.](#) Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240.](#) Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249.](#)

Step 10 Clerk issues service (certified copy of clerk's order containing notice and Writ of Fieri Facias (if execution requested by plaintiff) with

form for requesting an exemption hearing) within twenty-one days from date of entry of judgment on debtor; clerk notes service in Judgment Lien Docket "Book" (whether using microfilm, scanning or actual book).

Step 11

Clerk receives sheriff's return and records in process book. Serving officer has ten days to make return to court. Clerk will file order with case papers. Judgment is void if no service within sixty days. [Va. Code § 8.01-438](#). If order not served within sixty days of entry in the order book, the judgment becomes void. Clerk is not required to enter in Judgment Lien Docket the failure of service. *See Attorney General Opinion to Barry, dated 06/29/90; No statutory requirement that clerk record failure of service upon judgment debtor within requisite sixty days.*

If judgment debtor is a non-resident, clerk will send order via certified mail to last known address of judgment debtor and files certificate or return mail receipt showing that this has been done.

Comments: If debtor is a non-resident, clerk mails (by certified or registered mail) a certified copy of the clerk's order ([Va. Code § 8.01-438](#)). If the debtor confesses judgment in person, the clerk should hand deliver certified copy of order and note same in the file. If not mailed or hand delivered, service must be issued to sheriff within ten days of entry of judgment when debtor is an attorney-in-fact. [Va. Code § 8.01-438](#). Creditors may use private process server in which event the creditor pays process server directly.

When debtor is a non-resident, service of copy of order will be made by officer of place of residence or the clerk may send a copy of order by registered or certified mail at last known address of non-resident debtor and will file a certificate of compliance with case papers or a receipt of such notice by non-resident debtor. *See Attorney General Opinion to Frey, dated 02/19/16; service of a confessed judgment on a nonresident by "posting" is sufficient if authorized under the law of the foreign jurisdiction. Service is not sufficient, however, if the return is marked by the officer as "Not Found." If service is attempted by mailing, it is sufficient if the clerk sends a copy of the order by registered or certified mail to the nonresident debtor's last known address and files a certificate showing that such has been done. This is so regardless of whether the registered or certified mail receipt is not returned to the clerk by the post office, or is returned stating "not accepted" or "not at this address."*

See form CC-1477, WRIT OF FIERI FACIAS and DC-407, [REQUEST FOR](#)

[HEARING-EXEMPTION CLAIM.](#)

Step 12 If debtor/defendant makes motion to set aside or reduce the judgment, and the motion is granted, the case is placed on the trial docket ([Va. Code § 8.01-433](#)).

Whenever any such judgment is set aside or modified the case shall be placed on the trial docket of the court, and the proceedings thereon shall thereafter be the same as if an action at law had been instituted upon the bond, note or other evidence of debt upon which judgment was confessed. After such case is so docketed the court shall make such order as to the pleadings, future proceedings and costs as to the court may seem just.

A subsequent case number should be used (-01), and no fee should be charged for this action.

Note: The debtor must make such motion within twenty-one days of serving notice and after twenty-one day's notice to the judgment creditor.

Judgment cannot be a lien against real property or the basis for obtaining execution against personal property until the expiration of the twenty-one day period allowed creditor. [Va. Code § 8.01-434](#).

Comments: Clerk will note court decision on Judgment Lien Docket "Book" (whether using microfilm, scanning or actual book).

Step 13 Clerk makes notation in Judgment Lien Docket of the date the motion was filed.

Step 14 Contested case proceeds as any other civil case.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

CC-1420, [CONFESSION OF JUDGMENT/CERTIFICATE](#)

CC-1442, Judgment Lien Docket - Subsequent Entries

Reference(s)

[Va. Code § 8.01-432](#) et seq.

Attorney General Opinion to Barry, dated 6/29/90 (1990, pages 27-29); *Re: requirement to note in judgment lien docket failure to execute within 60 days*

Attorney General Opinion to Barry, dated 11/14/91 (1991, pages 24-26); *Re: inclusion of attorney fees*

Attorney General Opinion to Frey, dated 10/17/97 (1997, pages 24-27); *Re: inclusion of attorney fees and writ of execution*

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(14)
Courts Technology Fund	Va. Code § 17.1-275 A(13)
CHMF	Va. Code § 17.1-281
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
Technology Trust Fund (NOTE: clerk charges two Technology Trust Fund Fees, one \$5 TTF fee for filing the confessed judgment and one \$ TTF fee for docketing)	Va. Code § 17.1-279
Sheriff's Fee	Va. Code § 17.1-275 A(14)
Writ Tax	Va. Code § 58.1-1727
Cost of registered mail	Va. Code § 17.1-275 A(14)
Docketing fee	Va. Code § 17.1-275 A(17)
* Not assessed if the amount of the civil action is \$500 or less	

Consolidation of Counties

An action taken by (A) the boards of supervisors of two or more counties or (B) by 10% of the qualified voters of the county or counties, to consolidate into a single county.

Document Type

Consolidation Agreement between Counties and Petition

Petition Requesting Consolidation Agreement

Filing Type

FAS = CON, changes to PET when transferring to CCMS

Procedures

Consolidation Agreement between Counties and Petition

- Step 1** Agreement and Petition filed with one county circuit court judge with copies to the other county circuit court judge. Papers are not filed with clerk of the circuit court.
- Step 2** Publication of Agreement is listed in local newspaper and copy of such is posted at or near the front door of each county courthouse.
- Comments:** The cost of the publication shall be paid by the petitioner or applicant. [Va. Code § 8.01-316 \(B\)](#).
- Step 3** Order for Election entered in accordance with [Va. Code § 24.2-684](#).
- Step 4** Clerk sends copy of the Order to the [State Board of Elections](#).

Petition Requesting Consolidation Agreement

- Step 1** Petition of 10% of qualified county voters filed with board of supervisors with copy sent to the county circuit court judge initiating action by either the board or by a committee appointed by the judge in lieu of the board to develop a consolidation agreement. Papers are not filed with clerk of the circuit court.
- Step 2** STEPS (1)-(4) in a. "Consolidation Agreement" above are followed in addition to procedures required by [Va. Code § 24.2-684](#). See "Referendum Elections."

Fees/Taxes/Other Monies Assessed

By Voters

[Circuit Court Civil Filing Fee Calculation](#)

By locality

None

Form(s)

No forms provided by the clerk's office.

Reference(s)

[Va. Code § 15.2-3501](#), et seq[Va. Code 17.1-266](#)[Va. Code § 24.2-684](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(26)
Courts Technology Fund	Va. Code § 17.1-275 A(26)
CHMF	Va. Code § 17.1-281
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
Technology Trust Fund	Va. Code § 17.1-279
Writ Tax	Va. Code § 58.1-1727
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

Construe/Establish/Reform Wills

See Wills – This manual.

Contracts

Rescission of Contract

A remedy in contract law which discharges the duty of performance in a contract. Rescission is accomplished by mutual agreement between all parties to this contract, or is awarded by judicial decision to one or more of the parties involved in a contract dispute. The grounds for such judicial relief include fraud duress, misrepresentation, mistake, undue influence, and/or complete or substantial failure of performance.

Regarding contracts involving the sale of goods refer to [Va. Code § 8.2-209](#).

Document Type

Complaint

Filing Type

COM

Procedures

Step 1 Clerk receives Complaint.

Step 2 Clerk receipts for money received, assigns a CIVIL case number, docket case and issues process as directed.

Step 3 Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

Comments: Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms are not provided by the clerk's office.

Reference(s)

Frazier v. Campbell, 1 Va. Dec. 165 (1879)

[Va. Code § 8.2-209](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(26)
Courts Technology Fund	Va. Code § 17.1-275 A(26)
CHMF	Va. Code § 17.1-281
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
Technology Trust Fund	Va. Code § 17.1-279
Writ Tax	Va. Code § 58.1-1727
* Not assessed if the amount of the civil action is \$500 or less	

Seeking Damages & Performance

Action requiring both legal and equitable remedies for actual or constructive breach of contract. Refer to "Contracts (Specific Performance)" and "Contracts (Money Damages)" for more complete descriptions.

Document Type

Complaint

Filing Type

CNTR

Procedures

See "Procedures For Complaint." EXCEPTION: Epperson v. Epperson, 108 Va. 471, 62 S.E. 344. This exception will allow a court of equity to try and decide issues that arise between co-defendants who have not filed cross-pleadings in the action, if the rights and equities between the co-defendants necessarily arise upon the pleadings and evidence between plaintiffs and defendants.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office. Clerk has available:

CC-1400, SUMMONS – CIVIL ACTION

CC-1405, PROOF OF SERVICE

[CC-1406, ACCEPTANCE/WAIVER OF SERVICE OF PROCESS AND WAIVER OF FUTURE SERVICE OF PROCESS AND NOTICE](#)

CC-1407, [SERVICE OTHER THAN BY VIRGINIA SHERIFF](#)

CC-1418, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#)

CC-1434, ORDER OF PUBLICATION

Reference(s)

[Va. Code §§ 8.01-27, 8.01-28, 8.01-29, 8.01-30, 8.01-31, 8.01-32, 8.01-33](#)

[Va. Code § 8.01-446](#)

[Va. Code § 8.2-502](#)

[Va. Code § 8.2-716](#)

[Rules 3:2, 3:3, 3:4](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(13)(26)
Courts Technology Fund	Va. Code § 17.1-275 A(13)(26)
CHMF	Va. Code § 17.1-281
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
Technology Trust Fund	Va. Code § 17.1-279
Writ Tax	Va. Code § 58.1-1727

FEES	
TYPE CHARGES	CODE REFERENCE
* Not assessed if the amount of the civil action is \$500 or less	

Seeking Money Damages

An action maintained upon a bond, promissory note or other writing by which there is a promise, undertaking or obligation to pay.

Document Type

Complaint

Filing Type

CNTR

Procedures

See "Procedures for Complaint." Exception - Affidavit required by [Va. Code § 8.01-28](#) with copies to be served upon defendants.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office. Clerk has available:

CC-1400, SUMMONS – CIVIL ACTION

CC-1405, PROOF OF SERVICE

[CC-1406, ACCEPTANCE/WAIVER OF SERVICE OF PROCESS AND WAIVER OF FUTURE SERVICE OF PROCESS AND NOTICE](#)

CC-1407, [SERVICE OTHER THAN BY VIRGINIA SHERIFF](#)

CC-1418, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#)

CC-1434, ORDER OF PUBLICATION

Reference(s)

[Va. Code §§ 8.01-27, 8.01-28, 8.01-29, 8.01-30, 8.01-31, 8.01-32, 8.01-33](#)

[Va. Code § 8.01-446](#)

[Rules 3:1, 3:2, 3:3, 3:4](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(13)
Courts Technology Fund	Va. Code § 17.1-275 A(13)
CHMF	Va. Code § 17.1-281

FEES	
TYPE CHARGES	CODE REFERENCE
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
Technology Trust Fund	Va. Code § 17.1-279
Writ Tax	Va. Code § 58.1-1727
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

Seeking Specific Performance

An action to compel performance of a contract, where damages payable in money would not adequately compensate for its performance. Examples of actions include: (1) conveyance of real property; (2) payment of sales price for land; (3) conveyance of unique chattels; (4) compel personal services; (5) enforce negative contractual covenants (ex: order building removed or altered to conform to a contract; (7) recovery of goods under UCC, Title 8.2 Commercial Code-Sales: insolvency of seller, goods unique, payment of sales price, damages, or other relief.

Document Type

Complaint

Filing Type

PERF

Procedures

See "Procedures For Complaint." EXCEPTION: Epperson v. Epperson, 108 Va. 471, 62 S.E. 344. This exception will allow a court of equity to try and decide issues that arise between co-defendants who have not filed cross-pleadings in the action, if the rights and equities between the co-defendants necessarily arise upon the pleadings and evidence between plaintiffs and defendants.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office. Clerk has available:

CC-1400, SUMMONS – CIVIL ACTION

CC-1405, PROOF OF SERVICE

[CC-1406, ACCEPTANCE/WAIVER OF SERVICE OF PROCESS AND WAIVER OF FUTURE SERVICE OF PROCESS AND NOTICE](#)

CC-1407, [SERVICE OTHER THAN BY VIRGINIA SHERIFF](#)CC-1418, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#)

CC-1434, ORDER OF PUBLICATION

Reference(s)

[Va. Code §§ 8.01-27](#), [8.01-28](#), [8.01-29](#), [8.01-30](#), [8.01-31](#), [8.01-32](#), [8.01-33](#)[Va. Code § 8.01-446](#)[Va. Code § 8.01-502](#)[Va. Code § 8.2-716](#)[Rules 3:2](#), [3:3](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(26)
Courts Technology Fund	Va. Code § 17.1-275 A(26)
CHMF	Va. Code § 17.1-281
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
Technology Trust Fund	Va. Code § 17.1-279
Writ Tax	Va. Code § 58.1-1727
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

Convey/Encumber Church Property

A request to a court of record, by petition, requesting permission to sell, improve, make a gift, exchange, or settle boundaries between adjoining property by agreement of church property or benevolent associations (e.g., lodges, fraternal orders, etc.). [Va. Code § 57-15](#). The petition is filed in the circuit court of the county or city wherein the property, or greater part of it, lies. It is filed by the trustees of the religious congregation or society, or by other parties in the case of a religious congregation that has ceased to occupy the premises as a place of worship. When congregation has become extinct or ceased to occupy property as place of worship, the petition may be filed by a surviving trustee(s), a member(s) of the congregation or by the religious body who may have custody of the property. To carry out any order entered pursuant to [Va. Code §§ 57-14](#) and [57-15](#), the judge may appoint a special commissioner to convey or encumber any real estate held for the benefit of any church in connection with any transaction involving any conveyance or debt in the name of the church. [Va. Code § 57-15.1](#).

Document Type

Petition

Filing Type

RE

Procedures

- Step 1** Petition is filed in the circuit court of a county or city wherein the property, or greater part of it, lies. **Note:** Petition can be filed with the clerk of the circuit court or the judge of such court in vacation.
- Step 2** Clerk receipts for fee, opens file and docket new case. See "Case Initiation" chapter for respective procedures.
- Step 3** Hearing held.
- Step 4** Court enters Order granting/denying/amending requested action.
- Step 5** Clerk certifies copies of any Order of court upon request or upon direction of court.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

Va. Code § 57-15

Attorney General Opinion to Black, dated 1/18/90 (1990 page 236); Writ tax not applicable to nonadversarial proceedings in circuit court; determination of adversarial vs. *nonadversarial law and chancery proceedings*

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(26)
Courts Technology Fund	Va. Code § 17.1-275 A(13)(26)
CHMF	Va. Code § 17.1-281
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
Technology Trust Fund	Va. Code § 17.1-279
Writ Tax	Va. Code § 58.1-1727
Sheriff's fee, if applicable (per local service)**	Va. Code § 17.1-272
Sheriff's fee, if applicable (per out-of-town service)**	Va. Code § 17.1-272(1) Va. Code § 17.1-272
Clerk's Fee	Va. Code § 17.1-275 A(26)

FEES	
TYPE CHARGES	CODE REFERENCE
Courts Technology Fund	Va. Code § 17.1-275 A(13)(26)
* Not assessed if the amount of the civil action is \$500 or less	
**No fee collected if service is waived by Commonwealth's Attorney	

Correction of Erroneous or Improper Assessments of Local Levies

Any person assessed with local taxes (the “applicant”), who is aggrieved by any such assessment for real or personal property taxation, may apply for relief to the circuit court of the county or city wherein such assessment was made.

The limitations period for the filing of the application is (i) within three years from the last day of the tax year for which such assessment is made, (ii) within one year from the date of the assessment, or (iii) within one year from the date of the Tax Commissioner’s final determination under [Va. Code § 58.1-3703.1 A 5](#), whichever is later.

The application, in the form of a court suit, shall be before the court when it is filed in the clerk’s office. The proceedings shall be conducted as a legal cause of action before the court, sitting without a jury. Part Three of the Rules of the Supreme Court of Virginia are applicable to this action (*See* Supreme Court Rule 3:1). The county or city attorney, or if none, the attorney for the Commonwealth, shall defend the application.

Note: The Commissioner of the Revenue is authorized to correct real estate assessments resulting from factual errors made by the Commissioner or by other appraisers conducting general reassessments, or correct clerical mistakes, without a petition to circuit court by the taxpayer or the Commissioner. Pursuant to [Va. Code § 58.1-3981\(A\)](#) the local governing body can issue a refund up to \$2,500. If the Commissioner cannot correct the assessment, he must petition the circuit court for taxpayer relief pursuant to [Va. Code § 58.1-3984\(D\)](#). In such cases fees and costs are waived. ([Va. Code § 17.1-266.](#))

Document Type

Application

Filing Type

CTAX

Procedures

- Step 1** Applicant files an application with the clerk of the circuit court.
- Step 2** Clerk follows procedures set out in the chapter, “Legal Causes of Action – Complaint” of this manual.

Step 3 Although not specifically required by statute, a copy of the application should be mailed to the county or city attorney for the Commonwealth required to defend the application.

Comments: If there is a separate real estate assessor, clerk may send copy to that official.

Step 4 Clerk indexes and images/scans all orders entered by the court.

Comments: Whenever a correction of real estate assessment is ordered by the court, the clerk shall certify to the Commissioner of the Revenue and Treasurer the changes made by the court. See also [Va. Code § 58.1-3982](#) (Appeal by locality) and [Va. Code § 58.1-3984 \(B\)](#) (Application by Commissioner of the Revenue).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code §§ 58.1-3959, 58.1-3980, 58.1-3981, 58.1-3984, 58.1-3985, 58.1-3986, 58.1-3987, 58.1-3988, 58.1-3989](#), Rules of the Supreme Court - Rule 3

Correction of Erroneous or Improper Assessments of State Tax

Any taxpayer ("the applicant") assessed with any tax administered by the [Department of Taxation](#) and aggrieved by any such assessment may, unless otherwise specifically provided by law, within (i) three years from the date such assessment is made or (ii) one year from the date of the Tax Commissioner's determination under [Va. Code § 58.1-1822](#), whichever is later, apply to a circuit court for relief. The venue for such proceeding shall be as specified in [Va. Code § 8.01-261\(13\)\(B\)](#). The application shall be before the court when it is filed in the clerk's office.

The limitations period for the filing of such application is either within three years from the date of such assessment or, if later, within 1 year of the Tax Commissioner's decision on a process exemption claim made under [Va. Code § 58.1-1821](#).

In lieu of the payment required in [Va. Code § 58.1-1825 \(D\)](#), the taxpayer may, within sixty days of the court's ruling, (i) post a bond pursuant to the provisions of [Va. Code § 16.1-107](#), with a corporate surety licensed to do business in Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the bank or savings institution, the form and substance, and payable to the Commonwealth in the face amount of the contested assessment increased by twice the interest rate for underpayments published by the Department and in effect at the time the application is filed.

The Department of Taxation shall be named as defendant and the proceedings are conducted as a legal cause of action before the court sitting without a jury. This proceeding must follow the procedures established for legal causes of action as set forth in Rule 3 of the Rules of the Supreme Court of Virginia.

Document Type

Application

Filing Type

CTAX

Procedures

Step 1 The applicant files an application with the clerk of the circuit court.

Comments: Venue: [Va. Code § 8.01-261\(13\)\(B\)](#).

See [Va. Code § 58.1-1829](#):

no costs assessed against the Commonwealth;
if court grants the requested relief, no costs shall be taxed
against the applicant.

Except as provided in [Va. Code § 58.1-1825 \(C\)](#), the court shall require the applicant to pay the assessment before proceeding with its application upon granting a motion by the Tax Commissioner seeking to compel such payment. **Note:** [Va. Code § 58.1-1729](#) and Rule 3:2 require the collection of writ tax and clerk's fee, respectively, to be paid before any writ or notice is to be issued by the clerk.

Suggestion: The clerk should assess and collect the filing fees and writ tax and service fees at the time of filing, to comply with statute and Rule.

If the final order of the court in any proceeding under [Va. Code §§ 58.1-1825](#), [58.1-1826](#), [58.1-1827](#), [58.1-1828](#) grants the relief prayed for, no costs shall be taxed against the applicant. [Va. Code § 58.1-1829](#)

Step 2 The clerk follows procedures set out in “Complaint (Legal cause of action)”, in this manual.

Step 3 The clerk records any bond filed with the Court by the applicant in the Bond Book, and places a copy in the court file. [Va. Code § 17.1-230](#)

Step 4 The clerk indexes and images/scans all orders entered by the Court.

Comments: If the Court enters an order correcting an assessment, the clerk must certify a copy to the Tax Commissioner. [Va. Code § 58.1-1826](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk’s office.

Reference(s)

[Va. Code §§ 58.1-1825](#), [58.1-1826](#), [58.1-1827](#), [58.1-1828](#), [58.1-1829](#), [58.1-1830](#), [58.1-1831](#), [58.1-1832](#), [58.1-1833](#),
Rules of the Supreme Court - Rule 3

Correct Orders - Default Judgment/Pro Confesso

Notwithstanding the provisions of [Va. Code § 8.01-428](#), in any civil action or proceeding in which the defendant does not make an appearance, the court shall not enter a judgment by default until the plaintiff files with the court an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. Subject to the provisions of [Va. Code § 8.01-3](#), the Supreme Court shall prescribe the form of such affidavit, or the requirement for an affidavit may be satisfied by a written statement, declaration, verification or certificate, subscribed and certified or declared to be true under penalty of perjury. Any judgment by default entered by any court in any civil action or proceeding in violation of Title II of the Servicemembers Civil Relief Act (50 U.S.C. Appx. §§ 501 et seq.) may be set aside as provided

by the Act. See Form DC-418, [Affidavit-Default Judgment Servicemembers Civil Relief Act](#)

Notwithstanding the proscriptions of Supreme Court Rule 1:1, [Va. Code § 8.01-428](#) provides two methods to set aside default judgments, to correct clerical mistakes in the final decree, and to set aside a final decree upon which no notice was given the opposing party of its intended and actual entry.

Amendment of Final Decree, etc. in Original Action

[Virginia Code § 8.01-428 \(A\)\(B\)\(C\)](#) provides a summary procedure under which a party to the action seeks to re-open the concluded case. This does not involve reinstatement of the case, as is allowed for some actions under [Va. Code § 20-121.1](#). However, the requested action on the case qualifies for a clerk's fee under [Va. Code § 17.1-275 \(A\) \(18\)](#) and corresponding assessments of Courthouse Maintenance Fee, Law Library Fee and Legal Aid Fee.

Subsection A:

The plaintiff of judgment debtor files a motion to set aside the court's judgment by default or a decree pro confesso, giving reasonable notice to the opposing party, his attorney or agent. The Court may set aside such judgment on the grounds of fraud on the court, a void judgment, or proof of accord and satisfaction. A motion on the ground of fraud on the court shall be within two years from the date of judgment or decree.

Subsection B:

Clerical mistakes and errors or omissions on the record may be corrected by the Court at any time on its own initiative, or upon motion of any party after notice of same. Provision is also made for cases in which there is a pending appeal.

Subsection C:

A party not in default in circuit court may apply for leave (permission) to appeal the matter within sixty days of the entry of a final order upon a showing that the party was not notified of the entry of the final order, that the lack of notice did not result from the moving party's lack of diligence and that this has resulted in denying an opportunity to appeal the case.

File A New Action to Amend, Etc. The First Case

[Virginia Code § 8.01-428 \(D\)](#) provides that an independent action may be brought to relieve a party from any judgment or proceeding. Full fees, assessments and taxes are assessed in this matter, as are set out herein below.

Document Type

Motion (Subsections A., B. and C) and/or Complaint (Subsection D)

Filing Type

FAS = CORD, changes to PET when transferring to CCMS

Procedures

Step 1 Aggrieved party files either a motion or complaint.

Comments: Refer to discussion above.

Step 2 Clerk receipts for filing fee, etc., docket case, opens file (if new action), and issues requested process.

Comments: See "Case Initiation" this manual for respective procedures.

Step 3 Clerk indexes and images/scans all orders entered by the Court.

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 8.01-428, Rule of Supreme Court 1:1](#)

Counterclaim

A counterclaim is the defendant's claim against the plaintiff, which may be based upon any cause of action, irrespective of whether it grows out of the subject matter of the original pending action.

Within twenty-one days after service on him of the summons, a defendant may, at his option, plead as a counterclaim any cause of action for a money judgment against the plaintiff or all plaintiffs jointly, whether or not it grows out of any transaction mentioned in the summons, whether or not it is for liquidated damages, whether it is tort or contract, and whether or not the amount demanded in the counterclaim is greater than the amount demanded in the complaint. Rule 3:9.

Once a counterclaim is filed with the Circuit Court, the court cannot award a "non-suit" on motion of the plaintiff and without consent of the defendant unless the counterclaim can be tried separately.

Document Type

Counterclaim

Filing Type

CC (**Note:** A counterclaim filed in a divorce is a DCRP)

Procedures

Step 1 Counterclaim is filed with clerk.

Comments: A counterclaim is not considered a new action, even though the court in its discretion may order a separate trial of any cause of action asserted in the counterclaim. Clerk files the counterclaim under the requirements of Rule 3:9. Counterclaim must be filed within twenty-one days after the service of the claim. Service is not required per Rule 1:12.

Step 2 Clerk receipts for fee, unless counterclaim is filed as part of Annulment, Divorce or Separate Maintenance, opens file and docket new case.

Comments: Case should be set up as a subsequent action of the original (using the same base case number) and kept in the same file.

Note: Where there are multiple plaintiffs, the counterclaim must lie against all plaintiffs jointly. See Virginia Civil Procedures, Middleditch, § 7.3, page 342 (2d).

Defendant must pursue all plaintiffs involved. If directed at fewer than all plaintiffs, the defendant must make separate actions against each plaintiff. Notice of counterclaim is mailed to plaintiff's counsel. Plaintiff must respond to the counter claim within twenty-one days.

Fees/Taxes/Other Monies Assessed

Note: No fee shall be charged for the filing of a counterclaim or any other responsive pleading in any annulment, divorce or separate maintenance proceeding.

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Rule 3A:2, 3:9](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(13)(26)
Courts Technology Fund	Va. Code § 17.1-275 A(13)(26)
CHMF	Va. Code § 17.1-281
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
Technology Trust Fund	Va. Code § 17.1-279
Writ Tax	Va. Code § 58.1-1727
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

Cross Claim

A cross-claim is asserted by one defendant against one or more other defendants arising out of any matter pleaded in the complaint. A cross-claim against a codefendant is considered a new action and all provisions of the Rules of the Supreme Court applicable to complaints shall apply to cross-claims, except those requiring payment of writ tax and clerk's fees.

One defendant may cross-claim against another defendant only pursuant to [Rule 3:10](#). The subject of the cross-claim must grow out of some matter pleaded in the plaintiff's complaint. It may include a claim that the codefendant is liable to the cross-claimant for all or part of the damages alleged by the plaintiff; this liability may be secondary as well as primary. The difference between cross-claims against codefendants and counterclaims against plaintiffs is that the former must arise out of the same occurrence as the original claim in the complaint.

Document Type

Cross Claim

Filing Type

CROS

Procedures

Step 1 Defendant files cross-claim with clerk.

Comments: Cross-claim must be filed within twenty-one days after service of the summons on defendant asserting the cross-claim. Rule 3:10 (or later, with permission of court). Copies of the cross-claim must be supplied to the clerk for service.

Step 2 Clerk files cross-claim under requirements of Rule 3:10.

Step 3 Clerk assigns case number, indexes case and prepares case file.

Comments: Case should be set up as a subsequent action of the original (using the same base case number) and kept in the same file.

Step 4 Clerk issues process as directed.

Step 5 Clerk certifies copies of any orders of court for the parties upon request or upon direction of the court.

Note: The Court, in its discretion, may order a separate trial of any cause of action asserted in a cross-claim.

Fees/Taxes/Other Monies Assessed

No fees charged pursuant to [Va. Code § 17.1-275 A\(13\)\(26\)](#), [Va. Code § 17.1-281](#), [Va. Code § 42.1-70](#), [Va. Code § 17.1-278](#), [Va. Code § 17.1-279](#), [Va. Code § 58.1-1727](#)

Attorney General opinion to Gooding, dated 1/9/70 (69-70 page 296); Writ Tax - Not applicable to cross claims nor petition to intervene because not "original suits."

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Rules](#) 1:9, 3:10, 3:13

Attorney General Opinion to Gooding, dated 1/9/70 (69-70 page 296); Writ Tax - Not applicable to cross claims nor petition to intervene because not "original suits."

Attorney General Opinion to Powell, dated 12/29/72 (72-73 page 193); Clerk - No fee upon filing of counterclaim regardless of amount thereof. Writ Tax - Not applicable to filing of counterclaim regardless of amount thereof.

Custodian – Virginia Uniform Transfers to Minors Act

Duties of a Custodian

Under the Virginia Uniform Transfers to Minors Act (UTMA), property is transferred to a custodian who holds and administers the property for the benefit of a minor. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights. A transfer may be made only for one minor, and up to two persons may be joint custodians.

The custodian does not (usually) have to post bond or file accountings unless mandated by the court. A Virginia UTMA custodianship can be extended to twenty-one (21) years if the proper designation is made.

Incidents Involving a Petition to Circuit Court

- The Court may authorize a transfer exceeding \$25,000 from a personal representative, trustee or conservator to a custodian. [Va. Code § 64.2-1905](#)
- The Court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the Court considers advisable of the use and benefit of the minor. [Va. Code § 64.2-1913](#)
- If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian. [Va. Code § 64.2-1917](#)
- A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor, if the minor has attained the age of 14 years, may petition the court to (i) remove the custodian for cause and to designate a successor custodian other than a transferor under [Va. Code § 64.2-1903](#) or (ii) require the custodian to give appropriate bond. [Va. Code § 64.2-1917](#)
- Petition to the circuit court for an accounting by and determination of liability of custodian. [Va. Code § 64.2-1918](#)

Document Type

Petition

Filing Type

UTMA

Procedures

Step 1 Petition is filed in the circuit court. Venue is not jurisdictional. *See* [Va. Code § 8.01-258](#). If the place of filing becomes an issue, the Court will decide if venue is proper.

Step 2 Clerk receipts for fee, opens file and docket new case. *See* "Case Initiation" chapter for respective procedures.

Comment: Generally, this action will be non-adversarial, involving appointment of a successor custodian. However, if the object of the petition is to obtain an accounting from a custodian, require the custodian to give bond, or to remove a custodian, process may be requested.

Step 3 Clerk issues process (if requested), and notice of hearing (if deemed necessary, or required by the Court).

Step 4 Court or clerk appoints a Guardian ad litem for the minor (if deemed necessary or required by the Court).

Comments: If the Court requires the custodian to give bond, the clerk will most likely be asked to prepare it. The bond will be filed in the clerk's office in the same manner as other bonds. Unless ordered by the Court, the clerk does not give an oath to the custodian. If the court orders the custodian to prepare an accounting, the order should direct who will receive the accounting. Unless the Court directs otherwise, a custodian's accounting should be filed in the court file as a pleading.

Step 5 Clerk files all returns, etc.

Step 6 Clerk certifies copies of any Order of court upon request or upon direction of court.

Step 7 The clerk indexes and images/scans all orders entered by the Court.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 64.2-1900](#), et seq.

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	Va. Code § 17.1-275 A(31)
Courts Technology Fund	Va. Code § 17.1-275 (13)(26)
CHMF	Va. Code § 17.1-281
Law Library	Va. Code § 42.1-70
CHCF*	Va. Code § 17.1-281
Legal Aid	Va. Code § 17.1-278
Technology Trust Fund	Va. Code § 17.1-279
Writ Tax	Va. Code § 58.1-1727
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	