

CHAPTER 6 - CIVIL CASE PROCEDURES

I. INTRODUCTION

Civil cases are brought to enforce, redress, or protect the private rights of an individual, organization or government entity. The remedies available in a civil action include the recovery of money damages and the issuance of a court order requiring a party to the suit to complete an agreement or to refrain from some activity. The party who initiates the suit is the “plaintiff,” and the party against whom the suit is brought is the “defendant.” In civil cases, the plaintiff must prove his case by “a preponderance of the evidence.”

The following subsections provide a quick summary of the jurisdiction and venue requirements and the available discovery procedures in general district court.

A. Jurisdiction

[Va. Code § 16.1-77](#)

The general district court has exclusive original jurisdiction over any claim not exceeding \$4,500, excluding interest and attorney’s fees.

The general district court has concurrent jurisdiction with the circuit court over any claim in excess of \$4,500 and up to and including \$25,000, excluding interest and attorney’s fees claimed. However, claims, counter-claims, and cross-claims filed in actions for unlawful entry or detainer are not subject to the maximum jurisdictional limit \$25,000 applicable in general district court regardless of the purpose for which the occupant is using the premises. (Commercial and residential)

Civil cases involving amounts greater than \$25,000 are within the exclusive jurisdiction of the circuit courts.

The general civil jurisdiction statute for general district courts sets forth additional situations in which district courts have jurisdiction, whether it is exclusive or concurrent with the circuit courts. [Va. Code § 16.1-77](#). A court must have jurisdiction over the parties and the action in order to hear the case.

B. Venue

“Venue” refers to the place of trial, i.e. the particular county or city in which a case must be heard. See [Va. Code §§ 16.1-76](#) and [8.01-257](#). [Virginia Code § 8.01-261](#) (preferred venue) and [Va. Code § 8.01-262](#) (permissible venue), list several different types of actions and the places in which venue would be proper for each action. In order for venue to be proper, it must be in accordance with these sections. [Va. Code § 8.01-260](#).

A defendant may object to the choice of venue, but it is within the court's discretion whether or not to grant the request for a venue transfer. [Va. Code §§ 8.01-264; 8.01-265](#), and [8.01-267](#). Further, an objection to improper venue does not result in a dismissal, but in a transfer of the action to a proper venue. [Va. Code § 8.01-264](#).

C. Discovery Procedures

Discovery procedures in the general district courts are limited to the following:

- Subpoena *duces tecum*, to parties and non-parties. [Va. Code § 16.1-89](#).
- Evidence of medical reports or records; testimony of health care provider or custodian of records. [Va. Code § 16.1-88.2](#).
- Bill of particulars (filed by plaintiff at judge's request). [Va. Code § 16.1-69.25:1](#).
- Grounds of defense (filed by defendant at judge's request). Rule 7B:2.
- Interrogatories (following issuance of a *feri facias* upon a judgment rendered in general district court). [Va. Code § 16.1-103](#).

II. NARRATIVE DESCRIPTION

A plaintiff initiates a civil case in the general district court by filing a pleading describing the complaint or dispute with the defendant named in the pleading and remitting all appropriate fees. [Va. Code §§ 17.1-272, 16.1-69.48:2, 17.1-278, 17.1-281](#), and [42.1-70](#). All pleadings, motions, briefs and other documents filed in the court shall be on paper eight and one-half by eleven inches in size, with certain exceptions for evidentiary items. *See* Rule 7A:7. Whenever a party files, or causes to be filed, with the court a motion, pleading, subpoena, exhibit, or other document containing a social security number or other identification number appearing on a driver's license, credit card, debit card, bank account, or other electronic billing and payment system, the party shall make reasonable efforts to redact all but the last four digits of the identification number, unless there is a specific statute to the contrary that applies to the particular type of proceeding in which the party is involved. [Va. Code § 8.01-420.8](#).

There are two types of pleadings in general district court: the civil warrant or summons form and the motion for judgment. [Va. Code §§ 16.1-79, 16.1-81](#). The more frequently used of the two is the civil warrant or summons form, which the plaintiff files, with the appropriate filing fee in the clerk's office or with a magistrate.

If the warrant or summons form is filed in the clerk's office, the clerk marks the date and time of receipt in the clerk's office on the form, issues receipts for fees, assigns the case a sequential case number which is placed on the form, and indexes the case in the case index system. [Va. Code § 16.1-86](#). If the civil warrant or summons form and fees are filed with a magistrate, the magistrate forwards all forms and fees to the clerk's office that performs the above listed process. When any pleading in any civil action is filed in a district court,

including interrogatories and garnishments, the clerk or his designee shall stamp or mark the date received and time of filing on the face of such pleading.

Filing results in the issuance of process, such as a district court form DC-412, [WARRANT IN DEBT](#) prepared by either the clerk's office or the magistrate and picked up for service by the sheriff. After serving the civil warrant or summons, the sheriff returns the original civil warrant or summons together with the return of service to the clerk's office.

The other type of pleading is a motion for judgment or complaint prepared entirely by the plaintiff or plaintiff's attorney, (or, if a business entity is a party, certain high-level employees) who files it with the appropriate filing fee in the clerk's office. The clerk then marks the date and time of receipt in the clerk's office on the motion for judgment, assigns a sequential case number which is placed on the motion for judgment, and indexes the case in the index system. The sheriff picks it up and serves it like a civil warrant and makes his return of service on the original, which is returned to the clerk's office. [Va. Code § 16.1-82](#).

The defendant may file an answer with the court, settle the suit prior to court appearance, or appear in court on the return date and, depending on local practice, be ready for trial or be ready to set a trial date.

Parties not represented by counsel, and who have made an appearance in the case, shall promptly notify in writing the clerk of court wherein the litigation is pending, and any adverse party, of any change in the party's address necessary for accurate mailing or service of any pleadings or notices. In the absence of such notification, a mailing to or service upon a party at the most recent address contained in the court file of the case shall be deemed effective service or other notice. A district court form DC-437, [NOTICE OF CHANGE OF ADDRESS](#) should be given to the pro se defendant in court, and attached to the district court form DC-421, [SUMMONS FOR UNLAWFUL DETAINER](#) when issued for service. Generally, the party filing the pleading or that party's attorney must sign pleadings. However, corporate officers, managers of a limited liability companies, trustees of a business trust may sign. [Va. Code § 16.1-88.03](#).

Prior to the scheduled court date, the clerk retrieves all of the cases from the files for that court date and prints the docket, which includes cases settled out of court prior to their scheduled court date. The case papers and the docket are sent to court on the scheduled court date, and dockets are posted.

In court, cases are called and are either tried on this date or continued to a future date for trial. Court actions on all cases, including completed cases resulting in a judgment, are recorded in CMS and on the case papers. The cases are returned to the clerk's office after court.

All appeals to the circuit court must begin by noting the appeal in writing within ten days after the date on which the order was entered. [Va. Code § 16.1-106](#). The appellant posts an appeal bond and pays the circuit court writ tax and costs within thirty days from the date of

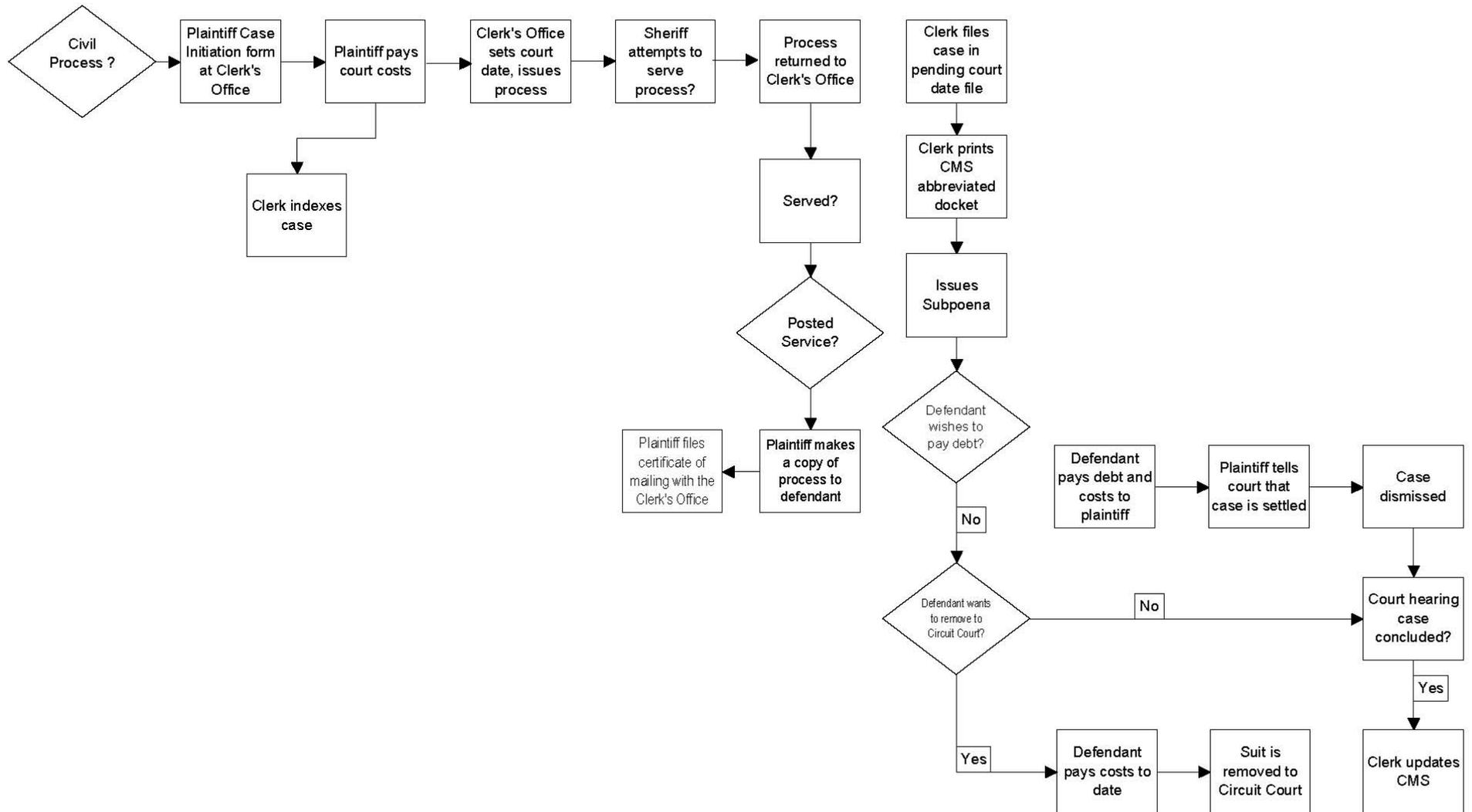
judgment (ten days from date of unlawful detainer judgment) to the general district court clerk. [Va. Code § 16.1-107](#). The clerk's office forwards all case-related materials, bond, writ tax, and costs to the circuit court. [Va. Code § 16.1-112](#). An appeal is permitted only if the amount in controversy exceeds \$20. [Va. Code § 16.1-106](#). An appeal bond in an unlawful detainer case must equal the amount of the judgment plus up to one year's rent as determined by the general district court.

In all civil cases, except trespass, ejectment or any action involving the recovering rents, no indigent person shall be required to post an appeal bond. [Va. Code § 16.1-107](#).

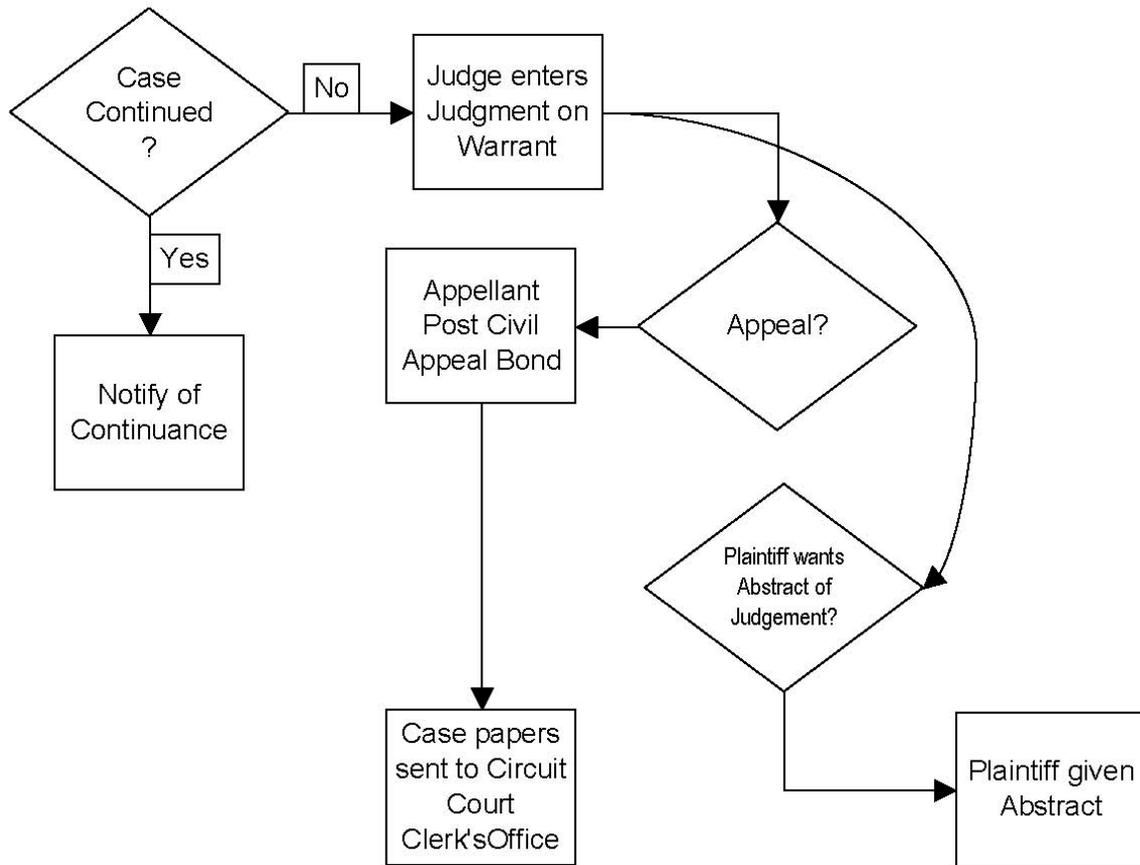
Clerks may charge fees for making copies of civil case papers.

Descriptions of other execution procedures such as liens on property, and reviews of the detailed procedures by type of case, are presented in the following sections.

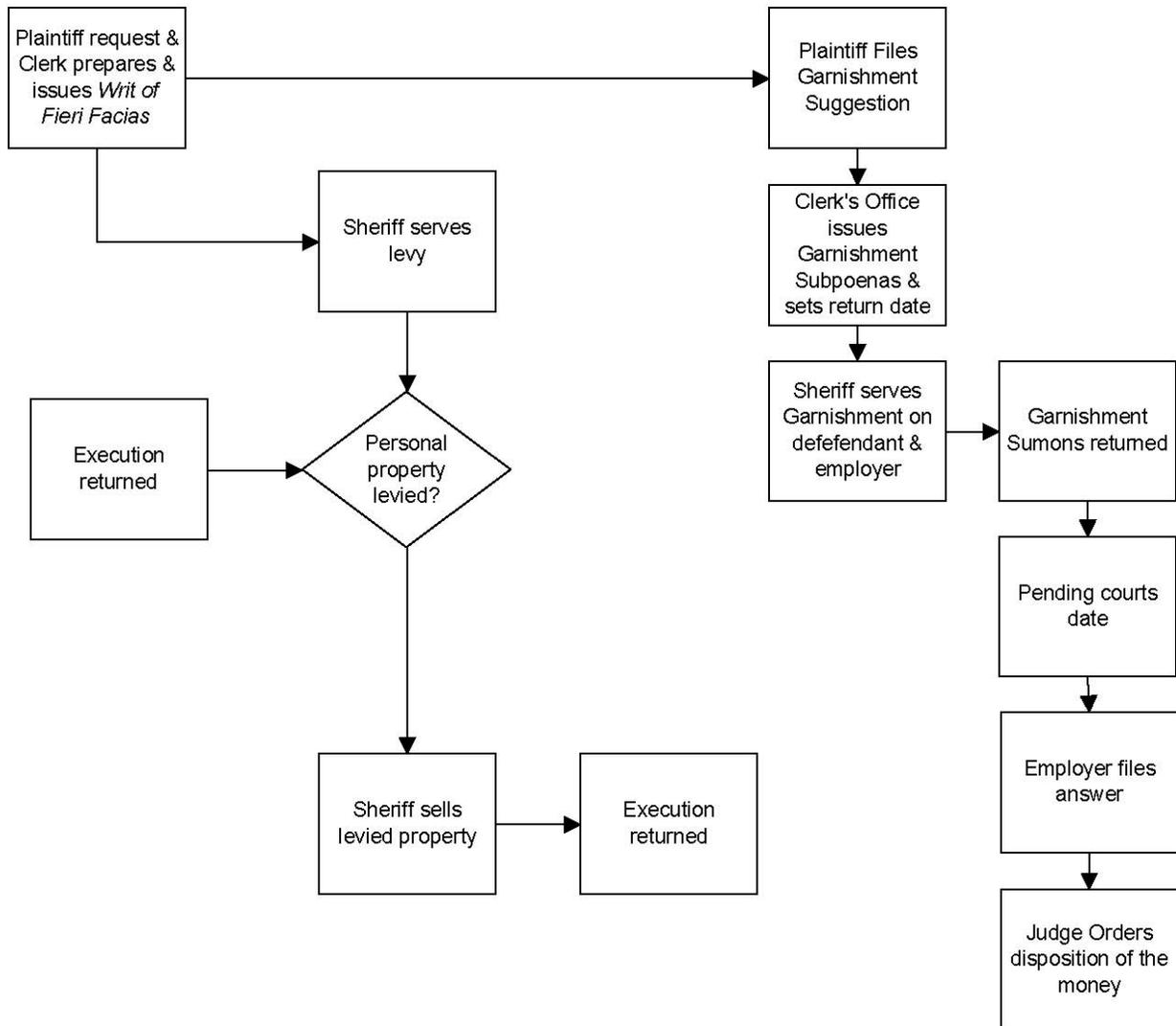
A. Pre-Trial Procedures Flow Chart



B. Trial Procedures Flow Chart



C. Judgment Enforcement Flow Chart



III. VENUE

Jurisdiction determines whether or not the court has the authority to hear a case. If a court has jurisdiction, then it must be determined if that court is within the proper venue for trying the case. Venue designates the court in a particular county or city that may hear and determine the case.

A. Preferred Venue

[Va. Code § 8.01-261](#)

Certain actions are required to be brought where the preferred or Category A venue exists. Improper venue, however, does not result in dismissal, but in a transfer of the action to a proper venue. [Va. Code § 8.01-264](#).

- In actions for review of, appeal from, or enforcement of state administrative regulations, decisions, or other orders, venue is preferred where the citizen resides, regularly does business, or where his affected property is located (or if none apply, where the violation took place). [Va. Code § 8.01-261 \(1\)\(a\)-\(c\)](#).
- Except where venue is preferred under paragraph 1, in an action against an officer of the Commonwealth in his official capacity, venue is preferred where his official office is located. [Va. Code § 8.01-261 \(2\)](#).
- In actions having to do with title or interests in real estate, the preferred place of venue has traditionally been the city or county in which the real estate is located. [Va. Code § 8.01-261 \(3\)](#).
- In actions for writs of mandamus, prohibition, or certiorari (except those issued by the Supreme Court), venue is preferred in the jurisdiction where the record to which the writ relates is located or where the proceeding took place. [Va. Code § 8.01-261 \(5\)](#).
- In actions on bonds required for public contract, venue is preferred in the city or county in which the project, or any part of it, is situated. [Va. Code § 8.01-261 \(6\)](#).
- In actions on any contract between a transportation district and a component government, venue is preferred in any county or city that is within the transportation district. [Va. Code § 8.01-261 \(10\)](#).
- In attachments, preferred venue is determined as if the principal defendant is the only defendant or is where the principal defendant has estate or debts owing him. [Va. Code § 8.01-261 \(11\)](#).
- In an action to collect state, county, or municipal taxes, venue is preferred where the taxpayer resides or owns real or personal property or has a registered office or regularly conducts business or, if he left the Commonwealth, where venue was

proper at the time taxes was assessed or at the time the person left the Commonwealth. [Va. Code § 8.01-261 \(13\)\(a\)](#).

- In an action for the correction of an erroneous assessment of state taxes and tax refunds, where the taxpayer resides, has a registered office, regularly conducts business, or where the involved real or personal property is located, or the Circuit Court of the City of Richmond. [Va. Code § 8.01-261 \(13\)\(b\)](#).
- In actions under the Virginia Tort Claims Act, where the claimant resides, where the act or omission complained of occurred, or in the City of Richmond if the act occurred outside the Commonwealth and the complainant resides outside the Commonwealth. [Va. Code § 8.01-261 \(18\)](#).
- In distress actions, in the county or city where the premises yielding the rent, or some part thereof, may be or where goods liable to distress may be found. [Va. Code § 8.01-261 \(20\)](#).

B. Permissible Venue

[Va. Code § 8.01-262](#)

All civil actions, other than those enumerated in [Va. Code § 8.01-261](#) where preferred venue is required, can be brought in the following permissible forums (permissible or category B venue):

- Where the defendant resides or has his principal place of employment. [Va. Code § 8.01-262 \(1\)](#).
- Where the defendant has a registered office, has appointed an agent, or an agent has been appointed by the operation of law, where its chief officer resides or, in a case where the defendant has withdrawn from the Commonwealth, where venue would have been proper at the time of withdrawal. This provision applies to legal entities in addition to corporations. [Va. Code § 8.01-262 \(2\)](#).
- Where the defendant regularly conducts substantial business activity or in the case of withdrawal, where venue was proper at the time of withdrawal. [Va. Code § 8.01-262 \(3\)](#).
- Where the cause of action, or any part, arose. [Va. Code § 8.01-262 \(4\)](#).
- Where the personal property is located or where evidence of such property is located or if either of these do not apply, where the defendant resides, in actions to recover or partition personal property. [Va. Code § 8.01-262 \(5\)](#).
- For actions based on an improper message transmission or misdelivery, where the message was transmitted or delivered or accepted for delivery or was misdelivered. [Va. Code § 8.01-262 \(7\)](#).

- For actions based on delivery of goods where goods were received. [Va. Code § 8.01-262 \(8\)](#).
- If none of the other specific forum are available, where the defendant has property or debts owing him, which are subject to seizure by civil process. [Va. Code § 8.01-262 \(9\)](#).
- If all of the defendants are unknown or are nonresidents of the Commonwealth, or there is no other forum available under [Va. Code §§ 8.01-261](#) or [8.01-262](#), then the county or city where any of the plaintiffs reside. [Va. Code § 8.01-262 \(10\)](#).

C. Multiple Parties

[Va. Code § 8.01-263](#)

In actions involving multiple parties, venue is not subject to objection:

- if one or more of the parties is entitled to preferred venue and the action is commenced in a preferred forum; or
- in all other cases, if venue is proper as to any party.

NOTE: If an original defendant whose presence created venue is dismissed after the parties are at issue, the remaining defendants may object to venue within ten days of dismissal if they can show that the dismissed defendant was not properly joined as a defendant or was added to create the venue. However, the judge may deny the request and retain the case on plaintiff's motion and for good cause.

D. Objection to Improper Venue

[Va. Code § 8.01-264](#) and Rule 7B:11

Improperly laid venue is subject to objection. Transfer, not dismissal, is generally required. [Va. Code § 8.01-264](#).

- While venue is subject to objection, this section prohibits dismissal for lack of venue if there is a proper venue somewhere in the Commonwealth.
- Even where venue is subject to objection under this section, the defendant may waive his objection by failure to file a timely objection.
 - In general district courts objection to venue must be made by written motion (which may be by letter or other writing) and filed with or received by the court on or before the day of trial. Defendant shall mail a copy to all counsel of record.

- All initial pleadings must inform the defendant of his right to object to improper venue in clear, nontechnical language. Supreme Court Rule 7B:3.
- The objecting party's motion shall state in which court(s) he believes that proper venue lies.
- Waiver by one defendant of objection to venue does not constitute a waiver for any other defendant.
- The court shall hear the motion promptly upon reasonable notice by any party.
- Objection to venue on behalf of an original defendant cannot be defeated by the subsequent joinder of another defendant or the intervention of another party.
- If the motion is sustained, the court *shall* order the venue transferred and notify each party.
- If the defendant who objected to venue is not present, a copy of the order is mailed to the defendant.
- If the motion is denied, the case goes to trial. However, if the defendant who objected to venue is not present, the case is continued and the defendant is notified by mail.
- The court shall notify each party of the judge's decision concerning the objection.

E. Motion for Transfer of Venue

[Va. Code § 8.01-265](#) and Rule 7B: 11

In addition to the requirement that the court transfer venue under [Va. Code § 8.01-264](#), the court may, upon motion of any party and for good cause shown, transfer any action to any fair and convenient forum having jurisdiction within the Commonwealth or, upon motion of any party and for good cause shown, may retain any action for trial. The same procedure used to object to venue is used here except that:

- No action shall be transferred from a preferred venue to a non-preferred venue, nor shall an action with a preferred venue be retained by a non-preferred venue, except by agreement of all parties.
- An action brought by a non-resident may be dismissed if the cause of action arose outside of the Commonwealth, and if the court determines that there is a more convenient forum in which to hear the case in a jurisdiction outside of the Commonwealth. [Va. Code § 8.01-265](#).

- If the parties are not present and the court transfers venue, the clerk transfers the case papers to the transferee court after the appeal period has run and sends a copy of the transmittal letter or transfer order to all parties together with information regarding costs awarded.
- If the parties are not present and the court denies the transfer motion, the court sets a trial date, and the clerk notifies the parties by first class mail of the trial date and of any costs awarded.
- Good cause shall be deemed to include, but not limited to, agreement of the parties, or avoidance of substantial inconvenience to parties or witnesses. [Va. Code § 8.01-265](#).

F. Civil Transportation of Incarcerated Witnesses

District courts have no authority to order transportation of incarcerated witnesses or parties in civil cases. The authority to issue prisoner transportation orders in civil cases granted by [Va. Code § 8.01-410](#) is vested solely in the circuit courts. By expressly granting the specific authority to issue such transportation orders only to the circuit court, the Supreme Court of Virginia found that the General Assembly intended to exclude the district courts from the authority to issue such transportation orders. Commonwealth v. Brown, 259 Va. 697, 529 S.E.2d 96 (2000).

NOTE: This decision does not affect the ability of the district courts to require the transportation of defendants as witnesses in CRIMINAL cases.

G. Discretion of Judge

[Va. Code § 8.01-267](#)

The court's decision transferring or refusing to transfer an action under [Va. Code § 8.01-265](#), and the court's decision as to the amount of costs awarded under [Va. Code § 8.01-266](#), are entirely within the trial judge's discretion.

H. Docketing a Transferred Case

The transferred case shall be docketed by the transferee court, which will notify the plaintiff and defendant of the hearing date.

IV. SUITS IN DEBT

A civil suit referred to as a "suit in debt" is one in which a plaintiff is suing to recover an unpaid debt owed him by the defendant named in the suit. The following stages of the civil process, as they occur in a suit in debt, are covered by this section:

- Case initiation

- Service of process
- Pre-trial procedures
- Discovery procedures
- Case hearing, judgment
- Post-trial procedures

A. Case Initiation

Plaintiffs initiate suits in debt in general district court in one of two ways: the plaintiff or his attorney may prepare a motion for judgment, or they may file a district court form DC-412, [WARRANT IN DEBT](#) with a clerk or magistrate. Once the warrant or summons form is filed in the clerk's office, the clerk marks the date and time of receipt in the clerk's office on the form. [Va. Code § 16.1-86](#).

1. Complaint Filed With Clerk

The Clerk receiving the complaint will:

- Request the plaintiff or his attorney or, if a corporation or partnership is the plaintiff, the statutorily authorized officer or employee as provided in Va. Code § 16.1-88.03, to complete a district court form DC-412, [WARRANT IN DEBT](#) according to the instructions in the District Court Forms Manual.
- Ascertain that all of the necessary information (plaintiff name and phone number, defendant's name and address, amount of claim, reason for claim) is present.
- Mark on the warrant the date and time filed in the clerk's office.
- Collect processing fees. No fee is charged: (1) when the Commonwealth of Virginia is the plaintiff; (2) when the local government is suing to collect taxes; or (3) when the school board is suing to collect overdue school book rentals. *See* Va. Code §§ 17.1-266, 16.1-69.48:2.

NOTE: The judge shall determine which plaintiffs, state residents, can file suit or which defendants can file suit or defend a suit without paying costs due to poverty claims as provided in [Va. Code § 17.1-606](#) either on a case-by-case basis or by providing an eligibility formula to be implemented by the clerks. An example of such a formula is the eligibility guidelines for court-appointed counsel in criminal cases. *See* "Criminal Case Procedures-Trial Procedures-Right to Representation by a Lawyer."

- Assign a sequential case number to each case and place it on all copies of the district court form DC-412, [WARRANT IN DEBT](#).
- Index the case in CMS.

- Determine jurisdiction, and if appropriate, issue the process by signing the warrant portion of the district court form DC-412, [WARRANT IN DEBT](#). [Virginia Code § 16.1-79](#) allows for the return date to be within sixty days of the date of service on the defendant.

The sheriff is required by statute to come to the clerk's office daily to pick up warrants in debt and other processes to be served.

2. Complaint Filed with the Magistrate

- The magistrate receiving the complaint will:
 - Request completion of the district court form DC-412, [WARRANT IN DEBT](#).
 - Review the district court form DC-412, [WARRANT IN DEBT](#) as would the clerk's office and collect the processing fee. Insert date and time filed on the pleadings. Individuals seeking to have the filing fee waived due to a claim of poverty should be handled in the same manner as they would be handled in the local clerk's office.
 - Forward the documents and fees to the clerk's office.
- Upon receipt, the clerk's office will:
 - Mark on the warrant the date and time of receipt of such form or warrant in the clerk's office.
 - Assign a sequential case number to each case and place it on all copies of the district court form DC-412, [WARRANT IN DEBT](#).
 - Index the case in CMS.

The sheriff will pick up the WARRANTS IN DEBT along with other process to be served from the clerk's office.

3. Motion for Judgment - See [Va. Code § 16.1-81](#).

The motion for judgment is handled the same as a warrant in debt filed with the clerk, except that:

- The plaintiff or plaintiff's attorney (or, if a corporation or partnership, the statutorily authorized officer or employee as provided in [Va. Code § 16.1-88.03](#)) prepares the entire motion for judgment, including the date and time of the return and hearing which must be within sixty days from service of process on the defendant. Plaintiffs who regularly file motions for judgment should be encouraged to arrange through the clerk's office a return date to avoid docket overcrowding.
- The motion for judgment can be filed only in the clerk's office.

- It must be served not fewer than five days before the return date; if returned as “not found,” a new motion is required with a payment of all fees for re-service. [Va. Code § 16.1-69.48:2](#).

B. Service of Process

Generally, it has been the appropriate sheriff in the district who serves process on the defendant. However [Va. Code § 8.01-293](#) provides that “whenever in this Code the term “officer” or “sheriff” is used to refer to persons authorized to make, return, or do any other act relating to service of process, such term shall be deemed to refer to any person authorized in this section to serve process.” This section authorizes any person who is at least eighteen years old and who is not a party or otherwise interested in the case, to serve process.

Only a sheriff, however, may execute an order or writ of possession for personal, real or mixed property, including an order or writ of possession in unlawful detainer, and only a sheriff, high constable or treasurer may levy upon property. [Va. Code § 8.01-293 \(B\)](#).

Generally, when a sheriff serves process on the defendant, a \$12.00 sheriff’s fee will be charged for each process served. A sheriff’s fee of \$25.00 will be charged for service and publication of any notice of a publicly-advertised public sale, service of writ of possession, levying upon current money, bank notes, goods or chattels under [Va. Code § 8.01-478](#), service of a declaration of ejectment on any person, firm or corporation, levying distress warrant or attachment or levying an execution. An additional \$12.00 will be charged for each additional defendant when serving a writ of possession or a declaration of ejectment.

The sheriff is required to call or go to the clerk’s office every day to receive all process and other papers to be served by him. The sheriff may serve process not only in his own political subdivision but also in any contiguous city or county.

The following two tables, SERVICE OF PROCESS - BY PARTIES and SPECIAL SUBSTITUTE SERVICE PROVISIONS, provide a synopsis of the statutory provisions governing upon which process may be served. These tables are followed by a description of the return of process.

NOTE: These methods of service are listed in order of preference. A “lower” method of service cannot be used unless a preferred method cannot be used.

1. Service of Process – By Parties

SERVICE OF PROCESS - BY PARTIES	
PARTY	TYPE OF SERVICE/METHODS
<p>Natural Person Virginia resident generally</p> <p>NOTE: <i>The person executing substituted service shall note the manner and date of such service on the original and the copy of the process so delivered or posted. See 2(a)(i) and (ii) at right.</i></p>	<ol style="list-style-type: none"> 1. In person in Virginia 2. By substituted service: <ol style="list-style-type: none"> a. If not at usual place of abode, then: <ol style="list-style-type: none"> (i) deliver the process to a family member found at abode who is at least sixteen years old and is not a temporary sojourner or guest, and give this person information regarding the purpose of the process delivered. See Va. Code § 8.01-296 (ii) If it is not successful, then by posting on front door or other such door as appears to be the main entrance of such abode; however, at least ten days before entry of default judgment, (1) plaintiff must mail by regular mail to the party served by posted service a copy of the process and certify such mailing to the clerk, <i>or</i> (2) plaintiff in a general district court case can mail a copy of the <i>pleading</i> which contains the date, time and place of the return prior to or after filing such pleading and certify such mailing to the clerk. Va. §§ 8.01-294 and 8.01-325. Va. Code § 8.01-296 (2)(c). 3. Service on the Secretary of the Commonwealth if process has been delivered to the sheriff or to a disinterested person for execution and, if unable to be served, that the person seeking service (usually a plaintiff) has made a bona fide attempt to determine the actual place of abode or location of the person to be served. Va. Code § 8.01-329 (B). 4. By order of publication. Serving party unable to locate person to be served after exercising due diligence; or Sheriff unable to serve other party at last known address after having process twenty-one days; or Other party is unknown. Va. Code § 8.01-316.
<p>Convicts (as defendants)</p>	<p>Service may be effected by delivery to the officer in charge of jail or institution whose duty it is to promptly deliver it to convict. Va. Code § 8.01-297.</p>

SERVICE OF PROCESS - BY PARTIES	
PARTY	TYPE OF SERVICE/METHODS
Non-resident	<p>Personal service in Virginia or on the Secretary of the Commonwealth.</p> <p>Personal service outside Virginia by person authorized to serve process where person to be served is located in the same provided in Chapter 8 of Title 8.01 (§ 8.01-285 et seq.). (Personal service on a non-resident outside Virginia is the equivalent of personal service on a non-resident within Virginia, if the “long arm” statute would provide personal jurisdiction.) Va. Code §§ 8.01-320, 8.01-329.</p> <p>Order of publication.</p> <p>Posting in three public places for certain liens (innkeepers, garage men, etc.). Va. Code § 43-34.</p>
Government Entities	
Cities and towns	On its city or town attorney, if such position exists, otherwise on its mayor, manager or trustee. Service may be made by leaving a copy with the person in charge of the office of any officer designated above. Va. Code § 8.01-300 .
Counties - generally	On its County Attorney where such position exists, otherwise, on its Attorney for the Commonwealth. Service may be made by leaving a copy with the person in charge of the office of any officer designated above. Va. Code § 8.01-300 .
Against county official or employees	On named defendant plus each supervisor and the County Attorney. If there is not County Attorney, then the clerk of the County Board. Va. Code § 8.01-300 .
Virginia Tort Claims Act Other public governmental entities	On director, chief administrative officer, commissioner, attorney, or member of governing body, or person in charge of office of any above designated official.
Partnerships or Partners	
General	On any general partner, except plaintiff-partner. Va. Code § 8.01-304 .
Limited	On any general partner; on limited partner only to enforce limited partner’s partnership liability. Va. Code § 8.01-304 .
Unincorporated associations, orders and common carriers	On any officer, director, trustee, staff member or other agent. Va. Code § 8.01-305 .

SERVICE OF PROCESS - BY PARTIES	
PARTY	TYPE OF SERVICE/METHODS
Domestic	Same as above; <i>or</i>
Foreign Corporations	<ul style="list-style-type: none"> • On Clerk of State Corporation Commission, if the association, etc., does business in the Commonwealth; <i>or</i> • Order of publication. Va. Code § 8.01-306. By personal service on any officer, director or registered agent of the corporation; <i>or</i>
Domestic	By substituted service on stock corporations in accordance with Va. Code § 13.1-637 and on non-stock corporations in accordance with Va. Code § 13.1-836 (Va. Code § 8.01-299 (1) and (2)) Garnishments, by service on an officer, an employee designated by the corporation other than an officer, or if there is no designated employee or if the designated employee cannot be found, upon a managing employee. A “managing employee” is an employee who has control of operations and supervision of employees at the location where process is served. If the creditor files a certificate that she used due diligence and an officer, designated employee or managing employee cannot be found or the designated or managing employee is the debtor, it may be served on the registered agent or upon the clerk of the State Corporation Commission . If the corporation intends to designate an employee for receipt of service, the corporation shall file the designation with the State Corporation Commission . Va. Code § 8.01-513 .
Foreign	By personal service on any officer, director, or on the registered agent of a foreign corporation authorized to do business in Virginia. If doing business without such authority, then by personal service on any of the corporation’s agents; <i>or</i> By substituted service in accordance with Va. Code §§ 13.1-766 and 13.1-928 , if such corporation is authorized to do business in Virginia; <i>or</i> Where jurisdiction is authorized under Va. Code § 8.01-328.1 , by substituted service in accordance with Va. Code § 8.01-329 , regardless of whether the corporation is authorized to do business in Virginia; <i>or</i> Where jurisdiction <i>in rem</i> or <i>quasi-in-rem</i> is

SERVICE OF PROCESS - BY PARTIES	
PARTY	TYPE OF SERVICE/METHODS
	<p>authorized, by order of publication in accordance with Va. Code §§ 8.01-316 and 8.01-317, regardless of whether the corporation is authorized to do business in Virginia. Va. Code § 8.01-301 (1-4).</p> <p>Garnishments, by service on an officer, an employee designated by the corporation other than an officer, or if there is no designated employee or if the designated employee cannot be found, upon a managing employee. If the creditor files a certificate that she used due diligence and an officer, designated employee or managing employee cannot be found or the designated or managing employee is the debtor, it may be served on the registered agent or upon the clerk of the State Corporation Commission. If the corporation intends to designate an employee for receipt of service, the corporation shall file the designation with the State Corporation Commission. Va. Code § 8.01-513.</p>
Operated by trustees or receivers	<p>On any trustee or receiver.</p> <p>If a trustee or receiver cannot be served, may serve as detailed above for a regular corporation. Va. Code § 8.01-303.</p>
Stock corporations (domestic and foreign)	<p>Substitute service on Clerk of State Corporation Commission.</p> <p>Order of Publication.</p> <p>Secretary of the Commonwealth (foreign corporations only).</p>
Non-stock foreign corporations	<p>Substitute service on Clerk of State Corporation Commission when corporation has no registered agent or agent cannot be found at registered office with due diligence.</p> <p>Order of Publication.</p> <p>Secretary of the Commonwealth (Foreign corporations only).</p>
Automobile insurers uninsured or underinsured motorist	<p>Same as party defendant except that Va. Code § 8.01-288 does not apply. See Va. Code § 38.2-2206 (E).</p>

SERVICE OF PROCESS - BY PARTIES	
PARTY	TYPE OF SERVICE/METHODS
Waiver of Service of Process Plaintiff may request defendant waive service of process	CC-1433, NOTICE OF COMMENCEMENT OF ACTION AND REQUEST FOR WAIVER OF SERVICE OF PROCESS Va. Code § 8.01-286.1

2. Special Substitute Service Provisions

SPECIAL SUBSTITUTE SERVICE PROVISIONS	
TYPE OF CASE OR PARTY	PERSON SERVED
Auctioneers (non-resident)	Director of Virginia Auctioneer Board (Va. Code § 54.1-603)
Automobile tort cases	Commissioner of Motor Vehicles
Reciprocal insurance	Clerk of the State Corporation Commission
Non-resident owner and operator of aircraft (tort cases)	Secretary of the Commonwealth (Va. Code § 8.01-309)
Public school tax publishers	Secretary of the Commonwealth
Solicitors of Contributions	Secretary of the Commonwealth
Virginia Tort Claims Actions	Attorney General (Va. Code § 8.01-195.4)
Transportation district	Chairman of the commission of the transportation district. (Va. Code § 8.01-195.4.)

3. Return of Service

A **return of service** must be made in one of the following ways:

- The sheriff must make a return on all process delivered to him for service of process as required by law within seventy-two hours from the date of service except where the third day would fall on a Saturday, Sunday or legal holiday. The return would then be due on the next business day following the Saturday, Sunday or legal holiday. [Va. Code § 8.01-294.](#)
- Proof of service by any person other than the sheriff or deputy sheriff must include an affidavit of his qualifications, the date and manner of service and the name of the party served. [Va. Code § 8.01-325.](#)

Unless otherwise directed by the court, the person serving process shall make the return within three days of service, except when the third day would end on a Saturday, Sunday, or legal holiday. In this case, the return would be due the day following the Saturday, Sunday, or legal holiday. [Va. Code § 8.01-325.](#) Failure

to make the return within that time frame does not invalidate the service. If the court finds that a late return prejudices a party or interferes with the handling of the case by the court, the court may grant a continuance, require additional service, or take other appropriate action.

Further, when service has been executed by substituted service, the date of service shall be noted on the return. [Va. Code § 8.01-296 \(2\)\(c\)](#).

- If served through the [Secretary of the Commonwealth](#):
 - Plaintiff, or his attorney or agent, prepares district court form DC-410, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#) (two copies), and attaches a copy of the process or notice to one copy of the affidavit. A copy of the affidavit is filed with the clerk of the court.
 - Plaintiff, his attorney or agent mails to the [Secretary of the Commonwealth](#):
 - 2 Affidavits (one original and one copy of the district court form DC-410, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#))
 - 1 copy of papers being served
 - 1 envelope addressed to the person/business being served, returnable to the plaintiff
 - 1 certified mail card (green), also addressed to the person/business being served, returnable to the plaintiff
 - A check or money order for \$28.00 per person/business being served. If it is a couple, two separate sets of papers are required.
 - The [Secretary of the Commonwealth](#) must **return all unserved general district court processes** received within ten days of the return date. If the service of process is to be served on the Secretary of the Commonwealth by the sheriff, then the clerk also collects the copies of the affidavit and service of process fee from the plaintiff and forwards to the sheriff the copies of the items to be served, the copies of the affidavits and the fee for service of process on the Secretary of the Commonwealth. The clerk does *not* mail these items directly to the Secretary of the Commonwealth.
 - If timely received, the [Secretary of the Commonwealth](#) sends a copy by certified mail return receipt requested to the person to be served (usually the defendant), then executes the Certificate of Compliance portion of the district court form DC-410, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#) and mails it to the general district court clerk. Service of process is effective on the

date when service is made on the Secretary of the Commonwealth. Upon receipt of the certificate of compliance, the clerk mails verification of filing of the certificate with the court to person filing the affidavit. The clerk shall not mail this verification unless the person filing the affidavit provides the clerk with a self-addressed, stamped envelope. [Va. Code § 8.01-329 \(C\)](#).

- Clerk enters the date and time filed on the affidavit (becomes effective date of service) and files the affidavit form with completed certificate with case papers.
- If served through the Clerk of the [State Corporation Commission](#), the Commissioner of the [Department of Motor Vehicles](#), or other statutory agent for service of process, the same procedure used for service of process through the [Secretary of the Commonwealth](#) is used, including the filing of a certificate of compliance, except that:
 - an affidavit for service of process is not usually required by statute, and
 - different fees for such service of process are set by statute for each such statutory agent, and
 - different timetables are statutorily set for each such agent to perform his/her duties.
 - the plaintiff, not the clerk, is responsible for arranging for timely service through any statutory agent, including the Secretary of the Commonwealth.
- If an order of publication is to be used:

[Virginia Code § 8.01-317](#) also requires that the court date shall be no sooner than fifty days after entry of the order of publication. It is recommended that any hearing date be set 60 days from the date of entry of the order.

Any waiver of publication must be ordered by the court. There is no initial filing fee for an order of publication, but the cost of newspaper publication shall be billed to and paid initially by the party seeking service. However, costs may be recoverable pursuant to [Va. Code § 17.1-601](#).

4. Clerk's Procedures for Order of Publication

- Step 1** The plaintiff files district court form DC-435, [Affidavit and Petition for Order of Publication](#) that states statutory reasons authorizing an order of publication.

Step 1 (cont'd) The clerk receives and date stamps the Affidavit and Petition for Order of Publication. This may be either on the district court form DC-435, [Affidavit and Petition for Order of Publication](#) or an attorney-drafted petition. It may be filed separately or as an attachment to a civil case or motion. It does not receive a separate case number in CMS from the original civil case.

Step 2 The published order must state the abbreviated style of the suit, the object of the suit, and require the defendant to appear by a certain date.

The clerk prepares the Order of Publication, which can be entered by either the judge or clerk.

Use district court form DC-436, ORDER OF PUBLICATION using language from the affidavit, and including the court date and publication dates. Orders of publication shall be published once each week for four consecutive weeks **and** shall be posted at the front door of the courthouse or on the public government website or on the website of the circuit court clerk of the locality served by the court where such notice, summons, or other official document is posted.

Step 3 Clerk mails or delivers copy of order to newspaper and mails copy to defendant(s) at last known post office address as stated in the Affidavit for Order of Publication. Va. Code § 8.01-316.

Comments: Mailing to the defendant, delivering to the newspaper and posting on the courthouse door must be completed within twenty days of the entry of the Order of Publication. [Va. Code § 8.01-317](#).

Step 4 The clerk shall post a certified copy of the order at the front entrance of the courthouse or post on the public government website or on the website of the circuit court clerk of the locality served by the court where such notice, summons, or other official document is posted, and mail certified copies to all parties and counsel.

The clerk should use the FOR COURT USE ONLY portion of the order to document completion of these steps

Step 5 After the order has run for four weeks, the newspaper should mail the court an affidavit of the publisher providing the dates of publication and the accompanying copy of the published order.

It is the clerk's responsibility to ensure that this affidavit is in the file on the hearing date.

5. Forms

DC-435	AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION
DC-436	ORDER OF PUBLICATION

6. References

Va. Code § 1-211.1	Courthouse; posting of notices.
Va. Code § 8.01-316	Service by publication; when available.
Va. Code § 8.01-317	What order of publication to state; how published; when publication in newspaper dispensed with.
Va. Code § 8.01-318	Within what time after publication case tried or heard; no subsequent publication required.
Va. Code § 8.01-319	Publication of interim notice.
Va. Code § 8.01-320	Personal Service outside of Virginia.
Va. Code § 8.01-324	Newspapers which may be used for legal notices and publications.
Va. Code § 17.1-601	General rule as to recovery of costs on final judgment.

- Alternatively, a person for whom service of process is intended may accept service of process by signing the proof of service and indicating the jurisdiction and state where service of process was accepted. [Va. Code § 8.01-327](#).

Unexecuted process should be docketed on the original return date and disposed of accordingly. If the plaintiff applies to the clerk for reissue within three months of the original return date, a new pleading should be completed and marked “Reissue” and assigned the same original case number. While a warrant in debt may be re-issued once during such three-month period without an additional fee if a new address is provided, no such free re-issuance is provided for motions for judgment.

After the case initiation papers are served on a party, all future documents (except in contempt cases) may be served on the attorneys for the parties unless otherwise ordered by the judge.

Service of process within twelve months of commencement of the action shall be timely as to that defendant. Service of process on a defendant more than twelve months after the suit was commenced shall be timely upon a finding by the court that the plaintiff exercised due diligence to have timely service made on the defendant. [Va. Code § 8.01-275.1](#).

A person, upon whom process has not been served within one year of commencement of the action against him, may make a special appearance, which does not constitute a general appearance, to file a motion to dismiss. Upon finding that the plaintiff DID NOT exercise due diligence to have timely service,

and sustaining the motion to dismiss, the court shall dismiss the action with prejudice. Upon finding that the plaintiff DID exercise due diligence to have timely service and denying the motion to dismiss, the court shall require the person filing such motion to file a responsive pleading within twenty-one days of such ruling. The plaintiff shall not be prevented from filing a nonsuit under [Va. Code § 8.01-380](#) before the entry of an order granting a motion to dismiss.

Enter such a motion as an **AH** in the CMS hearing update screen. The Judge should decide whether there should be an actual hearing with the plaintiff in attendance.

C. Pre-Trial Procedures

After service of process and prior to the court hearing, the clerk's office must perform certain administrative functions and the defendant has various options on how to proceed. The clerk's duties include processing motions for judgment served by the sheriff, filing all civil warrants and motions for judgment in the appropriate file, and preparing a docket. During this time, the defendant's options include settlement of the debt prior to the court hearing, taking additional steps (such as filing a counterclaim against the plaintiff, filing a cross-claim against a co-defendant, or filing a third party claim against a person who is not yet a party in the suit but who was involved in the dispute), and/or preparing an answer and filing it with the clerk. The defendant may also file an interpleader action (discussed *below*).

On all pleadings filed in the clerk's office, the date and time of the filing of such pleadings shall be stamped or marked on the pleadings.

Pleadings may be signed and filed by attorneys and by parties who are representing themselves. In certain listed general district court civil actions, [Va. Code § 16.1-88.03](#) permits a partnership to sign pleadings by any general partner, manager of a limited liability company, or a trustee of a business trust. Similarly, the statute permits a corporation to sign certain listed pleadings by its president, vice-president, treasurer, or other officer, except when the cause of action was assigned to the corporation or partnership solely for the purpose of enforcing an obligation owed or right inuring to another. Notwithstanding any rule of court to the contrary, (i) any person licensed under the provisions of § 54.1-2106.1, (ii) any property manager, or a managing agent of a landlord as defined in § 55-248.4, or (iii) any employee, who is authorized in writing by a corporate officer with the approval of the board of directors, or by a manager, a general partner or a trustee, of a partnership, association, corporation, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership or, business trust, or family trust to sign pleadings as the agent of the business entity to obtain a judgment for possession or for rent or damages.

Parties that are not represented by counsel are responsible for notifying in writing the clerk and the other parties of any change in address. If no notification of change of address is provided, service mailed to most recent address in the court file is effective service. See [Va. Code § 8.01-128](#).

To prepare the case for court, the clerk's office will file the district court form DC-412, [WARRANT IN DEBT](#) and motion for judgment by court date.

The *GENERAL DISTRICT COURT CASE MANAGEMENT SYSTEM USER'S GUIDE* describes the recommended procedures for indexing cases, filing records prior to court, and preparing the docket. Detailed questions concerning these procedures should be referred to that manual. See also [Va. Code § 8.01-449](#).

D. Pre-Trial Settlement

Frequently, a defendant will desire to settle a case rather than go to court. The steps involved in pre-trial settlement of a civil case include:

- Defendant settles the case with the plaintiff.
- The plaintiff advises the clerk's office in writing of the settlement and moves to dismiss the case.
- Cases, which go to court after a pre-trial settlement has been achieved, are to be dismissed when the court is advised of the settlement.

Where a plaintiff executes a release of liability as a condition of settlement in a claim or action for personal injury within thirty days of the incident giving rise to the claim, the plaintiff has the right to rescind the release until midnight on the third business day after the day on which the release was executed. [Va. Code § 8.01-425.1](#). This only applies where the plaintiff was not represented by counsel when the release was executed, the rescission is made in writing and the plaintiff returns any check or settlement proceeds prior to the rescission.

E. Mediation

Generally a court, on its own motion or on a motion of one of the parties, may refer any contested civil matter to a dispute resolution orientation session in order to encourage the early settlement of disputes. The court shall set a date for the parties to return to court in accordance with its regular docket and procedure, notwithstanding the referral to an orientation session. If the parties agree to mediation, an Order of Referral is entered by the court. This order shall be kept with the case papers. The parties shall notify the court, in writing, if the dispute is resolved prior to the return date. [Va. Code § 8.01-576.5](#).

If an interpreter is required for court-ordered mediation and a staff interpreter is not available, the interpreter may be paid from the criminal fund. It will be necessary to attach district court form DC-400, *MEDIATION ORIENTATION ORDER OF REFERRAL* to district court form DC-44, *LIST OF ALLOWANCES – INTERPRETER* before submitting for payment.

F. Guardian *ad Litem*

[Va. Code § 8.01-9](#) gives a judge of the general district court the authority to appoint a guardian *ad litem* to a person under a disability in a civil case. For documentation purposes, the court may wish to enter district court form, DC-401, *ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM*.

In a civil action against an incarcerated felon for damages arising out of a criminal act, the compensation and expenses of the guardian *ad litem* shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges. Otherwise, payment arrangements should be made prior to the appointment as guardian *ad litem*s are not paid out of the criminal fund.

G. Subpoenas For Witnesses

There are two parallel procedures for issuing witness subpoenas.

1. Issuance By The Clerk

The district court form DC-325, [REQUEST FOR WITNESS SUBPOENA](#) or other writing with the appropriate information is required before any subpoenas can be issued. The party prepares the district court form DC-325, [REQUEST FOR WITNESS SUBPOENA](#).

The judicial officer should:

- Verify that the request is returnable to the proper court and court division (i.e., the same as the court appearance location) and that the court date is correct;
- Obtain phone numbers where possible, to aid the clerk in contacting witnesses in the event of a pre-trial resolution of the case or of a continuance;
- Note date and time of receipt of request and issuance of subpoenas. Supreme Court Rule 7A: 12(a) provides that requests for subpoenas should be filed at least ten days prior to trial.
- Prepare the district court form DC-326, [SUBPOENA FOR WITNESSES](#) as per the instructions in the *DISTRICT COURT FORMS MANUAL*. Subpoenas can be issued by either a clerk or a magistrate.

The original and copies of the subpoena are forwarded to the sheriff for service in sufficient time prior to the court date to allow the party adequate notice.

The original of the subpoena (when returned by the sheriff) and the request are attached to the originating case papers and filed.

2. Attorney Issued Witness Subpoenas

An attorney who is an active member of the [Virginia State Bar](#) may issue a witness subpoena in most types of pending civil proceedings.

[Virginia Code § 8.01-407](#). The following categories of proceedings are excluded from this provision: habeas corpus proceedings under [Va. Code § 8.01-654](#) *et seq.*; delinquency proceedings; child abuse and neglect proceedings; civil forfeiture proceedings; habitual offender proceedings; proceedings to contest an administrative license suspension under [Va. Code § 46.2-391.2](#) and pursuant to petitions for writs of prohibition or mandamus in connection with civil proceedings.

The attorney should use district court form DC-497, [SUBPOENA FOR WITNESS \(CIVIL\) - ATTORNEY ISSUED](#). This form is a master form because it is expected that attorneys will produce these witness subpoenas (as well as the attorney-issued subpoena *duces tecum*, see below) through automated means. The forms are available on the web site of the Supreme Court: www.courts.state.va.us. Any attorney issued subpoena served less than five calendar days before appearance and served on a judicial officer generally incompetent to testify pursuant to [Va. Code § 19.2-271](#), has no legal force or effect.

When an attorney transmits the subpoenas to the sheriff for service, such subpoenas shall be accompanied by a transmittal sheet. The transmittal sheet, which may be in the form of a letter, shall contain for each subpoena: (i) the person to be served, (ii) the name of the city or county in which the subpoena is to be served, in parentheses, (iii) the style of the case in which the subpoena was issued, (iv) the court in which the case is pending, and (v) the amount of fees tendered or paid to each clerk in whose court the case is pending together with a photocopy of either (a) the payment instrument and a photocopy of the letter sent to the clerk's office that accompanied such payment instrument or (b) the clerk's receipt. The sheriff is not required to serve an attorney-issued witness subpoena if it is not issued at least five business days prior to the date the attendance is sought. These subpoenas may be served by a private process server, in which no service fees would be paid to the clerk. On the same day that the subpoena is issued, the attorney shall transmit a copy of the subpoena, or subpoenas, to the clerk's office.

If the witness subpoena is served fewer than five calendar days prior to the date attendance is sought, the court may refuse to enforce the subpoena for lack of adequate notice.

H. Subpoenas *Duces Tecum*

Unless otherwise ordered for good cause shown; when a party subpoenas documents, the party who subpoenaed the documents, upon receipt of the documents, must provide a copy to any other party, if copies were requested in writing. The party requesting copies of the documents must pay the reasonable cost of copying or reproducing the subpoenaed documents. If the subpoenaed documents are returnable to the clerk of court this requirement is not applicable. [Va. Code § 8.01-417](#).

If the subpoena *duces tecum* is for medical records, please see “Discovery of Medical Records” in the Miscellaneous Civil Case Procedures chapter of this manual.

1. Issuance By The Court

A district court clerk or judge, pursuant to [Va. Code § 16.1-89](#), may complete and issue the district court form DC-336, [SUBPOENA DUCES TECUM](#) requiring the production of any evidence in the hands of a party to the litigation or a person who is not a party to the litigation. In order to procure a subpoena *duces tecum*:

- The requesting person files a written request for a subpoena *duces tecum* in the REQUEST FOR SUBPOENA *DUCES TECUM* portion of the district court form DC-336, [SUBPOENA DUCES TECUM](#), describing the items sought with reasonable certainty, naming the person from whom these items are sought, and stating where the items should be produced.
- Supreme Court Rule 7A: 12(b) provides that requests for subpoenas *duces tecum* should be filed at least fifteen days prior to trial; requests for subpoenas *duces tecum* not timely filed should not be honored except when authorized by a judge for good cause.
- Enough copies of this request are needed for each copy of the subpoena *duces tecum*.
- The requesting party also certifies that he mailed or delivered a copy of this request to other attorneys in the case and to unrepresented parties.

Upon receipt of the request and certification, the clerk completes and issues the district court form DC-336, [SUBPOENA DUCES TECUM](#) as described above.

2. Attorney Issued Subpoenas *Duces tecum*

Attorneys who are active members of the [Virginia State Bar](#) may also issue subpoenas *duces tecum* in the same types of pending civil cases in which they may issue witness subpoenas. The issuance and processing of attorney issued

subpoenas *duces tecum* tracks generally that of the attorney issued witness subpoenas, as described above. [Va. Code §§ 16.1-89, 16.1-265](#).

If the recipient of a subpoena *duces tecum* has less than fourteen days following service to comply with the subpoena *duces tecum*, he or she may serve a written objection on the party issuing the subpoena. Upon proper objection, the issuing party is not entitled to compliance, unless the issuing party moves the court to compel compliance, the issuing party gives notice of this motion to the person to whom the subpoena is directed, and the court grants the motion. If the motion to compel is timely, the court may quash, modify or sustain the subpoena *duces tecum*.

I. Incarcerated Witness

The Supreme Court of Virginia has held that [Va. Code § 8.01-410](#) does not give a general district court the authority to issue a transportation order for a person who is a participant in a civil case. [Commonwealth v. Brown](#), 259 Va. 697 (2000). Therefore, the [Department of Corrections](#) will no longer comply with such transportation orders issued by general district courts. However, in civil matters under Chapter 6 of Title 16.1 ([Va. Code § 16.1-76](#) et seq.) a general district court may, in its discretion, conduct any hearing using a telephonic communication system or an electronic audio and video communication system to provide for the appearance of any parties and witnesses. [Va. Code § 16.1-93.1](#). Any electronic audio and video communication system used to conduct such a hearing shall meet the standards set forth in subsection B of [Va. Code § 19.2-3.1](#).

J. Counterclaims, Cross-Claims, Third-Party Claims

In any general district court proceeding, a defendant may, at any time before trial, plead a counterclaim against the plaintiff(s) in the case. [Va. Code § 16.1-88.01](#). The counterclaim does not have to be related to plaintiff's claim, but it cannot exceed the general district court's jurisdictional amount limits. It is a part of the original case; however, it is entered in CMS with a new case number.

A defendant may also, prior to trial, plead a cross-claim against any other defendant in the case, as long as the cross-claim relates to the plaintiff's claim in the case. A cross-claim is given a new case number in CMS. [Va. Code § 16.1-88.02](#). To be treated as a cross-claim or a counterclaim, the document should be labeled as a "counterclaim" or a "cross-claim." It is at the court's discretion whether to hear these matters as part of the original case or in a separate hearing. No separate processing fees are charged for filing counterclaims or cross-claims.

Whenever a party is served with a warrant, summons, motion for judgment, counterclaim or cross-claim, such party may, within ten days after service or up to the trial date, whichever is sooner, file a third-party civil warrant or motion for judgment on a person not a party to the action who is or may be liable to the party for all or part of the claim being asserted against such party. Supreme Court Rule 7B:10(a). The

person served with a third-party claim is the “third-party defendant.” After this time period, such third-party claims may be asserted only with leave of court. Processing fees are to be collected when a third-party claim is filed.

Any party may move to strike the third-party warrant or motion for judgment, or move for its severance for a separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to him for all or part of the claim made in the action.

K. Consolidation Of Actions

The court may, in its discretion, consolidate for trial separate suits which could be treated as counterclaims, cross-claims, and third-party claims. Supreme Court Rule 7B:10(b). The judge may enter such orders as may be appropriate to effect a prompt and fair disposition of such cases.

L. Discovery Procedures

1. Bill Of Particulars and Grounds Of Defense

In any civil proceeding, the judge of any general district court may order the plaintiff to file and serve a written Bill of Particulars and may order the defendant to file and serve a written Grounds of Defense within the periods of time specified in the order. The failure of either party to comply may be grounds for awarding summary judgment in favor of the other party. Supreme Court Rule 7B:2. At trial, the judge may exclude evidence as to matters not described in any such pleading.

2. Depositions

Depositions are the sworn written testimony of witnesses taken outside of court and are not typically permitted in general district court. However, depositions are used in Virginia general district court cases pursuant to [Va. Code § 16.1-88.2](#) in personal injury cases where the deposition of the doctor may be taken. There is also a provision for the court to assess the cost of taking the deposition of a health care provider or custodian of records.

M. Removal To Circuit Court

The right to remove a matter from the general district court to the circuit court has been eliminated.

N. Nonsuits

The plaintiff may take his first nonsuit as a matter of right although the court may allow additional nonsuits upon reasonable notice to counsel of record for all defendants and upon a reasonable attempt to notify any party not represented by

counsel, or counsel may stipulate to additional nonsuits. The court, in the event additional nonsuits are allowed, may assess costs and attorney's fees against the plaintiff. When suffering a nonsuit, a party shall inform the court if the cause of action has been previously nonsuited. Any order affecting a subsequent nonsuit shall reflect all prior nonsuits and shall include language that reflects the date of any previous nonsuit together with the court in which any previous nonsuit was taken. The plaintiff prepares the district court form DC-419, [MOTION AND ORDER FOR VOLUNTARY NONSUIT](#). If the notice to take a nonsuit of right is given to the opposing party with seven (7) days of trial, the court has the discretion to assess against the nonsuited party reasonable witness fees and travel costs of expert witnesses scheduled to appear at trial, which are incurred by the opposing party only because of the failure to give notice of the nonsuit more than seven (7) days before trial. [Va. Code § 8.01-380 \(D\)](#). The court shall determine the reasonableness of witness fees and travel costs.

The taking of the nonsuit must be noted in an order, after which the plaintiff may recommence the action in the same court (with certain exceptions) by filing a civil warrant or motion for judgment within six months from entry of the order documenting the nonsuit, or within the limitations period, whichever is longer. [Va. Code §§ 8.01-229 \(E\)\(3\)](#) and [8.01-380](#). If, however, the plaintiff dies before the end of the six-month period, the suit may be recommenced within one year of the qualification of the personal representative or before the expiration of the six-month refiling period, whichever occurs later. [Va. Code § 8.01-229 \(B\)\(1\)](#).

Upon the refiling of the nonsuited action, the clerk treats the matter as if it is a new suit (collect costs; index the case with a new case number, etc.). If, after a nonsuit, an improper venue is chosen, the court shall not dismiss the matter but shall transfer it to the proper venue upon motion of any party.

O. Case Hearing, Judgment

Responsibilities of the clerk's office in terms of case hearings include bringing all of the case files and the docket for the day's cases to court, recording the disposition on the docket and warrant, and accounting for witness expenses.

P. Interpreters

- **Deaf Person:** If a deaf person is a party or a witness in a civil case, he or she has the right to use an interpreter during the proceeding. If requested, the court must appoint an interpreter provided through the [Virginia Department for the Deaf and Hard of Hearing](#). The deaf person may waive the appointment of an interpreter and retain any interpreter at the deaf person's expense.
- **Non-English Speaking Person:** The court may also appoint an interpreter when a non-English speaking person is either a party or a witness in any trial, hearing or other proceeding before a judge in a civil case. The judge hearing the case may

appoint a qualified English-speaking person who is fluent in the language of the non-English speaking person, unless the non-English speaking person obtains a qualified interpreter of his own choosing who is approved by the court as competent. [Va. Code § 8.01-384.1:1\(a\)](#).

The interpreter's compensation shall be set by the court in accordance with guidelines set by the Judicial Council of Virginia and shall be paid from the criminal fund of the state treasury as part of the expense of trial. *See* the CHART OF ALLOWANCES for instructions regarding the submission of claims for compensation of these interpreters. [Va. Code § 8.01-384.1:1 \(B\)](#).

When a non-English speaking person communicates with another person under circumstances that render the communication privileged, i.e. the other person could not be compelled to testify as to the communication, the privilege shall also apply to the interpreter. This privilege applies in both circuit and district courts. [Va. Code § 8.01-384.1:1 \(C\)](#).

Q. Continuances

Supreme Court Rule 7A: 14 sets forth the standard continuance requirements. One party, all parties or a combination of parties may request a continuance. A continuance is granted at the discretion of the judge for good cause. If all parties agree to the continuance, the moving party is responsible for providing notice of the continuance and of the new court date to the subpoenaed witnesses. If all parties do not agree to the continuance, a hearing may be held and the requesting party is responsible for giving notice of this hearing to the other parties. Continuance requests made at the time set for the hearing or trial, where the other parties or witnesses are present and prepared for trial, should be granted only if it is shown that to proceed with the trial would not be in the best interest of justice. If a continuance is granted at a hearing the witnesses may be given a return to court notice and, if recognized for their appearance on the continuance date, required to execute a district court form DC-329, RECOGNIZANCE.

R. Exclusion Of Witnesses

Witnesses (except for individual named parties or one officer or agent for a corporation or association or, when requested, an expert witness for each side) may be excluded from the courtroom except when testifying. Such exclusion may be done on the judge's motion and shall be done on motion of any party. [Va. Code § 8.01-375](#).

S. Constitutional Rights

In any civil action, the exercise by a party of any constitutional protection shall not be used against him. [Va. Code § 8.01-223.1](#).

T. Trial On Affidavit, Denial By Defendant

In any action at law for the payment of money based on a note or on a contract, express or implied, or for the collection of taxes, if the plaintiff files an affidavit with his motion for judgment or civil warrant (and a copy of the account, if there is one) and it is served on defendant with the warrant in debt or motion for judgment, the plaintiff is entitled to a judgment on the affidavit and account without further evidence unless the defendant either appears and pleads under oath or files an affidavit with the court denying in whole or in part the claim. The defendant's denial need not be in writing. If the defendant appears and pleads, the plaintiff or defendant shall, on motion, be granted a continuance. See [Va. Code §§ 8.01-28, 16.1-88](#).

The plaintiff may use a similar procedure to recover when the physical evidence of a debt has been lost. [Va. Code § 8.01-32](#). To recover on a "lost debt" the plaintiff must verify under oath that a debt exists and that the evidence of the debt has been lost. Such verification may be made either by sworn affidavit or sworn testimony in open court. Recovery may occur only when the "lost debt" is past due.

U. Entry and Docketing of Judgment

Supreme Court Rule 7B:7 provides that no judgment for the plaintiff shall be granted, except on request made in court by the plaintiff, plaintiff's attorney, or plaintiff's regular and bona fide employee, except as permitted by statute.

The judgment or decree of the court may provide for interest on any principal sum awarded. Any judgment entered for a suit under a negotiable instrument shall provide for interest at the rate specified in the instrument. If no interest is specified, the judgment or decree shall bear interest from its date of entry at the judgment rate. [Va. Code § 8.01-382](#).

The rate of interest for a judgment shall be the judgment rate of interest in effect at the time of entry of the judgment. Interest in cases in which a judgment has been entered is not affected by subsequent changes in the judgment rate of interest in [Va. Code § 6.2-302](#). The current judgment rate of interest is 6% except on contracts for the loan of money, which accrue interest at the lawful rate stated in the contract or 6%, whichever is higher. [Va. Code § 6.2-302](#).

If the case originated on a motion for judgment, then the judgment normally would be entered on a district court form DC-480, CASE DISPOSITION.

V. Payment of Judgment into General District Court

When a judgment is taken in the general district court, upon motion of a party for good cause shown, the general district court judge may enter an order directing the clerk of the general district court to hold funds in escrow for a period not to exceed 180 days to enable such party to file a petition requesting that the funds be received

and held by the clerk of the circuit court. If an order directing the clerk of the general district court to transfer funds to the clerk of the circuit court is not received within 180 days, the clerk of the general district court may disburse the funds to the plaintiff after giving a 30-day notice to the parties. Va. Code §§ [8.01-600](#), [8.01-606](#)

The following procedures are recommended when the court enters an order for funds to be held in escrow by the court.

Step 1 One of the parties submits an Order at the conclusion of trial where judgment has been awarded in favor of the plaintiff and presents funds to be held by the court.

There are no fees associated with this filing.

Clerk receipts funds to revenue code 509 using original case number.

NOTE: BR08 will list the case under the defendant's name in liability accounts monthly.

Step 2 Enter administrative hearing in CMS using original case number for six months from the date of the receipt.

Step 3 Clerk will receive an order from circuit court directing the clerk to disburse funds immediately to circuit court. Issue check using ES (auto format) disbursement code. Prepare district court form DC-25, Circuit Court Case Transmittal and Fees Remittance Sheet.

NOTE: Do not mark case satisfied unless requested to do so by plaintiff/creditor.

Step 4 Transmit copy of circuit court order and check to circuit court.

Step 5 If the court does not receive an order from circuit court by the date of the administrative hearing, give parties notice. Keep a copy of the notice sent to the parties with the case papers. *See* Sample 1 at the end of this section. Attach a copy to the case papers.

Step 6 APPEAL PROCEDURES

Appeal may be noted in writing within ten calendar days of judgment.

NOTE: Bond and Circuit Court costs (including sheriff fees for service) are due within thirty days of **JUDGMENT**-not appeal date.

If case is perfected, prepare file in accordance with local policy for delivery to the circuit court; and send check for fees and any funds in escrow account along with a completed district court form DC-25,

Step 6 CIRCUIT COURT CASE TRANSMITTAL AND FEES REMITTANCE SHEET.
(cont'd)

See appendix on “Appeals” for procedures.

- Sample 1 – Print on court letterhead:

<h2>Print on Court Letterhead</h2> <p>This court received \$ _____ deposited pursuant to Va. Code § 8.01-606 on _____ (date) _____. The maximum amount of time the court may hold the funds is 180 days. The court has not received a certified copy of an order entered by the circuit court directing that these funds be transferred to the clerk of the circuit court. Take notice that such funds shall be disbursed to the plaintiff for whom judgment was entered in the general district court within 30 days after the date of this notice</p>

1. Forms

DC-25	CIRCUIT COURT CASE TRANSMITTAL AND FEE REMITTANCE SHEET.
DC-475	NOTICE OF APPEAL - CIVIL
DC-460	CIVIL APPEAL BOND

2. References

Va. Code § 8.01-600	Payment of funds into circuit court.
Va. Code § 8.01-606	Payment of small amounts to certain persons through court without intervention of fiduciary; authority of commissioners of accounts; certain fiduciary exempt of accountings.

W. Bad Check Cases

In civil suits to collect on bad (bounced) checks, the court may add to the face amount of the check, less any credits, as a part of the judgment:

- Legal interest from the date of the check
- The protest or bad (bounced) check bank fees
- The check holder’s normal bad check processing fee not to exceed \$50.00 if the check was returned for insufficient funds or because such check was returned because of a stop-payment order placed in bad faith on the check by the drawer. [Va. Code § 8.01-27.1](#). However, if the plaintiff charges an amount in excess of this statutory limit, the plaintiff is liable to the defendant for the lesser of \$50.00

plus the excess of the authorized amount or twice the excess charged over the statutory limit.

- Reasonable attorney’s fees, if awarded by the court. [Va. Code § 8.01-27.1](#).
- Civil penalty of the lesser of \$250 or three times the amount of the check pursuant to [Va. Code § 8.01-27.2](#) if:
 - the check was returned for insufficient funds, and
 - the check is not paid within thirty days after drawer receives written notice by certified, registered, or regular mail that the check was returned unpaid, no criminal bad check case pursuant to [Va. Code § 18.2-181](#) has been started.
 - cost of service of process or mailing, as applicable.

X. Failure To Appear And Default Judgments

If the defendant fails to appear in court, the court may enter judgment against him in his absence (default judgment). Rule 7B:9. Where plaintiff filed an affidavit with his district court form DC-412, [WARRANT IN DEBT](#) or motion for judgment, the plaintiff may be entitled to judgment on the affidavit without having to introduce other evidence. *See* “Trial on Affidavit - Denial by Defendant,” section above. In tort cases or on other claims where the damages are not fixed or liquidated, if the defendant fails to appear or file an answer, the court would still require evidence to determine the amount of damages. When service of process was obtained by posted service, no default judgment may be granted unless the plaintiff files a certificate, such as a district court form DC-413, [CERTIFICATE OF MAILING POSTED SERVICE](#) certifying that he mailed a copy of the pleadings at least ten days prior to the entry of judgment. District court form DC-412, [WARRANT IN DEBT](#) states specifically that this action may be taken. The court is not statutorily required to notify the defendant of a default judgment. Thus, the defendant may learn of the judgment when served with a summons for garnishment or other execution document. The administrative procedures performed by the clerk’s office following a default judgment are the same as for a judgment with the defendant present.

Supreme Court Rule 7B:8 provides that if the plaintiff fails to appear and the defendant appears, the judge will either:

- dismiss the case without prejudice to plaintiff’s right to refile if defendant admits owing all or part of the claim, or
- enter judgment for defendant.

If neither party appears, the judge then dismisses the case without prejudice to plaintiff’s right to refile the case.

Y. Servicemembers Civil Relief Act Requirements For Default Judgment

A default judgment may not be entered until the plaintiff files 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. The district court form DC-418, [AFFIDAVIT – DEFAULT JUDGMENT SERVICEMEMBERS CIVIL RELIEF ACT](#) is available for use by plaintiffs. Failure to file the affidavit is not grounds to set aside an otherwise valid default judgment against a defendant who was not, at the time of service of process or entry of the default judgment, a service member. However, case law indicates that failure to comply with the affidavit requirement in a case involving a defendant who is a service member and whose military service interfered with his ability to respond to a suit creates a voidable default judgment. *See Flynn v. Great Atlantic Management Co.*, 246 Va. 93; *Matthews v. Allstate Ins. Co.*, 194 F. Supp. 459 (E.D. Va 1961).

If the defendant is believed to be in military service and is unaware of the action, the court must appoint an attorney to represent the defendant prior to entry of a default judgment. Counsel appointed pursuant to the Servicemembers Civil Relief Act shall not be selected by the plaintiff or have any affiliation with the plaintiff. However, the plaintiff's attorney may provide a list of attorneys familiar with the provisions of the Servicemembers Civil Relief Act upon the request of the court.

The court must grant a stay of not less than ninety days upon request by appointed counsel or upon its own motion if the court believes that (i) there may be a defense that requires the defendant's presence or (ii) counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists after due diligence. If the service member cannot be contacted within the first ninety-day stay period, a default judgment may be entered, but the service member may attack the judgment and the attorney's actions shall not bind him.

If the service member is believed to be in military service and has been provided notice of the action, the court may grant a stay of ninety days or more upon its own motion, and shall grant a stay upon application of a service member with notice, if such service member provides (i) a letter setting forth the reasons why his military duties materially affect his ability to appear, and a date on or after which he could appear and (ii) a letter from his commanding officer stating that his service precludes his ability to appear and that he is not authorized to take leave. Active duty status alone, even in another state, does not necessarily "materially affect" one's ability to appear. Application for this stay does not constitute a waiver of jurisdictional defenses. A service member may apply for additional stays, but the court need not grant them. If the court refuses to grant an additional stay after the first ninety-day stay and the service member still cannot appear by reason of his military service, then the court must appoint an attorney to represent him before entering default judgment.

If appointment of counsel is required, the court may assess attorneys' fees and costs against any party, as the court deems appropriate, and shall direct in its order which of the parties shall pay. Such fees and costs shall not be assessed against the Commonwealth unless it is the party that obtains the judgment.

The Servicemembers Civil Relief Act covers National Guard members who are in Title 10 status. Title 10 status means they are paid and under the direct control of the federal government. Members who are in a Title 32 status, paid and trained by the United States Armed Forces but under control of the respective state governors, are covered by the Servicemembers Civil Relief Act if they are in that status pursuant to a contingency mission specified by the President or [Secretary of Defense](#). Members who are paid by and under the command of their states' governors are not covered under this Act.

A service member who did not have notice of an action that resulted in a default judgment may petition the court to reopen a case within ninety days of his release from service. The court shall rehear the matter and allow the service member to defend the action only if (i) the service member was materially affected in making a timely defense by reason of military service and (ii) the service member has a meritorious or legal defense to the action or some part thereof.

Z. Civil Action For Bad Check, Shoplifting And Employee Theft

No civil action may be initiated for a bad check, shoplifting or employee theft pursuant to [Va. Code §§ 8.01-27.2](#) or [8.01-44.4](#) if criminal action has been commenced against the perpetrator. However, in the case of shoplifting or employee theft, the merchant may non-suit the civil action and institute criminal proceedings. Since the clerk is not authorized to refuse to accept such civil actions, this issue may not arise prior to trial and it is an issue to be resolved by the judge at trial.

V. POST-TRIAL PROCEDURES

A. Appeals

In a general district court civil case in which the dispute is of a value greater than \$20.00, the losing party may appeal the judgment of the lower court to the circuit court provided the appeal is noted in writing within ten calendar days from the date judgment was entered. If the tenth day falls on a Saturday, Sunday, or legal holiday, the last day to note an appeal will be the next day the court is open. An appeal from the juvenile and domestic relations district court or an appeal in a civil case from the general district court shall be heard de novo in the circuit court.

For details and step-by-step instructions for handling appeals and withdrawal of appeals, *see* the appendix on "Appeals".

B. New Trial Of Case

A motion for a new trial must be made by one of the parties within thirty days after the date of judgment, not including the date of entry of such judgment. [Va. Code § 16.1-97.1](#). The new trial process is as follows:

- Any party to the suit files a motion for new trial within thirty days after the entry of judgment (use district court form DC-368, [MOTION TO REOPEN \(CRIMINAL/TRAFFIC\)/MOTION TO REHEAR \(CIVIL\)/MOTION FOR NEW TRIAL \(CIVIL\)](#)).
- The request must be heard by the judge, who acted in the case before, or if not available, by another judge. Granting of the motion is within the judge’s discretion. The judge must rule on the motion within forty-five days after judgment.
- In the event that this thirty-day time period has passed, a judge is authorized to reopen the case to correct clerical errors, or to set aside a confessed or default judgment because of fraud (if motion made within two years of judgment), a void judgment, or proof of an accord and satisfaction. [Va. Code § 8.01-428](#).

C. Motion to Vacate

A motion to vacate is filed by the plaintiff or judgment debtor to set aside a default judgment on the following grounds: (i) fraud on the court, (ii) a void judgment, (iii) on proof of an accord and satisfaction, or (iv) on proof that the defendant was, at the time of service of process or entry of judgment, a person in the military service of the United States for purposes of 50 U.S.C. app. § 502. Such motion on the ground of fraud on the court shall be made within two years from the date of the judgment or decree. Reasonable notice must be given to the opposite party. [Va. Code 8.01-428](#)

Sometimes a judgment may need to be corrected due to a clerical error. In that case, the court may correct the error based on its motion or the motion of either party. [Virginia Code § 8.01-428 \(B\)](#) states as follows:

“Clerical mistakes - Clerical mistakes in all judgments or other parts of the record and errors therein arising from oversight or from any inadvertent omission may be corrected by the court at any time on its own initiative or upon the motion of any party and after such notice, as the court may order. During the pendency of an appeal, such mistakes may be corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending such mistakes may be corrected with leave of the appellate court”.

D. Notice Of Satisfaction

Once the judgment has been paid or otherwise satisfied, the plaintiff/judgment creditor must notify the court in which the judgment was rendered in writing of that

satisfaction. This notice must be provided within thirty days of receipt of payment or satisfaction and is required only upon full satisfaction. The district court form DC-458, [NOTICE OF SATISFACTION](#) may be used for this purpose but it is not mandatory. Any type of notice is satisfactory if it contains:

- the case number
- the names of the parties
- the date of the judgment

Upon receipt of the notice of satisfaction, the clerk should affix a statement of satisfaction using a stamp or hand write the statement on the original judgment case papers. The clerk should sign the statement and insert the date the statement of satisfaction is affixed to the case papers. The notice of satisfaction should then be attached to the original judgment case papers. Va. Code [§ 16.1-94.01](#), [8.01-454](#)

For any money judgment marked as satisfied pursuant to either Va. Code § 8.01-454 or Va. Code § 16.1-94.01, nothing shall satisfy an unexecuted order of possession entered pursuant to Va. Code § [8.01-126](#).

If the plaintiff/judgment creditor fails to notify the court of the satisfaction of the judgment within thirty days, the defendant/judgment debtor may file a motion to have the judgment marked satisfied.

- District court form DC-459, [MOTION FOR JUDGMENT TO BE MARKED SATISFIED](#) may be used for this purpose
- Judgment debtor/defendant must give the plaintiff/judgment creditor ten days notice of the motion prior to filing with the court
- Enter in the civil division of CMS giving a new case number and case type **OT**
- Collect all filing fees and service fees
- The clerk will set a hearing date and send out for service

Upon a hearing on the motion, the court may order that the judgment be marked satisfied. The disposition of a district court form DC-459, [MOTION FOR JUDGMENT TO BE MARKED SATISFIED](#) may be appealed to the circuit court.

A judgment debtor wishing to discharge a judgment, pursuant to the provision of [Va. Code § 8.01-456](#), when the judgment creditor cannot be located, may pay the circuit court docketing and indexing fees and docket the judgment in the circuit court. Once the debtor has docketed the judgment, payment may be made and the judgment satisfied in circuit court following the filing of a petition in circuit court and the entry of a circuit court order. [Va. Code § 16.1-69.55](#).

E. Records And Evidence Management

As civil cases are completed in general district court, there are certain clerical tasks that must be completed to assure that cases are properly recorded. These administrative tasks that the clerk's office performs include:

- Record the disposition in CMS.
- Process appeals as noted earlier.
- Process executions of court orders as per plaintiff's request.
- File cases in the Civil Court Date Disposed File

The clerk may provide for disposal or donation of evidence after the date on which to note an appeal or request a rehearing has elapsed. If an appeal is not noted, or if a case is appealed, or notice of appeal is pending or the case is being reheard, after the appeal or rehearing is concluded. The clerk must first give notice to the owner or attorney by first class mail and wait until twenty-one days have elapsed from mailing of the notice to dispose of the evidence, unless the owner or attorney requests its return. [Va. Code § 8.01-452.1](#).

F. Execution Of Judgment

When a decree or order requiring the payment of money is entered, the persons entitled to that payment are called "judgment creditors." The persons required to pay the judgment are called "judgment debtors." Where the judgment is in favor of the plaintiff (judgment creditor) in a civil suit in debt, the defendant (judgment debtor) may either immediately satisfy the judgment, appeal the judgment to circuit court, or refuse or delay satisfying the judgment. The judgment creditor has two options for executing the judgment through a general district court when the case has not been appealed or satisfied:

1. Garnish the judgment debtor's wages, other income, or other money or credits in a third party's hands. [Va. Code § 8.01-511](#).
2. Levy on certain of the judgment debtor's property which can be touched and sold by the sheriff and is not subject to exemption.

The writ of *feri facias* (also informally called a "fi.fa." or "writ of fi.fa.") is a document that causes a lien to be put on the judgment debtor's property. The property is then converted to money through a sheriff's sale, and the money and the executed writ of *feri facias* are returned to the court. This writ is used in connection with all general district court executions of judgments entered on a district court form DC-412, [WARRANT IN DEBT](#). While the writ may be obtained as an independent enforcement vehicle, it is most often obtained as part of the garnishment process, and is seldom separately enforced when issued as a part of the garnishment process. When a separate writ is sought, the judgment creditor requests the issuance of a district court form DC-467, WRIT OF *FIERI FACIAS* from the clerk, who delivers it to the sheriff or any other person authorized to serve process pursuant to [Va. Code §](#)

[8.01-293](#) for execution. [Va. Code § 8.01-501](#). Subsequent steps for levy on personal property and garnishments are described below.

In addition, the judgment creditor can obtain a district court form DC-465, ABSTRACT OF JUDGMENT that can be taken to circuit court or to another state for enforcement actions there.

To assist in executing the judgment, the judgment creditor can use the interrogatory process to obtain information from the judgment debtor that the judgment debtor can use to enforce the judgment by garnishment, etc. [Va. Code § 8.01-506](#).

Executions on a judgment in district court can be issued for ten years from the date of judgment. However, the judgment creditor may extend this time period if the judgment creditor, prior to the expiration of the ten years, pays the circuit court docketing and indexing fees along with any other required filing fees and docketes the judgment in the circuit court in the same geographic location as the general district court. The judgment creditor can then request issuance of executions in the general district court after expiration of the ten-year period upon the filing in the district court of an abstract from the circuit court. *See* “Extension of Judgments” in this chapter. Upon the docketing of the judgment in circuit court, the judgment receives the same status as if it was a circuit court judgment and is extended to twenty (20) years from the date of the general district court judgment.

G. Levy On Property In The Hands Of The Judgment Debtor

A levy on personal property means that the property levied may be sold or disposed of by the judgment creditor to satisfy the judgment of the court, if not satisfied by other means.

Procedures for execution by levy include:

- The clerk prepares the district court form DC-467, WRIT OF *FIERI FACIAS* and attaches a copy of district court form DC-407, [NOTICE TO DEBTOR - HOW TO CLAIM EXEMPTIONS/REQUEST FOR HEARING - EXEMPTION CLAIM](#), to each copy of the writ, collects sheriff’s fees ([Va. Code § 17.1-272](#)) and forwards it to the sheriff. [Va. Code § 8.01-501](#). Only a sheriff, high constable or treasurer may levy upon property. [Va. Code § 8.01-293](#).
- The sheriff levies on the property of the judgment debtor and, if the judgment creditor posted an indemnifying bond with the sheriff, seizes the particular items of personal property noted in the writ of *feri facias*, and serves a copy of the writ on the judgment debtor or other responsible person at the premises. [Va. Code § 8.01-487.1](#).
- The judgment debtor may at this time decide to

- pay the debt and may do so within the ninety-day life of the execution and ask the judgment creditor to abandon the writ of *feri facias* and stop the sheriff's sale prior to the sale, or
- regain possession or obtain a release of the lien by posting a district court form DC-470, [FORTHCOMING BOND](#), or
- execute and return the district court form DC-407, [NOTICE TO DEBTOR - HOW TO CLAIM EXEMPTIONS/REQUEST FOR HEARING - EXEMPTION CLAIM](#) whereupon the clerk:
 - indexes the district court form DC-407 request as a subsequent action using case type **OT**, and
 - schedules a hearing on the claim within ten business days from receiving the request, and
 - notifies the parties and sheriff of the date, time and place of the hearing plus the exemption being claimed.

If the judge determines that the exemption claim is valid, the clerk gives a copy of the order to the parties. Otherwise, no copy is provided.

- The sheriff sells the levied property if the judgment debtor does not pay off the debt and the judgment creditor has posted an indemnifying bond.
- The executed writ is returned with the net proceeds and the proceeds of the sale are disbursed to the judgment creditor by the sheriff. The return shall account for the property seized and sold, the disbursement of funds, and the service of process on the judgment debtor or other responsible person at the premises.
- If the judgment is not satisfied, the judgment creditor may elect to re-execute and the above procedure is repeated.
- Formal notice of satisfaction of the court order should be filed by the judgment creditor with the court, but the judgment debtor may have to request that it be filed by the judgment creditor and can sue to enforce this notice of satisfaction procedure.

In some cases, the defendant, after issuance of the writ, will perfect an appeal in the case. Upon perfecting the appeal, the clerk promptly completes a district court form DC-323, **RECALL OF PROCESS** with a notation that the defendant perfected his appeal and transmits it to the sheriff. (In such a case, the sheriff returns the writ, discontinues the sale, and releases the levied or seized property to the prior possessor).

If more than one writ of *feri facias* is issued and the proceeds are insufficient to satisfy all writs, then the writs of *feri facias* are satisfied under [Va. Code § 8.01-488](#) in the following order:

The writs are divided into two groups:

- Indemnification bond posted prior to sale if required by sheriff.
- No indemnification bond posted.

The group of writs for which indemnification bonds were posted takes priority over the group for which no bonds were posted.

Within each group, order of priority is based on the time that the writs were delivered to the sheriff for execution (first writ delivered takes priority over second writ delivered). If writs are delivered at the same time to the sheriff, the funds are allocated ratably among the writs delivered at the same time.

I. Garnishment Of Funds ([Va. Code § 8.01-511](#))

A garnishment may be used when the judgment debtor has sufficient income (not subject to exemption), debts owed to him, money in the bank or other money in the hands of a third party from whom the judgment creditor may reasonably expect to obtain satisfaction of the judgment by the garnishment process. The judgment debtor is the person who is required to pay the judgment. The garnishee is the third party who holds money for or owes money to the judgment debtor. Often, the garnishee is the judgment debtor's employer.

The garnishment may be filed where the judgment was obtained or where the judgment debtor resides. If the garnishment is filed where the judgment debtor resides, an abstract of judgment must be provided to the court before the garnishment can be filed. Additional information is provided at the end of this section.

The procedures for execution by garnishment are as follows:

- Judgment creditor
 - Files a district court form DC-450, [SUGGESTION FOR SUMMONS IN GARNISHMENT](#) and provides the clerk with an envelope, with first class postage attached, addressed to each judgment debtor at his or her last known address.
 - The plaintiff is responsible for calculating the interest due. Interest is computed on the judgment principal only. See Virginia Code § 8.01-382.
 - Pays the same civil fees required for warrants in debt, and a sheriff's fee per service for each garnishment summons. A separate summons is required for each judgment debtor. If there is more than one garnishee for a judgment debtor, a separate garnishment proceeding for each garnishee is required. All costs incurred by the judgment creditor after entry of the judgment, in aid of execution of the judgment and paid to a clerk of court, sheriff, or process

server are chargeable against the judgment debtor, unless such costs are chargeable against the judgment creditor pursuant to Va. Code § [8.01-475](#). Regardless of the actual amount of the fee paid by the judgment creditor, the fee for a process server chargeable against the judgment debtor shall not exceed the fee authorized for service by the sheriff. All such previous costs chargeable against the judgment debtor may be included by the judgment creditor as judgment costs in the garnishment summons form prescribed in Va. Code § [8.01-512.3](#).

- The clerk's office issues receipts for all fees, verifies that the judgment was granted in at least the amount listed as the "Judgment Principal" on the district court form DC-451, [GARNISHMENT SUMMONS](#) and issues the summons with copies of the district court form DC-454, [REQUEST FOR HEARING - GARNISHMENT EXEMPTION CLAIM](#), and district court form DC-455, [GARNISHMENT INFORMATION SHEET](#) attached to each copy of the garnishment summons and with a copy of district court form DC-456, [GARNISHEE'S ANSWER](#) attached to the garnishee's copy of these forms. The garnishment summons contains a plain language interpretation of [Va. Code § 34-29](#).
- The summons is made returnable to the court that issued it within ninety days from the writ's issuance, except that, in the case of a wage garnishment, the summons shall be returnable not more than 180 days after such issuance. [Va. Code § 8.01-514](#). The life of the writ of *feri facias* will be the same as the summons to which it is attached. Garnishment proceedings for child support pursuant to [Va. Code § 20-78.1](#) continue until the judgment is satisfied or for 180 days.
- [Virginia Code § 8.01-511](#) permits clerks to issue a garnishment summons for wages, salaries, commission or other earnings only if the garnishment summons contains the following data:
 - If the judgment is based on a business, trade or professional credit transaction entered into on or after January 1, 1984, the summons must:
 - be in the form prescribed by [Va. Code § 8.01-512.3](#);
 - contain both the "Total Balance Due" and the social security number of the judgment debtor;
 - specifies that it is a garnishment against the judgment debtor's wages, salary, or other compensation some other debt due or property of the judgment debtor;
 - be directed to only one garnishee for the garnishment of only one judgment debtor; however, courts may accept a single suggestion for summons (district court form DC-450) for co-debtors where 1) the judgment is against both individuals named (and thus a single case number), and 2) the suggestions for summons is for a non-wage garnishment (bank account or other potentially jointly held property).

- If the judgment is based on a claim *other than* a business, trade or professional credit transaction entered into on or after January 1, 1984, the summons must contain the same information described above *except* that the summons may be issued without the social security number of the judgment debtor if the judgment creditor represents that he has made a diligent good faith effort to secure the judgment debtor's social security number and has been unable to do so.

This information can be found on the district court form DC-450, [SUGGESTION FOR SUMMONS IN GARNISHMENT](#).

- The clerk then provides enough copies for service of the summons with forms attached to each copy as described above plus the pre-addressed stamped envelope which contains a copy of the summons with the district court form DC-454, [REQUEST FOR HEARING - GARNISHMENT EXEMPTION CLAIM](#) and the district court form DC-455, [GARNISHEE INFORMATION SHEET](#) attached.
- The summons and attached forms shall be served on the garnishee, and shall be served on the judgment debtor promptly after service on the garnishee. After serving the garnishee, a copy of these papers is mailed to the judgment debtor in the pre-addressed stamped envelope that the judgment creditor provided to the clerk. If the person upon whom there is a suggestion is a corporation, the summons shall be served on an officer, an employee designated by the corporation other than an officer, or if there is no designated employee or if the designated employee cannot be found, upon a managing employee. If the creditor files a certificate that she used due diligence and an officer, designated employee or managing employee cannot be found or the designated or managing employee is the debtor, it may be served on the registered agent or upon the clerk of the [State Corporation Commission](#). The designated employee should be listed with the State Corporation Commission if the corporation has designated such an individual. A "managing employee" is an employee who has control of operations and supervision of employees at the location where process is served. [Va. Code § 8.01-513](#).

The executed summons is returned to the general district court clerk's office.

- If the service of the summons was not made on the judgment debtor, the mailing shall constitute service of process on the judgment debtor.
- The employer or other garnishee garnishes the judgment debtor's wages and subsequently files an answer (usually by tendering the garnished funds) in the clerk's office on or before the return date. The district court form DC-456, [GARNISHEE'S ANSWER](#) may be used by the garnishee in answering the garnishment summons.
- If the garnishment summons is served on a garnishee-employer and

- the summons does not comply with the issuance requirements of [Va. Code § 8.01-511](#); or
- the summons is for the enforcement of a judgment for which the social security number was omitted pursuant to [Va. Code § 8.01-511](#), and the garnishee-employer's records do not have an employee whose name and current address match the same on the garnishment summons, such garnishee-employer may file an answer to that effect and have no liability on such summons (which shall be void upon transmission of such answer).
- If a garnishment summons is served on a financial institution relating to a joint account, the financial institution may file an answer to that effect pursuant to [Va. Code § 6.2-606](#) and send a copy by first class mail to the judgment creditor or his attorney. [Va. Code § 63.2-1931](#). If the judgment creditor wishes to pursue the claim against such an account, the judgment creditor shall provide the clerk with a copy of the district court form DC-451, [GARNISHMENT SUMMONS](#) and its attachments for each party to be served. The address of the parties on the account as shown by the financial institution's records may be used.

The clerk shall prepare a district court form DC-430, SUMMONS FOR HEARING for return on the same date as the garnishment summons with enough copies for service on the financial institution, the other parties having an interest in the account, and the judgment debtor. Service on other parties with an interest in the account should be made at the address shown in the financial institution's records, but service on the financial institution and judgment debtor may be by certified or registered mail. [Va. Code § 6.1-125.3](#). In the description of the matter on the summons, check "The attached assertion" and add: "Notice: Attached is a copy of the documents served on a financial institution to cause it to withhold money from an account in which you may have an interest. If you wish to protect your interests, you or your attorney should take appropriate legal action promptly."

The financial institution is required to hold the amount garnished in such account only for twenty-one days from the filing of the answer unless served by the 21st day with a copy of the district court form DC-430, SUMMONS FOR HEARING in which case the funds are held pending the outcome of the case. If not timely served, the financial institution may treat the garnishment summons as having terminated insofar as the joint or trust account is concerned.

If the judgment debtor executes and returns the district court form DC-454, [REQUEST FOR HEARING - GARNISHMENT EXEMPTION CLAIM](#), the clerk must:

- must advance the garnishment on the docket, and
- schedule a hearing on the claim within seven business days from receiving the request, pursuant to [Va. Code § 8.01-512.5](#) and

- notify all parties of the date, time and place of the hearing plus the exemption being claimed. District court form, DC-512, [NOTICE OF HEARING](#) may be used for such purpose.
 - Only if the garnishment summons is modified or dismissed is a copy of the court’s order required to be provided to the parties by the clerk.
- A homestead exemption claim may be filed by the judgment debtor prior to or upon the return date of the garnishment summons and shall be considered by the court. [Va. Code § 34-17](#).
 - An exemption may be filed by a parent who supports a dependent child or children residing with him/her to hold exempt from garnishment an additional amount for the support of the child or children as follows: \$34 per week for one child; \$52 per week for two children; and \$66 per week for three or more children. This additional exemption amount shall not be available to a parent whose household gross income, including any support payments received for the children, exceeds \$1,750 per month. In order to claim this exemption, the parent must file the district court form DC-454, [REQUEST FOR HEARING - GARNISHMENT EXEMPTION CLAIM](#), the district court form DC-449, [AFFIDAVIT CONCERNING DEPENDENT CHILDREN AND HOUSEHOLD INCOME](#), and submit two items of proof showing that the debtor is entitled to the exemption. The clerk must advance the garnishment on the docket and schedule a hearing on the claim within seven business days of receiving the request. [Va. Code §§ 8.01-512.4](#) and [34-4.2](#).
 - At the garnishment hearing, the judge orders disposition of the money. In most cases, the funds go by default order of payment to the judgment creditor.
 - If there is more than one garnishment summons before the court, priority is determined by the date and time that the underlying writ of *feri facias* was received by the sheriff; however, judicial or administrative income deduction orders for support will take priority pursuant to [Va. Code § 20-79.3](#) over any other liens created by state law, including garnishments, on an employee’s income in the employer’s hands.
 - A homestead exemption claim may be filed by the judgment debtor prior to or upon the return date of the garnishment summons and shall be considered by the court. [Va. Code § 34-17](#).
 - If the garnishment funds have not yet been received and the judge determines that the funds are owed based on the garnishee’s answer, the clerk will issue a district court form DC-453, GARNISHMENT DISPOSITION. If the garnishee failed to pay in response to an Order of Payment contained in a district court form DC-453, GARNISHMENT DISPOSITION, then the judge may enter a judgment against the garnishee.

- If the garnishee has not answered, the district court form DC-481, SHOW CAUSE SUMMONS (CIVIL) may be issued to force the garnishee to respond by requiring his personal appearance in court.
 - Sheriff's fee applies if requested by the judgment creditor (preferably in writing); however, no fee is assessed if ordered by the court.
 - Enter in CMS as a subsequent action of the Garnishment Summons from the Civil Case Entry screen.
 - Issue district court form DC-481, SHOW CAUSE SUMMONS (CIVIL) listing the garnishee as the Respondent and serve the person who accepted service of the garnishment summons.
 - Continue original garnishment to same date as the show cause hearing.
 - On return date, update the Show Cause with disposition using regular civil disposition codes and finalize the Garnishment Summons in CMS.
 - If the garnishee does not pay judgment, the judgment creditor may request a district court form DC-465, ABSTRACT OF JUDGMENT from this action and proceed with other collection enforcement attempts.

If the judgment is not yet satisfied, the judgment creditor requests re-execution and the procedure is repeated.

The judgment creditor files a notice of satisfaction of the court order with the court or the judgment debtor may request that the judgment creditor file a notice. Upon certification by the judgment creditor that its claim has been satisfied or that it desires its action against the garnishee be dismissed for any other reason, the court or clerk shall, by written order, which may be served by the sheriff, notify the garnishee to cease withholding assets of the judgment debtor, and to treat any funds previously withheld as if the original garnishment action had not been filed. The court in which the garnishment action was filed shall then dismiss the action on or before the return date.

The garnishment process may be stopped by the judgment debtor paying off the debt directly to the judgment creditor who files a district court form DC-453, GARNISHMENT DISPOSITION with the court. In some instances, the judgment debtor will perfect the appeal after the garnishment summons has been issued.

If the garnishment has been served, the judgment creditor should file a district court form DC-453, GARNISHMENT DISPOSITION asking for release of the garnishment. If not done by the judgment creditor, then a district court form DC-512, [NOTICE OF HEARING](#) should be issued to be served on the judgment creditor, judgment debtor, and garnishee, with the reason being "why the garnishment summons should not be dismissed due to perfection of appeal." The disposition should be noted either in the

disposition part of district court form DC-451, [GARNISHMENT SUMMONS](#) or by order as appropriate.

There is no refund of processing fees paid by the judgment creditor.

J. Garnishment (Filed Where Judgment Debtor Resides)

The following procedures are recommended when the plaintiff/creditor is filing an abstract from another district court to issue a garnishment where the judgment debtor resides.

Step 1 Plaintiff/creditor files CC-1464, [ABSTRACT OF JUDGMENT](#), or district court form DC-465, ABSTRACT OF JUDGMENT.

There are no fees associated with this filing, however if the plaintiff/creditor is asking for additional execution off of this abstract, appropriate fees for those executions will apply.

Assign a new case number in the Civil division of case management. Any additional executions will be entered as subsequent actions to the new case number. Close case with **O** in the **J/DC/O/C** field and **O** in the **CASE DISP** field. Enter the original date of judgment in the **REMARKS** field.

Case type will be **AJ**.

Filing date and hearing date are the same date.

Step 2 Upon satisfaction, the creditor must file satisfaction of judgment in both courts.

K. Notice of Lien on Financial Institutions

Any judgment creditor serving a notice of lien on a financial institution shall, within five business days of such service, mail to the judgment debtor at his last known address a copy of the notice of lien along with a notice of exemptions and claim for exemption form. District Court Form DC-467, Writ of *Fieri facias*, may be used as a Notice of Lien. The judgment creditor or attorney for the judgment creditor shall file a certification with the court affirming that he has mailed the judgment debtor these notices. In the event that the judgment creditor fails to comply, he shall be liable to the judgment debtor for no more than \$100 in damages, unless he proves by a preponderance of the evidence that the failure was not willful. [Va. Code § 8.01-502.1](#).

If a debtor requests an exemption hearing on the notice of lien, the court will enter as a subsequent action to the original judgment using case type "OT." Once the court

has held the hearing, disposition may be entered on district court form DC-480 CASE DISPOSITION. A certified copy of the DC-480 should be provided to the defendant and the financial institution(s).

L. Abstract Of Judgment

Another alternative open to the plaintiff who has received a judgment in his favor in general district court, which has not yet been paid, is to request that a district court form DC-465, ABSTRACT OF JUDGMENT be issued to him. He then docketes the abstract against the defendant in the clerk's office of the circuit court in a jurisdiction in which the judgment debtor owns land. This creates a lien against any real property that the person owns in that jurisdiction. Satisfaction of the judgment against real estate is accomplished by plaintiff's filing of a separate suit in circuit court through the circuit court clerk's office.

If the plaintiff requests an exemplified abstract, district court form DC-619, EXEMPLIFICATION OF RECORD and district court form DC-465 ABSTRACT OF JUDGMENT should be provided; both should have original signatures.

In civil suits arising out of motor vehicle accidents, unsatisfied judgments are, if requested, abstracted to the [Department of Motor Vehicles](#) on a separate abstract of judgment FR-6. The clerk can obtain this form from the Department of Motor Vehicles.

M. Interrogatories ([Va. Code § 8.01-506](#))

Interrogatories are questions propounded by one party in a lawsuit to another party or, if a corporation, to certain officers or employees who shall be required to answer them. In most district courts, interrogatories are used primarily as a post-trial discovery procedure in civil cases. Interrogatories can be used to determine the income or debts owed to a defendant subject to execution of a civil judgment in order to determine what further action can be taken to enforce the judgment.

NOTE: The interrogatories may be conducted before the court that issued the underlying writ of *fieri facias* or a commissioner in chancery of such jurisdiction, or before the same type of court or a commissioner in chancery of a contiguous jurisdiction. However, on request of the judgment creditor the interrogatories may be conducted before the same type of court or commissioner in chancery either where the judgment debtor resides or in a contiguous jurisdiction to the place where the judgment debtor resides. See [Va. Code § 8.01-506](#). Other than when the summons is to be issued where the judgment debtor resides or contiguous thereto, if the judgment creditor, in completing the district court form DC-440, [SUMMONS TO ANSWER INTERROGATORIES](#) has the interrogatories set to be heard in one of these different jurisdictions from the one where judgment was entered, the clerk mails the summons to the appropriate sheriff. The clerk of the court hearing an interrogatory from a judgment in another court assigns the interrogatory a new case number, and after the

hearing, returns the original interrogatory to the judgment court and retains a copy in the court date disposed file. If the judgment creditor requests that the debtor appear before a court in the place where the debtor resides or contiguous thereto, the case may be filed or docketed in that court. An abstract of judgment must be filed with the court. A summons for interrogatories will issue from that court once appropriate fees are paid. Any subsequent executions must issue from that court. Notices of satisfaction must be filed in both courts.

The procedures for conducting these interrogatory proceedings are:

- The judgment creditor prepares the district court form DC-440, [SUMMONS TO ANSWER INTERROGATORIES](#) as instructed in the *District Court Forms Manual* together with a certificate that he has not used this interrogatory process against the judgment debtor within the last six months. The six-month wait may be waived by the judge on motion of the judgment creditor for good cause shown. The issuance of a summons that is not served shall not constitute the act of proceeding against an execution debtor for the purposes of making the certificate required.
- The judgment creditor may also request the issuance of a district court form DC-336, [SUBPOENA DUCES TECUM](#). Such a subpoena would be requested and issued by the same procedures used when a subpoena *duces tecum* is requested prior to trial. See “Pre-Trial Procedures - Subpoenas, Witness Summoning” above except that:
 - it may be used only to obtain a book of accounts or other writings containing material evidence; and
 - it may be issued by a judge, clerk or commissioner in chancery and require both the production of evidence and appearance of the custodian before the judge or the commissioner in chancery.
- The clerk’s office completes the summons portion of district court form DC-440, [SUMMONS TO ANSWER INTERROGATORIES](#) setting forth time and place of hearing, who is to appear, and what records are to be produced. The writ of *feri facias* portion of the form is also prepared together with a district court form DC-407, [NOTICE TO DEBTOR - HOW TO CLAIM EXEMPTIONS/REQUEST FOR HEARING - EXEMPTION CLAIM](#) if a writ of *feri facias* is not already in effect.
- The clerk’s office issues the district court form DC-440, [SUMMONS TO ANSWER INTERROGATORIES](#), which is served on the judgment debtor or corporate officer or employee as respondent.
- Prior to the hearing, on motion of the judgment debtor/respondent and for cause shown, the court from which the writ of *feri facias* issued shall, pursuant to [Va. Code § 8.01-506](#), transfer the debtor interrogatory proceeding to a forum more

convenient to the judgment debtor. *See above*, for procedure for handling requests for exemption hearings.

- At the hearing, the judge or commissioner conducting the examination will permit the examination of the records by the judgment creditor and require the respondent to answer the questions (oral or written) asked by the judgment creditor.
- The commissioner shall, if requested by the parties, file a report with the court together with the interrogatories, answers, and property produced by the hearing.
- If the judgment debtor respondent fails to appear, answers evasively or refuses to deliver property, the judge or commissioner in chancery may have the respondent taken into custody by use of district court form DC-483, CAPIAS: ATTACHMENT OF THE BODY (CIVIL) or DC-361, CAPIAS if personal service was held on the district court form DC-440, [SUMMONS TO ANSWER INTERROGATORIES](#), or proceed on a district court form DC-481, SHOW CAUSE SUMMONS (CIVIL), if there was no personal service. If the respondent is taken into custody on a district court form DC-361, CAPIAS, [Va. Code § 8.01-508](#) requires that if he is not brought promptly before the court or the commissioner in chancery to whom the capias is returnable, he shall be entitled to bail pursuant to [Va. Code § 19.2-120](#). If the respondent appeals, he shall be entitled to bail pursuant to [Va. Code § 19.2 120](#).

N. Interpleader and Postponement Of Sale

On occasion, not only does the judgment debtor have an interest in property that has been levied upon through the execution of judgment, but a third party may also have an interest in the property. Personal property owned by a third party but in the possession of a judgment debtor may also be levied upon. In such situations, the third party may wish to protect his interests in the property through a process called interpleader.

A third party to a suit may file a claim to the property to discharge it from the lien by preparing a summons in interpleader. The property in question must not be greater in value than \$25,000 and the applicant must claim an interest in the property such that there is sufficient cause to discharge the property from the lien.

The procedures for processing an interpleader and postponement of sale are as follows:

- Applicant prepares the district court form DC-432, [AFFIDAVIT FOR SUMMONS IN INTERPLEADER](#) as per the instructions in the *District Court Forms Manual*.
- Upon receipt of the affidavit, the clerk's office will:
 - Review the affidavit for completeness and assign a return date.

- Prepare the Summons portion of the district court form DC-433, Summons in Interpleader and Order for Postponement of Sale.
- Verify the date of sale or hearing noted on the affidavit.
- Determine whether the return date on the affidavit and on the summons is before or after the sale date or the return date of any process that would subject the property to a final disposition.
 - If the sale date is **after** the return date, then the Postponement of Sale portion of district court form DC-433, SUMMONS IN INTERPLEADER AND ORDER FOR POSTPONEMENT OF SALE is not completed.
 - If the sale date is **before** the return date, then complete the Postponement of Sale portion of district court form DC-433, SUMMONS IN INTERPLEADER AND ORDER FOR POSTPONEMENT OF SALE to postpone sale of the property until after the hearing on the interpleader.

NOTE: This process is similar to, but not the same as, pre-trial interpleader under [Va. Code § 8.01-364](#). See discussion of “Interpleader.”

- Forward the affidavit and summons for service.
- The hearing is held on the return date. The judge enters an order to determine whether or not the lien will remain on the property and what the rights of the interested parties are in the property. An appeal may be noted and processed in the same manner as in suits in debt pursuant to [Va. Code §§ 16.1-106](#) and [16.1-122](#).

O. Interpleader of Real Estate Escrows

If a licensed real estate broker or an agent of the licensee is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the licensee or an agent of the licensee shall have the right to file an interpleader action in the general district court. [Va. Code § 54.1-2108.1](#)

The procedures for processing an interpleader are as follows:

- Applicant prepares the district court form DC-432, [AFFIDAVIT FOR SUMMONS IN INTERPLEADER](#) and district court form DC-428, Warrant In Debt – Interpleader as per the instructions in the *District Court Forms Manual*.
- Upon receipt of the affidavit, the clerk’s office will:
 - Review the affidavit for completeness and assign a return date.

- Prepare the SUMMONS portion of the district court form DC-428, WARRANT IN DEBT – INTERPLEADER.
- Forward the affidavit and summons for service.
- The hearing is held; the judge enters an order to determine to whom the escrow funds belong. An appeal may be noted and processed in the same manner as in suits in debt pursuant to [Va. Code §§ 16.1-106](#) and [16.1-122](#).

VI. SUITS IN DETINUE

A “suit in detinue” is a civil suit in which a plaintiff seeks to recover specific personal property, or its value, that the defendant possesses and is unlawfully withholding from the plaintiff. There are two variations of the suit in detinue procedures. In the first instance, called a suit in detinue, the plaintiff allows the property to remain in the defendant’s hands. In the second instance, a suit in detinue with pre-trial process of seizure, the plaintiff files an affidavit to have an order issued and the property seized and returned to him prior to court.

Many of the procedures for suits in detinue are the same as the procedures for suits in debt reviewed previously. Thus, unless a different procedure is described below, reference should be made to the appropriate sub-section of the procedures in “Suits in Debt.”

A. Suit In Detinue Without Pre-Trial Seizure

1. Case Initiation

Procedures for initiating a suit in detinue without seizure are as follows:

- The plaintiff, his attorney, or plaintiff’s regular and bona fide employee completes a district court form DC-414, [WARRANT IN DETINUE](#), or a motion for judgment ([Va. Code § 8.01-114](#)). The clerk’s office verifies that the form has been prepared properly and that all necessary information is present.
- The clerk’s office collects filing fees.
- The clerk’s office distributes copies of the warrant as noted (original and first copy to the law officers for service, other copies distributed as per local practice).

Service of process and pre-trial procedures for suits in detinue are the same as for suits in debt.

2. Case Hearing, Judgment, Post-Trial Procedures

- If a request for hearing on an exemption claim is filed, the court must dispose of the claim prior to the entry of judgment.

- The final judgment of the court pursuant to [Va. Code § 8.01-121](#) shall dispose of the property or its proceeds according to the rights of the parties except as noted below:
 - **Secured transaction:** When the judgment is in favor of the plaintiff under a contract made to secure payment, the defendant may, if the judge permits him to do so within thirty days from the date of judgment, elect either to immediately return the disputed property to the plaintiff or to pay him the value determined in the court order. If the defendant fails to make a timely election when so permitted by the judge or permission to make an election is granted to the plaintiff and not to the defendant, then the plaintiff determines whether he wants the property or its value. If the defendant then fails to satisfy the judgment election of the plaintiff, the plaintiff may be forced to obtain execution of the judgment through the court.
 - **Animals:** When animals are the items in dispute, the court may order the return to the prevailing plaintiff without regard to any alternative method of recovery.

Appeals and post-trial proceedings for suits in detinue are the same as for suits in debt.

NOTE: For details and step-by-step instructions for handling appeals, *see* appendix on “Appeals.”

3. Executions

Procedures for requesting and obtaining execution of the court order include:

- Plaintiff requests that the judge or clerk prepare a district court form DC-468, WRITS OF POSSESSION AND *FIERI FACIAS* IN DETINUE.
- The judge or clerk prepares the district court form DC-468, WRITS OF POSSESSION AND *FIERI FACIAS* IN DETINUE (alternate value of the property listed is the unpaid purchase price).
- The clerk’s office records and issues the writ to the sheriff for service. *See* [Va. Code § 8.01-293](#).
- The writ is served on the defendant. *See* [Va. Code § 8.01-293](#).
- The Sheriff seizes the property named in the suit and
 - the executed writ is returned by the sheriff to the general district court clerk’s office.
 - the seized property is returned by the sheriff to the plaintiff.

If the defendant has disposed of the property, the plaintiff may request execution by garnishment or lien; the procedures are then the same as for execution of garnishment summons in suits in debt. The amount to be garnished is the alternate value set forth in the district court form DC-414, [WARRANT IN DETINUE](#). The alternate value of the goods is the unpaid purchase price.

In some instances, the judgment debtor will perfect his appeal after the issuance of the district court form DC-468, WRITS OF POSSESSION AND *FIERI FACIAS* IN DETINUE. Upon perfecting the appeal, the clerk promptly completes a district court form DC-323, RECALL OF PROCESS with a notation that the defendant perfected his appeal, and transmits it to the sheriff.

(In such a case, the sheriff returns the writ, discontinues the sale, and releases the levied or seized property to the prior possessor.)

B. Suit In Detinue With Pre-Trial Seizure

The procedures for pre-trial seizure in detinue actions are similar to procedures used in attachment suits. Like attachments, many procedures in pre-trial detinue seizure suits are the same as “Suits in Debt”. However, the following procedures apply specifically to pre-trial detinue seizure actions:

1. Case Initiation

Plaintiff prepares a district court form DC-415, [DETINUE SEIZURE PETITION](#) and pays civil fees to the clerk or magistrate. A petition in detinue for pretrial seizure pursuant to this article may be filed either to commence the detinue proceeding or may be filed during the pendency of a detinue proceeding which commenced on a warrant or motion for judgment and no additional civil fees are collected except for any sheriff service fees. If a petition is filed, it shall:

- Describe the kind, quantity and estimated fair market value of the specific personal property as to which plaintiff seeks possession;
- Describe the basis of the plaintiff’s claim of entitlement to recover the property, with such certainty as will give the adverse party reasonable notice of the true nature of the claim and, if based on a contract to secure the payment of money, the amount due on such contract; *and*
- Allege one or more of the grounds mentioned in [Va. Code § 8.01-534](#) and set forth specific facts in support of such allegation. [Va. Code § 8.01-114](#).

The Plaintiff also tenders a district court form DC-447, [PLAINTIFF’S BOND FOR LEVY OR SEIZURE](#) with every petition. The minimum bond amount is twice the fair market value of property to be seized regardless of the type of bond posted ([Va. Code § 8.01-115](#)). If surety bonds are tendered, the judge or magistrate

reviewing the petition must approve the surety. If a property bond is tendered, the bond amount must not exceed the net equity in the property. The plaintiff should be told that the sheriff would not seize property if the sheriff believes that the property valuation is too low and, therefore, the bond amount is inadequate.

The judge or magistrate (not the clerk) reviews the petition and bond. Review is restricted to the contents of the petition and bond. The summons may not issue until the judge or magistrate finds:

- the petition conforms to the statutory requirements. [Va. Code § 8.01-114 \(A\)](#)
- reasonable cause to believe that the grounds for pre-trial seizure described in the petition may exist, and
- proper bond has been posted, and fees and costs have been paid. [Va. Code § 8.01-114 \(B\)](#).

If these requirements are met, the judge or magistrate (not the clerk) signs and issues a district court form DC-416, DETINUE SEIZURE ORDER with a copy of the petition and the bond and the district court form DC-407, [NOTICE TO DEBTOR - HOW TO CLAIM EXEMPTIONS/REQUEST FOR HEARING - EXEMPTION CLAIM](#) attached to each copy of the order, and gives the process to the judgment creditor for service. An additional copy is forwarded to the clerk's office if issued by a magistrate.

2. Service Of Process And Pre-trial Procedures. *See also* [Va. Code § 8.01-293](#).
 - The order is served on the defendant or other responsible person where the seizure is made, the sheriff takes possession of the property and it is turned over to the plaintiff (who keeps it pending trial), and the executed summons is returned to the clerk's office.
 - If the defendant wants the property returned to him, defendant posts a counter bond, district court form DC-448, [DEFENDANT'S BOND FOR LEVY OR SEIZURE](#) with the sheriff for twice the value of the property seized.
 - *See* "Levy on Property in the Hands of the Judgment Debtor" in this chapter, for procedure for handling request for exemption hearings.
 - The clerk's office assigns a case number, indexes the case, and prepares a docket following the same procedures as for suits in debt.
3. Case Hearing

Pursuant to [Va. Code § 8.01-119](#) the court must hold a hearing to review the issuance of the order:

- if the order was issued *ex parte* (no notice to defendant prior to issuance of the order), **within** thirty days from issuance of the order.
 - if application for an order was made with notice to defendant, then promptly upon application.
 - if combined with a hearing on exemption claims, then within ten business days from filing of the request for hearing on exemption claims.
4. Post-trial Procedures

Execution of a judgment in favor of the plaintiff is as follows:

- The court order is sent to the sheriff.
- The plaintiff posts a bond, if he has not already done so.
- The sheriff takes possession of the property.
- The clerk’s office voids the defendant’s bond if one was posted.

VII. UNLAWFUL DETAINER

This type of suit arises when a defendant unlawfully detains a house, land, or tenement that he is renting or leasing from the plaintiff. [Va. Code §§ 8.01-124, 8.01-126](#). This could occur when a defendant refuses to pay rent or refuses to vacate the premises following termination of a rental or lease agreement. The plaintiff may sue for return of the premises, and may also ask for unpaid rent, for damages caused by the unlawful detention, and for attorney’s fees.

Many of the procedures in unlawful detainer suits are the same as the procedures for suits in debt. Thus, unless a different procedure is described below, reference should be made to the appropriate sub-section of the procedures in “Suits in Debt”.

When written notice is required, notice includes any representation of words, letters, symbols, numbers or figures, whether (i) printed in or inscribed on a tangible medium or (ii) stored in an electronic form or other medium, retrievable in perceivable form, and regardless of whether an electronic signature is affixed.

A. Case Initiation

An unlawful detainer suit is initiated by the plaintiff’s filing of a complaint with a magistrate or clerk:

- The plaintiff, his attorney, or a person described in [Va. Code § 55-246.1](#) prepares a district court form DC-421, [SUMMONS FOR UNLAWFUL DETAINER](#) in accordance with the instructions in the *DISTRICT COURT FORMS MANUAL*. However, if a person described in [Va. Code § 55-246.1](#) is seeking possession of the premises, then venue lies only in a jurisdiction where the premises (in whole or in part) is situated. The clerk should ask if all required notices have been given. [Va. Code](#)

[§§ 55-225](#) and 55-248.31 The clerk checks the index of tenant's complaints for a district court form DC-429, [TENANT'S ASSERTION AND COMPLAINT](#):

- If a complaint is on file, the file number from the district court form DC-429, [TENANT'S ASSERTION AND COMPLAINT](#) should be noted on the district court form DC-421, [SUMMONS FOR UNLAWFUL DETAINER](#) so that the judge will be alerted and can decide if the unlawful detainer action is prohibited by [Va. Code § 55-248.39 \(A\)](#).
- If there is no complaint on file, proceed to the next step.

NOTE: Plaintiff may have a claim for cost of service of any notice under [Va. Code §§ 55-225](#) or [55-248.31](#) or process by a sheriff or private process server, which cost shall not exceed the amount authorized by [Va. Code § 55-248.31:1](#). [Va. Code § 55-248.35](#).

- The plaintiff pays filing fees and any sheriff service fees.
- The clerk (or magistrate) completes the summons portion of the district court form DC-421, [SUMMONS FOR UNLAWFUL DETAINER](#) in accordance with the instructions in the *DISTRICT COURT FORMS MANUAL*.
- If the action is brought under the Virginia Residential Landlord Tenant Act ([Va. Code § 55-248.2](#) *et seq.*), the initial hearing is to be set as soon as practicable, but not more than twenty-one days after the date of filing. If the case cannot be heard within twenty-one days from filing, it shall be heard as soon as possible. The plaintiff may also request a later date for the initial hearing. [Va. Code § 8.01-126](#).
- The clerk issues process to the sheriff for service. Such summons shall be served at least ten days before the return day thereof. *See also* [Va. Code §§ 8.01-293, 8.01-126](#).
- A tenant may designate a third party to receive a duplicate copy of a summons in an unlawful detainer action and any other written notices from the landlord. This does not grant standing to any third party to challenge actions of the landlord. The failure of the landlord to give notice to a third party does not affect the validity of any judgment entered against the tenant. [Va. Code § 55-248.9:1](#).

B. Trial Procedures

The right to remove a matter from the general district court to the circuit court has been eliminated.

The plaintiff must produce proof of service of pay or quit notice to obtain judgment for actions pursuant to [Va. Code § 55-225](#). [Va. Code § 55-248.31](#).

A nonresident property owner of four or more commercial or residential rental units in a city or county must have filed in the circuit court clerk's office the designation of

a resident agent for service of process. Such a property owner cannot maintain an action in Virginia courts until such a designation has been filed. Whenever any nonresident property owner fails to appoint or maintain an agent, as required, or whenever his agent cannot with reasonable diligence be found, then the [Secretary of the Commonwealth](#) may be served as an agent of the nonresident property owner with any process, notice, order or demand. Service by the Secretary shall be by registered or certified mail to the property owner at his address as shown on the official tax records maintained by the locality where the property is located.

The plaintiff may seek judgment as to monetary claims on an affidavit only, without having witnesses testify in court, [Va. Code §§ 8.01-28](#) and [16.1-88](#). See “Trial on Affidavit, Denial by Defendant” in this chapter.

On or before the first return date on an action for unlawful detainer for the nonpayment of rent, a tenant can present a redemption tender in the amount of all current rent, reasonable late charges, attorney fees, and court costs, the court shall continue the action for 10 days. A redemption tender is defined by statute as “a written commitment to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs, by a local government or nonprofit entity within 10 days of said return date.” If the tenant presents a redemption tender to the court at the return date:

The court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs and dismissal of the action upon such payment.

Should the landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises. [Va. Code §§ 55-243](#) and [55-248.34:1](#). A tenant may invoke the redemption tender rights no more than one time during any 12-month period of continuous residency, regardless of the term of the rental agreement. [Va. Code § 55-243](#).

If the defendant/tenant seeks a continuance or requests that the case be set on the contested docket, the court shall order, at the request of the plaintiff/landlord, that the tenant pay an amount equal to the rent due as of the initial court date into the court escrow account prior to granting the continuance or setting the case on a contested docket. [Va. Code § 55-248.25:1](#). The defendant/tenant must also be required to pay any rent that comes due prior to the next court date into the escrow account. If the court finds that the defendant is asserting a good faith defense, the court shall not require the rent to be paid into escrow. If rent escrow is required:

- The court grants the defendant/tenant a continuance of no more than a week to make full payment of the escrow.

- Once the rent escrow is received in the clerk's office, the case is set for an available court date.
- No rent required to be escrowed in an unlawful detainer action shall be disbursed within ten (10) days of the date of judgment unless otherwise agreed to by the parties.

If the defendant/tenant fails to pay the entire amount within the time period set by the court, the court shall, upon request of the plaintiff/landlord, enter judgment for the plaintiff and enter an order for possession of the premises.

In an unlawful detainer action seeking possession of residential real estate for default in rent, the defendant, to avoid losing possession of the real estate, may pay into the court all rent, rent arrearages, reasonable attorney's fees and late charges as provided by the written rental agreement. [Va. Code § 55-243](#). If the defendant seeks to use this procedure, the clerk holds these funds in an escrow account pending a court order for disbursement. The judge will determine:

- any disputes in the amount that has been escrowed
- whether this option was timely exercised (escrow deposit must be made on or before the first return date of the summons for unlawful detainer)
- whether this option has been used more than once in any twelve-month period of continuous residency in the rental dwelling unit (not allowed more than once in any such twelve-month period)

NOTE: Damages for unlawful use and possession is composed of lost rents (including rent increases), breach of contract damages incurred by landlord, etc. It does not include physical damage or destruction to the premises, which is also called "waste."

In addition, pursuant to [Va. Code § 55-243](#), in a proceeding for unlawful detainer based on nonpayment of rent, the defendant may avoid losing possession of the real estate by paying all rent, rent arrearages, reasonable attorney fees and late charges directly to the plaintiff or her attorney on or before the return date. This option also cannot be used more than once in a twelve-month period of continuous residency.

The landlord may accept rent under reservation, in which case acceptance of rent does not waive the landlord's right to seek possession of the leased property. To accept rent under reservation, the landlord must give written notice to the tenant that the acceptance is with reservation. This notice may be given either together with the written notice that the lease has been terminated or separately. Acceptance under reservation does not interfere with the tenant's right to retain possession by paying all rent and late fees into court, as described above. [Va. Code § 55-248.31:1](#).

Judgment for plaintiff awards plaintiff possession of the premises, rent due and damages rather than a lump sum dollar judgment as in suits in debt. Plaintiff may be

given a simultaneous judgment for money due and for possession without credit for security deposit, which shall be credited to the tenant's account when the tenant actually vacates the premises.

When the tenant pays with a bad check, a landlord may seek award of civil recovery pursuant to [Va. Code § 8.01-27.2](#) as part of damages requested on an unlawful detainer action filed pursuant to [Va. Code § 8.01-126](#). The landlord must have given notice and may be included in the five-day termination notice. The civil recovery may include an award of costs, attorney fees, and the lesser of \$250 or three times the amount of the bad check, or draft order.

Alternatively, plaintiff may receive a final judgment for possession of the property and continue the case for up to 120 days to establish final rent and damages. The plaintiff must provide notice to the defendant at least fifteen days prior to the continuance date advising the defendant of (1) the continuance date, (2) the amounts of final rent and damages, and (3) that the plaintiff is seeking judgment for these sums. A copy of this notice must be filed with the court. [Va. Code § 8.01-128](#).

The court must award attorneys' fees to the plaintiff if the rental agreement provides for payment of attorney's fees in the event of breach of the agreement or noncompliance by the tenant unless the tenant proves by a preponderance of the evidence that the failure to pay rent or vacate the premises was reasonable.

Plaintiff may also have a claim for the cost of service of any notice under [Va. Code §§ 55-225](#) or [55-248.31](#) or process by a sheriff or private process server, which cost shall not exceed the amount authorized by [Va. Code § 55-248.35](#).

If the defendant does not make an appearance in court, the plaintiff or the plaintiff's attorney or agent may include in the affidavit entered into evidence pursuant to subsection B a statement of the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of the date of the hearing. Upon request of the plaintiff or the plaintiff's attorney or agent, if the court determines that (i) the affidavit accurately sets forth the amount due the plaintiff and (ii) the unlawful detainer summons served upon the defendant requests judgment for all amounts due as of the date of the hearing, the court shall permit amendment of the amount requested on the summons for unlawful detainer filed in court in accordance with the affidavit and shall enter a judgment for such amount due as of the date of the hearing in addition to entering an order of possession for the premises.

C. Post-Trial Procedures

1. Appeal

After an appeal has been noted in writing, the bond must be posted and the writ tax paid within ten days of the judgment date. **EXCEPTION:** In cases of unlawful detainer against a former owner based upon a foreclosure against that

owner, a person who has been determined to be indigent shall post an appeal bond within 30 days from the date of judgment. A determination of indigence does not exempt the owner from the appeal bond requirement. The appeal bond is calculated pursuant to [Va. Code § 8.01-129](#), and includes:

- the district court judgment (principal, interest, district court costs, and attorney’s fees). [Va. Code § 16.1-107](#).
- the rent accruing during the appeal (based on expected length of time for appeal). The portion of the appeal bond covering rent for which both judgment was granted and that may accrue during the appeal period may not exceed *one year’s rent*.
- the damages *from the unlawful use and possession of the premises* accruing during the appeal (based on the expected length of time for appeal). The portion of the appeal bond covering damages for unlawful use and possession of the premises for which both judgment was granted and that may accrue during the appeal period may not exceed *three month’s damages*.

No appeal bond shall be required of a plaintiff in a civil case where the defendant has not asserted a counterclaim, the Commonwealth or when an appeal is proper to protect the estates of a decedent, an infant, a convict, or an insane person, or the interest of a county, city, town or transportation district created pursuant to Chapter 45 ([§ 15.2-4500](#) et seq.) of Title 15.2. In all civil cases, except trespass, ejectment or any action involving the recovering rents, no indigent person shall be required to post an appeal bond. ([Va. Code § 16.1-107](#)).

An appeal bond is not required for an appeal of a civil case from district court if the defendant has sufficient indemnity coverage through a liability insurance policy to satisfy the judgment and the defendant's insurer provides a written irrevocable confirmation of coverage in the amount of the judgment. ([Va. Code § 16.1-107](#)).

2. Execution

If the judgment is in favor of the plaintiff and the defendant has not appealed, the plaintiff may request execution of the court order. For any money judgment marked as satisfied pursuant to this section, nothing shall satisfy an unexecuted order of possession entered pursuant to § 8.01-126. [Va. Code § 8.01-454](#)

The plaintiff requests execution to recover the premises, rent due, damages (if any), court costs, and attorney fees. To recover the premises, the plaintiff applies for a writ of possession using the Request portion of the district court form DC-469, [REQUEST FOR WRIT OF POSSESSION IN UNLAWFUL DETAINER PROCEEDINGS/WRIT OF POSSESSION](#). See, the *DISTRICT COURT FORMS MANUAL* for instructions on completing this form.

The clerk prepares the writ of possession section of the district court form DC-469, [REQUEST FOR WRIT OF POSSESSION IN UNLAWFUL DETAINER PROCEEDINGS/WRIT OF POSSESSION](#). See, the *District Court Forms Manual* for instructions on completing this form. The landlord must affirmatively state that the landlord has not accepted rent payments without reservation since the entry of the judgment. If the landlord has accepted rent payments, no writ can issue.

The clerk issues the writ no earlier than ten days after trial, unless otherwise ordered by the court, to plaintiff to give to sheriff. Where there has been a default judgment in an unlawful detainer action for nonpayment of rent, or when the case arises out of a trustee's deed following foreclosure, or for immediate nonremediable terminations the clerk shall immediately issue a writ of possession upon request of the plaintiff. A writ of possession must be issued within one year from the judgment for possession. Therefore, the writ should not be issued if the request is made more than one year after the judgment. The sheriff's fee for the execution of the writ is paid to the clerk at the time of filing of the district court form DC-469 request.

The sheriff executes the writ and the defendant vacates the premises. The writ is effective not only against the tenant, but also against any of the tenant's guests and invitees and against trespassers. The writ should be executed within fifteen calendar days after receipt by the sheriff, or as soon as practicable, but no more than thirty days after the date the writ is issued. [Va. Code § 8.01-470](#).

The sheriff returns the executed writ to the clerk's office.

An immediate writ of possession shall not be issued when a tenant perfects an appeal.

In some instances, the judgment debtor will perfect his appeal after the issuance of the district court form DC-469, [REQUEST FOR WRIT OF POSSESSION IN UNLAWFUL DETAINER PROCEEDINGS/WRIT OF POSSESSION](#). Upon perfecting the appeal, the clerk promptly completes a district court form DC-323, Recall of Process, with a notation that the defendant perfected his appeal, and transmits it to the sheriff.

VIII. ATTACHMENTS

An "attachment" is a civil suit in which a plaintiff is suing to levy or seize specific property in which the defendant named has an interest, in order to satisfy a potential judgment in favor of the plaintiff.

The district courts have jurisdiction to try and decide attachment cases when the plaintiff's claim does not exceed \$25,000, exclusive of interest and attorney's fees. [Va. Code § 16.1-77 \(2\)](#).

An attachment is used when there is reasonable cause to believe that statutory grounds for attachment may exist. These grounds are usually situations in which plaintiff believes that normal process of law will not be sufficient to recover debts owed to him by the defendant.

The plaintiff may use an attachment when he has one of the following claims if one of the statutory grounds for attachment is present, [Va. Code § 8.01-533](#):

- Claims to specific personal property.
- Claims to any debt, including rent, whether due and payable or not (but does not apply for claims to any debt not yet due and payable where the only ground for attachment is the fact that a defendant is a foreign corporation or a non-resident individual with an estate or debts owing to such defendant in Virginia).
- Claims for damages for breach of express or implied contract.
- Claims for damages for a wrong.
- Claims for a judgment for which no *supersedeas* or other appeal bond has been posted.

[Virginia Code § 8.01-534](#) sets forth the following statutory grounds for attachment:

- When the defendant is not a resident of this Commonwealth;
- When the defendant is removing himself out of this Commonwealth with intent to change his domicile;
- When the defendant is removing the property out of this Commonwealth;
- When the defendant is converting his property into money with intent to hinder, delay or defraud his creditors;
- When the defendant has disposed of his estate with intent to hinder, delay or defraud creditors.
- When the defendant has absconded or has concealed himself or his property.
- When the defendant has previously assessed unpaid fees and penalties due to the Commonwealth. (Va. Code 46.2-613.4)
- The procedure for an attachment suit is the same as in the section, “Suits in Debt”, except as follows.

A. Case Initiation

Plaintiff prepares district court form DC-445, [ATTACHMENT PETITION](#) including grounds of attachment as listed on the back of the petition.

The petition in the **claim description** must show, ([Va. Code § 8.01-537](#)):

- For recovery of personal property:
 - Description of each item with enough detail that a reasonable person can identify such items. The description should include the kind of property and the quantity. If any additional sheet for such listing is used, petition should also state, “See attached list”.
 - Total fair market value and items plus damages (if any) for such detention.
 - Plaintiff’s claimed property interest (owner, borrower, etc.).
 - The particulars of the plaintiff’s claim to the property with enough detail to give the defendant(s) reasonable notice of the true nature of the claim.
- For recovery of debt or damage:
 - Enough details of the claim so that a reasonable person knows what is involved in the claim.
 - Amount sought to be recovered.
 - If based on a contract and if the claim is for a debt not then due and payable, at what time or times the debt will become due and payable.
- The petition, in the **grounds of attachment**, must show; ([Va. Code § 8.01-537](#)):
 - Which grounds of attachment are claimed. Multiple grounds must be claimed together (connected by “and”). Exception--grounds nos. 4 and 5 on the back of the petition (same as in [Va. Code § 8.01-534](#)) may be connected to each other (but not to other grounds) by “or” or “and.”
 - A list of specific facts attached to petition that support the grounds listed on the front of the petition.
- In the **statement of relief desired**, the petition must show; ([Va. Code § 8.01-537](#)):
 - Whether “levy” only or “levy and take into possession (seize)” is desired.
 - Whether specific items are to be levied upon or seized or whether any property of the principal defendant may be attached.

- The **STATEMENT** portion of the petition must be completed as follows:
 - If recovery of specific personal property is sought, the third and seventh lines are completed and, if applicable, the fourth, fifth and eighth lines are completed.

NOTE: In addition to plaintiff's name and address, plaintiff's telephone number or his attorney's name should be on the petition. The plaintiff, his agent or his attorney, must sign the petition and the signature must be acknowledged.

- If recovery of debt or damages is sought, the first and seventh lines are completed and, if applicable, the second, fifth, sixth and eighth lines are completed.

Plaintiff also tenders district court form DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#) with every petition. The minimum bond amounts are:

- If pre-trial "levy" only is requested,
 - for a cash or surety bond, the bond shall be at least the estimated fair market value of the property to be levied.
 - for a property bond, at least *twice* the estimated fair market value of the property to be attached.
 - If "levy and take into possession (seize)" is requested, twice the fair market value of property to be attached.
- If surety bonds are tendered, the judge or magistrate reviewing the petition must approve the surety. If a property bond is tendered, the bond amount must not exceed the net equity in the property. The plaintiff should be told that the sheriff will not seize property if the sheriff believes that the property valuation is too low and, therefore, the bond amount is inadequate.

B. Issuance Of Attachment ([Va. Code § 8.01-540](#))

A judge or magistrate, (not a clerk), shall make an *ex parte* review of the attachment petition and issue the DC-446, Attachment Summons, when appropriate. An attachment shall issue only upon a determination that:

- There is reasonable cause to believe that grounds of attachment may exist, and
- The petition complies with [Va. Code §§ 8.01-534](#), [8.01-537](#) and [8.01-538](#).

If those findings are met, the reviewing judge or magistrate, not a clerk, signs and issues a summons with a copy of the petition and the bond and the district court form

DC-407, [NOTICE TO DEBTOR - HOW TO CLAIM EXEMPTIONS/REQUEST FOR HEARING - EXEMPTION CLAIM](#). If the attachment is issued by a magistrate, it shall be returnable to the clerk's office of the jurisdiction where the petition is filed as directed by [Va. Code § 8.01-541](#), and the magistrate shall promptly send the petition and the bond, if any, to the clerk's office to which the attachment is returnable. [Va. Code § 8.01-540](#).

The REQUEST FOR HEARING - EXEMPTION CLAIM, on the reverse of district court form DC-407, [NOTICE TO DEBTOR - HOW TO CLAIM EXEMPTIONS/REQUEST FOR HEARING - EXEMPTION CLAIM](#) is attached to each copy of the summons, and the process is given to the judgment creditor to transmit to the sheriff for service. The petition must be returnable not more than thirty days after issuance of the summons. [Va. Code § 8.01-541](#).

The court costs must be paid within ten days from issuance of the summons if a magistrate issued the summons.

C. Service Of Process And Pre-Trial Procedures

The summons is served on the defendant or other responsible person when the levy or seizure is made, the sheriff takes possession of the property if the plaintiff so requested in the petition, and the executed summons is returned to the clerk's office. [Va. Code § 8.01-293](#).

If the defendant is not otherwise served with process, then the following process is to be used:

- Claims *not exceeding* \$500 (exclusive of interest and attorneys' fees).
 - The plaintiff completes the district court form DC-435, [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#).
 - The clerk posts a copy of the district court form DC-446, Attachment Summons at the courthouse, on the local public government website, or on the website of the circuit court clerk and certifies the posting of the attachment summons on the back of the original copy of the district court form DC-435, [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#) in the case file.
 - The clerk mails a copy of the district court form DC-446, Attachment Summons to the defendant at his last known address as stated in the district court form DC-435, [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#).

Fifteen days after posting and mailing the attachment summons, the court may try the case.

- Claims exceeding \$500.
- Use order of publication process described in the section, "Suits in Debt".

If the defendant wants the property released from the attachment and/or returned to him, the following steps apply:

- The *defendant* posts a counter bond district court form DC-448, [DEFENDANT'S BOND FOR LEVY OR SEIZURE](#) with the sheriff.
- The sheriff *takes* the bond and returns the property to the defendant.

See "Attachments – Issuance of Attachment" above, for procedure for handling request for exemption hearings.

The clerk's office assigns a file number, indexes the case, and prepares a docket following the same procedures as for suits in debt.

If an attachment summons is served on a financial institution and a joint account or trust account is attached, the financial institution may file an answer to that effect pursuant to [Va. Code § 6.1-125.3](#). If the plaintiff wishes to pursue the claim against such an account, he shall request the clerk to issue a district court form DC-430, SUMMONS FOR HEARING together with the district court form DC-446, ATTACHMENT SUMMONS and its attachments, to be served on the financial institution and the other parties having an interest in the account as identified by the financial institution. The financial institution is required to hold the amount attached in such account for twenty-one days from the filing of the answer unless served by the 21st day with a copy of the district court form DC-430, SUMMONS FOR HEARING in which case the funds are held pending the outcome of the case. If not timely served, the financial institution may treat the attachment summons as having terminated insofar as the joint or trust account is concerned.

D. Case Hearing

The defendant may request an early hearing, which must be heard within ten business days from the filing of the request.

Judicial or administrative income deduction orders for support take priority pursuant to [Va. Code § 20-79.3](#) over any other liens created by state law on an employee's income in an employer's hands. The judgment normally should be entered on a district court form DC-480, CASE DISPOSITION.

E. Post-Trial Procedures

Execution of an attachment judgment in favor of the plaintiff is as follows:

- The court order is sent to the sheriff.
- The plaintiff posts an attachment bond, if he has not already done so.
- The sheriff takes possession of the property.

- The clerk’s office voids the defendant’s attachment bond, if one was posted.

IX. DISTRESS FOR RENT

This type of civil action arises when a defendant-tenant refuses or fails to make rent payments to the landlord of the premises, and the landlord wants to take pre-trial action to insure the payment of rent. The plaintiff, through this suit, is attempting to preserve this right to recover the rent by having the court “distrain” (levy or seize) enough of the defendant’s property or debts to pay the rent due. The distress may be levied on any goods of the lessee, or his assignee or undertenant, found on the leased premises or which may have been removed from the leased premises not more than thirty days prior.

The procedures for distress actions are similar to procedures used in attachment suits. Like attachments, many procedures in distress suits are the same as “Suits in Debt”. However, the following procedures apply specifically to distress.

A. Case Initiation

Plaintiff prepares a district court form DC-423, [DISTRESS PETITION](#) including grounds of attachment as listed on the back of the petition.

- The petition in the “claim description” section must show:
 - Rent claimed;
 - The property which plaintiff seeks to distrain either by levy or by seizure.
 - Which grounds of attachment are claimed. Multiple grounds must be claimed together (connected by “and”). Exception--grounds 4 and 5 on the back of the petition form (same as in [Va. § 8.01-534](#)) may be connected to each other (but not to other grounds) by “or” or “and;” and
 - a list of specific facts attached to petition that support the grounds listed on the front of the petition.
- In the “statement of relief desired” section the petition must show:
 - Whether “levy” only or “levy and take into possession (seize)” is desired; and
 - Whether specific items are to be levied upon or seized or whether any property of the principal defendant may be attached.

NOTE: In addition to plaintiff’s name and address, plaintiff’s telephone number or his attorney’s name should be on the petition. The plaintiff, his agent or his attorney sign the petition and the signature must be acknowledged.

Plaintiff also tenders district court form DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#) with every petition. The minimum bond amounts are:

- If pretrial “levy” only is requested,
 - for a cash or surety bond, the bond shall be at least the estimated fair market value of the property to be levied.
 - for a property bond, at least twice the estimated fair market value of the property to be attached.
 - If “levy and take into possession (seize)” is requested, twice the fair market value of the property to be attached.
- If surety bonds are tendered, the judge or magistrate reviewing the petition must approve the surety. If a property bond is tendered, the bond amount must not exceed the net equity in the property. The plaintiff should be told that the sheriff will not seize property if the sheriff believes that the property valuation is too low and, therefore, the bond amount is inadequate.

The distress warrant shall not be issued unless the plaintiff pays the proper costs, taxes and fees. [Va. Code § 55-230](#); *see also* [Va. Code § 8.01-367](#). The Commonwealth shall not be required to give an indemnifying bond under the provisions of this section.

A judge or magistrate (not a clerk) shall make an *ex parte* review of the bond. Review is restricted to the contents of the petition and bond. A summons shall only be issued upon a determination that:

- there is reasonable cause to believe that grounds of attachment may exist, and
- the petition complies with statutory requirements.

If these findings are met, the judge or magistrate (not the clerk) signs and issues a district court form DC-424, DISTRESS WARRANT. A copy of the petition and the bond and the REQUEST FOR HEARING - EXEMPTION CLAIM, on the reverse of district court form DC-407, [NOTICE TO DEBTOR - HOW TO CLAIM EXEMPTIONS/REQUEST FOR HEARING - EXEMPTION CLAIM](#) is attached to each copy of the warrant. Then, the entire package is given to the judgment creditor for service. Plaintiff pays the levy fee directly to the sheriff. An additional copy is filed in the clerk’s office if issued by a magistrate. The return date shall be no more than thirty days from the date of issuance.

B. Service Of Process And Pre-Trial Procedures

The summons is served on the defendant or other responsible person where the levy or seizure is made, the sheriff takes possession of the property if the plaintiff so

requested in the petition, and the executed summons is returned to the clerk's office.
[Va. Code § 8.01-293](#).

If the defendant wants the property released from the distress warrant and/or returned to him, the following steps apply:

- The defendant posts a counter bond, district court form DC-448, [DEFENDANT'S BOND FOR LEVY OR SEIZURE](#) with the sheriff.
- The sheriff takes the bond and returns the property to the defendant.
- If the tenant-defendant whose property was subjected to a levy-type distress files an affidavit with the serving officer pursuant to [Va. Code § 55-232](#), stating that he is unable to give a forthcoming bond required by [Va. Code § 8.01-526](#).

Then the serving officer leaves the property in the possession of the tenant-defendant, at the risk of the defendant-tenant and returns the process to the court. Thereafter, upon ten days notice to the tenant-defendant, the plaintiff-landlord may move for judgment and sale of the property so levied.

See "Attachments – Issuance of Attachment" above, for procedure for handling request for exemption hearings.

The clerk's office assigns a file number, indexes the case, and prepares a docket following the same procedures as for suits in debt.

C. Case Hearing

The distress warrant shall contain a return date and be tried in the same manner as an action on a warrant as prescribed in [Va. Code § 16.1-79](#), except that the case shall be returnable not more than thirty days from its date of issuance. The trial or hearing of the issues, except as otherwise provided, shall be the same, as near as may be, as in actions *in personam*. [Va. Code § 55-230.1](#).

A nonresident property owner of four or more rental units in a city or county must have filed in the circuit court clerk's office the designation of a resident agent for service of process. Such a property owner cannot maintain an action in Virginia courts until such a designation has been filed.

The judgment normally should be entered on a district court form DC-480, CASE DISPOSITION.

D. Post-Trial Procedures

Execution of a judgment in favor of the plaintiff is as follows:

- The court order is sent to the sheriff.

- The plaintiff posts a bond if he has not already done so.
- The sheriff takes possession of the property.
- The clerk's office voids the defendant's bond, if one was posted.

E. Execution

For judgment in favor of the plaintiff, the defendant may choose to immediately pay off the debt if he is able to do so, or the plaintiff may be forced to sell the property seized or seize property and sell it.

When judgment of the court is in the plaintiff's favor, the plaintiff requests that the sheriff seize the items of property levied upon and sell them at public auction up to the point where the dollar amount on the warrant is satisfied. The remaining property, if any, is returned to the defendant.

X. SMALL CLAIMS DIVISION

The Code of Virginia requires that all judicial districts have small claims divisions of their general district courts. [Va. Code §§ 16.1-122.1](#) to 16.1-122.7. These divisions have the jurisdiction, that is, the power to hear and decide civil actions, where the amount claimed does not exceed \$5,000, or recovery of personal property of up to \$5,000 in value. Actions to which the Commonwealth is a party under the Virginia Tort Claims Act or suits against any officer or employee of the Commonwealth for claims arising out of the performance of their official duties or responsibilities are not eligible for trial in a small claims court. Jurisdiction is concurrent with the general district court over such cases.

Actions are commenced by filing a small claims civil warrant, the district court form DC-402, [WARRANT IN DEBT-SMALL CLAIMS DIVISION](#) or DC-404, [WARRANT IN DETINUE - SMALL CLAIMS DIVISION](#). The district court form DC-402, WARRANT IN DEBT is used for plaintiffs seeking money judgments. The district court form DC-404, [WARRANT IN DETINUE - SMALL CLAIMS DIVISION](#) is used for plaintiffs who seek the recovery of personal property, or property used as collateral for a loan in default. The plaintiff must specify a dollar amount of and the basis for the claim. A filing fee is paid, along with any service fees, which are taxed as costs in the case. The plaintiff may receive the information pamphlet "Small Claims Court Procedures" from the clerk prior to filling out the warrant. The clerk fills out the portion of the warrant which requires service of process on the defendant, and a copy of the warrant is served on the defendant by the method used in general district court. [Va. Code § 16.1-122.3](#). The defendant may also be served with the information pamphlet about small claims court. Although it is not required, a copy of the warrant may be mailed by first class mail by the plaintiff to the defendant at least ten days before the date when the plaintiff and defendant are due to return to court in the same manner as for other civil process. [Va. Code § 8.01-296 \(2\)\(b\)](#). The small claims forms contain a certificate of mailing for the plaintiff to use or the district court form DC-413, [CERTIFICATE OF MAILING POSTED SERVICE](#) may be used, which is delivered to the clerk's office prior to trial or to the court on the return date.

The trial shall be conducted on the return date, unless the trial date is changed by consent of all parties or by order of the court. [Va. Code § 16.1-122.3 \(E\)](#). All objections to venue that apply in the general district court apply in the small claims court. A continuance shall be granted to either the plaintiff or the defendant only for good cause shown. Counterclaims may be filed by a defendant against a plaintiff, but they may not exceed \$5,000. The defendant may file an answer or grounds of defense, but no other pleadings are allowed.

A defendant in the small claims division may remove the case to the regular general district court docket at any point in the proceedings prior to judgment and may be represented by an attorney for that purpose. The defendant may complete the REMOVAL TO GENERAL DISTRICT COURT portion of the district court form DC-402, [WARRANT IN DEBT - SMALL CLAIMS DIVISION](#) or district court form DC-404, [WARRANT IN DETINUE - SMALL CLAIMS DIVISION](#) and give it to the clerk or judge. Such a request may also be made orally. The court notes the remark on the reverse of the warrant.

All cases are tried in an informal manner; however, the witness shall be sworn. Parties must represent themselves, except

- A plaintiff or defendant that is a corporation or partnership may be represented by an owner, a general partner, an officer, or an employee who has all the rights of a party appearing *pro se*. An attorney may appear in this capacity only if he is representing his own corporation or partnership.
- A plaintiff or defendant who in the judge's opinion cannot understand or participate in the proceedings may be represented by a friend or relative if that person is familiar with the facts of the case and is not an attorney.
- An attorney may appear for the defendant only for the purpose of removing the case to the regular general district court docket at any time before judgment. [Va. Code § 16.1-122.4](#).

The small claims court is required to “conduct the trial in an informal manner so as to do substantial justice between the parties.” The judge may admit evidence that is inadmissible under the formal rules of evidence. [Va. Code § 16.1-122.5](#).

Judgment and collection procedures are the same as for general district courts. The judgment creditor or their attorney may enforce the collection of the judgment.

Appeals from the small claims court are taken in the same manner as other civil appeals, using the district court form DC-475, NOTICE OF APPEAL - CIVIL and other procedures applicable to appeals in civil cases.

XI. MISCELLANEOUS CASE TYPES

A. Lien Of Mechanic For Repairs

[Va. Code § 43-33](#)

A civil suit referred to as a “lien of mechanic for repairs” occurs when an owner (plaintiff) tries to get his property back from a mechanic (defendant), who may be holding the property to ensure payment. The owner (plaintiff) may have his property returned before trial, provided he/she posts bond in the amount claimed to be owed to the mechanic (defendant), plus all costs and fees. If bond is posted, the Sheriff or other local law enforcement agency shall seize the property in dispute and return it to the owner (plaintiff). This procedure is used when a dispute arises over the amount owed or charged by the mechanic (defendant).

1. Clerk’s Procedures

Step 1 The Clerk prepares the district court form DC-463, SUMMONS - LIEN OF MECHANIC FOR REPAIRS. There are 2 copies: original to the court, first copy to defendant and second copy to plaintiff.

Collect fees/sheriff fees. The plaintiff, (owner), in lieu of a separate certificate of mailing, may complete the back of the form if mailing to defendant occurs at or prior to filing of the case.

It is recommended to use the **OTHER** field to give a brief summary of what the plaintiff alleges.

Enter in the civil division of CMS **V**–civil case, and **ML**-Mechanic’s Lien as case type.

Step 2 The Clerk should verify the amount of claim with the mechanic (defendant), and complete the ORDER OF POSSESSION area of the district court form DC-463, SUMMONS - LIEN OF MECHANIC FOR REPAIRS. **Verification of amount in dispute is done whether or not plaintiff requests property back pre-trial.**

If owner (Plaintiff) desires to have their property returned before trial, the Clerk prepares district court form DC-462, [PLAINTIFF’S BOND-LIEN OF MECHANIC FOR REPAIRS](#).

The bond shall be equal to the lien claimed by the mechanic (defendant) plus courts cost. The bond may be cash or surety.

Receipt bond (if cash) to 503, using **ML** case type on receipt.

Step 3 Set case for trial, and issue summons for service.

The summons is served on the mechanic (defendant) by the sheriff, who shall also seize the property IF the plaintiff posted bond. The executed summons is returned to the clerk's office, and the sheriff delivers the seized property to the plaintiff.

Step 4 Finalize in CMS using appropriate code for **CASE DISPOSITION:**
P PLAINTIFF
D DEFENDANT

At hearing, if judgment in favor of defendant, the property is to be delivered to the plaintiff owner (if not previously returned by posting bond) and the plaintiff owner is to pay to the defendant the amount awarded by the Court. Judgment may also be in favor of owner-plaintiff.

The bond should be distributed to satisfy the judgment with the remainder returned to plaintiff, after appeal (ten day) time has elapsed.

Where no bond was posted, the plaintiff may recover the property and obtain execution of the order only AFTER he pays the defendant the amount of judgment as determined by the court.

Step 5 APPEAL PROCEDURES

Appeal may be noted in writing within ten calendar days of judgment.

NOTE: Bond and Circuit Court costs (including sheriff fees for service) are due within thirty days of **JUDGMENT**-not appeal date.

If case perfected, prepare file in accordance to local policy for delivery to the Circuit Court; and send check for fees and any funds in escrow account along with a completed district court form DC-25, CIRCUIT COURT CASE TRANSMITTAL AND FEES REMITTANCE SHEET.

See appendix on "Appeals" for procedures.

2. Forms:

DC-462 [PLAINTIFF'S BOND-LIEN OF MECHANIC FOR REPAIR](#)
DC-463 SUMMONS – LIEN OF MECHANIC FOR REPAIRS
DC-475 NOTICE OF APPEAL –CIVIL
DC-460 [CIVIL APPEAL BOND](#)
DC-25 CIRCUIT COURT CASE TRANSMITTAL AND FEES REMITTANCE SHEET

3. References

[Va. Code § 43-33](#) Lien of mechanic for repairs.

B. Tenant's Assertion And Complaint

The Virginia Residential Landlord and Tenants Act, [Va. Code § 55-248.2](#) *et seq.*, provides tenants with a remedy in situations where a landlord not exempted by [Va. Code § 55-248.5](#) fails to correct certain problems with rental property such that living conditions are impaired.

A tenant residing in rental property that has been foreclosed is eligible to file a tenant's assertion as provided in [Va. Code § 55-225.2](#). The tenant initiates this landlord/tenant dispute.

1. Clerk's Procedures

Step 1 The tenant prepares and files a district court form DC-429, [TENANT'S ASSERTION AND COMPLAINT](#). This form is also available on the internet to be downloaded, filled out on screen, printed and brought to the court. The clerk may draw to the attention of the tenant the PREREQUISITE CONDITIONS FOR RELIEF on the back of the DC-429. This pleading may be accompanied by a copy of a notice of the conditions causing the complaint that was **previously** sent to the landlord but shall not be required for the filing.

There should be the original and at least two copies of the district court form DC-429, [TENANT'S ASSERTION AND COMPLAINT](#). Collect fees/sheriff's fees.

The original is the courts. The first copy is served on the defendant. If there is more than one defendant, provide a copy to be served on each defendant. The second copy is given to the plaintiff after setting the court date.

Step 2 Enter the case into the CIVIL case entry screen, using **V** for civil case and **TA** (Tenant's Assertion) as case type.

Step 3 This hearing must be set within fifteen calendar days from the date of service on the landlord or his agent.

Step 4 The clerk's office sets up an escrow account for the tenant at this step. The tenant sends his/her periodic rent payment to the clerk's office for deposit in the escrow account until an order is entered. Receipt any monies remitted under the pending civil case number, using account code 509 (escrow/ collections for others).

Step 5 Judge hears the case and enters a judgment that determines distribution of the funds in the escrow account (between the landlord and tenant), and the duties to be performed by the landlord.
NOTE: Distribution of the funds in the escrow account can be disbursed to the successor landlord or the successor landlord’s agent if the tenant’s assertion involves rental property that has been foreclosed.

If appeal is not noted in writing within ten days, disburse funds in escrow account as directed by court order.

Case would be finalized using appropriate code for **CASE DISPOSITION**.

If judgment is for one (or more) defendant (s), update **J** field (beside def name) with appropriate code. Please note that in this unique case type, the judgment could be for both plaintiff and defendant, and, if so, should be updated accordingly.

Step 6 Appeal may be noted in writing within ten days of judgment. The appealing party has 30 days to perfect.

If case perfected, prepare file in accordance to local policy for delivery to the Circuit Court; and send check for fees and any funds in escrow account along with a completed district court form DC-25, **CIRCUIT COURT CASE TRANSMITTAL AND FEES REMITTANCE SHEET**.

See appendix on “Appeals” for procedures.

2. Forms

DC-429	TENANT’S ASSERTION AND COMPLAINT
DC-475	NOTICE OF APPEAL –CIVIL
DC-460	CIVIL APPEAL BOND
DC-25	CIRCUIT COURT CASE TRANSMITTAL AND FEES REMITTANCE SHEET

3. References

Va. Code § 55-248.27	Tenant’s assertion; rent escrow.
Va. Code §55-225.2	Remedies for landlord’s unlawful ouster, exclusion or diminution of service.

C. Tenant’s Petition for Relief from Unlawful Exclusion

The Virginia Residential Landlord and Tenants Act, [Va. Code § 55-248.2 et seq.](#), provides tenants with a remedy in situations where a landlord unlawfully removes or

excludes a tenant from residential premises or willfully interrupts or stops essential services. The tenant initiates this landlord/tenant dispute.

1. Clerk's Procedures

Step 1 The tenant prepares and files a district court form DC-431, TENANT'S PETITION FOR RELIEF FROM UNLAWFUL EXCLUSION. This form is also available on the internet to be downloaded, filled out on screen, printed and brought to the court.

There should be the original and at least two copies of the district court form DC-431, TENANT'S PETITION FOR RELIEF FROM UNLAWFUL EXCLUSION.

Collect fees/sheriff's fees.

The original is the courts. The first copy is served on the defendant. If there is more than one defendant, provide a copy to be served on each defendant. The second copy is given to the plaintiff after setting the court date.

Step 2 Enter the case into the CIVIL case entry screen, using **V** for civil case and **TA** (Tenant's Assertion) as case type.

NOTE: It is recommended that an early hearing date be set, if possible.

Step 3 Judge hears the case and enters a judgment that could include an order to recover possession, resume any interrupted utility service, or terminate the rental agreement and, in any case, recover actual damages, and reasonable attorney's fees.

Case would be finalized using appropriate code for **CASE DISPOSITION**.

If judgment is for one (or more) defendant (s), update **J** field (beside def name) with appropriate code.

Step 4 Appeal may be noted in writing within ten days of judgment.

If case perfected, prepare file in accordance to local policy for delivery to the Circuit Court; and send check for fees and any funds in escrow account along with a completed district court form DC-25, CIRCUIT COURT CASE TRANSMITTAL AND FEES REMITTANCE SHEET.

See appendix on "Appeals" for procedures.

2. Forms

DC-431	TENANT’S PETITION FOR RELIEF FROM UNLAWFUL EXCLUSION
DC-475	NOTICE OF APPEAL –CIVIL
DC-460	CIVIL APPEAL BOND
DC-25	CIRCUIT COURT CASE TRANSMITTAL AND FEES REMITTANCE SHEET

3. References

[Va. Code § 55-225.2, 55-248.26](#), Tenant’s remedies for landlord’s ouster, exclusion or diminution of service.

D. Interpleader

An interpleader action, pursuant to [Va. Code § 8.01-364](#), is filed when, prior to levy or execution, a party wishes the court to determine the rights of various individuals in certain property when two or more people (excluding the plaintiff) claim the property. The parties in the suit are the claimants in the property and include the person holding the property even if this person does not claim to own it. In general district court, an interpleader action may involve personal property not exceeding \$25,000.00. The case is initiated by the filing of a district court form DC-428, [WARRANT IN DEBT - INTERPLEADER](#) or a motion for judgment. At trial, the judge disposes of the property according to the rights of the parties.

This interpleader is similar to post-judgment interpleader discussed in “Suits in Debt - Post-trial Procedures” earlier.

E. Freedom Of Information Act - Injunctions Or Writs Of Mandamus

The process for handling a request for an injunction or a writ of mandamus to enforce a claim under the Virginia Freedom of Information Act is substantially the same as for processing a warrant in debt except that:

- A petition is drafted and filed in the general district or circuit court by the person seeking to enforce these rights. It may be in the form of a formal petition or some other writing. The district court form DC-495, [PETITION FOR INJUNCTION OR MANDAMUS - FREEDOM OF INFORMATION ACT AND AFFIDAVIT FOR GOOD CAUSE OR PROTECTION OF SOCIAL SECURITY NUMBERS ACT](#) may be used for this petition.
- The clerk indexes the petition as a civil case using case type of **OT**, collects civil fees and sheriff’s service fees, issues a district court form DC-430, SUMMONS FOR HEARING with a copy of the petition. This summons is to be served on the appropriate government official or employee whom the claimant identifies as the person upon whom process is to be served. The petition for mandamus or injunction shall be heard within seven days of the date of filing. [Va. Code § 2.2-3713.](#)

- If the claimant seeks a preliminary injunction, the case may be heard without notice to the other party if there is not enough time to permit process to be served on the government official or employee. If a preliminary injunction is entered, a subsequent hearing should be held to address the issue of whether a final injunction should be issued. The district court form DC-496, [ORDER FOR PETITION FOR INJUNCTION OR A WRIT OF MANDAMUS](#) should be used to either grant or deny the requested relief. The case is tried as an equity case.

If the court finds the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case. If a preliminary or final order is entered, the sheriff should be promptly contacted to insure prompt, timely service of the injunction or the writ of mandamus.

F. Enforcement Of Statutory Liens ([Va. Code § 43-34](#), [46.2-644.03](#))

In addition to the special provisions in [Va. Code § 43-33](#) for the owner to recover the property held under a mechanic's lien (*See* "Lien of Mechanic for Repair" earlier), certain statutory lien holders (innkeepers, livery stable, garage and marina keepers, mechanics and bailees) may bring a civil action to obtain a court order authorizing the sale of personal property held under a statutory lien to satisfy the debt for which the lien arose. In general district court actions, the right to file such an action arises if the *value of the property* held under a lien pursuant to Va. Code § 46.2-644.03 (not the debt for which the lien arose) exceeds \$12,500 but does not exceed \$25,000. If the lien is pursuant to Va. Code § 43-34, and the value of the property is more than \$10,000 but does not exceed \$25,000, this civil action may also be filed in the general district court. [Va. Code § 43-34](#), [46.2-644.03](#).

The applicable procedures are:

- The lien holder files a petition and pays the processing fee.
- Enter in the civil division of CMS using case type **OT**.
- The clerk prepares and issues a district court form DC-430, SUMMONS FOR HEARING with a copy of the petition attached to each copy of the summons. If the present owner of the property is a nonresident, or his address is unknown, notice may be served by posting such copy in three "public places" (as defined in [Va. Code § 43-34](#)) in the county or city wherein the property is located.
- A hearing is conducted.
- If the court is satisfied that the debt and lien are established by the evidence and that the property should be sold to pay the debt, the court orders the sale to be made by the sheriff of the county or city. If the property to be sold is a motor vehicle and the vehicle is owned by an active duty member of the military, the lienholder shall comply with the provisions of the federal Servicemembers Civil

Relief Act when disposing of the vehicle, even if the value of the vehicle is less than \$12,500.

G. Human Rights Violations

1. Local Ordinances

The governing body of any city, town, or county may enact an ordinance prohibiting discrimination in housing, employment, public accommodations, credit and education on the basis of race, color, religion, sex, national origin, age, marital status or disability and enact an ordinance establishing a local commission on human rights.

A local commission shall have the powers and duties granted by the Virginia Human Rights Act.

2. Wrongful Discharge Claims

Under [Va. Code § 2.2-2639](#), no employer employing more than five but less than fifteen persons shall discharge any such employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation or age, if the employee is forty years of age or older.

The employee may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly discharged the employee in violation of this section. Any such action shall be brought within 300 days from the date of the discharge. The court may award up to twelve months' back pay with interest at the judgment rate. However, if the court finds that either party engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment without regard to the twelve-month limitation.

In any case where the employee prevails, the court shall award attorney's fees from the amount recovered, not to exceed twenty-five percent of the back pay awarded. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

H. Arbitration Proceedings

Arbitration is a dispute resolution method where a neutral third party renders a decision after a hearing in which both parties can be heard. It is intended to avoid the delay, formality, and expense of litigation. General district courts have concurrent jurisdiction with the circuit courts over arbitration matters when the amount in controversy is within the jurisdictional limits of the general district court. Any party who disagrees with the order to compel arbitration may appeal the decision to the

Circuit Court [Va. Code § 16.1-77 \(10\)](#). The powers of the general district court include the following:

1. Proceedings To Compel Or Stay Arbitration

On application of a party showing an arbitration agreement, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration. However, if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue of the existence of an agreement and shall order arbitration only if it finds for the moving party.

- If there is a pending case in CMS and the court enters a motion to compel arbitration, and orders the civil action stayed, update CMS with **O** in the **J/DJ/O/C** field on the CMS H/D screen and **O** in the **CASE DISP** field. If the court does not stay the civil action, update CMS according to the disposition, i.e., continued, dismissed, or non-suited.
- There is no pending case and the first pleading filed is a motion to compel arbitration. Enter in the civil division of CMS assigning a new civil number using case type **OT**, collecting all filing fees and service fees, and placing on the docket for a hearing. The court will enter an order compelling or denying the motion. Update CMS with **O** in the **J/DJ/O/C** field on the CMS H/D screen and **O** in the **CASE DISP** field whether or not the court grants the motion. Make a notation in the "Remarks" field as to the disposition of the motion, i.e., motion granted or denied.

Additionally, any action or proceeding involving an issue subject to arbitration shall be stayed if an application for a stay has been made. When the application is made in such action or proceeding, the order for arbitration shall include the stay. The court may stay an arbitration proceeding on a showing that there is no agreement to arbitrate. Such an issue, when in dispute, shall be heard and the stay ordered if found for the moving party. If the stay is found for the opposing party, the court shall order the parties to proceed to arbitration.

If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications for refusal to arbitrate, the application shall be made in that court. Otherwise, the application may be made in any court of competent jurisdiction.

An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or because any fault or grounds for the claim sought to be arbitrated have not been shown. [Va. Code § 8.01-581.02](#).

2. Appointment Of Arbitrators

The court, on application of a party, shall appoint one or more arbitrators in the absence of an agreement, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed. Contact the Office of the Executive Secretary for names of arbitrators when needed for an appointment. An arbitrator so appointed has all the powers of one specifically named in the agreement. [Va. Code § 8.01-581.03](#).

The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy. [Va. Code § 8.01-581.04 \(1\)](#).

3. Witnesses, Subpoenas, Depositions

The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action. All provisions of law compelling a person under subpoena to testify are applicable. [Va. Code § 8.01-581.06](#).

4. Change Of Award By Arbitrators

On application of a party or, if an application to the court is pending, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify, correct or clarify the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice shall be given to the opposing party, stating that he must serve his objections, if any, within ten days from the notice. [Va. Code § 8.01-581.08](#).

5. Confirmation Of An Award

Upon application of a party, the court shall confirm an award, unless, within the time limits imposed, grounds are urged for vacating or modifying or correcting the award, in which case the court shall follow the procedures for vacating or modifying an award. [Va. Code § 8.01-581.09](#).

- If an order confirming an arbitration award is entered in the court's record, enter in the civil division of CMS using a new case number and case type **OT**. CMS should be updated according to the order, i.e., judgment for the plaintiff, etc. If any subsequent enforcement actions are filed, enter as a subsequent action to the new civil case number and collect applicable filing fees.

6. Vacating An Award

Upon application of a party, the court shall vacate an award where:

- (1) The award was procured by corruption, fraud or other undue means;
- (2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any of the arbitrators, or misconduct prejudicing the rights of any party;
- (3) The arbitrators exceeded their powers;
- (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefore or refused to hear evidence material to the controversy or otherwise so conducted the hearing, in such a way as to substantially prejudice the rights of a party; or
- (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under [Va. Code § 8.01-581.02](#) and the party did not participate in the arbitration hearing without raising the objection.

The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

An application for vacating an award shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if based upon corruption, fraud or other means, it shall be made within ninety days after such grounds are known or reasonably should have been known.

In vacating the award on grounds other than those stated in number (5) above, the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court. If the award is vacated on grounds set forth in subdivisions (3) and (4), the court may order a rehearing before the arbitrators who made the award or their successors. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award. [Va. Code § 8.01-581.010](#)

7. Modification Or Correction Of Award

Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

- There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

- The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- The award is imperfect in a matter of form, not affecting the merits of the controversy.

If the application is granted, the court shall modify and correct the award so as to affect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

An application to modify or correct an award may be joined in the alternative with an application to vacate the award. [Va. Code § 8.01-581.011](#)

8. Judgment Or Decree On Award

Upon granting an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity therewith and be docketed and enforced as any other judgment or decree. The court may award costs of the application, proceedings, and disbursements. [Va. Code § 8.01-581.012](#)

9. Applications To Court

An application to the court shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action. [Va. Code § 8.01-581.013](#)

10. Venue

Unless specifically provided for elsewhere in the code, an initial application shall be made to the court of the county or city in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county or city in which it was held. Otherwise, venue of the application shall be as provided in [Va. Code § 8.01-257](#) et seq. All subsequent applications shall be made to the court hearing the initial application unless the court directs otherwise. [Va. Code § 8.01-581.015](#)

11. Appeals

An appeal may be taken from:

- An order denying an application to compel arbitration;
- An order by a general district court granting an application to compel arbitration;
- An order granting an application to stay arbitration;

- An order confirming or denying an award;
- An order modifying or correcting an award;
- An order vacating an award without directing a rehearing; or
- A judgment or decree entered pursuant to the provisions of this article.

An appeal granting or denying a motion to compel arbitration must be noted in writing within ten days using district court form DC-475, NOTICE OF APPEAL – CIVIL. Writ tax and costs are collected based on “General District Appeal – No Monetary Damages”. The writ tax and costs shall be posted within 30 days from the date of judgment. [Va. Code § 8.01-581.016](#)

XII. *PRO SE* LAWSUITS BY PRISONERS

The “Virginia Prisoner Litigation Reform Act” ([Va. Code §§ 8.01-689](#) through -695) creates a procedure that prisoner-plaintiffs must follow in order to file *pro se* civil actions for money damages. It is intended to encompass actions brought by prisoners that arise from the conditions of their confinement. For example, it does not apply to custody or visitation proceedings brought by incarcerated petitioners.

In order to proceed with a suit governed by the Act, the prisoner-plaintiff must pay full filing fees and costs unless granted *in forma pauperis* status. The approval of *in forma pauperis* status permits payment of filing fees and costs in installments, as directed by the court. If the prisoner-plaintiff has had no deposits in his inmate trust account for the six months preceding the filing of the action, prepayment of fees and costs are waived but will be taxed at the end of the case.

A prisoner-plaintiff who seeks *in forma pauperis* status must provide the court with a certified copy of his inmate trust account for the preceding twelve months. This document should be taken to the judge for consideration. If *in forma pauperis* status is granted, the prisoner-plaintiff shall make payments, in equal installments as the court directs, towards satisfaction of the filing fee and costs. If the court orders such payments, the clerk's office would set up a civil receivable in FMS. If a prisoner-plaintiff who has been granted *in forma pauperis* defaults on the schedule of installment payments for filing fees, the court should dismiss the case and not refund the incomplete installment payments.

In forma pauperis status must be denied if the prisoner-plaintiff has had three or more cases or appeals dismissed for being frivolous, malicious, or for failure to state a claim, unless the prisoner-plaintiff shows that he is in imminent danger of serious physical injury at the time of filing suit or it would be manifest injustice to deny such status. Unless it was your court that had dismissed three or more of the prisoner-plaintiff's prior cases as being frivolous or malicious or for the failure to state a claim, the court would not know to deny *in forma pauperis* status on that basis. If *in forma pauperis* status is incorrectly granted because the prisoner-plaintiff has had three or more cases or appeals dismissed for being frivolous, malicious, or for failure to state a claim, the [Office of the Attorney General](#) will simply object to the status and the court can review its decision.

Following the granting of *in forma pauperis* status or upon the receipt of the proper filing fees, [Va. Code § 8.01-694](#) directs the court to “serve” the motion for judgment and supporting papers on the [Office of the Attorney General](#). The Office of the Attorney General is willing to accept this service by mail. The address to be used is:

Correctional Litigation Section
Office of the Attorney General
900 East Main Street
Richmond, VA 23219.

This Act provides for the review of the prisoner-plaintiff’s pleadings as they are filed, as opposed to waiting until a return date. The prisoner-plaintiff’s failure to state his claims in a written motion for judgment plainly stating facts sufficient to support his cause of action, accompanied by all necessary supporting documentation, constitutes grounds for dismissal. The court must rule on initial dispositive motions on the record whenever possible rather than hold a hearing.

The Act does not confer on the general district any authority to issue transportation orders to have prisoner-plaintiffs or incarcerated witnesses brought to a hearing. Therefore, the decision of [Commonwealth v. Brown](#), 259 Va. 697 (2000), is still the controlling law for general district courts in this regard. The general district court does have the authority to conduct hearings by telephonic communication systems or video and audio communication systems. [Va. Code § 16.1-93.1](#).

The prisoner-plaintiff may not seek the limited discovery available in general district court, ([Va. Code § 16.1-89](#); Virginia Supreme Court Rule 4:9) until initial dispositive motions are ruled upon, and then only when he can demonstrate to the court that his requests are relevant and material to the issues in the case. No subpoena for witnesses or documents shall issue unless a judge of the court has reviewed the subpoena request and specifically authorized a subpoena to issue. The court shall exercise its discretion in determining the scope of the subpoena and may condition its issuance on such terms as the court finds appropriate. [Va. Code § 8.01-695](#).

No prisoner action shall be filed except in the city or county in which the prison is located where the prisoner was housed when his cause of action arose.

XIII. ASSIGNMENT OF JUDGMENT

Many times, a judgment creditor will sign or assign a judgment in their favor. An assignment, in order to be so noted, must be in writing, showing the date thereof, the name of the assignor and assignee, the amount of the judgment, and when and by what court granted, and either acknowledged as are deeds for recordation in the clerks’ offices of circuit courts in this Commonwealth, or signed by the assignor, attested by two witnesses; or such judgment may be assigned by notation on the margin of the judgment lien docket on the page of the book where same is docketed, by the judgment creditor or his attorney of record, and attested by the clerk. The assignment, after the same is noted upon the judgment

docket as is herein provided, shall be filed by the clerk with the other papers in the case in his office. When such assignment is made and noted as herein provided further executions shall be issued in the name of the assignee as the plaintiff in the case. [Va. Code § 8.01-452](#).

The following describes the procedures involved.

- Assignment must be in writing:
 - Must include date of assignment
 - Name of Assignor
 - Name of Assignee
 - Amount of judgment
 - When and by what court granted
- Assignment must be:
 - Acknowledged,
 - Or signed by the assignor, attested by two witnesses,
 - Or noted on the case papers by the judgment creditor or attorney of record and attested by the clerk.
- No fees are charged for an assignment of judgment.
- In CMS, make a notation in remarks “Judgment assigned to(Name of Assignee.) Do not enter as a new case in CMS.
- File assignment with case papers.
- Future executions should be styled: John Jones, Assignee for John Doe, Plaintiff vs. Jane Doe, Defendant.

XIV. EXTENSION OF JUDGMENTS

Normally, executions on a judgment in district court can be issued for ten years from the date of judgment. However, the judgment creditor may extend this time period if the judgment creditor, prior to the expiration of the ten years, pays the circuit court docketing and indexing fees along with any other required filing fees and docketts the judgment in the circuit court in the same geographic location as the general district court. The judgment creditor can then request issuance of executions in the general district court after expiration of the ten-year period upon the filing in the district court of an abstract from the circuit court.

The following clerk’s procedures are recommended when plaintiff/creditor filing abstract from circuit court:

Step 1 Plaintiff/creditor files CC-1464, [ABSTRACT OF JUDGMENT](#), or a certified copy of district court form DC-465, ABSTRACT OF JUDGMENT obtained from the Circuit Court.

There are no fees associated with this filing, however if the plaintiff/creditor is asking for additional execution off of this abstract, appropriate fees for those executions will apply.

Assign a new case number in the Civil division of case management. Any additional executions will be entered as subsequent actions to the new case number. Enter the original date of judgment in the **REMARKS** field.

Case type will be **AJ**.

Filing date and hearing date are the same date.

Step 2 **J/DJ/O/C** field is **O** (other).
Case Disp field is **O** (other).

Step 3 **REMARKS** field:
AJ cases will appear on the internet. No money amounts will display if the court has entered the case utilizing only **REMARKS** to insert judgment amounts and costs. The internet will reflect judgment as “other.” Because the original date of judgment is included in remarks, the credit bureau and others should not reflect this as a new judgment against the defendant.

References

- [Va. Code § 16.1-69.55](#) Retention of case records; limitations on enforcement of judgments; extensions
[Va. Code § 16.1-94.1](#) Limitations on enforcement of district court judgments.

XV. COLLECTION OF CHILD SUPPORT

Each juvenile and domestic relations district court may enter judgment for money in any amount for arrears of support and maintenance. If the amount of the judgment does not exceed \$25,000, exclusive of interest and any attorney’s fees, the obligee/petitioner or the Division of Child Support Enforcement may deliver an abstract of any such judgment entered to the general district court of the same judicial district, and executions upon such judgment shall be issued by the clerk of such general district court. [Va. Code § 16.1-278.18](#).

The following procedures are recommended when a petitioner is filing such abstract from the juvenile and domestic relations court.

Step 1 Petitioner files DC-465, [ABSTRACT OF JUDGMENT](#), obtained from the Juvenile and Domestic Relations Court.

There are no fees associated with this filing, however if the petitioner is asking for additional execution from this abstract, appropriate fees for those executions will apply.

Assign a new case number in the Civil division of case management. Any additional executions will be entered as subsequent actions to the new case number. Enter the original date of judgment in the **REMARKS** field.

Case type will be **AJ**.

Filing date and hearing date are the same date.

Step 2 **J/DJ/O/C** field is **O** (other).
Case Disp field is **O** (other).

Step 3 **REMARKS** field:
AJ cases will appear on the internet. No money amounts will display if the court has entered the case utilizing only **REMARKS** to insert judgment amounts and costs. The internet will reflect judgment as “other.” Because the original date of judgment is included in remarks, the credit bureau and others should not reflect this as a new judgment against the defendant.

References

[Va. Code § 16.1-278.18](#) Money judgments for arrearages in support from the juvenile and domestic relations court.