

## Table of Contents

<b>Table of Contents</b> .....	<b>i</b>
<b>Chapter 1 - Overview</b> .....	<b>1-1</b>
Civil Law - Generally .....	1-1
Civil Actions - Law and Chancery No Longer Distinguished.....	1-1
Common Law and Statute Law .....	1-2
Equity.....	1-2
Effect of Distinction between Law and Equity.....	1-4
Court Organization and Jurisdictional Distinctions.....	1-4
Supreme Court of Virginia .....	1-4
Court of Appeals of Virginia .....	1-5
Circuit Courts.....	1-5
District Courts.....	1-6
Participants in a Civil Action.....	1-7
Plaintiff.....	1-8
Defendant.....	1-8
Attorneys.....	1-8
<i>Pro se</i> Litigants.....	1-8
Guardian <i>Ad litem</i> .....	1-8
Commissioner in Chancery.....	1-8
Judges .....	1-9
Clerk of Circuit Court.....	1-9
Juries.....	1-9
Condemnation Commissioners.....	1-9
Special Commissioners.....	1-9
Registered Agents .....	1-10
Executors/Administrators.....	1-10
Sheriff .....	1-10
Judge Pro Tempore.....	1-10
Mediators.....	1-10
Police Officers.....	1-10

General Description of Civil Case Pleadings .....	1-11
Legal Causes of Action (formerly known as Actions at Law) .....	1-12
Complaint .....	1-13
Bills of Particulars.....	1-14
Demurrers.....	1-14
Venue.....	1-14
Answer .....	1-14
Cross-Demands.....	1-15
Suits in Equity.....	1-16
Complaint .....	1-16
Demurrers.....	1-17
Pleas in Equity .....	1-18
Disclaimers.....	1-18
Answers.....	1-18
Cross-Claims.....	1-18
Sources of Law Applicable to Civil Cases .....	1-18
Statutory Law.....	1-18
Acts of the General Assembly.....	1-19
Case Reporters.....	1-19
Opinions of the Attorney General .....	1-19
Other Reference Works.....	1-19
<b>Chapter 2 - Case Initiation .....</b>	<b>2-1</b>
Introduction.....	2-1
Acknowledging Receipt of Case Papers.....	2-1
When an Increase in <i>Ad Damnum</i> Allowed by the Court .....	2-3
Transfer of Cases – Amended Amount of Claim .....	2-4
Case Numbering .....	2-5
Indexing .....	2-6
Preparation of Case File – Paper Files.....	2-7
Issuance of Court Process.....	2-8
General.....	2-8
Service of Process.....	2-8

Acceptance/Waiver of Service.....2-9

Order of Publication .....2-9

Certified Mailing ..... 2-10

Service Upon a Corporation or State Corporation Commission..... 2-10

Service on Secretary of the Commonwealth..... 2-11

    Virginia Code § 8.01-329 states: ..... 2-11

Service Upon the Commissioner of DMV ..... 2-13

Attorney-Issued Subpoenas ..... 2-13

*Pro Se* Civil Actions -*Pro Se* Litigants..... 2-14

Virginia Prisoner Litigation Reform Act ..... 2-15

**Chapter 3 - Caseflow Management.....3-1**

    Docket Call.....3-1

        Docket Preparation.....3-1

        Civil Docket Procedures.....3-2

    Caseflow Management .....3-3

        Defining Delay .....3-3

        Considerations in Developing Caseflow Management Prevention Efforts.....3-4

        Forming a Team.....3-5

        Steps Taken by the Court or Team to Assess Delay .....3-6

        Developing Caseflow Management Programs.....3-9

        Examples of Caseflow/Calendar Management Programs..... 3-10

    Requests For Subpoenas, Production Of Documents, Etc..... 3-11

        Definitions ..... 3-11

        Subpoena ..... 3-12

        Subpoena *Duces tecum*..... 3-13

        Uniform Interstate Depositions and Discovery Act..... 3-18

    Jury Management ..... 3-19

        Civil Jury Composition..... 3-20

        Condemnation Juries..... 3-21

        Creation of the Master Jury List/It’s Use in Jury Management..... 3-21

        Appointment of Jury Commissioners..... 3-24

        Master Jury List..... 3-25

Term Jury List .....	3-28
Petit Jury.....	3-30
Jury Orientation.....	3-31
Voir dire.....	3-33
Microfilming and Indexing Orders; Order Books.....	3-33
Microfilming.....	3-33
Court Orders.....	3-35
Procedures listed below are typical when an order is prepared by the court: .....	3-35
Indexing Orders .....	3-36
Order Books and Other Information Found In the Clerk's Office .....	3-36
Appeals .....	3-39
Court of Appeals of Virginia .....	3-40
Supreme Court of Virginia .....	3-49
<b>Chapter 4 - Pre-Trial.....</b>	<b>4-1</b>
Pretrial Conferences.....	4-1
Hearings on Motions .....	4-2
Commissioner in Chancery .....	4-3
Alternative Dispute Resolution.....	4-3
Referral .....	4-4
Cases for Mediation.....	4-5
Process.....	4-6
Appointment of Guardian Ad Litem .....	4-9
Generally .....	4-9
Specific Appointments .....	4-10
Recoup Fees .....	4-13
Nonsuit, Dismiss Action With(Out) Prejudice .....	4-14
Amendment of Claim – Case Transfer .....	4-14
Rules of The Supreme Court of Virginia .....	4-15
Pleadings .....	4-15
Time Computation.....	4-15
Amendments to Pleadings .....	4-15
Discretion of Court-Extensions of Time .....	4-16

Verification - Effect of Omission of Required Oath..... 4-16

Endorsements - Submission of Draft Orders, etc. .... 4-16

Legal Causes of Action & Actions in Equity ..... 4-16

Interpreters..... 4-35

Interpreters – Deaf and Hard of Hearing..... 4-35

Local Rules of Court (Rule 1:15)..... 4-36

Purging Inactive Cases From The Docket..... 4-37

    One Year..... 4-37

    Two Years ..... 4-38

    Three Years..... 4-38

**Chapter 5 - Trial of the Action/Post-Trial..... 5-1**

    Bench Trial..... 5-1

        Procedures..... 5-1

    Jury Trial..... 5-4

        Right to Trial by Jury ..... 5-5

        Eligibility for and Exemption from Jury Service..... 5-6

        Selection of Trial Jurors ..... 5-6

        Conduct of Jury Trial..... 5-8

        Juror Reimbursement ..... 5-15

    Clerk’s Duties In The Courtroom..... 5-15

        The Court File ..... 5-16

        Jury Trial..... 5-16

        Pre-Trial Motions ..... 5-16

        Trial..... 5-16

        Trial Exhibits..... 5-16

        Post-Trial Motions..... 5-16

        Court Orders..... 5-17

        Post-Trial Matters ..... 5-17

        Under Advisement Cases..... 5-17

    Post-Trial Motions..... 5-17

    Judgments and Executions Thereon..... 5-18

    Records Management..... 5-18

Statutory Recordkeeping Duties ..... 5-18

Creating A Records Management Program..... 5-20

Dealing with Electronic Records..... 5-23

Destroying Circuit Court Records ..... 5-24

Destroying District Court Papers..... 5-27

**Chapter 6 - Suits/Action Types (A-B).....6-1**

Administrative Process Act – Judicial Review..... 6-1

Administrative Appeal (Employee Grievance)..... 6-3

Administrative Appeal (Virginia Retirement System Member Grievance)..... 6-4

Administrative Impoundment of Motor Vehicles ..... 6-5

Administrative Suspension of Driver’s License ..... 6-5

Adoption ..... 6-5

    Adoption-Foreign ..... 6-9

    Adoption-Post Adoption Contact And Communication Agreements ..... 6-11

Adult Protective Services Emergency Order – Aged or Incapacitated Adults..... 6-13

Animal Violations ..... 6-15

Annexation ..... 6-15

Appeals ..... 6-18

    Blood Borne Pathogens Appeal ..... 6-18

    Civil Contempt from District Court ..... 6-19

    Civil Proceedings from J&DR ..... 6-22

    Decision from Board of Zoning Appeals ..... 6-29

    Decision from Zoning Administrator Decisions..... 6-32

    Decision of ABC Board..... 6-34

    Decision of Board of Real Estate Review, (Board of Assessors) and Equalization Board ..... 6-35

    Decision of Compensation Board or Governing Body ..... 6-37

    Decision of Support Enforcement Set Off Debt Collections ..... 6-40

    Decision of Employment Commission..... 6-41

    Decision of Local Governing Body (Historic Landmarks)..... 6-43

    Decision of Marine Resources Commission ..... 6-44

    Denial of Authorization for Abortion from J&DR ..... 6-46

    Denial of Voter Registration..... 6-49

General District Court Appeal..... 6-50

Involuntary Commitment/Inpatient and Outpatient - Va. Code § 37.2-821..... 6-54

Isolation/Quarantine Order ..... 6-56

Probate – Not an Original Action ..... 6-58

Refusal to Take Blood or Breath Test..... 6-59

Testing For Sexually Transmitted Infections Appeal ..... 6-60

    Withdrawal of Appeal from District Court ..... 6-62

Appointment..... 6-63

    Church Trustees and Fraternal Organizations Trustees..... 6-63

    Special Conservator of the Peace..... 6-65

    Special Conservator of the Peace-Revocation ..... 6-68

    Guardian/Conservator ..... 6-70

    Special Justice..... 6-70

    Standby Guardian/Standby Conservator ..... 6-71

Approval Of The Right To Be Eligible To Register To Vote ..... 6-71

Attachments ..... 6-73

Augmented Estate..... 6-78

Authorization of Non-Ministers to Perform Marriages ..... 6-78

Birth Certificate – Amendment..... 6-79

Bond ..... 6-80

**Chapter 7 - Suits/Action Types (C) ..... 7-1**

    Change of Sex..... 7-1

    Child Abuse Or Neglect – Unfounded Complaint ..... 7-2

    Civil Commitment for Sexually Violent Predators ..... 7-4

    Sexually Violent Predator Timeframes ..... 7-9

    Civil Contempt..... 7-11

    Complaint – Legal Cause Of Action Or Equitable Action..... 7-13

    Compromise Settlement ..... 7-15

    Concealed Handgun Permit ..... 7-17

        Application for Concealed Handgun Permit ..... 7-17

        Renewal of Concealed Handgun Permit ..... 7-21

        Replacement Permit for a Change of Address ..... 7-22

Replacement Permit for Lost or Destroyed Permit, Change of Name..... 7-23

Denial of Concealed Handgun Permit - Petition for Review ..... 7-24

Revocation/Suspension of Concealed Handgun Permit ..... 7-25

Condemnation/Eminent Domain/Inverse Condemnation and Related Procedures..... 7-26

Confession of Judgment..... 7-44

Consolidation of Counties..... 7-49

Construe/Establish/Reform Wills..... 7-51

Contracts..... 7-51

    Rescission of Contract..... 7-51

    Seeking Damages & Performance..... 7-52

    Seeking Money Damages..... 7-54

    Seeking Specific Performance..... 7-55

Convey/Encumber Church Property..... 7-56

Correction of Erroneous or Improper Assessments of Local Levies..... 7-58

Correction of Erroneous or Improper Assessments of State Tax ..... 7-59

Correct Orders - Default Judgment/Pro Confesso..... 7-61

    Amendment of Final Decree, etc. in Original Action..... 7-62

    File A New Action to Amend, Etc. The First Case..... 7-63

Counterclaim..... 7-63

Cross Claim ..... 7-65

Custodian – Virginia Uniform Transfers to Minors Act..... 7-67

    Duties of a Custodian..... 7-67

    Incidents Involving a Petition to Circuit Court ..... 7-67

**Chapter 8 - Suits/Action Types (D-F) ..... 8-1**

Death Certificate – Amendment..... 8-1

Declaratory Judgment..... 8-4

Declare Death..... 8-5

Destruction of Unexecuted Felony and Misdemeanor Warrants..... 8-7

Detinue ..... 8-9

Divorce/Annulment/Affirmation ..... 8-13

Ejectment..... 8-24

Elections..... 8-28



Referendum Elections.....	8-28
Special Elections (Constitutional Officers) .....	8-30
Special Elections (Local Governing Body or Local School Board) .....	8-32
Recount of Election .....	8-33
Elective Share.....	8-36
Election Laws – Violation of .....	8-36
Enforcements.....	8-36
Mechanic’s Lien .....	8-36
Vendor’s Lien.....	8-38
Erroneous or Improper Assessments of Local Levies .....	8-40
Escheat.....	8-40
Establishments .....	8-42
Establish Property Line.....	8-42
Establish Record of Birth .....	8-43
Establish Report of Foreign Adoption .....	8-45
Establish Residency - Eligibility for In-State Tuition .....	8-45
Establish Right-Of-Way.....	8-46
Establish/Impeach/Reform Will .....	8-48
Expungement .....	8-48
Expungement of Unlawful Detainer .....	8-54
Foreign Country Judgments .....	8-58
Forfeitures .....	8-59
Bail Bond .....	8-59
Financial Accounting for Processing Bond Forfeitures .....	8-63
Bond Refund Requests.....	8-64
Contraband Seized For ABC Violations.....	8-64
Forfeiture of Property, Money.....	8-66
Freedom of Information.....	8-70
<b>Chapter 9 - Suits/Action Types (G-M).....</b>	<b>9-1</b>
Garnishment.....	9-1
Guardians/Conservators .....	9-6
Guardian/Conservator Appointment.....	9-6

Guardian/Conservator Review Hearings ..... 9-10

    Guardianship – Restrict Communication, Visitation, or Interaction ..... 9-12

    Guardian/Conservator Appointment-Uniform Adult Guardianship and Protective Proceedings Act 9-14

    Guardian of Minor – Appointment of - Estate Filing ..... 9-18

    Guardian Of Minor – Distribution From Estate..... 9-20

    Standby Guardian Conservator..... 9-22

    Transfer of Guardianship or Conservatorship-Uniform Adult Guardianship and Protective Proceedings Act ..... 9-24

Guardianship For Enrolling Child In School ..... 9-27

Habeas Corpus Ad Subjiciendum ..... 9-27

Illegal Gambling Devices..... 9-31

Income Deduction Order..... 9-32

Injunction ..... 9-34

Interdiction..... 9-36

Interpleader..... 9-37

Intervener..... 9-38

Isolation/Quarantine ..... 9-39

Judgment Lien (Bill To Enforce) ..... 9-42

Judicial Reviews..... 9-46

    DMV Revocation/Suspension of License ..... 9-46

    School Board Decision Regarding A Pupil ..... 9-47

Juvenile & Domestic Relations Court Case Matrix..... 9-48

Lawyer Discipline ..... 9-48

Levy/Seizure - (Post-Judgment)..... 9-51

Liquidated Damages/Overweight Vehicle Violations..... 9-56

Mandamus..... 9-56

Marriage-Authorization Of Persons Other Than Ministers To Perform..... 9-59

Medical Malpractice..... 9-60

**Chapter 10 - Suits/Action Types (N-W)..... 10-1**

    Name Change..... 10-1

    Name Change – Void ..... 10-5

    Partition ..... 10-6

Pawnbroker – Application for License ..... 10-8

Payment Of Funds Into The Circuit Court From General District Court..... 10-10

Petition By Public Officials To Prohibit Publication Of Information ..... 10-11

Petition For Entry Onto School Property By Sex Offender ..... 10-13

*Pro Hac Vice* – When Out-Of-State Lawyer Is Allowed to Participate In A Virginia Case ..... 10-15

Prohibition ..... 10-16

Protective Orders..... 10-18

    Adult Protective Services – Emergency Order ..... 10-18

    Appeal..... 10-19

    Protective Order Extensions..... 10-23

    Hope Card Program ..... 10-27

    Protective Order Emergency - Family Abuse - Pass-Through (No File Created)..... 10-28

    Protective Orders of Family Abuse Where Divorce, Custody, Visitation or Support Is Pending -Civil or Juvenile (Where Custody/Visitation Appealed) ..... 10-32

Protective Order Firearm Certification Contempt..... 10-34

*Quo Warranto*..... 10-35

Receiver (Special)..... 10-38

Reinstatements ..... 10-41

    Civil Case..... 10-41

    Driving Privileges..... 10-42

    Reinstatement Of Professional License ..... 10-45

    Restoration Of Voting Rights..... 10-46

    Restore Driving Privileges (Third Offense , Involuntary Manslaughter or DUI Maiming)..... 10-46

    Restore, Modify or Terminate Guardian/Conservator ..... 10-49

    Restore Rights To Possess Firearm ..... 10-51

Relief ..... 10-55

    Legal Determination of Paternity..... 10-55

    Re-Registration - Sexual Offender Registry..... 10-56

Removals..... 10-58

    Circuit to Federal Court ..... 10-58

    Removal of Elected and Certain Appointed Officials ..... 10-60

    Removal of General Registrar or Electoral Board Member ..... 10-62

Personal Representative/Trustee..... 10-63

Name from Sexual Offender Register or Supplement to the Sex Offender and Crimes Against  
Minors Registry..... 10-65

Restricted Driver’s License..... 10-67

    Conviction for Unauthorized Driving ..... 10-67

School Board Decision (Teacher or School Board Employee) ..... 10-69

Sell..... 10-71

    Land for Delinquent Taxes ..... 10-71

    Sell, Etc. Land of Person under a Disability ..... 10-74

Special Grand Jury – Public or Common Nuisance ..... 10-76

Structured Settlement – Approval of Transfer ..... 10-79

Substantial Risk Orders ..... 10-81

Surcharge And Falsify An Accounting ..... 10-84

Suspension of Professional License..... 10-86

Third-Party Practice..... 10-89

Trusts..... 10-90

    Aid and Guidance for Established Trusts ..... 10-90

    Reformation of Trusts ..... 10-92

    Creation of Trusts..... 10-93

Unlawful Entry And Detainer ..... 10-95

Violation of Election Laws..... 10-98

Wills..... 10-100

    Construe Will..... 10-100

    Elective Share and Augmented Estate ..... 10-102

    Establish/Impeach/Reform ..... 10-103

Workers’ Compensation Lien – Ascertain Amount..... 10-105

Workers’ Compensation Commission Referral..... 10-107

Writ of Certiorari ..... 10-108

Writ of Coram Nobis/Writ of Coram Vobis ..... 10-110

Writ of Habeas Corpus Ad Subjiciendum ..... 10-111

Writ of Vacatur..... 10-111

Wrongful Death/Personal Injury..... 10-115

**Appendix..... 10-1**

Appendix A - Worksheet for Filing Civil Actions..... A-1

Appendix B - Miscellaneous Bond Forms ..... B-1

    Performance Bond ..... B-2

    Injunction Bond ..... B-4

    Special Commissioner’s Bond..... B-5

    Special Commissioner’s Bond – Clerk’s Certificate and Notice..... B-6

    Forthcoming Bond [Relief from Writ of Fieri Facias] ..... B-7

    Forthcoming Bond [Third-Party Claim to Property Levied On] ..... B-9

    Forthcoming Bond [Injunction Against Removal of Property] ..... B-10

    Indemnifying Bond [Fieri Facias, Attachment, Distress]..... B-11

    Indemnifying Bond [Action on Lost Evidence of Debt]..... B-12

    Bond for Costs..... B-14

Appendix C - Fee Schedule ..... C-1

Appendix D - Miscellaneous Orders, Decrees, and Documents..... D-1

    Closing Office for General Holiday ..... D-1

    Closing Office for Christmas And New Year’s ..... D-2

    Closing Office - (Bad Weather, Office Catastrophe, Etc.)..... D-3

    Foreign Deposition Order ..... D-4

    Petition for Proceeding in Civil Case Without Payment of Fees or Costs (CC-1414)..... D-5

    Petition for Proceeding in a No-Fault Divorce Without Payment of Fees or Costs (CC-1421) D-7

    Order for Proceeding in a Civil Case Without Payment of Fees or Costs (CC-1421(A)) ..... D-9

    Petition for Writ of Vacatur ..... D-10

    Order to Open Sealed Record ..... D-11

    Service of Process Order ..... D-12

    Garnishment Exemption Order ..... D-13

    Petition for Authorization to Celebrate Rites of Marriage (Persons Other Than Ministers) . D-14

    Order for Authorization to Celebrate Rites of Marriage (Persons Other Than Ministers) .... D-15

    Order to Celebrate Rites of Matrimony by Ministers ..... D-16

    Petition to Appoint Church Trustees ..... D-17

    Order of Appointment of Church Trustees ..... D-18

    Clerk’s Order - Qualification of Notary Public ..... D-19

Clerk’s Order - Concealed Weapon Permit .....	D-19
Order - Reappointment to Electoral Board.....	D-20
Petition - Writ of Habeas Corpus .....	D-21
Order - Writ of Habeas Corpus .....	D-26
Writ of Quo Warranto.....	D-27
Checklist for Completing Expungement Proceedings .....	D-28
Appendix E - Records Retention and Disposition Schedule .....	E-1
Appendix F - Sealing Court Records/Confidentiality Considerations.....	F-1
Sealed Records .....	F-1
Divorce.....	F-2
Confidentiality Considerations .....	F-10
Appendix G - Manual Updates .....	G-1
<b>Index .....</b>	<b>1</b>
<b>Glossary.....</b>	<b>15</b>
A .....	15
B.....	16
C.....	16
D .....	19
E.....	19
F.....	20
G .....	20
H.....	21
I.....	21
J .....	21
L.....	22
M .....	22
N .....	22
O .....	23
P.....	23
Q.....	24
R.....	24
S.....	24

T.....	25
V .....	26
W .....	26

## Chapter 1 - Overview

### Civil Law - Generally

Civil cases involve disputes among individuals (including corporations, which are treated legally as an individual) or groups of individuals. Unlike criminal law which is intended to deter behavior deemed detrimental to society and to deal fairly with those who misbehave, civil law is intended to make a wronged person whole again through specific performance, monetary compensation by the wrongdoer or a restitution of rights.

The remedy sought in civil actions involves the right to recover damages, usually in monetary terms, or require a party to the suit to complete an agreement or refrain from some activity. The person or party who initiates the case is termed the “plaintiff” and the person or party against whom the suit is brought is termed the “defendant.” See the subsection in this chapter, “Participants in a Civil Action” for more detailed information. The number of plaintiffs or defendants included in a suit is unlimited. In civil cases, the plaintiff must prove their contentions by a preponderance or greater weight of evidence.

Sources of law applicable to civil procedure in Virginia include federal, state and local law. The United States Constitution, federal statutes, and court cases construing federal law comprise the body of federal law. Virginia civil law consists of the state constitution, state statutes and court decisions addressing issues of state law. Specific sources of state civil law are Article I, Section 11 of the Constitution of Virginia and Title 8.01 of the Code of Virginia.

### Civil Actions - Law and Chancery No Longer Distinguished

One of the most common questions asked upon the filing of a civil action has always been - Is the case to be filed one “at law” or “in equity”. Prior to January 1, 2006, cases were distinguished as either “Law” or “Chancery” and filed on either the law or chancery “side” of the court. Effective January 1, 2006, however, amendments to the CODE OF VIRGINIA and the Rules of Court eliminated the distinction of a case as either “Law” or “Chancery” and instead classified cases as “Civil”, in essence abolishing the “chancery side” of the court. While the case itself may remain either “legal” or “equitable” in nature, beginning January 1, 2006, the case is filed in the unified Civil Division of the court. This manual has attempted to identify many of the suits/actions filed in the clerk's office. See the chapter, “Suits/Action Types” for a complete listing of the most common suits/actions filed in the circuit court.

A statutory proceeding which provides an adequate and complete remedy at law is not an equity case. See 7 MICHIES JURISPRUDENCE, “Equity”, § 3 and Attorney General Opinion to Crockett, dated 12/29/69 (1969-70, page 237); Proceeding for sale of property - Not Chancery cause. Prior to January 1, 2006, Part Two of the Rules of the Supreme Court applied to all chancery suits or suits in equity, i.e. divorces, injunctions, partition suits whereas Part Three of



the Rules of the Supreme Court applied to cases on the law docket. Specifically, Part Three Rules then applied to all civil actions for law in a court of record seeking a judgment personam for money only, actions for establishment of boundaries, ejectment, unlawful detainer, detinue, a refund of taxes, and declaratory judgments at law, including cases appealed or removed to such courts from inferior courts whenever applicable to such cases. Effective January 1, 2006, Part Three of the Rules of the Supreme Court was amended to pertain to all “civil” cases, whether legal or equitable in nature.

### Common Law and Statute Law

The basic law of Virginia is the Common Law of England, which continues in full force and effect until altered by the General Assembly. ([Va. Code § 1-200](#)).  
<https://law.lis.virginia.gov/vacode/1-200/>

The Common Law of England is composed of uncodified case law providing precedents and treatises of opinions of English courts. These opinions are also the source of the subject matter of common law and for the extent of its jurisdiction.

Statute Law, the enactments of the General Assembly which are codified in the Code of Virginia, change the Common Law of Virginia, and either abolish, amend or establish rights and remedies which previously may (or may not) have existed at common law. Actions “at law” usually *seek* monetary damage awards.

### Equity

- The system of law known as Equity was borrowed from England, called the court of chancery, and has been expanded by judicial interpretation and statutory enactments which have given equity courts powers to resort to various common law remedies, such as jurisdiction to:
  - Decree a monetary award (*Jones v. Tunis*, 99 Va. 220, 37 S.E. 841 (1901); *Grubb v. Starkey*, 90 Va. 831, 20 S.E. 784 (1894)).
  - Litigate a dispute before any damages have occurred by declaratory judgment. ([Va. Code § 8.01-184](#)).
  - Award an attachment during a pending action. ([Va. Code § 8.01-574](#)).
  - Issue a writ of fieri facias based on a decree in equity as if it were a judgment at common law. ([Va. Code §§ 8.01-426](#) and [8.01-427](#)).
- The equity court has been empowered by statute law entirely has been given new jurisdictions that were previously handled by ecclesiastical courts:
  - To grant divorces and annulments from marriage. ([Va. Code § 20-96](#)).

- To probate wills. ([Va. Code § 64.2-443](#)).
- In addition, the General Assembly gave equity courts jurisdiction to:
  - Impeach or establish a will. ([Va. Code § 64.2-448](#)).
  - To order adoptions (which was previously unknown to either English or Virginia law), in 1942. ([Va. Code § 63.2-1201](#)).
- A list of subjects of equity jurisdiction, first set out in Notes On Virginia Civil Procedure, by W. H. Bryson, published in 1979, follows:
  - To administer decedent's estate;
  - To supervise accounts of fiduciaries;
  - To supervise estates of persons under disabilities;
  - To supervise charities and public trusts;
  - To grant divorces, alimony and separate maintenance;
  - To assign dower rights and compel election of rights;
  - To interpret wills and deeds;
  - To impeach instruments of fraud;
  - To reform contracts and writings;
  - To set up lost instruments
  - To review order of probate;
  - To hear creditor's bills;
  - To marshal assets;
  - To compel contribution, exoneration, and subrogation;
  - To set aside fraudulent conveyances;
  - To set aside awards of arbitrators;
  - To appoint receivers;
  - To settle partnership affairs;
  - To specifically enforce contracts
  - To enforce trusts;
  - To foreclose or redeem mortgages;
  - To compel partition of common interests
  - To enjoin torts and nuisances;
  - To enforce liens;
  - To remove clouds on title and to quiet title;
  - To compel claimants to interplead;
  - To enjoin fraudulent judgments; and
  - To compel joining in bills of peace.

## Effect of Distinction between Law and Equity

While the federal courts merged law and equity in 1938, Virginia courts retained a bifurcated system until January 1, 2006.

- Classification of an action as one of “at law” or one “in equity” affects the documentation of:
  - 1) Availability and forms of relief;
  - 2) Availability of certain defenses; and
  - 3) Form and type of review;
  - 4) Bill of Review in Equity ([Va. Code § 8.01-623](#)), and Appeals to either the Supreme Court of Virginia (Va. Code Title 17.1 Ch. 3) or the Court of Appeals (Va. Code Title 17.1 Ch. 4).

## Court Organization and Jurisdictional Distinctions

The organizational structure of Virginia's court system has been streamlined in recent years to increase the quality of the judicial system as well as the efficiency with which justice is dispensed. Virginia has four levels of courts: 1) the Supreme Court, 2) the Court of Appeals, 3) the circuit court, and 4) the district court (composed of the general district court and juvenile and domestic relations district courts). For purposes of this manual, jurisdictional distinctions among the courts are presented only as they relate to civil cases.

### Supreme Court of Virginia

The Supreme Court of Virginia is made up of seven justices elected by a majority vote of both houses of the General Assembly for a term of twelve years. The Supreme Court of Virginia is the highest court in the Commonwealth and is frequently referred to as the “court of last resort.” It has both original and appellate jurisdiction, but its primary purpose is to review decisions of lower courts from which appeals have been allowed. Va. Const. Article VI, § 1.

Virginia does not allow an appeal to the Supreme Court as a matter of right except in cases involving the [State Corporation Commission](#), the disbarment of an attorney, and review of the death penalty. The Court's original jurisdiction is limited to cases of habeas corpus (ordering one holding custody to produce the detained person before the Court for the purpose of determining whether such custody is proper), mandamus (ordering the holder of an office to perform their duty), and prohibition (ordering an action stopped in a lower court). The Court also has original jurisdiction in matters filed by the [Judicial Inquiry and Review Commission](#) relating to judicial censure, retirement, and removal of judges.

The Supreme Court may, in its discretion, on motion of the Court of Appeals or on its own motion, certify an appeal which was filed with the Court of Appeals for review by the Supreme Court. Certification is appropriate when the Supreme Court determines that the case is of great public importance or that the docket or status of work of the Court of Appeals warrants transfer of jurisdiction of the case. [Va. Code § 17.1-409](#). For a further discussion of appellate procedure in the Supreme Court, See the “Appeals” chapter.

## Court of Appeals of Virginia

The Court of Appeals was established January 1, 1985 and consists of ten judges who are elected for eight-year terms by a majority of the members of each house of the General Assembly. The Court has authority to hear appeals as a matter of right from:

- any final judgment, order, or decree of a circuit court involving affirmation or annulment of a marriage, divorce, custody, spousal or child support, or control or disposition of a child, as well as other domestic relations cases;
- any final decision of the [Department of Workers' Compensation](#);
- any final decision of a circuit court on appeal from a decision of an administrative agency;
- any criminal conviction of the circuit court; and
- any interlocutory order granting, dissolving, or denying an injunction or adjudicating the principles of a cause in any of the cases listed above.

Also, the Court of Appeals has authority to consider petitions from final decisions of a circuit court on an application for concealed weapons permit.

Actions rejecting a petition for appeal, dismissing an appeal, and deciding an appeal are final in cases originating before any administrative agency of the Workers' Compensation Commission, and divorce, custody, and any other domestic relations cases.

## Circuit Courts

The circuit court is the trial court of general jurisdiction in Virginia. It is the sole court with the authority to try all types of cases except as specifically provided by statute.

In civil cases, the circuit court has concurrent jurisdiction with the general district court over claims from \$4,500 to \$25,000 and exclusive original jurisdiction over almost all claims exceeding \$25,000. The circuit court also has jurisdiction over all equity matters. These include divorce cases, disputes concerning wills and estates, and controversies involving property. Both law and equity cases are now classified as civil actions. To bring a civil action in a circuit court, the person bringing the case (plaintiff) files a complaint with

the clerk. [Va. Code § 16.1-77](#).

The final decision of the circuit court may be appealed to either the Supreme Court or the Court of Appeals, depending upon the type of case involved. Death penalty, lawyer disbarment, and most civil cases are appealed to the Supreme Court. While death penalty and disbarment case appeals are a matter of right, civil appeals are commenced by the filing of a petition for appeal.

## District Courts

District courts in Virginia are courts of limited jurisdiction. They have jurisdiction only in cases where jurisdiction is specifically given by statute. Jury trials are not conducted in district courts. All cases are heard by a judge.

Virginia has a unified district court system that consists of general district courts and juvenile and domestic relations district courts. Some general district and juvenile and domestic relations district courts are served jointly by one clerk and are referred to as “combined” district courts. Combined district courts, however, maintain their separateness in terms of case processing. Furthermore, general district court judges hear only general district court cases, and juvenile and domestic relations district court judges hear only juvenile and domestic relations cases, except when they consent to serve as a replacement judge when the regular judge is unable to preside over a case.

The General District Court decides civil suits involving amounts of money up to \$25,000. In civil cases, the circuit court has concurrent jurisdiction with the general district court over claims from \$4,500 to \$25,000 and exclusive original jurisdiction over almost all claims exceeding \$25,000.

**NOTE:** Jurisdictional limits of actions governing the enforcement of mechanics' liens in the circuit court also begin at \$25,000. A suit is begun in General District Court by filing a civil warrant or motion for judgment with the clerk of the court. The General District Court is the only court where suits may be filed for claims under \$4,500.

**NOTE:** The \$25,000 limit shall not apply with respect to distress warrants under the provisions of [Va. Code § 8.01-130.4](#) nor shall it apply to cases involving liquidated damages for violations of vehicle weight limits pursuant to [Va. Code § 46.2-1135](#) in the district courts.

The juvenile and domestic relations district court has exclusive jurisdiction over individuals under the age of eighteen alleged to have committed acts which, if committed by an adult, would constitute a crime. [Va. Code § 16.1-241](#). Such cases are referred to as “delinquency” cases. The juvenile and domestic relations district court has jurisdiction of

cases where a juvenile has committed certain actions which, if committed by adults, would not be considered criminal offenses such as truancy or habitually running away from home. Such cases are known either as “CHINS” (child in need of services) cases or “CHINSUP” (child in need of supervision) cases. The juvenile and domestic relations district court also has jurisdiction of all misdemeanor offenses committed by one member of the family against another.

#### Small Claims Court

- On or before July 1, 1999, each general district court shall establish, using existing facilities, a small claims division to be designated a small claims court.
- Such courts shall not have jurisdiction over suits against the Commonwealth under the Virginia Tort Claims Act ([Va. Code § 8.01-195.1](#) et seq.) or suits against any officer or employee of the Commonwealth for claims arising out of the performance of their official duties or responsibilities. [Va. Code § 16.1-122.1](#).
- Notwithstanding any provision of law to the contrary, the small claims court shall have jurisdiction, concurrent with that of the general district court, over the civil action specified in [Va. Code § 16.1-77 \(1\)](#) when the amount claimed does not exceed \$5,000, exclusive of interest. [Va. Code § 16.1-122.2](#).

• [Virginia Code § 16.1-242.1](#) provides that upon appeal to the circuit court of any case involving a child placed in foster care and in any appeal to the Court of Appeals or Supreme Court of Virginia, the juvenile court shall retain jurisdiction to continue to hear petitions filed pursuant to [Va. Code §§ 16.1-282](#) and [16.1-282.1](#). Orders of the juvenile court in such cases shall continue to be reviewed and enforced by the juvenile court until the circuit court, Court of Appeals or Supreme Court rules otherwise.

## Participants in a Civil Action

Virginia's Civil Justice system, designed to settle disputes between private individuals, is comprised of a network of courts that deal with the law applicable to these disputes. Judges and lawyers are the primary figures, but other persons connected with the courts will also come into play as the cases progress through the system.

This section identifies those that may be involved in the civil system on the circuit court level only and attempts to give briefly an explanation of their role.

## Plaintiff

The individual who initiates a civil case against others is known as a plaintiff. In some instances they may be called complainant. The plaintiff may be one person, more than one, a corporation or a partnership.

## Defendant

A defendant in a civil action is the person against whom the action is brought. In some instances, they may be called respondent. A defendant can be one or more individuals, a corporation or a partnership. In rare cases if the names of the defendants are not known, they can be listed as "John Doe."

## Attorneys

The lawyer who files a suit on behalf of their client is known as plaintiff's attorney or counsel. The lawyer who defends is known as defense counsel. If there are multiple plaintiffs, there may be multiple plaintiff attorneys. If there are multiple defendants, there may be multiple defense attorneys.

## *Pro se* Litigants

Persons may choose to represent themselves as either plaintiffs or defendants. If so, they are referred to as *pro se* plaintiffs or *pro se* defendants.

## Guardian *Ad litem*

In legal causes of action, if any of the parties are either minors (under age eighteen) or incompetent and have not had a legal guardian appointed, the court or clerk will appoint an attorney to represent the interests of that minor or incompetent in the proceedings. These attorneys are called Guardians *ad litem*. They file all pleadings required. Their fee is usually awarded by the Court at the conclusion of the case. See "Pre Trial" chapter, subsection "Appointment of Guardian *Ad litem*" of this manual for more information on guardians *ad litem*.

## Commissioner in Chancery

In certain civil actions, the Court will appoint an attorney, not involved in a case, to hear certain evidence and make a recommendation to the Court. This commissioner then becomes a "substitute judge" in the case insofar as the matters referred. The commissioner will file a report to the Court. Then the Court can make final disposition of the action. Commissioners in Chancery may be appointed only by agreement of the

parties with the concurrence of the court, upon motion of a party, or upon the court's own motion. The court must make a finding of good cause shown for appointing a Commissioner in Chancery in each individual case.

## Judges

Virginia judges are assigned the responsibility to decide civil cases in a fair and timely fashion. If the Judge hears a case without a jury, the judge alone will decide the facts and make the final decision. If a jury is used, the jury will decide the facts and return a verdict in favor of either the plaintiff or the defendant. However, a judge may set aside a verdict if it is contrary to the law and evidence in a given case. Judges must follow the law in conducting the trial. Their rulings may be appealed to an appellate court.

## Clerk of Circuit Court

The clerk of the circuit court is an elected official. They serve as the administrative officer for the circuit court. Original suit papers are filed in the circuit court. The clerk has the responsibility to file and store the cases properly, to issue all summonses for the cases, to ensure juries are present for the cases, and to record properly all orders. Clerks also are responsible for preparing all cases filed that are appealed to either the Court of Appeals or the Supreme Court of Virginia.

## Juries

Juries may be used in some cases. If the amount in dispute is more than \$25,000, a jury of seven from not less than thirteen impaneled will try the case. If the amount in dispute is less than \$25,000, a jury of five out of not less than eleven impaneled will try the case. If it is a special jury, twelve out of not less than twenty impaneled will try the case. If it is a complicated case that may last for an unusual amount of time, the Court may seat alternate jurors. [Va. Code § 8.01-359](#)

## Condemnation Commissioners

Similar to a jury, in cases where a public body *seeks* to condemn private property for certain public use, "Condemnation Commissioners" may be empaneled. The attorneys for each side will provide the names of those to be summoned.

## Special Commissioners

In some civil cases, the Court must appoint an attorney as a special commissioner to execute certain orders of the Court, such as selling property. The special commissioner so appointed may appear before the clerk to post a bond. They will file a final report and/or accounting with the Court.



## Registered Agents

A registered agent is a person who has been designated by another, usually a corporation or business, to accept service of process on behalf of the corporation or business. Very often, the corporation or business is a resident of another state and the registered agent is a state resident. A resident agent can be appointed to represent an individual also. However, they are usually not actual parties in civil suits and do nothing more than accept service of process.

## Executors/Administrators

Virginia law allows executors and administrators of deceased persons' estates to bring civil suits and to defend the estate in civil actions. Thus, the executor or administrator of an estate may be involved as a plaintiff or defendant.

## Sheriff

A sheriff of a city or county is the person responsible for serving papers in civil suits, summoning a jury and providing bailiff services in court during the trial.

## Judge Pro Tempore

A judge pro tempore is one appointed for the term or some part thereof. During such time they exercise all the functions of the regular judge. Also, such person must be a citizen of and shall be licensed to practice law in this Commonwealth. Any cause pending in a circuit court, when the judge of the court is disqualified or unable, for any reason, to try the same, may be tried by a judge pro tempore. [Va. Code §§ 17.1-109, 17.1-110, and 17.1-111](#).

## Mediators

Please see the subsection "Referral" in the "Pre Trial" chapter for a discussion of Alternative Dispute Resolution

## Police Officers

A police officer has no authority in civil matters, except (i) to execute and serve temporary detention and emergency custody orders and any other powers granted to law-enforcement officers in [Va. Code §§ 37.2-808 or 37.2-809](#), (ii) to serve an order of protection pursuant to [Va. Code §§ 16.1-253.1, 16.1-253.4 and 16.1-279.1](#), or (iii) to execute all warrants or summons as may be placed in their hands by any magistrate for the locality and to make due return thereof. A town police officer, after receiving training under [Va. Code § 9.1-102](#), may, with the concurrence of the local sheriff, also serve civil papers, and make return thereof, only when the town is the plaintiff and the defendant

can be found within the corporate limits of the town.

## General Description of Civil Case Pleadings

Pleadings are the formal allegations by the parties of their respective claims and defenses. The clerk shall receive and file all pleadings without order of the court. Any controversy over whether a party who has filed a pleading had a right to file it shall be decided by the court, not clerk. [Rule 3:3](#).

[Rule 1:4](#) of the Supreme Court of Virginia provides the general provisions relating to Pleadings as follows:

1.	Must be filed in Good Faith:	Counsel tendering a pleading gives their assurance as an officer of the court that it is filed in good faith and not for delay.
2.	Sworn Pleading as Affidavit:	A pleading that is sworn to is an affidavit for all purposes for which an affidavit is required or permitted.
3.	Counsel Must Sign:	Counsel or an unrepresented party who files a pleading shall sign it and state their address
4.	Must Inform Opponent of Facts:	Every pleading shall state the facts on which the party relies in numbered paragraphs, and it shall be sufficient if it clearly informs the opposite party of the true nature of the claim or defense
5.	Allegations Admitted or denied:	An allegation of fact in a pleading that is not denied by the adverse party's pleading, when the adverse party is required by these Rules to file such pleading, is deemed to be admitted. An allegation in a pleading that the party does not know whether a fact exists shall be treated as a denial that the fact exists.
6.	Instruments Under Seal:	Requirements of pleadings applicable to instruments not under seal shall apply to instruments under seal
7.	Equitable Defenses:	Requirements of pleadings applicable to legal defenses shall apply to equitable defenses
8.	Filing Date Attested:	The clerk shall note and attest the filing date on every pleading
9.	Exhibits:	The mention in a pleading of an accompanying exhibit shall, of itself and without more, make such exhibit a part of the pleading

10. Brevity:	Brevity is enjoined as the outstanding characteristic of good pleading. In any pleading, a simple statement, in numbered paragraphs, of the essential facts is sufficient
11. Pleading Alternative Facts Against Alternate Parties:	A party asserting either a claim, counterclaim, cross-claim, or third-party claim or a defense may plead alternative facts and theories of recovery against alternative parties, provided that such claims, defenses, or demands for relief so joined arise out of the same transaction or occurrence. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as they have regardless of consistency and whether based on legal or equitable grounds.
12. Contents of pleading:	Every pleading, motion or other paper served or filed shall contain at the foot the Virginia State Bar number, office address and telephone number of the counsel of record submitting it, along with any electronic mail (E-mail) address and facsimile number regularly used for business purposes by such counsel of record.

### Legal Causes of Action (formerly known as Actions at Law)

Part Three of the Rules of the Supreme Court applies to all civil cases. Legal causes of action include cases seeking a judgment in personam for money only, actions for establishment of boundaries, ejectment, unlawful detainer, detinue, a refund of taxes, and declaratory judgments, including cases appealed to such courts from inferior courts whenever applicable to such cases.

**NOTE:** In matters not covered by the Rules, the established practices and procedures are continued. [Rule 3:1](#). For example, mandamus, prohibition, and certiorari are instituted by a petition.

Matters initiated by either petition or application are distinct from matters initiated by complaint. Issuance of a summons as prescribed by [Rule 3:5](#) is not applicable to legal process to be served upon the defendant or respondent. However, the Clerk shall issue a Proof of Service as prescribed by [Rule 3:6](#). The Clerk is not responsible for making a decision on when

response by the defendant is due.

## Complaint

An action is commenced by filing in the clerk's office a written complaint. The statutory writ tax and clerk's fees must be paid before the summons is issued.

The complaint will contain a caption setting forth the name of the court and the title of the action, which will include the names of all parties. The complaint must be signed by counsel with their office address. The complaint must state facts, not conclusions, and should be in numbered paragraphs. Also, the complaint will be sufficient in fact if it clearly informs the defendant of the true nature of the claim asserted and it states the damages claimed or other relief for which judgment is sought. See form CC-1400, SUMMONS - CIVIL ACTION.

A party may join a claim in tort with one in contract, provided that all claims joined arise out of the same transaction or occurrence. Improper joinder is called "misjoinder of actions." The court may, on its own motion, order separate trials. [Va. Code § 8.01-272](#). Also, it is important to note that there is no rule of court on the splitting of a cause of action. It is generally not permissible over the objection or without waiver of the adverse party to split a single cause of action.

The following are typical activities followed when a complaint is filed with the court: (See also "Suits/Action Types" chapter of this manual for complete procedures)

- Step 1** The clerk receives complaint, receipts the applicable fees, opens files, docket the new case, and issues any requested process. The plaintiff must provide the clerk with a copy of the complaint for each defendant named. [Rule 3:4 \(a\)](#).
- Step 2** The clerk issues the summons, attaches a copy of the complaint with proof of service, and delivers for service as the plaintiff may direct.
- Step 3** When service is made by officer, a Proof of Service is filed with the clerk.

If service is made by a "non-officer", an affidavit of what was done in effecting service is filed with the clerk. [Rule 3:6](#).

**Comments:** Returns will be made to the court and show when, how, where and upon whom service was made.

No judgment can be entered against a defendant who was served with process more than one year after the commencement of the action. [Rule 3:5](#).

Any court in which is pending a case wherein process has not been served within one year of the commencement of the case may, in its discretion, order it to be struck from the docket, and the action shall thereby be discontinued.

[Va. Code § 8.01-335 \(D\)](#)

See form CC-1405, PROOF OF SERVICE.

**Step 4** Defendant may file a responsive pleading within twenty-one days after service.

**Comments:** Defendant will be in default if they fail to file a pleading within this timeframe.

## Bills of Particulars

The object of the motion for a bill of particulars is to amplify any pleading. They are basically supplemental complaints. The motion must be made promptly. A bill of particulars that fails to inform the opposite party fairly of the true nature of the claim or defense, on motion, may be stricken and an amended bill of particulars ordered. Every order requiring a bill or amended bill of particulars shall fix the time within which it is to be filed.

## Demurrers

A demurrer is a pleading by a defendant disputing the legal sufficiency of plaintiff's pleadings. In effect, it is an allegation that "even if the plaintiff's claims are true, they have not stated a claim which is sufficient for the judge to enter an order in their favor for the requested award." It is used to attempt to have a case dismissed because the legal claims are not sufficient for granting judicial relief.

## Venue

Motions objecting to venue must state why venue is improper and where proper venue may be found. The motion must be filed within twenty-one days of service of process commencing the action or within the period of any extension of time for filing responsive pleadings fixed by order of the court. Any party may move the court for a change of venue and any party may oppose such motion. [Va. Code § 8.01-265](#).

## Answer

When the court has entered its order overruling all motions, demurrers and other pleas filed by a defendant, such defendant shall, unless they have already done so, file their answer within such time as the court may prescribe. If they fail to do so they are in

default.

## Cross-Demands

### Counter Claim

A counterclaim claim presented by a defendant in opposition to or deduction from the claim of the plaintiff. Any such action filed in an equity suit would be treated as a cross-claim. Within twenty-one days after service on them of the summons, a defendant may, at their option, plead as a counterclaim any cause of action for a money judgment that they have against the plaintiff or all plaintiffs jointly, whether or not it grows out of any transaction mentioned in the summons, whether or not it is for liquidated damages, whether it is tort or contract, and whether or not the amount demanded in the counterclaim is greater than the amount demanded in the summons. [Rule 3:9](#).

### Cross-Claim

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

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

### Interpleader

When two or more persons claim the same thing (or fund) of a third, and they, laying no claim to it themselves, is ignorant which of them has right to it, and fears they may be prejudiced by their proceeding against them to recover it, they may join such claimants as defendants and require them to interplead their claims so that they may not be exposed to double or multiple liability.

## Suits in Equity

Part Three Rules of Court also apply to all suits in equity. As to matters not specifically covered, established practices and procedures are continued. [Rule 3:1](#).

### Complaint

A Complaint is the pleading used to state a party's claim in an equity case. Variations include an amended complaint (amendment to the original complaint), complaint for notary service (party accepts or waives service on affidavit pursuant to [Va. Code § 20-99.1:1](#)), complaint for non-resident service (service of process to be made outside Virginia) and a cross-claim (complaint filed by the party being sued in the original complaint).

See “Suits/Action Types” chapter of this manual for complete procedures.

A suit in equity shall be commenced by filing a complaint in the clerk's office. The suit is then instituted and pending as to all parties defendant thereto. The statutory writ tax and clerk's fees shall be paid before the summons is issued.

The complaint shall be captioned with the name of the court and the full style of the suit. The requirements of <https://law.lis.virginia.gov/vacode/8.01-290/e> address or other data after the name of each defendant.

The following are typical activities followed when a complaint is filed with the court:

**Step 1** Clerk receives Complaint, receipts applicable fees, opens file and docket the case, and issues any requested process. The plaintiff must provide the clerk with a copy of the complaint for each defendant named. It is not required that copies of exhibits filed with the complaint be furnished or served.

**Step 2** The clerk shall issue a Summons – Civil Action and attach it to a copy of the complaint together with a proof of service used by the process server to note the date, place, how and to whom the summons was served. \*\*\* See Note Below\*\*\*

**Comments:** Upon the commencement of a suit in equity defendants may appear voluntarily and file responsive pleadings and may appear voluntarily and waive process, but in cases of divorce or annulment of marriage only in accordance with the provisions of the controlling statutes. With respect to defendants who do not appear voluntarily and/or file responsive pleadings or waive service of process, the clerk shall issue summonses and securely attach

one to and upon the front of each copy of the complaint to be served. The copies of the complaint, with a summons so attached, shall be delivered by the clerk for service together as the plaintiff may direct.

See form CC-1400, SUMMONS - CIVIL ACTION.

**Step 3** When service is made by officer, a Proof of Service is filed with the clerk.

**Comments:** Returns will be made to the court and show when, how, where and upon whom service was made.

No decree can be entered against a defendant who was served with process more than one year after the institution of the suit against them. [Rule 3:5](#).

Any court in which is pending a case wherein process has not been served within one year of the commencement of the case may, in its discretion, order it to be struck from the docket, and the action shall thereby be discontinued.

[Va. Code § 8.01-335 \(D\)](#)

See form CC-1405, PROOF OF SERVICE.

**Step 4** Defendant may file their answer within twenty-one days after entry of order overruling all motions, demurrers and other pleas.

**NOTE:** On December 7, 1999, the Court of Appeals issued a decision holding that Supreme Court Rule 2:2 “does not require a party, after filing a bill of complaint, make a separate request for service of process.” *Kessler v. Smith*, Record No. 2397-98-4 (December 7, 1999) at 6. Rather, the court went on to conclude, “[N]othing more than the filing of a bill of complaint is required in order to request service of process.” The issue arose in this case because the appellant sought to proceed in forma pauperis and, therefore, no sheriff's fee had been proffered to indicate that service was sought. Therefore, if litigants wish to defer service for a period of time, it is suggested that the clerk's office obtain a written statement to that effect and place in the case file.

## Demurrers

A demurrer is a pleading by a defendant disputing the legal sufficiency of plaintiff's pleadings. In effect, it is an allegation that “even if the plaintiff's claims are true, they have not stated a claim which is sufficient for the judge to enter an order in their favor for the requested award.” It is used to attempt to have a case dismissed because the legal claims are not sufficient for granting judicial relief.



## Pleas in Equity

A plea in equity is a pleading in which a party asserts that the entire case can be decided on one very specific set of facts, which if true, would decide the case in that party's favor.

## Disclaimers

A disclaimer is a pleading in which the defendant states that they have no interest in the subject of the case. The defendant will appear in court, submit their disclaimer, agree to the order set forth by the court, and ask the court to dismiss them from the case.

## Answers

An answer is a pleading by which a defendant in an equity suit endeavors to resist the plaintiff's demand by stating facts. The defendant may deny the claims of the plaintiff, or agree to them. Also, they may introduce a new matter.

## Cross-Claims

A cross-claim against a codefendant or a third party is a complaint, analogous to a counterclaim or cross-claim. A cross-claim against a codefendant is considered a new suit. All provisions of the Rules of the Supreme Court of Virginia applicable to complaints and summonses, except those provisions requiring payment of writ tax and clerk's fees, apply to cross-claims of this type.

No amendments shall be made to any pleading after it is filed, except by permission of the court. Permission to amend will be liberally granted in furtherance of the ends of justice. In granting permission to amend, the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper. [Rule 1:8](#).

## Sources of Law Applicable to Civil Cases

### Statutory Law

The Code of Virginia of 1950 is the source of all state statutory law. It sets forth matters of jurisdiction, venue, applicable statutory causes of actions and periods of limitations thereon, rules of civil procedure and practice in all state courts.

A summary of all legislative action taken on the statute is found in parenthesis immediately after the text of each statute. Such summary provides the year and chapter of the Acts of the General Assembly, either establishing, amending or recodifying the statute. The text of each statute is followed by annotations citing case law decisions

involving applications of the particular statute to the subject case. The Code of Virginia and supplements thereto are provided to each clerk annually, at no cost, through the [Virginia Code Commission](#).

### Acts of the General Assembly

The Acts of the General Assembly of Virginia provide (in part) the complete text of new statutes and amendments to existing statutes. These amendments can be reviewed by noting that statutory sections or wording printed in italics denotes new statutory language added by the Act, while lines printed through existing statutory language denote deletion or repeal of that language from the text of the statute. Amendments to related statutes are grouped into chapters in the Acts.

The Acts of the General Assembly are published annually after the conclusion of regular and special sessions of the state legislature. The Acts are provided, at no cost, to clerks upon written request, from the [Division of Legislative Services](#).

### Case Reporters

The Virginia Reports contain the full-published text of the opinions of the Supreme Court of Virginia. The Virginia Court of Appeals Reports contain the full text of opinions of the [Court of Appeals of Virginia](#).

These case reporters can be obtained by clerks, at no expense, from the Supreme Court of Virginia.

### Opinions of the Attorney General

The Annual Report of the Attorney General contains (in part) the text of opinions of the Attorney General, answering specific questions proposed to them by clerks, judges, etc. These opinions will often address issues involving civil actions.

Published annually, the Opinions are provided to clerks, at no expense, from the [Office of the Attorney General](#) of Virginia.

### Other Reference Works

The [Circuit Clerks Duties List](#), annually published and distributed to clerks from the Department of Legal Research of Supreme Court of Virginia, provides (in part) a quick - reference to statutes involving the clerk's responsibilities in filing, processing and storing civil cases, and other related subjects.

The Circuit Court Clerk's Manual - Criminal is published and distributed by the Supreme

Court of Virginia in cooperative effort with the Virginia Court Clerks Association. The manual contains a comprehensive discussion of criminal case processing, a descriptive listing of selected case types, and appendixes of forms, schedules, fee charts, etc. The complete manual is available on the intranet or through the Supreme Court website ([www.vacourts.gov](http://www.vacourts.gov)) under the heading Virginia's Court System > [Circuit Court](#) >Manuals.

## Chapter 2 - Case Initiation

### Introduction

This section describes those activities performed by the clerk upon the filing of a civil case in the circuit court. Juvenile appeals and adoption cases must be filed and maintained as separate series of records because of their confidential status.

As discussed in the chapter “Overview,” a civil case is generally initiated by the filing of

- A petition;
- A complaint; or
- A notice of an appeal from the district court.

While case-processing activities performed by the clerk may vary depending upon which type of case is received, many activities are routinely conducted, regardless of the method by which a case is initiated.

The next five sections of this chapter address those case initiation activities that are routinely conducted for all civil case filings. These include:

- Acknowledging receipt of case papers;
- Case numbering;
- Indexing;
- Case file preparation; and,
- Issuance of court process.

For each of the activities enumerated above, specific step-by-step procedures are also provided to guide the clerk in completing the activity. Because local practice and other matters may affect the sequence in which civil cases are processed, the information provided herein should be viewed only as a guide.

### Acknowledging Receipt of Case Papers

One of the primary responsibilities of the circuit court clerk's office is the receipt and maintenance of case-related documents filed with the court.

In addition to the four types of pleadings mentioned above which initiate a civil case, the clerk's office may also receive a variety of other case-related materials. Examples of such materials include:

- Civil Case Cover Sheet;
- District Court case transmittal or cover sheet;
- Exhibits;
- Other pleadings and evidence; and
- Reports, such as VS-4 (Divorce) and VS-21 (Adoption).

When receiving case-related documents, the clerk should exercise care to ensure that the materials are not separated or misplaced. Exhibits and evidence that cannot be placed in a case file should be stored together in a secure location after acknowledgment of receipt.

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. This will apply to all civil actions in circuit and district court, unless there is a specific statute to the contrary that applies to the particular type of proceeding in which the party is involved. Nothing shall create a private cause of action against the party or lawyer who filed the document or any court personnel, the clerk, or any employees of the clerk's office who received it for filing. [Va. Code § 8.01-420.8](#).

A clerk of a circuit court may establish a system for electronic filing of documents as herein provided. Once established, federal, state, and local governmental entities, or political subdivisions thereof, and quasi-governmental agencies, corporations, and authorities, including but not limited to [Fannie Mae](#), [Freddie Mac](#), and [VHDA](#), may electronically file land records, instruments, judgments, U.C.C. financing statements, and any other papers in civil or criminal actions approved by the Supreme Court of Virginia. The Supreme Court shall adopt rules governing electronic filing in such actions. The place of filing is the receiving station designated by the circuit court clerk to which electronic information is transmitted. Electronic filing is not allowed in certain classes of cases where particular forms are specified by statute (e.g., creation and execution of wills, codicils, testamentary trusts, premarital agreements, and negotiable instruments.) [Va. Code §§ 17.1-258.2](#), [17.1-258.3](#), [17.1-258.4](#), [17.1-258.5](#) and [17.1-258.6](#).

These procedures are recommended when receiving case papers.

**Step 1** Clerk notes or stamps on the face of each pleading and exhibit the date and time received; clerk or deputy clerk initials each document (optional); for cases appealed or removed from the district court, obtain signature of receiving clerk on case transmittal sheet and notice of appeal, if furnished.

**Comments:** A case transmittal sheet is not statutorily required to be submitted by the district court; however, the Office of the Executive Secretary recommends use of this form.

Notices of appeal from general district court are statutorily required by [Rule 7A:13](#). Notices of appeal are recommended by the Office of the Executive Secretary in appeals from juvenile and domestic relations district courts. [Va. Code § 17.1-129](#). [Rule 1:4](#).

[Rule 3:3](#) - clerk shall file all pleadings without order of court. Controversy over whether party has filed a pleading has a right to file it shall be decided by the court.

**Step 2** Clerk issues a receipt for the filing fees, service fees, if applicable, and for any bond monies received.

**Comments:** The original copy of the receipt is given to the payor. One copy of the receipt may be placed with the case papers.

**Step 3** Any person, who is (i) a plaintiff in a civil action in a court of the Commonwealth and a resident of this the Commonwealth or (ii) a defendant in a civil action in a court of the Commonwealth, and who is on account of their poverty is unable to pay fees or costs, may be allowed by a court to sue or defend a suit therein, without paying fees or costs; whereupon they shall have, from any counsel whom the court may assign them, and from all officers, all needful services and process, without any fees, except what may be included in the costs recovered from the opposite party. In determining a person's inability to pay fees or costs on account of their poverty, the court shall consider the factors set forth in subsection B of [Va. Code § 19.2-159](#). The [CC-1414, PETITION FOR PROCESSING IN CIVIL CASE WITHOUT PAYMENT OF FEES OR COSTS](#) or [CC-1421, PETITION FOR PROCEEDING IN A NO-FAULT DIVORCE WITHOUT PAYMENT OF FEES OR COSTS](#) should be filed by the party requesting *in forma pauperis* status. If petition is denied, go to Step 4.

**Step 4** If the Court denies the petition to proceed without fees, the Clerk should 1) send a copy of the denied petition/denial order to the applicant, 2) return all original documents submitted for filing, or hold per your local practice, and 3) send a statement including the required filing fees to docket the action.

### **When an Increase in *Ad Damnum* Allowed by the Court**

The Clerk's Fee is determined by reference to Va. Code § 17.1-275. Writ Tax is determined by reference to Va. Code §58.1-1727. These costs are collected upon the filing of papers for the commencement of civil actions. A civil action is commenced by filing a complaint in the clerk's office.

When the debt or demand for damages exceeds a statutory limit, additional clerk's fee and writ tax is payable before the summons is issued.

If the Court grants leave to increase the *ad damnum* amount (the dollar amount the lawsuit asks for in money damages), the amended pleading is deemed filed as of the date of the Court order permitting the amendment. Rules 1:8 and 3:2.

**Step 1** Clerk stamps or writes next available case number on all papers received and on the case file folder, if not a paperless court, that will house the case papers.

**Step 2** Clerk may note the case number on all pleadings and exhibits received.

**Comments:** All exhibits may be marked with the case number since they are often separated from the case papers and stored elsewhere.

**Note:** Costs are collected upon the filing of papers for the commencement of civil actions. If the Court grants leave to increase the *ad damnum* amount (the dollar amount the lawsuit asks for in money damages), the amended pleading is deemed filed as of the date of the Court order permitting the amendment. Rules 1:8 and 3:2. When a debt or demand for damages exceeds statutory limits for the Clerk's fee pursuant to Va. Code § 17.1-275 and the writ tax pursuant to Va. Code § 58.1-1727, an additional Clerk's fee and writ tax may be assessed for the difference of the initial and amended amount of claim before a summons is issued.

## Transfer of Cases – Amended Amount of Claim

While a matter is pending in a general district court or a circuit court, upon motion of the plaintiff seeking to increase or decrease the amount of the claim, the court shall order transfer of the matter to the general district court or circuit court that has jurisdiction over the amended amount of the claim without requiring that the case first be dismissed or that the plaintiff suffer a nonsuit. Tolling of the applicable statutes of limitations shall be unaffected by the transfer.

Where such a matter is pending, if the plaintiff is seeking to increase or decrease the amount of the claim to an amount wherein the general district court and the circuit court would have concurrent jurisdiction, the court shall enter an order transferring the matter to the appropriate general district court or the circuit court as directed by the plaintiff, and providing that court has jurisdiction over the matter.

Except for good cause shown, an order of transfer shall not be issued unless the motion to amend and transfer is made at least 10 days before trial. The plaintiff shall pay all applicable filing and other fees, i.e. service fees, as otherwise provided by law to the clerk of the court to which the case is being transferred, and the clerk shall process the claim as if it were a new civil action. The plaintiff is required to prepare and present the order of transfer to the transferring

court for entry, at which time the case will be removed from the pending docket of the transferring court. The plaintiff shall provide a certified copy of the transfer order to the receiving court. [Va. Code §8.01-195.4](#)

**Note:** Case papers from the transferring court will not be forwarded to the receiving court. The plaintiff shall file a certified copy of the transfer order with original case documents and shall pay all applicable filing fees as if the receiving court was the originating court. Filing fees paid to the transferring court will not be refunded.

## Case Numbering

Case numbers are used to distinguish one case from another. While the format of case numbers may vary from court to court, most courts use a sequential case numbering system, starting with the number 1. The sequential numbering system offers a measure of security in that missing cases are readily obvious. However, after a number of years, case numbers can become large and unwieldy, thus increasing processing time and encouraging transposition errors. The preferred practice in many courts is to incorporate in the case number a year indicator and a case type identifier. Under this system, for example, the first civil case filed in 2001 would receive the case number “CL01-1” - Civil, “CA01-1” - Adoption, or “CJ01-1” - Juvenile.

**Note:** If the court is using the CAIS Circuit Court Automated Case Management System, the above case numbers would be “CL01000001-00”, “CA01000001-00”, or “CJ01000001-00”.

For cases that are reinstated, the clerk would use the same base case number already assigned and add a suffix number (-01, -02, etc.). Under this system, for example, the case number for a reinstatement would be “CL01000001-01.” Some clerks actually use the suffix number to identify miscellaneous petitions within each term of court. For example, the clerk will assign one base case number per term and each miscellaneous petition filed within that term would take on a new suffix number using the same base case number.

**Note:** With the merger of law and chancery effective January 1, 2006, “CH” (Chancery) numbers should no longer be assigned. When reinstating an existing “CH” (Chancery) case on the CAIS Circuit Court Automated Case Management System on or after January 1, 2006, it will be necessary to assign a new “CL” case number. It is recommended that clerks use the Case Management System to cross-reference the prior chancery case with the current reinstated civil action. Clerks may want to consider filing the prior chancery case with the new reinstated civil action.

Incorporating the year digits addresses the problem of unwieldy case numbers and provides an instant annual count of cases filed. The case type identifier distinguishes each civil case. A case type identifier is particularly useful when color-coded file folders are not used to distinguish



each case.

Regardless of the numbering system used, it should be remembered that the case number is vital in case processing. Case numbers provide uniqueness while offering better case control.

The procedures on the following page are recommended when numbering cases.

**Step 1** Clerk stamps or writes next available case number on all papers received and on the case file folder, if not a paperless court, that will house the case papers.

**Comments:** For courts that are not paperless, it is recommended that unassigned case numbers be pre-stamped on the file folders.

**Step 2** Clerk may note the case number on all pleadings and exhibits received.

**Comments:** All exhibits may be marked with the case number since they are often separated from the case papers and stored elsewhere.

## Indexing

Any filing system or collection of records is only as good as the indexing system that provides access to those records. In circuit courts, the Index to Civil Cases is the key to retrieval of all civil case records. The index may be maintained in book form with hand-written or typed entries, or the index may be a computer-generated printout, appropriately bound.

The index is intended for use by both court personnel and the general public. It should, therefore, be housed in the public record room of the clerk's office for easy access. If it is a computer-based index the public access terminals and instructions for use should be readily available. Because the index serves as the primary "pointer" to all individual case records, a conscientious effort should be made to index cases on the day they are filed.

For those courts using the Virginia Supreme Court's Case Management System, the indexing process is part of the procedure of entering all of the initial case data into the computer database.

Clerk enters case in the Index to Civil Cases and includes the following information:

- defendant name (last, first, middle)
- plaintiff name (last, first, middle)
- case number
- date case filed
- assigned judge, if applicable.

**Note:**

- The index is in alphabetical order by each party's name. When a party has known aliases, each alias should also be indexed, in addition to a trading as name.
- All cases received on a given day should be indexed at the same time.
- For courts using FAS and CCMS (with interfaces), most cases will be automatically indexed when filing fees are receipted.

**Preparation of Case File – Paper Files**

The case file is the repository for all documents filed with respect to a particular case.

**Step 1** Clerk types or writes on tab of case file:

- defendant name (last, first, middle)
- plaintiff name (last, first, middle)
- case number (unless pre-stamped)

**Comments:** Only minimal information should be included on the file tab to avoid confusion. Courts using end tabs may only put case number on tab. The parties' names and other information can be put on the outside of the file.

**Step 2** Clerk affixes to inside of opened folder a Case Summary Sheet, if utilized, for recording:

- date case filed
- filing type
- commenced by
- documents filed
- attorney's name, address and telephone number
- first hearing date and type, and any subsequent hearings
- assigned judge, if applicable.

**Comments:** Utilization of this optional form permits easy retrieval of case information, particularly when automation support does not exist. As significant events occur in the case, the case summary sheet should be promptly updated. Information can also be entered directly on the inside of the folder.

**Step 3** Clerk ensures that all case-related documents are placed in the case file, stamped with the date and time received.

**Comments:** Documents should be securely fastened to the inside of the folder to prevent loss of documents during file handling. Local policy will dictate whether documents are filed front-to-back or back-to-front.

## Issuance of Court Process

### General

Service of process is issued at the initial filing of a civil action, unless the filing party requests no service be made. The opposing party or parties are notified of the civil action by:

- service of process;
- acceptance of service;
- order of publication; or
- certified mailing (on an appeal from district court).

In some instances process can also be through the [Secretary of the Commonwealth, State Corporation Commission](#) or the [Department of Motor Vehicles](#). Additionally, [Va. Code §2.2-515.2](#) allows certain victims of Domestic Violence to apply to the [Office of the Attorney General](#) for inclusion in the Address Confidentiality Program, by which the participant is served through the Attorney General's office.

Each party must be served or notified with a copy of the Petition, Complaint or whatever type of civil action is filed. Attached to each service is a notice for the type of civil action filed such as Notice of Petition or Summons - Civil Action along with a Proof of Service for the return by the process server.

**Note:** On December 7, 1999, the Court of Appeals issued a decision holding that Supreme Court Rule 2:2 “does not require a party, after filing a bill of complaint, make a separate request for service of process.” *Kessler v. Smith*, Record No. 2397-98-4 (December 7, 1999) at 6. Rather, the court went on to conclude, “[N]othing more than the filing of a bill of complaint is required in order to request service of process.” The issue arose in this case because the appellant sought to proceed *in forma pauperis* and, therefore, no sheriff's fee had been proffered to indicate that service was sought. Therefore, if litigants wish to defer service for a period of time, it is suggested that the clerk's office obtain a written statement to that effect and place in the case file.

### Service of Process

Service of process, with the exception of attorney-issued subpoenas, is prepared by the clerk's office, manually or by an automated system, and delivered or mailed to the appropriate Sheriff of the locality where the party (parties) to be served reside or to a private process server if requested.

## Acceptance/Waiver of Service

A plaintiff may ask a defendant for a waiver of service of process in lieu of official service. The defendant is then required to respond so as to avoid any unnecessary costs of service of process. If a defendant fails to comply with a request for waiver made by a plaintiff, the court shall impose the costs subsequently incurred in effecting service on the defendant, unless good cause for the failure is shown, together with the costs, including reasonable attorney's fees of any motion required to collect the costs of service. Supreme Court form CC-1433, [NOTICE OF COMMENCEMENT OF ACTION AND REQUEST FOR WAIVER OF SERVICE OF PROCESS](#) can be used by the plaintiff to notify the defendant of the commencement of an action and to request waiver of service of process.

Form CC-1406, [ACCEPTANCE/WAIVER OF SERVICE OF PROCESS AND WAIVER OF FUTURE SERVICE OF PROCESS AND NOTICE](#) can be used for acceptance/waiver of service of process and waiver of future service of process and notice.

## Order of Publication

### [Va. Code § 8.01-317](#):

“Except in condemnation actions, every order of publication shall give the abbreviated style of the suit, state briefly its object, and require the defendants, or unknown parties, against whom it is entered to appear and protect their interests on or before the date stated in the order which shall be no sooner than fifty days after entry of the order of publication. Such order of publication shall be published once each week for four successive weeks in such newspaper as the court may prescribe, or, if none be so prescribed, as the clerk may direct, and shall be posted at the front door of the courthouse wherein the court is held; also a copy of such order of publication shall be mailed to each of the defendants at the post office address given in the affidavit required by § [8.01-316](#). The clerk shall cause copies of the order to be so posted, mailed, and transmitted to the designated newspaper within twenty days after the entry of the order of publication. Upon completion of such publication, the clerk shall file a certificate in the papers of the case that the requirements of this section have been complied with. Provided, the court may, in any case where deemed proper, dispense with such publication in a newspaper. The cost of such publication shall be paid by the petitioner or applicant.”

**Note:** The order of publication should be posted for a period of no less than four weeks. [Va. Code § 8.01-317](#)

See also [Va. Code § 1-211.1](#) which states that the requirement to post any notice, summons, order or other official document of any type is satisfied if such notice, summons, order, or other official document is posted on the public government website of the locality served by the court or the website of the circuit court clerk.

CC-1434, [ORDER OF PUBLICATION](#) can be used for the order of publication and clerk's certificate. The clerk should create a clerk's certificate form for use when an attorney or party draws the order of publication.

[Virginia Code § 8.01-316](#) allows an Order of Publication to be entered by the Clerk in certain circumstances. [Virginia Code § 8.01-316](#) makes it clear that those Orders of Publication signed by attorneys and processed by a clerk or deputy clerk prior to July 1, 2010, are valid.

### **Certified Mailing**

Notification of an appeal from the district court shall be by service or by certified mail, with certified delivery receipt requested, to the appellee or their attorney, or by regular mail to their attorney, pursuant to [Va. Code § 16.1-112](#). DC-475, NOTICE OF APPEAL - CIVIL can be used for the notification. A courtesy copy of the notification is also mailed to the appellant (optional).

### **Service Upon a Corporation or State Corporation Commission**

[Virginia Code § 8.01-513](#) sets forth requirements for service upon a corporation. If the person upon whom there is a suggestion of liability as provided in [Va. Code § 8.01-511](#) is a corporation, the summons shall be served upon an officer, an employee designated by the corporation other than an officer of the corporation, or, if there is no designated employee or the designated employee cannot be found, upon a managing employee of the corporation other than an officer of the corporation. If the judgment creditor or their attorney files with the court a certificate that they have used due diligence and that (i) no such officer or employee or other person authorized to accept such service can be found within the Commonwealth or (ii) such designated or managing employee found is also the judgment debtor, then such summons shall be served on the registered agent of the corporation or upon the clerk of the [State Corporation Commission](#) as provided in [Va. Code §§ 13.1-637, 13.1-766, 13.1-836](#) and [13.1-928](#). However, service on the corporation shall not be made upon a designated or managing employee who is also the judgment debtor. If the corporation intends to designate an employee for service, the corporation shall file a designation with the State Corporation Commission.

**Note:** [Virginia Code §12.1-19.1\(G\)](#) sets forth fee for service, which is \$30 for each defendant named in the process.

The clerk of the Commission shall charge and collect at the time of any service of process on them as statutory agent, thirty dollars for each defendant named in the process, which amount may be recovered as taxable costs by the party to the proceeding giving rise to such service if such party prevails in the proceeding.

**Step 1** Clerk notes or stamps on the request the date, time received, and sign or initial the request.

Comments: Each request must show the style of case, case number, court date, time and whether the request is on behalf of the Plaintiff or Defendant. Check the file or the automated system to verify the hearing date and time, if applicable.

**Step 2** Clerk manually types the service document requested for each service, or, if using an automated system, enter each service requested using the appropriate codes.

**Step 3** Enter manual services in process book and/or automated services in automated system. Mail services to the SCC or return to the requesting attorney (party). [Va. Code § 17.1-215](#).

Clerk of the State Corporation Commission

P.O. Box 1197

Richmond, Virginia 23218-1197

**Comments:** The requesting attorney (party) may ask that services be returned to them for service through a private process server or acceptance of service.

**Step 4** When the service is returned, Clerk notes or stamps the date and time received. If using an automated system, enter the date served and how served in the automated system. Clerk signs or initials the return.

**Comments:** If Process Book is used/kept, date served and how served does not have to be entered in the Process Book. [Va. Code § 17.1-215](#).

**Step 5** File the service return with the appropriate case papers.

## Service on Secretary of the Commonwealth

[Virginia Code § 8.01-329](#) states:

B. When service is to be made on the Secretary, the party or their agent or attorney seeking service shall file an affidavit with the court, stating either (i) that the person to be served is a nonresident or (ii) that, after exercising due diligence, the party seeking service has been unable to locate the person to be served. In either case, such affidavit shall set forth the last known address of the person to be served. For the mailing, by the clerk to the party or their agent or attorney, in accordance with subsection C, of verification of the effective date of service of process, the person filing an affidavit may leave a self-addressed, stamped envelope with the clerk.

When the person to be served is a resident, the signature of an attorney, party or agent of the person seeking service on such affidavit shall constitute a certificate by them that process has been delivered to the sheriff or to a disinterested person as permitted by § [8.01-293](#) for execution and, if the sheriff or disinterested person was unable to execute such service, that the person seeking service has made a bona fide attempt to determine the actual place of abode or location of the person to be served.

C. Service of such process or notice on the Secretary shall be made by the plaintiff's, their agent's or the sheriff's leaving a copy of the process or notice, together with a copy of the affidavit called for in subsection B and the fee prescribed in § [2.2-409](#) in the office of the Secretary in the City of Richmond, Virginia. Service of process or notice on the Secretary may be made by mail if such service otherwise meets the requirements of this section. Such service shall be sufficient upon the person to be served and shall be effective on the date when service is made on the Secretary. It shall be the duty of the Secretary to:

- Provide a receipt to a party seeking service who serves process on the Secretary by hand delivery or any other method that does not provide a return of service or other means showing the date on which service on the Secretary was accomplished. The party seeking service shall be responsible for filing such receipt in the office of the clerk of the court in which the action is pending;
- Forthwith send by certified mail, return receipt requested, to the person or persons to be served at the last known post-office address of such person notice of such service, a copy of the process or notice, and a copy of the affidavit; and
- Forthwith file with the papers in the action a certificate of compliance herewith by the Secretary or someone designated by them for that purpose and having knowledge of such compliance.

Upon receipt of the certificate of compliance, the clerk of the court shall mail verification of the date the certificate of compliance was filed with the court to the person who filed the affidavit required by subsection B, in the self-addressed, stamped envelope, if any, provided to the clerk at the time of filing of the affidavit. The clerk shall not be required to mail verification unless the self-addressed, stamped envelope has been provided. The time for the person to be served to respond to process sent by the Secretary shall run from the date when the certificate of compliance is filed in the office of the clerk of the court in which the action is pending.

**Comment:** The Secretary of the Commonwealth also has online options available through their [Service of Process Department](#).

## Service Upon the Commissioner of DMV

If served through the Commissioner 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 their duties.
- The Commissioner of DMV has the responsibility to send in an affidavit of compliance.  
**Note:** [Virginia Code § 8.01-312](#) case notes indicate that case law has determined that the non-filing of the affidavit does not invalidate the service. *Reynolds v. Dorrance*, 94F.2d 184 (4th Cir. 1938), applied in *Dennis v. Jones*, 240 Va. 12, 393 S.E.2d 390 (1990).
- Service of process on the Commissioner of DMV shall be made by the plaintiff or their agent or the sheriff leaving a copy of such process together with the fee for service of process on parties, for each party to be thus served, in the hands, or in the office, of the Commissioner or the Secretary, and such service shall be sufficient upon the nonresident and shall be effective on the date when service is made on the Commissioner or the Secretary.

## Attorney-Issued Subpoenas

If attendance is desired in a civil proceeding pending in a court or at a deposition in connection with such proceeding, an attorney-at-law who is an active member of the [Virginia State Bar](#) at the time of issuance may issue a subpoena. However, a sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date that attendance is desired.

This also allows attorneys to issue subpoenas duces tecum. Some civil proceedings, such as abuse and neglect proceedings, habeas corpus and protective orders, are excluded from the provisions of this legislation. Any attorney-issued summons or subpoena is required to be on a form approved by the Supreme Court, signed by the attorney, and shall include the attorney's address. The attorney-issued summons shall be deemed to be a pleading. [Va. Code § 8.01-407](#). See form DC-497, [SUBPOENA FOR WITNESS \(CIVIL\) - ATTORNEY ISSUED](#) and form DC-498, [SUBPOENA DUCES TECUM \(CIVIL\) - ATTORNEY ISSUED](#).

- Step 1** Clerk receives copy(ies) of subpoena(s) with applicable fee if service by Sheriff and stamps them with the date and time of receipt as with any other civil pleading and places in file. [Virginia Code § 8.01-407](#) provides that a copy of the summons and, if served by a sheriff, all service of process fees, shall be mailed or delivered to the



clerk's office of the court in which the case is pending on the day of issuance by the attorney.

**Note:** The clerk's fee is not authorized for a subpoena duces tecum for medical records when it is requested in accordance with [Va. Code § 8.01-413\(C\)](#).

**Comments:** Form DC-497, [Subpoena for Witness \(Civil\) - Attorney Issued](#) and form DC-498, [Subpoena Duces Tecum \(Civil\) - Attorney Issued](#) must be used.

Attorney sends original subpoenas, and if more than one subpoena is to be served, a transmittal sheet and photocopy of the payment instrument or clerk's receipt. [Va. Code § 8.01-407 \(A\)](#).

Attorney-issued subpoena shall not be issued less than five business days prior to the date of attendance of the witness or date that production of evidence is required.

If any subpoena is served less than five calendar days before appearance is required upon any judicial officer generally incompetent to testify pursuant to [Va. Code § 19.2-271](#), such subpoena shall be without legal force or effect unless a judge has issued the subpoena. [Va. Code § 8.01-407 \(A\)](#).

**Step 2** Clerk receipts for sheriff fees and any clerk's fees.

**Comments:** Insufficient fees would result in the return of all documents to the attorney. **Note:** Clerk should contact Sheriff to alert them of the return as soon as possible.

**Step 3** Return is placed in case file with copy(ies) of subpoena(s).

**Comments:** Some clerks will be entering the return in the P/O area as well to assist in answering calls on when service was made.

## ***Pro Se Civil Actions -Pro Se Litigants***

The right of individuals to represent themselves is an unalienable right common to all natural persons. During the 1990's, courts witnessed a dramatic increase in the number of filings by self-represented litigants. Individuals came to realize that the lack of affordable legal services impedes access to justice for low and moderate-income people.

The role of the courts must address customer services needs from the perspective of the consumer. They must acknowledge the courts' self-interest while formulating responses that

serve litigants and also benefit court operations.

The “*Pro se* Litigation Planning Committee,” established by the Supreme Court of Virginia, is working on these issues and further recommendations will be made to the courts throughout the Commonwealth for serving *pro se* litigants in Virginia courts ensuring fairness and enhancing access.

## Virginia Prisoner Litigation Reform Act

[Va. Code §§ 8.01-689](#) through 8.01-695

This Act creates a procedure that prisoners must follow in order to file *pro se* civil actions for money damages or for injunctive, declaratory or mandamus relief. It is intended to encompass actions brought by prisoners that arise from the conditions of their confinement. This act does not include petitions filed by prisoners for Divorce or a Name Change. In order to proceed with a suit the prisoner must pay full filing fees and costs unless granted *in forma pauperis* status; grant of *in forma pauperis* status would permit payment of filing fees and costs in installments as directed by the court. If the prisoner has had no deposits in their 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. *In forma pauperis* status must be denied if the prisoner has had three or more cases or appeals dismissed for being frivolous, malicious, or for failure to state a claim, unless the prisoner shows that they are in imminent danger of serious physical injury at the time of filing suit or it would be manifest injustice to deny such status. The prisoner’s failure to state their claims in a written complaint plainly stating facts sufficient to support their cause of action, accompanied by all necessary supporting documentation, is grounds for dismissal. The court must rule on initial dispositive motions on the record whenever possible rather than hold a hearing. The prisoner may not Seek discovery until initial dispositive motions are ruled upon, and then only when they can demonstrate to the court that their requests are relevant and material to the issues in the case. No prisoner action shall be filed except in the city or county in which the prison is located where the prisoner was housed when their cause of action arose.

### Note:

- A prisoner seeking *in forma pauperis* status shall provide the court with a certified copy of their 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 shall make payments, in equal installments as the court directs, towards satisfaction of the filing fee and costs. If the court orders payments, the clerk’s office would set up a civil receivable in its Financial Accounting System. Unless it was your court that had dismissed three or more of the defendant’s prior cases as being frivolous or malicious or for the failure to state a claim, you would not know to deny *in forma pauperis* status. If *in forma pauperis* status is incorrectly granted, 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](#) will direct the court to “serve” the complaint and supporting papers on the [Office of the Attorney General](#) in any action in which any defendant is the Commonwealth or one of its officers, employees, or agents. The Office of the Attorney General informs us that they are 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.

## Chapter 3 - Caseflow Management

### Docket Call

Civil Docket Call is a method used to call pending civil cases for the purpose of setting trial dates.

**Note:** Not all courts may conduct a civil docket call. In some courts, cases are set by praecipe or pretrial scheduling orders. Civil Docket Call is often referred to as “term day.” [Virginia Code § 17.1-517](#) provides that the chief judge of each circuit shall specify, through a court order, the terms of court for each court within their circuit. A “term of court” is the period of time during which the circuit court is in session. Terms may vary in length among courts, but no court may have less than four terms of court each year. Any change in the terms of court is to be reported by the chief judge of the circuit to the Office of the Executive Secretary by January 1 of each year. [Va. Code § 17.1-517](#).

Civil and Criminal Terms are often combined, however several courts have set terms for civil cases and separate terms for criminal cases. Some examples of civil terms throughout the Commonwealth are:

- “First Monday in March, June and December and Third Monday in September”;
- “Third Wednesday in each month except August”;
- “Third Wednesday in February, April, June, August, October and December”;
- “First Tuesday in each month”

Again, “Term day” refers to the day on which a term of court commences. The times for commencement of terms for each circuit court are set out in [Rule 1:15](#). Term day is also the day on which the docket of pending cases is usually called.

### Docket Preparation

[Virginia Code § 8.01-331](#) states that “when any civil action is commenced in a circuit court, or any such action is removed to such court and the required writ tax and fees thereon paid, the clerk shall enter the same in the civil docket.” **Note:** Effective July 1, 2007, removals from general district court to circuit court were eliminated. These dockets may be either (i) a substantial, well-bound loose-leaf book, (ii) a visible card index or (iii) automated data processing media such as the Supreme Court Case Management System.

The form of a civil docket may vary. However, each case that is entered on the civil docket must contain the following:

- The short style of the suit or action;
- The names of the attorneys;
- The nature of the suit or action; and
- The date filed and case file number.

In addition the docket may contain the following information applicable in an individual case as deemed appropriate:

- The names of the parties;
- The date of the issuance of process;
- A memorandum of the service of process;
- A memorandum of the orders and proceedings in the case; and
- The hearing date(s) and type(s) of hearing(s) conducted on such date(s).

Cases appealed from the juvenile and domestic relations district courts shall be docketed as provided above and as prescribed by [Va. Code § 16.1-302](#).

Below are typical practices followed when the docket is prepared.

### Civil Docket Procedures

**Step 1** Clerk checks for all cases that have been filed but have not been placed on the docket because of no service being requested, or due to all parties having not been served, etc.

J&DR Court appeals are placed on the docket after notice to all parties in interest.

**Note:** Protective Orders take precedence on the Circuit Court docket and notice should be given to the parties and the case docketed without delay.

**Step 2** Declaratory Judgment cases are placed on the docket after a Summons is issued and the response time has passed.

**Step 3** Other cases are placed on the docket upon written request.

**Step 4** Cases are “flagged” by date on the case management system, if used, for Term Docket date.

**Step 5** Cases disposed of from a prior docket for which a final order has been entered are removed from the prior docket.

- Step 6** Cases not disposed of from the prior docket are continued and given the new Term Docket date.
- Step 7** Term Docket is prepared or generated from computer system prior to docket call.
- Step 8** Copies of docket are made for the Judge, Judge's staff and attorneys based on local practice.
- Step 9** Copies of the docket for attorneys are placed in the courtroom on Docket Call day.
- Step 10** Cases will then be called by the judge or the clerk on Docket Call day. Clerk present in court notes all assignments for trial.

## Caseflow Management

Elements of successful caseflow management programs in circuit courts include the desire for finding better ways of handling increasing workloads in the trial courts which has prompted judges and court officials throughout the country to reexamine their case processing customs and practices and to search for new techniques to resolve disputes fairly and more expeditiously. Within the past decade, numerous delay reduction programs have been undertaken in courts of varying sizes and their results have become more readily available.

Whether they are called caseflow management, docket control, litigation management or by other terms, the research conducted to date confirms that there is no single solution or model program that has been proven successful in all courts. However, what has been proven time and again is that in every successful program certain basic elements or themes have been found to be present.

### Defining Delay

A range of opinions exist on the question of what constitutes delay. In fact, some bar members and court leaders have asked "What do you mean the public is complaining about delay? What delay? Nobody's complained to me about their cases taking too long. What litigants are concerned about is the outcome of their case."

The experiences related by Virginia judges and clerks of court, in particular, suggest that the picture is far larger than that. First, among the most well-documented facts about the court system is the public's apprehension about having to go to court, even as a juror, combined with a reverence for the court's authority.

Therefore, it is not surprising that litigants usually are less vocal to the court and even to their lawyers than under other circumstances. If a complaint is lodged, it generally is to court staff, unless the matter for which they are in court is to be taken care of by such staff. Thus, while case outcome is of primary importance, litigants, witnesses and jurors also evaluate the legal system and the courts on the basis of how they were treated during the entire litigation process, the inconveniences they perceived to exist, and the costs of doing business with lawyers and the court.

Among the ways the public (both individuals and the business community) perceives court delays are:

- The number of days, weeks, or months that it takes to conclude a civil case from the time the perceived civil wrong happened to them; and, in a criminal case, from the arrest date to the date the court adjudicates the case;
- The number of times litigants, witnesses, and jurors are required to appear in court and the number of times after having appeared, the scheduled event does not occur, or the case has been settled.
- Within the business community particularly, the costs incurred due to the amount of time they and/or their lawyers spend in court, as well as the time lawyers have to wait for cases to be called or motions to be argued.

In contrast, judges and clerks, and many lawyers of court are much more likely to view delays in case processing from the time the case was filed in the court. The concerns, if not fears, they express generally relate to the increasing number of months in advance cases are having to be set in some areas, particularly if the trial is going to last more than one day. In other areas the problems are increased criminal caseloads, particularly drug cases, the lack of capacity in the court's schedule for handling emergency cases, the indiscriminate scheduling between simple and complex cases, the resulting bumping of cases or continuance of cases bumped (angering and inconveniencing lawyers, litigants and experts); and finally, the increase of motions, particularly those filed immediately prior to trial.

### **Considerations in Developing Caseflow Management Prevention Efforts**

The current situation on delay reduction efforts suggests several key findings that should be considered from the outset by courts interested in assessing the condition of their civil or criminal dockets and/or developing caseflow management plans.

1. The keys to effective caseflow management and delay reduction programs are court control of the pace of litigation and committed leadership by the court in developing and sustaining effective caseflow management systems.

2. Given the shared responsibilities for successfully introducing and maintaining an effective caseflow management plan, a “team” approach is recommended. In this way, the court ensures that there is a method of consulting with others, such as the clerks of courts and their personnel as well as the bar, law enforcement and others involved in case processing. Cooperation, particularly between the court and the clerk’s office is required in order to gather information to assess the current status of the court’s caseloads, including identifying where any delays may be occurring, to determine what changes would be mutually beneficial, and to build support for any program that may be developed. In addition, it is essential that the need for additional resources, where needed, be examined prior to the introduction of new case processing procedures.
3. Caseflow management programs can be developed either by individual courts or circuits. To avoid confusion by the bar, litigants and others, any new procedures developed should be discussed with and/or circulated prior to their introduction.

### Forming a Team

Two interrelated principles are involved in answering the question of who should take the lead in organizing docket management programs. These are court control of the pace of litigation and committed leadership by the bench in developing and implementing delay reduction efforts.

Judges are responsible for the effective administration of justice within their courts and for taking action to ensure the timely disposition of civil and criminal matters. However, through procedures such as the praecipe system, Virginia lawyers traditionally have set the pace for litigation to proceed through the courts, particularly for civil cases. Thus, while adopting these principles marks a change in philosophy, the evidence suggests that when caseflow management programs are developed cooperatively and there is reasonable accommodation of the bar, judicial control of the dockets is evaluated favorably by lawyers. In addition, it has long been noted in the Commonwealth that judges set the “attitudinal” pace of litigation. Thus, where the expectation is that cases will move forward and not languish on the dockets, the legal community responds accordingly.

As almost every program reflects, a strong judicial commitment is essential to reducing delay and, once achieved, maintaining a current docket. Since it is the judges who must be responsible for the pace of litigation, it is the judges who must be the formal leaders of the reform effort. Although others will play vital roles in the delay reduction programs, judges must take the lead.

Most of the successful delay reduction efforts to date have included a core team of people led by judges. Because of this fact, the information that follows relates primarily to efforts



undertaken with this approach. At the nucleus of the team are judges and clerks or their deputies and other court staff. In addition, interested bar members, sometimes either the local bar president or the chairman of the bench-bar committee, have participated on the teams. Sometimes lay citizens have served on the teams. When possible, circuit-wide teams should be created for multiple locality jurisdictions. If a court/clerk's office/bar team is not formally appointed, there must exist a mechanism for extensive consultation with these persons throughout the development, implementation and monitoring of any new delay reduction measures.

At least three objectives should be considered if a team or committee is appointed. First, the members must be selected carefully, considering that the team is the logical base upon which to build acceptance of the program. Second, the team must evaluate current case processing procedures based upon the information objectively obtained from the gathering of statistics, not through the preexisting conceptual lens of its members. Third, the team should plan systematically, considering the impact of change on the entire system.

The "ownership" of the program should be broadly based. Every successful program has enjoyed the early and enthusiastic support of the chief judge of the jurisdiction where the change is sought.

Although success depends upon commitment from the leadership, it cannot become the leaders' program. "Ownership" of the program must be as broadly based as possible. Although the spokesperson for the program should be a judge, the team members must be appropriately recognized for their contribution. Even if the team members are not involved in the day-to-day operation of the program, they should be kept informed of its progress. If unanticipated problems arise during implementation, or if changes are needed, the team members most familiar with the area should be consulted.

### **Steps Taken by the Court or Team to Assess Delay**

Whether as an informal group or as a team, there are several recommended actions for those involved to undertake:

1. Conduct a thorough review of the condition of the civil and criminal dockets, including numbers of cases pending.

To do so, the court and/or team members can consult the court's monthly and quarterly caseload reports. These reports contain information on the number of cases commenced, concluded, and pending for each court as well as the percentages of cases disposed through different methods of adjudication, such as settled or dismissed cases, and jury trials. The annual State of the Judiciary reports also

contains this information. Judges also should work with personnel in the clerks' offices so that members of the court may have a thorough understanding of how the statistical information is compiled.

Additional information is available particularly for automated courts through the case management system of the Courts Automated Information System (CAIS). Examples of those reports including the age of pending cases, "speedy trial reports", and concluded case reports by age can be found in the "batch reports" sections of the Case Management System User's Guide. These manuals are available to all automated courts and are maintained in the clerks' offices. In addition, examples of "calendar management" reports currently available as well as those under development by the Executive Secretary's office are contained in this document.

2. Review trends in case filings as well as demands being placed on the resources of the court and clerks' offices.

Again, the State of the Judiciary reports can be consulted for trend information over a period of years for a particular court or circuit. In addition, sample questions that can be asked about caseload trends appear in the document. Clerks of the court and their deputies must be consulted for information on resource demands.

3. Conduct a "walking the tracks" exercise.

A "walking the tracks" exercise can be held with the team or by the judges and clerks to review every step of the current case processing system to determine where delays, if any, may be occurring. In doing so, consideration should be given to such potential causes as procedures, customs and traditions in the handling of different types of cases. For instance, consider the charts below. What case processing problems, if any, are occurring between the identified intervals or any of the steps along your court's case processing steps? Are there any other steps where inactivity on the part of the court, the clerk's office, the Bar or others causes delays in concluding the cases?

As examples, in civil cases, delays may be occurring when service of process is not requested at case filing and thus the case can languish for considerable periods of time with no further actions, pleadings or orders filed. Delays also may result from discovery not being completed in a timely fashion or when last minute motions or continuances require postponement of the trial.

4. Ask the following questions:

a. Local Practices

- Are there local practices that speed or slow disposition of cases?
- Are attorneys cooperating sufficiently in the discovery process?
- Where praecipes are used, what is estimated to be the time from case filing to the filing of the praecipe?

b. Expediting Trials

- Are there any actions taken by the court to ensure that cases, once filed, do not languish on the docket for long periods of time before the case is set for trial? Are there any monitoring events or methods used by the court to require counsel to open their files and prepare the case once it is filed?
- Have any stages of case processing been expedited by innovative techniques?
- What techniques should be considered to expedite cases, if any?

c. Clerks' Offices

- Are there any practices that could be expedited within the clerks' offices?
- Does the court regularly purge under the two and three-year rules?

d. Nature of Case

- Are there any case characteristics that speed or slow case processing?
- If so, what reasonably could be done to expedite discovery in these cases? (i.e., filing pre-trial scheduling orders)
- What are the *voir dire* practices and do they speed (or slow) trial process?

e. Trial/Post-Trial

- Is the pace of trials affected on a regular basis by any specific events (examples: daily commencement time, lawyer estimates of length of trials or hearings, last minute pretrial motions, continuances or trial interruptions)?
- If so, please explain.
- How long are cases generally held under advisement?
- How long does it take between adjudication and sentencing or submission of final order in a criminal case? Are there any time guidelines for probation officers on preparing presentence investigation orders?

- Does the court have any policies on the length of time allowed to file the final order in a civil case?
- f. Evidence
- Is the pace of trials affected on a regular basis by practices regarding evidence (examples: stipulations, expert testimony, or limitations on certain types of evidence)?
  - If so, please explain.

Conducting a walking the tracks exercise provides an opportunity for those involved to review the current situation. The key results of such reviews will be the discussions and the assembling of information on the present status of the court's dockets.

Assessing the current status of the docket and determining where delays may be occurring can be done expeditiously, but not "overnight." Part of the responsibility of the team leader or the judge heading up an internal review is to work with others involved to determine: (1) a schedule of possible meeting dates; (2) how the work involved can be accomplished; and, (3) who should be responsible for each task.

### Developing Caseflow Management Programs

Once the profile suggested has been completed, several options are available. If the analysis was developed internally, it can be reviewed with local bar members, law enforcement, probation offices, and others for their feedback. A bench-bar committee can join in the efforts of the internal working group (judges, clerks, court staff), at this point, if desired. The next step is determining what actions, if any, are needed to improve the court/circuit's caseflow management procedures, or to address any identified delay problems. The court may decide to establish a docket management program or to initiate use of additional actions or specific techniques to expedite litigation.

Although many techniques exist to attack delay, the heart of all of the programs reviewed is active caseflow management. So important is this concept that many would describe it as a specific "delay reduction technique" in and of itself. In fact, it is the technique credited for the success in reducing delay in many jurisdictions.

Essential elements of active caseflow management are as follows:

- Court supervision and control of the movement of all cases from the time of filing through final disposition.
- Monitoring of case processing time guidelines for the overall disposition of

cases.

- By conferences or other techniques, establishing times for concluding the critical steps in the litigation process, including the discovery phase.
- Developing procedures for early identification of cases that may be protracted, and for giving them special administrative attention where appropriate (differentiated treatment of cases).
- Adopting a policy on the number of hearings or trials to be set per day that schedules a sufficient number of cases to ensure efficient use of judge time while minimizing the bumping of cases caused by over scheduling.
- Commencing trials on the original date scheduled with adequate advance notice.
- A firm, consistent policy for minimizing continuances.
- Reasonable accommodation of the bar.
- Prompt determination of matters submitted to the judge.

### Examples of Caseflow/Calendar Management Programs

#### Praecepe System

According to the 1994 edition of the “General Information Relating to the Courts within each Circuit and District in Virginia”, prepared annually by the Supreme Court of Virginia, approximately 33% of all circuit courts set their respective pending civil cases for trial by employing some form of praecepe system. Generally, a praecepe is a written request to the court to set a case for trial at the next docket call.

The praecepe is filed with the clerk by either the plaintiff or defendant, without first seeking the concurrence of the opposing party. If the opposing party objects to setting the case for trial at the court’s next civil docket call, a formal objection is usually tendered the court, sometimes in the form of a motion to quash the opponent’s praecepe.

This method of setting cases for trial relies heavily on the good faith of attorneys and pro se parties to voluntarily move their respective cases along as expeditiously as possible. In a pure praecepe system, the court often exercises little oversight or control over its civil docket, preferring the parties to the action to decide when a case has matured for trial or settlement.

Pretrial Scheduling Order - [Rule 1:18](#).

In any civil case the parties, by counsel of record, may agree and submit for approval and entry by the court a pretrial scheduling order. If the court determines that the submitted order is not consistent with the efficient and orderly administration of justice, then the court shall notify counsel and provide an opportunity to be heard. See Section 3 of the Appendix of Forms at the end of Part I of the Rules of Court (Uniform Pretrial Scheduling Order).

In any civil case in which a pretrial scheduling order has not otherwise been entered pursuant to the court's normal scheduling procedure, the court may, upon request of counsel of record for any party, or in its own discretion, enter the pretrial scheduling order contained in Section 3 of the Appendix of Forms at the end of Part I of The Rules of Court (Uniform Pretrial Scheduling Order). The court shall cause copies of the order so entered to forthwith be transmitted to counsel for all parties. If any party objects to or requests modification of that order, the court shall (a) hold a hearing to rule upon the objection or request or (b) with the consent of all parties and the approval of the court, enter an amended pretrial scheduling order.

With the exception of domestic relations cases, a court may not enter a scheduling order which deviates from the terms of the Uniform Pretrial Scheduling Order unless either (1) counsel of record for all parties agree to different provisions, or (2) the court, after providing an opportunity for counsel of record to be heard, makes a finding that the scheduling order contained in the Appendix is not consistent with the efficient and orderly administration of justice under the specific circumstances of that case.

## Requests For Subpoenas, Production Of Documents, Etc.

### Definitions

A subpoena is a "process to cause a witness to appear and give testimony"... Black's Law Dictionary. A more technical and descriptive term for the ordinary subpoena is subpoena *ad testificandum*.

A subpoena *duces tecum* is "a process by which the court, at the instance of a suitor, commands a witness who has in their possession or control some document or paper that is pertinent to the issues of a pending controversy, to produce it at trial." Black's Law Dictionary (3) [Virginia Code § 8.01-2 \(8\)](#) states that "'summons' and 'subpoena' may be

used interchangeably and shall include a subpoena *duces tecum* for the production of documents and tangible things.”

## Subpoena

### 1. How Issued. To Whom

According to [Va. Code § 8.01-407](#), a subpoena may be issued to command a person to attend to give evidence before a court, notary, or commissioner or other person appointed by a court or acting under its process or authority in a judicial or quasi-judicial capacity.

If attendance is desired in a civil proceeding pending in a court or at a deposition in connection with such proceeding, a subpoena may be issued not less than five business days prior to the date attendance is desired by an attorney-at-law who is an active member of the [Virginia State Bar](#) at the time of issuance. This also allows attorneys to issue subpoenas *duces tecum*. Some civil proceedings, such as abuse and neglect proceedings, habeas corpus and protective orders, are excluded from the provisions of this legislation. Any attorney-issued summons or subpoena is required to be on a form approved by the Supreme Court, signed by the attorney, and shall include the attorney’s address. The attorney-issued summons shall be deemed to be a pleading. A copy of the summons and, if served by a sheriff, all service of process fees, shall be mailed or delivered to the clerk’s office of the court in which the case is pending. [Va. Code § 8.01-407](#).

Convicts or persons incarcerated in a correctional or penal institution may be summonsed to appear in a civil action, upon the entry of an order by the court directed to the [Department of Corrections](#) commanding the attendance of the convict or prisoner, per [Va. Code § 8.01-410](#).

Witnesses may be compelled to attend depositions by subpoena, per [Rule 4:5\(a\)](#). The place of taking a deposition is set by [Va. Code § 8.01-420.4](#). Further, witnesses may be compelled to produce documents and other tangible things per [Rule 4:5\(b\)\(5\)](#).

No subpoena shall, without first obtaining a court order for same, issue for the attendance of the persons listed in [Va. Code § 8.01-407 \(B\)](#). If any subpoena is served less than five calendar days before appearance is required upon any judicial officer generally incompetent to testify pursuant to [Va. Code § 19.2-271](#), such subpoena shall be without legal force or effect unless the subpoena has been issued by a judge. [Va. Code § 8.01-407 \(A\)](#).

Requests for issuance of witness subpoenas are usually presented to the clerk by

written request letter or memorandum from counsel of record or by pro se parties.

[Virginia Code § 8.01-407 \(C\)](#) provides that a clerk may issue a summons to compel attendance of a citizen of the Commonwealth before commissioners or other persons appointed by authority of another state when the summons requires the attendance of such witness at a place not out of their county or city. The code provides no direction on how to handle the paperwork in these instances. Most clerks place these documents in a miscellaneous file. Clerks may charge a Clerk's fee of \$10 pursuant to [Va. Code § 17.1-275 \(A\)\(18\)](#) plus "add-on" fees and service fees.

#### Witness Reimbursement

[Virginia Code § 17.1-612](#) provides how a witness may claim reimbursement for mileage, tolls and, in some cases, an attendance fee for compensation as an expert witness. [Virginia Code § 17.1-613](#) prescribes that the sum to each witness is to be paid by the party for whom the summons issued; if the witness is compelled to attend by the Commonwealth, payment is made as required by that section.

#### Who May Serve Subpoena on the Witness

[Virginia Code § 8.01-293](#) prescribes that any sheriff within their territorial bounds or any person age eighteen years or older and who is neither a party or otherwise interested in the subject matter in controversy, are authorized to serve process.

#### Fee for Service of Witness Subpoena

A sheriff's fee is authorized for each service of a subpoena per [Va. Code § 17.1-272](#). No Clerk's fee is authorized for issuing a subpoena.

#### **Subpoena *Duces tecum***

##### 1. How Issued. To Whom

[Rule 4:9](#) prescribes the method by which a person can be compelled to produce documents and other tangible things, or to allow entry onto land for inspection or for other purposes. [Virginia Code § 8.01-407](#) allows attorneys to issue subpoenas *duces tecum*. Any attorney-issued subpoena is required to be on a form approved by the Supreme Court, signed by the attorney, and shall include the attorney's address. See form DC-498, [Subpoena \*Duces tecum\* \(Civil\) - Attorney Issued](#).

[Rule 4:9 \(a\)](#) provides that a party to an action may be compelled to produce and



permit inspection and copying of documents and other tangible things for the other party, or to produce documents in court at the time of trial, or to permit entry upon land or property for purposes of inspection, etc. The request document sent to the clerk is usually titled as a Request for Production of Documents, etc. The resulting summons is a subpoena *duces tecum*.

[Rule 4:9 \(c\)](#) provides how a subpoena *duces tecum* may be served on a person not a party to the action. The subpoena commands the person to produce documents or tangible things demanded in the request for inspection and copying, etc. A certificate is required from the requesting party that a copy of the written request for subpoena *duces tecum* has been mailed or delivered to counsel of record and to any pro se party. The request document sent to the clerk is usually titled as a Request for Subpoena *Duces tecum*. The resulting summons is a subpoena *duces tecum*.

[Rule 1:12](#) requires any request for a subpoena *duces tecum* shall be served on each counsel of record by delivery or mailing a copy to them on or before the day of filing.

Per [Va. Code § 8.01-413](#), any health care provider whose patient records or papers are subpoenaed for production may comply by timely mailing to the clerk who issued the subpoena or in whose court the action is pending, properly authenticated copies, photographs or microphotographs in lieu of the originals.

Copies of a health care provider's records or papers shall be furnished within 30 days of receipt of such request to the patient, their attorney, their executor or administrator, or an authorized insurer upon such patient's, attorney's, executor's, administrator's, or authorized insurer's written request, which request shall comply with the requirements of subsection E of [Va. Code § 32.1-127.1:03](#). If a health care provider is unable to provide such records or papers within 30 days of receipt of such request, such provider shall notify the requester of such records or papers in writing of the reason for the delay and shall have no more than 30 days after the date of such written notice to comply with such request.

No subpoena *duces tecum* for records or papers shall set a return date by which the health care provider must comply with such subpoena earlier than 15 days from the date of the subpoena, except by order of a court or administrative agency for good cause shown. When a court or administrative agency orders that records or papers be disclosed pursuant to a subpoena *duces tecum* earlier than 15 days from the date of the subpoena, a copy of such order shall accompany such subpoena.

Motion to Quash

Any objection or motion to quash a subpoena *duces tecum* under [Rule 4:9\(c\)](#) may result in either annulment of the subpoena *duces tecum* or amendment as provided in this Rule.

As to a subpoena *duces tecum* issued with at least a 15-day return date, if no motion to quash is filed within 15 days of the issuance of the subpoena, the party requesting the subpoena *duces tecum* or the party on whose behalf the subpoena was issued shall certify to the subpoenaed health care provider that (a) the time for filing a motion to quash has elapsed and (b) no such motion was filed. Upon receipt of such certification, the subpoenaed health care provider shall comply with the subpoena *duces tecum* by returning the specified records or papers by either (1) the return date on the subpoena or (2) five days after receipt of such certification, whichever is later.

#### Who May Serve Subpoena *Duces tecum* on the Person

[Virginia Code § 8.01-293](#) prescribes that any sheriff within their territorial bounds or any person age eighteen years or older and who is neither a party or otherwise interested in the subject matter of the controversy, may serve process.

#### When a Court Order is Necessary to Subpoena Records, etc.

Both the Federal Privacy Act [5 U.S.C.S. section 552 a. (b) (11)] and the confidentially Statute [38 U.S.C.S. section 7332 (b)(2)(D)] (dealing with certain Veterans Health administration records) require an order of a court of competent jurisdiction to command a federal agency to disclose any record, or the V.A. authority to release medical records concerning treatment, etc. of drug abuse, alcoholism or alcohol abuse, infection with HIV, or sickle cell anemia.

To subpoena the records, etc. of certain officials listed in [Rule 4:9\(c-1\)](#), a court order must first issue.

No subpoena *duces tecum* for records or papers shall set a return date by which the health care provider must comply with such subpoena earlier than 15 days from the date of the subpoena, except by order of a court or administrative agency for good cause shown. When a court or administrative agency orders that records or papers be disclosed pursuant to a subpoena *duces tecum* earlier than 15 days from the date of the subpoena, a copy of such order shall accompany such subpoena.

#### Fees for Service of Subpoena *Duces tecum*:

A sheriff's fee is authorized for service of a subpoena *duces tecum* per [Va. Code § 17.1-272](#). A clerk's fee of \$5.00 is authorized for issuing a subpoena *duces tecum* per [Va. Code § 17.1-275 \(23\)](#), but not for an attorney-issued subpoena *duces tecum*, as the Clerk neither prepares, nor issues it.

The clerk's fee is not authorized for a subpoena *duces tecum* for medical records when it is requested in accordance with [Va. Code § 8.01-413\(C\)](#).

#### Copies of Subpoenaed documents

Unless otherwise ordered for good cause shown, when one party to a civil proceeding subpoenas documents, the subpoenaing party, upon receipt of the subpoenaed documents, shall, if requested in writing, provide true and full copies of the same to any other party or to the attorney for any other party, provided the other party or attorney for the other party pays the reasonable cost of copying or reproducing the subpoenaed documents. This provision does not apply where the subpoenaed documents are returnable to and maintained by the clerk of court in which the action is pending. [Va. Code § 8.01-417](#).

#### Procedures to issue a subpoena *duces tecum*

**Step 1** Clerk receives written request (“Request for Production of Documents” or “Request for Subpoena *Duces tecum*”) to issue a subpoena *duces tecum*.

**Comments:** The request should be in writing and should indicate:

- The officer who is to serve the subpoena,
- The writings or objects to be produced or delivered,
- Whether the person on whom the subpoena is served is required to appear with the objects to be produced,
- The name of the court and title of the proceeding,
- Time and place at which the witness is to appear or deliver the items, and
- On whose application the subpoena was issued.

**Step 2** Clerk checks to *See* if certificate is attached. **Note:** A certificate is required by the party requesting the subpoena *duces tecum* ensuring that a copy of the request has been delivered or mailed to counsel and to any pro se counsel. [Rule 4:9\(c\)](#).

**Step 3** Clerk prepares subpoena *duces tecum* and signs.

**Comments:** See form CC-1437, SUBPOENA *DUCES TECUM* (CIVIL CASE). The subpoena may be prepared in triplicate or two copies of the signed original may be produced. The latter is recommended.

Any party filing a request for a subpoena *duces tecum* for a patient's medical records shall include a Notice to Providers in the same part of the request where the provider is directed where and when to return the records. [Va. Code § 32.1-127.1:03](#).

**Step 4** Clerk issues signed original and one copy of subpoena *duces tecum* to sheriff or serving officer; places second copy in case file with request for subpoena.

**Step 5** Clerk enters the following information in the court's process book or file:

- plaintiff name
- defendant name
- type of process issued
- date prepared
- date of issuance
- signature of issuing clerk or of sheriff who will serve process.

**Comments:** Every service of process must be entered in a process book or file (or automated system). [Va. Code § 17.1-215](#).

The preferred practice in most jurisdictions is to place every process to be served locally in the process book or a file to be picked up daily by the local sheriff or serving officer. The sheriff or serving officer signs for the processes in the process book when collecting them for service.

A subpoena directed to another city or county in Virginia is mailed by the clerk's office to the sheriff or serving officer of that jurisdiction. The date of mailing should be noted on the process book.

**Step 6** The sheriff or serving officer executes the subpoena *duces tecum* and makes their return to the issuing court.

**Comments:** Return must be made within seventy-two hours of service. Service is due on next working day if otherwise due on Saturday, Sunday or legal holiday. [Va. Code § 8.01-325](#).

Execution is effected by leaving a copy of the subpoena with the intended party or posting the subpoena on the door of their home. The

original is returned to the court, showing the date and method of service. If the party could not be located, the copy is marked “not found” and returned with the original to the court.

**Step 7** Clerk checks returned original to verify that the serving officer has entered the following:

- date of execution
- type of service
- serving officer’s signature

**Comments:** If service made by private process server, the return should be stamped, typed or printed stating:

- that the process was served by a private process server; and
- name, address and phone number of the server.

**Step 8** Clerk enters in process book or file the date the subpoena was returned to the court.

## Uniform Interstate Depositions and Discovery Act

### 1. How Issued. To Whom

The creation of the Uniform Interstate Depositions and Discovery Act in 2009 provided that a party may submit a subpoena issued by a court of record from another state to the clerk of the circuit court serving the jurisdiction in which discovery is sought in the Commonwealth. The foreign subpoena must be accompanied by a written statement that the law of the foreign jurisdiction grants reciprocal privileges for taking discovery by citizens of the Commonwealth. Upon receipt of the foreign subpoena, the clerk shall issue a subpoena for service upon the person to whom the foreign subpoena was directed. Form CC-1439, SUBPOENA/SUBPOENA *DUCES TECUM* TO PERSON UNDER FOREIGN SUBPOENA should be used

Any subpoena issued by the clerk shall incorporate the terms used in the foreign subpoena and contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates, and of any party not represented by counsel. No civil action need be filed in the circuit court to utilize this discovery act. No subpoena issued in the Commonwealth pursuant to this article may be issued by any person other than the applicable circuit court clerk of court in the Commonwealth. [Va. Code § 8.01-412.10](#)

A subpoena issued under this article shall be served in compliance with applicable statutes of the Commonwealth for service of a subpoena. [Va. Code § 8.01-412.11](#)

The code provides no direction on how to handle the paperwork in these instances. Most clerks place these documents in a miscellaneous file.

### Application to Court

An application to the court for a protective order or to enforce, quash or modify a subpoena issued by a clerk of court under [Va. Code § 8.01-412.10](#) shall comply with the statutes and rules of court of the Commonwealth, and be submitted to the court in the circuit in which discovery is to be conducted. A separate civil action need not be filed. [Va. Code § 8.01-412.13.](#)

### Fees for Service

- a) Subpoena. A sheriff's fee is authorized for each service of a subpoena per [Va. Code § 17.1-272](#). Clerks may charge a Clerk's fee of \$10 pursuant to [Va. Code § 17.1-275 \(A\)\(18\)](#).
- b) Subpoena *duces tecum*. A sheriff's fee is authorized for service of a subpoena *duces tecum* per [Va. Code § 17.1-272](#). A clerk's Fee of \$5.00 is authorized for issuing a subpoena *duces tecum* per [Va. Code § 17.1-275 \(23\)](#).

### Jury Management

The right of trial by jury is declared in Article I, Section 11 of the Constitution of Virginia. Trial by jury is a common law right, however it can be waived. Any legal cause of action in which the recovery sought is greater than \$20, exclusive of interest, may be heard and judgment entered by the court, unless one of the parties involved in the suit demands a trial by jury. If neither party requests a jury, the court may, on its own motion, direct that a jury be impaneled to hear and give judgment on one or more issues arising out of a legal cause of action.

Trial by jury in equity matters is typically not available except as provided in a few statutes, unless one of the parties or the judge requests a jury. If the defendant in equity responds to an equitable claim with a plea that is denied by the plaintiff, either party may have the issues tried by jury. [Va. Code § 8.01-336 \(D\)](#). In an action to establish or impeach a will ([Va. Code § 64.2-448](#)) or an action to remove clouds on title ([Va. Code § 55-153](#)), parties have the right to a trial by jury. In an equitable claim where no right to a jury trial otherwise exists, where impaneling of an advisory jury pursuant to [Va. Code § 8.01-336 \(E\)](#) to hear an issue will be helpful to the court concerning disputed fact issues, such a jury may be seated. Decision on such claims and issues shall be made by the judge.

Virginia Code § 8.01-353.1 provides that at the time of assembly for the purpose of juror selection, the clerk of court shall ensure that the identity of each member of the jury venire is verified. Acceptable forms of identification: Commonwealth of Virginia voter registration card; social security card; valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the juror and issued by an employer of the juror in the ordinary course of the employer's business. If the juror is unable to present one of these forms of identification, they shall sign a statement affirming, under penalty of perjury, that they are the named juror.

### Civil Jury Composition

The Code of Virginia provides for civil juries to be comprised of five (5), seven (7), or, in special situations, three (3) or twelve (12) persons. If the amount involved in the action, exclusive of interest, is less than \$25,000.00 ([Va. Code § 16.1-77 \(1\)](#)), the jury will be five (5) persons selected from a panel of not less than eleven (11). [Va. Code § 8.01-359](#). All other civil juries will be composed of a group of seven (7) selected from a panel of not less than thirteen (13), unless a special jury is allowed.

[Virginia Code § 8.01-359 \(D\)](#) provides for the selection of a jury of three (3). In any civil case where the plaintiff and defendant certify to the court that they wish to impanel a jury of three, the plaintiff and defendant may each choose a juror, and the two shall agree upon and select a third of similar qualifications. The impaneling of a special jury in civil actions is rare. A special jury is ordered by the court, on the motion of either party, in cases of unusual importance or complexity. [Va. Code § 8.01-362](#). The special jury will be comprised of twelve (12) selected from a panel of not less than twenty (20).

When the court has selected six (6) veniremen more than are needed to constitute the appropriate size jury, the parties or their counsel, beginning with the plaintiff, will alternately strike off one name from the panel until the number remaining is reduced to the number required. Where there are more than two parties, all plaintiffs will share three strikes between them and all defendants and third-party defendants will share three strikes between them.

[Virginia Code § 8.01-360](#) provides for additional jurors when the trial likely to be protracted. The court may direct the selection of additional jurors who shall be drawn from the same source, in the same manner and at the same time as the regular jurors. When one additional juror is desired, there shall be drawn three veniremen, and the plaintiff and defendant in a civil case or the Commonwealth and accused in a criminal case shall each be allowed one peremptory challenge. When two or more additional jurors are desired there shall be drawn twice as many venireman as the number of additional jurors

desired. The plaintiff and defendant in a civil case or the Commonwealth and accused in a criminal case shall each be allowed one additional peremptory challenge for every two additional jurors.

### Condemnation Juries

The jury commissioners established pursuant to Chapter 11 ([Va. Code § 8.01-336](#) et seq.) of Title 8.01 shall select condemnation jurors. Therefore, a separate pool of condemnation jurors may be selected. The jury commissioners shall select as condemnation jurors persons who are residents of the county or city in which the property to be condemned, or the greater portion thereof, is situated. No person shall be eligible as a condemnation juror when they, or any person for them, solicits or requests a member of the jury commission to place their name on a list of condemnation jurors. All of the persons included on the list of condemnation jurors shall be freeholders of property within the jurisdiction. The list shall include a notation indicating those persons who are freeholders. [Va. Code § 8.01-346](#). "Freeholder" means any person owning an interest in land in fee, including a person owning a condominium unit. [Va. Code § 25.1-100](#). Except as otherwise provided, the provisions of [Va. Code §§ 8.01-345](#), [8.01-346](#), [8.01-347](#), [8.01-356](#), and [8.01-358](#) relating to procedures for preparing this list from which members will be chosen, penalties for failure to appear and *voir dire* examination shall apply to condemnation jurors mutatis mutandis. [Va. Code § 25.1-229](#). Each juror receives \$50.00 per day for being summoned and appearing, whether for regular jury service or for service as a condemnation juror. [Va. Code §§ 25.1-235](#) and [17.1-618](#).

### Creation of the Master Jury List/It's Use in Jury Management

The method used to create the master jury list must not result in the exclusion or avoidable under-representation of any social, economic or racial group. Similarly, the opportunity for citizens to serve as jurors cannot be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation or any other factor that discriminates against a cognizable group in the jurisdiction.

#### Who Liable to Serve As Jurors:

Any person over the age of eighteen who has resided in Virginia for one year and in their county, city or town for six months is eligible to serve on a jury. United States military personnel stationed in Virginia are not considered residents solely by reason of their being stationed in Virginia. [Va. Code § 8.01-337](#).

#### Who Cannot Serve as Jurors:



- Any person who has been adjudicated mentally incompetent. [Va. Code § 8.01-338](#).
- Any person convicted of treason or a felony. [Va. Code § 8.01-338](#).
- Any person who solicits or requests a jury commissioner to designate them as a juror, or who has another person solicit or request a jury commissioner to designate them as a juror. [Va. Code § 8.01-339](#).
- Any person who is a party to any case that has been or is expected to be tried by a jury during the same term of court. [Va. Code § 8.01-340](#)
- Any person under the age of eighteen. [Va. Code § 8.01-337](#).
- Any person under a disability as defined in [Va. Code § 8.01-2](#). [Va. Code § 8.01-338](#).
- Any person has been called for and reported for jury duty within the last three years. [Va. Code § 8.01-342](#).

#### Who Are Automatically Exempt from Jury Service:

The Code exempts certain individuals and permits others to claim exemption from jury service. The following individuals are automatically exempt from jury service pursuant to [Va. Code § 8.01-341](#):

- The President and Vice-President of the United States,
- The Governor, Lieutenant Governor, and Attorney General of the Commonwealth,
- The members of both houses of Congress,
- The members of the General Assembly, while in session or during a period when the member would be entitled to a legislative continuance as a matter of right under Va. Code § 30-5,
- Licensed practicing attorneys,
- The judge of any court, members of the State Corporation Commission, members of the Workers' Compensation Commission (formerly the Industrial Commission), and magistrates,
- Sheriffs, deputy sheriffs, state police, and police in counties, cities, and towns,
- The superintendent of the penitentiary and their assistants and the persons composing the guard; and
- Superintendents and jail officers, as defined in Va. Code § 53.1-1, of regional jails.

#### Who May Claim Exemptions/Not Automatically Exempt:

Pursuant to [Va. Code § 8.01-341.1](#), the following individuals are not automatically exempt but may claim exemptions from jury service:

- Mariners actually employed in maritime service,
- A person who has legal custody of and is necessarily and personally responsible for a child or children sixteen years of age or younger requiring continuous care by them during normal court hours, or any mother who is breast-feeding a child,
- A person who is necessarily and personally responsible for a person having a physical or mental impairment requiring continuous care by them during normal court hours,
- Any person over seventy (70) years of age,
- Any person whose spouse is summoned to serve on the same jury panel,
- Any person who is the only person performing services for a business, commercial or agricultural enterprise and whose services are so essential to the operation of the business, commercial or agricultural enterprise that such enterprise must close or cease to function if such person is required to perform jury duty, and
- Any person who is the only person performing services for a political subdivision as a firefighter, as defined in Va. Code § 65.2-102, and whose services are so essential to the operations of the political subdivision that such political subdivision will suffer an undue hardship in carrying out such services if such person is required to perform jury duty.

Who May Be Asked To Be Excused During Specific Calendar Periods:

The following individuals are not exempt, but may be excused during specific calendar periods under [Va. Code § 8.01-341.1](#).

- Any person employed by the Office of the Clerk of the House of Delegates, the Office of the Clerk of the Senate, the Division of Legislative Services, and the Division of Legislative Automated Systems, however, this exemption shall apply only to jury service starting (i) during the period beginning 60 days prior to the day any regular session commences and ending 30 days after the day of adjournment of such session and (ii) during the period beginning seven days prior to the day any reconvened or special session commences and ending seven days after the day of adjournment of such session.
- Any general registrar, member of a local electoral board, or person

appointed or employed by either the general registrar or the local electoral board, except officers of election appointed pursuant to Article 5 (§ 24.2-115 et seq.) of Chapter 1 of Title 24.2; however, this exemption shall apply only to jury service starting (i) during the period beginning 90 days prior to any election and continuing through election day, (ii) during the period to ascertain the results of the election and continuing for 10 days after the local electoral board certifies the results of the election under § 24.2-671 or the State Board of Elections certifies the results of the election under § 24.2-679, or (iii) during the period of an election recount or contested election pursuant to Chapter 8 (§ 24.2-800 et seq.) of Title 24.2. Any officer of election shall be exempt from jury service only on Election Day and during the periods set forth in clauses (ii) and (iii).

- Any member of the armed services of the United States or the diplomatic service of the United States appointed under the Foreign Service Act (22 U.S.C. § 3901 et seq.) who will be serving outside of the United States at the time of such jury service.

The foregoing code sections should be consulted regularly to check for amendments.

Instead of completely discharging an individual who claims that serving on a jury would interfere with their work responsibilities, the judge (or a court official designated by the judge) may defer or limit their jury service for a reasonable period of time. [Va. Code § 8.01-341.2](#). In such instances, the person is often excused from service until the next term of court. This also includes a full-time student at an accredited public or private institution of higher education and who is attending classes at such institution during such term.

### Appointment of Jury Commissioners

Each circuit court shall appoint two (2) to fifteen (15) persons by July 1 of every year to serve as jury commissioners. The judge of the circuit court of a county having the urban county executive form of government may appoint jury commissioners at any time prior to the first day of November of each year. Jury Commissioners may be allowed a fee not exceeding \$50 per day that they are actually engaged in such work as the court directs. [Va. Code § 8.01-343](#). The order of appointment shall be certified by the judge to the clerk of the court who shall enter the same on the civil order book of such court. A jury commissioner shall be eligible for reappointment. The jury commissioners prepare a master list of persons eligible to serve as jurors. [Va. Code §§ 8.01-343](#), [8.01-344](#), and [8.01-345](#). The size of such list is specified by the particular court for which it is compiled. The commissioners, using random selection techniques, either manual, mechanical, or electronic, select persons for the master jury list from the list of current voters, telephone

directories, the list of licensed drivers, and any other list approved by the chief judge of the circuit. [Va. Code § 8.01-345](#)

After such master list has been compiled, the commissioners must delete the names of those who are exempt and those who are statutorily accepted from jury service. The master list is then used for the selection of jurors for a twelve-month period beginning on the first day of the first term of court in the calendar year next succeeding December 1.

The Supreme Court of Virginia will provide to each locality, upon request, a list of the names and addresses of its residents who are listed as currently registered voters or as holders of drivers' licenses. A request for this merged list should be directed to the Supreme Court by June 1 of the year for which the list is needed. Contact the Office of the Executive Secretary, Supreme Court of Virginia, (804) 786-6455, for more information.

For courts not using automated processes for selecting potential jurors, each name on the master jury list is written on a separate ballot that is folded or rolled up so that the names are not visible. The ballots, with the master jury list, are then placed by the commissioners in a jury box that is locked and secured by the clerk of the court. [Va. Code § 8.01-347](#).

## Master Jury List

*The Master Jury List is not a public record. The court, where good cause is shown, may permit an examination of the list, under the watchful eye of the court. Copying of this list is not permitted. The proper administration of justice requires that the jury list be kept secret until the jurors are drawn for service, unless good cause is shown. Archer and Johnson v. Mayes, 213 Va. 633, 194 S.E. 2d 707 (1973).*

For many years, Jury Commissioners have obtained additional information on potential juror candidates, including information to disqualify or exempt them from service, by use of a pre-formatted Jury Questionnaire, usually mailed to all candidates. These questionnaires are a portion of the working papers of the Jury Commission.

Similar nondisclosure protection is extended to jury commissioner's questionnaires. Refer to Opinion of the Attorney General to Ronald B. Hall, September 17, 1997, 1997 Va. AG 27.

When completed, the Master Jury List shall be delivered to the clerk to be safely kept by them. [Va. Code § 8.01-346](#).

### Preparing A Master Jury List

**Step 1** Is master list to be created manually or by automation? If manually: GO TO

STEP 3; If by automation: GO TO STEP 2

**Step 2** Clerk coordinates development and implementation of computer programming with local government MIS/computer operations personnel, or with another third party automated jury services system.

**Step 3** Clerk obtains supplies (capsules, ballot box), if needed for manual selection process.

**Step 4** Clerk obtains, in the appropriate form (printed, computer tape or electronic download), the current voter registration list, driver's license list, and any other court-approved source list for use by the commissioners in selecting juror names.

**Comments:** To obtain printed lists or lists on computer tape contact:

- Voter Registration List - Secretary, [State Board of Elections](#)
- Licensed Driver List - Secretary, [Department of Motor Vehicles](#)
- To participate in the automated Jury Services System (JSS), and to obtain a list of the residents of a locality whose names appear on the voter registration list or the list of licensed drivers, or a merged list contact the Department of Judicial Services at 804-371-2424.

While these lists are not needed by the clerk until after July 1, the clerk or Jury Administrator must notify DJS through the JSS each year which list they need.

**Step 5** Clerk receives a tape or list, or electronic data download for use by the jury commissioners.

**Comments:** If the master jury list is to be created by automation, clerk follows procedures discussed in STEP 2.

If the master jury list is to be created manually, clerk holds printed list for delivery to the jury commissioners.

**Step 6** Judge makes annual appointment of jury commissioners.

**Comments:** Commissioner appointments must be made prior to July 1 of each year. **Note:** The judge of the circuit court of a county having the urban county executive form of government may appoint jury commissioners at any time prior to the first day of November of each year. [Va. Code § 8.01-343](#).

**Step 7** Clerk prepares order of appointment; obtains judge's signature. [Va. Code § 8.01-343.](#)

**Comments:** The order must specify the number of persons the commissioners are to select for the master list for jury service for a twelve-month period. [Va. Code § 8.01-345.](#)

**Step 8** Clerk images order; indexes and enters in the Civil Order Book. See the section in this chapter for court order processing.

**Step 9** Clerk immediately notifies commissioners of their appointment; directs them to appear in the clerk's office at a specific date and time for their swearing in. [Va. Code § 8.01-344.](#)

**Step 10** Clerk administers oath to commissioners.

**Comments:** See [Va. Code § 8.01-344](#) for language of the oath.

**Step 11** Clerk provides jury questionnaires or access to automated programming to jury commissioners.

**Step 12** Commissioners select the names to be put on the master jury list and submit the list.

**Comments:** The master list must be compiled by December 1 of each year. The initial random selection of a pool of potential juror candidates for the Jury Commissioners to consider is accomplished by the Court, which decides the random selection techniques and selection pools to be used, and the initial number of names to be drawn. From the initial list of potential candidates, jury commissioners are required to exclude the names of deceased persons, unqualified persons, and apply statutory exemptions to the names so selected. A Master Jury List of potential jurors who are not disqualified or otherwise exempt will be prepared by the jury commissioners. [Va. Code § 8.01-345.](#)

**Step 13** During the year, as directed by the judge, clerk amends the master jury list by deleting the names of those who are disqualified or exempt.

**Comments:** The judge may order the jury commissioners to add to the list as needed and to strike the names of persons who become disqualified or are exempt must be stricken from the list. [Va. Code § 8.01-346.](#)

**Step 14** If the Master Jury List is not stored electronically as provided in [Va. Code § 8.01-350.1](#), the Clerk provides jury box to commissioners.

If names of jurors are to be placed in a jury box, as provided in [Va. Code § 8.01-347](#), the Commissioners prepare a separate ballot or paper for each name listed on the master jury list; the master jury list and ballots are placed in the jury box which is locked and returned to the clerk for safekeeping. [Va. Code §§ 8.01-346, 8.01-347](#).

**Comments:** Each ballot or paper must be folded or rolled so that the name written on each is not visible. Once the jury box is returned to the clerk, it must be placed in a secured area. The contents of the box are not open to public inspection and the box is to remain locked until the court instructs otherwise.

### Term Jury List

Prior to or during any term of court at which a jury may be necessary, the clerk or deputy clerk, in the presence of the judge or a commissioner in chancery appointed by the judge, will draw from the box the number of ballots necessary for the trial of all civil and criminal cases during the term or the number of ballots requested by the judge. [Va. Code §§ 8.01-348](#) and [8.01-355](#). Whenever the court feels that a particular trial of a criminal or civil case is likely to be protracted, the court may direct the selection of additional jurors from the same source as the regular jurors. [Va. Code § 8.01-360](#). In automated courts, the computer randomly selects the potential jurors. [Va. Code § 8.01-350.1](#). The clerk then prepares a list from the names on the ballots drawn or obtains a computer-generated list. A writ of *venire facias*, containing the names and addresses of potential jurors and notice to appear is prepared by the clerk and delivered to the sheriff. The sheriff then notifies the jurors of their selection by way of a summons, which may be served or mailed. Pursuant to [Va. Code § 8.01-354](#), mailing is equivalent to summoning such juror in execution of a writ of *venire facias*.

The Term Jury List, showing the name, age, address, occupation and employer of each juror, shall be available in the clerk's office for inspection **only** by counsel, unless otherwise ordered by the court, in any case to be tried by a jury during the term. [Va. Code § 8.01-351](#).

*See Attorney General Opinion to Small, dated 6/3/16; Counsel of record has the right to view a term jury list. Copying of the list by counsel is permitted only by leave of court upon showing of good cause.*

### Preparing A Term Jury List

**Step 1** Is term list selected by random selection techniques, either mechanically or electronically? [Va. Code § 8.01-350.1](#). If mechanically: GO TO STEP 2 ; If electronically: GO TO STEP 5

**Step 2** The clerk, as directed by the court, draws from the jury box a specified number of ballots for the current or upcoming term of court. [Va. Code 8.01-348](#)

**Comments:** The number of names to be drawn is based upon the number of jury trials scheduled for the term. [Va. Code § 8.01-355](#).

**Step 3** The clerk thoroughly mixes the ballots and draws the number of names specified.

**Comments:** The drawing of names for the term list shall be done by the clerk or deputy clerk in the presence of judge or a court-appointed commissioner in chancery who has no interest in any of the trials for which the names are being drawn. [Va. Code § 8.01-348](#).

**Step 4** If a person whose name is drawn is known to be deceased, a non-resident, exempt or disqualified by law, clerk notes the fact on the ballot next to their name on the master jury list; places the ballot with other such ballots in an envelope marked “Ineligible Jurors.” [Va. Code § 8.01-349](#).

**Step 5** For all other names drawn, clerk writes “drawn” and the date drawn next to the name on both the ballot and master jury list; places such ballots in an envelope marked “Eligible Jurors.” [Va. Code § 8.01-349](#).

**Comments:** If during the term, additional jurors are needed, names previously drawn may be drawn again. [Va. Code § 8.01-349](#).

**Step 6** Clerk has computer randomly select the necessary number of potential jurors.

**Comments:** Clerk deletes names of persons known to be deceased, non-residents, disqualified, or exempt

**Step 7** Clerk prepares an alphabetical list of the names drawn; enters the following information next to each name on the list:

- address
- age
- occupation
- employer



- Step 8** Clerk signs the list and obtains the judge's signature or that of the commissioner in chancery. [Va. Code § 8.01-351.](#)
- Step 9** Depending upon how juror names are stored by the Clerk (mechanically or electronically), jurors are randomly selected for individual jury trials, using similar techniques as described above for a Term Jury List.
- Step 10** Clerk maintains original list in the clerk's office and makes it available for inspection by counsel in any case to be tried by a jury during the term. [Va. Code § 8.01-351.](#)

Upon request, the clerk or sheriff or other officer responsible for notifying jurors to appear in court for the trial of a case shall make available to all counsel of record in that case, a copy of the jury panel to be used for the trial of the case at least three full business days before the trial. Such copy of the jury panel shall show the name, age, address, occupation and employer of each person on the panel. ([Va. Code § 8.01-353](#))

## Petit Jury

From the Term Jury List, individual jurors are selected to appear in court on such day as the court may direct. Referred to as a "Petit Jury", the court directs the clerk to notify a predetermined number of jurors from the Term Jury List for the trial of a civil or criminal action. The clerk normally prepares this list, and submits it to the sheriff, who notifies each juror of the time and date of the trial.

Upon request, the clerk or other officer responsible for notifying jurors to appear in court for the trial of a case shall make available to all counsel of record in that case, a copy of the jury panel to be used for the trial of the case at least three full business days before the trial. [Va. Code § 8.01-353.](#)

**Note:** Unlike the confidentiality requirements for the Master Jury List and Term Jury List, the Jury Panel List, or "strike list", that contains the names or assigned juror numbers of persons summoned to appear for trial, may be made available to the public provided the juror's address, or any other personal identifying information, is not included.

### Preparing A Petit Jury List

- Step 1** A petit jury list or jury panel is usually prepared employing the same software and server hardware and random selection method used to produce the Term Jury List, or is otherwise prepared as authorized by

the court.

- Step 2** Once created, the petit jury list containing the name, age, address, occupation and employer of each person on the panel, shall be made available to all counsel of record in that case, and if requested, provide a copy of the jury panel list at least three full business days prior to trial.

**Comment: Request to view Jury Questionnaires** - Jury questionnaires are the work product of the Jury Commission and are not a public record. This request should be referred to the judge for consideration. See Attorney General Opinion to Hall, dated 9/17/97, (1997 Va. AG 27): *Circuit court clerk may not release information contained on master jury list or jury commissioner's questionnaires regarding potential jurors to law enforcement or Department of Motor Vehicles authorities without circuit court judge having determined that good cause has been shown by such authorities for obtaining such information.*

- Step 3** Jurors selected for call are notified by the sheriff in accord with [Va. Code § 8.01-298](#). Writ of *Venire facias* requirements are satisfied by any procedure followed in [Va. Code § 8.01-354](#).

**Comments:** See Form CC-1321, WRIT OF *VENIRE FACIAS* – PETIT JURY.

## Jury Orientation

Courts should provide some form of orientation to persons called for jury service. Orientation programs increase jurors' understanding of the judicial system and prepare them to serve competently as jurors. Orientation may be effected by an oral presentation, written materials, audio-visual means, or through a combination of all three. The program should be presented in a consistent and efficient manner.

In some jurisdictions, a formal orientation program for all jurors is conducted at the commencement of each term. In others, the judge meets briefly with the jurors on their first day of service (at the beginning of the trial). Since jurors are paid for each day of service, the court should conduct orientation on a day on which jury trials are scheduled. The orientation should be completed before the first jury panel is needed. The judge or someone designated by them will normally acquaint jurors with the following:

- the names of court personnel (clerk, Commonwealth's attorney, sheriff, bailiff)
- how they were selected
- their obligation for subsequent service

- the length of their term of jury service and the division of caseload among the jurors
- the types of cases to be heard by them and the number of jurors needed for each case
- A Handbook for Jurors published by the Office of the Executive Secretary (Some courts have adopted a policy of having this pamphlet distributed to jurors with the summons.)
- the daily procedures (time for opening, luncheon recess)
- the layout of the court facility (location of parking area, restrooms)
- the civic and patriotic obligation of citizens to serve on juries
- how and when they will be compensated for their services

Jury orientation provides jurors an opportunity to state why they should not serve and to present exemption claims if not previously addressed. Jurors not excused by the court proceed to the next phase of the jury trial process, *voir dire*, which is discussed in “*voir dire*” below.

Clerk’s duties with respect to juror orientation:

**Step 1** Person taking jury attendance shall ensure the identity of jurors. Each juror shall provide any of the following forms of identification: their Commonwealth of Virginia voter registration card; their social security card; their valid Virginia driver’s license or any other identification card issued by a government agency of the Commonwealth; or any valid employee identification card containing a photograph of the juror and issued by an employer of the juror in the ordinary course of the employer’s business. If the juror is unable to present one of these forms of identification, they shall sign a statement affirming, under penalty of perjury, that they are the named juror.

**Note:** If person taking jury attendance is unable to give an oath, the clerk or deputy clerk should do so. [Va. Code § 8.01-353.1](#)

**Step 2** Clerk has jurors complete qualification questionnaires if not received previously.

**Step 3** Clerk ensures the comfort of the jurors whenever possible.

**Comments:** Some jurors, especially those serving for the first time, may be nervous, and every effort should be made to make them feel at ease.

**Step 4** Clerk distributes copies of A Handbook for Jurors if not provided to the jurors with the summons.

**Comments:** These handbooks may be ordered through:

Purchasing Department  
Office of the Executive Secretary  
100 North 9th Street  
Richmond, VA 23219

**Step 5** Clerk notes the names of all jurors who are excused from jury duty or who are exempt or disqualified as determined by the judge. See procedures discussed in “Civil Jury Composition.”

**Step 6** Clerk conducts orientation program.

**Comments:** Depending on local practice, the presentation may be conducted by the clerk’s office, the sheriff’s department, or others. A “[Juror Orientation Video](#)” is available from the Office of the Executive Secretary.

**Step 7** For jurors temporarily excused from service until a subsequent term, ensure that their names are placed on the jury list for that term.

**Step 8** Upon completion of orientation, jurors proceed to *voir dire*. See “*Voir dire*” below.

## Voir dire

The term *Voir dire* comes from the French *vrai dire* meaning to speak the truth. It is the questioning of potential jury members by the court, lawyers or parties themselves if not represented by counsel. *Voir dire* is intended to determine the suitability of prospective jurors to hear a particular case.

Trial by jury is a common law right. All parties to civil litigation are entitled to a fair and impartial jury of persons who are impartial in the cause. “*Voir dire*” denotes the examination of prospective jurors (also called veniremen) to determine whether they are free from partiality and prejudice, and to assure that they are “indifferent in the cause” (impartial). [Va. Code § 8.01-358](#). On the day on which jurors have been notified to appear, jurors not excused by the court shall be called in such a manner as the judge may direct to be sworn on the *voir dire* until a panel free from exception shall be obtained. [Va. Code § 8.01-357](#).

## Microfilming and Indexing Orders; Order Books

### Microfilming

Microfilming is the process whereby all permanent records in the Clerk's Offices are substantially reduced (35mm or 16mm film) for purposes of security and reproduction of documents. [Rule 1:14](#) of the Virginia Supreme Court and [Va. Code §§ 17.1-239, 42.1-82](#) and [42.1-86](#) set forth the standards and requirements for the micrographic process. The [Library of Virginia](#) has the responsibility for adopting and implementing standards for all writings required by law to be recorded and retained permanently in the Circuit Court Clerk's Office.

Effective January 1, 1986, Virginia State Library & Archives (now known as the [Library of Virginia](#)) implemented a set of standards for records and plats, setting forth specific criteria for size, inscriptions, format, etc. [A Manual for Public Records Management in the Commonwealth of Virginia](#), published in 1992 by the Library of Virginia, sets forth in detail the micrographic process, equipment needed, the quality control process used, security microfilm storage and reproduction process. Refer to appendix, "Records Retention and Disposition Schedule" of this manual for a schedule of record retention and disposition.

Clerks should develop a procedure for ensuring that all records to be permanently retained are microfilmed for security purposes. Land recordation has its own definite procedure. Clerks must organize court orders in chronological order for each Order Book. All orders making each day's proceedings shall be recorded to conform to [Va. Code § 17.1-123](#). The clerk must ensure that order books have been microfilmed, converted to or created in an electronic format. Such microfilm and microphotographic processes and equipment must meet state microfilm standards, and such electronic format must follow state electronic records guidelines, pursuant to [Va. Code § 42.1-82](#). The clerk must further provide the master reel of any such microfilm for storage in the [Library of Virginia](#) and must provide for the secured, off-site back up of any electronic copies of such records. [Va. Code § 17.1-124](#).

Microfilming should be done in-house or by contract with an outside vendor who supplies hard copy and submits security film to the [Library of Virginia](#). This decision is made by individual clerks based upon budgetary considerations, space, number of employees, etc. In either case, microfilm submitted to Library of Virginia must meet their criteria for quality control. If done in-house, reels of film are sent directly to the Library. If done by an outside vendor, the vendor must submit film to the Library of Virginia as a part of their contract. Refer to [Va. Code § 42.1-86](#) and the [Manual for Public Records Management in the Commonwealth of Virginia](#).

[Virginia Code § 17.1-213](#) allows the clerk of the circuit court to use an electronic format for the archival of records, papers, and documents of cases, as long as the clerk converts them in accordance with state electronic records guidelines. Such microfilm and microphotographic processes and equipment shall meet state archival microfilm standards pursuant to [Va. Code § 42.1-82](#) or such electronic format shall follow state electronic

records guidelines.

**Note:** Guidelines may be found at the following web site: [Electronic Records](#)

While filming original orders, a copy may be placed in the case file to temporarily preserve the history of the file. Hard copy microfilmed sheets should be checked for accuracy before placing in Order Book and returning the original to the case file. Orders may either be indexed prior to or after microfilming.

Security backup by micrographic process is vital to preserve integrity of all records permanently retained and in order to reconstruct records in the event of loss by catastrophic disaster.

## Court Orders

The function of a court order is to record what transpired and to memorialize the court's disposition with respect thereto. A circuit court speaks only through its written orders. *Hill v. Hill*, 227 Va. 569 (1984). Civil orders are generally prepared by the attorney for the party seeking the order, depending on the type of relief sought and on local practice. All orders must contain the name of the court and the style of the case and should contain the case number. Each order must be submitted to the judge for their signature, after which the clerk assigns a book and page number, microfilms/scans it, and indexes and enters the order in an order book.

The clerk shall keep order books. All actions in civil proceedings shall be processed in the Civil Order Book while all actions in criminal proceedings shall be processed in the Criminal Order Book. [Va. Code § 17.1-124](#). If the chief judge of the circuit court approves, the clerk may divide the order book into a civil section and a criminal section. **Note:** Prior to Senate Bill 1118, effective January 1, 2006, which merged chancery and law, the clerk was required to keep two order books, a Common Law Order Book and a Chancery Order Book. Effective January 1, 2006, the clerk is required to maintain a Civil Order Book. All orders that make up each day's proceedings of every circuit court shall be recorded by the clerk in a book known as the order book. Orders that make up each day's proceedings that have been recorded in the order book shall be deemed the official record pursuant to [Va. Code § 8.01-389](#) when (i) the judge's signature is shown in the order, (ii) the judge's signature is shown in the order book, or (iii) an order is recorded in the order book on the last day of each term showing the signature of each judge presiding during the term. [Va. Code § 17.1-123](#).

**Procedures listed below are typical when an order is prepared by the court:**

**Step 1** Clerk records information to be included in the court order.

**Comments:** The clerk of the court may keep a ledger of orders to be used by court personnel when preparing the order.

Based on local policy, the court or the attorney for the party seeking the order prepares the order for the judge's approval.

**Step 2** Clerk or other court personnel prepares order and obtains judge's signature, if directed by the Court.

**Comments:** Order must contain the name of the court, case number, style of the case and the judge present.

**Step 3** Clerk stamps each page of court order with Order book and page number or instrument number.

**Step 4** Clerk images order and enters and indexes in order book; clerk places original in case file.

**Comments:** See "Indexing Orders" below. Clerk must ensure that order books are microfilmed, converted to or created in electronic format. The clerk must further provide the master reel of any such microfilm for storage in the [Library of Virginia](#) and provide for the secured, off-site back up of any electronic copies of such records. [Va. Code § 17.1-124](#).

## Indexing Orders

Orders are indexed using the respective systems adopted by each circuit court clerk's office. Clerks using the Supreme Court of Virginia Case Management System (CMS) are advised of indexes that may be produced through that system. See the Circuit Case Management System User's Guide, "Batch Reports" for more information.

## Order Books and Other Information Found In the Clerk's Office

**Note:** Virginia Code § 17.1-240 provides that a procedural microphotographic process, digital reproduction, or any other micrographic process which stores images of documents in reduced size or in electronic format, may be used to accomplish the recording of writings otherwise required by any provision of law to be spread in a book or retained in the circuit court clerk's office, including but not limited to,

Adoption Order Book	<a href="#">Va. Code § 63.2-1245</a>	Record of all orders entered in adoption proceedings. Book is confidential.
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Bond Books	<a href="#">Va. Code § 17.1-230</a>	All bonds taken of officers, executors, administrators, trustees or other fiduciaries and all bonds of commissioners and receivers, and all suspending bonds, appeal bonds, injunction bonds, attachment bonds, cost bonds, and all other bonds required to be recorded, shall be recorded in a book known as the bond book.
Certificate of Persons or Corporation Transacting Business under an Assumed Name	<a href="#">Va. Code §§ 59.1-69, 59.1-70 and 59.1-74</a>	Record all certificates of persons, partnerships, corporations, limited partnerships or foreign limited partnerships transacting business under an assumed name
Chancery Order Book (Maintained Prior To January 1, 2006)	<a href="#">Va. Code § 17.1-124</a>	Record of orders of the Judge of the Circuit Court arising from suits involving land disputes; matters of divorce, support and child custody; suits to construe a will, etc.
Civil Order Book (Maintained Effective January 1, 2006, In Lieu Of The Common Law Order Book Or Chancery Order Book)	<a href="#">Va. Code § 17.1-124</a>	Records of civil cases, whether legal or equitable in nature. Prior to January 1, 2006, these orders were processed in the Common Law Order Book or Chancery Order Book.  <b>Note:</b> If the chief judge of the circuit court approves, the clerk may divide an order book into a civil section and a criminal section.
Clerk's Order Book	<a href="#">Va. Code § 17.1-124</a>	Record of orders appointing guardian ad litem, administrators of estates; taking oaths of notaries public and other public officials, etc.
Common Law Order Book (Maintained Prior To January 1, 2006)	<a href="#">Va. Code § 17.1-124</a>	Record of civil cases in matters of common law involving an aggrieved party suing a defendant for money damages etc., evidenced in the Order Book by Orders of the Judge of the Circuit Court; records of orders of the Judge of the Circuit Court in all criminal actions arising from criminal indictments or appeals from inferior courts.
Criminal Order Book	<a href="#">Va. Code § 17.1-124</a>	Records of orders of the Judge of the Circuit Court in all criminal actions arising from criminal indictments or appeals from inferior courts.



**Note:** If the chief judge of the circuit court approves, the clerk may divide an order book into a civil section and a criminal section.

Deed Books	<a href="#">Va. Code §§ 17.1-227, 17.1-229</a>	Deeds; Homestead Deeds; Deeds of Trust; Easements; Agreements; Contracts affecting interests in real or personal property; Certificates of Assignment, Partial or Full Satisfaction of Deeds of Trust; Powers of Attorney; Lis Pendens; Memorandum of Mechanic's Lien; Escheator's Certificate; Bankruptcy Orders; Name Changes; etc.
Financing Statements	Title 8.9a	Records to perfect a security interest against a debtor in favor of a secured party if: (1) the collateral is as-extracted collateral (oil, gas, and other minerals); (2) the collateral is timber to be cut, or (3) filed as a fixture filing (goods that are or will become fixtures).
Judgment Lien and Execution Books	<a href="#">Va. Code § 17.1-232</a>	Record of all judgment records as entered by order of the court or by abstract of judgment from another court; recorded by the creditor against the debtor; recording places a lien upon real estate owned by the debtor located within the jurisdiction of the court; assignments, partial and full releases or satisfaction of docketed judgments; etc.
Land Books	<a href="#">Va. Code § 17.1-243</a>	Assessments of lands located within the jurisdiction of the city or county. Land Book contents are prepared by local Commissioner of Revenue or Finance Department and bound and stored by the clerk.
Map Books and State Highway Plat Books	<a href="#">Va. Code §§ 17.1-236 and 17.1-238</a>	Recorded maps-of parcels and subdivisions of land located within the jurisdiction, and maps of roads and rights-of-way taken for use by the State Highway Department and the locality; maps of easements, etc.
Marriage Register	<a href="#">Va. Code § 17.1-233</a>	Records of all applications and returned licenses to marry issued by the clerk to persons registering in the Clerk's Office.
(Military) Discharge And Induction Records	<a href="#">Va. Code §§ 17.1-</a>	Records of discharges for all persons honorably discharged from any branch of the armed services, etc.

	<a href="#">261</a> , <a href="#">17.1-262</a> , <a href="#">17.1-263</a> , <a href="#">17.1-264</a> , <a href="#">17.1-265</a>	
Notary Oath Book	<a href="#">Va. Code § 47.1-9</a>	Record of all oaths of notaries given before clerk before receiving their commission.
Process Book	<a href="#">Va. Code § 17.1-215</a>	A book, file or automated system in which every process, order or decree of court is delivered or mailed to the officer/person to affect service thereof.
Settlement of Receivers and Commissioners (Fiduciary Book)	<a href="#">Va. Code § 8.01-619</a>	Record of reports and receivers and commissioners approved by the court.
Trust Fund Order Book	<a href="#">Va. Code § 17.1-125</a>	The clerk shall record (i) trust fund orders pursuant to <a href="#">Va. Code §§ 17.1-123</a> and <a href="#">-124</a> and (ii) the annual trust fund report required pursuant to <a href="#">Va. Code § 8.01-600</a> in a book known as the civil order book, in which shall be recorded all reports, orders and decrees concerning money received and disbursed under <a href="#">Va. Code §§ 8.01-582</a> and <a href="#">8.01-600</a> .
Will Books	<a href="#">Va. Code § 17.1-231</a>	Wills, Clerk's Orders; List of Heirs; Inheritance Tax Certificates; Inventories; Accountings; Real Estate affidavits; Trustee, Guardian or Commissioner's Accounting and Settlement.

## Appeals

Once a final judgment, or other appealable order or decree, has been entered by a circuit court, either party to a case, plaintiff or defendant, may seek appellate review of such judgment, order or decree. The two tribunals which have appellate jurisdiction to review final judgments are the Supreme Court and the Court of Appeals.

“Perfecting an appeal” refers to the legal process by which an appeal is taken to a higher court.

The procedures relating to appeals to the Supreme Court and Court of Appeals are set out in Parts 5 and 5A, respectively, of the [Rules of the Supreme Court of Virginia](#).

In processing appeals, one of the most important considerations is the proper computation of the time limits for filing and transmitting required notices and documents. Most time limits are specified in the Rules; others are provided by statute.

The nature of a case dictates to which appellate court an appeal from a circuit court may lie. The following subsections address the jurisdiction of the Court of Appeals and the Supreme Court and the procedures involved in filing an appeal from circuit court to these courts. For a discussion of procedures relating to appeals from the district court to the circuit court, see the “Appeals” chapter in this manual.

## Court of Appeals of Virginia

The Court of Appeals of Virginia is the intermediate appellate court with limited jurisdiction. In some cases, an appeal lies as a matter of right, i.e. the Court must hear the appeal. In other cases, whether to hear an appeal lies within the discretion of the Court. These are called discretionary appeals.

### Appeal as A Matter of Right

An aggrieved party may appeal, as a matter of right, to the Court of Appeals from any final decision, judgment, order, or decree of a circuit court involving the following:

- an appeal from a decision of an administrative agency ([Va. Code § 17.1-405](#)); affirmance or annulment of a marriage;
- divorce;
- custody;
- spousal or child support;
- the control or disposition of a child;
- any other domestic relations matter arising under Title 16.1 or Title 20;
- adoption under Chapter 12 of Title 63.2
- judicial review of school board actions pursuant to [Va. Code § 22.1-87](#) and of hearing officer decisions pursuant to [Va. Code §§ 22.1-214](#) and [22.1-214.1](#); or
- any interlocutory decree or order entered in any of the cases listed above (i) granting, dissolving, or denying an injunction or (ii) adjudicating the principles of a cause.

#### a. Notice of Appeal

A notice of appeal indicating one’s intention to appeal must be filed with the clerk of the trial court, and a copy of such notice must be mailed or delivered to all opposing counsel and the clerk of the Court of Appeals. [Va. Code § 17.1-407](#). Oral intention to appeal may be given prior to the filing of a written notice of appeal in

which case the trial judge commences with certain aspects of the appellate process (suspending execution of the sentence). However, a written notice of appeal must still be filed within thirty days after entry of a final judgment or other appealable order. [Rule 5A: 6\(a\)](#).

Notice:

- Due thirty days from date of order appealed from.
- [Rule 5A:3](#); Turner v. Commonwealth, 2 Va. App.96,98, 341 S.E. 400, 401 (1986)
- Form contained in Rules of Court following [Rule 5A:6](#)
- Accept notice of appeal from submittal
- Give appropriate Code Sections in response to inquiries concerning correct court to which to appeal.
  - Jurisdiction of Supreme Court (Va. Code § 8.01-670)
  - Jurisdiction of Court of Appeals (Va. Code §§ 17.1-405 and 17.1-406)

A 1998 statutory amendment directs that cases involving termination of parental rights in the Court of Appeals of Virginia “shall take precedence on the docket of the Court.” [Va. Code Ann § 16.1-296 \(D\)](#) (Repl. Vol. 1999). During 2001, a study was undertaken by the Court Improvement Program in the Office of the Executive Secretary to analyze implementation of this statute in the Court of Appeals. The significance of this law and the study is that while a termination of parental rights case winds through the court system toward a final decision, the child awaits a permanent home. A final report was produced in December 2001, which included recommendations for the Court’s consideration. Among these, it was recommended that a form Notice of Appeal from the trial court for use in termination of parental rights cases be developed as a circuit court form. The CC-1345, [Notice of Appeal from Trial Court](#) was designed to permit identifying that the appeal is a termination of parental rights case so that the Court of Appeals is notified of this in advance of receiving the record from the trial court. The objective is to permit the Court of Appeals to flag the case for preferential docketing as required by [Va. Code § 16.1-296 \(D\)](#). Other key points about the Notice of Appeal form and the termination of parental rights case process include:

- A de novo merits hearing of termination of parental rights cases appealed to the circuit court must be held within

ninety days of the perfecting of the appeal. [Va. Code § 16.1-296](#). Circuit court clerks play a crucial role in making sure a child's case is not delayed by getting the record to the Court of Appeals as promptly as possible when the record is assembled.

- The Notice of Appeal from Trial Court ([RULE 5A:6](#)) may be used in other than termination of parental rights cases.
- The form permits notifying the trial court whether a transcript or a statement of facts will be filed, which is designed to help the trial court anticipate those events.
- The certificate, which is incorporated into the new form, indicates sending notice to the guardian ad litem for the child, when appropriate. A Court of Appeals decision dismissed an appeal for failure to do so.

A party filing a notice of appeal shall simultaneously file in the trial court an appeal bond in compliance with [Va. Code § 8.01-676.1](#). Bond forms are set forth in the "Appendix of Forms" located in Part 5A of the Rules.

Failure to adhere to the thirty-day time limit is fatal to an appeal, [Rule 5A:3\(a\)](#), but the authority to reject an appeal on the basis of untimely filing of the notice of appeal rests solely with the Court of Appeals.

The notice of appeal must state whether any transcript or statement of facts, testimony, and other incidents of the case will be filed. [Rule 5A:6\(b\)](#). The notice of appeal must also contain a certificate stating:

- the names and addresses of all parties, the names, addresses and telephone numbers of counsel;
- that a copy of the notice has been delivered to all opposing counsel; and
- that if a transcript is to be filed, a copy has been ordered from the court reporter.

[Rule 5A:6\(d\)](#).

Unless the appellant is indigent, a \$50.00 check or money order payable to the clerk of the Court of Appeals must accompany the copy of the notice of appeal when it is filed. If check is received by

the clerk of the trial court, they will submit to the clerk of the Court of Appeals.

b. To appeal a civil case from a circuit court to the Court of Appeals, the appealing party or attorney must:

- 1) File a notice of appeal. [Rule 5A:6](#)
  - Due thirty days after entry of the judgment appealed
  - Original filed in the clerk's office of the trial court ([Va. Code § 17.1-407](#))
  - Copy filed in clerk's office of the Court of Appeals, accompanied by \$50 filing fee
  - The forms for a notice of appeal and for the required certificate are at [Rule 5A:6](#)
- 2) File bonds for costs. [Va. Code § 8.01-676.1](#)
  - Due when notice of appeal is filed
  - Filed in circuit court clerk's office
  - Amount of bond is \$500 unless reduced by circuit court
  - May be waived if appellant is determined to be indigent
  - Forms for bond appear at the end of the Part 5A of the Rules of Court
- 3) File transcript or statement of facts. [Rule 5A:8](#)
  - **Transcript** is due sixty days after entry of Judgment. (extensions only by the Court of Appeals. [Rule 5A:8\(a\)](#); See also *Jordon v. Price*, 3 Va. App 672, 353 S.E. 2d 168 (1987)). Filed in the circuit court clerk's office. Must send opposing counsel notice that transcript has been filed within 5 days.
  - **Statement of facts** (in lieu of transcript) due fifty-five days after entry of judgment appealed. See [Rule 5A:8](#) for additional requirements.

The decision whether to file a transcript or written statement as part of the record is determined by the appellant. The Court of Appeals determines whether to dismiss an appeal because of the absence of a transcript or written statement. A transcript becomes part of the record when it is filed in the circuit court clerk's office within sixty days after entry of final judgment in the trial court. [Rule 5A:8\(a\)](#).

In lieu of a transcript, a party may file a written statement of facts, testimony, and other incidents of the case which becomes a part of the record when filed in the circuit court clerk's office within fifty-five days from the date of entry of the final judgment. [Rule 5A:8\(c\)\(1\)](#). The Court of Appeals has no authority to extend the time for filing transcripts or written statements. The trial court alone has the authority to extend the time for filing transcripts and written statements. [Rule 5A:3\(b\)](#); Barrett v. Barrett, 1 Va. App. 378 (1986).

- 4) Circuit court **clerk sends trial court record** to Court of Appeals. Clerk of Court of Appeals notifies parties of the date on which record was filed.
- 5) File statement of Questions presented and designation of contents of appendix. [Rule 5A:25](#).
  - Due no later than **fifteen** days after trial court record filed
  - Filed in Court of Appeals Clerk's Office
- 6) File **appendix and opening brief**. [Rules 5A:19](#), 20 and 25
  - Due forty days after circuit court record filed. Files in the clerk's office of the Court of Appeals. Seven copies must be filed; three copies must be sent to opposing counsel.
- 7) Oral argument is automatically scheduled on appeals unless counsel sends written notification that counsel waives the hearing, [Rule 5A:28](#), or the Court affirms the trial court summarily, See [Rule 5A:27](#).

c. Preparation of the Appeal

Once a notice of appeal has been filed, the circuit court clerk is responsible for preparing the record on appeal and transmitting it to the Court of Appeals. The circuit court clerk receives a fee of \$20.00 for preparing the record. [Va. Code § 17.1-275\(A\) \(32\)](#)

The record on appeal consists of:

- all pleadings and any attachments including warrants and indictments on criminal cases;
- all orders entered by or presented to the court, especially orders appointing counsel for a party;

- all exhibits offered in evidence, whether admitted or not, (or a reference to and description of those exhibits that cannot be transmitted with the record) and initialed by the judge;
- all orders, memoranda, and opinions by the trial court;
- any depositions and any discovery materials under Part 4 of the Rules offered into evidence (whether rejected or admitted)
- any transcript or written statement of facts, or the official videotape recording of any proceeding in those circuit courts authorized to use videotape recordings (the Court of Appeals may require that any videotape proceedings be transcribed and made a part of the record) (Please indicate the date these were filed);
- all jury instructions, marked “given” or “refused.” All instructions should be initialed by the judge; and
- the notice of appeal.

[Rule 5A:7.](#)

An abbreviated record, consisting of only the pleadings, facts, and testimony germane to the issues on appeal, may be prepared upon consent of counsel and approval of the trial court. [Rule 5A:10\(c\)](#). The Court of Appeals may consider other parts of the record as it deems necessary. [Rule 5A:10\(c\)](#).

If disagreement arises as to the contents of any part of the record, the matter shall be submitted to and decided by the trial court. [Rule 5A:7\(b\)](#). The Rules of Court further provide that the clerk is not required to transmit exhibits of unusual bulk, weight, or character with the record, unless directed to do so by a party or by the clerk of the appellate court. [Rule 5A:10\(d\)\(4\)](#). The party desiring to make such exhibits part of the record must arrange for their transportation and receipt. [Rule 5A:10\(d\)\(4\)](#).

d. Transmission of Record on Appeal

- If the notice of appeal states that no transcript will be filed, send the record when the notice of appeal is filed;
- If the notice of appeal states that a transcript or written statement of facts will be filed, wait until the time to file the transcript or written statement of facts has passed.
  - If no transcript or written statement of facts is filed within the time limit, send the record without it.
  - If a transcript or written statement of facts is filed, hold the record to wait for any objections.



- if there are no objections, send the record twenty-one days after the filing of transcript or written statement of facts.
  - if there are objections, send the record 5 days after circuit court rules on the objections.
- Forward the record immediately if such a request is filed and signed by all counsel; and
  - Send the record to the Court of Appeals within three months after the date of the order appealed unless an order is entered extending the time limit for filing the transcript (or statement of facts) to beyond three months. Remember that only the Court of Appeals may extend the time for filing a transcript. Notify the clerk's office of the Court of Appeals of extensions for filing statements of facts and send a copy of the extension order. Then forward the record as soon as the transcript is filed (or the statement of facts is entered) or the period of extension ends.
- e. Compiling the Record
- Arrange papers in chronological order (except volumes of transcript and exhibits);
  - Number the pages of the record at the bottom. Include no more than 250 pages in a single volume. A copy of the relevant table of contents pages is helpful at the beginning of each volume. A complete table of contents indicating the divisions(s) by volume should appear on the first volume;
  - Include a table of contents listing each item included in the record and the page on which it begins. The table should be headed by the full, formal style of the case in the circuit court, with the circuit court's case number. The last page of the table should contain a certificate that the foregoing list constitutes the true and complete record except for omitted exhibits. In listing the orders on the table, list the date on which the order was signed by the judge. This may be different from the date of the hearing.
  - Prepare and include a durable cover setting forth the name of the circuit and shot style of the case.
- f. Multiple Cases Tried Together
- When combining cases tried together into one record (as allowed by [Rule 5A:10\(a\)](#)), put all like items together. Alternatively, use a separate folder for each of your case numbers.
- g. Exhibits ([Rule 5A:10\(c\)\(4\)](#))
- Put the exhibits in separate volumes or envelopes. Put sealed documents,

such as presentence reports, into sealed envelopes and label the envelopes. Include the terms of the seal, of one and possible. The envelope may be then put in the record at the appropriate place.

- Include a descriptive list of exhibits. Where the same exhibit is introduced at more than one hearing, the descriptive list should so indicate.

**Do not send:**

- Bulky items such as large graphs and maps, articles of clothing, heavy items: If the exhibits fit into a large envelope, send them. If not, retain them;
- Items of value (jewelry, money, etc.);
- Drugs;
- Guns and other weapons or ammunition;
- Omissions should be indicated on the descriptive list of exhibits sent;
- Notify counsel which exhibits are retained in the circuit court. Counsel or the Court of Appeals will notify you when an exhibit is needed.

### Discretionary Appeals

For the purposes of this manual, the Court of Appeals has the discretion to grant an appeal from any final order involving involuntary treatment of prisoners pursuant to [Va. Code § 53.1-40.1](#).

When an appeal to the Court of Appeals is a discretionary one, the aggrieved party must file a petition of appeal with the clerk of the Court of Appeals. The petition must be filed not more than forty days after the filing of the record with the Court of Appeals. At the time the petition is filed, a copy shall be mailed or delivered to opposing counsel.

The petition shall contain the questions presented. At the end thereof, appellant shall include a certificate stating the date of mailing or delivery of a copy to opposing counsel and whether or not they desire to state orally the reasons their petition should be granted.

Appellee may file a brief in opposition to granting the appeal with the clerk of the Court of Appeals. It must be filed within twenty-one days after the petition for appeal is served on appellee's counsel. A reply brief may be

filed by appellant in lieu of oral argument.

Subsequent Action in the Clerk's Office [Va. Code § 8.01-676.1](#)

If a petition for appeal is granted, the clerk of the Court of Appeals must certify the granting of the petition for appeal to the trial court and to all counsel. [Rule 5A:16\(b\)](#).

Except in cases where the appellant is an indigent, the order granting the appeal will stipulate that a bond be posted by the appellant to cover the costs of the appeal. Such bond is called an appeal bond or costs bond and is generally set by the Court of Appeals in the amount of \$500. Neither the Court of Appeals nor the Supreme Court requires a bond or security therefor for indigent appellants.

In any civil litigation under any legal theory, the amount of the suspending bond or irrevocable letter of credit to be furnished during the pendency of all appeals or discretionary reviews of any judgment granting legal, equitable, or any other form of relief in order to stay the execution thereon during the entire course of appellate review by any courts shall be set in accordance with applicable laws or court rules, and the amount of the suspending bond or irrevocable letter of credit shall include an amount equivalent to one year's interest calculated from the date of the notice of appeal in accordance with [Va. Code § 8.01-682](#). However, the total suspending bond or irrevocable letter of credit that is required of an appellant and all of its affiliates shall not exceed \$25 million, regardless of the value of the judgment.

The bond or irrevocable letter of credit, if required, is filed in the clerk of the trial court with surety as approved by the clerk of the trial court or the clerk of the appellate court. All bonds required pursuant to [Va. Code § 8.01-676.1](#) must substantially conform to the bond forms set forth in the Appendix to Part 5A of the Rules of Court. See Rule 5A:17 (effective July 1, 1991).

**Note:** If the party required to post an appeal or suspending bond tenders such bond together with cash in the full amount required by this section to the clerk specified in this section, no surety shall be required.

In cases in which an appeal is denied and the appellant does not petition the court for a rehearing, the clerk of the Court of Appeals, within thirty-five days after entry of the order of denial, will transmit the case record, with the original order of denial of the petition for appeal, to the circuit

court clerk. The order is then microfilmed/scanned by the circuit court clerk and placed in the file.

## Mandate

The final decision in a case is called a “mandate.” The mandate may affirm or reverse the ruling of the trial court, or it may dismiss the appeal.

When there can be no further proceedings in the Court of Appeals, the clerk of the Court of Appeals must forward the mandate (final order) to the clerk of the circuit court, along with a certified copy of any written opinion and the case record. [Rule 5A:31](#). A copy of the mandate is also sent by the Court of Appeals to all counsel. [Rule 5A:29](#). The circuit court clerk must microfilm/scan the mandate which, along with the opinion, if any, is placed with the case record. [Rule 5A:31](#).

Decisions of the Court of Appeals are usually final. However, See [Va. Code § 17.1-410 \(A\)](#).

## Case Closing

The vast majority of appeals end in dismissal or with the trial court’s ruling being affirmed. In either case, the circuit court clerk’s remaining responsibilities in the case are essentially limited to recording the appellate court’s final order or mandate, merging the case record returned by the appellate court into the circuit court case file and proceeding with normal case closing procedures.

Where an appeal ends in reversal of the trial court’s decision, the circuit court clerk’s administrative responsibilities in the case will vary depending on: (a) whether the Court of Appeals reversed the judgment or remanded the case to the trial court; and (b) the subsequent actions taken by the trial court. For example, in cases where the appellate court reverses and enters final judgment, the case ends, and the circuit court clerk may proceed with normal case closing procedures. On the other hand, if the appellate court reverses and remands the case for a new trial, the circuit court clerk’s administrative responsibilities in the case will be similar to those associated with a new case.

To summarize, the clerk should carefully review the mandate to determine their duties with respect to the case. The clerk should also consult with the trial judge as to further action necessary in the case.

## Supreme Court of Virginia

The Supreme Court of Virginia is the state court of last resort. It has appellate jurisdiction over an appeal directly from a final decision of a circuit court in civil cases where the matter in controversy exceeds \$500, except:

- those cases which are appeals of decisions by an administrative agency; or
- juvenile or domestic relations cases.

The procedure for perfecting an appeal to the Supreme Court is very similar to that outlined above for the Court of Appeals. See Part Five of the [Rules of Supreme Court of Virginia](#).

In its discretion, the Supreme Court may require a costs bond with security, generally in the amount of \$500, upon awarding the appeal. [Va. Code § 8.01-676.1 \(B\)](#). Any bond ordered must be filed and processed in the circuit court clerk's office. All bonds required pursuant to [Va. Code § 8.01-676.1](#) must conform to the bond forms set forth in the Appendix to Part 5 of the Rules of Court. [Rule 5:24\(a\)](#).

When there can be no further proceedings in the Supreme Court, the clerk thereof will forward a copy of the Court's mandate to the clerk of the circuit court. If an aggrieved party appeals or seeks a writ of certiorari to the Supreme Court of the United States, the Supreme Court of Virginia may defer the issuance of its mandate until proceedings in the United States Supreme Court have been terminated. [Rule 5:41](#). Upon termination of any such proceedings, the Supreme Court of Virginia will forward a copy of the mandate to the circuit court clerk, along with a certified copy of any written opinion. [Rule 5:38](#). The case record on appeal will be transmitted separately.

1. Notice of Appeal ([Rule 5:9](#))

- Due thirty days from date of order appealed from; accept notice of appeal upon submittal. (Appellant(s) or their counsel are not required to send a copy of the notice of appeal to the Supreme Court.);
- Give appropriate Code Sections in response to inquiries concerning correct court to which to appeal:
  - Jurisdiction of Supreme Court. [Va. Code § 8.01-670](#)
  - Jurisdiction of the Court of Appeals. [Va. Code §§ 17.1-405 and 17.1-406](#)
- In response to inquiries regarding appellate procedures to the Supreme Court, feel free to suggest that the litigant refer to [Rule 5:9](#) (notice of appeal), [Rule 5:11](#) (transcript/ statement of facts) and [Rule 5:17](#) (petition for appeal).

2. Statement of Facts. ([Rule 5:11\(c\)](#))

- Due fifty-five days from the date of the order appealed from;
- Date-stamp statement of facts on date you receive it; do not wait until judge signs it to mark it as filed;
- Check that the statement of facts has been signed or ruled on by the judge before you forward the record to our Court. If this will cause the record to be late in being transmitted to this office, please notify the Supreme Court Clerk's office as soon as possible. If the statement of facts is received after the record has been forwarded, present the statement to the judge (even if it is untimely filed) before you forward it to the Supreme Court as an addition to the record.
- Include original submittal in the record being prepared even though statement of facts eventually signed by the judge may be different from one originally submitted.

3. Transcript. ([Rule 5:11\(a\)](#) and [\(b\)](#))

Due sixty days from date of order appealed from:

- Date-stamp transcripts;
- Only Supreme Court can extend time. [Rule 5:5\(a\)](#)

4. Record. ([Rules 5:10](#) and [5:13](#))

- Due three months from date of order appealed from;
- Hold entire record if extension of time granted to file transcript or statement of facts;
- Include items listed in [Rule 5:10](#);
- Format -See memo on preparing the record; and
- If this Court specifically requests that a record be sent, even though no notice of appeal has been filed in your court, be sure to state in the table of contents that no notice of appeal was filed.

5. Problem Situations.

- The clerk should use caution when accepting petitions for appeal from litigants. The petition for appeal must be filed directly with the Supreme Court or the appeal will be dismissed. Any petition for appeal filed with the clerk should be a courtesy copy only.
- The clerk should not accept the Supreme Court's \$50 filing fee from an appealing party (or their counsel). If the fee is mailed to the clerk, it should

not be forwarded with the record. Rather, the fee should be returned to the appealing party with directions that it must be sent directly to the Supreme Court with the petition for appeal.

## 6. Concluding the Appeal

- When the Petition for Appeal is Refused:
  - Order is sent to counsel upon entry.
  - Once case is disposed of (time to file petition for rehearing has passed, nothing further is pending, etc.), order is returned to the circuit court with the record.
- In Appeals Granted by the Supreme Court of Virginia:
  - Order granting the appeal is sent to circuit court except in appeals from the Court of Appeals where no bond is required. When an appeal bond is filed, send a copy of the bond to the Supreme Court. Always keep the original bond in your file.
  - Opinion sent to counsel and to trial judge upon issuance. [Rule 5:36](#).
- Original mandate with certified copy of opinion sent to clerk of circuit court and copies of mandate sent to counsel when case has been disposed of.
- Record follows shortly thereafter.

## 7. Interlocutory Appeals

[Va. Code § 8.01-670.1](#). If a judge certifies an issue for an interlocutory appeal, the record must be sent as quickly as possible (within ten days or less of the judge's certification) containing the judge's certification and the appellant's statement of reasons for certification. If the Supreme Court grants the appeal, it will need the complete record and will inform the clerk of that when the appeal is granted.

## 8. Clerk's Procedures

The procedures that follow are intended to provide the circuit court clerk with a reference for processing an appeal to the Court of Appeals or Supreme Court. These procedures should be followed in conjunction with the applicable [Rules of Court](#) and statutory provisions governing the appellate process.

**Step 1** Written notice of appeal is filed with the circuit court clerk.

**Comments:** Notice of intent to appeal is often given orally at the end of the trial hearing; however, written notice of appeal must be filed with the circuit court clerk within thirty days of the trial court's ruling.

[Rules 5A:6](#) and [5:9](#)). If appeal is being made to the Court of Appeals, See “Notice of Appeal from Trial Court” contained in [Rule 5A:6](#).

**Note:** If oral intention to appeal is given prior to the filing of the written notice of appeal, the clerk may proceed to STEPS 3, 4, 5, 6 and 7, as appropriate.

**Step 2** Clerk notes on written notice of appeal the date of filing; clerk collects \$20 fee for preparation of the record (unless the defendant is indigent or one of the fixed felony fees has been assessed) and issues receipt to payor.

**Comments:** The circuit court clerk is not authorized to reject a written notice of appeal on the grounds that it was not filed in a timely manner. Such decision rests with the appellate court. The \$20 clerk’s fee allowed by [Va. Code § 17.1-275 \(32\)](#) is receipted under revenue code 304.

The \$50 filing fee required by [Rule 5A:6](#) for the clerk of the Court of Appeals is mailed directly to the clerk of the appellate court by the defendant with a copy of the notice of appeal.

**Step 3** Clerk assembles the record on appeal; pursuant to [Rules 5A:7](#) and [5:10](#), the record on appeal should contain the following:

- the original papers and exhibits filed or lodged with the clerk of the trial court and any reports or depositions;
- all jury instructions marked “given” or “refused” and initialed by the judge;
- all exhibits offered into evidence, whether rejected or admitted (exhibits should be initialed by the judge and any non-documentary exhibits tagged or labeled and initialed by the judge);
- all orders entered by the trial court;
- all transcripts and written statements of facts (with the date of filing indicated on same) or the official videotape recording of any proceeding where authorized;
- any opinion or memorandum decision of the trial judge;
- the notice of appeal.

**Step 4** The clerk should begin preparing the record as soon as possible following receipt of the written notice of appeal. The clerk should begin preparing the record promptly after they are aware an appeal is imminent.



**Comments:** The parties have up to sixty days in which to file a transcript and fifty-five days in which to file a written statement of facts. Such documents are often the last to be incorporated in the record on appeal, and the clerk should not wait for such documents to be filed before compiling the record on appeal.

An abbreviated record may be prepared only in appeals to the Court of Appeals. Such record is prepared by counsel and filed with the circuit court clerk after being signed by all counsel and the trial judge. [Rule 5A:10\(c\)](#).

**Step 5** If the clerk does not intend to transmit certain exhibits with the record due to unusual bulk, weight, or character, the clerk must notify all counsel in writing. [Rules 5A:10\(4\)](#) and [5:13\(4\)](#).

**Comments:** Types of exhibits that should not be sent include:

- bulky or heavy items and articles of clothing;
- valuable items such as jewelry or money;
- drugs, guns, ammunition, and other explosives;
- any other items or materials which the clerk believes cannot be transported safely.

Counsel or the appellate court may direct the clerk to transmit the exhibits. Counsel is responsible for making advance arrangements for the transportation and receipt of exhibits of unusual bulk, character or weight.

**Step 6** Clerk prepares the record for transmission as follows:

- arrange all case documents in chronological order (except transcripts, depositions and exhibits)

**Note:** Clerk should retain a copy of the Table of Contents.

## Chapter 4 - Pre-Trial

### Pretrial Conferences

[Rule 4:13](#), titled Pretrial Procedures; Formulating Issues reads as follows:

The court may in its discretion direct the attorney for the parties to appear before it for a conference to consider:

- A determination of the issues;
- A plan and schedule of discovery;
- Any limitations on the scope and methods of discovery;
- The necessity or desirability of amendments to the pleadings;
- The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- The limitation of the number of expert witnesses;
- The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;
- Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

This rule is designed to allow the court to consider such matters as will aid it in the disposition of the case in subsequent proceedings. It is not intended to substitute a new way of trying a case when an issue of fact exists.

In most cases, judges will require counsel to meet with the judge in chambers prior to the trial to dispose of preliminary matters. The trial judge will want to ensure that the matters addressed in [Rule 4:13](#) are covered. The judge may further be interested in determining if the parties have agreed to any stipulations, whether they have exchanged exhibits (and if there are objections to any exhibits) and whether there are motions *in limine* that must be resolved prior to the trial. Motions *in limine* are used to raise objections that one party may have certain evidence that is expected to be offered by the opposing party. It is helpful to raise such issues prior to trial and if the judge excludes the evidence (grants the motion *in limine*), then opposing counsel cannot comment on the evidence in opening statement. At times, the judge may have to hear the evidence, without the jury present before the judge can rule on the motion *in limine*.

It should also be noted that court reporters will often be present at these conferences (particularly if any motions are to be heard) and the reporter must be sworn by the Clerk or the judge.

Some courts require the parties to confer and prepare a pretrial order listing witnesses, exhibits, stipulations and other such matters. The most important suggestion is to make sure you know your courts local rules and the particular requirements of your judge.

## Hearings on Motions

There may be various motions by the parties that will be heard before the actual trial commences. There may be motions *in limine*, demurrers, motions for a bill of particulars, motions for default judgment and motions for summary judgment.

A demurrer basically asserts that the initial pleading fails to state a cause of action under law or fails to allege facts upon which relief could be granted. It must set forth the grounds for the demurrer as to all or part of the motion for judgment. It may not be filed after the answer is filed unless the court grants leave to withdraw the answer.

Motions for a bill of particulars are responsive pleadings wherein a defendant requests the court to require the plaintiff to amplify the allegations, so the defense is adequately advised of the claim. Failure of the plaintiff to comply with the order for a bill of particulars may result in all or part of the complaint being struck.

A motion for default judgment may be asked for when a defendant does not file a responsive pleading within twenty-one days after being served. (See [Rules 3:5](#) and [3:19](#)). A defendant in default is not entitled to notice of any further proceedings, however judgment by default cannot be entered when there was service by posting until the ten days' notice required by [Va. Code § 8.01-296](#) has been given. If the damages sought are unliquidated, the judge or a jury may hear evidence and set the judgment amount. (See [Rule 3:19](#)).

Motions for summary judgment may be filed after the parties are at issue. The motion may be sought on all or a portion of the issues. If no material fact is in dispute on a particular issue, the court may grant the motion. A motion for summary judgment cannot be based upon discovery depositions pursuant to [Rule 4:5](#) unless all parties agree to the use of the deposition.

There may be various other motions hearings that may be held during the life of a case. The Clerk must be prepared at these hearings to swear witnesses and court reporters and to perform such other duties as may be required by the local rules or local judges.

## Commissioner in Chancery

A number of equity suits are unusual and different methods of procedure may be best suited to meet the exigencies of a particular case. The trial court may in its sound discretion, determine the issue itself from the evidence before it or may call for assistance from Commissioner in Chancery. However, in the final analysis the ultimate determination of the issues is left to the trial court either on the evidence or upon the report of the Commissioner in Chancery. For an outline of the proceedings before a Commissioner in Chancery, See [Rule 3:23](#).

A Commissioner in Chancery is a lawyer appointed by the circuit court judge who conducts evidentiary hearings and makes factual findings in circuit court cases referred to them by the circuit court judge who is conducting the trial. Commissioners in Chancery may be appointed in cases in circuit court, including uncontested divorce cases, only by agreement of the parties with the concurrence of the court, upon motion of a party, or upon the court's own motion. The court must make a finding of good cause shown for appointing a Commissioner in Chancery in each individual case. The Commissioner in Chancery collects a fee for their services. Their findings of fact are subject to challenge before the circuit court judge through the "noting of exceptions" by the objecting lawyer or an unrepresented party, which results in a hearing and re-examination of the evidence by the judge.

Some of the type cases where a Commissioner in Chancery is typically used are partition suits, suits for the sale of lands of persons under a disability, suits to enforce mechanic's liens and divorce cases in some parts of the Commonwealth. When a case is referred to a Commissioner in Chancery, the Commissioner typically hears the evidence and researches the law and other issues and makes a report back to the court, which then is the ultimate decision maker. Unless exceptions to the Commissioner's report are filed then the Commissioners recommendations generally become the decision of the court.

A situation may arise where a cause of action pending in the circuit court cannot be tried because a judge of the court has been disqualified or is unable to try the case. In these situations, when all parties enter into a written stipulation and subsequently approved by a judge of the court, a Judge Pro Tempore may be appointed to try the case. A judge pro tempore is one appointed for the term or some part thereof, during which time they exercises all the functions of the regular judge. Black's Law Dictionary, 5th Edition. Any cause pending in a circuit court, when the judge of the court is disqualified or unable, for any reason, to try the same, may be tried by a judge pro tempore, who will be qualified to practice law in the Commonwealth of Virginia. [Va. Code §§ 17.1-109](#), [17.1-110](#), [17.1-111](#).

## Alternative Dispute Resolution

"Mediation" is a process in which a "neutral" (a person who is trained and experienced in conducting dispute resolution proceedings and in providing dispute resolution services)

facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and resolve their dispute. [Va. Code § 8.01-576.4](#). Mediation is governed by rules of confidentiality. Confidentiality is important to the mediation process, because it encourages the parties to speak freely, and to move beyond their stated positions to revealing their underlying interests. (Balnave, 1992). See the Dispute Resolution Procedures Manual published by the Office of the Executive Secretary of the Supreme Court of Virginia for more complete information on the mediation process.

Initial screening, the determination of whether a case should be referred to a dispute resolution evaluation session, may be performed by an intake specialist, by court personnel, by a judge, or by a party. The identity of the person who is responsible for screening is a function of the overall local program design.

Except in those cases where a party requests a referral to a dispute resolution evaluation session, the individual who initially screens cases requires certain background and training. The individual should be competent in screening procedures, able to analyze cases, and familiar with both local program design and the available dispute resolution options in the community.

## Referral

The court may refer any contested civil matter, or selected issues in a civil matter, to a “dispute resolution evaluation session.” [Va. Code § 8.01-576.5](#). When a petition is filed to initiate a condemnation proceeding, the court is required to refer the parties to a dispute resolution orientation session. [Va. Code § 25.1-205.1](#). The evaluation session is a preliminary meeting during which the parties and a neutral assess the case and decide whether to continue with a dispute resolution proceeding or with adjudication. [Va. Code § 8.01-576.4](#). The court may make the referral on its own or on the motion of any party.

To make the referral, the court must enter an Order of Referral to a neutral or to a dispute resolution program, and so notify the parties as quickly as possible. [Va. Code § 8.01-576.6](#). Form DC-400, MEDIATION ORIENTATION ORDER OF REFERRAL may be used for this purpose.

While the court may enter the DC-400, MEDIATION ORIENTATION ORDER OF REFERRAL to provide for referral to a specific neutral or dispute resolution program for the evaluation session, the parties may seek the assistance of any other neutral if they so choose. Similarly, referral to a particular neutral for the evaluation session does not restrict in any way the parties' ability to select a mediator from the Directory of Court Mediators or any other source to conduct the actual mediation.

- Effect upon Trial Date  
Referral to a dispute resolution evaluation session does not remove a case from

the docket. Despite the referral to the evaluation session, the court shall set a date for the parties to return to court in accordance with its regular docket and calendar management procedure. [Va. Code § 8.01-576.5](#).

- **Objection to Referral**

Any party may object to the referral to the evaluation session. To object, the objecting party must file with the court a written statement signed by that party, within fourteen days after entry of the DC-400, MEDIATION ORIENTATION ORDER OF REFERRAL. The written statement must indicate that the dispute resolution process has been explained to the party and the party objects to the referral. [Va. Code § 8.01-576.6](#).

If the objecting party complies with the statutory provisions, the court shall excuse the parties from participation in a dispute resolution evaluation session. [Va. Code § 8.01-576.6](#). Otherwise, the parties are mandated to attend the scheduled evaluation session with the designated neutral.

- **Costs**

The evaluation session must be conducted at no cost to the parties. [Va. Code § 8.01-576.7](#).

## Cases for Mediation

### Cases Appropriate for Mediation

- the parties have an ongoing relationship;
- the parties have had a significant past relationship, whether business or personal;
- there are communication problems between the parties;
- the parties want to tailor a solution to their specific needs and interests;
- there is no need or desire to establish legal precedent;
- the parties are motivated to settle due to time constraints, expense, or other factors;
- there are cultural differences between the parties which have contributed to their difficulty in communicating with each other;
- the dispute involves subjective questions such as state of mind or intent;

- the dispute involves each party's perception or interpretation of objective facts;
- the parties wish to have significant control over the outcome;
- the parties wish to resolve their dispute in a private setting; and/or,
- the dispute is a condemnation proceeding.

### Cases Inappropriate for Mediation

One type of case that is universally acknowledged as inappropriate for mediation is where a party wishes to establish legal precedent.

The following types of cases are considered to be inappropriate for mediation by some authorities. Others suggest that mediation procedures can be modified and protocols established to permit mediation even in these situations. The factor, which is common to each of these situations, is a party's inability to participate effectively in the process. These cases are where:

- a party cannot negotiate for themselves, even with the assistance of their lawyer;
- physical or psychological abuse impairs the ability of a party to protect their interests; and/or
- an inequality of knowledge or sophistication between the parties is so extreme that it cannot be balanced in the mediation process.

### Process

The following are typical procedures followed when a case is referred to a dispute resolution proceeding:

**Step 1** Court staff member, judge, or intake specialist screens cases for possible referral. NOTE: Clerk may receive a motion for referral from any party in the matter. [Va. Code § 8.01-576.5](#).

**Comments:** New cases are typically screened upon the filing of the Answer but can be screened at any time during the court process. See the Dispute Resolution Procedures Manual for information on the screening process.

**Step 2** If case is selected for referral, responsible person prepares DC-400, MEDIATION ORIENTATION ORDER OF REFERRAL for judge's signature.

**Step 3** Judge signs DC-400, MEDIATION ORIENTATION ORDER OF REFERRAL and returns to

the clerk.

**Comments:** Judge may also authorize a “standing order” to be sent for all cases that appear, after screening, to be appropriate for an evaluation session.

**Step 4** Clerk or designated person (i.e. intake officer) mails DC-400, MEDIATION ORIENTATION ORDER OF REFERRAL to all parties and maintains a copy with the case file.

**Comments:** Any party may object to the referral, provided:

- 1) the objection is filed within fourteen days after entry of the DC-400, MEDIATION ORIENTATION ORDER OF REFERRAL; and
- 2) the party files a written statement which states that the dispute resolution process has been explained to the party and the party objects to the referral. [Va. Code § 8.01-576.6](#).

If objection complies with the statutory procedures, clerk notifies all parties that they are excused from the evaluation session.

Clerk or other responsible person also notifies the neutral that the parties have been excused and files information in court file.

**Step 5** Evaluation session takes place to determine to proceed with dispute resolution proceeding.

**Comments:** All parties must consent to any further participation in any dispute resolution proceeding. [Va. Code § 8.01-576.5](#). NOTE: Court case file may be needed by neutral party to gather information regarding parties' names, parties' attorney, dates set for trial etc. File should be immediately returned to clerk's office after information is gathered.

**Step 6** If all parties do not agree to use the dispute resolution proceeding, case re-enters court system and case resumes normal case processing procedures.

**OR**

If agreement is made to use the dispute resolution proceeding, neutral will provide parties with information regarding selection of qualified neutrals to conduct the session.



**Comments:** The parties may:

- continue to work with the neutral who conducted the evaluation session;
- select any neutral from the list maintained by the court, that is, the Directory of Court Mediators; or
- pursue any other alternative for voluntarily resolving the dispute to which the parties agree.

[Va. Code § 8.01-576.8](#), The parties make their selection at the conclusion of the evaluation session or no later than ten days thereafter. [Va. Code § 8.01-576.8](#), At the parties' request, the court may select a neutral or a dispute resolution program for the parties from the list of qualified neutrals and programs maintained by the court.

**Step 7** Dispute resolution proceedings take place.

**Step 8** Parties or parties' attorney notify the court that case has been resolved by filing a motion with clerk to dismiss or close the case

**OR**

Notify the court that the case is not resolved.

**Comments:** Notification to the court should be in writing. If case is not resolved, case resumes normal case processing procedures.

**Step 9** Parties may file a Joint Motion to Confirm a Mediated Agreement if written settlement is prepared and parties wish agreement to be incorporated in final order.

**Step 10** Clerk follows regular case closing activities.

**Comments:** 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 a DC-400, Mediation Orientation Order of Referral to the DC-44, List of Allowances-Interpreter before submitting for payment.

The court may also refer parties to a “Judicial Settlement Conference” in lieu of mediation. A judicial settlement conference is an informal process, for any civil matter, in which a retired circuit court judge, trained in mediation and settlement conference skills, actively facilitates a process whereby parties in conflict may reach a mutually satisfactory resolution at no cost to the parties. Once a judge refers parties to the program, the parties are required to attend the conference, however, they do not have

to settle.

- [Judicial Settlement Conference Program Procedures](#)
- [Judicial Settlement Conference Judges](#)
- [Checklist for Court Personnel](#)
- [Checklist for Lawyers](#)
- [CC-1419, ORDER OF DESIGNATION AND REFERRAL TO SETTLEMENT CONFERENCE](#)
- [Agreement Concerning Settlement Conference Process](#)
- [Settlement Judge Confirmation of Appointment](#)
- [Settlement Conference Per Diem and Travel Expense Voucher](#)

## Appointment of Guardian Ad Litem

### Generally

A guardian ad litem is a special guardian appointed by the court to prosecute or defend, on behalf of an infant or incompetent, a suit to which they are a party, and such guardian is considered an officer of the court to represent the interests of the infant or incompetent in the litigation. Black's Law Dictionary, 5th Edition.

Per [Va. Code § 8.01-9](#), if the defendant in a suit is a “person under a disability,” the court or clerk is given authority to appoint an attorney at law as guardian ad litem to such defendant. Only the court has authority to appoint a person who is not an attorney as guardian ad litem; only the court can remove a guardian ad litem and appoint another in their stead. The court allows compensation and expenses for the services of a guardian ad litem, and if the estate is inadequate to pay such award, it may be taxed as costs in the proceedings.

A “person under a disability” is defined in [Va. Code § 8.01-2 \(6\)](#).

Typical procedures when the court or clerk is appointing a guardian ad litem:

**Step 1** Petition and/or DC-514- ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM is filed in a pending action.

**Comments:** Clerks may charge a fee for appointment under [Va. Code § 64.2-1801](#) only.

**Step 2** Clerk files petition in the pending action and prepares requests for service of any Notice and copy of Petition upon the person under a disability.

**Step 3** Clerk notes return of service and places it in the court file.

**Step 4** Either the judge or clerk enters the order of appointment of a guardian ad litem. See discussion above, this section.

**Step 5** Order is indexed and microfilmed/scanned, and original is returned to the court file.

### Specific Appointments

Servicemen's Readjustment Act of 1944: Eligibility of Minor for Guaranty of Credit - [Va. Code § 11-8](#).

A guardian ad litem shall be appointed who shall make an investigation and report in writing whether in their opinion the best interest of the petitioner would be served by permitting the petitioner to enter into such transaction.

Action for the Sale, Lease, Exchange, Redemption and Other Disposition of Lands of Persons Under a Disability - [Va. Code § 8.01-73](#).

"In every suit brought under this article, a guardian ad litem shall be appointed for any person under a disability not otherwise represented by a guardian or committee, or trustee appointed pursuant to § [64.2-2003](#), and for all persons proceeded against by an order or publication under the designation of "parties unknown" as provided for in [Va. Code § 8.01-316](#). The guardian ad litem shall file an answer as such."

Process on Convict Defendant - [Va. Code § 8.01-297](#).

In all actions against one who has been convicted of a felony and is confined in a local or regional jail or State correctional institution, process shall be served on such convict and, subject to [Va. Code § 8.01-9](#) a guardian ad litem shall be appointed for them. Such service may be affected by delivery to the officer in charge of such jail or institution whose duty it shall be to deliver forthwith such process to the convict.

Incarcerated Felon Divorce - [Va. Code § 8.01-9](#).

Provides that by order of the court, compensation and expenses of the guardian ad litem that must be appointed for an incarcerated felon in a divorce action shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges if the crime (i) for which the felon is incarcerated occurred after the date of the marriage for which the divorce is sought, (ii) for which the felon is incarcerated was committed against the felon's spouse, child, or stepchild and involved physical injury, sexual assault, or sexual abuse, and (iii) resulted in incarceration subsequent to conviction and the felon was sentenced to confinement for

more than one year. The amount allowed by the court to the guardian ad litem shall be taxed against the incarcerated felon as part of the costs of the proceeding, and if collected, the same shall be paid to the Commonwealth.

Drainage Projects - [Va. Code § 21-310](#).

Proceedings to establish a drainage project are not stayed because of the infancy or incapacity of a party who may own or be interested in any of the land affected by such proceedings. The court shall appoint an attorney at law or other person as guardian ad litem to represent such persons in the proceeding.

Eminent Domain - [Va. Code § 25.1-215](#).

If any owner is a person under a disability and has no guardian, conservator or committee in this Commonwealth, (i) no notice need be issued for or served upon such owner and (ii) a guardian ad litem for such owner shall be appointed in the manner prescribed in [Va. Code § 8.01-9](#).

Local Road Authorities - [Va. Code § 33.2-711](#).

If any such owner or proprietor is a person under a disability as defined in [Va. Code § 8.01-2](#), the circuit court of the county shall, at the time the clerk shall issue such process, or as soon thereafter as practicable, upon the court's or judge's own motion, or upon the suggestion of any party in interest, appoint for such person a guardian ad litem, who shall faithfully represent the interest of the person under a disability and whose fees shall be fixed by the court or judge making the appointment.

Standby guardianship or conservatorship for incapacitated persons - [Va. Code § 64.2-2013](#).

On the hearing of every appointment of a guardian or conservator under [Va. Code § 64.2-2013](#), a guardian ad litem shall be appointed pursuant to [Va. Code § 64.2-2003](#) to represent the interests of the person for whom a guardian or conservator is requested.

Petition for Appointment of Guardian or Conservator - [Va. Code § 64.2-2002](#).

A petition for the appointment of a guardian or conservator shall be filed with the circuit court of the county or city in which the respondent is a resident or is located or in which the respondent resided immediately prior to becoming a patient, voluntarily or involuntarily, in a hospital or a resident in a nursing facility or nursing home, convalescent home, state hospital for the mentally ill, assisted living facility as defined in [Va. Code § 63.2-100](#) or any other similar institution; or if the petition is for the appointment of a conservator for a nonresident with property in the state,

in the city or county in which the respondent's property is located. Instructions regarding duties and powers are to be distributed by the clerk's office upon appointment.

Parental Duty of Support - [Va. Code § 64.2-1801](#).

A guardian who desires to make any distribution when neither (i) an existing court order nor (ii) the deed, will or other instrument under which the estate is derived authorizes it, shall file a petition in the court wherein their accounts may be settled, naming the ward as a defendant and setting forth the reasons why such distribution is appropriate. The court or clerk shall appoint an attorney-at-law as guardian ad litem to represent the ward. No attorney's fees shall be taxed in the costs, nor shall there be any writ tax upon the petition. The court may fix reasonable attorney's fees for services in connection with the filing of the petition, and the court shall fix the guardian ad litem's fee. Such fees shall be paid out of the estate unless the court directs that they be paid by the petitioner. The clerk shall receive a fee as provided in subdivision A 18 of [Va. Code § 17.1-275](#) for all services rendered thereon, to be paid by the guardian, out of the estate.

Child Custody Proceedings - [Va. Code § 64.2-1800](#).

The court may appoint a guardian ad litem to represent the interests of a child. Refer to [Va. Code §§ 16.1-266](#), [16.1-267](#), [16.1-268](#).

Sale of Delinquent Tax Lands - [Va. Code § 58.1-3967](#).

A guardian ad litem shall be appointed for persons under a disability as defined in [Va. Code § 8.01-2](#), and for all parties proceeded against by order of publication as "parties unknown".

Adult Protective Services: Emergency Order for Protective Services - [Va. Code 63.2-1609](#).

A guardian ad litem shall be appointed for a person who lacks capacity to waive the right of counsel at the court's hearing.

Counsel appointed for a parent or guardian pursuant to [Va. Code § 16.1-266](#).

A guardian ad litem shall be selected from the list of attorneys who are qualified to serve as guardians ad litem. If no attorney who is on the list is reasonably available or appropriate considering the circumstances of the parent or case, a judge in their discretion may appoint any discreet and competent attorney who is admitted to practice law in Virginia.

Counsel appointed for child pursuant to [Va. Code § 16.1-266](#).

In any proceeding in which the court appoints a guardian ad litem to represent a child pursuant to [Va. Code § 16.1-266](#), the court shall order the parent, or other party with a legitimate interest who has filed a petition in such proceeding, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian ad litem by the court. If the court determines that such party is unable to pay, the required reimbursement may be reduced or eliminated. No party whom the court determines to be indigent pursuant to [Va. Code § 19.2-159](#) shall be required to pay reimbursement except where the court finds good cause to do so.

### Recoup Fees

When a juvenile and domestic relations district court or a circuit court appoints a guardian ad litem for a juvenile who will be compensated by the Commonwealth, the court is to direct the parent, parents, adoptive parent or adoptive parents of the child, or another party with a legitimate interest therein who has filed a petition with the court to reimburse the Commonwealth for that guardian ad litem, if the parents or guardians are financially able to do so. This provision applies to appointments of guardians ad litem under [Va. Code § 16.1-266](#). Therefore, it will apply in circuit court only in cases appealed from the juvenile and domestic relations district court **and** when a guardian ad litem is appointed by the circuit court pursuant to [Va. Code § 16.1-266](#). \*

The following forms may be utilized by the Circuit Court:

- DC-333, [FINANCIAL STATEMENT - ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES](#);
- DC-211, [PETITION FOR PAYMENT AGREEMENT FOR FINES AND COSTS OR REQUEST TO MODIFY EXISTING AGREEMENT](#);
- DC-533, ASSESSMENT/PAYMENT ORDER;
- DC-225, NOTICE TO PAY (FINAL NOTICE TO PAY)

\*In 2014, it was determined that the DC-533 ASSESSMENT/PAYMENT ORDER should remain in the juvenile and domestic relations court and should not accompany any appealed cases to the circuit court. Therefore, circuit courts will only be collecting amounts from the appropriate parties for GAL fees assessed in the circuit court.

## Nonsuit, Dismiss Action With(Out) Prejudice

A non-suit is a legal means by which a plaintiff only may end a case before it is actually adjudicated. It can be done at any time before the case is submitted to a jury or the court. A plaintiff is entitled to one (1) non-suit as a matter of right although the court may allow additional non-suits upon reasonable notice to counsel of record for all defendants and upon a reasonable attempt to notify any party not represented by counsel, and they can re-file suit within the original statute of limitations or within six (6) months from the date of the non-suit. If additional non-suits are allowed, the court may assess costs and reasonable attorney's fees against the non-suiting party. When suffering a non-suit, a party shall inform the court of previous non-suits. Any order effecting a subsequent non-suit shall reflect all prior non-suits along with the date of any previous non-suit and the court in which any previous non-suit was taken. [Va. Code § 8.01-380](#).

On occasion, the court will dismiss a case before it is tried or adjudicated. It is usually done after a motion for dismissal is made by one of the parties. If the court dismisses without prejudice, the case may be re-filed. If the court dismisses with prejudice, the case may not be re-filed. The court may assess against the non-suiting party reasonable witness fees and travel costs of expert witnesses scheduled to appear at trial, which are incurred by the opposing party solely by reason of the failure to give notice at least seven days prior to trial. [Va. Code § 8.01-380](#).

In any of the above, the clerk microfilms/scans and indexes the order and enters in the appropriate order book. Order is placed in case file that is then placed in the ended case files.

## Amendment of Claim – Case Transfer

While a matter is pending in a circuit court, upon motion of the plaintiff seeking to decrease the amount of the claim at least 10 days before trial, the court shall order transfer of the matter to the general district court that has concurrent jurisdiction over the amended amount of the claim without requiring that the case first be dismissed or that the plaintiff request a nonsuit. The plaintiff shall pay filing and other fees as otherwise provided by law to the clerk of the court to which the case is transferred, and such clerk shall process the claim as if it were a new civil action. The plaintiff shall prepare and present the order of transfer to the transferring court for entry, after which time the case shall be removed from the circuit court docket and the order of transfer placed among its records. The plaintiff shall provide a certified copy of the transfer order to the receiving court. [Va. Code § 8.01-195.4](#).

Pursuant to [Va. Code § 16.1-77](#), cases may also be transferred to circuit court from district court upon motion of the plaintiff seeking to increase the amount of the claim at least 10 days prior to trial. The district court shall order transfer of the matter to the circuit court that has concurrent jurisdiction over the amended amount of the claim without requiring that the case

first be dismissed or that the plaintiff suffer a nonsuit. The plaintiff shall pay filing and other fees as otherwise provided by law to the clerk of the court to which the case is transferred, and such clerk shall process the claim as if it were a new civil action. The plaintiff shall prepare and present the order of transfer to the transferring court for entry, after which time the case shall be removed from the pending docket of the transferring court and the order of transfer placed among its records. The plaintiff shall provide a certified copy of the transfer order to the receiving court.

## Rules of The Supreme Court of Virginia

The Supreme Court, subject to [Va. Code §§ 17.1-503](#) and [16.1-69.32](#), may make general regulations for the practice in all courts of the Commonwealth; and may prepare a system of rules of practice and a system of pleading and the forms of process and may prepare rules of evidence to be used in all such courts. [Va. Code § 8.01-3](#).

New rules and amendments to rules do not become effective until sixty days from adoption by the Supreme Court. These rules are printed and distributed as public documents pursuant to [Va. Code § 8.01-3](#). The [Virginia Code Commission](#) publishes the rules adopted by the Supreme Court. Each circuit court clerk should secure and maintain a copy of the Code of Virginia and the [Rules of the Supreme Court](#).

The following is a summary of the [Rules of the Supreme Court](#) and the rules applying to pleadings and procedures:

### Pleadings

[Rule 1:4](#) of the Supreme Court of Virginia provides the general provisions relating to Pleadings. See General Description of Civil Case Pleadings for more information.

### Time Computation

Whenever a party is required or permitted under these Rules, or by direction of the court, to do an act within a prescribed time after service of a paper upon counsel of record, three (3) days shall be added to the prescribed time when the paper is served by mail, or one (1) day shall be added to the prescribed time when the paper is served by facsimile, electronic mail or commercial delivery service. With respect to Parts Five and Five A of the Rules, this Rule applies only to the time for filing a brief in opposition. [Rule 1:7](#).

### Amendments to Pleadings

No amendments may be made to any pleading after it is filed, except by permission of the court. Leave to amend shall be liberally granted in furtherance of the ends of justice.



Unless otherwise provided by order of the court in a particular case, any written motion for leave to file an amended pleading shall be accompanied by a properly executed proposed amended pleading, in a form suitable for filing. If the motion is granted, the amended pleading accompanying the motion shall be deemed filed in the clerk's office as of the date of the court's order permitting such amendment. If the motion is granted in part, the court may provide for filing an amended pleading as the court may deem reasonable and proper. Where leave to amend is granted other than upon a written motion, whether on demurrer or oral motion or otherwise, the amended pleading shall be filed within 21 days after leave to amend is granted or in such time as the court may prescribe. In granting leave to amend the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper. [Rule 1:8](#).

### **Discretion of Court-Extensions of Time**

All steps and procedures in the clerk's office touching the filing of pleadings and maturing of suits or actions may be reviewed and corrected by the court. The time allowed for filing pleadings may be extended by the court in its discretion and such extension may be granted although the time fixed already has expired; but the time fixed for the filing of a motion challenging the venue can in no case be extended except to the extent permitted by [Va. Code § 8.01-264](#). [Rule 1:9](#)

### **Verification - Effect of Omission of Required Oath**

If a statute requires a pleading to be sworn to, and it is not, or requires a pleading to be accompanied by an affidavit, and it is not, but contains all the allegations required, objection on either ground must be made within seven days after the pleading is filed by a motion to strike; otherwise the objection is waived. At any time before the court passes on the motion or within such time thereafter as the court may prescribe, the pleading may be sworn to or the affidavit filed. In an Electronically Filed Case, verification shall be subject to the provisions of Rule 1:17. [Rule 1:10](#)

### **Endorsements - Submission of Draft Orders, etc.**

Drafts of orders and decrees shall be endorsed by counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served pursuant to Rule 1:12 upon all counsel of record who have not endorsed them. Compliance with this Rule and with Rule 1:12 may be modified or dispensed with by the court in its discretion. In an Electronically Filed Case, endorsement and specification of any objections to the draft order shall be accomplished as provided in Rule 1:17. [Rule 1:13](#)

### **Legal Causes of Action & Actions in Equity**

Part Three of the [Rules of the Supreme Court](#) applies to all civil cases, whether legal or equitable in nature.

**Rule 3:1. Scope.**

There shall be one form of civil case, known as a civil action. These Rules apply to all civil actions, in the circuit courts, whether the claims involved arise under legal or equitable causes of action, unless otherwise provided by law. These rules apply in cases appealed or removed to such courts from inferior courts whenever applicable in such cases. These Rules shall not apply in petitions for a writ of habeas corpus. In matters not covered by these Rules, the established practices and procedures are continued. Whenever in this Part Three the words “action” or “suit” appear they shall refer to a civil action, which may include legal and equitable claims.

**Rule 3:2. Commencement of Civil Actions.**

- a. *Commencement.* A civil action shall be commenced by filing in the clerk's office a complaint. When a statute or established practice requires, a proceeding may be commenced by a pleading styled "Petition." Upon filing of the pleading, the action is then instituted and pending as to all parties defendant thereto. The statutory writ tax and clerk's fees shall be paid before the summons is issued
- b. *Caption.* The complaint shall be captioned with the name of the court and the full style of the action, which shall include the names of all the parties. The requirements of [Va. Code § 8.01-290](#) may be met by giving the address or other data after the name of each defendant.
- c. *Form and Content of the Complaint.*
  - (i) It shall be sufficient for the complaint to ask for the specific relief sought. Without more it will be understood that all the defendants mentioned in the caption are made parties defendant and required to answer the complaint; that proper process against them is requested; that answers under oath are waived, except when required by law and that all relief authorized by law and demanded in the complaint may be granted. No formal conclusion is necessary.
  - (ii) Every complaint requesting an award of money damages shall contain an ad damnum clause stating the amount of damages sought. Leave to

amend the ad damnum clause shall be available under Rule 1:8.

**Rule 3:3.** Filing of Pleadings; Return of Certain Writs.

- a. *Filing Generally.* The clerk shall receive and file all pleadings when tendered, without order of the court. The clerk shall note and attest the date of filing thereon. In an Electronically Filed Case, the procedures of Rule 1:17 shall be applicable to the notation by the clerk of the date of filing. Any controversy over whether a party who has filed a pleading has a right to file it shall be decided by the court.
- b. *Electronic Filing.* In any circuit court which has established an electronic filing system pursuant to Rule 1:17:
  - (1) Any civil action for which electronic filing is available in the circuit court may be designated as an Electronically Filed Case upon consent of all parties in the case. Such designation shall be made promptly, complying with all filing and procedural requirements for making such designations as may be prescribed by such circuit court.
  - (2) Except where service and/or filing of an original paper document is expressly required by these rules, all pleadings, motions, notices and other filings in an Electronically Filed Case shall be formatted, served and filed as specified in the requirements and procedures of Rule 1:17; provided, however, that when any document listed below is filed in the case, the filing party shall notify the clerk of court that the original document must be retained.
    - (i) Any pleading or affidavit required by statute or rule to be sworn, verified or certified as provided in Rule 1:17(d)(5).
    - (ii) Any last will and testament or other testamentary document, whether or not it is holographic. Any contract or deed.
    - (iii) Any prenuptial agreement or written settlement agreement, including any property settlement agreement.
    - (iv) Any check or other negotiable instrument.
    - (v) Any handwritten statement, waiver, or consent by a defendant or witness in a criminal

- proceeding.
- (vi) Any form signed by a defendant in a criminal proceeding, including any typed statements or a guilty plea form.
  - (vii) Any document that cannot be converted into an electronic document in such a way as to produce a clear and readable image.
- c. *Return of writs.* No writ shall be returnable more than 90 days after its date unless a longer period is provided by statute.

**Rule 3:4. Copies of Complaint.**

- a. *Copies for Service.* Except in cases where service is waived pursuant to Code [§ 8.01-286.1](#), the plaintiff shall furnish the clerk when the complaint is filed with as many paper copies thereof as there are defendants upon whom it is to be served. In an Electronically Filed Case, the plaintiff shall file the complaint electronically and furnish paper copies to the clerk as provided in this Rule.
- b. *Exhibits.* It is not required that physical copies of exhibits filed with the complaint be furnished or served. Unless an individual case is exempted by order of the court for good cause shown, an electronic or digitally imaged copy of all exhibits that are incorporated by reference in the pleading shall be filed with the complaint. Upon the adoption of standards for the preparation of electronic or digital records for use in appeals, exhibits under this Rule shall comply with such standards.
- c. *Additional copies.* A deficiency in the number of copies of the complaint shall not affect the pendency of the action.
  - (1) If the plaintiff fails to furnish the required number of copies, the clerk shall request that additional copies be furnished by the plaintiff as needed, and if the plaintiff fails to do so promptly, the clerk shall bring the fact to the attention of the judge, who shall notify the plaintiff's counsel, or the plaintiff personally if no counsel has appeared for plaintiff, to furnish them by a specified date. If the required copies are not furnished on or before that date, the court may enter an order dismissing the suit.
  - (2) Additionally, in an Electronically Filed Case, if the clerk has been provided by the plaintiff with a credit or payment account through which to obtain payment of fees for

duplication of required copies of filings, the clerk shall promptly prepare additional copies of the pleading as needed, and process payment through such credit or payment account; or, if processing by the clerk of the proper payment for duplication of additional copies of the pleading through a credit or payment account authorized by the filing party is not feasible, the clerk shall proceed as provided in subpart (c)(1) of this Rule.

**Rule 3:5. The Summons.**

- a. *Form of process.* Process shall be via a summons, substantially in the form of Form CC-1400, SUMMONS - CIVIL ACTION.
- b. *Affixing summons for service; voluntary appearance.* Upon the commencement of a civil action defendants may appear voluntarily and file responsive pleadings and may appear voluntarily and waive process, but in cases of divorce or annulment of marriage only in accordance with the provisions of the controlling statutes. With respect to defendants who do not appear voluntarily or file responsive pleadings or waive service of process, the clerk shall issue summonses and securely attach one to and upon the front of each copy of the complaint to be served. The copies of the complaint, with a summons so attached, shall be delivered by the clerk for service together as the plaintiff may direct.
- c. *Defendant under a disability.* Except when sued for divorce or annulment of marriage, or a judgment in personam is sought, a summons need not be issued for or served upon a defendant who is a person under a disability (except as otherwise provided in [Va. Code § 8.01-297](#)), the procedure is described in [Va. Code § 8.01-9](#) constituting due process as to such defendants.
- d. *Additional summonses.* The clerk shall on request issue additional summonses dating them as of the day of issuance.
- e. *Service more than one year after commencement of the action.* No order, judgment or decree shall be entered against a defendant who was served with process more than one year after the commencement of the action against them unless the court finds as a fact that the plaintiff exercised due diligence to have timely service that defendant.

**Rule 3:6. Proof of Service.**

- Returns shall be made on a paper styled “Proof of Service” which shall be substantially in the form of Form CC-1405, PROOF OF SERVICE.
- Returns shall be made thereon and shall show when, where, how and upon whom service was made.
- The clerk shall prepare as many as may be needed and deliver them with the copies of the complaint.
- The summons with copy of the complaint attached shall constitute and be served as one paper.
- It shall be the duty of all persons eligible to serve process to make service within five days after receipt, and make return as to those served within 72 hours after the earliest service upon any party shown on each Proof of Service; but failure to make timely service and return shall not prejudice the rights of any party except as provided in [Rule 3:5](#).
- Additional copies of the Proof of Service may be obtained from the clerk and returns thereon made in similar manner.

**Rule 3:7. Bills of Particulars.**

- a. *Timing and Grounds.* On motion made promptly, a bill of particulars may be ordered to amplify any pleading that does not provide notice of a claim or defense adequate to permit the adversary a fair opportunity to respond or prepare the case.
- b. *Striking of Insufficient Bills of Particulars.* A bill of particulars that fails to inform the opposing party fairly of the true nature of the claim or defense may, on motion made promptly, be stricken and an amended bill of particulars ordered. If the amended bill of particulars fails to inform the opposite party fairly of the true nature of the claim or defense, the pleading not so amplified and the bills of particulars may be stricken.
- c. *Date for Filing Bill of Particulars.* An order requiring or permitting a bill of particulars or amended bill of particulars shall fix the time within which it must be filed.
- d. *Date for Responding to Amplified Pleading.* If the bill of particulars amplifies a complaint, a defendant shall respond to the amplified pleading within 21 days after the filing thereof, unless the defendant relies on pleadings already filed. If the bill of particulars amplifies any other pleading, any required response shall be filed within 21 days after the filing of the bill of particulars, or within such shorter or longer time as the court may

prescribe.

**Rule 3:8.** Answers, Pleas, Demurrers and Motions.

- *Response Requirement.* A defendant shall file pleadings in response within 21 days after service of the summons and complaint upon that defendant, or if service of the summons has been timely waived on request under Code § [8.01-286.1](#), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the Commonwealth. A demurrer, plea, motion to dismiss, and motion for a bill of particulars shall each be deemed a pleading in response for the count or counts addressed therein. If a defendant files no other pleading than the answer, it shall be filed within said time. An answer shall respond to the paragraphs of the complaint. A general denial of the entire complaint or plea of the general issue shall not be permitted.
- *Response After Demurrer, Plea or Motion.* When the court has entered its order overruling all motions, demurrers and other pleas filed by a defendant, such defendant shall, unless they have already done so, file their answer within 21 days after entry of such order, or within such shorter or longer time as the court may prescribe.

**Rule 3:9.** Counterclaims.

- a. *Scope.* A defendant may, at that defendant's option, plead as a counterclaim any cause of action that the defendant has against the plaintiff or all plaintiffs jointly, whether or not it grows out of any transaction mentioned in the complaint, whether or not it is for liquidated damages, whether it is in tort or contract, and whether or not the amount demanded in the counterclaim is greater than the amount demanded in the complaint.
- b. *Time for initiation*
  - (i) A counterclaim shall, subject to the provisions of [Rule 1:9](#), be filed within 21 days after service of the summons and complaint upon the defendant asserting the counterclaim, or if service of the summons has been timely waived on request under Code § [8.01-286.1](#), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the Commonwealth.

- (ii) If a demurrer, plea, motion to dismiss, or motion for a bill of particulars is filed within the period provided in subsection (b)(i) of this Rule, the defendant may file any counterclaim at any time up to 21 days after the entry of the court's order ruling upon all such motions, demurrers and other pleas, or within such shorter or longer time as the court may prescribe.
- c. *Response to counterclaim.* The plaintiff shall file pleading in response to such counterclaim within 21 days after it is served.
- d. *Separate trials.* The court in its discretion may order a separate trial of any cause of action asserted in a counterclaim.

**Rule 3:10. Cross-Claims.**

- a. *Scope.* A defendant may, at that defendant's option, plead as a cross-claim any cause of action that such defendant has or may have against one or more other defendants growing out of any matter pled in the complaint. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.
- b. *Time for initiation.* A cross-claim shall, subject to the provisions of [Rule 1:9](#), be filed within 21 days after service of the summons and complaint on the defendant asserting the cross-claim or if service of the summons has been timely waived on request under Code [§ 8.01-286.1](#), within 60 days after the date when the request for waiver was sent, or within 90 days after that date if the defendant was addressed outside the Commonwealth.
- c. *Response to cross-claim.* The cross-claim defendant shall file pleadings in response to such cross-claim within 21 days after it is served.
- d. *Separate trials.* The court in its discretion may order a separate trial of any cause of action asserted in a cross-claim.

**Rule 3:11. Reply.**

*Responding to new matter.* If a pleading, motion or affirmative defense sets up new matter and contains words expressly requesting a reply, the adverse party shall within 21 days file a reply admitting or denying such new matter. If it does not contain such words, the allegation of new matter shall be taken as denied or avoided without further pleading.



**Rule 3:12.** Joinder of Additional Parties.

- a. *Persons to Be Joined if Feasible.* A person who is subject to service of process may be joined as a party in the action if (1) in their absence complete relief cannot be accorded among those already parties, or (2) they claim an interest relating to the subject of the action and is so situated that the disposition of the action in their absence may (i) as a practical matter impair or impede their ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of their claimed interest. If they should join as a plaintiff but refuse to do so, they may be made a defendant, or, in a proper case, an involuntary plaintiff.
- b. *Method of Joinder.* A motion to join an additional party shall, subject to the provisions of [Rule 1:9](#), be filed with the clerk within 21 days after service of the complaint and shall be served on the party sought to be joined who shall thereafter be subject to all provisions of these Rules, except the provisions requiring payment of writ tax and clerk's fees.
- c. *Determination by Court Whenever Joinder Not Feasible.* If a person as described in subdivision (a) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to them or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.
- d. *Pleading Reasons for Nonjoinder.* A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a) hereof who are not joined, and the reasons why they are not joined.

**Rule 3:13.** Third-Party Practice.

- a. *When Defendant May Bring in Third Party.* At any time after commencement of the action a defending party, as a third-party plaintiff, may file and serve a third-party complaint upon a person not a party to the action who is or may be liable to them for all or part of the plaintiff's claim against them. The third-party plaintiff need not obtain leave therefor if they file the third-party complaint not later than 21 days after they serve their original pleading in response. Otherwise, they must obtain leave therefor on motion after notice to all parties to the action. The person served with the third-party complaint, hereinafter called the third-party defendant, shall make their defenses to the third-party plaintiff's claim as provided in [Rules 3:7](#) and [3:8](#) and their counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in [Rules 3:9](#) and [3:10](#). The third-party defendant may assert against the plaintiff any defenses that the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may, at their option, within 21 days after service of the third-party complaint upon the third-party defendant, assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert their defenses as provided in [Rules 3:7](#) and [3:8](#) and their counterclaims and cross-claims, including claims against the plaintiff, as provided in [Rules 3:9](#) and [3:10](#). Any party may move to strike the third-party complaint, or for its severance or 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 them for all or part of the claim made in the action against the third-party defendant.
- b. *When Plaintiff May Bring in Third Party.* When a counterclaim is asserted against a plaintiff, they may cause a third party to be brought in under circumstances that under this rule would entitle a defendant to do so.

**[Rule 3:14.](#) Intervention.**

A new party may by leave of court file a pleading to intervene as a plaintiff or defendant to assert any claim or defense germane to the subject matter of the proceeding.

All provisions of these Rules applicable to civil cases, except those

provisions requiring payment of writ tax and clerk's fees, shall apply to such pleadings. The parties on whom such pleadings are served shall respond thereto as provided in these Rules.

**Rule 3:15.** Statutory Interpleader.

Proceedings brought pursuant to statutory provisions relating to interpleader shall, to the extent not inconsistent with the governing statutes, be conducted in accordance with the Rules contained in this Part Three.

**Rule 3:16.** New Parties.

New parties may be added, on motion of the plaintiff by order of the court at any stage of the case as the ends of justice may require. The motion, accompanied by an amended complaint, shall be served on the existing parties as required by [Rule 1:12](#). If the motion is granted, the amended complaint shall be filed in the clerk's office and all the provisions of [Rule 3:4](#) shall apply as to the new parties, but no writ tax, clerk's fee or deposit for costs is required. All defendants shall file pleadings in response thereto as required by these Rules unless otherwise ordered by the court.

**Rule 3:17.** Substitution of Parties.

- a. *Substitution of a successor.* If a party becomes incapable of prosecuting or defending because of death, disability, conviction of felony, removal from office, or other cause, a successor in interest may be substituted as a party in such person's place.
- b. *Motion, Consent, Procedure.* Substitution shall be made on motion of the successor or of any party to the action. If the successor does not make or consent to the motion, the party making the motion shall file the motion and the proposed amended pleading upon the party to be substituted in the manner prescribed by the Code of Virginia for serving original process upon such party. Unless the movant and the party to be substituted agree otherwise, or the court orders a different schedule, the party sought to be substituted shall file a written response to the motion for substitution within 21 days after service of the motion and proposed amended pleading upon the party sought to be substituted.

**Rule 3:18.** General Provisions as to Pleadings.

- a. *Pleadings.* All motions in writing, including a motion for a bill of particulars and a motion to dismiss, whether filed in paper document format or as electronic or digitally imaged filings, are pleadings.
- b. *Allegation of negligence.* An allegation of negligence or contributory negligence is sufficient without specifying the particulars of the negligence.
- c. *Contributory negligence as a defense.* Contributory negligence shall not constitute a defense unless pleaded or shown by the plaintiff's evidence.
- d. *Pleading the statute of limitations.* An allegation that an action is barred by the statute of limitations is sufficient without specifying the particular statute relied on.
- e. *Separate of combined filings.* Answers, counterclaims, cross-claims, pleas, demurrers, affirmative defenses and motions may all be included in the same paper if they are separately identified in both the caption and the body of the filing.

**Rule 3:19. Default.**

- a. *Failure Timely to Respond.* A defendant who fails timely to file a responsive pleading as prescribed in [Rule 3:8](#) is in default. A defendant in default is not entitled to notice of any further proceedings in the case, including notice to take depositions, except that written notice of any further proceedings shall be given to counsel of record, if any. The defendant in default is deemed to have waived any right to trial of issues by jury.
- b. *Relief from Default.* Prior to the entry of judgment, for good cause shown the court may grant leave to a defendant who is in default to file a late responsive pleading. Relief from default may be conditioned by the court upon such defendant reimbursing any extra costs and fees, including attorney's fees, incurred by the plaintiff solely as a result of the delay in the filing of a responsive pleading by the defendant.
- c. *Default Judgment and Damages.*
  - (1) Except in suits for divorce or annulling a marriage, the court shall, on motion of the plaintiff, enter judgment for the relief appearing to the court to be due. When service of process is effected by posting, no judgment by default shall be entered until the requirements of Code § 8.01-296 (2)(b) have been satisfied.
  - (2) If the relief demanded is unliquidated damages, the court shall hear evidence and fix the amount thereof, unless the

plaintiff demands trial by jury, in which event, a jury shall be impaneled to fix the amount of damages.

- (3) If a defendant participates in the hearing to determine the amount of damages such defendant may not offer proof or argument on the issues of liability, but may (i) object to the plaintiff's evidence regarding damages, (ii) offer evidence regarding the quantum of damages, (iii) participate in jury selection if a jury will hear the damage inquiry, (iv) submit proposed jury instructions regarding damages, and (v) make oral argument on the issues of damages.

d. *Relief from Default Judgment.*

- (1) *Within 21 Days* – During the period provided by [Rule 1:1](#) for the modification, vacation or suspension of a judgment, the court may by written order relieve a defendant of a default judgment after consideration of the extent and causes of the defendant's delay in tendering a responsive pleading, whether service of process and actual notice of the claim were timely provided to the defendant, and the effect of the delay upon the plaintiff. Relief from default may be conditioned by the court upon the defendant reimbursing any extra costs and fees, including attorney's fees, incurred by the plaintiff solely as a result of the delay in the filing of a responsive pleading by the defendant.
- (2) *After 21 Days* – A final judgment no longer within the jurisdiction of the trial court under [Rule 1:1](#) may not be vacated by that court except as provided in [Va. Code §§ 8.01-423](#) and [8.01-623](#).

[Rule 3:20](#). Motion for Summary Judgment.

Any party may make a motion for summary judgment at any time after the parties are at issue, except in an action for divorce or for annulment of marriage. If it appears from the pleadings, the orders, if any, made at a pretrial conference, the admissions, if any, in the proceedings, that the moving party is entitled to judgment, the court shall grant the motion. Summary judgment, interlocutory in nature, may be entered as to the undisputed portion of a contested claim or on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment shall not be entered if any material fact is genuinely in dispute. No motion for summary judgment or motion to strike the evidence shall be sustained when based in whole or in part upon any discovery depositions

under Rule 4:5, unless all parties to the action shall agree that such deposition may be so used, or unless the motion is brought in accordance with the provisions of subsection B of [§ 8.01-420](#). As further provided in subsection C of § 8.01-420, depositions and affidavits may be used to support or oppose a motion for summary judgment in any action where the only parties to the action are business entities and the amount at issue is \$50,000 or more.

**Rule 3:21. Jury Trial of Right.**

- a. *Jury Trial Situations Unchanged.* The right of trial by jury as declared by the Constitution of Virginia, or as given by an applicable statute or other authority, is unchanged by these rules, and shall be implemented as established law provides. Established practice for the trial and decision of equitable claims by the judge alone shall be continued.
- b. *Demand.* Any party may demand a trial by jury of any issue triable of right by a jury in the complaint or by (1) serving upon the other parties a demand therefore in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to the issue, and (2) filing the demand with the trial court. Such demand may be endorsed upon a pleading of the party. In an Electronically Filed Case, endorsement of such demand may be made as provided in Rule 1:17. The court may set a final date for service of jury demands. Leave to file amended pleadings shall not extend the time for serving and filing a jury demand unless the order granting leave to amend expressly so states.
- c. *Specification of Issues.* In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within ten days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.
- d. *Waiver.* The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury.

**Rule 3:22. Trial by Jury or by the Court.**

- a. *By Jury.* When trial by jury has been demanded as provided in [Rule 3:21](#), the action shall be designated upon the docket as a jury

action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury; or (2) the court upon motion or of its own initiative finds that a right of trial by jury on some or all of those issues does not exist under applicable law.

- b. *By the Court.* Except as otherwise provided in this Rule, issues not demanded for trial by jury as provided in [Rule 3:21](#), and issues as to which a right of trial by jury does not exist, shall be tried by the court.
- c. *Statutory Jury Rights in Certain Equitable Claims.*
  - i. In an equitable claim where no right to a jury trial otherwise exists, where impaneling of an advisory jury pursuant to [Va. Code § 8.01-336\(E\)](#) to hear an issue will be helpful to the court concerning disputed fact issues, such a jury may be seated. Decision on such claims and issues shall be made by the judge.
  - ii. Where a jury trial on a defendant's plea in an equitable claim is authorized under [Va. Code § 8.01-336 \(D\)](#), trial of the issues presented by the plea shall be by a jury whose verdict on those issues has the same effect as if trial by jury had been a matter of right.
- d. *Party Consent to Jury.* As to any claim not triable of right by a jury, the court, with the consent of the parties, may (i) order trial of any claim or issue with an advisory jury or, (ii) a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.
- e. *Trial by Mixed Jury and Non-Jury Claims.* In any case when there are both jury and non-jury issues to be tried, the court shall adopt trial procedures and a sequence of proceedings to assure that all issues properly heard by the jury are decided by it, and applicable factual determinations by the jury shall be used by the judge in resolving the non-jury issues in the case.

**[Rule 3:23.](#)** Use of and Proceedings Before a Commissioner in Chancery.

- a. Commissioners in chancery may be appointed in cases in circuit court, including uncontested divorce cases, only when (1) there is agreement by the parties with concurrence of the court or (2) upon motion of a party or the court on its own motion with a finding of good cause shown in each individual case.
- b. Upon entry of a decree by the court referring any matter to a

commissioner in chancery, the clerk shall mail or deliver to the commissioner a copy of the decree of reference. Unless the decree prescribes otherwise, the commissioner shall promptly set a time and place for the first meeting of the parties or their attorneys, and shall notify the parties or their attorneys of the time and place so set. It shall be the duty of the commissioner to proceed with all reasonable diligence to execute the decree of reference.

- c. A commissioner may require the production of evidence upon all matters embraced in the decree of reference including the production of all books, papers, vouchers, documents and writings applicable thereto. The commissioner shall have the authority to call witnesses or the parties to the action to testify and may examine them upon oath. The commissioner may rule upon the admissibility of evidence unless otherwise directed by the decree of reference; but when a party so requests, the commissioner shall cause a record to be made of all proffered evidence which is excluded by the commissioner as inadmissible.
- d. The commissioner shall prepare a report stating their findings of fact and conclusions of law with respect to the matters submitted by the decree of reference. The commissioner shall file the report, together with all exhibits admitted in evidence and a transcript of the proceedings and of the testimony, with the clerk of the court. In an Electronically Filed Case, filing as required in this Rule shall be in accord with the requirements of Rule 1:17. The commissioner shall mail or deliver to counsel of record and to parties not represented by counsel, using the last address shown in the record, written notice of the filing of the report. Provided, however, that in divorce cases a copy of the report shall accompany the notice. Provided, further, that no such notice or copy shall be given parties who have not appeared in the proceeding.

**Rule 1A:4.** Out-of-State Lawyers - When Allowed by Comity to Participate in a Case *Pro Hac Vice*.

1. *Introduction.* A lawyer who is not a member of the Virginia State Bar, but is currently licensed and authorized to practice law in another state, territory, or possession of the United States of America (hereinafter called an "out-of-state lawyer") may apply to appear as counsel *pro hac vice* in a particular case before any court, board or administrative agency (hereinafter called "tribunal") in the Commonwealth of Virginia upon compliance with this rule.



2. *Association of Local Counsel.* No out-of-state lawyer may appear *pro hac vice* before any tribunal in Virginia unless the out-of-state lawyer has first associated in that case with a lawyer who is an active member in good standing of the Virginia State Bar (hereinafter called "local counsel"). The name of local counsel shall appear on all notices, orders, pleadings, and other documents filed in the case. Local counsel shall personally appear and participate in pretrial conferences, hearings, trials, or other proceedings actually conducted before the tribunal. Local counsel associating with an out-of-state lawyer in a particular case shall accept joint responsibility with the out-of-state lawyer to the client, other parties, witnesses, other counsel and to the tribunal in that particular case. Any pleading or other paper required to be served (whether relating to discovery or otherwise) shall be invalid unless it is signed by local counsel. The tribunal in which such case is pending shall have full authority to deal with local counsel exclusively in all matters connected with the pending case. If it becomes necessary to serve notice or process in the case, any notice or process served upon local counsel shall be deemed valid as if served on the out-of-state lawyer.
3. *Procedure for applying.* Appearance *pro hac vice* in a case is subject to the discretion and approval of the tribunal where such case is pending. An out-of-state lawyer desiring to appear *pro hac vice* under this rule shall comply with the procedures set forth herein for each case in which *pro hac vice* status is requested. For good cause shown, a tribunal may permit an out-of-state lawyer to appear *pro hac vice* on a temporary basis prior to completion by the out-of-state lawyer of the application procedures set forth herein. At the time such temporary admission is granted, the tribunal shall specify a time limit within which the out-of-state lawyer must complete the application procedures, and any temporary *pro hac vice* admission shall be revoked in the event the out-of-state lawyer fails to complete the application procedure within the time limit.
  - a. *Notarized Application.* In order to appear *pro hac vice* as counsel in any matter pending before a tribunal in the Commonwealth of Virginia, an out-of-state lawyer shall deliver to local counsel to file with the tribunal an original notarized application and a non-refundable application fee of \$250.00 payable to the Clerk of the Supreme Court. *Pro hac vice* counsel must submit a notarized application with the non-refundable application fee of \$250.00 for each separate case before a tribunal. Original, notarized applications and orders granting, denying or revoking application to appear *pro hac vice* shall be retained in a separate file containing all applications. The clerk of the tribunal shall maintain

- the application for a period of three years after completion of the case and all appeals.
- b. Motion to associate counsel *pro hac vice*. Local counsel shall file a motion to associate the out-of-state lawyer as counsel *pro hac vice* with the tribunal where the case is pending, together with proof of service on all parties in accordance with the [Rules of the Supreme Court of Virginia](#). The motion of local counsel shall be accompanied by: (1) the original, notarized application of the out-of-state lawyer; (2) a proposed order granting or denying the motion; and (3) the required application fee.
  - c. Entry of Order. The order granting or denying the motion to associate counsel *pro hac vice* shall be entered by the tribunal promptly and a copy of the order shall be forwarded to the Clerk of the Supreme Court. An out-of-state lawyer shall make no appearance in a case until the tribunal where the case is pending enters the order granting the motion to associate counsel *pro hac vice* unless temporary admission has been approved pursuant to this rule. The order granting *pro hac vice* status shall be valid until the case is concluded in the courts of this Commonwealth or a court revokes the *pro hac vice* admission.
4. *Notarized Application*. The notarized application required by this rule shall be on a form approved by the Supreme Court of Virginia and available at the office of the clerk of the tribunal where the case is pending.
  5. *Discretion and Limitation on Number of Matters*. The grant or denial of a motion pursuant to this rule by the tribunal is discretionary. The tribunal shall deny the motion if the out-of-state lawyer has been previously admitted *pro hac vice* before any tribunal or tribunals in Virginia in twelve (12) cases within the last twelve (12) months preceding the date of the current application. In the enforcement of this limitation, the tribunal may consider whether the pending case is a related or consolidated matter for which the out-of-state lawyer has previously applied to appear *pro hac vice*. Before ruling on a *pro hac vice* motion, the tribunal shall verify with the Supreme Court of Virginia the number of cases during the preceding twelve (12) months in which the out-of-state lawyer was admitted in Virginia *pro hac vice*.
  6. *Transfer of Venue and Appeal*. The out-of-state lawyer's *pro hac vice* admission shall be deemed to continue in the event the venue in the case or proceeding is transferred to another tribunal or is appealed; provided, however, that the tribunal having jurisdiction over such transferred or appealed case shall have the discretion to revoke the authority of the out-

- of-state lawyer to appear *pro hac vice*.
7. *Duty to Report Status*. An out-of-state lawyer admitted *pro hac vice* shall have a continuing obligation during the period of such admission to advise the tribunal promptly of any disposition made of pending disciplinary charges or the institution of any new disciplinary proceedings or investigations. The tribunal shall advise the Clerk of the Supreme Court of Virginia if the tribunal denies or revokes the out-of-state lawyer's permission to appear *pro hac vice*.
  8. *Record-keeping*. The Clerk of the Supreme Court of Virginia will maintain an electronic database necessary for the administration and enforcement of this rule.
  9. *Disciplinary Jurisdiction of the Virginia State Bar*. An out-of-state lawyer admitted *pro hac vice* pursuant to this rule shall be subject to the jurisdiction of all tribunals and agencies of the Commonwealth of Virginia, and the Virginia State Bar, with respect to the laws and rules of Virginia governing the conduct and discipline of out-of-state lawyers to the same extent as an active member of the Virginia State Bar. An applicant or out-of-state lawyer admitted *pro hac vice* may be disciplined in the same manner as a member of the Virginia State Bar.
  10. *In-State Services Related to Out-of-State Proceedings*. Subject to the requirements and limitations of [Rule 5.5](#) of the Virginia Rules of Professional Conduct, an out-of-state lawyer may provide the following services without the entry of a *pro hac vice* order:
    - a. In connection with a proceeding pending outside of Virginia, an out-of-state lawyer admitted to appear in that proceeding may render legal services in Virginia pertaining to or in aid of such proceeding.
    - b. In connection with a case in which an out-of-state lawyer reasonably believes they are eligible for admission *pro hac vice* under this rule: (1) the out-of-state lawyer may consult in Virginia with a member of the Virginia State Bar concerning a pending or potential proceeding in Virginia; (2) the out-of-state lawyer may, at the request of a person in Virginia contemplating or involved in a proceeding in Virginia, consult with that person about that person's retention of the out-of-state lawyer in connection with that proceeding; and (3) on behalf of a client residing in Virginia or elsewhere, the out-of-state lawyer may render legal services in Virginia in preparation for a potential case to be filed in Virginia.
    - c. An out-of-state lawyer may render legal services to prepare for and participate in an ADR process, regardless of where the ADR process or proceeding is expected to take place or actually takes place.

The Rule and Application may be accessed by clicking below:

[Rule 1A:4](#) and [APPLICATION TO APPEAR PRO HAC VICE BEFORE A VIRGINIA TRIBUNAL](#)

See “Suits/Action Types” in this manual for specific clerk’s office procedures.

## Interpreters

Interpreters may be appointed by the court, pursuant to [Va. Code § 8.01-384.1:1](#), in a civil case. Local policy will dictate whether a hearing is required to assess the need for an interpreter, whether the court has a standing order. “[T]he amount allowed by the court to the [foreign language] interpreter may, in the discretion of the court, be assessed against either party as a part of the cost of the case and, if collected, the same shall be paid to the Commonwealth.”

It is a federal requirement to provide free language assistance to LEP individuals in all court proceedings, notwithstanding conflicting state or local laws. See the appendix “Language Access Guidance Letter to State Courts from Assistant Attorney General Thomas E. Perez (August 17, 2010).”

If notwithstanding this guidance a court orders judgment in a civil case for any or all of the interpreter fees against either the defendant or the plaintiff, the court should establish an FAS accounts receivable. If the order is against the defendant, the court can use the existing civil case number. If the order is against the plaintiff, then the court should assign a new civil number in the FAS to establish the accounts receivable. Any monies collected by the party ordered to pay should be receipted into revenue account 113 “cost collected in Commonwealth cases.”

See [SERVING NON-ENGLISH SPEAKERS IN THE VIRGINIA COURT SYSTEM](#).

## Interpreters – Deaf and Hard of Hearing

[Va. Code § 8.01-384.1](#)

In any civil proceeding in which a speech-impaired person or a person who is deaf or hard of hearing is a party or witness, the court may appoint a qualified interpreter to assist such person in the proceeding. The court shall appoint an interpreter for any speech-impaired person or person who is deaf or hard of hearing who requests this assistance.

Interpreters for the deaf and hard of hearing in these proceedings shall be procured through the Department for the Deaf and Hard-of-Hearing. If the Department cannot procure such services, then the court may appoint a readily available interpreter with full certification from

the Registry of Interpreters for the Deaf, Inc., or an equivalent national certification. Such court-appointed interpreter's qualifications are subject to review and approval by the Department for the Deaf and Hard-of-Hearing.

**Note:** If VDDHH is not able to provide an interpreter and one has been appointed by the court, the interpreter must first be reviewed and approved by VDDHH prior to the hearing.

Any person who is eligible for an interpreter for hearing impairment may waive the use of an interpreter appointed by the court for all or a portion of the proceedings. A person who waives their right to an interpreter may provide their own interpreter at their own expense without regard to whether the interpreter is qualified under this section.

#### Forms

[ADA Accommodation Request Procedure](#)  
[Request for Accommodation Under the Americans with Disabilities Act](#)  
[Court Sign Language Interpreter/CART Request Form](#)  
[Accommodations for People Who Are Deaf, Hard of Hearing or Deafblind](#)

### Local Rules of Court (Rule 1:15)

In addition to the rules promulgated by the Supreme Court of Virginia, local rules can be prescribed by the circuit courts. The circuit courts may prescribe for their circuits such rules as may be reasonably appropriate to promote proper order and decorum, and the convenient and efficient use of courthouses and clerks' offices. [Va. Code § 8.01-4.](#)

Whenever a local rule is prescribed by a circuit court it will be entered in the appropriate order book. A copy of the order, with the date of entry of such order, will be posted in the clerk's office. All local rules are to be filed with the Executive Secretary of the Supreme Court and the court may, upon request, furnish to attorneys regularly practicing before that circuit court.

Any attorney who becomes counsel of record in any proceedings in a circuit court, in which they do not regularly practice, must ascertain the rules of that court and abide thereby. The clerk shall, upon request, promptly furnish a copy of all rules then in force and effect.

The chief judge of the circuit court will provide a copy of general information relating to the management of the courts on or before December 31 of each year to the Executive Secretary of the Supreme Court. The information provided is published on or before July 1 of each year. Examples of local rules adopted include the following:

- Beginning date of Term;
- Grand Jury Days;
- Motion Days;

- Misdemeanor Appeal Days;
- Utilization of Commissioners in Chancery;
- How/when criminal cases are set; i.e., on Term Day
- How/when civil cases are set; i.e., cases set by praecipe
- Use of Docket Call;
- Time court convenes;
- Juror information; and
- When Instructions must be filed

## Purging Inactive Cases From The Docket

The ever-increasing caseloads and congested dockets within the circuit court have made the court aware of delay in concluding cases that remain on the court's docket for long periods of time with no activity. As examples, in civil cases, delays may be occurring when service of process is not requested at case filing and thus the case can languish for considerable periods of time with no further actions, pleadings or orders filed.

Delays also may result from discovery not being completed in a timely fashion or when last minute motions or continuances require postponement of the trial. For that reason, many courts have established internal procedures for removing inactive cases from their docket through firm adherence to a regular case purging schedule. Purging inactive cases from the docket has often been referred to as the “one-, two- and three-year rule.” Methods of notifying parties that cases will be purged vary from court to court, however, courts have found it necessary to establish guidelines for the purging of these cases and the notification of parties accordingly.

### One Year

If process has not been served within one year of the commencement of a case that is still pending on the court's docket, the court may, in its discretion, order it to be struck from the docket and the action shall be discontinued. The clerk of the court shall notify the plaintiff or their counsel of record at their last known address at least thirty days before the entry of an order of discontinuance so that the plaintiff may have an opportunity to show that service has been timely effected on the defendant or that due diligence has been exercised to have service timely effected. Upon finding that service has been timely effected or that due diligence has been exercised to have service timely effected, the court shall maintain the action on the docket and, if service has not been timely effected but due diligence to effect service has been exercised, shall require the plaintiff to attempt service. The plaintiff may still file a nonsuit before the entry of a discontinuance order. This process does not apply to asbestos litigation. [Va. Code § 8.01-335.](#)

Also, a defendant who has not been served within one year of the filing of a suit may make a special appearance to file a motion to dismiss, and if the court finds that the plaintiff did not exercise due diligence to have timely service, the court shall dismiss the suit with prejudice. Upon finding that the plaintiff did exercise due diligence to have timely service, the court shall require the person filing the motion to file a responsive pleading within twenty-one days. The plaintiff reserves the right to file a nonsuit. [Va. Code § 8.01-277](#).

If a civil action is pending in a circuit court on appeal from a general district court and (i) an appeal bond has been furnished by or on behalf of any party against whom judgment has been rendered for money or property and (ii) for more than one year there has been no order or proceeding, except to continue the matter, the action may, upon notice to the parties at least fifteen days prior to the entry of the order, be dismissed and struck from the docket of the court. Upon dismissal, the judgment of the general district court shall stand and the appeal bond shall be forfeited after application of any funds needed to satisfy the judgment.

## Two Years

A number of courts in Virginia are sending notice requiring parties to appear in court when a case has been inactive for two years. Cases are considered inactive if there has been no action (order or proceeding) except to continue it. The court may, at its discretion, discontinue and strike the inactive case from the docket if a request is not made for continuance. If one of the parties requests a continuance prior to an entry of a discontinuance order, the court will enter a pre-trial order formulating specific issues in the case. This order is used by the court to ensure timely resolution of the case. If the court finds that the case has not advanced based on the pre-trial order, the court may strike the case from the docket.

Cases which fall into the “two-year” rule and are stricken from the docket are discontinued. These cases may be reinstated, on motion, after notice to the parties or their counsel, within one year from the date of the discontinuance notice. The clerk of the court shall notify the parties in interest if known, or their counsel of record at their last known address, at least fifteen days before the entry of such order of discontinuance so that all parties may have an opportunity to be heard on it. [Va. Code § 8.01-335](#).

## Three Years

Cases which fall into the “three-year” rule and are stricken from the docket are also discontinued. Like cases that are discontinued under the “two-year” rule, cases discontinued under the “three-year” rule can be reinstated on the docket under [Va. Code § 8.01-335 \(B\)](#) but some actions may be reinstated under [Va. Code § 20-121.1](#). See

Crenshaw v. Crenshaw 12 Va. App. 1129, 408 S.E. 2nd 556 (1991). Notice to the parties prior to any action taken by the court to discontinue the case is not required, however the clerk must forward any order entered to all parties once entered by the court.

The Pending Docket provided by the Supreme Court Case Management System provides a listing of all cases pending in the court. A summary sheet details the age of the court's pending civil cases falling within time increments, such as those still pending within one year of filing. This report will show the percentage of cases which are more than two years old and which of these cases are eligible to be purged under the two (2) or three (3) year rules.

The most useful report available to the court is the Civil - No Action Report. This too, is provided by the Supreme Court Case Management System. This report depicts those cases that have had no hearings, pleadings or orders filed within specific time periods. This report will also aid the court in determining if there are pending cases that are eligible to be purged.



## Chapter 5 - Trial of the Action/Post-Trial

### Bench Trial

A trial conducted by the judge without a jury is called a “bench trial.” An action shall be commenced by filing in the clerk’s office a complaint. The parties defendant file answers to the cause of action, and the issue is joined. The judge, after hearing pre-trial motions and counsel having completed discovery action, is ready for bench trial if a jury is NOT requested.

The case is set for trial by a judge at the calling of the court’s docket. (Local rule may require the filing of a praecipe.) A bench trial follows the same sequence as a trial by jury. The primary difference is that the judge, rather than a jury, hears and determines the case.

In a typical bench trial, the clerk calls the case and determines if counsel is ready for trial. Witnesses are sworn and excluded from the courtroom if a motion for exclusion is made by either party. Beginning with the plaintiff, counsel may offer opening statements. After the judge hears testimony presented by plaintiff, defendant may move to strike the evidence. Upon completion of argument on the motion, the judge will make a ruling. If the motion to strike is denied, the defendant will then put on its evidence. Closing arguments are presented by both sides, and the judge renders a decision in the case in favor of the plaintiff or the defendant. If ruling is for the plaintiff, the judge may also assess damages.

### Procedures

(representative of those followed in most courts)

- Step 1** The bailiff opens court.
  
- Step 2** Clerk calls the case; court reporter is sworn by clerk, depending on local practice. [Rule 1:3](#). A court reporter may be hired by either party who will bear all expenses.
  
- Step 3** Judge asks counsel if they are ready to proceed and if there are any motions to be heard. In most instances, the decision whether to have a jury trial or bench trial will have already been made. If not, it is made at this stage. If case is to be tried by a jury, see “Jury Trials.”

**Note:** Depending on local practice, the Clerk may not remain in the courtroom during civil bench trials. See Attorney General Opinion To Worthington, dated 8/14/2003; *Circuit court clerks, under their duty to establish a system that satisfies the statutory purpose for maintaining their records, have the discretion, but no obligation, to provide a deputy clerk in the courtroom during civil proceedings.*

- Step 4** Clerk listens to motions and takes notes.
- Comments:** The clerk's notes may be used to prepare a court order of the proceeding (a trial order). The nature of the motion and the court's ruling on it may be included in the trial order. See "Post-trial Motions."
- Step 5** Clerk swears witnesses, if directed by court. Depending on the judge's preference, the witnesses are either sworn all at one time or each one is sworn prior to giving their testimony. If sworn all at once, it is helpful to make a note of the relevant attributes about each witness as a memory device.
- Step 6** PROCEDURE DECISION: Does the court order the witnesses excluded from the courtroom? If no: GO TO STEP 9; If yes: GO TO STEP 7.
- Upon its own motion, the court may, and upon motion of the plaintiff or defendant the court must order the witnesses excluded. [Va. Code § 8.01-375](#).
- Step 7** Clerk notes the motion to exclude witnesses and any other motions and whether granted or denied for inclusion in the trial order. Clerk must be sure to note the nature of the motion and on whose motion the witnesses were excluded (the court, plaintiff or defense counsel). See Motion to Exclude Witnesses, Post-trial Motions.
- Step 8** The bailiff takes the witnesses to the witness room or other place outside the courtroom and escorts them into the courtroom when they are required to testify. The judge will instruct the witnesses prior to their leaving the courtroom to remain in the witness room or other location outside the courtroom until called and not to discuss the case or their testimony with each other or any other party during the trial.
- Step 9** Opening statements are made by the plaintiff's attorney and defense counsel, respectively. Either side may waive the right to an opening statement.
- Step 10** Beginning with the plaintiff, each side presents its case by calling witnesses and introducing evidence.
- Step 11** If the clerk is responsible for all exhibits introduced; they should mark each exhibit as directed by the court and should keep information on record in case of an appeal. Exhibits may be marked with the following information:

- exhibit number or letter (number sequentially if not provided)
- case number
- style of case
- party presenting exhibit
- date exhibit introduced
- “ID” or “ADM” indicator

Initially, an exhibit is marked for identification only (ID). A party may later move the court to admit the exhibit into evidence. If the motion is granted, the exhibit becomes admitted (ADM). If an exhibit is rejected by the court, the clerk should note that fact.

Extreme care should be taken with dangerous or valuable exhibits. When not needed, these exhibits should be stored securely in the clerk's office.

**Note:** KNOW YOUR LOCAL RULES AND REQUIREMENTS.

**Step 12** Clerk obtains judge's initials on the label of each documentary exhibit and on the tag of each non-documentary exhibit, regardless of whether the exhibit is admitted or rejected.

**Comments:** This procedure comports with [Rule 5:10](#) so that if the case is appealed, the exhibits need not be relabeled.

**Step 13** Clerk records exhibit information on a master list (if used) that becomes part of the case record.

**Comments:** See Form CC-1338, List of Exhibits. Accuracy of the master exhibit list is critical because it is the official and usually only list in existence. Additionally, if the case is appealed, the clerk of the appellate court depends upon this list for reference.

**Step 14** PROCEDURE DECISION: Has the court granted a motion to strike or a motion for mistrial? If no: GO TO STEP 16; If yes: GO TO STEP 15.

**Comments:** See Post-trial Motions for a detailed discussion of these and other motions.

**Step 15** Clerk follows post-trial and case closing procedures, respectively.

**Step 16** Counsel for each side conducts closing arguments.

**Comments:** Closing arguments provide each party the opportunity to

present its interpretation of the case in summary form and to state why the judge should find for the plaintiff or defendant. The plaintiff goes first and has an opportunity for a rebuttal statement after defense counsel's closing argument.

**Step 17** Judge renders a judgment in the case.

**Comments:** If judgment is in favor of the plaintiff, damages may be assessed.

**Step 18** Judge rules on any motions.

**Step 19** Case is concluded; clerk gathers all case-related and other pertinent materials and returns to clerk's office. Clerk proceeds to case closing procedures.

**Comment:** Clerk determines if judgment rendered should be docketed.

**Note:** The clerk shall docket every judgment in compliance with [Va. Code § 8.01-446](#). See Attorney General opinion to Pritchett, dated 11/21/86 (1986-87, page 47); judgment must be docketed without delay upon receipt in clerk's office; time of actual docketing of judgment should be recorded in judgment lien docket book.

See also CIRCUIT MISCELLANEOUS PROCEDURES MANUAL, "[Judgments.](#)"

## Jury Trial

Prior to trial, certain activities occur regarding the use of juries in trials. Some of these procedures apply to the court's entire jury process; some apply only to the trial of a particular case. Procedures that apply to civil trials are discussed herein. Procedures relating to the jury process as a whole are discussed in the chapter Jury Management.

A jury trial is one in which a jury makes finding of fact from the evidence presented to it and applies the law, as stated by the judge, to those facts, and makes a determination for the plaintiff or defendant. Trial by jury is considered waived unless one of the parties or the court request that the issue or action be heard by a jury.

Provisions guaranteeing a jury trial in legal actions do not apply to equitable claims. By statute, a plaintiff may "take issue" upon a defendant's plea and thereafter either party may have such issue tried by a jury; the verdict will be binding rather than advisory. Another jury that may be had is an action to remove a cloud on title. The action is also binding. The Court however, may

order the issue or case be tried by a jury. In an equitable claim where no right to a jury trial otherwise exists, where impaneling of an advisory jury pursuant to [Va. Code § 8.01-336 \(E\)](#) to hear an issue will be helpful to the court concerning disputed fact issues, such a jury may be seated. Decisions on such claims and issues shall be made by the judge.

The Code of Virginia provides for summary jury trials. [Va. Code § 8.01-576.1](#). Parties may agree to a summary jury trial where the verdict will be non-binding unless otherwise agreed. Generally, the parties will orally summarize their case and the evidence. The non-binding verdict may aid pretrial settlement.

**Condemnation Juries:** The court, juries or commissioners may hear eminent domain cases. Pursuant to [Va. Code § 25.1-100](#), “body determining just compensation” means a jury selected pursuant to [Va. Code § 25.1-229](#), or the court if a jury is not empaneled. The jury commissioners established pursuant to Chapter 11 ([Va. Code § 8.01-336](#) et seq.) of Title 8.01 shall select condemnation jurors. Therefore, a separate pool of condemnation jurors may be selected. The jury commissioners shall select as condemnation jurors persons who are residents of the county or city in which the property to be condemned, or the greater portion thereof, is situated. No person shall be eligible as a condemnation juror when they or any person for them, solicits or requests a member of the jury commission to place their name on a list of condemnation jurors. All of the persons included on the list of condemnation jurors shall be freeholders of property within the jurisdiction. The list shall include a notation indicating those persons who are freeholders. [Va. Code § 8.01-346](#). “Freeholder” means any person owning an interest in land in fee, including a person owning a condominium unit. [Va. Code § 25.1-100](#). Except as otherwise provided, the provisions of [Va. Code §§ 8.01-345](#), [8.01-346](#), [8.01-347](#), [8.01-356](#), and [8.01-358](#) relating to procedures for preparing this list from which members will be chosen, penalties for failure to appear and *voir dire* examination shall apply to condemnation jurors mutatis mutandis. [Va. Code § 25.1-229](#). Each juror receives \$50.00 per day for being summoned and appearing for service. [Va. Code §§ 25.1-235](#) and [17.1-618](#). Refer to the chapter, “Suits/Action Types,” for further instructions regarding this process.

## Right to Trial by Jury

The right to a trial by jury is guaranteed in the following cases:

- Legal causes of action. Va. Const. art. I, § 11.
- Equity cases. [Va. Code § 8.01-336](#)

On motion of either party supported by an affidavit that the case will be rendered doubtful by conflicting evidence of another party, or at the initiative of the court, an issue out of equity may be awarded. An equitable claim is the discretionary submission by the court of a factual controversy to a jury.

Most trials are conducted by the judge without a jury (“bench trials”); jury trials comprise only a small portion of all trials conducted. For a discussion of bench trials, See Bench Trials.

In jury trials, the jury determines whether to find in favor of the plaintiff or defendant. If the jury finds in favor of the plaintiff, damages may be assessed. Jury trials are generally more time consuming and more complicated than bench trials. Consequently, jury trials generate compounded responsibilities for the court, attorneys, and clerk’s office staff. The subsections that follow address the procedures involved in the trial by jury of a particular case. Those aspects of jury trials that are common to all jury trials are discussed in Juror Management.

### Eligibility for and Exemption from Jury Service

See [Creation of the Master Jury List](#) in this manual.

### Selection of Trial Jurors

[Virginia Code § 8.01-353.1](#) provides that at the time of assembly for the purpose of juror selection, the clerk of court shall ensure that the identity of each member of the jury venire is verified. Acceptable forms of identification: Commonwealth of Virginia voter registration card; social security card; valid Virginia driver’s license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the juror and issued by an employer of the juror in the ordinary course of the employer’s business. If the juror is unable to present one of these forms of identification, they shall sign a statement affirming, under penalty of perjury, that they are the named juror.

Because some of the potential jurors will be removed for cause and because alternate jurors may be needed, the clerk or sheriff may be requested to summon more potential jurors than will be needed to create the jury panel for each jury trial. In civil cases, five persons from a panel of not less than eleven shall constitute a jury in a civil case when the amount involved exclusive of interest and costs does not exceed the maximum jurisdictional limits as provided in [Va. Code § 16.1-77 \(1\)](#). Seven persons from a panel of not less than thirteen shall constitute a jury in other civil cases except that when a special jury is allowed, twelve persons from a panel of not less than twenty shall constitute the jury. Five persons from a panel of not fewer than thirteen jurors shall constitute a jury in a condemnation case. Upon request, the clerk, sheriff, or other officer responsible for summoning jurors to appear shall make available to all counsel of record a copy of the jury panel to be used for the trial of a particular case at least 3 full business days before the trial. [Va. Code § 8.01-353](#). The copy of the jury panel shall show the name, age, address,

occupation and employer of each person on the panel.

In any case in which qualified jurors cannot be conveniently found in the county or city in which the trial is to be held, the court may cause so many jurors as may be necessary to be summoned from any other city or county by the sheriff from a master jury list furnished by the locality from which the jurors are to be summoned. [Va. Code § 8.01-363](#).

Procedures that should be employed by the clerk in the preparing for a jury trial:

**Step 1** Determination is made to have a jury trial.

**Comments:** The determination is usually made prior to the day of trial. If the request is made on the day of trial, the judge may order a continuance, or if sufficient jurors are available, the case may proceed to *voir dire*.

**Step 2** Clerk prepares jury list.

**Comments:** Upon request, the clerk or sheriff or other officer responsible for notifying jurors to appear in court for the trial of a case shall make available to all counsel of record a copy of the jury panel to be used for the trial of the case at least 3 full business days before the trial. [Va. Code § 8.01-353](#). See Lists of Jurors for further information.

**Step 3** The bailiff opens court.

**Step 4** Clerk calls the case; court reporter is sworn by clerk, depending on local practice. [Rule 1:3](#).

**Comments:** Court reporters may be hired by parties in civil cases. The Code is silent with respect to recording civil proceedings; consequently, unless a party specifically requests a court reporter, local practice normally dictates. [Va. Code § 8.01-420.3](#).

**Step 5** Judge asks counsel if they are ready to proceed and if there are any motions to be heard.

**Step 6** Clerk may listen to motions and take notes.

**Comments:** The nature of the motion and the court's ruling on it will be included in the trial order which is generally prepared

by an attorney.

**Step 7** Clerk calls a jury panel.

**Comments:** Jurors shall be selected at random. [Va. Code § 8.01-357](#). Civil jury trials are conducted using the number of jurors prescribed by [Va. Code § 8.01-359](#).

**Step 8** The clerk swears the jury panel.

**Step 9** *Voir dire* examination is conducted by the court and counsel for all parties. [Va. Code § 8.01-358](#).

**Comments:** Examination continues until a panel free of exceptions is obtained. Additional jurors for lengthy trials may be selected by reference to [Va. Code § 8.01-360](#).

**Step 10** The parties or counsel alternatively strike off one name from the panel until the number remaining is reduced to the number required for a jury. [Va. Code § 8.01-359](#).

**Step 11** The clerk swears the jury and they are seated in the jury box.

**Step 12** The remaining jurors not selected are excused and released by the Court. [Va. Code § 8.01-357](#).

## Conduct of Jury Trial

A jury trial begins with the calling of the case and the hearing of motions. The court may, upon its own motion, or must, upon motion of any party, order the exclusion of all witnesses. Each named party, although they may be a witness, has the right to remain. One officer, agent, or corporation may remain in the courtroom. [Va. Code § 8.01-375](#).

Before the witnesses leave the courtroom, the judge will instruct them not to discuss their testimony with other witnesses, spectators or any other party during the course of the trial.

After the judge has given the jury its preliminary instructions, the attorneys make their opening statements, beginning with the attorney for the plaintiff. The plaintiff presents its case after which defense counsel may move to strike the plaintiff's evidence. The court will grant the motion if the evidence presented by the plaintiff is insufficient as a matter of law to sustain a verdict. [Rule 1:11](#). If the motion is denied, the trial continues, and the defendant presents its evidence. When the defense rests, the plaintiff has the



opportunity to refute any new evidence introduced by the defendant and may present rebuttal evidence. The parties may, at any time before the jury renders its verdict, settle the issue and the jury will be dismissed.

Counsel will, from time to time, request that the court remove the jury from the courtroom temporarily or request a conference with the judge on the bench or in their chambers. On such occasions, matters of law and evidence are discussed out of the hearing of the jury so that the jury will hear and consider only those matters relevant to reaching its verdict.

Sometimes the jury may hear testimony that the judge subsequently orders stricken from the record and not to be considered by the jury. If the judge, after considering the grounds for an objection to evidence, concludes that the jury should not have heard the testimony, the jury should consider the case as if such testimony had not been given.

With the permission of the judge, jurors may ask questions of the witnesses. Such questions may be asked only for clarification purposes.

A juror may realize after a trial has begun that they know some fact about the case. When this occurs, the juror may bring this matter to the clerk's attention. The clerk should tell the juror not to mention the fact to the other members of the jury and should inform the judge immediately so that the judge can take appropriate action.

At the conclusion of the testimony, the judge and attorneys, outside the presence of the jury, meet to consider instructions to be given the jury relating to the law of the case. Instructions are proposed in writing by each side, and the judge will adopt the instructions which they believe properly state the law applicable to the case and reject the other proposed instructions. The judge reads the instructions adopted by the court to the jury. The jurors must accept and follow the law as stated by the judge even though they may have a different idea of what the law is or ought to be.

After the judge instructs the jury, the attorneys make their closing arguments. The purpose of closing arguments is to summarize the evidence and to state, in light of the judge's instructions, the reasons why the jury should find for the plaintiff or defendant. The plaintiff's attorney makes their closing argument first, followed by defense counsel. The plaintiff's attorney may reserve time for a rebuttal argument.

When the case has been submitted to the jury, the jury is taken by the bailiff to the jury room. The jurors may take the written instructions to the jury room for guidance in their deliberations. They may, by leave of court, also take any exhibits admitted into evidence into the jury room.

Before the jurors begin their deliberations, they must select one of their members to serve

as foreman. The foreman presides over the deliberations and writes and signs the jury's verdict. The foreman otherwise participates in the deliberations and votes on the issues presented to the jury for decision as a regular juror. The jury may ask the judge to clarify the instructions. Any questions are conveyed in written form to the court by the bailiff or made to the judge in open court with all the jurors and parties' attorneys present.

If the jury finds for the plaintiff, it may also determine the amount of damages, if any. While awaiting the jury's verdict, the clerk may leave the courtroom as directed by the judge. The judge may retire to chambers.

The jury's verdict must be unanimous, in writing and signed by the jury foreman, and returned in open court. Verdict forms are commonly used to record jury verdicts. The court may submit alternate forms of verdicts to the jury. The judge generally reviews the verdict form before it is read by the foreman or clerk to check for errors. The court may not make substantive changes to the verdict; it may only correct errors of form.

After the jury foreman or clerk renders the jury's verdict in open court, the jury may be polled upon request of any party or upon the court's own motion. If polled, each juror is asked individually if the verdict read in court reflects their vote. Polling cannot be used to inquire into how or why a juror reached the verdict. If the verdict is found not to be unanimous, the judge may direct the jury to retire for further deliberations or they may declare a mistrial and discharge the jury. In some courts, the judge asks both attorneys on the record if they are satisfied that the verdict is unanimous and has their response entered on the record. In other courts, the judge simply states for the record that they find that the verdict is unanimous.

After the jury has returned its verdict, the court dismisses the jurors after thanking them for their service. If there is a likelihood of media coverage, the court may also advise the jurors with respect to discussing their verdict with the media. Jurors are also encouraged to advise the court of any threats or harassment made in regard to their jury service in the case.

Pursuant to [Rule 1:11](#), counsel may move to set aside a verdict based upon error committed during the trial or on insufficient evidence. A motion to set aside the verdict must be filed within twenty-one days of entry of a final order after verdict in the trial court. If the court grants the foregoing motion upon finding the evidence insufficient as a matter of law to sustain a verdict, it must enter a judgment in favor of the defendant. The court must grant a new trial if it sets aside the verdict for any other reason. [Va. Code § 8.01-383](#).

Sometimes a jury is unable to reach a unanimous verdict. Such a jury is said to be "hung" or "deadlocked." The judge may attempt to break the deadlock by sending the jury back

to deliberate further and by giving an “Allen charge.” The Allen charge encourages the jurors in the minority to consider the majority position and ask themselves whether they might not reasonably doubt the correctness of a judgment not concurred in by the majority. This should not be construed as an attempt by the court to coerce a verdict from the jury. If a verdict is still not reached, the court will declare a mistrial and the case may be tried again before another jury.

The clerk’s role during the trial of a case by jury may vary from one jurisdiction to the next, depending on local practice. Depending on local practice, the Clerk may not remain in the courtroom during civil bench trials. See Attorney General Opinion To Worthington, dated 8/14/2003; *Circuit court clerks, under their duty to establish a system that satisfies the statutory purpose for maintaining their records, have the discretion, but no obligation, to provide a deputy clerk in the courtroom during civil proceedings.*

The procedures listed below are representative of those followed in most courts when the Clerk remains in the courtroom:

**Step 1** Clerk swears witnesses, if directed by the court.

**Comments:** Depending on the judge’s preference, the witnesses are either sworn all at one time or each one is sworn prior to giving their testimony. If sworn all at once, it is helpful to make a note of the relevant attributes of each witness as a memory device.

**Step 2** PROCEDURE DECISION: Does the court order the witnesses excluded from the courtroom? If no: GO TO STEP 6; If yes: GO TO STEP 3.

**Comments:** Upon its own motion, the court may, and upon motion of the defendant or plaintiff, the court must, order the witnesses excluded. [Va. Code § 8.01-375](#).

**Step 3** Clerk notes the motion to exclude witnesses and any other motions and whether granted or denied for inclusion in the trial order.

**Comments:** Clerk must be sure to note the nature of the motion and on whose motion the witnesses were excluded (the court, plaintiff, or defense counsel).

**Step 4** The bailiff takes the witnesses to the witness room or other place outside the courtroom and escorts them into the courtroom when they are required to testify.

**Comments:** The judge will instruct the witnesses to remain in the

witness room or other location outside the courtroom until called and not to discuss the case or their testimony with each other or any other party during the trial.

- Step 5** Jury is given preliminary instructions by the court.
- Step 6** Opening statements are made by the plaintiff and defense counsel, respectively. Either side may waive its right to an opening statement.
- Step 7** Beginning with the plaintiff, each side presents its case by calling witnesses and introducing evidence.
- Step 8** Clerk maintains custody of and is responsible for all exhibits introduced; clerk marks each exhibit as directed by the court introduced with the following information:
- exhibit number (if not already, sequentially number exhibits beginning with A or 1)
  - by attorney
  - case number
  - style of case
  - party presenting exhibit
  - date exhibit introduced
  - ID or ADM indicator

**Comments:** The clerk must know the location of the exhibits since the attorneys refer to and display these items frequently. Exhibits should be marked before trial, if at all possible.

Initially, an exhibit is marked for identification only (ID). A party may later move the court to admit the exhibit into evidence. If the motion is granted, the exhibit becomes admitted (ADM). If the court rejects an exhibit, the clerk should note that fact. It is important to keep exhibits not admitted separate from those admitted since jurors may only take exhibit, the clerk should note that fact. It is important to keep exhibits not admitted separate from those admitted since jurors may only take exhibits which have been admitted into evidence into the jury room. An exhibit marked for identification only which is inadvertently given to the jury can be grounds for mistrial.

Extreme care should be taken with dangerous or valuable exhibits. When not needed, these exhibits should be stored securely in the clerk's office. **Note:** KNOW YOUR LOCAL RULES REGARDING

EVIDENCE.

**Step 9** Clerk obtains judge's initials on each documentary exhibit and on the tag or label of each non-documentary exhibit, regardless of whether the exhibit is admitted or rejected.

**Comments:** This procedure comports with [Rule 5:10](#) so that if the case is appealed, the exhibits need not be relabeled.

**Step 10** Clerk records exhibit information on a master list that will become part of the case record.

**Comments:** See Form CC-1338, LIST OF EXHIBITS. Accuracy of the master list is critical since it is the official and usually only list in existence. Additionally, if the case is appealed, the clerk of the appellate court depends upon this list for reference.

**Step 11** PROCEDURE DECISION: Has the court granted a motion to strike, a motion for a mistrial, or a motion for a non-suit? If no: GO TO STEP 13; If yes: GO TO STEP 12.

**Step 12** Clerk follows post-trial and case closing procedures, respectively.

**Step 13** Court rules on proposed jury instructions.

**Comments:** The instructions are the laws to be applied to the facts of the case. The proposed instructions are submitted in writing to the court by each attorney. [Rule 3A:16](#). Counsel must provide the court with the original and give a copy to the other attorney. Based on local practice, some clerks code the instructions submitted as to which side offered each and number each instruction separately. If there are multiple defendants, the label should reflect which defendant offered the instruction.

Each proposed instruction that is not withdrawn is marked "given" or "refused" and initialed by the judge. [Rule 5:10\(a\)\(2\)](#). Some courts also mark and initial withdrawn instructions. Withdrawn instructions should be clearly marked, returned to counsel, or otherwise disposed of. All other instructions are part of the record and must be retained.

**Step 14** Judge reads all the instructions granted to the jury.

**Step 15** Counsel for each side conducts closing arguments.

**Comments:** Closing arguments provide each party the opportunity to present its interpretation of the case in a summary form and to state why the jury should find for the plaintiff or the defendant. The plaintiff argues first and has an opportunity for a rebuttal statement after defense counsel's closing argument. The plaintiff may waive their right to argue first.

**Step 16** Jurors retire to the jury room for deliberations, taking with them all instructions that have been granted, the verdict forms, and by leave of court, all exhibits that have been admitted.

**Step 17** Clerk notes any questions submitted by the jury during their deliberations.

**Comments:** If the jurors have any questions during deliberation, the questions are written down and handed to the bailiff who gives them to the judge. The judge discusses the questions with counsel and a written answer is sent to the jury or the jury is returned to the courtroom to hear an answer.

It is important to note the questions submitted since all questions become part of the permanent record and must be placed in the case file when the case is ended.

**Step 18** When the jury has reached a verdict, the foreman advises bailiff, and jury returns to courtroom.

**Step 19** Clerk or bailiff receives verdict forms from the foreman.

**Step 20** Clerk shows the verdict forms to the judge, if so directed.

If the verdict has been improperly executed, the judge will instruct the jury again and send them back to the jury room for further deliberation.

**Step 21** If the verdict is in proper form, the clerk or judge asks whether the jury has reached its verdict.

**Comments:** If the foreman answers in the affirmative, the clerk or judge asks if the jury's verdict is unanimous.

- Step 22** Clerk generally reads the verdict, which should be read verbatim.
- Step 23** Clerk shows the verdict form to counsel, if directed by the court.
- Step 24** If directed, the clerk polls the individual jurors by calling each name from the jury list and asking each juror if the verdict read accurately reflects their verdict.
- Step 25** The jury is discharged.
- Comments:** Prior to the jurors leaving, the bailiff or clerk should collect all juror badges (if used by the court).
- Step 26** Judge hears and rules on any motions (motion to set aside verdict, motion in arrest of judgment, motion for new trial). See Post-Trial Motions.
- Step 27** Clerk follows case closing procedures, respectively.

### Juror Reimbursement

Every person summoned as a juror in a civil case or serving as a condemnation juror shall be entitled to \$50.00 for each day of attendance. [Va. Code § 25.1-235](#). [Virginia Code §§ 17.1-619](#) and [17.1-623](#) authorize payment to jurors by negotiable check, cash, or electronic transfer. Jurors summoned from another city or county for reason of obtaining an impartial jury may be allowed by the court, in addition to the \$50.00, their actual expenses. [Va. Code § 17.1-618](#).

Procedures recommended to the clerk when requesting payment for jurors in civil cases:

- Step 1** Clerk prepares List of Allowances for Jurors, with juror's full name and address including the number of days juror was present and the total amount due each juror.
- Note:** Compensation and allowances of jurors in civil cases are paid by the County or City. [Va. Code § 17.1-619](#).
- Step 2** Clerk signs List of Allowances for Jurors and obtains judges signature for approval.

### Clerk's Duties In The Courtroom

The clerk's duties in the courtroom vary from one jurisdiction to the next depending on local practice. Clerks *"have the discretion, but no obligation, to provide a deputy clerk in the courtroom during civil proceedings."* See AGO to Worthington 8/14/03 (2003 Va . AG 60) *"...have the discretion, but no obligation, to provide a deputy clerk in courtroom during civil proceedings."* Discussion with the judge(s) on what services may be provided in the courtroom is encouraged and recommended.

The information provided below lists key responsibilities of the clerk in the courtroom:

### **The Court File**

Prior to the date and time of the trial, the Clerk should ensure that all pleadings, orders, notices, discovery, motions and subpoenas are in the court file /imaged.

### **Jury Trial**

If the trial involves jury selection, refer to Jury Trial, this chapter.

### **Pre-Trial Motions**

The Clerk may be required to note any pretrial motions and the ruling of the Court on those motions.

### **Trial**

Actual trial procedures vary according to local practice, insofar as the duties of the Clerk are concerned.

The Oath: In some courts, the Clerk administers the oath to all witnesses at one time, while in other courts; the Clerk must administer the oath to each witness individually as they are called. Per [Va. Code § 8.01-405](#), the clerk or deputy may administer the oath to a witness in the presence of and at the direction of the trial judge.

In some courts, the Clerk is excused from the courtroom after the jury has been empanelled (if any) and the witnesses sworn; in others, the clerk is required to remain in the courtroom during the entire trial.

### **Trial Exhibits**

The Clerk must take control of all exhibits introduced into evidence at the trial.

### **Post-Trial Motions**

Depending on whether the Clerk is required to remain in the courtroom, the Clerk may be



required to note all post-trial motions and the court's ruling on each motion.

### Court Orders

Some clerks are required to prepare civil case verdicts and orders of court. This may require the Clerk to remain in court for the duration of the trial.

### Post-Trial Matters

The Clerk must take control of the court file, exhibits, and jury instructions and verdict (if any) after the case is concluded.

Exhibits which are too large or bulky to fit in the court file should be tagged for identification and placed in the court's exhibit storage area.

**Note:** Exhibits in a civil case may be destroyed as provided in [Va. Code § 8.01-452.1](#). Further, certain discovery material not used in the trial of the case may be disposed of per [Rule of Court 4:14](#).

### Under Advisement Cases

#### [Va. Code § 17.1-107](#)

In any civil action, a judge of a circuit court who fails to act on any matter, claim, motion, or issue that has been submitted to the court for a decision or render a final decision in the action shall report, in writing, to the parties or their counsel on any such matter, claim, motion, issue, or action held under advisement for more than 60 days after such submission stating an expected time of a decision.

In any civil action in which a judge fails to report as required by this section or fails to render a decision within the expected time stated in the report, any party or their counsel may notify the Chief Justice of the Supreme Court of Virginia.

### Post-Trial Motions

Post-trial motions and petitions in the circuit court are used to correct errors of fact; errors of law are attacked by appeal to the Virginia Supreme Court or the Court of Appeals.

In civil actions, motions to set aside, motions to modify, motions for new trial, and motions in arrest of judgment must be made within twenty-one days of the entry of the final judgment. Pursuant to [Va. Code § 8.01-428](#), where there has been a fraud on the court, default judgments and decrees *pro confesso* may be set aside by motion and notice made within two years of the

final judgment. Default judgments and decrees *pro confesso* may also be set aside by motion and notice where there is a void judgment or proof of an accord and satisfaction.

In equity, a petition to rehear must be made within twenty-one days of the final decree upon permission of the court. A bill of review may be filed within six months after the final decree.

Clerical errors and some errors of fact can be corrected by a motion for writ of *coram nobis* (or *vobis*).

A motion to reinstate a suit can be made at any time pursuant to [Va. Code § 20-121.1](#).

**Step 1** Moving party files a motion or petition. If the case has been ended, the clerk receipts for filing fee and places the motion or petition with the ended case file. If case has not been ended, there is no filing fee and the clerk will simply place the motion or petition with the pending case file.

**Comments:** Any motion or petition made after a suit has ended should be treated as a reinstatement for the purposes of collecting fees.

Clerk would assess filing fees based on [Va. Code §§ 17.1-275 \(A\)\(18\)](#), [17.1-275 \(B\)\(C\) & \(D\)](#).

**Step 2** Clerk issues any process, as directed.

## Judgments and Executions Thereon

\*\*\*Please refer to the [Circuit Miscellaneous Procedures Manual](#)\*\*\*

## Records Management

### Statutory Recordkeeping Duties

#### Duty to Preserve Papers in The Clerk's Office

The circuit court clerks shall have custody of all court records, including books, evidence, records, maps, and papers, deposited in their offices or at such location otherwise designated by the clerk, as well as records stored in electronic format whether the storage media for such electronic records are on premises or elsewhere. [Va. Code § 17.1-242](#).

The clerk of a circuit court may cause (i) any or all papers or documents pertaining to civil and criminal cases; (ii) any unexecuted search warrants

and affidavits for unexecuted search warrants, provided at least three years have passed since issued; (iii) any abstracts of judgments; and (iv) original wills, to be destroyed if such records, papers, documents, or wills no longer have administrative, fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or documents have been microfilmed or converted to an electronic format. Such microfilm and microphotographic processes and equipment shall meet state archival microfilm standards pursuant to [Va. Code § 42.1-82](#), or such electronic format shall follow state electronic records guidelines, and such records, papers, or documents so converted shall be placed in conveniently accessible files and provisions made for examining and using same. The clerk shall further provide security negative copies of any such microfilmed materials for storage in The Library of Virginia. [Va. Code § 17.1-213](#).

#### Removal of Records by the Clerk or Other Persons

STATUTE: The clerk may not remove or allow others to remove, any records or papers of a circuit court, out of the county or city where the clerk's office is kept, except:

- by order of the court;
- by an attorney of record in a pending case to any location within the Commonwealth, unless prohibited by the court;
- on occasion of invasion or insurrection if the records or papers would be endangered; and
- in other cases specifically provided for by law.

Refer to [Va. Code §17.1-210](#).

#### Records Open to Public Inspection and Copying

STATUTE: The records and papers of circuit court are open to inspection by any person. The clerk shall, when required, furnish copies thereof, except in cases in which it is otherwise specifically provided. Refer to [Va. Code § 17.1-208](#).

COMMENT: Records not open to public inspection are confidential documents, documents sealed by court order, and papers that are not public records.

STATUTE: Persons may make copies of records and papers in the clerk's office. However, no person may use the clerk's office for making copies of records in such manner or to such extent as will interfere with the business

of the office or with its reasonable use by the general public. Refer to [Va. Code § 17.1-208](#).

STATUTE: “Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records.... The custodian of such records shall take all necessary precaution for their preservation and safekeeping.” [Va. Code § 2.2-3704](#).

### Preserving Records That Have Become Damaged Or Illegible

STATUTE: Records that are becoming illegible or are wearing out may be copied, photographed or otherwise duplicated. The copies shall be certified as true copies, and the originals shall be carefully preserved. Refer to [Va. Code § 17.1-212](#).

STATUTE: Any books or records in the clerk’s office may be rebound, transcribed, microfilmed or digitally reproduced. The same faith and credit shall be given the reproductions from the microfilm as the book or record transcribed would have been entitled to. Refer to [Va. Code § 17.1-244](#).

STATUTE: Any book may be taken from the clerk’s office to be bound, rebound, microfilmed or digitally reproduced. All necessary precautions shall be taken, by requiring bonds or otherwise, to ensure preservation and return of the record and to prevent the mutilation thereof. Refer to [Va. Code § 17.1-245](#).

## Creating A Records Management Program

### The Library of Virginia

The clerk of circuit court is the designated records manager for the office. The [State Library Board](#) is given authority under [Va. Code § 42.1-82](#) to regulate the creation, preservation, storage, filing management and disposition of all records, including electronic records. Under [Va. Code § 42.1-85](#), each locality is required to cooperate with the Librarian of Virginia in conducting surveys and in establishing and maintaining an active, continuing program for the economical and efficient management of public records.

The Library of Virginia has provided clerks with a copy of the January 2000 edition of the *VIRGINIA PUBLIC RECORDS MANAGEMENT MANUAL*. The Manual provides a guide to the best practices for managing public records and information. The electronic version of this Manual is available at the

Library's Website at <http://www.lva.virginia.gov/agencies/records/>.

Each clerk's office should also have a copy of the General Records Retention and Disposition Schedule for Local Government in Virginia. These schedules can be viewed at the Library of Virginia's Website: <http://www.lva.virginia.gov/agencies/records/retention.asp>.

The schedules list specific record series and provide instructions for - how long to retain them, how to maintain them, and (if applicable) how to dispose of them. The records retention and disposition schedule for circuit court records is [General Schedule No. 12](#).

### Appointing A Records Officer

[Virginia Code § 42.1-85](#) requires each agency and locality to designate a records officer, who serves as a liaison to the [Library of Virginia](#), and supervises the local record management plan. Complete the RESPONSIBILITIES OF STATE AGENCY AND LOCAL GOVERNMENT RECORDS OFFICER (RM-25 form).

### Components of A Records Management Plan

Guidelines for creating a records management plan are set out in Chapter 1 of the Virginia Public Records Management manual.

Briefly, any records management plan requires the records officer to:

- Conduct a Survey or inventory of the records (in all formats).
- Establish and follow a retention schedule (approved by the Library of Virginia).
- Identify and use appropriate technology to create, store and retrieve materials.
- Destroy obsolete records and document their destruction.
- Store inactive records in a secure location.
- Preserve vital records essential to conducting continuous business operations.
- Preserve archival (historic, permanent) records. This may be done on-site, or by transferring them to the Library of Virginia.
- Create a disaster preparedness plan to protect and recover records.
- Implement efficient filing and indexing systems for the records.
- Develop forms to document records management activities.

### Library of Virginia Records Management Forms

ARC-1	<a href="#">Archival Transfer List and Receipt (Sample)</a>
ARC-1	<a href="#">Archival Transfer List and Receipt Instructions</a>
RM-3	<a href="#">Certificate of Records Destruction (Sample)</a>
RM-3	<a href="#">Certificate of Records Destruction Instructions</a>
RM-18	Records Center Retrieval Request
RM-19	<a href="#">Records Survey (Sample)</a>
RM-19	<a href="#">Records Survey Instructions</a>
	Order Form for Publications and Locality General Schedules

These forms can be obtained at the Library of Virginia's Website,  
<http://www.lva.virginia.gov/forms/index.htm>.

### Circuit Court Records Preservation Program

The 3 initiatives of this program are:

- Records preservation grants, education and consultation for the clerks;
- Processing court records that have been transferred to the Library of Virginia;
- Converting the Library of Virginia's paper index and inventory of circuit court microfilm to electronic format.

Refer to the **CCRP Program Description and Grant Guidelines**, which can be found at the Library of Virginia's Website,  
[Library of Virginia Circuit Court Records Preservation Program](#)

### Disaster Planning For Records Managers

The Library of Virginia is responsible for ensuring that public records are maintained and available throughout their life cycle. A link to disaster planning can be found on the [Records Management](#) section of the Library of Virginia's website.

### Library of Virginia Newsletters

The Library of Virginia publishes two newsletters, **The Commonwealth Records Manager**, and **Recordatur** (a newsletter for circuit courts). Circuit courts receive a free copy by mail as they are published. These publications may be accessed on-line from the [Circuit Court Records Preservation Program- Recordatur](#).

## Dealing with Electronic Records

If permanent records are kept solely in an electronic format, the Library of Virginia states that it is the responsibility of the clerk to migrate the permanent electronic records from generation to generation and to ensure no information is lost between migrations.

[The Library of Virginia](#) has issued several guidelines for the use of electronic records.

[The Electronic Records Guidelines](#) extends the policies and practices of paper-based record keeping to an electronic environment, and discusses essential characteristics of electronic records, principles of electronic records management, and long term preservation strategies. Identifies critical issues for public officials to consider when designing, selecting, implementing, operating, and maintaining an electronic records system.

[The Digital Imaging Guidelines](#) provides best practices for public bodies that are investigating the use of imaging systems for storage and retrieval of public records, and applies to imaging systems that involve routine systematic processing, storage, or retrieval of documents, pictures, maps, drawings, and similar items that constitute public records.

The General Records Retention and Disposition Schedule for localities is General Schedule No. 23.

Refer to Chapter 7 of the Virginia Public Records Management Manual for a broader discussion of electronic records.

Clerks' offices are constantly faced with problems involving the protection and preservation of physical office records. [Virginia Code § 42.1-87](#) requires the clerk, as custodian of archival public records, to *"...keep them in fire-resistant, environmentally controlled, physically secure rooms designed to ensure proper preservation and in such arrangement as to be easily accessible.... Record books deemed archival should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read."*

Circuit court clerks must comply with [Va. Code § 17.1-213](#), which provides for retention and disposition of papers in ended cases. This statute generally provides that:

- a. All pre-1913 case files, any case files having historical, genealogical or sensation significance, and all cases in which title to real estate is established, conveyed or condemned, must be retained permanently.
- b. Other cases or matters specifically set out may be disposed of after a 20-year, 10-year or 3-year retention period.

**Do not destroy pre-1913 records.** Any records created prior to 1913 should be offered to the Library of Virginia for an assessment of their historical and genealogical value before making a final plan for their retention or other disposition.

The Library of Virginia strongly urges the **retention of permanent records** on either alkaline paper or on microfilm or electronic format pursuant to the state electronic guidelines found at the following site:

(<http://www.lva.virginia.gov/agencies/records/electronic/index.htm>)

Further, the clerk by [Va. Code § 17.1-211](#) is required to retain all **receipt books, cancelled checks and bank statements** for three years after having been audited.

The records retention and disposition schedule, [General Schedule No. 12](#), mentioned above, prescribes the conditions of records management that apply specifically to circuit court records.

Record storage, retention and destruction guidelines for financial records generated by the Financial Accounting System are found in the Financial Accounting System User's Guide.

## Destroying Circuit Court Records

### Generally

"No agency shall sell or give away public records. No agency shall destroy or discard a public record unless (i) the record appears on a records retention and disposition schedule approved pursuant to Va. Code§ [42.1-82...](#)" [Va. Code § 42.1-86.1](#).

The procedures to be followed by a records officer have been sufficiently explained in earlier sections of this document. The balance of this document will provide specific guidance for removing the clutter from files, file and storage cabinets, shelves, etc.

### Disposition of Ended Case Files, Exhibits, and Discovery Materials

- a. Generally, exhibits are retained in accordance "with appropriate case file retention period or statute, case law or decision governing evidence and forfeiture". Refer to General Schedule No. 12, "Exhibits". Disposition of Exhibits filed in criminal cases, prior to complete destruction of the entire case file, is controlled by [Va. Code §§ 19.2-386.23](#), [19.2-386.29](#) and [19.2-270.4](#). The court may dispose of unwanted exhibits (such as drugs, weapons and bulky exhibits that take up lots of space) by entering an order. For civil



cases, the clerk of court may, after sixty days have elapsed from the entry of judgment or after all appeal time periods are exhausted, dispose of or donate any exhibits filed in the case, after notification of the owner, in accordance with [Va. Code § 8.01-452.1](#).

- b. [Rule 4:14](#) allows the clerk to purge discovery materials in civil cases. There is no corresponding Rule of court or statute that applies to criminal cases. Therefore, all discovery materials filed in criminal cases should be retained pending the disposition of the case file.
- c. Some exhibits and discovery materials cannot be stored in the case file, either because of their nature (i.e. weapons) or of their size (i.e. video depositions). Chapters 10 and 12 of the Virginia Public Records Management Manual offer guidelines for storage. For example, in Chapter 10 “Packing and Stacking Boxes,” it is recommended: **“Consider larger records and materials such as maps and drawings that will have special handling, packing, and shelving needs.”** Also, in Chapter 12, “Pack files into boxes and/or save electronic records to external electronic media in the same order and hierarchy in which they are currently stored. Maintaining the original order of the files is an underlying principle of archival management and will accurately reflect the actual administrative use of the records.”
- d. Before considering disposal of ANY case files, the records officer should be thoroughly familiar with General Schedule No. 12 (GS-12) and [Va. Code § 17.1-213](#). In GS-12, look at all references to “Cases.” Regarding [Va. Code § 17.1-213](#), it is again important to note that **except for (1) pre-1913 case files, (2) case files that have historical value, genealogical or sensational significance, and (3) all cases in which title to real estate is established, conveyed or condemned, all other case files may be destroyed after the particular retention period has expired.**

No agency shall destroy any public record created before 1912 without first offering it to The Library of Virginia. [Va. Code § 42.1-86.1](#).

- e. Each agency shall ensure that records created after July 1, 2006 and authorized to be destroyed or discarded in accordance with [Va. Code § 42.1-86.1](#), are destroyed or discarded in a timely manner provided, however, such records that contain identifying information as defined in clauses (iii) through (ix), or clause (xii) of subsection C of [Va. Code § 18.2-186.3](#), shall be destroyed within six months of the expiration of the records retention period.

#### Trial Transcripts. Court Reporter Records

- a. **Definitions:** Court Reporter records are the verbatim recording of the evidence and incidents of trial either by a court reporter or by mechanical or electronic devices approved by the court. A Transcript is a copy of the trial record certified by either the court reporter or other designated to report and record the trial. Refer to [Va. Code §§ 17.1-128](#) and [19.2-165](#).
- b. Applying the above statutes, General Schedule No. 12 (GS-12) provides the retention periods for (i) court reporter records: (a) 5 years for civil cases, (b) 5 years for felony criminal cases, if an appeal is taken and a transcript was prepared, and (c) 10 years in a felony criminal case if no appeal was taken; and for (ii) transcripts: retain in case file and dispose of it when the case can be disposed of.
- c. Refer to copies of the RM-3 form, CERTIFICATE OF RECORDS DISPOSAL for an example of how to dispose of this record.

#### Special Grand Jury Court Reporter records.

If no prosecution for perjury is instituted within three years from the date of the report of the special grand jury, the court shall cause the sealed container of notes, tapes and transcriptions of the court reporter to be destroyed.

However, on motion of the attorney for the Commonwealth, the court may extend the time period for destruction if the grand jury was impaneled at the request of the attorney for the Commonwealth. [Va. Code § 19.2-212](#).

## Election Records

Election records are retained by the clerk's office. According to General Schedule No. 12 (GS-12), election records prior to 1913 must be retained permanently.

Election records after 1912 are retained pursuant to General Schedule No. 1 (GS-1). Post-1912 election records may be destroyed after a few years, according to retention periods set out in GS-12.

## Judgment Abstracts. Executions

According to General Schedule No. 12 (GS-12), pre-1913 judgment abstracts and executions (fieri facias or fifa) must be retained permanently.

[Virginia Code § 17.1-213 \(E\)](#) provides that judgment abstracts can be destroyed once they are microfilmed or converted to an electronic format in accordance with existing requirements. Fifas that have been successfully served must be retained for ten years, and unserved fifas must be retained for two years.

## Lists of Jurors

- a. The Master Jury List of the Jury Commission, and any materials used in the preparation of it, including jury questionnaires, are the work product of the Jury Commission, and are not a public record. The Library of Virginia cannot regulate its retention but has listed Lists of Jurors in the GS-12. The Library suggests the List of Jurors be retained for three years, then destroyed.
- b. Refer to [Va. Code §§ 8.01-346](#) and [8.01-351](#). [Virginia Code § 8.01-346](#) indicates that the Master Jury List is to be delivered to the clerk, who holds it for at least twelve months while the court is drawing jurors from it. [Virginia Code § 8.01-351](#) indicates that each jury list drawn for a term of court (from the Master Jury List) is available in the clerk's office for inspection by counsel in any case to be tried by a jury during the term.

## Destroying District Court Papers

See [General Schedule No. 12 \(GS-12\)](#), series numbers 010446, 010457, 010458, and 010459, which involves retention of district court cases. Generally, unless the papers are pre-1913, or have historical, genealogical or sensational significance, criminal case papers shall be retained for ten years, determined by felony and misdemeanor code

sections, and civil case papers shall be retained for twenty years.

[Va. Code § 16.1-69.55](#) allows the chief judge of a district court to direct the clerk of that court to cause any or all papers or documents pertaining to civil and criminal cases that have been ended to be destroyed if such records, papers, or documents will no longer have administrative, fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or documents have been microfilmed or converted to an electronic format. Such processes and equipment shall meet state archival microfilm standards, or such electronic format shall follow state electronic records guidelines, and such records, papers, or documents so converted shall be placed in conveniently accessible files and provisions made for examining and using the same. The provisions of this subsection shall not apply to the documents for certain misdemeanor cases.

## Chapter 6 - Suits/Action Types (A-B)

### Administrative Process Act – Judicial Review

Pursuant to [Va. Code § 2.2-4000 et. seq.](#)

Any person affected by and claiming the unlawfulness of any regulation or any party aggrieved by and claiming unlawfulness of a case decision and whether exempted from the procedural requirements of Article 2 ([Va. Code § 2.2-4006 et seq.](#)) or Article 3 ([Va. Code § 2.2-4018 et seq.](#)) shall have a right to the direct review thereof by an appropriate and timely court action against the agency or its officers or agents in the manner provided by the Rules of Supreme Court of Virginia. Actions may be instituted in any court of competent jurisdiction as provided in [Va. Code § 2.2-4003](#), and the judgments of the courts of original jurisdiction shall be subject to appeal to or review by higher courts as in other cases unless otherwise provided by law. In addition, when any regulation or case decision is the subject of an enforcement action in court, it shall also be reviewable by the court as a defense to the action, and the judgment or decree therein shall be appealable as in other cases. [Va. Code § 2.2-4026](#)

#### Document Type

Varies

#### Filing Type

AAPL (May be Commenced By INIT, OTH, REIN, TRAN)

Options:

DBHDS – Department of Behavioral and Developmental Services

DMAS – Department of Medical Assistance Services

DLI – Department of Labor and Industry

SBC – State Building Code Technical Review Board

CG – Charitable Gaming

OTH – Other

EG – Employee Grievance

\*See also Administrative Appeal (Employee Grievance) this chapter

VRS – Virginia Retirement System Member Grievance

\*See also Administrative Appeal (Virginia Retirement System Member Grievance) this chapter

DSS – Department of Social Services

#### Procedures

- Step 1** The aggrieved party files appeal of decision of a specific agency. (Format may include, but is not limited to, letter, petition, notice of appeal, etc.)

- Step 2** Clerk receipts for money collected, when applicable, opens file and docket case.
- Step 3** The agency shall transmit a copy of the grievance record to the clerk of court.
- Step 4** Case is set for hearing.
- Step 5** Court renders decision and if the court finds in favor of the party complaining of the agency action, the court shall declare the regulation null and void and remand the case to the agency for further proceedings.
- Step 6** Clerks sends copy of order to agency/counsel for the agency, complainant, and as the order directs.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

No forms provided by clerk's office.

Reference(s)

[Va. Code § 2.2-4000 et. seq.](#)

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

## Administrative Appeal (Employee Grievance)

Pursuant to [Va. Code § 2.2-3006](#)

Request that the Circuit Court review decision of state agency pertaining to a grievance proceeding. **Note:** [Virginia Code § 2.2-3006](#) provides that either party may petition the circuit court having jurisdiction in the locality in which the grievance arose for an order requiring implementation of the final decision or recommendation of a hearing officer.

### Document Type

Form provided by [Department of Employee Relations](#)

### Filing Type

AAPL (not GRV)

### Procedures

- Step 1** Within 30 days of a final decision for an administrative review of a grievance hearing, a party may appeal on the grounds that the determination is contradictory to law.
- Clerk receives notice of appeal, filed by either party. The agency shall transmit a copy of the grievance record to the clerk of court.
- Step 2** The court, on motion of a party, shall issue a writ of certiorari requiring transmission of the record on or before a certain date. See "Writ Of Certiorari."
- Step 3** Clerk sets case for hearing within thirty days of receipt of record (without jury). EXCEPTION: Appeal of decision of School board shall be heard with ten days. [Va. Code § 22.1-314](#).
- Step 5** Court renders decision no later than fifteen days from hearing date.
- Step 6** The court shall award reasonable attorneys' fees and costs to the employee if the employee substantially prevails on the merits of a case brought under subsection B or D of [Va. Code § 2.2-3006](#).

### Fees/Taxes/Other Monies Assessed

None. The circuit court hearing shall be at no cost to the Commonwealth or the grievant.

Form(s)

No forms provided by clerk's office.

Reference(s)

[Va. Code § 2.2-3006](#)

## Administrative Appeal (Virginia Retirement System Member Grievance)

Pursuant to [Va. Code § 51.1-124.13](#)

No person shall be entitled to any of retirement benefits if (i) they are convicted of a felony and (ii) the person's employer determines that the felony arose from misconduct occurring on or after July 1, 2011, in any position in which the person was a member covered for retirement purposes. Prior to making this determination, the person has an opportunity to be heard. The employer's determination may be appealed. [Va. Code § 51.1-124.13](#)

Document Type

Notice of Appeal

Filing Type

AAPL

Procedures

- Step 1** A member may file a notice of appeal within five workdays of receipt of the employer's determination.
- Step 2** Within five workdays thereafter, the employer shall transmit to the clerk of court in the jurisdiction where the employer is located, a copy of the record.
- Step 3** Clerk sets case for hearing within thirty days of receipt of record (without jury).
- Step 4** Court renders decision no later than fifteen days from hearing date.
- Step 5** The circuit court hearing shall be final and shall not be appealable.

Fees/Taxes/Other Monies Assessed

None. The circuit court hearing shall be at no cost to the Commonwealth or the member.



Form(s)

No forms provided by clerk's office.

Reference(s)

[Va. Code § 51.1-124.13](#)

## Administrative Impoundment of Motor Vehicles

Upon arrest for DUI, refusal to take breath test, driving suspended or driving after having been declared a habitual offender, the arresting officer impounds or immobilizes the vehicle being operated by the defendant. The period of impoundment is thirty days. If the defendant believes that the vehicle was impounded unfairly, or if someone else is the owner of the vehicle and did not authorize the unlawful use of the vehicle by the defendant, they may appeal (petition for a review) to the District Court. The District Court will give this appeal priority on its docket.

The Circuit Court does not exercise original jurisdiction over this type of case. Refer to *Nicely v. Comm.*, 23 Va. App 327 (1996) - annotations under [Va. Code § 46.2-391.2](#). The Circuit Court can, however, hear an appeal of the matter from the District Court.

## Administrative Suspension of Driver's License

Upon arrest for DUI or refusal to take breath test, the arresting officer takes possession of the defendant's driver's license and delivers it to the magistrate who then forwards it to the clerk of the District Court. The defendant's license and privilege to drive are suspended for a period of seven days. If the defendant believes that the license was taken unfairly, they may ask for a review to the District Court. The District Court will give this review priority on its docket.

The Circuit Court does not exercise jurisdiction over this type of case. Refer to *Nicely v. Comm.*, 23 Va. App 327 (1996) – annotations under [Va. Code § 46.2-391.2](#). See also *Wilson v. Comm.*, 23 Va. App 443 (1996).

## Adoption

A statutory proceeding by which a person takes the child of another or an adult into their family and makes them, for all legal purposes, their own child. The formalities, effect and validity of an adoption in the Commonwealth of Virginia are governed by [Va. Code §§ 63.2-1200](#) through 63.2-1248 of the Code of Virginia. Preliminary steps in some types of adoptions are also guided by [Va. Code § 16.1-283](#). **Note:** Adoption processing was not affected by the statutory changes and amendments to the rules of court as a result of Senate Bill 1118, the legislation effective 1/1/06 that merged law and chancery.

**Note:** The first separate index for adoption cases was allowed in 1952, but no separate order book was required. In 1968, the present version of [Va. Code § 63.2-1245](#) appeared, requiring the judge to enter an order establishing the Adoption Order book, file and index. Until authorized as provided, the only index required in adoption cases is the usual index in connection with equity (chancery) cases. Reference Attorney General opinion to Bowles, dated 7/08/64 (1964-65 page 3); The statute did not require retroactive action to redo an index for adoption cases, or remove old cases from their usual repository. Because of this, many clerks left the old pre-1968 adoptions on the chancery index and have not moved the files from the chancery repository. Review of concluded cases is per [Va. Code § 17.1-208](#) and [Va. Code § 2.2-3704](#).

Document Type

Petition

Filing Type

ADOP - Domestic

FORA - Foreign

Procedures

**Step 1** The adopting parties file a petition requesting adoption and, if requested, a change of name. The clerk receipts for filing fee, opens a new case file and docket the case. If service is requested on an interested party, the CC-1400, SUMMONS, should be attached to the petition.

**Note:** Pursuant to [Va. Code § 63.2-1201](#), the petition for adoption, except those filed pursuant to subdivisions 5 and 6 of [Va. Code § 63.2-1210](#), shall include an additional \$50 filing fee that shall be used to fund the Virginia Birth Father Registry established pursuant to [Va. Code § 63.2-1249](#).

**Comments:** Venue - Adoptions are filed in the county or city in which the Petitioners reside or in the county or city in which the child-placing agency is located.

The Petitioners must sign the Petition with counsel, if any, and if the Petition seeks adoption without referral for investigation, it must be signed under Oath.

If adoption is requested for two or more children who have the

same birth parent or parents, the Petitioners may proceed under one Petition for all the children. [Va. Code § 63.2-1237](#).

No petition for adoption shall be granted unless written consent is filed with the petition, unless otherwise provided for in [Va. Code § 63.2-1202](#).

A birth father's consent to adoption is not necessary if the birth father is convicted in another state, the United States, or any foreign jurisdiction of (i) rape, (ii) carnal knowledge of a child between 13 and 15 years of age, or (iii) adultery or fornication with their mother, daughter or granddaughter, and the child was conceived as a result of such violation.

In an adoption proceeding where the consent of a birth parent is required, but the petition for adoption alleges that the birth parent is withholding consent to the adoption, the court shall provide written notice to the birth parent of their right to be represented by counsel prior to any hearing or decision on the petition. Upon request, the court shall appoint counsel for any such birth parent if such parent has been determined to be indigent by the court pursuant to [Va. Code § 19.2-159](#). See CC-1424, ADOPTION NOTICE/REQUEST FOR APPOINTMENT OF LAWYER

**Step 2** Immediately upon entry of the order of reference, the clerk shall forward a copy of the order of reference, the petition, and all exhibits thereto to the [Commissioner of Social Services](#), and the child-placing agency retained to provide investigative, reporting, and supervisory services. If no Virginia agency was retained to provide such services, the order of reference, petition, and all exhibits shall be forwarded to the local director of social services of the locality where the petitioners reside or resided at the time of filing the petition or had legal residence at the time the petition was filed.

**Comments:** All materials required to be mailed to:  
VDSS Adoptions  
5600 Cox Road  
3<sup>rd</sup> Floor West  
Glen Allen, VA 23060  
(804) 726-7000  
Or sent by encrypted email to:

adoptionrecords@dss.virginia.gov

**Note:** All reports, certificates and orders may be submitted to VDSS as they are filed.

- Step 3** Clerk files all reports of investigations. Clerk is NOT to receipt money for investigation. Attorney, if ordered to pay, sends payment directly to DSS.
- Step 4** Immediately upon entry of the Final Order of Adoption or other final disposition of the matter, the clerk transmits an attested copy of such order, along with all reports made in connection with the case, and the Commissioner shall preserve such reports and all other collateral reports, information and recommendations in a separate file. [Va. Code § 63.2-1246](#).

**Comments:** If Petition, reports and exhibits are still in the file, they should be sent in with Final Order of Adoption.

- Step 5** Clerk maintains an exclusive Adoption Order Book, filing and indexing system for adoption cases, any information about which is made available only in accordance with [Va. Code § 63.2-1245](#). Disclosure of adoption information is controlled by [Va. Code § 63.2-1246](#). The adult adopted person will first apply to the Commissioner of Social Services if the consent of the birth parents is not obtainable due to their death or mental incapacity. If the Commissioner denies the application, the adult adopted person may apply to the circuit court for an order to disclose that information.

- Step 6** To obtain a revised Birth Certificate: Clerk tenders a VS6 - Application for a Certification of a Birth Record together with the proper fee, prepared by the Petitioners, together with the VS21 - Report of Adoption, required to be submitted by the clerk to the State [Division of Vital Records](#) by the 10th of each month ([Va. Code § 32.1-262](#)) to assist the Petitioners in getting a revised Birth Certificate for the adopted child. Mail to:
- Division of Vital Records  
ATTN: Special Services Department  
P.O. Box 1000  
Richmond, VA 23218-1000

**Note:** A separate application and fee is required by the Division of

Vital Records for the petitioner/adoptee to receive a revised Birth Certificate.

**Adult Adoption Note:** When the entry of a final order of adoption incorporates a change of name the order may be spread upon the land records (fees may apply) and shall be deemed to meet the requirements of [Va. Code §§ 8.01-217. 63.2-1243](#)

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

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

Reference(s)

[Va. Code § 63.2-1200](#) through 63.2-1248  
Attorney General Opinion to Black dated 1/18/90 (1990, page 235); Writ tax not applicable to nonadversarial proceedings in circuit court; determination of adversarial vs. nonadversarial law and chancery proceedings.

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(29)</a>
Virginia Birth Father Registry (except Foreign Adoptions)	<a href="#">Va. Code § 63.2-1201</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 (13)(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
<i>*Not assessed if the amount of the civil action is \$500 or less</i>	

### Adoption-Foreign

Adoptive parents who are residents of the Commonwealth may petition the circuit court in the city or county where they reside for a report of adoption when the adoptive parents are seeking a Virginia certificate of birth for a child adopted in a foreign country that has post-adoption reporting requirements and with whom the United States has diplomatic relations. The adoptive parents must provide the circuit court with the immediate relative immigrant visa

(IR-3), a report of adoption on a form furnished by the [State Registrar of Vital Records](#), completed post-adoption reports, and a signed affidavit stating that any outstanding post-adoption requirements shall be met as required by the foreign country.

## Document Type

Petition

## Filing Type

FORA

## Procedures

**Step 1** Petition and affidavit as required pursuant to [Va. Code § 63.2-1220 \(B\)](#) is filed with the Clerk.

**Comments:** VENUE - in Circuit Court of the county or city where the person resides.

**Step 2** Clerk receipts for taxes/fees, opens file and docket new case and issues requested process.

**Comments:** While the clerk would assess fees as any other CIVIL matter, it is suggested that you set this case up in the Adoption area of CMS to maintain the confidential nature of this case.

**Step 3** The Court fixes the time and place for hearing the petition.

**Step 4** If the circuit court finds that all requirements of this subsection have been met, the circuit court may issue the report of adoption to the State Registrar for issuance of a Virginia certificate of birth in accordance with [Va. Code § 32.1-262](#).

**Step 5** On or before the 10th day of each month, the clerk of such court shall forward to the State Registrar all records of decrees of adoption entered in the preceding calendar month, together with such related reports as the State Registrar may require. [Va. Code § 32.1-262 \(B\)](#). Clerk should retain copy of form in file.

**Comments:** VS21 form from Vital Records will be updated to include this provision. Court would send this report along with copy of Court's order to:

Division of Vital Records  
P.O. Box 1000  
Richmond, VA 23218

When the State Registrar receives a report of adoption from a court

in this Commonwealth for a person born in a foreign country, a birth certificate shall be registered for such person in accordance with the provisions of [Va. Code § 32.1-261](#), and a copy of the report of adoption shall be transmitted to the appropriate federal agency. [Va. Code § 32.1-262 \(D\)](#).

**Step 6** The Clerk records order in the Adoption Order Book.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 32.1-262](#)  
[Va. Code § 63.2-1220](#)

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

**Adoption-Post Adoption Contact And Communication Agreements**

[Virginia Code § 16.1-283.1](#) authorizes a post-adoption contact and communication agreement between the adoptive parent(s) and birth parent(s). Such agreement may be approved by the circuit court pursuant to [Va. Code § 63.2-1220.3](#). This agreement is not a requirement as a precondition to the entry of any order in the adoption. Unless otherwise stated in the final order of adoption, the circuit court of the jurisdiction in which the final order of adoption was entered shall retain jurisdiction to modify or enforce the terms of a post-adoption contact and communication agreement. A birth parent or parents or adoptive parent or parents who have executed a post-adoption contact and communication agreement as described in this section may file a petition with the circuit court of the jurisdiction in which the final order of adoption was entered to modify the agreement or to compel a birth or adoptive parent to comply with

the post-adoption contact and communication agreement. [Va. Code § 63.2-1220.4](#).  
 Document Type

Petition

Filing Type

REIN

Procedures

**Step 1** The birth parent(s) or adoptive parent(s) file either a petition requesting modification of the agreement, or a petition to compel a birth or adoptive parent to comply with the agreement.  
 Recommendation: Open base case number with -01 suffix.

**Comments:** [Virginia Code 63.2-1220.4](#) requires that notice and opportunity to be heard must be given before the agreement can be modified.

**Step 2** The court may appoint a guardian ad litem to represent the child’s best interest before modifying the agreement.

Fees/Taxes/Other Monies

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

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

Reference(s)

[Va. Code §§ 16.1-278.3, 16.1-283.1](#)  
[Va. Code §§ 63.2-1220.3, 63.2-1220.4](#)

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



## Adult Protective Services Emergency Order – Aged or Incapacitated Adults

A civil procedure that allows a local department of social or human services, on behalf of an adult, to request an emergency order for adult protective services and appointment of a temporary guardian and/or conservator.

### Type

Petition

### Filing Type

PROT

### Procedures

- Step 1** Petition is filed by the local Department of Social or Human Services.  
**Note:** No fee shall be charged for filing or serving any petition filed by the local department.
- Step 2** Clerk opens file, assigns a CIVIL case number, indexes, and docket the case. A copy of the petition is provided to the petitioner.  
**Note:** Case is filed for an emergency order and therefore scheduling these cases should take precedence on the docket. The hearing shall be held no earlier than 24 hours and no later than 72 hours after the notice required has been given unless such notice has been waived by the court.
- Step 3** Clerk serves the adult, their spouse, or to their nearest known next of kin, and the alleged perpetrator if the petition alleges the adult has been subjected to an act of violence, force, or threat or financial exploitation, and a copy of the petition shall be attached.
- Step 4** Court conducts hearing. Upon granting an Emergency Order for Adult Protective Services, the court shall appoint a temporary guardian and/or conservator.  
**Note:** The order is only for a period of 15 days and may be renewed once for a 5-day period. The order will be prepared and

submitted by the petitioner or counsel.

**Step 5** If the Court finds the adult has been subjected to an act of violence, force, or threat or been subjected to financial exploitation, the clerk shall forthwith forward an attested copy of the order containing the perpetrator's identifying information and the name, date of birth, sex, and race of each protected person, to law-enforcement for entry into VCIN and to serve the perpetrator in person. A return shall be made to the Clerk.

**Note:** The order for adult protective services is similar to the normal protective orders that are issued, however, there are no forms and the local law enforcement agency is responsible for entering the information into VCIN, not the clerk via the CCMS interface.

If the order is later set aside or modified, an attested copy of such order shall be sent to law-enforcement for personal service of the parties, with a return made to the Clerk.

**Step 6** Clerk qualifies the temporary guardian and conservator, if appointed, and takes bond as stated in the order of the court.

**Step 7** If guardian ad litem was appointed by the Court and the adult has been found to be indigent, Clerk processes DC-40.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms are not provided by the clerk's office.  
CC-1341, NOTICE OF HEARING

Reference(s)

[Va. Code § 63.2-1609](#)

FEES	
TYPE CHARGES	CODE REFERENCE
<i>No fee shall be charged for filing or serving any petition filed by the local department</i>	

## Animal Violations

Several sections of the Code of Virginia relate to the control and care of animals. Although these violations are civil in nature, it is recommended that they be entered into the Criminal Division. Please See the Circuit Court Clerk's Manual - Criminal, for details.

## Annexation

Generally, annexation of land involves some form of legal proceeding authorized by statute, which seeks to take the land of a county and bring it under control of a town or city.

Under [Va. Code § 15.2-3201](#), annexation proceedings commenced under [Va. Code § 15.2-2907](#) or by court action are prohibited for a period of time beginning January 1, 1987 and terminating July 1, 1997. However, the same section allows certain proceedings for annexation to continue: (1) annexation notices filed prior to 1/1/87, (2) proceedings to implement an annexation agreement, and (3) proceedings filed under [Va. Code §§ 15.2-2907](#) and [15.2-3203](#) by the owners/voters of real estate who wish their property to be annexed into a town or a city.

This section will address only those annexation proceedings that are currently allowed by law; Voluntary Settlements among Local Governments - [Va. Code § 15.2-3400](#), and Petition by Voters/Landowners of Adjacent Territory for Annexation into a Town or City - [Va. Code § 15.2-3203](#).

### Document Type

Petition

### Filing Type

ANEX

### Procedures

Voluntary Settlements among Local Governments

**Step 1** A petition is filed with clerk of the circuit court who docket the case. **Note:** No filing fees pursuant to [Va. Code § 17.1-266](#) if filed by the locality.

**Comments:** Prior to filing, the local governments shall first have:

- Applied to the Commission on Local

Government for review of its proposed agreement;

- Advertised its intention to approve such agreement in a local newspaper;
- Held at least one public hearing on the proposed agreement; &
- Filed a true copy of the proposed agreement with the clerk of the circuit court of each affected jurisdiction.

**Step 2** Notice of the petition is provided to the Supreme Court of Virginia - Office of the Executive Secretary, which selects a three-judge panel to review the petition. [Va. Code § 15.2-3000](#).

**Step 3** The Court reviews the petition and proposed agreement and may either accept or reject it. Voluntary agreements that provide for municipal annexation shall take effect, in the absence of a stipulated date, on the first day of the month following court validation of the voluntary agreement.

**Step 4** The clerk microfilms or scans and indexes all orders of the court.

Petition by Voters/Landowners of Adjacent Territory For Annexation Into A Town Or City

**Step 1** A petition is filed with clerk of the circuit court, who receipts for filing fees, docketts the case and issues process.

**Comments:** This follows the conclusion of required proceedings before the Commission on Local Government per [Va. Code § 15.2-2907](#). A copy of the petition is served on the city or town council.

**Step 2** Clerk mails or delivers a copy of the petition to a local newspaper as provided in [Va. Code §](#)

[15.2-3204.](#)

**Comments:** The cost of the publication shall be paid by the petitioner or applicant. [Va. Code § 8.01-316 \(B\)](#).

- Step 3** Clerk files the newspaper's certificate of publication.
- Step 4** Notice of the petition is provided to the Supreme Court of Virginia - Office of the Executive Secretary, which appoints a special court to hear case. [Va. Code § 15.2-3202](#).
- Step 5** Court holds a hearing in compliance with [Va. Code § 15.2-3209](#).
- Step 6** If the Court enters an order granting the petition, a copy is certified to the [Secretary of the Commonwealth](#). [Va. Code § 15.2-3209](#).
- Step 7** Clerk of the court in which final order is entered certifies copies to the county clerk and to the clerk of such city, per [Va. Code § 15.2-3223](#).
- Step 8** The Commissioner of the Revenue of such county shall make from the land books and certify to the Commissioner of the city a list of all real estate within the annexed territory, per [Va. Code § 15.2-3224](#).
- Step 9** Clerk microfilms or scans and indexes all orders of the court.

Fees/Taxes/Other Monies Assessed

None. **Note:** Refer to annotation under [Va. Code § 58.1-1729](#), citing *Pelouze v. City of Richmond*, and *See also* Opinion of the Attorney General (1938-39, page 181); Opinion (1951-52, page 163); and Opinion to Stoner, dated 12/9/43 (1943-44, page 204); exempts political entities from paying writ tax. Effective 7/1/07, pursuant to [Va. Code § 17.1-266](#), localities are exempt from paying fees for services rendered by a clerk when the locality

is a party to a case. See Opinion to Smith, dated 2/14/1997 (1997, page 44) that states although this exemption is for “services rendered in Commonwealth cases (emphasis added),” the exemption from clerk’s fee upon recordation applies as well.

Form(s)

Initiating forms are not provided by clerk’s office.

Reference(s):

Va. Code Title 15.2  
[Va. Code § 17.1-266](#)

## Appeals

### Blood Borne Pathogens Appeal

If an employee of a public safety agency, which may include victims and witnesses of crimes as defined in [Va. Code § 32.1-45.2](#), is involved in a possible “exposure prone” incident involving another person and the exposure is to blood-borne pathogens, Human Immunodeficiency Virus (HIV) or Hepatitis B or C, the person allegedly carrying the blood-borne pathogens may be requested to submit for testing for hepatitis B or C virus and human immunodeficiency virus. Prior to performing any test for the human immunodeficiency virus, the medical care provider shall inform the patient that they have the right to decline the test. If the alleged carrier refuses to consent to testing a petition may be filed in general district court to order testing and disclosure of its results. If the person whose body fluids were involved in the exposure is deceased, the decedent’s next of kin shall be deemed to have consented to testing of the decedent’s blood for infection and release of such test results to the person who was exposed.

A party may appeal an order of the general district court to the circuit court of the same jurisdiction within ten days from the date of the order. Any such appeal shall be *de novo*, in camera, and shall be heard as soon as possible by the circuit court. The circuit court shall be advised by the Commissioner or their designee. The record shall be sealed. The order of the circuit court shall be final and non-appealable. [Va. Code § 32.1-45.2](#).

Document Type

DC-475, Civil Appeal Notice

Filing Type

GABT

Procedures

- Step 1** Clerk receives DC-475, CIVIL APPEAL NOTICE and copies of all paperwork, including the DC-405, PETITION TO TEST FOR BLOOD-BORNE PATHOGENS from the district court.
- Step 2** There are no fees, appeal bond, writ tax or costs associated with this appeal.
- Step 3** The appeal shall be heard as soon as possible, and is heard *de novo*, *in camera*. [Va. Code § 32.1-45.2](#)
- Step 4** The circuit court shall be advised by the Commissioner (of the Health Department) or their designee.
- Step 5** The record shall be sealed. The results of the tests shall be confidential.
- Step 6** The Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

#### Fees/Taxes/Other Monies Assessed

None

#### Form(s)

DC-405, Petition To Test For Blood-Borne Pathogens  
DC-475, Notice Of Appeal – Civil

#### Reference(s)

[Va. Code § 32.1-36.1](#)  
[Va. Code § 32.1-37.2](#)  
[Va. Code § 32.1-45.2](#)

### Civil Contempt from District Court

#### Document Type

Petition to Show Cause

Filing Type

CCON

Procedures

**Step 1** Clerk acknowledges receipt of case papers.

**Comments:** Appeal from a finding of civil contempt in a district court may be brought only in connection with the appeal from a final judgment or order in the main proceedings.

**Step 2** Clerk collects and receipts for applicable fees. **Note:** For J&DR Civil Contempt (finding in support case) charges, the civil appeal bond is not required to perfect the appeal.

**Step 3** Clerk assigns case number. See “Case Initiation” chapter in this manual.

**Step 4** Clerk prepares case file. See “Case Initiation” chapter in this manual.

**Step 5** Court proceeds and handles matter of contempt as part of the main cause of action being appealed.

**Comments:** Civil Contempt is not considered a separate action. Attorney General Opinion to Foreman dated 8/21/85 (1985-86, page 292).

Circuit courts can engage in discretionary counsel appointments for Civil Show Cause-Failure to Pay Support cases that are appealed from the J&DR courts. Pursuant to § 19.2-163 the amount allowed by the court to the attorney appointed to defend them shall be taxed against the defendant and if collected, the same shall be paid to the Commonwealth, or the county, city or town, as the case may be, and accounted for as a civil receivable.

**NOTE:** Attorneys appointed to represent indigent respondents in Civil Contempt for Failure to Pay Child Support cases will be compensated, capped at \$158.00. The Order of Appointment must reflect the respondent is indigent, and must accompany the DC-40, LIST OF ALLOWANCES.

Fees/Taxes/Other Monies Assessed



General District Appeal

[Circuit Court Civil Filing Fee Calculation](#)

J&DR Appeal

- Support Cases: Do not generate “trial” fee
- ALL Other J&DR Case Types: Do generate “trial” fee. Including custody/visitation under [Va. Code § 16.1-69.48:2](#)

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms are not provided by Clerk’s Office.

Reference(s)

[Va. Code § 16.1-69.48:1](#)

[Va. Code § 16.1-69.48:2](#)

[Va. Code § 16.1-106](#)

[Va. Code § 16.1-107](#)

[Va. Code § 16.1-296](#)

Attorney General Opinion to Foreman, dated August 21, 1985 (1985-86, page 292); *writ taxes imposed on appeal from juvenile and domestic relations district court only if district court fees assessable.*

Attorney General Opinion to Garrett, dated April 20, 1983 (1982-83, page 313);

*§ 16.1-296 requires circuit court to assess writ tax, costs and fees on matters appealed to it from juvenile and domestic relations court only if trial fee could have been charged in juvenile and domestic relations court.*

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk’s Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>

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

**Civil Proceedings from J&DR**

Most appeals for non-criminal matters from the J&DR court are matters of support and custody. From any order entered or judgment rendered in the J&DR court in a civil case in which the amount in controversy is more than \$50, exclusive of interest, attorney fees contracted in instrument and cost, there will be an appeal of right, if taken within ten days after judgment or order (thirty days for UIFSA/URESAs cases), to the circuit court. When the amount in controversy exceeds \$50 a jury may be requested.

[Virginia Code § 16.1-296\(A\)](#) requires a copy of the notice of appeal shall be served by the appealing party upon the opposing party or each counsel of record consistent with Rule 1:12 of the Rules of Supreme Court of Virginia.

[Virginia Code §§ 16.1-278.15](#) and [20-103](#) require that the court shall order parties with a minor child or children whose custody or visitation is contested to attend educational seminars on the effects of separation or divorce. Such programs are to be completed, where possible, prior to participating in mediation or alternative dispute resolution, and the court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available. Parties include natural or adoptive parents, or any person with a legitimate interest as defined in [Va. Code § 20-124.1](#). The fee for such programs shall be based on ability to pay, but shall in no case exceed \$50.

[Virginia Code § 20-103\(B\)](#) gives the court authority to issue a Protective Order “upon a showing by a party of reasonable apprehension of physical harm...” the CC-1409, PROTECTIVE ORDER – IN PENDING CASES OF DIVORCE, CUSTODY, SUPPORT OR VISITATION should be used for such purposes.

**Note:** See Form DC-605, ORDER OF REFERRAL TO PARENT EDUCATION SEMINAR. Also See Supreme Court of Virginia web site for Parent Education Providers at:

<http://www.vacourts.gov/courtadmin/aoc/djs/programs/parented/home.html>

The Juvenile and Domestic Relations District Court has exclusive jurisdiction over parentage proceedings, except that the Circuit Court shall have concurrent jurisdiction when the parentage of a child is at issue in any matter before the Circuit court. Form DC-624, PARENTAGE TEST ORDER may be used, or the attorney may draft their own order. Parentage test orders and any test results are confidential. Once paternity is determined, DC 644, ORDER DETERMINING PARENTAGE should be completed and sent to the Office of Vital

Records. If the child was born outside of the Commonwealth of Virginia, a copy should also be sent to the Office of Vital Records for that location. Refer to the list of [United States' Vital Records Office](#) for the contact information of the appropriate agency.

**Special Note:** Abuse and Neglect; Foster Care; Cases involving Termination of Parental Rights. In processing these cases, it is important to remember that whatever the eventual disposition in circuit court, there will be further proceedings related to the matter in juvenile and domestic relations district court. For example, if parental rights are terminated by the circuit court, there may be an appeal to the Court of Appeals, and the matter will also continue as a foster care case in juvenile and domestic relations district court with proceedings to seek a permanent placement of the child. During the appeal of foster care cases to circuit court (and beyond), the juvenile and domestic relations district court retains the jurisdiction to continue to hear petitions regarding the review of foster care plans and placement. [Va. Code § 16.1-242.1](#). Also note these cases should remain confidential and therefore should be set up in the JUVENILE APPEAL section of CCMS.

These types of cases are poignant examples of the rationale behind the requirement that the circuit court send a copy of its final judgment to the juvenile and domestic relations district court from which the matter was appealed. [Va. Code § 16.1-297](#).

Document Type

Petition or Notice of Appeal

Filing Type

VARIOUS – See [Circuit Court Clerk's Fee Schedule](#)

Procedures

CCMS Division “Juvenile Appeal” is augmented to include separate data screens for Juvenile Civil cases. Refer to the Circuit Court Case Management System User’s Guide and the “Juvenile Appeal Division” for help to distinguish case types, CCMS Classification, confidentiality, etc.

**Step 1** Clerk receives cases after the ten-day or thirty-day appeal (UIFSA/URESA) period has elapsed. [Va. Code § 16.1-296](#). **Note:** Court should hear case, when practical, within forty-five days of notice of appeal. [Va. Code §§ 16.1-269.6](#) and [16.1-296](#). See CMS report CJ39, Juvenile Appeal hearing time limits.

**Comments:** Termination of Parental Rights appeals should be forwarded from the JDR court to the circuit court within three

working days of the filing of the Notice of Appeal. **Note:** For Termination of Parental Rights Appeals, the circuit court must hold a hearing on the merits of the case within ninety days of the perfecting of the appeal. [Va. Code § 16.1-296 \(D\)](#).

**Step 2** Clerk receives DC-581, NOTICE OF APPEAL-JUVENILE CIVIL APPEALS, DC-475, CIVIL APPEAL NOTICE or DC-602, NOTICE OF APPEAL – SUPPORT PROCEEDINGS, and DC-575, CONFIDENTIAL MATERIALS - JUVENILE CASE APPEAL/TRANSFER TRANSMITTAL and DC-25, CIRCUIT COURT CASE TRANSMITTAL AND FEES REMITTANCE or a notice in writing detailing appeal & original case papers.

**Note:** A copy of the Notice of Appeal shall be served, consistent with [Rule 1:12](#) of the Rules of Supreme Court of Virginia, by the appealing party upon the opposing party(s)/each counsel of record. [Va. Code 16.1-296\(A\)](#). If the hearing date for the appeal is not set by the J&DR court, the circuit court clerk is responsible for notifying all parties and/or counsel of record of the date and time the appeal will be tried. No proof is required to be provided to the clerk that the Notice of Appeal has been served by the appellant prior to filing.

**Comments:** Clerk may receive DC-606, [AFFIDAVIT IN SUPPORT OF APPLICATION FOR PROCEEDING IN CUSTODY OR VISITATION CASE WITHOUT PAYMENT OF FILING FEES](#) or CC-1414, [PETITION FOR PROCEEDING IN CIVIL CASE WITHOUT PAYMENT OF FEES OR COSTS](#) for Custody/Visitation type cases.

**Step 3** Clerk receipts for fees received, including service fees for custody and visitation cases. **Note:** In any matter in which a filing fee either was or could have been assessed pursuant to [Va. Code § 16.1-69.48:5](#), no appeal shall be allowed unless and until the party applying for appeal shall, within ten days from the entry of the final judgment or order, either (i) pay or (ii) file with the clerk of the court from which the appeal is taken a petition to have the court to which the appeal is taken determine that the writ tax and costs need not be paid on account of poverty.

**Comments:** The J&DR clerk shall collect any applicable fees, **including service of the notice of appeal**, from the appellant prior to transmitting the case to the circuit court clerk. Service of process in the circuit court may include service on the appellee by

the sheriff or private process server or certified or registered mail, and service on the attorney for the appellee by regular mail. ([Va. Code § 16.1-69.48:5](#))

Notwithstanding any other provision of law, the writ tax of the court to which the appeal is taken, and other applicable costs shall be assessed only once for all custody and visitation petitions simultaneously appealed by a single appellant.

The J&DR court shall promptly transmit to the Circuit Clerk the original pleadings, together with all exhibits and other papers filed in the trial of the case and upon receipt of the foregoing by the clerk of the circuit court the case shall then be docketed.

**Step 4** Clerks sets up file and assigns case a CIVIL case number for all support (civil support, criminal support, arrearage) cases, criminal and civil contempt, UIFSA/URESAs, family abuse, and a JUVENILE case number for all other juvenile appeals (traffic, delinquency, CHINS, custody/visitation, paternity, termination of parental rights, abuse & neglect, judicial authorization-abortion) and indexes case.

**Comments:** A separate docket and order book or file for cases on appeal from the J&DR court must be maintained by the circuit court.

Exceptions:

- Support cases pursuant to [Va. Code §§ 16.1-241 \(A\)\(3\), 16.1-241 \(F\) & 16.1-241 \(L\)](#) and [20-61](#).
- Criminal offenses committed by adults commenced on a warrant or summons as described in Title 19.2.
- Civil commitments of adults pursuant to Title 37.2
- These cases will be entered on appropriate docket and order book, [Va. Code § 16.1-302](#).

**Note:** In any child or spousal support case appealed to the circuit court, the case files shall be open for inspection only as provided by [Va. Code § 16.1-305.01](#).

**Step 5** Clerk receives Civil Appeal Bond, if required, with sufficient surety approved by the judge or clerk of the J&DR court.  
Custody/Visitation Cases only.

**Comments:** Civil Appeal Bond is required in order to perfect an appeal

on the following:

- Suspension of support payments
- Judgment for Arrearages

Bond must be posted with district court within thirty days of final order or judgment. [Va. Code § 16.1-296](#). J&DR may order bond in appeal of support cases involving criminal convictions for non-support. An appearance bond, with or without surety, may also be ordered.

**Note:** No appeal bond required if appellant is agency of the Commonwealth (i.e., DCSE) or is an incarcerated individual.

When a bond or other security is required by law to be posted or given in connection with an appeal or removal from a district court, and there is either (i) a defect in such bond or other security as a result of an error of the district court, or (ii) the district court erroneously failed to require the bond or other security, and the defect or failure is discovered prior to sending the case to the circuit court, the district court shall order that the appellant or applicant for removal cure such defect or failure within a period not longer than the initial period of time for posting the bond or giving the security. If the error or failure is discovered after the case has been sent to the circuit court, the circuit court shall return the case to the district court for the district court to order the appellant or applicant for removal to cure the defect or post the required bond or give the required security within a period of time not longer than the initial period of time for posting the bond or giving the security for removal. Failure to comply with such order shall result in the disallowance of the appeal or denial of the application for removal. [Va. Code § 16.1-109](#).

**Note:** The appellant in a civil contempt/support case is allowed to appeal either the finding of contempt or establishment of a support arrearage or both, at the appellant's choice.

**Step 6** Clerk acknowledges receipt of case papers; issues receipt for fee paid (Custody/Visitation cases only) and bond monies received, if any.

**Comments:** Bond will be receipted using Account Code 503. In lieu of giving bond with surety, any party appealing from the judgment or order of the district court may deposit with the judge or clerk of that court such sum of money as the judge or clerk may determine to be sufficient. The money so deposited shall be transmitted in cash, by check of the court, surety bond, or bank check, or by draft from the escrow account of the appealing party's attorney to the

clerk of the court to which the appeal is taken, who shall likewise issue their official receipt therefore [Va. Code § 16.1-108](#).

**Step 7** [Virginia Code § 16.1-112](#) only requires notification of the appeal to the appellee by certified mail or their attorney by regular mail.

**Comment:** Best practice would be to notify all other parties or counsel of record of the appeal and of the next appearance date by whatever delivery method the clerk or court deems appropriate.

See form CC-1340, NOTICE OF HEARING ON AN APPEAL FROM A DISTRICT COURT.

**Step 8** Clerk issues summons/subpoena as requested.

**Step 9** If the Court dismisses or allows a nonsuit of the appeal, the Clerk will microfilm and index the Court's order, and remove the case from the docket. **Note:** For withdrawal procedures, please See section below, "Withdraw Appeal From District Court."

**Step 10** In cases where support is ordered paid to the State Treasurer through the [Division of Child Support Enforcement](#) (DCSE), clerk will send a certified copy of the decree to DCSE.

DCSE  
5600 Cox Road  
3rd Floor West  
Glen Allen, VA 23060  
Fax (804) 692-1438

In cases where child support is ordered, the guidelines worksheet relied upon by the court or DSS shall be placed in the court's file or the DSS file, and a copy shall be provided to the parties. In some cases support orders will contain information that necessitates the completion of a DC-645, INCOME WITHHOLDING FOR SUPPORT ORDER. This Federal version is the only version that will be accepted by employers and the Division of Child Support Enforcement beginning December 31, 2011.

DJS recommends that the court stamp the original document and make 4 copies:

- Copy for file, pending service  
(can be destroyed upon return of original)

- Copy for Employer
- Copy for Employee
- Copy for Division of Child Support Enforcement
  
- Service should be as follows:
  - Original – Employer
  - Copy for Employer, with the Copy for Employee attached (employer will provide employee's copy to employee)
  - Copy for DCSE – may be mailed or hand delivered.

**Note:** The DC-646, COMPLIANCE PROVISIONS-INCOME WITHHOLDING FOR SUPPORT should also be sent to the Employer.

**Step 11** Clerk transmits final order of circuit court to the J&DR court within twenty-one days of entry of its order. [Va. Code § 16.1-297](#).

#### Fees/Taxes/Other Monies Assessed

Payment of writ tax and costs are not required, exception Custody/Visitation cases.

#### [Circuit Court Civil Filing Fee Calculation](#)

**Special Note:** There are no appellate fees, including service/certified mail fees, on the motions to amend for custody and visitation cases since there are no filing fees in the J&DR Court on those cases.

#### Form(s)

DC-460, [CIVIL APPEAL BOND](#)  
DC-581, NOTICE OF APPEAL - JUVENILE CIVIL APPEALS  
DC-602, NOTICE OF APPEAL – SUPPORT PROCEEDINGS  
DC-604, ORDER OF REFERRAL AND MEDIATOR APPOINTMENT FORM – CUSTODY, VISITATION AND SUPPORT CASES  
DC-605, ORDER OF REFERRAL TO PARENT EDUCATION SEMINAR  
DC-606, [AFFIDAVIT IN SUPPORT OF APPLICATION FOR PROCEEDING IN CUSTODY OR VISITATION CASE WITHOUT PAYMENT OF FILING FEES](#)  
DC-645, INCOME WITHHOLDING ORDER  
DC-646, Compliance Provisions – Income Withholding Order  
CC-1412, Notice of Hearing on a Civil Appeal Bond from a District Court  
CC-1414, [PETITION FOR PROCEEDING IN CIVIL CASE WITHOUT PAYMENT OF FEES OR COSTS](#)

#### Reference(s)



[Va. Code §§ 16.1-69.48:5, 16.1-106, 16.1-107, 16.1-296](#) and [16.1-297](#)  
 Title 37.2 (Involuntary Mental Commitment)

Attorney General Opinion to Foreman, dated August 21, 1985 (1985-86, page 292); *writ taxes imposed on appeal from juvenile and domestic relations district court only if district court fees assessable.*

Attorney General Opinion to Garrett, dated April 20, 1983 (1982-83, page 313); *§ 16.1-296 requires circuit court to assess writ tax, costs and fees on matters appealed to it from juvenile and domestic relations court only if trial fee could have been charged in juvenile and domestic relations court.*

<b>FEES</b>	
<b>TYPE CHARGES</b>	<b>CODE REFERENCE</b>
<b>CUSTODY/VISITATION**</b>	
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
Certified Mail	<a href="#">Va. Code § 16.1-107</a>
Registered Mail	<a href="#">Va. Code § 16.1-107</a>
Sheriff Fee	<a href="#">Va. Code § 17.1-272</a>
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	
<i>** Only one set of fees shall be required for all custody and visitation petitions simultaneously initiated by a single petitioner.</i>	

**Decision from Board of Zoning Appeals**

An appeal to circuit court by any person, officer, department, board or bureau of the county or municipality, aggrieved by a decision of the Board of Zoning Appeals. Reader may wish to refer to [Va. Code § 15.2-2308](#) regarding establishment of a Board of Zoning Appeals.

In the case of an appeal from the board of zoning appeals to the circuit court of an order, requirement, decision or determination of a zoning administrator or other administrative officer in the administration or enforcement of any ordinance or provision of state law, the decision of the Board of Zoning Appeals shall be presumed to be correct. The appealing party may rebut that presumption by proving by a preponderance of the evidence, including the record before the Board of Zoning Appeals that the Board of

Zoning Appeals erred in its decision. Any party may introduce evidence in the proceedings in the court.

In the case of an appeal by a person of any decision of the Board of Zoning Appeals that denied or granted an application for a variance, or application for a special exception, the decision of the board of zoning appeals shall be presumed to be correct. The petitioner may rebut that presumption by showing to the satisfaction of the court that the Board of Zoning Appeals applied erroneous principles of law, or where the discretion of the Board of Zoning Appeals is involved, the decision of the Board of Zoning Appeals was plainly wrong and in violation of the purpose and intent of the zoning ordinance.

Document Type

Petition

Filing Type

ZONE

Procedures

- Step 1** Petition is presented to the circuit court by the aggrieved party within thirty days after the filing of the decision of the Board of Zoning Appeals in the Board's office. The style of the petition is "In Re: (date) Decision of the Board of Zoning Appeals of (locality name)".
- Step 2** Upon receipt of the petition, the court shall allow a Writ of Certiorari to review the decision of the Board. The writ prescribes the time within which a return must be made and served upon the aggrieved party's attorney, which shall not be less than ten days and may be extended by the court.
- Step 3** Upon receipt of the papers in the action, the clerk receipts money collected, opens file and docket case. The Board will provide original or certified copies of any part of the record of the proceeding to the court as required by the writ that is filed in the case.
- Step 4** Clerk issues all notices as directed.
- Step 5** Hearing is held. The court holds a hearing, taking additional evidence if it deems necessary and may reverse or affirm, wholly or partly, or may modify the decision brought up for review. The writ does not stay proceedings upon the Board's decision

appealed from and the court may grant a restraining order suspending execution of the Board's decision pending the outcome of the court's review.

**Step 6** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

#### Fees/Taxes/Other Monies Assessed

By Individual

[Circuit Court Civil Filing Fee Calculation](#)

By Locality

None, effective 7/1/07, pursuant to [Va. Code § 17.1-266](#), localities are exempt from paying fees for services rendered by a clerk when the locality is a party to a case.

Form(s)

Initiating forms are not provided by clerk's office.

Reference(s)

[Va. Code § 15.2-2314](#)  
[Va. Code § 17.1-266](#)

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

### Decision from Zoning Administrator Decisions

Any zoning applicant or any other person who is aggrieved by a decision of the zoning administrator made pursuant to the provisions of § [15.2-2299](#) may petition the governing body for review of the decision of the zoning administrator. All petitions for review shall be filed with the zoning administrator and with the clerk of the governing body within 30 days from the date of the decision for which review is sought and shall specify the grounds upon which the petitioner is aggrieved. A decision by the governing body on an appeal taken pursuant to this section shall be binding upon the owner of the property which is the subject of such appeal only if the owner of such property has been provided written notice of the zoning violation, written determination, or other appealable decision.

An aggrieved party may petition the circuit court for review of the decision of the governing body on an appeal taken pursuant to this section. The provisions of subsection F of § [15.2-2285](#) shall apply to such petitions to the circuit court, mutatis mutandis.

#### Document Type

Petition

#### Filing Type

ZONE  
GAZO

#### Procedures

- Step 1** Petition is presented to the circuit court by the aggrieved party.
- Step 2** Upon receipt of the papers in the action, the clerk receipts money collected, opens file and docket case.

- Step 3** Clerk issues all notices as directed.
- Step 4** Hearing is held, taking additional evidence if it deems necessary and may reverse or affirm, wholly or partly, or may modify the decision brought up for review.
- Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

By Individual

[Circuit Court Civil Filing Fee Calculation](#)

By Locality

None, effective 7/1/07, pursuant to [Va. Code § 17.1-266](#), localities are exempt from paying fees for services rendered by a clerk when the locality is a party to a case.

Form(s)

Initiating forms are not provided by clerk's office.

Reference(s)

[Va. Code § 15.2-2301](#)

[Va. Code § 17.1-266](#)

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

## Decision of ABC Board

An appeal to circuit court by any person who, following the provisions of the Administrative Process Act ([Va. Code § 2.2-4000](#) et seq.), appeals from any adverse decision by the [ABC Board](#) regarding:

- Refusal to grant any ABC license (Va. Code § 4.1-224);
- Suspension or revocation of any ABC license, or imposition of civil penalty against a brewery licensee (Va. Code § 4.1-227 (A)); or
- Suspension or revocation of any ABC permit ([Va. Code § 4.1-229](#))

Other appeals under the Administrative Process Act may include: 1) Department of Medical Assistance; or 2) Abuse or neglect suspicions or findings. [Va. Code § 63.2-1526](#).

The action of the Board in suspending or revoking any license or in imposing a civil penalty against the holder of a brewery license shall be subject to judicial review in accordance with the Administrative Process Act. Such review shall extend to the entire evidential record of the proceedings provided by the Board in accordance with the Administrative Process Act. An appeal shall lie to the Court of Appeals from any order of the court. Notwithstanding [Va. Code § 8.01-676.1](#), the final judgment or order of the circuit court shall not be suspended, stayed or modified by such circuit court pending appeal to the Court of Appeals. Neither mandamus nor injunction shall lie in any such case. [Va. Code § 4.1-227](#).

### Document Type

Petition

### Filing Type

ABC

### Procedures

- Step 1** The aggrieved party files a petition for judicial review.
- Step 2** Clerk receipts for money collected, opens file and docket case.
- Step 3** Clerk issues all notices, etc. as directed.
- Step 4** A hearing is held. The Court reviews the record. The Court may not require appearance of adverse parties unless it finds error of law in the record.

**Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law, and prepares and transmits any appeal to the Court of Appeals.

**Comments:** [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms are not provided by clerk's office.

Reference(s)

[Va. Code § 2.2-4000](#) et seq.  
[Va. Code §§ 4.1-224, 4.1-227 \(A\), 4.1-229](#)  
Va. Supreme Court Rules Part Two A  
Va. Supreme Court Rules Part Three A

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

\* Not assessed if amount of civil action is \$500 or less

### Decision of Board of Real Estate Review, (Board of Assessors) and Equalization Board

The attorney for the county, city or town or any taxpayer aggrieved by any order of a real estate review and equalization board may apply for relief to the circuit court of the county/city for the correction and revision of such order, in the same manner and within the same time as is provided by law for the correction of erroneous assessments of real estate by any person who is aggrieved thereby.

The limitations period for the filing of the application is (i) within three years from the last day of the tax year for which such assessment is made, (ii) within one year from the date of the assessment, or (iii) within one year from the date of the Tax Commissioner's final determination under [Va. Code §§ 58.1-3703.1 \(A\)\(5\)](#) or [58.1-3983.1](#) or (iv) within one year from the date of the final determination under [Va. Code § 58.1-3981](#), whichever is later.

The application, in the form of a court suit, shall be before the court when it is filed in the clerk's office. The proceedings shall be conducted as a legal cause of action before the court, sitting without a jury. Part Three of the Rules of the Supreme Court of Virginia are applicable to this action (See Supreme Court Rule 3:1).

**Note:** The taxpayer may apply directly to the Circuit Court without first appealing to the Board of Assessors or the Board of Equalization. [Va. Code § 58.1-3983](#).

Document Type

Application/Complaint

Filing Type

COM

Procedures

- Step 1** Applicant files application/complaint with the clerk of circuit court.
- Step 2** Clerk follows procedures set out in "Legal Cause Of Action - Complaint" this chapter.
- Step 3** Although not specifically required by statute, a copy of the application/complaint should be mailed to the county or city attorney, or the Attorney for the Commonwealth. Statute does require that the county or city attorney, or if none, the Commonwealth, defend the application. If there is a separate real estate assessor, clerk may send copy to that official.
- Step 4** Clerk indexes and microfilms/scans all orders entered by the Court.

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



Fees/Taxes/Other Monies Assessed

By Individual

[Circuit Court Civil Filing Fee Calculation](#)

By Locality

None. Effective 7/1/07, pursuant to [Va. Code § 17.1-266](#), localities are exempt from paying fees for services rendered by a clerk when the locality is a party to a case.

Form(s)

Initiating forms are not provided by clerk's office.

Reference(s)

[Va. Code §§ 58.1-3382](#), [58.1-3959](#), [58.1-3980](#), [58.1-3984](#) through 58.1-3989

Va. Supreme Court Rules Part Three

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

**Decision of Compensation Board or Governing Body**

Any constitutional officer whose budget is affected by a decision of the [Compensation Board](#) or governing body may appeal any decision made by such entity. Appeals are filed with the circuit court for a *de novo* hearing. Burden of proving necessity of additional funding will be borne by appealing officer.

Document Type

Petition for Appeal

Filing Type

ACOM

Procedures

**Step 1** Constitutional officer receives letter on or before May 1st of each year of certified budget from Compensation Board detailing the fixed salaries and expenses for the fiscal year. [Va. Code § 15.2-1636.8](#). Constitutional officer has forty-five days to note an appeal. [Va. Code § 15.2-1636.9](#).

**Step 2** PROCEDURE DECISION: Does the constitutional officer want to proceed with appealing the decision of the Compensation Board or local governing body? If yes: GO TO STEP 3; If no: END PROCEDURE

**Step 3** Constitutional officer prepares appeal, following statutory procedure ([Va. Code § 15.2-1636.9](#)) for notice of appeal with certification.

**Comments:** Appeal shall be noted in the circuit court of the county or city wherein the officer making the appeal resides. Appeal notice should be specific and provide statutorily required information including:

- Details regarding portion(s) of budget being contested;
- Additional services for locality not provided by law; and
- Cost of such services

**Step 4** Constitutional officer notifies Chief Justice of the Supreme Court, Compensation Board, the county or city affected and Attorney General notifying each of the appeal.

**Step 5** Clerk assigns a case number and docket the case. **Note:** No fee is collected.

**Step 6** Compensation Board notifies constitutional officer and other local officials of administrative hearing. **Note:** Date of hearing is set by the Compensation Board.

**Step 7** PROCEDURE DECISION: Is a compromise reached and agreed upon during the administrative hearing? If yes: GO TO STEP 8; If no: GO TO STEP 10

- Step 8** Compensation Board sends proposed settlement/compromise to constitutional officer.
- Step 9** Constitutional officer notifies Compensation Board of acceptance and withdraws appeal or notifies Compensation Board of non-acceptance.
- Step 10** Compensation Board notifies the Chief Justice of the Supreme Court that all administrative remedies have been exhausted by the appellant and that the Chief Justice should appoint the three-judge panel to hear the appeal.
- Step 11** Chief Justice appoints three judges from a panel of fifteen active or retired judges selected by the Supreme Court.

**Comments:**

- Appeal will be heard within forty-five days from the date such notice is filed by the Board with the Chief Justice.
- 3-judge panel hearing appeal will consider to what extent, if any, the local governing body should participate in providing additional funding requested by clerk.
- No judge may be appointed to hear an appeal involving a jurisdiction in their current or former circuit.
- Term of such judges is determined by the Supreme Court.

- Step 12** Clerk sends notice to all parties at least fifteen days prior to the hearing indicating the time and place of such hearing.

**Comments:** Officer noting appeal, Compensation Board, the county or city affected, and the Attorney General will be given at least fifteen days prior notice of the time and place of hearing.

- Step 13** Hearing is held.

- Step 14** Decision is made by the panel. Decision of the three-judge panel is final and there is no right of the constitutional officer to a further appeal.

- Step 15** Final order is entered. Clerk:
- Records and indexes orders in the Civil Order Book unless otherwise provided by law

- Sends certified copies of order to all parties
- Removes case from docket

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

Fees/Taxes/Other Monies Assessed

None

Form(s)

N/A

Reference(s)

[Va. Code §§ 15.2-1636.9, 15.2-1636.10, 15.2-1636.18](#)  
[Va. Code § 17.1-287](#)

### Decision of Support Enforcement Set Off Debt Collections

A petition filed by an aggrieved party seeking judicial review in a circuit court of a decision of the Child Support Enforcement Programs with respect to determinations under the Set-off Debt Collections Act. An appeal may be taken by filing a written notice of appeal with the clerk of the court having proper jurisdiction to review the decision of the hearing officer. The clerk shall send reasonable notice of such appeal, which shall include the date and time of the hearing, to the appellee or to the Department when, at the request of another state's child support agency, it is acting on behalf of a nonresident obligee. A nonresident obligee for whom the Department is acting is not required to appear at the hearing. Evidence relative to the support obligation may be taken from a nonresident obligee by deposition and presented by the Department at the hearing. Such appeal shall be taken within ten days of receipt of the hearing officer's decision.

Document Type

Petition

Filing Type

PET

Procedures

**Step 1** The aggrieved party files a petition for judicial review.

- Step 2** Clerk receipts for money collected, opens file and docket the case.
- Step 3** Clerk issues all notices as directed. .
- Step 4** Hearing is held. A hearing is held on review of the record.
- Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law and prepares and transmits any appeal of the court's decision to the Court of Appeals.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms are not provided by clerk's office.

Reference(s)

[Va. Code §](#)  
 et seq.  
[Va. Code §§ 58.1-520, 527](#)  
[Va. Code § 63.20-1943](#)

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

**Decision of Employment Commission**

A petition filed by an aggrieved party seeking judicial review in a circuit court of a decision of the [Employment Commission](#). The appeal is filed in the circuit court of the county or city in which the aggrieved party was last employed.

From any circuit court decision involving (i) the provisions of [Va. Code § 60.2-612](#) or [Va. Code § 60.2-618](#), (ii) whether an employing unit constitutes an employer or (iii) whether services performed for or in connection with the business of an employing unit constitute employment for such employing unit, the Court of Appeals shall have jurisdiction to review such decision regardless of the amount involved in any claim for benefits. It shall not be necessary, in any proceeding under this chapter, to enter exceptions to the rulings of the Commission or an appeal tribunal, and no bond shall be required upon an appeal to any court. Upon the final determination of such judicial proceeding, the Commission shall administer the Unemployment Compensation Fund in accordance with such determination. The Commission shall have the right to appeal a decision of a circuit court in any proceeding under this chapter. [Va. Code § 60.2-625](#).

Document Type

Petition

Filing Type

EMP

Procedures

- Step 1** The aggrieved party files a petition for judicial review. Petition must be received and filed in the clerk's office within thirty days from the date the decision is mailed.
- Step 2** Clerk receipts for money collected, opens file and docket the case.
- Step 3** Clerk issues all notices as directed. Copy of the Petition for Judicial Review is to be served upon the Commission.
- Step 4** Hearing is held. A hearing is held on review of the record. The court may not require appearance of the adverse parties unless/until the court finds error of law in the record.
- Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law and prepares and transmits any appeal of the court's decision to the Court of Appeals.

**Comments:** Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing

may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms are not provided by clerk's office.

Reference(s)

[Va. Code § 2.2-4000](#) et seq.

[Va. Code § 28.2-219](#)

[Va. Code § 60.2-625](#)

Va. Supreme Court Rules Part Two A

Va. Supreme Court Rules Part Three A

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

**Decision of Local Governing Body (Historic Landmarks)**

An appeal is allowed from the final decision of the local governing body requesting the circuit court to review any decision by a local governing body to establish, rezone and designate certain properties or areas as places of important historic, architectural, archaeological, or cultural interest and to review any decision made by such body as provided in the [Va. Code § 15.2-2306 A\(3\)](#). This statute requires adoption of an ordinance providing for such appeal.

Document Type

Petition

Filing Type

PET

Procedures

- Step 1** Petition at law is filed with the court within thirty days of the final decision of the governing body.
- Step 2** Clerk opens a civil file and docket the case.
- Step 3** Clerk sends notice of appeal to all parties of counsel of record. The filing of the petition stays the decision of the governing body pending decision of the court.
- Step 4** Hearing held and orders entered. The court may reverse or modify the decision of the governing body in whole or in part, or it may affirm the decision of the governing body.
- Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms are not provided by clerk's office.

Reference(s)

[Va. Code § 15.2-2306](#)  
[Va. Code § 17.1-266](#)

**Decision of Marine Resources Commission**

A petition filed by an aggrieved party seeking judicial review in a circuit court of a decision of the [Marine Resources Commission](#). Review by the court is in accordance with the Administrative Process Act.



The court's review of a petition filed in the circuit court is based solely upon the agency record and it will decide whether or not there was sufficient evidence in the agency record to support the case decision of the agency acting as the trier of fact. Unless an error of law is found, the court shall dismiss the review and affirm the agency regulation or decision. If error is found, the court may compel agency action unlawfully and arbitrarily withheld or unreasonably delayed, or suspend or set the agency's ruling aside and remand the matter back for further action. The court may provide injunctive relief while the proceedings are pending.

Document Type

Petition

Filing Type

MAR

Procedures

- Step 1** Petition is filed by the aggrieved party, unless otherwise agreed, in a circuit court as is specified in subdivision 1 of the [Va. Code § 8.01-261](#). ([Va. Code § 2.2-4003](#)).
- Step 2** Clerk receipts for money collected, opens file and docket the case.
- Step 3** Clerk issues all notices as directed.
- Step 4** Hearing is held. A hearing is held on review of the record. The court may not require appearance of the adverse parties unless/until the court finds error of law in the record.
- Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law and prepares and transmits any appeal of the court's decision to the Court of Appeals.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms are not provided by clerk's office.

Reference

[Va. Code § 2.2-4000](#) et seq.

[Va. Code § 28.2-219](#)

Va. Supreme Court Rules Part Two A

Va. Supreme Court Rules Part Three A

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

**Denial of Authorization for Abortion from J&DR**

There is an expedited, confidential appeal of right to the circuit court by any minor for whom the Juvenile & Domestic Relations District Court has denied a petition authorizing an abortion without notice to a parent or legal guardian, or other authorized person defined in [Va. Code § 16.1-241 \(V\)](#). An order authorizing an abortion is not appealable.

The following steps are recommended when an appeal of a denial for authorization for an abortion has been filed in the circuit court:

Document Type

Petition or Notice of Appeal

Filing Type

JR

Procedures

**Step 1** J&DR clerk contacts circuit court clerk's office or Judicial Assistant when petitioner notes their appeal

**OR**

J&DR Clerk escorts the petitioner to the circuit court upon receipt of notice of appeal to obtain court date.

Clerk receives record from the J&DR Court:

- DC-502(A), PETITION FOR JUDICIAL AUTHORIZATION OF ABORTION; (Exhibit 4)
- DC-502(B), Advisement of Your Right to Counsel; (Exhibit 5)
- DC-502(C), Acknowledgment of Right to Counsel and Appointment of Counsel (if J&DR court appointed an attorney or guardian ad litem); (Exhibit 6)
- DC-502(D), Order in Proceeding Seeking Judicial Authorization of Abortion; (Exhibit 7)
- DC-502(E), Notice of Appeal; (Exhibit 8)
- DC-575, Confidential Matters-Juvenile Case Appeal/Transfer Transmittal; and
- DC-25, Circuit Court Case Transmittal and Fees Remittance

**Comments:** Clerk may receive the CC-1340, NOTICE OF HEARING on Appeal from the J&DR court in the event the J&DR clerk cannot escort the petitioner to the clerk's office, or the case needs to be set with the Judicial Assistant.

Clerk must notify Court immediately to ensure a timely hearing.

WATCH YOUR TIME! If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without notice to an authorized person.

No fees are charged pursuant to [Va. Code § 16.1-241 \(V\)](#).

As there is no appellee, notice pursuant to [Va. Code § 16.1-112](#) is not applicable.

**Step 2** Clerk determines if petitioner is represented by counsel. **Note:** It is presumed that any court-appointed counsel in the J&DR court will continue to represent the juvenile in the circuit court.

If DC-502(B), ADVISEMENT OF YOUR RIGHT TO COUNSEL is not received from the J&DR court, Clerk will have petitioner sign form.

If Petitioner did not have counsel appointed in the J&DR court and requests one be appointed or waives their right to be represented by an attorney, clerk will have petitioner sign the DC-502(C), ACKNOWLEDGMENT OF RIGHT TO COUNSEL AND APPOINTMENT OF COUNSEL form.

**Comments:** Form may be signed by the judge in advance of any hearing and will be given to the minor at the time of filing of the petition. Court may appoint a guardian ad litem for the minor.

The Court shall appoint counsel for the petitioner at their request. Petitioner is not liable for the cost of the court-appointed counsel. [Va. Code § 16.1-241 \(V\)](#).

**Step 3** Clerk sets case for hearing. Court hears and decides the matter within five (5) days of filing of appeal.

**Comments:** Coordination between the court and clerk's office is essential to ensure the matter will be heard within time frame.

If last day falls on a Saturday, Sunday, legal holiday or day the clerk's office is authorized to be closed, the next day the clerk's office is authorized to be open becomes last day. ([Va. Code § 1-210](#)).

**Step 4** Clerk sets up case file, assigns a CJ case number in the Juvenile Civil section of CCMS and indexes as follows:  
First Initial of last name {space} In re: 16.1-241(V) as a business  
Case will be commenced by INIT - Initial Filing.

Example:

Jane Doe is petitioner

Index: D In re: 16.1-241(V), as a business for the juvenile name, and NONE as respondent, also as a business.

Although access to the Juvenile Civil section of CCMS is limited, this practice will ensure confidentiality of the petitioner.

**Step 5** Court hears and decides the matter within five (5) days of filing of appeal. **Note:** Time periods subject to [Va. Code § 1-210](#)

**Step 6** Court enters order granting or denying petition. (CC-1415, ORDER IN PROCEEDING FOR JUDICIAL AUTHORIZATION OF ABORTION).

**Step 7** Clerk certifies and hand-delivers a copy of the Court's order within twenty-one (21) days of entry to the J&DR Court. [Va. Code § 16.1-297](#).

**Step 8** Clerk files order with other case papers and retains in secure area of the court. Clerk also completes List of Allowances, if applicable.

**Comments:** It is recommended that the clerk not microfilm the order or store the order in the Juvenile Order Book due to the deep level of confidentiality required. Files should be maintained in a secure area of the court such as an area where adoption records are stored. Access to these records are limited to the Petitioner, attorney of record, and the guardian ad litem.

Fees/Taxes/Other Monies Assessed

None

### Denial of Voter Registration

A person denied registration shall have the right to appeal, without payment of writ tax or giving security for costs, to the circuit court of the county or city in which they offer to register by filing with the clerk of the court, within ten days after the denial, a petition in writing to have their right to register determined.

Document Type

Petition

Filing Type

AVOT

Procedures

**Step 1** Petitioner files with the clerk of court a petition provided by the registrar.

**Comments:** Petition must be filed within ten days of the denial of voter registration.

**Step 2** Clerk immediately brings this matter to the attention of the chief judge of the court for the scheduling of a hearing.

**Step 3** Clerk gives notice of appeal to the Commonwealth attorney for the

- Step 4** area who defends the petition on behalf of the Commonwealth. Hearing held and enters orders.
- Comments:** The matter is heard and determined upon the petition and a written answer by the registrar and other evidences introduced at the hearing.
- Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law and prepares any appeal to the Supreme Court should the petitioner appeal an order rendered against them.
- Comments:** Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms are not provided by clerk's office.

Reference(s)

[Va. Code § 24.2-422](#)

### General District Court Appeal

An appeal of right to circuit court lies from any order entered or judgment rendered in a court not of record in a civil case in which the matter in controversy is greater than \$50 in value, exclusive of costs, etc., or when the case involves the constitutionality or validity of a statute or of an ordinance or bylaw of a municipal corporation.

Document Type

Notice of Appeal

Filing Type

VARIOUS – See [Circuit Court Clerk's Fee Schedule](#)

Procedures

- Step 1** Clerk receives record from district court and determines that the ten-day appeal period has elapsed before accepting the case. For

appeals withdrawn prior to trial, See “Withdraw Appeal from District Court” below.

**Step 2** Clerk receives DC-580, NOTICE OF APPEAL or DC-475, NOTICE OF APPEAL - CIVIL and DC-25, CIRCUIT COURT CASE TRANSMITTAL AND FEES REMITTANCE or a written NOTICE OF APPEAL setting forth the basis for the appeal, together with certified copies of the case papers.

**Note:** If any party timely notices an appeal, such notice of appeal shall be deemed a timely notice of appeal by any other party on a final order or judgment entered in the same or a related action arising from the same conduct, transaction, or occurrence as the underlying action, however, all parties will be required to timely perfect their own respective appeals by giving a bond and the writ tax and costs, if any, in accordance with [Va. Code § 16.1-107](#).

If an appeal is noted and perfected after the sheriff has served the notice of intent to execute a writ of eviction, which is required to be served at least 72 hours before such eviction in accordance with law, the party noting such appeal shall notify the sheriff of such appeal.

**Comments:** In lieu of giving bond with surety, any party appealing from the judgment or order of the district court may deposit with the judge or clerk of that court such sum of money as the judge or clerk may determine to be sufficient. The money so deposited shall be transmitted in cash, by check of the court, surety bond, or bank check, or by draft from the escrow account of the appealing party's attorney to the clerk of the court to which the appeal is taken, who shall likewise issue their official receipt therefor. [Va. Code § 16.1-108](#).

**Note:** District Courts are instructed by the Office of the Executive Secretary to not send the case to the circuit court until appeal is perfected.

No appeal shall be allowed unless and until the party applying for the same or someone for them shall give bond, in an amount and with sufficient surety approved by the judge or by their clerk if there is one, or in an amount sufficient to satisfy the judgment of the court in which it was rendered. Either such amount shall include the award of attorney fees, if any. Such bond shall be

posted within 30 days from the date of judgment, except for an appeal from the judgment of a general district court on an unlawful detainer pursuant to [Va. Code § 8.01-129](#).

No appeal bond shall be required of a defendant with indemnity coverage through a policy of liability insurance sufficient to satisfy the judgment if the defendant's insurer provides a written irrevocable confirmation of coverage in the amount of the judgment. If defendant's insurer does not provide a written irrevocable confirmation of coverage in the amount of the judgment, then an appeal bond will be required.

When a bond or other security is required by law to be posted or given in connection with an appeal or removal from a district court, and there is either (i) a defect in such bond or other security as a result of an error of the district court, or (ii) the district court erroneously failed to require the bond or other security, and the defect or failure is discovered prior to sending the case to the circuit court, the district court shall order that the appellant or applicant for removal cure such defect or failure within a period not longer than the initial period of time for posting the bond or giving the security. If the error or failure is discovered after the case has been sent to the circuit court, the circuit court shall return the case to the district court for the district court to order the appellant or applicant for removal to cure the defect or post the required bond or give the required security within a period of time not longer than the initial period of time for posting the bond or giving the security for removal. Failure to comply with such order shall result in the disallowance of the appeal or denial of the application for removal. [Va. Code § 16.1-109](#).

**Step 3** Clerk receipts for fees, costs (CHMF, law library, legal aid and technology trust fund), service fees, writ tax and any bond money received.

**Comments:** The appellant must pay the circuit court clerk's fee ([Va. Code § 17.1-275 A\(13\)](#)) and writ tax pursuant to [Va. Code § 16.1-107](#). Reference form DC-460, CIVIL APPEAL BOND. **NOTE:** Refer to [Va. Code § 16.1-107](#) when bond is not required.

**Step 4** Clerk sets up a Civil file and docket case.



**Comments:** Upon receipt of the case papers, fees and bond, if any, the case shall then be docketed. [Va. Code § 16.1-112](#).

- Step 5** Clerk notifies appellee or their attorney that an appeal has been docketed, in conformity with [Va. Code § 16.1-112](#).
- Step 6** Clerk issues summons as requested.
- Step 7** Clerk microfilms or scans and indexes all orders of the court.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms are not provided by clerk's office.

Reference(s)

Va. Code Title 16.1 Chapter 6 Article 3 ([Va. Code § 16.1-106](#), et seq.)  
[Va. Code § 46.2-362](#)

Attorney General Opinion to Frinks, dated 5/17/73 (72-73, page 73); *CLERKS - Costs of Appeal to Court of Record - Clerk of court from which appeal is taken should collect sheriff's service fee if notified by clerk to which appeal is taken to do so. COSTS - Library Fee Paid to Court Not of Record Should Be Collected Again When Case Is Removed or Appealed to Court of Record.*

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
Bond	<a href="#">Va. Code § 16.1-108</a>
* Not assessed if the amount of the civil action is \$500 or less	

## Involuntary Commitment/Inpatient and Outpatient - [Va. Code § 37.2-821](#)

Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment pursuant to [Va. Code §§ 37.2-814](#), [37.2-815](#), [37.2-816](#), [37.2-817](#), [37.2-818](#), [37.2-819](#) or certified as eligible for admission pursuant to [Va. Code § 37.2-806](#) shall have the right to appeal the order to the circuit court in the jurisdiction where they were involuntarily admitted or ordered to mandatory outpatient treatment or certified or where the facility to which they were admitted is located. Choice of venue shall rest with the party noting the appeal. The court may transfer the case upon a finding that the other forum is more convenient.

### Document Type

Petition for Appeal

### Filing Types \*

IC – Involuntary Commitment

GAMC – Mental Commitment Appeal- General District Court

JAMC – Mental Commitment Appeal – Juvenile & Domestic Relations Court

**Note:** These Filing Types are restricted from public inquiry.

### Procedures

**Step 1** Appellant files a notice of appeal with the clerk of the court from which the appeal is taken who immediately transmits the record to the clerk of the circuit court. Choice of venue is with the party noting the appeal. The Court may transfer the case upon a finding that the other forum is more convenient.

**Comments:** The appeal is noted within ten days from the date of the commitment or certification order. An appeal does not operate to suspend any such order unless so ordered by a judge or special justice. [Virginia Code § 37.2-821](#) provides that no appeal bond or writ tax, costs and fees are to be collected, unless recovered per [Va. Code § 37.2-804](#).

**Step 2** The clerk of the circuit court provides written notice of the appeal to the petitioner in accordance with [Va. Code § 16.1-112](#), and notifies the Commonwealth's Attorney of the jurisdiction, who defends on behalf of the Commonwealth

**Comments:** An order continuing the involuntary admission shall be entered only if the criteria in [Va. Code § 37.2-817](#) are met at the time the appeal is heard. The order shall not extend the duration of involuntary admission or mandatory outpatient treatment as set forth in the order appealed from.

**Step 3** The court hears the appeal *de novo*; and the case is given priority on the docket. The circuit court may require an independent evaluation of the person pursuant to [Va. Code § 37.2-815](#), or may rely on the evaluation report from the initial commitment hearing.

**Note:** Pursuant to [Va. Code § 37.2-818](#) which requires a district court judge or special justice to record involuntary commitment hearings, it is recommended that hearings be recorded in circuit court.

**Note:** Upon a finding by the court that the appellant no longer meets the criteria for involuntary admission or mandatory outpatient treatment, the court shall not dismiss the Commonwealth's petition but shall reverse the order of the district court. [Va. Code § 37.2-821 \(E\)](#)

**Comments:** The judge shall appoint an attorney to represent the appellant if the appellant is not represented by counsel. The appellant is entitled to a trial by jury. Seven persons from a panel of thirteen shall constitute a jury.

**Step 4** Clerk records and indexes all orders in the Civil Order Book unless otherwise provided by law.

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

**Step 5** Clerk should fax, then mail any order that extends or reverses the current commitment to State Police for both inpatient and outpatient involuntary commitments.

Department of State Police  
CCRE  
P. O. Box 27472  
Richmond, VA 23261-7472  
Fax: (804) 674-2268

Fees/Taxes/Other Monies Assessed

None

Form(s)

Initiating forms are not provided by clerk's office.

Reference(s)

[Va. Code § 18.2-308.1:2](#)

[Va. Code § 18.2-308.1:3](#)

[Va. Code §§ 37.2-806](#)

[Va. Code §§ 37.2-814](#), [37.2-815](#), [37.2-816](#), [37.2-817](#), [37.2-818](#), [37.2-819](#),  
[37.2-820](#), [37.2-821](#), [37.2-822](#)

### Isolation/Quarantine Order

The State Health Commissioner may issue orders of isolation or quarantine when they determine that a person or persons are infected with a communicable disease of public health threat, and may order a quarantine of any person or persons, or any affected area, after they find that the quarantine is the necessary means to contain a communicable disease of public health threat. In addition, the Commissioner may extend any order of isolation or quarantine upon a finding that such an extension is necessary. Any person(s) subject to an order of isolation or quarantine, or a court-ordered confirmation or extension of any such order, may file an appeal in the circuit court for the city or county in which such person(s) reside or are located in, or the circuit court for the jurisdiction for any affected area.

Any circuit court confirming or extending such orders of isolation/quarantine are also appealable, directly to the Supreme Court of Virginia.

Document Type

Written Notice of Appeal

Filing Type

PET

Procedures

**Step 1** Clerk receives appeal of the Commissioner's order of isolation/quarantine. Such appeal shall be served upon the State Health Commissioner or their legal representative. Clerk receipts money, including service fees.

**NOTE:** Because it is anticipated that the Commissioner will have filed a petition for review and confirmation of their order/or order extending isolation/quarantine, it is recommended that any appeal of such order be made a subsequent filing of the base case number.

**Comments:** Any petition for appeal shall be in writing, shall set forth the grounds on which the order of isolation/quarantine is being challenged vis-a-vis the subject person or persons or affected area.

**Step 2** Clerk docket the appeal and sets a hearing within 48 hours of the filing. The filing of an appeal shall not stay any order of isolation/quarantine. Upon receiving multiple appeals of an order of isolation/quarantine that applies to a group of persons or an affected area, the court may consolidate the cases in a single proceeding.

**Comments:** If the 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the hearing shall be held on the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

The court may confirm, vacate or modify the order of isolation/quarantine.

If the court vacates the order of isolation/quarantine, such person(s) subject to the order shall be immediately released from isolation/quarantine, unless such order is appealed to the Supreme Court of Virginia. If appealed, the order of isolation/quarantine remains.

Persons appealing any order of isolation/quarantine shall have the right to be represented by an attorney in all proceedings. If the person is unable to afford an attorney, the court shall appoint counsel. Counsel so appointed shall be paid at a rate established by the Supreme Court of Virginia from the Commonwealth's criminal fund.

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

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

**Step 4** Clerk removes case from docket and places case with ended files.

Appeals of any final order of any circuit court regarding the Commissioner's petition for review and confirmation, or extension of an order of isolation/quarantine, shall be appealable directly to the Supreme Court of Virginia, and are afforded an expedited review.

**Important Note:** Rule 5:43 states that the clerk shall transmit the record to the Clerk of the Supreme Court immediately upon the filing of the notice of appeal.

Appeals of any circuit court order relating to an order of isolation/quarantine shall not stay any order of isolation/quarantine.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided

Reference(s)

[Va. Code §§ 32.1-48.010](#) and [32.1-48.013](#)

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

**Probate – Not an Original Action**

A procedure which allows an appeal from a grant or denial of probate. Any person interested may, within six months after the entering of such an order, appeal as a matter of right, without having to give bond, to the court whose clerk or deputy clerk has made the order. If clerk of court refuses to admit an instrument purporting to be a decedent's will to probate for failure to satisfy the requirements of [Va. Code § 64.2-446](#), the clerk may appoint an administrator of the estate pursuant to [Va. Code § 64.2-502](#).

Document Type

Petition

Filing Type

PET \*No fee\*

Procedures

- Step 1** Clerk receives applications/letter/petition for appeal
- Step 2** Clerk stamps papers as filed. **Note:** No fee is collected.
- Step 3** Clerk enters Clerk's Order in Clerk's Order Book allowing such an appeal and docket case as a preferred cause for trial at the next term of court. Appeal is now perfected.

Fees/Taxes/Other Monies Assessed

None

Form(s)

N/A

Reference(s)

[Va. Code §§ 64.2-445, 64.2-446](#)

Attorney General Opinion to Barry, dated May 29, 1991 (1991, pages 319-322); Circuit court clerk may qualify administrator of estate after refusing to admit to probate will that is not self-proving if certain statutory prerequisites satisfied and administrator applies for position. Va. Code § 64.1-119. (recodified 2012 [64.2-502, 64.2-503](#))

### Refusal to Take Blood or Breath Test

The appeal to a circuit court from a district court of a refusal to take blood or breath test is conducted as a misdemeanor appeal, per [Va. Code § 18.2-268.4](#). The clerk sets the case up on the criminal docket and assesses criminal costs.

The Commonwealth can appeal from a finding of not guilty in a district court because the unlawful refusal charges are administrative and civil in nature for a first offense. Commonwealth v. Rafferty, 241 Va. 319; 402 S.E. 2d 17 (1991) (decided under former Va. Code § 18.2-268).

The Court of Appeals does not have jurisdiction over an appeal from a first conviction of

refusal to take blood or breath test. *Thomas v. Commonwealth*, 22 Va. App. 735, 473 S.E. 2d 87 (1996) and second or subsequent offenses would be classified as misdemeanors and would be appealable to the Court of Appeals.

The appeal to the Supreme Court from a judgment of the circuit court is treated as a civil appeal.

### Testing For Sexually Transmitted Infections Appeal

As soon as practicable following arrest, the attorney for the Commonwealth may request after consultation with a complaining witness, or shall request upon the request of the complaining witness, that any person charged with (i) any crime involving sexual assault, (ii) any offense against children as prohibited by §§ [18.2-361](#), [18.2-366](#), [18.2-370](#), and [18.2-370.1](#), or (iii) any assault and battery, and where the complaining witness was exposed to body fluids of the person so charged in a manner that may, according to the then-current guidelines of the Centers for Disease Control and Prevention, transmit a sexually transmitted infection, be requested to submit to diagnostic testing for sexually transmitted infections and any follow-up testing as may be medically appropriate. The person so charged shall be counseled about the meaning of the tests and about the transmission, treatment, and prevention of sexually transmitted infections.

If the person so charged refuses to submit to testing or the competency of the person to consent to testing is at issue, the court with jurisdiction of the case shall hold a hearing in a manner as provided by § [19.2-183](#), as soon as practicable, to determine whether there is probable cause that the individual has committed the crime with which they are charged and that the complaining witness was exposed to body fluids of the person so charged in a manner that may, according to the then-current guidelines of the Centers for Disease Control and Prevention, transmit a sexually transmitted infection. If the court finds probable cause, the court shall order the person so charged to undergo testing for sexually transmitted infections. The court may enter such an order in the absence of the person so charged if the person so charged is represented at the hearing by counsel or a guardian ad litem. The court's finding shall be without prejudice to either the Commonwealth or the person charged and shall not be evidence in any proceeding, civil or criminal. At any hearing before the court, the person so charged, or their counsel, may appear.

Any person who is subject to a testing order may appeal the order of the general district court to the circuit court of the same jurisdiction within 10 days of receiving notice of the order. Any hearing conducted pursuant to this subsection shall be held **in camera** as soon as practicable. The record shall be **sealed**. The order of the circuit court shall be final and nonappealable.

Confirmatory tests shall be conducted before any test result shall be determined to be



positive. The results of the tests shall be confidential as provided in [§ 32.1-127.1:03](#), however, the entity that performed the test shall also disclose the results to any victim and offer appropriate counseling.

The cost of such tests shall be paid by the Commonwealth and taxed as part of the cost of such criminal proceedings.

Document Type

DC-475, Civil Appeal Notice  
DC-3010, Request for Sexually Transmitted Infection Testing

Filing Type

GABT  
JAOT

Procedures

- Step 1** Clerk receives DC-475, CIVIL APPEAL NOTICE and copies of all paperwork, including the DC-3010, REQUEST FOR SEXUALLY TRANSMITTED INFECTION TESTING, from the district court.
- Step 2** There are no fees, appeal bond, writ tax or costs associated with this appeal.
- Step 3** The appeal shall be heard as soon as possible and is heard *in camera*. **Note:** Hearing type BTH is used to mask the hearing.
- Step 4** The record shall be sealed. The results of the tests shall be confidential.
- Step 5** Clerks sends copy of order to the district court.
- Step 6** The Clerk records and indexes orders in the Civil Order Book **under seal** unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

None

Form(s)

DC-475, Notice of Appeal – Civil  
DC-3010, Request for Sexually Transmitted Infection Testing  
CC-1390, Order for Testing

Reference(s)

[Va. Code § 18.2-61.1](#)  
[Va. Code § 32.1-127.1:03](#)

**Withdrawal of Appeal from District Court**

[Va. Code §16.1-106.1](#)

Document Type

Written Notice of Intent

Filing Type

N/A, as this is a motion filed in a case already before the court.

Procedures

- Step 1** Clerk receives written notice of intent to withdraw civil case, filed by the appealing party. Notice of intent to withdraw must be served on all parties or their counsel, in person or by first class mail.  
**NOTE:** Case must be properly filed in circuit court. Notice of intent to withdraw is served by party filing the notice.
- Step 2** Withdrawal hearing is set, no later than the date set for trial of the appeal.  
**Comments:** Use Hearing Type of AW (appeal withdrawn).
- Step 3** If withdrawal hearing set prior to trial date all parties are given notice of hearing, in person or by first class mail.  
**Comments:** If withdrawal hearing set on initial trial date, no new notice required. Notice of withdrawal hearing, if necessary, is served by court. Use CC-1340, NOTICE OF HEARING ON AN APPEAL FROM A DISTRICT COURT.

**Step 4** If objection to withdrawal received, such objection is to be served in person or first class mail on parties or their counsel.

**Comments:** Objection to withdrawal is served by party filing the objection. If objection is filed and served within a reasonable period after service of notice of intent to withdraw, the court, upon a showing of good cause, may decline to permit the withdrawal of the appeal.

**Step 5** If no written objection timely filed, the appeal shall be deemed to be withdrawn.

**Comments:** The court shall order disposing of the case in accordance with the judgment or order entered in the district court.

**Step 6** If neither party appears at the withdrawal hearing, the court may deem the appeal withdrawn without a motion. If the party who appealed the district court case does not appear at the withdrawal hearing, the court may upon motion of any party, enter an order treating the appeal as withdrawn.

**Comments:** Use Concluded by Code of WPT (withdrawn prior to trial.)

**Step 7** The court shall also order the disbursement of any cash bond posted to perfect such appeal. [Va. Code § 16.1-106.1\(F\)](#)

**Step 8** Unless the Court orders otherwise, any case arising from a JDR appeal, will be remanded back to JDR for purposes of enforcement and future modifications.

Fees/Taxes/Other Monies Assessed

None

## Appointment

### Church Trustees and Fraternal Organizations Trustees

Order that confirms appointment of church trustees or trustees for other fraternal organizations required by law to be confirmed by the court.

Document Type

Petition

Filing Type

AOCT

Procedures

**Step 1** Clerk receives application or petition from attorney or applicant.

**Comments:** Application or petition should be accompanied by minutes of the meeting in which the trustees were elected. Meeting minutes should include:

- New appointments;
- New retirees; and
- Changes in organization

**Step 2** Clerk collects and receipts for fee paid.

**Comments:** Clerk collects fee pursuant to [Va. Code § 17.1-275 A\(22\)](#) and receipts using Account Code 304.

**Step 3** Clerk or filing party prepares order detailing appointment(s).

**Step 4** Copy is given to attorney or mailed to the church making appointments.

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

**Comments:** Recording and/or Indexing may be done by electronic process or micrographic medium pursuant to [Va. Code § 17.1-240](#) and/or [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

See sample Application

Reference(s)

[Va. Code §§ 57-8; 57-18, 57-23](#)

Attorney General Opinion to Morton, dated March 17, 1987 (1986-87,

pages 84-85); ten-dollar fee authorized for each application filed in proceeding to appoint trustees of church.

Attorney General Opinion to McMurrin, dated December 3, 1987 (1987-88, pages 496-97); Proceeds from sale of property held by charitable organization may be distributed to similar charitable organization or other charitable purpose, but not to last surviving member.

Attorney General Opinion to Black, dated January 18, 1990 (1990, page 235) Wade 76 Va. 620 (1892); Writ tax not applicable to nonadversarial proceedings in circuit court; determination of adversarial vs. nonadversarial law and chancery proceedings.

<b>FEES</b>	
<b>TYPE CHARGES</b>	<b>CODE REFERENCE</b>
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(22)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 (13)(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
<i>*Not assessed if the amount of the civil action is \$500 or less</i>	

**Special Conservator of the Peace**

Upon the submission of an application from (i) any sheriff or chief of police of any county, city, or town; (ii) any corporation authorized to do business in the Commonwealth; (iii) the owner, proprietor, or authorized custodian of any place within the Commonwealth; or (iv) any museum owned and managed by the Commonwealth, a circuit court judge of any county or city shall appoint special conservators of the peace who shall serve as such for such length of time as the court may designate.

Upon an application made by a corporation authorized to do business in the Commonwealth, the owner, proprietor or authorized custodian of any place within the Commonwealth or any museum owned and managed by the Commonwealth, the court shall, prior to entering the order of appointment, transmit a copy of the application to the local attorney for the Commonwealth and the local sheriff or chief of police who may submit to the court a sworn, written statement indicating whether the order of appointment should be granted. However, a judge may deny the appointment for good cause, and shall state the specific reasons for the denial in writing in the order denying the

appointment.

Document Type

[CC – 1430, APPLICATION FOR APPOINTMENT OF SPECIAL CONSERVATOR OF THE PEACE](#)  
CC – 1431, Order For Appointment Of Special Conservator Of The Peace

Filing Type

COP

Procedures

**Step 1** Moving party submits a CC-1430, [APPLICATION FOR APPOINTMENT OF SPECIAL CONSERVATOR OF THE PEACE](#) along with the results of a background investigation, a temporary registration letter issued by the [Department of Criminal Justice Services](#) and evidence establishing the that proposed conservator of the peace is covered by a policy of liability insurance or self-insurance prior to seeking an appointment by the circuit court. **NOTE:** All applications and orders for appointments of special conservators of the peace shall be submitted on forms developed by the Office of the Executive Secretary of the Supreme Court of Virginia in consultation with the Department of Criminal Justice Services.

**Comment:** No official or employee of a school board or county, city, or town, its departments, or its agents shall submit an application for the appointment of a special conservator of the peace without attaching a written assessment from the chief law-enforcement officer of the locality stating the need for the appointment and recommending any limitations that should be included in the order of appointment to the application submitted to the court pursuant to [Va. Code § 19.2-13](#).

**Step 2** Clerk receipts for filing fee, opens a new case file and docket the case.

**Step 3** Upon an application made by a corporation authorized to do business in the Commonwealth, the owner, proprietor or authorized custodian of any place within the Commonwealth or any museum owned and managed by the Commonwealth, the court shall, prior to entering the order of appointment, transmit a copy of the application to the local attorney for the Commonwealth and the local sheriff or chief of police who may submit to the court a sworn, written statement indicating whether the order of appointment should be granted.

**Comment:** The court will complete Page 3 of the CC-1430, [APPLICATION FOR APPOINTMENT OF SPECIAL CONSERVATOR OF THE PEACE](#), directing the Clerk to transmit a copy to appropriate local law enforcement agencies.

**Step 4** The court shall appoint special conservators of the peace who shall serve as such for such length of time as the court may designate, but not exceeding four years under any one appointment, during which time the court shall retain jurisdiction over the appointment order.

**Comment:** A judge may deny the appointment for good cause, and shall state the specific reasons for the denial in writing in the order denying the appointment.

**Step 5** If court grants the CC-1431, ORDER FOR APPOINTMENT OF SPECIAL CONSERVATOR OF THE PEACE the clerk shall transmit copies to:

- [The Department of State Police](#),
- The clerk of the circuit court of each locality where the special conservator of the peace is authorized to serve, and
- The sheriff or chief of police of each such locality

**Step 6** If the court appointment includes any real property owned or leased by the corporation or business in other specifically named cities and counties not within the city or county wherein application has been made, the clerk shall transmit a copy of the order of appointment to:

The clerk of the circuit court for each jurisdiction where the special conservator of the peace is authorized to serve  
The sheriff or chief of police of each jurisdiction where the special conservator of the peace is authorized to serve.

**Step 7** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

**Comment:** The employer of any special conservator of the peace shall notify the circuit court, the Department of Criminal Justice Services, the Department of State Police, and the chief law-enforcement officer of all localities in which the special conservator of the peace is authorized to serve within 30 days after the date

such individual has left employment and all powers of the special conservator of the peace shall be void. Failure to provide such notification shall be punishable by a fine of \$250 plus an additional \$50 per day for each day such notice is not provided.

**Fees/Taxes/Other Monies Assessed**

[Circuit Court Civil Filing Fee Calculation](#)

**Form(s)**

CC-1430, [APPLICATION FOR APPOINTMENT OF SPECIAL CONSERVATOR OF THE PEACE](#)  
 CC-1431, Order For Appointment Of Special Conservator Of The Peace

**Reference(s)**

[Va. Code §§ 19.2-13, 19.2-14](#)

<b>FEES</b>	
<b>TYPE CHARGES</b>	<b>CODE REFERENCE</b>
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(18)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 (13)(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
Fee for preparing bond	<a href="#">Va. Code § 17.1-275 A(6)</a>
State Police fee for Processing order	<a href="#">Va. Code § 19.2-13</a>
* Not assessed if the amount of the civil action is \$500 or less	

**Special Conservator of the Peace-Revocation**

A judge also may revoke the appointment order for good cause shown, upon the filing of a sworn petition by the attorney for the Commonwealth, sheriff, or chief of police for any locality in which the special conservator of the peace is authorized to serve or by the Department of Criminal Justice Services. Prior to revocation, a hearing shall be set and the special conservator of the peace shall be given notice and the opportunity to be heard. The judge may temporarily suspend the appointment pending the hearing for good cause shown. A hearing on the petition shall be heard by the court as soon as practicable. If the appointment order is suspended or revoked, the clerk of court shall notify the Department of Criminal Justice Services, the Department of State Police, the applicable local law-



enforcement agencies in all cities and counties where the special conservator of the peace is authorized to serve, and the employer of the special conservator of the peace.

Document Type

Petition

Filing Type

COPR

Procedures

**Step 1** Petition filed by the attorney for the Commonwealth, sheriff, or chief of police for any locality in which the special conservator of the peace is authorized to serve or by the Department of Criminal Justice Services.

**Note:** No fee pursuant to [Va. Code § 17.1-266](#).

**Step 2** Clerk opens a new case file and docket the case. **Note:** It is recommended that the case be entered as -01 off the original case number.

**Step 3** Hearing on the petition shall be heard by the court as soon as practicable.

**Comment:** The judge may temporarily suspend the appointment pending the hearing for good cause shown.

**Step 4** If the appointment order is suspended or revoked, the clerk shall notify the

[Department of Criminal Justice Services](#)  
[The Department of State Police](#)

The applicable local law-enforcement agencies in all cities and counties where the special conservator of the peace is authorized to serve.

The employer of the special conservator of the peace.

**Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

None

Form(s)

Initiating forms are not provided by clerk's office.

Reference(s)

[Va. Code §§ 19.2-13](#)

### **Guardian/Conservator**

See "Suits/Action Types-Guardians- Guardian/Conservator Appointment" of this manual.

### **Special Justice**

The chief judge of a judicial circuit may appoint a special justice for the purpose of performing the duties required of a judge under [Va. Code § 37.2-803](#). The special justice is sometimes referred to as the "lunacy judge." This proceeding is not an action requiring the filing and docketing of a new civil action.

Document Type

None

Filing Type

FAS = ASJ Note: changes to PET when transferring to CCMS

Procedures

**Step 1** The chief judge enters an order appointing the special justice.

**Step 2** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

None

Form(s)

None

Reference(s)

[Va. Code § 17.1-266](#)

[Va. Code § 37.2-803](#)

### Standby Guardian/Standby Conservator

See "[Suits/Action Types-Guardians](#) – Standby Guardians/Standby Conservator-Appointment" of this manual.

### Approval Of The Right To Be Eligible To Register To Vote

A petition filed by a convicted felon seeking court approval of the restoration of the right to be eligible to register to vote. This procedure applies only to the right to vote, not to the other civil rights which are lost upon conviction of a felony. A felon must seek restoration of those rights directly by the Governor, through a petition lodged with the [Secretary of the Commonwealth](#).

Any person, other than a person (i) convicted of a violent felony as defined in [Va. Code § 19.2-297.1](#) or in subsection C of [Va. Code § 17.1-805](#) and any crime ancillary thereto, (ii) convicted of a felony pursuant to [Va. Code §§ 18.2-248](#), [18.2-248.01](#), [18.2-248.1](#), [18.2-255](#), [18.2-255.2](#) or [18.2-258.02](#), or (iii) convicted of a felony pursuant to [Va. Code § 24.2-1016](#), may petition the circuit court of the county or city in which they were convicted of a felony, or the circuit court of the county or city in which they presently reside, for restoration of their civil right to be eligible to register to vote. [Va. Code § 53.1-231.2](#)

Document Type

Petition

Filing Type

VOTE

Procedures

**Step 1** Petition is filed with the clerk of the circuit court.

**Comments:** Venue - Petitions are filed in the county of city in which the Petitioner resides or in the county or city in which the individual was convicted. [Va. Code § 53.1-231.2](#). Typical documents filed with the petition would include:

- Criminal history;

- Letter from Probation Officer outlining period of supervision;
- Letters of reference; and
- Proof of civic responsibility

**Step 2** The clerk receipts for filing fee (unless court approves proceeding in forma pauperis), opens a new case file and docket the case.

**Step 3** Hearing held.

**Step 4** Order entered approving or denying petition.

**Comments:** If petition is approved, the order must state that the petitioner's right to be eligible to register to vote may be restored by the date that is ninety days after the date of the court order, subject to the approval or denial of the Governor.

**Step 5** Clerk provides copy of Approval or Denial Order to the petitioner and sends (fax) a copy to the [Secretary of the Commonwealth](#).

**Note:** Secretary of the Commonwealth requests that all documents filed relating to the petition be forwarded with the copy of the court's order.

**Comments:** The Secretary of the Commonwealth shall transmit the order to the Governor for approval or denial. The Secretary of the Commonwealth shall send, within ninety days of the date of the court order, to the petitioner at the address stated on the court's order, a certificate of restoration of that right or notice that the Governor has denied the restoration of that right.

Appeal from the denial of restoration from circuit court would be to the Supreme Court. There is no right of appeal upon a denial from the Governor.

[Secretary of the Commonwealth](#)

P.O. Box 2454

Richmond, VA 23218

Fax: 804-371-0017

Telephone: 804-692-2531

**Step 6** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

**Comments:** Recording may be accomplished by microphotographic

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

CC-1402, [INFORMATION ABOUT PETITIONING A CIRCUIT COURT FOR APPROVAL OF THE RIGHT TO REGISTER TO VOTE](#)

CC-1403, [PETITION FOR APPROVAL OF THE RIGHT TO BE ELIGIBLE TO REGISTER TO VOTE](#)

CC-1404, Order Regarding Petition for Approval of the Right to be Eligible to Register to Vote

Reference(s)

[Va. Code §§ 53.1-231.1, 53.1-231.2](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(18)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 (13)(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

**Attachments**

An Attachment is a pre-judgment action to seize specific real or personal property of the debtor, to recover a debt or damages for a breach of contract or to recover damages for a wrong (violation of legal rights). The purpose of an Attachment is to bring property into legal custody prior to trial to protect the plaintiff's rights and interest in the property and to make sure that enough of the defendant's assets are available for sale by the sheriff to pay off any judgment which may be given to the plaintiff against the defendant, or to bring an out-of-state resident into the jurisdiction of the court.

The plaintiff executes a petition setting forth factual information sufficient to support the attachment. The petition should ask for an attachment against the specific personal property mentioned in the petition or the estate, indicate whether officer is to take possession of the

attachment and be sworn by plaintiff or their agent.

Document Type

Petition for Attachment

Filing Type

ATT

Procedures

**Step 1** Petition for attachment filed with clerk simultaneously with plaintiff bond.

**Comments:** Petition will include:

**If Personal Property:**

- Nature of personal property
- Estimated value of the property
- Character of the estate claimed by plaintiff
- Sum plaintiff is entitled to recover

**If to Recover a Debt, Damages, Breach of Contract:**

- State claim with certainty as will give defendant reasonable notice
- Minimum sum plaintiff is entitled to recover
- If claim for debt yet due and payable, the time(s) it will be due and payable.

See form DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#).

**Step 2** Clerk collects filing fees and if cash bond posted, collects bond and receipts to 503.

Plaintiff or representative for plaintiff will give bond as follows:

- 3) Approved Surety - in the amount of at least the fair market value of the attached property;
- 4) Cash Bond - in the amount of the fair market value of the attached property or
- 5) Property Bond - in the amount of twice the value of the attached property.

If only a levy on property sought, the bond amount is 100% of the estimated fair market value of the property to be levied on

**OR**

If seizure of the property is sought, the bond amount is double the estimated fair market value of the property seized. [Va. Code § 8.01-553](#).

**Comments:** If an agent or attorney-in-fact for the surety is entering into the bond, the clerk should:

- Ask for proof of their authority to enter into civil bond and bonds in the amount required to be posted, and
- Ask whether their power of attorney has been recorded in the circuit court where they enter into bond. [Va. Code § 38.2-2416](#).

**Note:** Copy of power of attorney should be attached to original of bond.

Fact that bond was given will be certified on process OR certified by the clerk to the serving officer. See sample certificate below. If certified by the clerk, the serving officer will return the certificate with the process.

Sample Certificate of Clerk to the Sheriff:

Pursuant to [Va. Code § 8.01-537.1](#), as amended  
I hereby certify that the plaintiff and surety have given bond in this case, evidenced by a copy of said bond attached to and made part of the process to be served upon the defendants in this matter.

Clerk name/address here

**Note:** This Certificate should be returned with the process evidencing serving officer.

**Step 3** Summons for attachment is prepared by clerk for judge's signature, if attachment is approved.

**Step 4** Petitioner takes petition and bond to judge (or magistrate) for an ex parte hearing to determine probable cause and statutory compliance of both petitioner and bond, and to sign attachment summons (if approved).

Defendant can give bond/performance bond on any attached property. Amount of bond as follows:

- If defendant seeks to retain property, the penalty is either double the value for which attachment issued or double the value of the property retained or returned.
- If defendant seeks return of property, bond in penalty of double the amount of value for which attachment issued or double the value of the property on which the attachment was levied.

**Comments:** Ex Parte hearing is used to review all such petitions. [Va. Code § 8.01-540](#). Ex Parte means in this context that only the plaintiff and/or their attorney are present at the hearing - the defendants are not given notice of the hearing.

**Step 5** Judge signs summons.

**Comments:** Summons cannot be issued until judge makes required findings. [Va. Code § 8.01-540](#).

**Step 6** Plaintiff, to expedite matters, takes to sheriff for service on:  
**Primary Defendant**

- Copy of petition
- Copy of bond
- Copy of summons (original used to make return)
- Copy of DC-407, Request FOR EXEMPTION HEARING

**Co-Defendant: same as above (except copy of summons used by sheriff for return).**

**Step 7** Case file established - if not done previously.

**Step 8** Bond placed in Bond Book and copy is placed in case file.

**Step 9** If defendant's bond is posted with sheriff, clerk places bond in Bond Book and places copy of bond in file.

**Step 10** Clerk receives sheriff's return (or summons).

**Step 11** Defendant prepares DC-407, [REQUEST FOR EXEMPTION HEARING](#) and files with clerk ([Va. Code § 8.01-546.2](#))

**Step 12** Clerk schedules hearing with judge and promptly notifies (via mailing copy of DC-407, [REQUEST FOR EXEMPTION HEARING](#) or a general notice of hearing) all litigants and sheriff of hearing date and exemption claim.

**Comments:** Hearing must be held within ten days of the of a filing DC-407, [REQUEST FOR EXEMPTION HEARING](#).

**Step 13** Hearing held and judge rules on exemptions that apply, if any.



**Step 14** Separate or contemporaneous hearing on merits held before judge.

**Step 15** Judgment entered (may direct sale of property by sheriff).

**Comments:** If prior to the sale of assets or distribution of money, a third party contests the attachment's validity or the ownership or lien interest of the property, and upon giving security for costs to the court, then inquiry into the matter is made and either party may demand a jury trial to hear the matter. [Va. Code § 8.01-573](#).

**Step 16** Clerk prepares a Writ of Possession for the return of specific property ([Va. Code § 8.01-470](#)) or a Writ of Fieri Facias for any monetary judgment or costs ([Va. Code § 8.01-466](#)).

**Step 17** Clerk docket in Judgment Lien Docket (if money judgment).

**Step 18** If applicable, judge notified of unclaimed/excess proceeds. Judge enters order as to disposition of funds (normally held under control of court - special court funds.) After twelve months if property unclaimed, clerk reports and submits funds under Unclaimed Property Act.

**Step 19** Clerk disposes of bond as follows:

**Plaintiff's bond**

- Examine court order.
- If plaintiff prevailed and judge so ordered, release the bond or refund surety. In the event a cash bond was posted, write
- disbursement check.
- If judgment is not in favor of the defendant, follow judge's order for direction on allocating bond.

**Defendant's bond** (e.g. forthcoming bond posted with sheriff)

- Examine court order.
- If defendant prevailed and judge so ordered, release the bond or refund surety.
- If defendant did not prevail, the bond posted under [Va. Code § 8.01-553](#) is forfeited to plaintiff in the amount awarded by the judge in the order.
- Refund any monies.

**Step 20** Clerk sends copy of final order to all parties.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

- DC-407, [REQUEST FOR HEARING-EXEMPTION CLAIM](#)
- DC-445, [ATTACHMENT PETITION](#)
- DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#)
- CC-1309, [BOND TO RETAIN POSSESSION](#)
- CC-1442, [ATTACHMENT SUMMONS](#)

Reference(s)

- [Va. Code § 8.01-533](#) et seq.
- [Va. Code§ § 17.1-272, 17.1-275 A\(7\)](#)
- [Va. Code § 42.1-70](#)
- [Va. Code § 58.1-1727](#)

Winfree v. Mann 154 Va. 683, 153 S.E. 837 (1930)  
 Attorney General Opinion to Zepkin, dated August 18, 1980 (1980-81, page 277); *A writ of attachment pursuant to § 8.01-533, et seq., is neither a formal action at law nor a bill in equity, but a statutory procedure, Winfree v. Mann, 154 Va. 683, 153 S.E. 837 (1930). Consequently, it is original process and falls within the narrow definition set down by § 1-13.23:1.*

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(7)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 (13)(26)</a>
Plaintiff's bond	<a href="#">Va. Code § 8.01-553</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Sheriff Fee	<a href="#">Va. Code § 17.1-272</a>
Writ Tax-Law	<a href="#">Va. Code § 58.1-1727</a>
* Not assessed if the amount of the civil action is \$500 or less	

**Augmented Estate**

See [Wills](#)-Elective Share and Augmented Estate in this manual.

**Authorization of Non-Ministers to Perform Marriages**

See [Marriages](#) – Authorization of Non-Ministers to Perform Marriages in this manual.

## Birth Certificate – Amendment

Every request for an amendment to a birth certificate shall be filed with and reviewed by the Virginia Department of Health (VDH) to determine whether the requested amendment can be made administratively or if a judicial order is required for such amendment. Upon approval, the VDH will amend the record without the necessity of a court order. Upon denial of the request, VDH shall notify the applicant in writing and will also include notice of the right to petition the circuit court for an order compelling VDH to amend the record.

**Comment:** Information about the process and the request form is available to the public on the VDH website.

**Note:** Virginia residents are required to file the petition in the jurisdiction in which they reside or the Circuit Court of the City of Richmond. For non-residents born in Virginia, the petition may be filed in any jurisdiction.

When a petition is filed, a copy of the petition shall be served upon the State Registrar.

The clerk shall submit such petition and any evidence received with the petition to the judge for entry of an order without the necessity of a hearing, unless the judge decides a hearing is necessary.

The clerk shall transmit a certified copy of the court's order to the State Registrar, who shall amend such birth certificate in accordance with the order.

### Document Type

Petition

### Filing Type

AVR

### Procedures

- Step 1** Clerk receipts filing and service fees, assigns case number, indexes the case and prepares the case file and/or electronic record.
- Step 2** A copy of the petition is served upon the State Registrar.
- Step 3** Clerk submits petition and any evidence received to judge for consideration and/or hearing. Upon setting of a hearing all

parties are notified of the date and time of hearing.

**Comment:** No hearing should be set or order entered until 21 days or more from date of service.

**Step 4** Court enters order granting or denying the petition.

**Step 5** Clerk certifies and remits copies of the order as directed by the Court.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Forms

No Form Petition or Order

References

[Va. Code §§ 32.1-269, 32.1-272](#)

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

**Bond**

See Forfeitures - Bail Bond in this manual.

## Chapter 7 - Suits/Action Types (C)

### Change of Sex

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

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

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

#### Document Type

No Form Petition

#### Filing Type

COS

#### Procedures

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

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

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Forms

Forms are not provided.

Reference(s)

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

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

### Child Abuse Or Neglect – Unfounded Complaint

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

Document Type

Petition

Filing Type

CAN

Procedures

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

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

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

**Note:**

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

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

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

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

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

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

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

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk’s office.

Reference(s)

[Va. Code § 63.2-1514 \(D\)](#)

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

### Civil Commitment for Sexually Violent Predators

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

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

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

Document Type

Petition

Filing Type

CSVP

Procedures



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

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

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

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

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

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

**Comments:** Copies are sent to the following:

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

The Respondent may hire counsel if they so desire.

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

**Comments:** Copies are sent to the following:

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

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

following:

- Petition for Civil Commitment as a Sexually Violent Predator
- Explanation of Process and Rights
- Appointment of Counsel Order
- Transportation Order
- Probable Cause Order (unsigned)

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

- Petition for Civil Commitment as a Sexually Violent Predator
- Explanation of Process and Rights
- Appointment of Counsel Order
- Transportation Order
- Probable Cause Order (unsigned)
- Continued Custody Order to continue confinement of the defendant pending a hearing. [Va. Code § 37.2-906](#).

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

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

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

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

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

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

**Comments:** The trial should be held within one hundred twenty (120) days of completion of the probable cause hearing. Either side

may be granted a continuance beyond this date for good cause shown or by agreement of the parties. The jury is to be composed of seven (7) persons from a panel of thirteen (13) and the verdict must be unanimous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Fees/Taxes/Other Monies Assessed

None

Form(s)

Initiating documents are provided from the Commitment Review Committee.

Reference(s)

[Va. Code § 37.2-900, et seq](#)

### Sexually Violent Predator Timeframes

Timeframe/Event	Action	Notes
	Petition filed in the circuit court for the judicial circuit or district in which: - the prisoner was last convicted of a sexually violent offense, or -the defendant was deemed unrestorably incompetent and referred for commitment review	<a href="#">Va. Code § 37.2-905</a>
Immediately	The Court shall enter a HOLD Order that, until final Order is entered in the proceeding. A prisoner shall remain in the secure custody of the Department of Corrections (DOC), or a defendant shall remain in the secure custody of the Department of Behavioral Health and Developmental Services (DBHDS)  The clerk shall mail a copy of the petition to: - the attorney appointed or retained for the respondent, and - the person in charge of the facility in which the respondent is then confined.  Prior to any hearing, the judge shall ascertain if the respondent is represented by counsel and, if not, shall appoint an attorney.	<a href="#">Va. Code § 37.2-906</a>
Within 90 Days of Receiving the	Schedule a probable cause hearing.	<a href="#">Va. Code § 37.2-906</a>

Timeframe/Event	Action	Notes
Petition	<p>At the probable cause hearing, the judge shall:</p> <ul style="list-style-type: none"> <li>-verify the respondent's identity, and</li> <li>-determine whether probable cause exists</li> </ul> <p>If there is probable cause, the case shall be set for trial.</p> <p>If there is not probable cause, the judge shall dismiss the petition, and as applicable, the respondent shall:</p> <ul style="list-style-type: none"> <li>- (DOC custody) remain in the custody of DOC until their scheduled release date</li> <li>- (Non-DOC) be ordered discharged, involuntarily admitted (<a href="#">Va. Code §§ 37.2-814 - 819</a>), or certified for admission (<a href="#">Va. Code § 37.2-806</a>)</li> </ul>	<p>Any hearing or proceeding under this section may be conducted using a two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses. Any system used shall meet the standards set forth in <a href="#">Va. Code § 19.2-3.1</a></p>
Within 120 Days After the Completion of the Probable Cause Hearing	<p>The court shall conduct a trial to determine whether the respondent is a sexually violent predator.</p> <p>The Attorney General or the respondent shall have a right to trial by jury. Seven persons from a panel of 13 shall constitute a jury in such cases. If a jury determines that the respondent is a sexually violent predator, a unanimous verdict shall be required. If no demand is made by either party for a trial by jury, the trial shall be before the court.</p>	<p><a href="#">Va. Code § 37.2-908</a></p> <p>A continuance extending the case beyond 120 days may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties.</p>
Not Found to be a Sexually Violent Predator	<p>The Court shall:</p> <ul style="list-style-type: none"> <li>- (DOC custody) return to DOC custody where they shall be released immediately if their scheduled release date has passed, or, held shall be held in the custody of DOC until their scheduled release date</li> <li>- (Non-DOC) order that they be discharged, involuntarily admitted (<a href="#">Va. Code §§ 37.2-814 - 819</a>), or certified for admission (<a href="#">Va. Code § 37.2-806</a>).</li> </ul>	<p><a href="#">Va. Code § 37.2-908</a></p>
Mistrial – New Trial Must be	<p>The court shall direct that the prisoner remains in the secure custody of the DOC, or</p>	<p><a href="#">Va. Code § 37.2-908</a></p>

Timeframe/Event	Action	Notes
Held Within 90 Days of the Previous Trial	the defendant remains in the secure custody of DBHDS until another trial is conducted.	
Found to be a Sexually Violent Predator	The court shall determine if: -The respondent shall be committed, or -The trial is continued for not less than 45 days nor more than 60 days to receive additional evidence on possible alternatives to commitment.	<a href="#">Va. Code § 37.2-908</a>
12 Months After the Date of Commitment	The court shall conduct a hearing to assess each respondent's need for secure inpatient treatment. -Hearings shall be conducted at yearly intervals for five years. -After five years, hearings shall be at biennial intervals. Court finding: Respondent is no longer a sexual violent predator: - Respondent is released from secure inpatient treatment.  Respondent continues to be a sexually violent predator: - Respondent is ordered to remain in custody of DBHDS for inpatient treatment, or - Respondent is conditionally released - must be subject to electronic monitoring.	<a href="#">Va. Code § 37.2-910</a>  A continuance extending the review may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties.  Whenever practicable, the hearing for assessment shall be conducted using a two-way electronic video and audio communication system that meets the standards set forth in <a href="#">Va. Code § 19.2-3.1</a> .

## Civil Contempt

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

Indirect contempt (outside the presence of the judge) is used to compel a person to comply with a prior order of the court, order to turn over property or to refrain from doing an act.

Punishment is typically conditional; a fixed or growing fine and/or an indefinite jail sentence until the person complies with the order of the court. In a civil contempt proceeding for failure to pay child support, if a circuit judge concludes that counsel for the respondent is required, payment from the Criminal Fund will be allowed for an attorney appointed to represent an indigent respondent.

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

Document Type

Petition to Show Cause

Filing Type

CCON

Procedures

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

- Step 1** Petitioner, in whose favor an order has been entered, files a petition to show cause why person should not be held in contempt for violation of the court's order.
- Step 2** For civil contempt in a pending action, no new case is opened. For civil contempt in an ended case, the Clerk sets up the civil contempt action as a subsequent action of the original case.  
  
**Comments:** It is recommended that the Clerk cross-reference the prior chancery case in the Case Management System to a new civil action.
- Step 3** Notice given to all parties.
- Step 4** Plenary hearing held.
- Step 5** Final order is indexed and recorded with certified copies sent to all parties.

Fees/Taxes/Other Monies Assessed

Indirect Contempt



[Circuit Court Civil Filing Fee Calculation](#)

Direct Contempt  
 No fees assessed.

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

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

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

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

**Complaint – Legal Cause Of Action Or Equitable Action**

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

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

Document Type

Complaint

Filing Type

COM

Procedures

**Step 1**

Clerk receives Complaint.

**Note:** Any divorce petitions, pleadings, motions, orders, or decrees, including any agreements of the parties or transcripts, shall not contain the social security number of any party or of any minor child of any party, or any financial information of any party that provides identifying account numbers for specific assets, liabilities, accounts, or credit cards. Such information if required by law to be provided to a governmental agency or required to be recorded for the benefit or convenience of the parties, shall be contained in a separate addendum filed by the attorney or party. Such separate addendum shall be used to distribute the information only as required by law. Such addendum shall otherwise be made available only to the parties, their attorneys, and to such other persons as the court in its discretion may allow. The attorney or party who prepares or submits a petition, pleading, motion, agreement, order, or decree shall ensure that any protected information is removed prior to filing with the clerk and that any separate addendum is incorporated by reference into the petition, pleading, motion, agreement, order or decree. [Va. Code § 20-121.03](#). See Form CC-1426, [ADDENDUM FOR PROTECTED IDENTIFYING INFORMATION](#)

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

**Addendum:**

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

**Step 2**

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

**Comments:** Clerk may request that a Cover Sheet be submitted

along with the Complaint. Reference CC-1416, [COVER SHEET FOR FILING CIVIL ACTIONS](#).

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

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

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

Reference(s)

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

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

## Compromise Settlement

An action to compromise and settle a matter involving damage to the person or property of a

person under a disability or death by a wrongful act. This action is sometimes referred to as an “Infant Settlement” or an “Agreed Settlement”.

**Document Type**

Petition

**Filing Type**

COMP

**Procedures**

**Step 1** Clerk receives petition from attorney or applicant.

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

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

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

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

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

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

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

**Step 5** Hearing held.

**Step 6** Court directs the proceeds of the compromise agreement.

**Comments:** Payment(s) will be made:

- to the court ([Va. Code § 8.01-600](#));

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

Fees/Taxes/Other Monies Assessed

Petition For Court Approval Of Settlement - No Action Filed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 8.01-6.3](#)  
[Va. Code § 8.01-85](#)  
[Va. Code § 8.01-424](#)

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

## Concealed Handgun Permit

### Application for Concealed Handgun Permit

Any person twenty-one years of age or older may apply in writing to the clerk of the circuit court of the county or city in which they reside, or if they are a member of the United States Armed Forces, the county or city in which they are domiciled, for a five-year permit

to carry a concealed handgun. There shall be no requirement regarding the length of time an applicant has been a resident or domiciliary of the county or city.

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

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

**CONFIDENTIALITY CONSIDERATIONS:** The clerk of court shall withhold from public disclosure the applicant's name and any other information contained in a permit application or any order issuing a concealed handgun permit, except that such information shall not be withheld from any law-enforcement officer acting in the performance of their official duties or from the applicant with respect to their own information. The prohibition on public disclosure of information under this subsection shall not apply to any reference to the issuance of a concealed handgun permit in any order book before July 1, 2008; however, any other concealed handgun records maintained by the clerk shall be withheld from public disclosure. [Va. Code § 18.2-308.02](#)

Document Type

Application

Filing Type

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

Procedures

- Step 1** Applicant presents application for permit along with any additional requirements as necessary.
- Step 2** The clerk shall enter on the application the date on which the completed application is received from the applicant.

**Comments:** An application is deemed complete when all information required to be furnished by the applicant is delivered

to and received by the clerk of court before or concomitant with the conduct of a state or national criminal history records check.

**Step 3** Clerk collects and receipts for money paid.

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

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

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

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

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

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

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

[Virginia Code §18.2-308.09](#) lists the circumstances such as convictions of criminal offenses that disqualify a person from

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

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

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

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



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

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

Form(s)

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

Reference(s)

[Va. Code § 18.2-308.02, et seq.](#)

### Renewal of Concealed Handgun Permit

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

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

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

The applicant may obtain their criminal history and submit it with the application and applicable fee; or the applicant may mail the application to the clerk with the fee, the clerk will receipt and forward to local law enforcement for the criminal history. A criminal history must be submitted. If the application is incomplete or the fee is incorrect, the clerk shall promptly notify the applicant. The Clerk may send the application back to the applicant or hold until receipt of the proper information or fee. [Va. Code § 18.2-308.010](#).

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

If the clerk has an electronic system for, and issuance of, concealed handgun permits and such system has the capability of sending electronic notices to permit holders and if a permit holder requests such notice on the concealed handgun application form, the clerk that issued the permit shall notify the permit holder by electronic mail at least 90 days prior to the permit expiration date that the permit will expire. The failure of a clerk to send the notice required by this subsection or the failure of the permit holder to receive such

notice shall not extend the validity of the existing permit beyond its expiration date.

**Note:** If the application is filed less than 90 days or more than 180 days from the expiration date of the current permit, the expiration date of the new permit is calculated based on the date the renewal order is signed.

### Transfer of Concealed Handgun Application

If an application is found to have been filed in the wrong jurisdiction, the circuit court judge may enter an order to transfer the application to another jurisdiction. If the order addresses the issue of a filing fee the clerk assesses, or does not assess, the fee as the order directs. If the transfer order is silent to the fee assessment, the clerk exercises their discretion. Some clerks who receive a transferred application still insist on receiving their own local fees, while others do not charge an additional fee.

### Replacement Permit for a Change of Address

#### [Va. Code § 18.2-308.011](#)

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

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

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

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

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

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

**Step 3** Clerk re-issues permit, using the original issue date. **Note:** The issue date is only changed when a criminal background check is initiated.

**Step 4** Clerk may collect an amount not to exceed \$10.00 (\$5.00 clerk, \$5.00 VSP). Receipt will populate with 304 and 104 account codes.

**Step 5** Clerk shall notify VSP of new address of permit holder.

### Replacement Permit for Lost or Destroyed Permit, Change of Name

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

[Va. Code § 18.2-308.011.](#)

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

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

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

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

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

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

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

## Denial of Concealed Handgun Permit - Petition for Review

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

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

### Document Type

Petition for Review

### Filing Type

CHP

### Procedures

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

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

**Notes:**

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

**Step 2** Court of Appeals reviews petition.

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

Form(s)

None

Reference(s)

[Va. Code § 18.2-308.08](#)

### Revocation/Suspension of Concealed Handgun Permit

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

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

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

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

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

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

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

- issue a show cause summons to be served upon the permittee ordering the

permittee to appear for a hearing and show cause why the permit should not be revoked or suspended;

- upon a finding the permit should be revoked or suspended, order the permittee to surrender the permit and issue and order suspending or revoking the permit, and;
- the clerk should forward certified copies of the order to State Police (CCRE), local law enforcement officials and the Commonwealth's Attorney.

**Note:** No fees apply.

## Condemnation/Eminent Domain/Inverse Condemnation and Related Procedures

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

### Document Type

#### Land Recordings

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

**Note:** As of July 1, 2022, any funds deposited with the court shall be deposited in an interest-bearing account. [Va. Code §§ 25.1-237, 25.1-308, 25.1-315, 33.2-1019, 33.2-1026.](#)

#### Case Filings

The following provide procedures that highlight many of the court

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

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

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

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

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

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

Occasionally, the filer of a Certificate of Take or Deposit will seek to revise,

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

### Summary Condemnation “Quick Take” Procedures

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

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

Who may use summary condemnation “quick take” procedures:

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

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

- Localities;
  - Only to condemn easements for streets and roads, drainage facilities, oyster bottoms, water supply and sewage disposal systems and water, sewer, and governmentally owned gas and utility lines and pipes. [Va. Code § 15.2-1902](#)
  - May not use the summary procedures to condemn the property of public service corporations, [Va. Code § 15.2-1904](#), or to condemn a water or sewage treatment system in its entirety. [Va. Code § 15.2-1902 \(2\)](#)
- Electric Authorities;
  - Governed by Chapter 54 of Title 15.2 ([Va. Code § 15.2-5400](#)) have eminent domain power and may employ summary condemnation proceedings.



- May not use their eminent domain power to acquire existing power supply facilities or power supply plants held for future use. [Va. Code § 15.2-5425](#).
- May not exercise eminent domain powers outside of their territorial limits unless they obtain the consent of the affected locality or a court order waiving the requirement for such consent.
- Sanitary Districts;
  - May employ summary condemnation to acquire land for the purpose of constructing water lines, sewer lines, water treatment plants, and sewage treatment plants. [Va. Code §§ 21-118 \(10\)\(b\)](#) and [21-118 \(10\)\(C\)](#).
  - Summary procedures may not be used to acquire existing waterworks systems. [Va. Code § 21-118\(10\)\(a\)](#).
- Jamestown-Yorktown Foundation. Entity's use of summary condemnation procedures is limited only by a requirement that such use advance the purposes of the agency.
- Department of Conservation and Recreation. Entity's use of summary condemnation procedures is limited only by a requirement that such use advance the purposes of the agency.

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

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

#### Definitions

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

- "Certificate" means an instrument that, when recorded in the office of the clerk of the circuit court wherein condemnation proceedings are pending or are to be instituted by the Commissioner, terminates the interest or estate of the owner of the property described therein and vests defeasible title to such property or interest or estate of the owner in the Commonwealth.

“Certificate” includes a certificate of deposit and a certificate of take.

- “Certificate of deposit” means a certificate issued by the Commonwealth Transportation Commissioner and countersigned by the State Treasurer, stating that any sum or sums designated therein shall be paid pursuant to the order of the court, and which is filed by the Commissioner with the court wherein condemnation proceedings are pending or are to be instituted in lieu of the payment of funds into court, as provided in subdivision A 2.
- “Certificate of take” means a certificate recorded by the Commissioner with the court wherein condemnation proceedings are pending or are to be instituted, in connection with which the Commissioner has deposited funds with the court as provided in subdivision A 1.

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

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

Filing Type

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

## Procedures

### Summary Condemnation

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

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

**OR**

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

**Note:** As of July 1, 2022, any funds deposited with the court shall be deposited in an interest-bearing account. [Va. Code §§ 25.1-237, 25.1-308, 25.1-315, 33.2-1019, 33.2-1026](#).

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

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

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

**Comments:** Certificate shall set forth the description of the property being taken or damaged, and the owner or owners,

if known, of such property.

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

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

**Note:** As of July 1, 2022, any funds deposited with the court shall be deposited in an interest-bearing account. [Va. Code §§ 25.1-237, 25.1-308, 25.1-315, 33.2-1019, 33.2-1026](#).

**Comments:** For funds invested by the clerk, any interest accrued on the funds is payable to the person(s) entitled to receive such funds. [Va. Code §§ 25.1-224\(E\)](#) and [25.1-310\(E\)](#). funds. [Va. Code § 25.1-310\(E\)](#).

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

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

**Comments:** If the property affected by the certificate is situated in two or more localities, the clerk of the court wherein the certificate is recorded shall certify a copy of such certificate to the clerk of the court of the locality in which any portion of the property lies. The clerk shall record the same

in the Deed Book and index it in the manner prescribed in [Va. Code §§ 25.1-307 \(B\)](#), [25.1-309](#) and [33.2-1027](#).

#### Determination of Final Compensation

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

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

- The authorized condemnor and the original owner may agree as to the amount of compensation to be paid. [Va. Code §§ 25.1-317](#) and [33.2-1027](#).
- The authorized condemnor may institute formal condemnation proceedings if either: (i) it is unable to agree upon the amount of compensation with the original owner or (ii) one or more owners cannot be ascertained or are under a disability. [Va. Code §§ 25.1-313](#) and [33.2-1027](#).

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

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

#### Reconciliation

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

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

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

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

#### Distribution of Funds

Any person shown by the Certificate of Take to be entitled to compensation may petition the court for the distribution of some or all of such funds. The court must distribute the funds to the person indicated on the Certificate of Take unless the record shows any dispute as to the ownership of such funds or the condemnor shows cause why the funds should not be distributed.

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

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

- Step 1** Petition for the distribution of all or any part of the funds is filed by any person shown by a certificate to be entitled to funds deposited with the court or represented by a Certificate of

Deposit. [Va. Code §§ 25.1-310 \(A\)](#) and [33.2-1023](#).

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

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

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

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

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

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

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

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

**Comments:** Recording may be accomplished by microphotographic or electronic recording process per [Va. Code](#)

[§ 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

#### Amendment to Certificate

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

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

- Step 1** Petition is filed by the authorized condemnor with the court setting forth any error made in such certificate or necessity of change. [Va. Code §§ 25.1-312\(C\)](#) and [33.2-1024](#).
- Step 2** Clerk collects and receipts for fees and sets up a CIVIL matter.
- Step 3** Court denies petition or may enter an order permitting the reformation, alteration, revision, amendment or invalidation, in whole or in part, of the certificate. [Va. Code §§ 25.1-312 \(D\)](#) and [33.2-1024](#).
- Step 4** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. This order, together with any revised certificate that may be necessary should also be recorded in the Deed Book. [Va. Code §§ 25.1-312 \(C\)](#) and [33.2-1024](#).

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

#### Agreed Upon Settlement

At any time after the recordation of a certificate, but prior to the institution of condemnation proceedings, if the authorized condemnor and the owner of the property taken or damaged agree as to compensation for the



property taken and damages, if any, caused by such taking, the authorized condemnor shall file with the court a petition so stating.

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

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

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

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

**Step 3** Court enters order.

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

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

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

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

#### Petition by Owner for Determination of Just Compensation

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

Petition is filed if:

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

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

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

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

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

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

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

**Comments:** Procedures would continue under [Va. Code § 25.1-](#)

[230](#) - Measure of just compensation; oaths of members of body determining just compensation.

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

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

#### Condemnation Proceedings

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

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

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

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

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

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

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

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

**Step 3** Petitioner gives the owners twenty-one days notice of the filing of such petition and of its intention to apply to the court to ascertain just compensation for the property to be taken or affected as a result of the taking and use by the petitioner of the property to be so acquired. [Va. Code § 25.1-209](#).

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

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

**Comments:** Such order shall be published in a newspaper published in the county or city where the property or major portion thereof is located, or if there is no such newspaper then in a newspaper having a general circulation in such city or county, once a week for not less than two successive calendar weeks and shall be posted on the front door of the courthouse within ten days after the entry of the order of publication.

**Note:** Costs of publication will be paid by petitioner. [Va. Code § 17.1-626](#).

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

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

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

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

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

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

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

**Comments:** Court approves if found that:

- A public necessity or an essential public convenience requires such entry for such purposes;
- An emergency exists justifying such entry before the time when just compensation can be determined and the amount so determined paid into court; and

- The interests of the owners of such property will be adequately protected by (i) the payment into court for the benefit of the owners of the amount of the offer made in accordance with [Va. Code § 25.1-204](#) or (ii) if no offer is required by that section, by the payment into the court of the amount of a good faith estimate of the value of the property.

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

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

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

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

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

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

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

**Comments:** In order to enable the court to determine the proper disposition of the fund and any interest accrued thereon, the court

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

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

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

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

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

#### Fees/Taxes/Other Monies Assessed

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

#### Form(s)

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

Reference(s)

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

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

**Confession of Judgment**

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

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

Document Type

Confession of Judgment

Filing Type



CJ

Procedures

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

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

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

**Comments:** Creditor needs to file note (bond or other obligation), if there be such, with the Confession of Judgment. Clerk endorses upon confession a certificate notifying the date and time the judgment was confessed. **Note:** bond or other evidence of debt must contain (in bold-face print) IMPORTANT NOTICE: This instrument contains a confession of judgment provision which constitutes a waiver of important rights you may have as a debtor and allows the creditor to obtain a judgment against you without any further notice.

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

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

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

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

[437.](#)

**Step 5** Clerk assigns a case number and prepares file.

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

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

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

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

**Step 9** If a Clerk's order is prepared in addition to the CC-1420, Confession of Judgment/Certificate of Clerk, the clerk signs, records and indexes the order in the Civil Order Book unless otherwise provided by law. [Va. Code §§ 8.01-431](#) and [8.01-432](#).

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

**Step 10** Clerk issues service (certified copy of clerk's order containing notice and Writ of Fieri Facias (if execution requested by plaintiff) with form for requesting an exemption hearing) within twenty-one days from date of entry of judgment on debtor; clerk notes service in Judgment Lien Docket "Book" (whether using microfilm, scanning or actual book).

**Step 11** Clerk receives sheriff's return and records in process book. Serving officer has ten days to make return to court. Clerk will file order with case papers. Judgment is void if no service within sixty days. [Va. Code § 8.01-438](#). If order not served within sixty days of entry in the order book, the judgment becomes void. Clerk is not required to

enter in Judgment Lien Docket the failure of service. *See Attorney General Opinion to Barry, dated 06/29/90; No statutory requirement that clerk record failure of service upon judgment debtor within requisite sixty days.*

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

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

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

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

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

Whenever any such judgment is set aside or modified the case shall

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

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

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

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

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

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

**Step 14** Contested case proceeds as any other civil case.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

CC-1420, [CONFESSION OF JUDGMENT/CERTIFICATE](#)  
CC-1442, Judgment Lien Docket - Subsequent Entries

Reference(s)

[Va. Code § 8.01-432](#) et seq.  
*Attorney General Opinion to Barry, dated 6/29/90 (1990, pages 27-29); Re: requirement to note in judgment lien docket failure to execute within 60 days*  
*Attorney General Opinion to Barry, dated 11/14/91 (1991, pages 24-26); Re: inclusion of attorney fees*  
*Attorney General Opinion to Frey, dated 10/17/97 (1997, pages 24-27); Re:*

*inclusion of attorney fees and writ of execution*

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

## Consolidation of Counties

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

### Document Type

Consolidation Agreement between Counties and Petition

Petition Requesting Consolidation Agreement

### Filing Type

FAS = CON, changes to PET when transferring to CCMS

### Procedures

Consolidation Agreement between Counties and Petition

**Step 1** Agreement and Petition filed with one county circuit court judge with copies to the other county circuit court judge. Papers are not filed with clerk of the circuit court.

**Step 2** Publication of Agreement is listed in local newspaper and copy of such is posted at or near the front door of each county

courthouse.

**Comments:** The cost of the publication shall be paid by the petitioner or applicant. [Va. Code § 8.01-316 \(B\)](#).

**Step 3** Order for Election entered in accordance with [Va. Code § 24.2-684](#).

**Step 4** Clerk sends copy of the Order to the [State Board of Elections](#).

#### Petition Requesting Consolidation Agreement

**Step 1** Petition of 10% of qualified county voters filed with board of supervisors with copy sent to the county circuit court judge initiating action by either the board or by a committee appointed by the judge in lieu of the board to develop a consolidation agreement. Papers are not filed with clerk of the circuit court.

**Step 2** STEPS (1)-(4) in a. "Consolidation Agreement" above are followed in addition to procedures required by [Va. Code § 24.2-684](#). See "Referendum Elections."

#### Fees/Taxes/Other Monies Assessed

By Voters

[Circuit Court Civil Filing Fee Calculation](#)

By locality

None

Form(s)

No forms provided by the clerk's office.

Reference(s)

[Va. Code § 15.2-3501](#), et seq

[Va. Code 17.1-266](#)

[Va. Code § 24.2-684](#)

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

### Construe/Establish/Reform Wills

See Wills – This manual.

### Contracts

#### Rescission of Contract

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

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

#### Document Type

Complaint

#### Filing Type

COM

#### Procedures

- Step 1** Clerk receives Complaint.
- Step 2** Clerk receipts for money received, assigns a CIVIL case number, docket case and issues process as directed.
- Step 3** Clerk records and indexes orders in the Civil Order Book

unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

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

Reference(s)

Frazier v. Campbell, 1 Va. Dec. 165 (1879)  
[Va. Code § 8.2-209](#)

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

**Seeking Damages & Performance**

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

Document Type

Complaint

Filing Type

CNTR



Procedures

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

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

- CC-1400, SUMMONS – CIVIL ACTION
- CC-1405, PROOF OF SERVICE
- [CC-1406, ACCEPTANCE/WAIVER OF SERVICE OF PROCESS AND WAIVER OF FUTURE SERVICE OF PROCESS AND NOTICE](#)
- CC-1407, [SERVICE OTHER THAN BY VIRGINIA SHERIFF](#)
- CC-1418, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#)
- CC-1434, ORDER OF PUBLICATION

Reference(s)

- [Va. Code §§ 8.01-27, 8.01-28, 8.01-29, 8.01-30, 8.01-31, 8.01-32, 8.01-33](#)
- [Va. Code § 8.01-446](#)
- [Va. Code § 8.2-502](#)
- [Va. Code § 8.2-716](#)
- [Rules 3:2, 3:3, 3:4](#)

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

### Seeking Money Damages

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

Document Type

Complaint

Filing Type

CNTR

Procedures

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office. Clerk has available:  
CC-1400, SUMMONS – CIVIL ACTION  
CC-1405, PROOF OF SERVICE  
[CC-1406, ACCEPTANCE/WAIVER OF SERVICE OF PROCESS AND WAIVER OF FUTURE SERVICE OF PROCESS AND NOTICE](#)  
CC-1407, [SERVICE OTHER THAN BY VIRGINIA SHERIFF](#)  
CC-1418, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#)  
CC-1434, ORDER OF PUBLICATION

Reference(s)

[Va. Code §§ 8.01-27, 8.01-28, 8.01-29, 8.01-30, 8.01-31, 8.01-32, 8.01-33](#)  
[Va. Code § 8.01-446](#)  
[Rules](#) 3:1, 3:2, 3:3, 3:4

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(13)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(13)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>

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

**Seeking Specific Performance**

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

Document Type

Complaint

Filing Type

PERF

Procedures

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office. Clerk has available:  
 CC-1400, SUMMONS – CIVIL ACTION  
 CC-1405, PROOF OF SERVICE  
[CC-1406, ACCEPTANCE/WAIVER OF SERVICE OF PROCESS AND WAIVER OF FUTURE SERVICE OF PROCESS AND NOTICE](#)

- CC-1407, [SERVICE OTHER THAN BY VIRGINIA SHERIFF](#)
- CC-1418, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#)
- CC-1434, ORDER OF PUBLICATION

Reference(s)

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

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

**Convey/Encumber Church Property**

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

Document Type

Petition

Filing Type

RE

Procedures

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk’s office.

Reference(s)

Va. Code § 57-15  
 Attorney General Opinion to Black, dated 1/18/90 (1990 page 236); Writ tax not applicable to nonadversarial proceedings in circuit court; determination of adversarial vs. *nonadversarial law and chancery proceedings*

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk’s Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(13)(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
Sheriff’s fee, if applicable (per local service)**	<a href="#">Va. Code § 17.1-272</a>

FEES	
TYPE CHARGES	CODE REFERENCE
Sheriff's fee, if applicable (per out-of-town service)**	<a href="#">Va. Code § 17.1-272(1)</a> <a href="#">Va. Code § 17.1-272</a>
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(13)(26)</a>
* Not assessed if the amount of the civil action is \$500 or less	
**No fee collected if service is waived by Commonwealth's Attorney	

### Correction of Erroneous or Improper Assessments of Local Levies

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

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

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

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

Document Type

Application

Filing Type

CTAX

Procedures

- Step 1** Applicant files an application with the clerk of the circuit court.
- Step 2** Clerk follows procedures set out in the chapter, “Legal Causes of Action – Complaint” of this manual.
- Step 3** Although not specifically required by statute, a copy of the application should be mailed to the county or city attorney for the Commonwealth required to defend the application.

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

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

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

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

## Correction of Erroneous or Improper Assessments of State Tax

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

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

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

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

Document Type

Application

Filing Type

CTAX

Procedures

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

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

See [Va. Code § 58.1-1829](#):

no costs assessed against the Commonwealth;

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

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

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



statute and Rule.

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

- Step 2** The clerk follows procedures set out in “Complaint (Legal cause of action)”, in this manual.
- Step 3** The clerk records any bond filed with the Court by the applicant in the Bond Book, and places a copy in the court file. [Va. Code § 17.1-230](#)
- Step 4** The clerk indexes and images/scans all orders entered by the Court.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk’s office.

Reference(s)

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

## Correct Orders - Default Judgment/Pro Confesso

Notwithstanding the provisions of [Va. Code § 8.01-428](#), in any civil action or proceeding in which the defendant does not make an appearance, the court shall not enter a judgment by default until the plaintiff files with the court an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. Subject to the provisions of [Va. Code § 8.01-3](#), the Supreme Court shall prescribe the form of such affidavit, or the requirement for an affidavit may be satisfied by a written statement,

declaration, verification or certificate, subscribed and certified or declared to be true under penalty of perjury. Any judgment by default entered by any court in any civil action or proceeding in violation of Title II of the Servicemembers Civil Relief Act (50 U.S.C. Appx. §§ 501 et seq.) may be set aside as provided by the Act. See Form DC-418, [Affidavit-Default Judgment Servicemembers Civil Relief Act](#)

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

### **Amendment of Final Decree, etc. in Original Action**

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

#### Subsection A:

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

#### Subsection B:

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

#### Subsection C:

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

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

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

### Document Type

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

### Filing Type

FAS = CORD, changes to PET when transferring to CCMS

### Procedures

**Step 1** Aggrieved party files either a motion or complaint.

**Comments:** Refer to discussion above.

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

**Comments:** See “Case Initiation” this manual for respective procedures.

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

### Form(s)

Initiating documents not provided by clerk’s office.

### Reference(s)

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

## Counterclaim

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

Within twenty-one days after service on them of the summons, a defendant may, at their option, plead as a counterclaim any cause of action for a money judgment against the plaintiff or all plaintiffs jointly, whether or not it grows out of any transaction mentioned in the summons, whether or not it is for liquidated damages, whether it is tort or contract, and

whether or not the amount demanded in the counterclaim is greater than the amount demanded in the complaint. Rule 3:9.

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

Document Type

Counterclaim

Filing Type

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

Procedures

**Step 1** Counterclaim is filed with clerk.

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

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

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

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

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

Fees/Taxes/Other Monies Assessed

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

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

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

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

**Cross Claim**

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

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

Document Type

Cross Claim

Filing Type

CROS

Procedures

**Step 1** Defendant files cross-claim with clerk.

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

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

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

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

**Step 4** Clerk issues process as directed.

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

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

Fees/Taxes/Other Monies Assessed

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

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

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

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

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

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

## Custodian – Virginia Uniform Transfers to Minors Act

### Duties of a Custodian

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

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

### Incidents Involving a Petition to Circuit Court

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

- Petition to the circuit court for an accounting by and determination of liability of custodian. [Va. Code § 64.2-1918](#)

Document Type

Petition

Filing Type

UTMA

Procedures

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

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

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

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

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

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

**Step 5** Clerk files all returns, etc.

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



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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 64.2-1900](#), et seq.

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

## Chapter 8 - Suits/Action Types (D-F)

### Death Certificate – Amendment

A death certificate may be amended only in accordance with [Va. Code § 32.1-269.1](#) and by regulations adopted by the State Board of Health. The Board prescribes by regulation the conditions under which omissions or errors on death certificates may be corrected.

Circuit court will be involved in three instances:

[Per Va. Code § 32.1-269.1 \(D\)](#), the State Registrar, upon receipt of an affidavit and supporting evidence testifying to corrected information on a death certificate more than 45 days after the filing of a death certificate, including the correct spelling of the name of the deceased, the deceased's parent or spouse, or the informant, the sex, age, race, date of birth, place of birth, citizenship, social security number, education, occupation or kind or type of business, military status, or date of death of the deceased, the place of residence of the deceased, if located within the Commonwealth, the name of the institution, the county, city, or town where the death occurred, or the street or place where the death occurred, shall amend such death certificate to reflect the new information and evidence.

[Per Va. Code § 32.1-269.1 \(F\)](#), when an applicant, as defined by the regulations of the Board, does not submit the minimum documentation required by regulation to amend a death certificate or when the State Registrar finds reason to question the validity or sufficiency of the evidence, the death certificate shall not be amended and the State Registrar shall so advise the applicant. An aggrieved applicant may petition the circuit court of the county or city in which they reside, or the Circuit Court of the City of Richmond, for an order compelling the State Registrar to amend the death certificate, an aggrieved applicant who is currently residing out of state may petition any circuit court in the Commonwealth for such an order. A copy of the petition shall be served upon (i) the State Registrar pursuant to Chapter 8 (§ 8.01-285 et seq.) of Title 8.01 and (ii) any person listed as an informant on the death certificate unless such person provides an affidavit in support of such petition. The clerk shall submit such petition and any evidence received with the petition to the judge for entry of an order without the necessity of a hearing, unless the judge decides a hearing is necessary. The State Registrar or their authorized representative may appear and testify in such proceeding. The clerk shall transmit a certified copy of the court's order to the State Registrar, who shall amend such death certificate in accordance with the order.

[Per Va. Code § 32.1-269.1 \(E\)](#), For death certificate amendments received more than 45 days after the filing of a death certificate, other than the correction of information by the State Registrar pursuant to subsection D, the surviving spouse or immediate family, as defined by the regulations of the Board, of the deceased; attending funeral service licensee; or other reporting source may file a petition with the circuit court of the county or city in which the decedent

resided as of the date of their death, or the Circuit Court of the City of Richmond, requesting an order to amend a death certificate, along with an affidavit sworn to under oath that supports such request. A copy of the petition shall be served upon (i) the State Registrar pursuant to Chapter 8 ([§ 8.01-285](#) et seq.) of Title 8.01 and (ii) any person listed as an informant on the death certificate, unless such person provides an affidavit in support of such petition. The clerk shall submit such petition and any evidence received with the petition to the judge for entry of an order without the necessity of a hearing, unless the judge decides a hearing is necessary. The clerk shall transmit a certified copy of the court's order to the State Registrar, who shall amend such death certificate in accordance with the order. The matters for which a petition may be filed include changing the name of the deceased, the deceased's parent or spouse, or the informant, the marital status of the deceased, or the place of residence of the deceased, when the place of residence is outside the Commonwealth.

For either petition filed, a copy of the petition shall be served upon the State Registrar and any person listed as an informant on the death certificate, unless such person provides an affidavit in support of such petition.

The clerk shall submit such petition and any evidence received with the petition to the judge for entry of an order without the necessity of a hearing, unless the judge decides a hearing is necessary.

The clerk shall transmit a certified copy of the court's order to the State Registrar who shall amend such death certificate in accordance with the order.

Document Type

Petition

Filing Type

AVR

Procedures

- Step 1** Clerk receipts filing payment and service fee, assigns case number, indexes the case and prepares the case file and/or electronic record.
- Step 2** Copies of the petition are served upon the State Registrar and any person listed as an informant on the death certificate unless such person provides an affidavit in support of such petition.
- Step 3** Clerk submits petition and any evidence received to judge for

entry of order without a hearing.

Judge reviews [CC-1453, PETITION FOR AMENDMENT OF A DEATH CERTIFICATE](#) and may decide a hearing is necessary.

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

**Step 4** Court enters CC-1454, ORDER FOR AMENDMENT OF A DEATH CERTIFICATE, granting or denying the [CC-1453, PETITION FOR AMENDMENT OF A DEATH CERTIFICATE](#).

**Step 5** Clerk certifies and remits copies of the CC-1454, ORDER FOR AMENDMENT OF A DEATH CERTIFICATE to the State Registrar and as directed by the court.

Office of Vital Records  
Attn: Special Services  
PO Box 1000  
Richmond, VA 23218-1000

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Forms

[CC-1453, PETITION FOR AMENDMENT OF A DEATH CERTIFICATE](#)  
CC-1454, Order for Amendment Of A Death Certificate

References

[Va. Code § 32.1-269.1](#)  
[Va. Admin Code § 12VAC5-550-440](#)

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

## Declaratory Judgment

A Declaratory Judgment is a remedy for the determination of a claim of right where the plaintiff is in doubt as to their legal rights. It is a binding adjudication of the rights and status of litigants, even though no consequential relief is awarded. Black's Law, 5th edition. Simply stated, it is a request of the court for determination or decision which states the rights of the parties to a dispute. An actual justiciable controversy must exist in order to file for this type of relief. Examples of reasons for this action include: interpretation of deeds, wills, other instruments, statutes, municipal ordinances and governmental regulations.

[Virginia Code § 8.01-188](#) provides that in a declaratory judgment action or in an action for the granting of further relief, if issues of fact are present the issues may be submitted to a jury for a special verdict, i.e., in the form of interrogatories with proper instructions by the court, whether a general verdict be required or not.

### Document Type

Complaint

### Filing Type

DECL

### Procedures

- Step 1** Plaintiff/Complainant files their Complaint with clerk.
- Comments:** Sufficient copies of Complaint should be supplied upon filing for service on defendant(s)/respondent(s).
- Step 2** Clerk receipts for money collected.
- Step 3** Clerk sets up case file, assigns a CIVIL case number and docket case.
- Step 4** Clerk issues process.
- Step 5** Clerk certifies copies of any Orders of court for the parties upon request or upon direction of the court.

### Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 8.01-184](#) et seq.

[Va. Code § 8.01-428](#)

Attorney General Opinion to Ridley, dated 10/7/69 (1969-70, page 52);  
 CLERKS - Fees - Where suit for declaratory judgment filed in both law and  
 chancery side of the court.

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

**Declare Death**

Petition requesting court to pronounce individual deceased. A person for seven years not heard of by those who, had they been alive, would naturally have heard of them, is presumed to be dead. The law raises no presumption as to the precise time of death. The burden of proving that the death took place at any particular time within the seven years lies upon the person claiming right to the establishment of which the fact is essential.

Petition to declare a person dead who has disappeared for seven consecutive years and has not been heard from at any time during that period. In cases of a person disappearing from a ship or vessel at sea or on board an aircraft which disappeared at sea, whose body is not found or identified, that person is presumed dead upon the finding of a board of inquiry that the person is presumed dead or within six months from the date of disappearance, whichever occurs first. This action is used to petition the court to grant letters of administration and/or probate the will of a missing person.

Document Type

Petition

Filing Type

DDTH

Procedures

**Step 1** Petitioner files a Petition to declare a person dead.

**Comments:** Petition would be filed in the clerk's office of the court that would have jurisdiction for probate or for granting letters of administration on the estate of the missing person.

**Step 2** Clerk assigns case number, indexes the case and prepares the case file. See "Case Initiation" chapter for respective procedures.

**Step 3** Clerk receipts money collected.

**Step 4** PROCEDURE DECISION: Is a will offered for probate or letters of administration requested? If yes: GO TO STEP 5; If no: GO TO STEP 6.

**Step 5** Court will order request to be advertised in a local city or county newspaper. [Va. Code § 64.2-2304](#). (if petitioner is seeking probate of a will or letters of administration)

**Comments:** Advertisement shall be published once a week for four consecutive weeks. Advertisement will have the date on which evidence will be heard by the court, which will be at least two weeks from final advertisement, concerning the alleged absence of the supposed decedent.

**Step 6** Hearing held.

**Step 7** PROCEDURE QUESTION: Does court determine that missing person has been absent for more than seven but less than twenty years? If yes: GO TO STEP 9; If no: GO TO STEP 10

**Step 8** Court will publish advertisement in a local county or city newspaper as well as in a newspaper published near where the person was last heard from. [Va. Code § 64.2-2304](#)

**Comments:** Notice is to be advertised once a week for two consecutive weeks. **Note:** Notice is not required if court

determines that person has been missing for more than twenty years.

**Step 9** Final Order is entered.

**Comments:** Matter of probate of will or request for letters of administration will be referred to clerk.

**Step 10** Clerk certifies copies of all Orders and Notices required by the court to the parties and newspapers as directed.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

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

Reference(s)

[Va. Code § 64.2-2300](#), et seq

Smith, Harrison on Wills and Administration, § 11.14, pgs. 11-43 to 11-48

Evans v. Stewart and Als, 81 VA 724 (1886)

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

## Destruction of Unexecuted Felony and Misdemeanor Warrants

[Virginia Code § 19.2-76.1](#) requires the Attorney for the Commonwealth to file a petition with the circuit court for the destruction of unexecuted felony and misdemeanor warrants, summonses, capias or other unexecuted criminal processes.

In addition, an attorney for the Commonwealth may at any time move for the dismissal and



destruction of any unexecuted warrant or summons issued by a magistrate upon presentation of such warrant or summons to the court in which the warrant or summons would otherwise be returnable. The court shall not order the dismissal and destruction of any warrant which charges capital murder and shall not order the dismissal and destruction of an unexecuted criminal process whose preservation is deemed justifiable by the court. Dismissal of such a warrant or summons shall be without prejudice.

#### Document Type

Petition

#### Filing Type

PET

#### Procedures

**Step 1** Clerk receives petition requesting destruction of unexecuted felony and misdemeanor warrants, and other criminal processes.

**Step 2** It is recommended that the clerk enter the petition in the Miscellaneous Case Activity area of the Case Management System. There is no mention of confidentiality or sealing of these records in statute.

**Comments:** It is recommended that indexing be done in a manner that does not identify each warrant, summons or other criminal processes. Example of indexing entry: Warrants Unexecuted, Destruction Unexecuted Warrants.

**Step 3** Court shall order the destruction of each such unexecuted process, except any warrant which charges capital murder and any unexecuted criminal process whose preservation is deemed justifiable by the court.

**Step 4** The Clerk shall distribute the Order to the appropriate court(s) who may be in possession of such unexecuted criminal processes, and pursuant to [Va. Code § 19.2-390\(c\)](#), the clerk shall report such action to the law enforcement agency that entered the warrant or capias into the VCIN.

#### Fees/Taxes/Other Monies Assessed

None. [Va. Code § 17.1-266](#) exempts the Commonwealth and localities from paying fees.

Form(s)

No forms provided by clerk's office.

Reference(s)

[Va. Code § 19.2-76.1](#)

[Va. Code § 19.2-390](#)

[Va. Code § 17.1-266](#)

## Detinue

The action of detinue is a dispute involving claims for recovery of 1) specific property or its "alternate" value from a defendant who obtained possession of the property and continues to hold the property after their rights, if any, to possess the property has ended, and 2) damages for unlawful detention of such personal property.

In order to maintain the action of detinue these points are necessary: (1) The plaintiff must have property rights in the item sought to be recovered; (2) they must have the right to its immediate possession; (3) it must be capable of identification; (4) the property must be of some value, and (5) the defendant must have had possession at some time prior to the institution of the action. United States Supreme Court, *Vicars v. Atlantic Discount Co.*. A mere equitable interest in the property is not sufficient. If the defendant originally obtained the property lawfully, the plaintiff must demand its return before they may maintain the action.

There are two (2) 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 possession. The case processing for this type of procedure is described below. In the second instance, a suit in detinue with pre-trial seizure, the plaintiff files an affidavit to have an order issued and the property seized and returned to them prior to a hearing in court.

Document Type

Petition or Complaint

Filing Type

DET

Procedures

Without Pre-Trial Seizure

**Step 1** Clerk receives a petition or complaint from plaintiff if pre-trial seizure is not sought at time of filing together with sufficient copies for service.

**Step 2** Clerk issues receipt for monies received.

**Comments:** If a decision is made after filing a Complaint for pre-trial seizure, See procedures outlined in Detinue With Pre-trial Seizure.

**Step 3** Clerk assigns CIVIL case number. See “Case Initiation” chapter.

**Step 4** Clerk prepares case file and service of process.

**Step 5** Clerk docket case.

**Comments:** Promptly upon application of either party, after reasonable notice, the court in which such proceeding is pending shall conduct a hearing for an order or other process. [Va. Code § 8.01-119](#).

**Step 6** Hearing may be held to review issuance of order. [Va. Code §§ 8.01-114](#), [8.01-115](#), [8.01-116](#), [8.01-117](#), [8.01-119](#), [8.01-120](#), [8.01-121](#).

**Step 7** At hearing on disposition of property:

**If judgment is for plaintiff:**

- Court will enter Order directing disposition of property
- Writ of Possession and Writ of Fieri Facias issued

**If judgment is for Defendant:**

- Court will dismiss the case

**Comments:** If plaintiff prevails on final order disposing of property, Writ of Possession is issued for return of specific property. DC-467, WRIT OF FIERI FACIAS with an exemption hearing claim form under [Va. Code § 8.01-546.2](#) is issued for costs, damages, or recovery of the alternate value of personal property. Writ is served on defendant. Sheriff seizes the property and returns to plaintiff.

With Pre-Trial Seizure

**Step 1** Clerk receives Petition in Detinue for Pre-Trial Seizure, with a list of facts and a Plaintiff’s Bond for Levy or Seizure.

If the petitioner has already been to See a magistrate, the Magistrate will file with the Court the Petition, the Bond, and a copy of the Detinue Seizure Order with the Request for Hearing-Exemption Claim form and filing and service fees. Service copies of the documents will be given to the Petitioner by the Magistrate to take directly to the sheriff.

**Comments:** See form DC-415, [DETINUE SEIZURE PETITION](#) and DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#). Either a judge or magistrate may enter an order for pre-trial seizure. [Va. Code § 8.01-114](#).

**Note:** Before the action is brought to the circuit court, a judge or magistrate may have entered an order commanding the sheriff to seize the disputed property and return to plaintiff.

**Step 2** Clerk issues receipt for monies received.

**Comments:** If the petition in detinue for pre-trial seizure is filed on a case already initiated by a complaint or petition, no additional fees are collected except for service fees.

**Step 3** Clerk assigns CIVIL case number.

**Step 4** If the petitioner has not been to a magistrate, the judge will need to review the petition and bond to determine if a Detinue Seizure Order can be entered. If an order is entered by the Judge, the clerk's office should have the petition, order, bond, and the exemption claim form served on the defendant.

**Note:** Defendant may request an Exemption Claims Hearing that must be held within ten business days from filing of the request for the hearing.

The order shall be issued and returned as provided in [Va. Code § 8.01-541](#) and may be issued or executed on any day, including a Saturday, Sunday, or other legal holiday. Service shall be in accordance with [Va. Code § 8.01-487.1](#).

**Step 5** If defendant posts bond, to retain or regain possession of the property, the sheriff will return the bond to the clerk's office.

**Comments:** Defendant may post bond with the sheriff, with approved surety, payable to the plaintiff, to have property returned to them. Bond will be double the estimated value of the property or court, may, upon application of the defendant, order property to be returned to the defendant upon a lessor security. [Va. Code § 8.01-116 \(B\)](#)

**Step 6** Hearing to review issuance of *ex parte* seizure order is held within thirty days after issuance of order or process unless a party requests an earlier date. [Va. Code § 8.01-119.](#)

**Comments:** Defendant may request Exemption Claims Hearing, which must be held within ten business days of the filing of the request for such hearing.

**Step 7** If Exemption Claims Hearing set, clerk will give notice to all parties and sheriff of hearing date and time.

**If judgment for defendant:**

*Ex parte* Order is nullified and the property is returned to the person from whom it was seized. [Va. Code § 8.01-119 \(B\)](#).

**Step 8** At hearing on the disposition of the property:

**If judgment for plaintiff** - Court will enter an order directing disposition of the property.

If plaintiff has possession of property, they will retain property. Their bond becomes void.

If defendant has filed a bond to retain possession, the bond remains in effect until property is returned to plaintiff and judgment is satisfied.

**If judgment for defendant** - *Ex parte* order is nullified. Court will enter an order directing disposition of the property.

If plaintiff has possession of property, the bond remains in effect until the property is returned to defendant and judgment is satisfied.

If defendant has possession of property, they will retain property. Their bond is void.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

- DC-407, [REQUEST FOR HEARING - EXEMPTION CLAIM](#)
- DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#)
- DC-448, [DEFENDANT'S BOND FOR LEVY OR SEIZURE](#)
- CC-1400, Summons – Civil Action
- CC-1405, Proof of Service
- CC-1418, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#)
- CC-1422, Detinue Seizure Order
- CC-1434, Order of Publication
- CC-1478, [WRITS OF POSSESSION AND FIERI FACIAS IN DETINUE](#)

Reference(s)

- [Va. Code §§ 8.01-114, 8.01-115, 8.01-116, 8.01-117,](#)
- [Va. Code §§ 8.01-119, 8.01-120, 8.01-121](#)
- [Va. Code § 8.01-466](#)
- [Va. Code §§ 8.01-470, 8.01-472](#)

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

## Divorce/Annulment/Affirmation

Affirmation is an action filed to affirm a marriage. [Virginia Code Section § 20-90](#) states: When the validity of any marriage shall be denied or doubted by either of the parties, the other party may institute a suit for affirmance of the marriage, and upon due proof of the validity thereof, it shall be decreed to be valid, and such decree shall be conclusive upon all persons concerned. *See Attorney General Opinion to Frey, dated 12/10/2009; a court does not have the statutory or equitable authority to affirm marriages that were not performed under a license of marriage.*

A Divorce or Annulment is an action filed to terminate a marriage. Venue is controlled by [Va. Code § 8.01-261](#). The case may be concluded by:

- Decree on deposition or affidavit in lieu of deposition;
- Commissioner's Report; or
- Trial/*ore tenus* hearing in which unrecorded oral testimony is given in court or in chambers.

[Virginia Code § 20-121.03](#) requires that any divorce petitions, pleadings, motions, orders, or decrees, including any agreements of the parties or transcripts, shall not contain the social security number of any party or of any minor child of any party, or any financial information of any party that provides identifying account numbers for specific assets, liabilities, accounts, or credit cards. Such information if required by law to be provided to a governmental agency or required to be recorded for the benefit or convenience of the parties, shall be contained in a separate addendum filed by the attorney or party. Such separate addendum shall be used to distribute the information only as required by law. Such addendum shall otherwise be made available only to the parties, their attorneys, and to such other persons as the court in its discretion may allow. The attorney or party who prepares or submits a petition, pleading, motion, agreement, order, or decree shall ensure that any protected information is removed prior to filing with the clerk and that any separate addendum is incorporated by reference into the petition, pleading, motion, agreement, order or decree.

**Notes:**

- See form CC-1426, [ADDENDUM FOR PROTECTED IDENTIFYING INFORMATION-CONFIDENTIAL](#), [Va. Code §§ 16.1-278.15](#) and [20-103](#) require that the court shall order parties with a minor child or children whose custody or visitation is contested to attend educational seminars on the effects of separation or divorce. Such programs are to be completed, where possible, prior to participating in mediation or alternative dispute resolution, and the court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available. Parties include natural or adoptive parents, or any person with a legitimate interest as defined in [Va. Code § 20-124.1](#). The fee for such programs shall be based on ability to pay, but shall in no case exceed \$50.
- See form DC-605, ORDER OF REFERRAL TO PARENT EDUCATION SEMINAR. Also See Supreme Court of Virginia web site for Parent Education Providers at:

<http://www.courts.state.va.us/courtadmin/aoc/djs/programs/parented/home.html>

[Virginia Code § 20-108.1](#) allows the court to appoint a vocational expert to conduct an evaluation of a party in cases involving child support, spousal support, and separate maintenance where the earning capacity, unemployment, or underemployment of a party is in controversy. The court may award costs or fees for the evaluation and the services of the expert at any time during the proceedings.

By order of the court, in a civil action for divorce from an incarcerated felon, 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 if the crime (i) for which the felon is incarcerated occurred after the date of the marriage for which the divorce is sought, (ii) for which the felon is incarcerated was committed against the felon's spouse, child, or stepchild and involved physical injury, sexual assault, or sexual abuse, and (iii) resulted in incarceration subsequent to conviction and the felon was sentenced to confinement for more than one year. The amount allowed by the court to the guardian ad litem shall be taxed against the incarcerated felon as part of the costs of the proceeding, and if collected, the same shall be paid to the Commonwealth. [Va. Code § 8.01-9](#). In a divorce proceeding where both parties are indigent, and a guardian ad litem is appointed for a defendant pursuant to [Va. Code § 8.01-9](#) because the defendant is a "person under a disability" as defined in [Va. Code § 8.01-2](#), the guardian ad litem may submit a DC-40, LIST OF ALLOWANCES for payment by the Supreme Court of Virginia. The court order of appointment should be included with the DC-40, LIST OF ALLOWANCES. [Virginia Code § 20-103\(B\)](#) gives the court authority to issue a Protective Order "upon a showing by a party of reasonable apprehension of physical harm..." the CC-1409, PROTECTIVE ORDER – IN PENDING CASES OF DIVORCE, CUSTODY, SUPPORT OR VISITATION should be used for such purposes.

A contested divorce includes divorce cases where any one or more of the following matters were at any time disputed or contested: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation.

An uncontested divorce includes divorce cases where the case was filed on "no fault" grounds pursuant to [Va. Code § 20-91 \(9\)](#) and there are no issues in controversy.

In a suit for a no-fault divorce, the defendant may waive service of process prior to or after the suit is filed, provided that a copy of the complaint is attached to such waiver, or is otherwise provided to the defendant, and the final decree of divorce as proposed by the complainant is signed by the defendant.

In contemplation of or in a suit for a no-fault divorce, the plaintiff or their attorney may take and file the complaint, the affidavit(s) or deposition(s), any other associated documents, and the proposed decree contemporaneously, and a divorce may be granted solely on those documents where the defendant has waived service and, where applicable, notice. [Va. Code §§ 20-99.1:1, 20-106](#).

**Note:** As of July 1, 2021, the deposition or affidavit of a corroborating witness for a no-fault divorce is no longer a requirement. [Va. Code § 20-106](#)

Document Type

Complaint

Filing Type

DIV – Divorce



ANUL – Annulment

TRAN – Divorce case transferred from another jurisdiction

DCRP – Divorce-Counterclaim/Responsive Pleading

ACRP – Annulment-Counterclaim/Responsive Pleading

## Procedures

**Step 1** Clerk receives Complaint and any other papers filed (e.g. Addendum, Notice to Take Deposition, Order of Publication, Separation Agreement, etc.).

**Note:** Form CC-1421 PETITION FOR PROCEEDING IN A NO-FAULT DIVORCE WITHOUT PAYMENT OF FEES OR COSTS may be filed with the complaint.

**Comments:** The addendum should be placed in an envelope marked “confidential” and allowed for inspection by only those parties identified by statute. [Va. Code § 20-121.03](#)

**Step 2** Clerk assigns a CIVIL case number, indexes and docket the case in CCMS. See “Case Initiation” chapter for respective procedures.

**Step 3** Clerk receipts money collected including service fees when applicable.

**Note:** In a no-fault divorce if a person is claiming indigency and is seeking to proceed with payment of fees, there is a presumption that a person who is a current recipient of a state or federally funded public assistance program for the indigent is unable to pay. To proceed without payment of fees or costs, the petitioner must file under oath [FORM CC-1421 PETITION FOR PROCEEDING IN A NO-FAULT DIVORCE WITHOUT PAYMENT OF FEES OR COSTS](#). [Va. Code § 17.1-606](#).

**Note:** It is up to the plaintiff or the plaintiff’s attorney to determine the appropriate sheriff’s fee when service is out of state.

**Step 4** PROCEDURE QUESTION: Is Order of Publication used in lieu of service? If no: GO TO STEP 5; if yes: GO TO STEP 7

**Comments:** Orders of Publication are used when defendant is

a nonresident or whose whereabouts are unknown. [Va. Code §§ 20-104, 20-105](#)

**Step 5** Clerk issues Summons and sends Summons, Complaint, any notices and Proof of Service to serving jurisdiction. See form CC-1400, SUMMONS – CIVIL ACTION and form CC-1405, PROOF OF SERVICE.

In a suit for no-fault divorce, the plaintiff or their attorney may file the complaint, the affidavits or depositions, any other associated documents, and the proposed decree, signed by both the plaintiff and the defendant, contemporaneously, and a divorce may be granted solely on those documents where the defendant has waived service and, where applicable, notice.

**Step 6** Clerk makes entry of process in Process Book or automated case management system. [Va. Code § 17.1-215](#).

**Step 7** Plaintiff files affidavit for Order of Publication.

**Comments:** Advertisement shall be published once a week for four consecutive weeks. Advertisement will have the date on which evidence will be heard by the court, which will be at least two weeks from final advertisement, concerning the alleged absence of the supposed defendant. The cost of the publication shall be paid by the petitioner or applicant. [Va. Code § 8.01-316 \(B\)](#).

**Step 8** Clerk or plaintiff's attorney prepares Order of Publication.

If plaintiff has been determined to be indigent, the Order shall be mailed to the defendant at the last known address and posted. No publication shall be required. **Note:** The judge or clerk designates the return date on the Order of Publication in accordance with local practice. It is recommended that the return date be sixty days from the date of entry of the order.

See form CC-1434, ORDER OF PUBLICATION.

**Step 9** Clerk images or scans and enters order of publication in the Clerk's Order Book and places original order in case file.

**Note:** The clerk notes on affidavit, before it is imaged or scanned, the date it was:

- Mailed to the defendant;
- Delivered to the newspaper; and
- Posted on the front door of the courthouse or on a public bulletin board at the courthouse for a period of no less than four weeks, or at or near the principal public entrance to the courthouse in a location that is conspicuous to the public and approved by the chief judge of the circuit in which the courthouse is situated, or both. The requirement to post any notice, summons, order, or other official document of any type is satisfied if such notice, summons, order, or other official document is posted on the public government website of the locality serviced by the court or the website of the circuit court clerk. [Va. Code § 1-211.1](#)

It is suggested that the delivery to the newspaper, mailing to the defendant and posting be done on the same day.

**Step 10** Clerk mails or delivers copy of order to newspaper and mails copy to defendant 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 must be completed within twenty days of the entry of the Order of Publication. [Va. Code § 8.01-317](#).

Court will advertise order in a local city or county newspaper. Advertisement shall be published once a week for four consecutive weeks. Advertisement will list the date the defendant should appear to protect their interests and shall be no sooner than fifty days from the entry of the Order of Publication.

**Step 11** Clerk receives from newspaper an Affidavit and Certification of compliance that order was printed. Clerk places Affidavit/Certificate in the case file. **Note:** Newspaper must ensure that the Affidavit/Certificate has been notarized. [Va. Code §§ 8.01-317](#) and [8.01-325 \(3\)](#).

**Step 12** Clerk receives answer along with any other subsequent

pleadings and places in case file and issues process as directed.

**Note:** In no-fault divorce proceedings, refer back to Step 5.

**Step 13** Clerk receives a completed Form VS-4, COMMONWEALTH OF VIRGINIA REPORT OF DIVORCE OR ANNULMENT.

**Comments:** This form should be completed as soon as possible. To ensure its completion, many courts require that it be submitted to the clerk in order for the final order to be entered or before the case is referred to a Commissioner in Chancery.

**Step 14** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

**Comments:** The CC-1426, [ADDENDUM FOR PROTECTED IDENTIFYING INFORMATION-CONFIDENTIAL](#) should be imaged and sealed.

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

**Step 15** [Virginia Code §§ 8.01-217](#) and [20-121.4](#) requires that name changes ordered as part of a decree of divorce are issued as separate orders, so that detailed and sensitive information contained within the decree of divorce (such as the names of minor children, and custody and support arrangements) is not disclosed in the deed books. The clerk should record the order in the Deed Book. See CC-1412, ORDER FOR CHANGE OF NAME (ADULT).

Judge may order the record sealed if applicant shows that the record of name change may cause a threat to the health and safety of the applicant and their family. See [Va. Code § 20-124](#)

**Step 16** Enforcement of orders: In any suit for divorce or suit for maintenance and support, the court may after a hearing, pendente lite, or in any decree of divorce *a mensa et thoro*, decree of divorce a vinculo matrimonii, final decree for

maintenance and support, or subsequent decree in such suit, transfer to the juvenile and domestic relations district court the enforcement of its orders pertaining to support and maintenance for the spouse, maintenance, support, care and custody of the child or children.

Transfer of case for modification: After the entry of a decree of divorce a vinculo matrimonii the court may transfer to the juvenile and domestic relations district court any other matters pertaining to support and maintenance for the spouse, maintenance, support, care and custody of the child or children on motion by either party, and may so transfer such matters before the entry of such decree on motion joined in by both parties. A court shall not (i) transfer a case for modification to the juvenile and domestic relations district court in the absence of a motion by either party or (ii) require a provision for transfer of matters for modification to the juvenile and domestic relations district court as a condition of entry of a decree of divorce a vinculo matrimonii.

**Note:** MJDR should be used as the post-trial filing type when a transfer for modification to the JDR court is filed. This would not be considered a reinstatement of the original case.

Change of venue: In the transfer of any matters referred to herein, the court may, upon the motion of any party, or on its own motion, and for good cause shown, transfer any matters covered by said decree or decrees to any circuit court or juvenile and domestic relations district court within the Commonwealth that constitutes a more appropriate forum. An appeal of an order by such juvenile and domestic relations district court which is to enforce or modify the decree in the divorce suit shall be as provided in [Va. Code § 16.1-296](#).

**Comments:** If the case is transferred, a copy of the addendum should be forwarded to the Circuit or J&DR Court in an envelope marked “confidential” along with a certified copy of the final decree.

**Step 17** In cases where support is ordered paid to the State Treasurer through the [Division of Child Support Enforcement](#) (DCSE), clerk will send a certified copy of the decree to DCSE.

DCSE  
5600 Cox Road  
3rd Floor West  
Glen Allen, VA 23060  
Customer Service: 1-800-468-8894  
Fax #804-692-1438

In cases where child support is ordered, clerk places worksheet for determining support award in file. In some cases support orders will contain information that necessitates the completion of a DC-645, INCOME WITHHOLDING FOR SUPPORT ORDER.

This Federal version is the only version that will be accepted by employers and the Division of Child Support Enforcement beginning December 31, 2011.

DJS recommends that the court stamp the original document and make 4 copies (It would be best practice to mark each copy in some manner.):

- Copy for file, pending service (can be destroyed upon return of original)
  - Copy for Employer
  - Copy for Employee
  - Copy for Division of Child Support Enforcement  
Service should be as follows:
    - Original – Employer
    - Copy for Employer, with the Copy for Employee attached (employer will provide employee's copy to employee)
    - Copy for DCSE – may be mailed or hand delivered.
- Note:** The DC-646, COMPLIANCE PROVISIONS-INCOME WITHHOLDING FOR SUPPORT should also be sent to the Employer.

**Step 18** Clerk makes entry in Judgment Lien Docket, if applicable. FAS Users: Clerk sets up Civil Receivable if court appointed GAL and fees are to be paid pursuant to [Va. Code § 8.01-9](#).

**Comments:** The following guidelines are suggested:

If decree addresses current child/spousal support (to be paid in future installments), docket only if judge so orders. [Va. Code § 8.01-426](#).

If decree specifies support arrearage (fixed amount, final judgment), docket immediately. [Va. Code §§ 20-78.2, 8.01-446](#).

If decree provides for lump sum award (equitable distribution), docket only if judge so orders. [Va. Code § 20-107.3 \(D\)](#).

If decree addresses attorney fees (for services) and /or costs to be recovered by prevailing party (filing, service, guardian ad litem and commissioner in chancery fees, etc.), clerk docket immediately.

**Step 19** Clerk submits Form VS-4 - Commonwealth of Virginia Report of Divorce and Annulments filed and prepared by attorney to Virginia Division of Vital Statistics at end of each month.

**Note:** If the case has been sealed by order of the Court, a certified copy sealing the case should be forwarded to the Virginia Division of Vital Statistics with the Form VS-4.

**Step 20** Clerk removes case from docket and places case with ended files.

**Step 21** If it appears upon or after the entry of a final decree, that neither party resides in the city or county circuit court that entered the decree, the court may, on the motion of any party, or on its own motion, transfer to the circuit court for the city or county where either party resides the authority to make additional orders to carry out or enforce any order or agreement between the parties.

**Comments:** If divorce finalized, handle as MOPT in the Circuit Case Management System. Specify in Remarks which court the file is being transferred to.

If you are the court receiving the transfer, open up a civil case using TRAN as commenced by and TRAN as filing type. Specify in remarks which court the case was transferred from. TRAN will allow a \$.00 receipt in the Financial Accounting System.

It is recommended that no fee be assessed for MOPT or for

TRAN activities under this statute, but it will ultimately be the Clerk's decision to charge or not.

**Step 22** The court may enter a qualified domestic relations order (QDRO) or other order for the purpose of enforcing a support order arising from a divorce. Such order may allow the petitioner to attach or garnish any pension, profit-sharing, or deferred compensation or retirement benefits.

**Comments:** It is recommended that this QDRO be docketed as a judgment, to allow the petitioner to later file attachment or garnishment proceedings.

#### Fees/Taxes/Other Monies Assessed

In a no-fault divorce procedure, fees and costs may be waived by the court.

[Circuit Court Civil Filing Fee Calculation](#)

#### Form(s)

DC-605, Order of Referral to Parent Education Seminar  
CC-1400, Summons - Civil Action  
CC-1406, [ACCEPTANCE/WAIVER OF SERVICE OF PROCESS AND WAIVER OF FUTURE SERVICE OR PROCESS AND NOTICE](#)  
CC-1421, [PETITION FOR PROCEEDING IN A NO-FAULT DIVORCE WITHOUT PAYMENT OF FEES OR COSTS](#)  
CC-1426, [ADDENDUM FOR PROTECTED IDENTIFYING INFORMATION-CONFIDENTIAL](#)  
DC-645, Income Withholding For Support  
DC-646, Compliance Provisions- Income Withholding For Support

#### Reference(s)

[Va. Code §§ 8.01-217, 8.01-316, 8.01-317, 8.01-460](#)  
[Va. Code § 16.1-278.15](#)  
[Va. Code § 17.1-272, 17.1-275 A\(26\)](#)  
[Va. Code § 17.1-606](#)  
[Va. Code § 20-99](#)  
[Va. Code § 20-99.1:1](#)  
[Va. Code § 20-103](#) et seq  
[Va. Code § 20-106](#)  
[Va. Code § 20-107.3](#)  
[Va. Code § 20-108.1](#)  
[Va. Code § 20-113](#)



[Va. Code § 20-121.03](#)

Attorney General Opinion to Foreman, dated 12/31/85 (1985-86, page 21); clerk required to spread final decree of divorce changing individual's name on current deed book in their office and index it in both old and new names.

Attorney General Opinion to Snow, dated 10/16/86 (1986-87, page 81); clerk may charge only specific fee required by § 14.1-112(20) for recording in deed book order for name change or divorce decree incorporating restoration of former name.

Attorney General Opinion to Powell, dated 6/24/63, (1962-63, page 21);

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Sheriff's Fee	<a href="#">Va. Code § 17.1-272</a>
Clerk's recording fee if maiden name is restored**	<a href="#">Va. Code § 17.1-275 A(2)</a> <a href="#">Va. Code § 17.1-279</a>
State Library Fee	<a href="#">Va. Code § 17.1-275 A(2)</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
* Not assessed if the amount of the civil action is \$500 or less	
** No clerk's fee of \$20.00 is collected when name change is pursuant to a divorce per <a href="#">Va. Code § 17.1-275 A(24)</a> .	

## Ejectment

Ejectment is an action taken by a party to recover an interest in land or premises and damages by determining the title and right of possession of real property. It is simply an action to restore possession of property to the person entitled to it. The plaintiff will prove title to property in question. Not only must the plaintiff establish a right to possession themselves, but they must also show that the defendant is in wrongful possession and must have demanded the premises and given notice to the tenant to remove themselves from the premises.

Defendants named in the action can be persons in possession or persons claiming title or interest detrimental to the plaintiff. Defendants may recover for improvements and plaintiffs may recover for damages. Defendant will not be liable for any value of the premises for a period of five years before the institution of the action unless defendant claims for

improvements made to premises.

If plaintiff prevails in suit but right or title of premises by the plaintiff expired after the commencement of the suit, but before the trial, the judgment will be for damages and the judgment regarding the premises will be for the defendant.

Judgment cannot be entered against a defendant who has been served with a Summons more than one year after the commencement of the action unless the court determines that plaintiff exercised due diligence in having process served on the defendant. If a judgment is against several defendants and joint possession by all is proved, judgment will be against all defendants, whether or not they pleaded separately or jointly. [Va. Code § 8.01-142](#).

Document Type

Complaint

Filing Type

EJCT

Procedures

**Step 1** Plaintiff files Complaint with sufficient copies to be served upon defendants. Complaint should include the following: Names and last known addresses of each party. [Va. Code § 8.01-290](#).

- Name of court and style of case.
- Date of possession by plaintiff.
- Date of possession or claim by defendant. [Va. Code § 8.01-135](#).
- Description of premises. [Va. Code § 8.01-136](#).
- Damage amount

**Notes:**

- Complaint may contain several counts and several plaintiffs may be named as plaintiffs jointly in one count and separately in others. [Va. Code § 8.01-138](#).
- If boundary dispute, all persons having interest in boundaries must be designated as defendants. [Va. Code § 8.01-180](#).

Plaintiff is to submit adequate number of copies to serve all parties. [Va. Code § 8.01-291](#). If adequate number of copies is not submitted, clerk requests plaintiff conform. If plaintiff does not, judge may set date certain when copies are to be

filed with clerk. If not received by the specified date, the court may enter an order dismissing the case.

- Step 2** Clerk collects writ tax and applicable clerk's fees and issues receipt.
- Step 3** Clerk sets up file and assigns case a CIVIL case number.
- Step 4** Summons is prepared by clerk. See form CC-1400, SUMMONS– CIVIL ACTION.
- Step 5** Clerk issues service (with Summons, Complaint and other applicable papers) and records in process book or automated system. [Va. Code § 17.1-215](#).

**Comments:** Officers should make service within five days after receipt of papers and make return to the court within 72 hours after the earliest service upon any party shown on the Proof of Service. [Rule 3:6](#).

Defendant(s) have twenty-one days from date of service of summons to file a response. See form CC-1402, PROOF OF SERVICE.

- Step 6** Clerk receives sheriff's return and records in process book or automated system.
- Step 7** **Procedure Decision:** Does defendant(s) respond within 21 days? If YES or an extension is granted: GO TO STEP 9. If NO: Defendant(s) is in default. GO TO STEP 10. See Rule 3:19 - Judgment by Default. **Note:** Trial judge has authority to extend the time in which a responsive pleading is due and the trial judge can grant an extension even if the twenty-one day period has expired. Rule 1:9.
- Step 8** Clerk receives responsive pleading from defendant.

**Comments:** If defendant seeks to recover for improvements made to premises in dispute, they will file a statement with their responsive pleading detailing claim. [Va. Code § 8.01-160](#).

If plaintiff prevails, defendant may apply for suspension of

judgment. If granted, court would impanel a jury to assess damages of the plaintiff and the allowances to the defendant for such improvements. [Va. Code § 8.01-166](#).

**Step 9** Clerk docket any judgment for money in the Judgment Lien Docket and Execution Book.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

- CC-1400, Summons – Civil Action
- CC-1405, Proof of Service
- CC-1407, [SERVICE OTHER THAN BY VIRGINIA SHERIFF](#)
- CC-1418, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#)
- CC-1434, ORDER OF PUBLICATION

Reference(s)

- [Va. Code § 8.01-131](#) et seq.
- [Va. Code § 8.01-446](#)
- Rules 3:1, 3:3, 3:4, 3:5

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

## Elections

### Referendum Elections

#### School Board

The direct election of School Board members is set forth in [Va. Code § 22.1-57.2](#). The provision in the statute permits qualified voters of a county or city constituting a separate and entire school division to file a petition for a referendum to require the jurisdiction to select its school board members by direct election rather than by appointment.

The Code also permits a referendum to be held to revert from an elected school board to a school board appointed by either the governing body or a school board selection committee. If approved by a majority of the voters, elections for school board members would be held at the same general election at which members of the governing body of the county or city are selected.

#### Pari-Mutuel Wagering

[Virginia Code § 59.1-391](#) references pari-mutuel wagering and the local referendum required before a license for any horse racetrack or satellite facility can be granted. Therefore, before any license to construct, establish, operate or own a racetrack can be granted, a referendum must be held in the county or city in which the racetrack would be located.

#### Document Type

Copy of Petition and Statement Identifying Petitioner

#### Filing Type

ELEC

#### Procedures

**Step 1** Petition is filed with the clerk of the circuit court with a statement that identifies the individual filing the petition. Clerks sets up case file and receipts for filing fee (does not matter that the petition has yet to be circulated).

**Comments:** Petition and statement must be filed with clerk prior to circulation of the petition. The Petition and statement are filed in the clerk's office for the city or county in which the referendum is to be held. If referendum is to be held in more than one city or county, the petition may be filed with the clerk in any of the localities. The Statement should contain the following:

- Name of individual (who is a qualified voter of the city, county or town in which the referendum will be held) filing the petition and statement;
- Residence and mailing address of petitioner; and
- Name of organization represented in circulating the petition.

**Step 2** Clerk certifies to the petitioner within ten days of filing that they has received and accepted the petition copy and statement.

**Comments:** Original of certificate is given to petitioner, which is used so that the petition may now be circulated by petitioner.

**Note:** The clerk also sends one copy of the Certificate to the [State Board of Elections](#) with statement of petitioner and the petition. See State Board of Elections suggested Certificate of Receipt and Acceptance form in this section.

State Board of Elections  
1100 Bank Street, 1st Floor  
Washington Building  
Richmond, VA 23219

**Step 3** Completed Petition (names and addresses of registered voters, date signed, circulator's affidavit, etc.) filed with "appropriate" court or authority within nine months of the date of the certification by the clerk of the circuit court. Petitioner may file a suggested Court Order provided by the Board of Elections for the Court's approval and signature.

**Step 4** The court will enter an Order calling for a special election.

**Step 5** Clerk will send a copy of the Court Order to the State Board of Elections.

**Step 6** Clerk publishes notice of referendum once a week for three consecutive weeks prior to the election in a newspaper of general circulation and posts a copy of the same on the door of the courthouse. In practice, the petitioner of the locality will pay for the publishing.

**Step 7** Clerk receives from newspaper an Affidavit and Certification of compliance that order was printed. Clerk places Affidavit/Certificate in the case file. **Note:** Newspaper typically will ensure that the Affidavit/Certificate has been notarized.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Suggested forms provided by [State Board of Elections](#):  
 Suggested notice for referendum election State board of elections Rev. 6/10/94  
[Statement of Petitioner for Local Referendum, Certificate of Receipt and Acceptance – Local Referendum and Sample Orders](#)

Reference(s)

[Va. Code § 22.1-57.2](#)  
[Va. Code § 24.2-684.1](#)  
[Va. Code § 59.1-391](#)

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

**Special Elections (Constitutional Officers)**

An action taken by either the local governing body or the Court, on its own motion, to immediately fill a vacancy in a constitutional office. The appointment of an interim constitutional officer is not to be made by the judges of the circuit court of the county or city, except in certain limited circumstances. The general law provision calling for a special election to fill a vacancy in a constitutional office overrides any other provision in a charter that may provide a different method to fill the vacancy.

Document Type

Petition

Filing Type

SPEC

Procedures

- Step 1** Petition to issue a writ of election will be filed by the local governing body, within fifteen (15) days of the occurrence of the vacancy, with the circuit court in which the vacancy occurred. **Note:** No filing fees when filed by the locality. [Va. Code § 17.1-266](#).
- Comments:** The court, on its own motion or upon receipt of the petition, shall promptly issue the writ ordering the election for a date determined pursuant to [Va. Code § 24.2-682](#).
- A vacancy in any elected constitutional office in any county or city with a population of 15,000 or less, or shared by two or more units of government with a combined population of 15,000 or less, shall be held at a special election ordered by the court to be held at the next ensuing general election to be held in November. If the vacancy occurs within 120 days prior to that election, however, the writ shall order the election to be held at the second ensuing such general election. [Va. Code § 24.2-228.1](#).
- Step 2** Order for Election entered in accordance with [Va. Code § 24.2-228.1](#).
- Comments:** There will not be a special election if there is to be a general election for that office within sixty days.
- Step 3** Acting clerk sends copy of the Order to the State Board of Elections.
- Comments:** The highest-ranking deputy shall be vested with the powers and shall perform all of the duties of the office, and shall be entitled to all the privileges and protections afforded by law to elected constitutional officers.

Fees/Taxes/Other Monies Assessed



By Locality  
 Only applicable if complaint is filed by an individual.  
 By Others  
[Circuit Court Civil Filing Fee Calculation](#)

**Form(s)**

No forms provided by the clerk's office.

**Reference(s)**

[Va. Code § 17.1-266](#)  
[Va. Code §§ 24.2-226, 24.2-227, 24.2-228.1, 24.2-682](#)  
 Attorney General Opinion to Morgan, dated 1/29/01 (2001, page 134);  
 Circuit court clerk vacancy is to be filled promptly on Tuesday date that falls within purview of statutory limitations for holding special elections.  
 November general election day is among dates court may consider for holding such election.

Attorney General Opinion to Davis, dated 11/13/14 (2014, page 144); When the powers of a vacant constitutional office are assumed by the highest ranking deputy officer within the office, as provided by § 24.2-228.1, the deputy officer need not be a resident of the locality of service.

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

**Special Elections (Local Governing Body or Local School Board)**

An action taken by either the local governing body or the local school board to fill a vacancy in an elected local office.

Document Type

Petition

Filing Type

SPEC

Procedures

**Step 1** Petition to issue a writ of election will be filed by the local governing body or local school board, within fifteen (15) days of the occurrence of the vacancy, with the circuit court in the jurisdiction in which the vacancy occurred.

**Note:** No filing fees when filed by the locality. [Va. Code § 17.1-266](#).

**Comments:** The court, upon receipt of the petition, or upon its own motion, shall issue the writ ordering the election.

**Step 2** Order for Election entered in accordance with [Va. Code § 24.2-228](#).

**Step 3** Clerk sends a copy of the Order to the [State Board of Elections](#).

Fee/Taxes/Other Monies Assessed

No fees if filed by the locality.

Form(s)

No forms provided by the clerk's office.

Reference(s)

[Va. Code § 17.1-266](#)  
[Va. Code §§ 24.2-226, 24.2-227, 24.2-228](#)

### Recount of Election

In Virginia, there is no automatic recount; rather, a recount will only occur under certain circumstances and when certain actions are conducted. First, the election results must be certified. Certification of election results can happen at different times depending on the office being certified.

## Document Type

Petition for Recount

## Filing Type

PET

## Procedures

- Step 1** Clerk receives Petition for Recount. Clerk shall place all of the sealed election materials in a vault or room not open to the public or to anyone other than the clerk or Clerk's Office staff; (iii) cause such vault or room to be securely locked except when access is necessary for the Clerk and Clerk's Office staff.
- Step 2** Upon the initiation of a recount, the Clerk shall certify that security measures have been taken in whatever form is deemed appropriate by the chief judge to secure all election materials pursuant to §24.2-668. \*Note: The Clerk should affix signage to the vault/election room door advising no admittance.
- Step 3** The chief judge of the circuit court in which a petition is filed shall promptly notify the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit with the chief judge §§ [24.2-805](#) and [24.2-806](#).
- Step 4** The case shall take precedence on the docket by the setting of a hearing within seven calendar days of the filing of the petition for a recount of any election other than an election for presidential electors, or within five calendar days of the filing of a petition for a recount of an election for presidential electors, the chief judge of the circuit court shall call a preliminary hearing at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to review by the full court.
- Step 5** The Clerk shall send a Notice of Preliminary Hearing to all candidates involved and their respective legal counsel, if applicable, along with the Registrar and the city or county attorney. The Notice may be sent by way of electronic transmission.

- Step 6** The hearing shall be held in accordance with Va. Code § [24.2-802.1](#) to consider motions and establish preliminary rules of procedure of the recount of ballots in said election, along with the date, time and location of the recount. \*Note: The Clerk shall make arrangements for the transportation and delivery of election materials, under their custody and control, necessary for the recount to said recount location under appropriate safeguards.
- Step 7** Clerk provides a copy of the order to all candidates involved and their respective legal counsel, if applicable, along with the Registrar and the city or county attorney. \*Note: The Clerk shall thoroughly read all Court Order(s) to ensure strict compliance.
- Step 8** Upon receipt of a list of names and addresses of recount officials and alternate recount officials, from each party, the Clerk shall issue the necessary summonses to compel the attendance of the recount coordinators, officials, and alternate officials.
- Step 9** Recount Day. The Clerk should be mindful that the Recount serves as a court proceeding and shall administer the [oath](#) to all recount participants.
- Step 10** At the conclusion of the recount, the Clerk takes custody and control of election and recount materials and shall secure them using the security measures outlined in the Recount Order.

#### Suggested Practices:

It is suggested that the Clerk implement a tracking mechanism for the distribution of any and all election materials for each precinct at all times the materials are outside the secured vault/room.

Create and maintain a list of all attendants to include the recount coordinators, officials, alternate officials, and observers.

Form(s)

See Appendix D of this manual for the Clerk's Certification Sample and the SBE-611, OFFICER OF ELECTION OATH

References

[Va. Code 24.2-801](#)

[Va. Code § 24.2-802](#)

[Va. Code § 24.2-802.1.](#)

Department of Elections - Recount Step-by-Step Instructions

[Revised-Recount-Instructions-and-SBE-Memo.pdf 2023.pdf \(virginia.gov\)](#)

## Elective Share

See Wills – Elective Share and Augmented Estate this manual.

## Election Laws – Violation of

See Violation of Election Laws, Chapter 10 of this manual.

## Enforcements

### Mechanic's Lien

A suit to enforce payment of a claim for improvements made by the plaintiff(s) upon real property. The claim is against the owner of the described parcel of realty, to subject it to sale in satisfaction of the proven lien of the creditor/plaintiff. A memorandum of mechanic's lien under [Va. Code § 43-3](#) will have been previously filed in the clerk's office sometime within a 6-month period prior to the filing of this suit. The clerk should note that the time period within which a suit to enforce a mechanic's lien is set by law, and the clerk should not attempt to determine whether this suit has been filed within the statutory limitations period.

Document Type

Complaint

Filing Type

MECH

Procedures

**Step 1** Complaint and itemized statement of facts filed with clerk in the county or city wherein the building, structure, railroad,

or some part thereof is situated, or wherein the owner(s) reside. Statement of facts generally include:

- Amount and character of work completed;
- materials furnished;
- prices charged;
- payments made;
- balance due; and
- interest state date

**Step 2** Clerk receipts for taxes/fees, opens file and docket new case and issues process.

**Comments:** Clerk should collect same filing fees, costs, and tax for a suit to release a mechanic's lien as for a suit to enforce a mechanics' lien. **Note:** At any time after mechanic's lien is perfected, but before suit is brought to enforce lien, the owner, general contractor or other interested party of the property to which the lien(s) is sought to be enforced, after giving five days notice to the lienor, may apply to court to pay an amount or file a bond in the amount of double the amount of the lien to discharge the lien by obtaining a court order. [Va. Code § 43-71](#).

Fees/Taxes/Other  
Monies Assessed

**Step 3** If court allows bond or other surety to be posted under [Va. Code § 43-70](#) (release of lien after suit is filed), the lien against real property is extinguished. Release of lien may be accomplished by the filing of a CC-1515, [CERTIFICATE OF RELEASE OF MECHANIC'S LIEN](#) or similar document in the Deed Book.

**Comments:** Once suit is filed to enforce lien, the owner, general contractor or other interested party of the property to which the lien(s) is sought to be enforced can, after giving five days notice to the lienor, ask court for permission to file bond in the amount of double the amount of the lien to discharge the lien. [Va. Code § 43-70](#). See form CC-1515, [CERTIFICATE OF RELEASE OF MECHANIC'S LIEN](#).

**Step 4** Clerk certifies copies of all Orders of the court for the parties upon request or upon direction of court.

**Step 5** Clerk docket any judgment for money awarded by the court against any party in the Judgment Lien Docket and Execution Book.

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office. Circuit Court Forms series 1400 is available for use and CC-1515, [CERTIFICATE OF RELEASE OF MECHANIC'S LIEN](#).

Reference(s)

[Va. Code § 43-22](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
Bond, if prepared by clerk	<a href="#">Va. Code § 17.1-275 A(6)</a>
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

**Vendor's Lien**

An action by vendor (seller) to enforce lien against vendee (purchaser), reserved in the deed of conveyance against the real property. The vendor/plaintiff seeks an order of the circuit court to sell the property of the vendee/defendant due to default in payment of the reserved lien, to satisfy debt.

Document Type

Complaint

Filing Type

VEND

Procedures

- Step 1** Complaint filed in the county or city wherein the real property, or some part thereof is situated, or wherein the owner(s) reside.
- Step 2** Clerk receipts for taxes/fees, opens file, docket new case and

issues process.

- Step 3** If court appoints a special commissioner, bond will be required. [Va. Code § 58.1-3969](#).
- Step 4** Hearing held.
- Step 5** Clerk certifies copies of all Orders of the court for the parties upon request or upon direction of court.
- Step 6** Clerk docket any judgment for money awarded by the court against any party in the Judgment Lien Docket and Execution Book.

**Fees/Taxes/Other Monies Assessed**

[Circuit Court Civil Filing Fee Calculation](#)

**Form(s)**

Initiating documents not provided by clerk's office. Circuit Court Forms series 1400 is available for use.

**Reference(s)**

[Va. Code § 55.1-311](#)  
[Va. Code § 55.1-326](#)

The action is recognized in case law:  
 Ambler v. Warwick & Co., 28 Va. (1 Leigh) 215 (1829);  
 Wilson v. Davisson, 41 Va. (2 Rob.) 384 (1843); and  
 Neff v. Wooding, 83 Va. 432, 2 S.E. 731 (1887)

<b>FEES</b>	
<b>TYPE CHARGES</b>	<b>CODE REFERENCE</b>
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
Bond, if prepared by clerk	<a href="#">Va. Code § 17.1-275 A(6)</a>
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	



## Erroneous or Improper Assessments of Local Levies

See [Correction of Erroneous or Improper Assessments of Local Levies](#) in the Suit/Action Types (C) chapter in this manual.

### Escheat

An action to revert ownership to the Commonwealth of real property for one of two reasons: (1) the property owner died intestate leaving no known heirs, or (2) no person is known by the Commissioner of the Revenue or Tax assessor to be entitled, included lands which appear to be abandoned. Evidence of nonpayment of ad valorem property taxes is used as evidence at the inquest.

#### Document Type

Petition

#### Filing Type

ESC

#### Procedures

- Step 1** Petition filed with clerk pursuant to [Va. Code § 55.1-2409](#).
- Step 2** Escheator will request from the clerk a list of ten jurors for the inquest. [Va. Code § 55.1-2406](#).  
**Comments:** Jurors are impaneled for inquest. Inquest is for escheator to determine if any land mentioned in notice from Treasurer ([Va. Code § 55.1-2404](#)) has escheated to Commonwealth. **Note:** Clerks will use regular juror list to make selection of jurors.
- Step 3** Hearing held
- Step 4** Clerk records escheat verdict signed by the jurors and escheator, in the Deed Book (grantor index), without cost ([Va. Code § 17.1-266](#)), and provide copies within ten days to the local Commissioner of the Revenue and local Treasurer. [Va. Code § 55.1-2408](#). **Note:** Escheator will, within ten days, return verdict to the clerk.
- Step 5** Clerk opens file, docket case and closes the file. Subsequent action by the Escheator will require reinstatement of the action.

**Comments:** After first petitioning the court to correct the verdict, the Escheator may amend the verdict prior to the auction sale (1) to remove any parcels upon which any claimant has proven a claim to the satisfaction of the Escheator, or (2) to correct a mistake upon the verdict. [Va. Code § 55.1-2416](#).

**Step 6** Persons who find they have a legal or equitable claim to any parcel declared escheated may petition the circuit court to have the parcel removed from the list of properties to be auctioned. [Va. Code § 55.1-2409](#). This petition constitutes a separate action for which the clerk will collect the ordinary fee for filing a case, open a separate file and docket a new (separate) case.

**Comments:** Petition should be accompanied by bond, with good security, to pay the Commonwealth for all past due real estate taxes, penalties and interest on such lands.

**Step 7** Clerk records corrected escheat verdict in the Deed Book. [Va. Code § 55.1-2416](#).

**Step 8** Commonwealth issues grants to the purchasers of property sold at the escheator's auction. The escheator is required to collect the clerk's fee ([Va. Code § 17.1-275 A\(1\) & \(2\)](#)) to record the grant. The grants are sent to the clerk, who receipts payment and records and indexes them in the Deed Book. Clerk forwards to escheator the recorded grants. [Va. Code § 55.1-2421](#).

#### Fees/Taxes/Other Monies Assessed

This case is initiating on behalf of the Commonwealth; no fees or taxes are collectable ([Va. Code § 17.1-266](#)) unless authorized by statute.

Clerk's fees for recording grants from the Commonwealth in the deed book are authorized. [Va. Code § 55.1-2421](#)

#### Form(s)

Initiating documents not provided by clerk's office.

#### Reference(s)

[Va. Code § 55.1-2401](#) et seq.

## Establishments

### Establish Property Line

A summary proceeding to ascertain and determine the boundary lines of real estate.

#### Document Type

Complaint

#### Filing Type

ESTB

#### Procedures

Follow steps for Complaint. See Suits/Action Types (C) chapter in this manual.

#### Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

#### Form(s)

Initiating documents not provided by clerk's office. Circuit Court Forms series 1400 is available for use.

#### Reference(s)

[Va. Code § 8.01-179](#)

[Rules of Court](#) Part Three

Wright v. Rabey, 117 Va. 884, 86 S.E. 71 (1915)

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

## Establish Record of Birth

If the [State Registrar](#) rejects a person's request for a delayed birth certificate, the person may file a petition in circuit court requesting the court to enter an order establishing a record of birth, and/or parentage of the person.

### Document Type

Petition

### Filing Type

ESTB

### Procedures

**Step 1** Petition is filed with the Notice of the State Registrar denying person's request for a delayed certificate of birth, including all documentary evidence that was submitted to the State Registrar in support of the requested registration.

**Comments:** VENUE – in Circuit Court of the county or city where the person resides; if person is a citizen of the Commonwealth having no fixed residence or is a residence of another state, in Circuit Court of county or city where birth occurred. WHO MAY FILE - the person seeking to establish their birth record; if person is a minor, by their parent or guardian, and if none, by their next friend.

**Note:** Person seeking circuit court relief must have first petitioned the State Registrar for a delayed birth certificate, been denied, and have evidence through Notice of the State Registrar.

**Step 2** Clerk receipts for taxes/fees, opens file and docket new case and issues requested process.

**Step 3** The Court fixes the time and place for hearing the petition.

**Step 4** The Clerk may be directed to issue notice of the hearing.

**Comments:** The petition shall give the State Registrar five days' notice of the court's hearing. The State Registrar or an authorized representative may appear and testify at the hearing.

**SUGGESTION:** State Registrar should be notified immediately upon

receipt of petition. Petition may be faxed to 804-662-7262 or mailed to:

Department of Health  
 Office of Vital Records  
 P.O. Box 1000  
 Richmond, VA 23218-1000

- Step 5** If the Court grants a delayed certificate of birth, “it shall issue an order to establish a record of birth on a form furnished by the State Registrar.”
- Step 6** The Clerk shall forward the form mentioned above in Step 4 to the State Registrar not later than the 10th day of the next calendar month following the month in which the order was entered. Clerk should retain copy of form in file.
- Step 7** The Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk’s office.

Reference(s)

[Va. Code § 32.1-260](#)

<b>FEEs</b>	
<b>TYPE CHARGES</b>	<b>CODE REFERENCE</b>
Clerk’s Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>

FEES	
TYPE CHARGES	CODE REFERENCE
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

**Establish Report of Foreign Adoption**

See [Adoptions-Foreign](#), this manual.

**Establish Residency - Eligibility for In-State Tuition**

A summary court proceeding wherein any party aggrieved from the final decision of an appeals committee of public institution of higher education may petition the circuit court of the jurisdiction wherein the institution is located for review of the final administrative decision. The circuit court’s function in such review shall be “only to determine whether the decision reached by the institution could reasonably be said, on the basis of the record, to be supported by substantial evidence and not to be arbitrary, capricious or otherwise contrary to law.”

In order to become eligible for in-state tuition, an independent student shall establish by clear and convincing evidence that for a period of at least one year immediately prior to the date of the alleged entitlement, they lived in Virginia and had abandoned any previous domicile.

Factors involved in determining domiciliary intent include: continuous residence for at least one year prior to date of entitlement, state to which income taxes are paid, driver’s license, motor vehicle registration, voter registration, employment, and any other economic or social relationships with the Commonwealth.

Document Type

Petition

Filing Type

ESTB

Procedures

**Step 1** Petition is filed with the circuit court in the jurisdiction where the institution is located.

**Comments:** Appeal must be filed within thirty days of the final written administrative decision.

- Step 2** Clerk receipts for fee, opens new case with CIVIL case number and docket case. See “Case Initiation” chapter for respective procedures.
- Step 3** Court receives record from institution and then files the record.
- Step 4** Court may hold a summary hearing on the matter or may base its decision solely upon review of the record of the proceedings.
- Step 5** Clerk indexes and images/scans all orders of the Court in the matter and provides copies of any order to the parties as directed by the Court.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk’s office.

Reference(s)

[Va. Code § 23.1-510](#)

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

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

**Establish Right-Of-Way**

An action by the owner of land which is subject to an easement for purposes of ingress (i.e., access; entrance) and egress (i.e., exit), which benefits an adjunct landowner’s

property, to relocate the easement.

Document Type

Petition

Filing Type

ESTB

Procedures

- Step 1** Clerk receipts for fee, opens file, docket new case and issues process. See “Case Initiation” chapter for respective procedures.
- Step 2** Hearing held.
- Step 3** Clerk certifies copies of any Order of court upon request or upon direction of court.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk’s office. Circuit Court Forms series 1400 is available for use.

Reference(s)

[Va. Code § 55.1-303, 55.1-304](#)

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



## Establish/Impeach/Reform Will

See [Wills – Establish/Impeach Wills](#), this manual.

## Expungement

An action to delete all police and court records pertaining to a criminal case when any of the following has occurred: acquittal, nolle prosequi, dismissal, absolute pardon or an individual's name used in error wrong person arrested ([Va. Code § 19.2-392.2 \(H\)](#)) or ID used without consent ([Va. Code § 19.2-392.2 \(B\)](#)). Expungement is not available for those persons whose criminal case resulted in deferred dismissal following a finding of evidence sufficient to convict the defendant. Dismissals pursuant to [Va. Code § 19.2-151](#) are eligible for expungement. When a record is expunged, the record is not destroyed but removed from public access and sealed.

When a person has been granted an absolute pardon for the commission of a crime that they did not commit, the Secretary of the Commonwealth shall forward a copy of the absolute pardon to the circuit court for the county or city the person was convicted. Upon receiving a copy of the absolute pardon, the court shall enter an order requiring expungement of the police and court records, including electronic records, relating to the charge and conviction. The order of expungement shall contain a statement that the expungement is a result of an absolute pardon. [Va. Code § 19.2-392.2\(I\)](#).

Upon receiving a copy of a writ vacating a conviction pursuant to [Va. Code § 19.2-327.5](#) or [Va. Code § 19.2-327.13](#), the court shall enter an order requiring expungement of the police and court records, including electronic records, relating to the charge and conviction. [Va. Code § 19.2-392.2](#).

Any person whose name or other identification has been used without their consent or authorization by another person who has been charged or arrested using such name or identification may file with the court disposing of the charge a petition with the court for relief pursuant to [Va. Code § 19.2-392.2](#). [Va. Code § 18.2-186.5](#). Such person shall not be required to pay any fees for the filing of a petition under this subsection. A petition filed under this subsection shall include one complete set of the petitioner's fingerprints obtained from a law-enforcement agency. The individual may contact the Victim Notification Program of the [Office of the Attorney General](#) at 804.786.2071 to obtain information, not legal advice, and also to apply for an identification card that shows that they have been the victim of identity theft.

### Document Type

Petition for Expungement  
Copy of Absolute Pardon

Filing Type

XPUN

Procedures

**Step 1** Clerk receives petition. Petition is filed in the locality in which the case was disposed of by acquittal or being otherwise dismissed. Copy of Petition is served on the attorney for the Commonwealth.

**Comments:** Petition should be accompanied by warrant or indictment, if available, and contain:

- file number;
- date of arrest;
- name of arresting agency;
- specific charge to be expunged;
- date of final disposition;
- petitioner's date of birth; and
- full name used by petitioner when charge was made

If information above is not available, the petitioner must state in writing why this information is unavailable. [Va. Code § 19.2-392.2 \(C\)](#). **Note:** Petitioner provides copy of petition to a law enforcement agency to obtain finger print card to be submitted to CCRE. CCRE will then forward, under seal, petitioner's criminal history, copy of source documents, and the set of fingerprints. [Va. Code § 19.2-392.2 \(E\)](#). Underlying case No.(s) could also include any General District Court case numbers.

A petition is not required to expunge a court record in the case of an absolute pardon. Receipt of a copy of the absolute pardon from the Secretary of the Commonwealth initiates the filing and docketing of the case.

**Step 2** Clerk collects fees (clerk & sheriff). [Va. Code §§ 17.1-275 A\(26\) & 17.1-272](#).

**Note:** No filing fees for a writ vacating a conviction. No filing fees for an absolute pardon.

**Step 3** Clerk issues a Summons to the sheriff for service on Commonwealth attorney along with a copy of the petition.

**Note:** No summons fee for absolute pardon.

**Comments:** Commonwealth attorney may file answer or objection within twenty-one days of service or may simply endorse petitioner's order of expungement. See Form CC-1400, SUMMONS - CIVIL ACTION.

- Step 4** Clerk records Service in Process Book or automated case management system. [Va. Code § 17.1-215](#).
- Step 5** Proof of Service is returned to clerk's office and recorded in Process Book or automated case management system.
- Step 6** After receipt of criminal history record information from the CCRE, the Court shall conduct a hearing on the petition.

**Comment:** If the attorney for the Commonwealth of the county or city in which the petition is filed gives written notice to the court that they do not object to the expungement, the court may enter an order of expungement without conducting a hearing.

**Note:** Fingerprint card and criminal history record information is not required for expungement based upon an absolute pardon.

- Step 7** Hearing held.

Court will return fingerprint card at the conclusion of the hearing.

**Note:** If expungement is sought because of identity theft, the Court will send the fingerprint card to VSP (See step below).

If no hearing was conducted, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of the fingerprint card.

**Note:** For expungements by absolute pardon, the court will enter the order of expungement without holding a hearing.

- Step 8** If court orders, Expungement Order is entered. Clerk sends a copy of the order to [Virginia State Police](#). [Va. Code § 19.2-392.2 \(K\)](#).  
Virginia State Police

P.O. Box 27472  
Richmond, VA 23261-7472  
ATTN: CCRE Manager

**Comments:** Identity Theft: The Office of the Attorney General, in cooperation with the State Police, may issue an “Identity Theft Passport” stating that such an order has been submitted. [Va. Code § 18.2-186.5](#)

**Step 9** Clerk receives a letter from State Police requesting notification of compliance with expungement procedures. See [Va. Code § 9.1-134](#).

**Note:** For an example of a Checklist For Completing Expungement Proceedings, See Appendix D: Miscellaneous Orders, Decrees and Documents.

**Step 10** Clerk may receive from Commonwealth attorney, probation and parole, sheriff, police and/or district court(s) all records pertaining to the expunged case.

**Step 11** Scanning courts: the procedure for expunging automated records is found in [6VAC20-120-80 \(D\)](#).

Clerk pulls both the criminal & civil file materials from storage, prepares new file jacket for both criminal and civil cases with only case numbers and “EXPUNGED RECORD TO BE UNSEALED ONLY BY COURT ORDER” on exterior.

**Step 12** Clerk places criminal and civil materials in an envelope that is physically sealed and writes on the outside of the envelope a unique expungement index number and the following clause:

“EXPUNGED RECORD TO BE UNSEALED ONLY ON ORDER OF COURT.” Clerk notes date of expungement order on the envelope.

**Comments:** It is important to include the date of the expungement order on the envelope because an order of expungement may later be voided. [Va. Code § 19.2-392.2 \(M\)](#). (Please See below within this section for further information.)

**Step 13** Clerk places sealed envelope in secure storage area that is not accessible to public.

**Step 14** Clerk prepares separate index, secured from public access, for expunged record showing the name of petitioner and expungement record number.

**Step 15** Clerk “whites out” petitioners name on appropriate index to Criminal Order Book and covers the order that will prevent the public from viewing the order and deletes name from Grand Jury List, if applicable. Clerk should remove all orders from any repository, including order books and scanned images.

**Comments:** Clerk would delete case from automated system and delete all reference for fines and costs (stolen identity cases).

**Note:** Clerk should make screen prints of information in the automated system to facilitate in entering the information back into the system in the event the expungement is later voided. (For further instructions on voiding an expungement, please See below within this section.)

Clerk would notify Collection Agent and DMV or other agency originally notified (using an amended abstract).

**Step 16** Clerk follows current procedures provided by [State Police](#). Clerk sends copy of compliance within 60 days of receipt of State Police.

**Step 17** Clerk deletes criminal and civil cases from automated case management system, and manual indexes/dockets.

**Step 18** Clerk sends written notification of compliance within 60 days of receipt of State Police request for expungement.

**Step 19** Clerk prepares cover letter with copy of order attached to the [Library of Virginia](#).

Library of Virginia  
ATT: QC Supervisor, Imaging Services  
800 East Broad Street  
Richmond, VA 23219-8000  
Questions: 804-236-3703

Please include as much information as possible about the expunged case, including but not limited to case numbers, Book and Page, instrument numbers of scanned orders, etc. If the case is from district court, please indicate that also in the letter.

The court should also provide the microfilm reel number that images are on, and if this information is unknown, please contact your vendor for the reel number. The Library will splice out the original order(s).

**Step 20**

VOIDING AN EXPUNGEMENT:

- Clerk receives a motion to void a case that was previously expunged.
- If the expungement is subsequently voided, clerk should unseal the record and re-enter the case back into the automated system, noting in the REMARKS area the date of the expungement order and the date the order was entered to void the expungement.

**Comments:** Any expungement order entered where (i) the court or parties failed to strictly comply with the procedures set forth in this section or (ii) the court enters an order of expungement contrary to law, shall be voidable upon motion and notice made within three years of the entry of such order. [Va. Code § 19.2-392.2 \(M\)](#).

Clerk should send a copy of the motion to void the expungement to the district court for its records. The case, once re-entered into the automated system, will not re-transmit to the [State Police](#) and [Division of Motor Vehicles](#) as a new charge.

**Step 21**

Clerk re-records and re-indexes orders in the Civil and Criminal Order Books.

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

**Step 22**

Clerk sends a certified copy of the order voiding the expungement to the [Virginia State Police](#).

Virginia State Police  
P.O. Box 27472  
Richmond, VA 23261-7472  
ATTN: Mary Catherine Day

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

**Note:** AS OF JULY 1, 2016: Upon entry of an order of expungement the clerk of court shall refund the petitioner's costs. Exception: Service fees.

Form(s)

CC-1473, [PETITION FOR EXPUNGEMENT FILED IN A CIRCUIT COURT – ACQUITTAL/DISMISSAL](#)

CC-1473, (Inst) [INSTRUCTIONS FOR EXPUNGEMENT FILED IN A CIRCUIT COURT – ACQUITTAL/DISMISSAL](#)

CC-1474, Expungement Order

Reference(s)

[Va. Code § 2.2-402](#)

[Va. Code §§ 17.1-272, 17.1-275 A \(26\)](#)

[Va. Code § 18.2-186.5](#)

[Va. Code § 19.2-392.2](#) Et Seq.

[Va. Code § 42.1-70](#)

[Va. Code § 58.1-1727](#)

Commonwealth V. Jackson, 255 Va. 552 (1998)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
Sheriff's fee (per local service)**	<a href="#">Va. Code § 17.1-272</a>
Sheriff's fee (per out-of-town service) **	<a href="#">Va. Code § 17.1-272 (1)</a> <a href="#">Va. Code § 17.1-272</a>
* Not assessed if the amount of the civil action is \$500 or less	
** No fee collected if service waived by Commonwealth's Attorney	

**Expungement of Unlawful Detainer**

If an action for unlawful detainer is dismissed, or a nonsuit is taken, and the time in which the action may be recommenced pursuant to [§ 8.01-229](#) has expired, provided that no order of possession has been entered in the case, the defendant may file a petition in the general district court where the underlying unlawful detainer action was filed requesting expungement of the court records relating to the unlawful detainer. The petition shall provide the date that the order of dismissal or nonsuit was entered, the address of the property that was the subject of the unlawful detainer action, and the name of the plaintiff in the unlawful detainer action.

**Note:** General district court has exclusive jurisdiction for the initial filing of the petition.

For previously appealed unlawful detainer actions, the petition will be transferred to circuit court from the general district court for ruling.

Upon finding that the unlawful detainer action was dismissed, or a nonsuit was taken and the time for recommencement of the action has expired, and no order of possession was entered, the court shall, without a hearing, enter an order requiring the expungement of the court records.

#### Document Type

Petition for Expungement of Unlawful Detainer

#### Filing Type

GAOT – Appeal of Denial of Petition for Expungement of Unlawful Detainer  
by General District Court  
PET – Transfer of Petition for Expungement of Unlawful Detainer  
by General District Court

#### Procedures

**Step 1** Clerk receives petition with a copy of the pertaining unlawful detainer(s) attached, or appeal of denial of petition, from general district court.

**Step 2** Clerk receipts fees. [Va. Code § 17.1-275 A\(26\)](#).

**Note:** General district court will collect the writ tax prior to transfer, however, if the writ tax does not accompany the petition when transferred, the circuit court clerk shall notify the petitioner of the filing fee requirement. Fees shall be paid by the petitioner before the petition is filed unless the court has ordered the petitioner may proceed *in forma pauperis*.



**Step 3** Clerk sends the case file to the judge for review.

**Note:** No hearing is required.

**Step 4** Upon entry of the order, the clerk sends a certified copy of the order to petitioner and the general district court.

**Note:** When there are multiple tenants and only one tenant files a petition for expungement of the unlawful detainer, and the case disposition is granted for all tenants, the case is expunged as to all tenants.

**Step 5** Scanning courts: the procedure for expunging automated records is found in [6VAC20-120-80 \(D\)](#).

Clerk places the file, and the prior appeal of unlawful detainer file, if any, in a new file jacket with only case number(s) and “EXPUNGED RECORD TO BE UNSEALED ONLY BY COURT ORDER” on exterior.

**Step 6** Clerk prepares separate index and places sealed envelope and index in a secure storage area that is not accessible to public.

**Comments:** It is important to include the date of the expungement order on the envelope. The code does not speak to retention requirements for expungements of unlawful detainer, however, it is suggested these expungements be retained for a period of 3 years.

**Step 7** Clerk removes all case information, including any prior appeal(s) of unlawful detainer, from the automated system, from manual indexes/dockets and scanned images.

**Note:** If there are multiple tenants and the petition is granted to only one tenant, Clerk redacts all references of the qualifying tenant only.

**Note:** Clerk should make screen prints of information in the automated system to facilitate in entering the information back into the system in the event the expungement is later voided.

**Step 8** Clerk prepares cover letter with copy of order attached to the [Library of Virginia](#).

Library of Virginia  
 ATT: QC Supervisor, Imaging Services  
 800 East Broad Street  
 Richmond, VA 23219-8000  
 Questions: 804-236-3703

Fees/Taxes/Other  
 Monies Assessed

Please include as much information as possible about the expunged case, including but not limited to case numbers, Book and Page, instrument numbers of scanned orders, etc. If the case is from district court, please indicate that also in the letter. The court should also provide the microfilm reel number that images are on, and if this information is unknown, please contact your vendor for the reel number. The Library will splice out the original order(s).

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

DC-425, PETITION FOR EXPUNGEMENT OF UNLAWFUL DETAINER  
 DC-426, ORDER FOR EXPUNGEMENT OF UNLAWFUL DETAINER

Reference(s)

[Va. Code § 8.01-130.01](#)

<b>FEES</b>	
<b>TYPE CHARGES</b>	<b>CODE REFERENCE</b>
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
Sheriff's fee (per local service)**	<a href="#">Va. Code § 17.1-272</a>
Sheriff's fee (per out-of-town service) **	<a href="#">Va. Code § 17.1-272 (1)</a> <a href="#">Va. Code § 17.1-272</a>
* Not assessed if the amount of the civil action is \$500 or less	
** No fee collected if service waived by Commonwealth's Attorney	

## Foreign Country Judgments

The Uniform Foreign-Country Money Judgments Recognition Act addresses the specific procedures for seeking enforcement of judgments from other countries. [Va. Code § 8.01-465.13:1](#), et seq.

Foreign country means a government other than the United States or its' territories.

Foreign country judgment means a judgment of a court of a foreign country.

A foreign-country judgment must be recognized by the court before enforcement proceedings can take place.

### Document Type

Original action seeking recognition  
Counterclaim, cross-claim, affirmative defense in a pending action

### Filing Type

RFCJ

### Procedures

- Step 1** Clerk receives document, either as an original action seeking recognition as a foreign judgment, or as an issue of recognition in a pending action.
- Step 2** Clerk receipts for money collected, assigns a case number and docket case.
- Step 3** Clerk sends case to the court for determination of recognition.
- Step 4** Once court makes a determination of recognition, clerk will proceed with enforcement of judgment as directed by court order.
- Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Forms(s)

Initiating forms not provided by clerk's office.

References(s)

Chapter 17.2 of Title 2 ([§ 8.01-465.13:1](#), et seq.)

## Forfeitures

### Bail Bond

An action to incur a penalty or become liable for the payment of a sum of money as a consequence of failure to abide by the terms and conditions of bail/release.

Document Type

Order and Notice of Bond Forfeiture or another format for Orders and Notices preferred by the Court.

Filing Type

BF –Circuit Court Criminal Case  
GABF – General District Court Appeal  
JABF – Juvenile & Domestic Relations Court Appeal

Procedures

**Step 1** The Court records the default of a recognizance in a case for either a party or witness who has failed to perform the condition(s) of appearance.

**Comment:** The requirement to hold a show cause hearing with reasonable notice to all parties was repealed 7/01/2019. It is replaced with a more summary procedure requiring the Court to record a default. Prior to ordering default and forfeiture of the bond, the Court may require service upon the property or surety bail bondsman, or Other Solvent Surety (non-licensed surety offering property as collateral).

**Caveat:** If the offense date of the Failure to Appear occurred on or before 6/30/2019, a notice is served upon all parties, accused and surety, including the surety company and agent for surety company

(if known) to show cause why all or part of a recognizance should not be forfeited.

**Step 2** The Court shall issue a notice of default on the surety within five days of the breach of the condition of appearance. The Clerk scans and indexes Form DC-482, ORDER AND NOTICE OF BOND FORFEITURE, evidencing the Court's entry of the Order of Default and the issuance of the Notice to the Respondent(s). The Order and Notice of Default shall be served upon the surety.

**Note:** The Court may enter its own order in lieu of Form DC-482, ORDER AND NOTICE OF BOND FORFEITURE. The order shall be served upon the surety.

**Comment:** Refer to Form DC-482, ORDER AND NOTICE OF BOND FORFEITURE for content of the Notice to the Respondents(s). The Respondent(s) are the person(s)/agent(s) securing the condition of recognizance by Cash or as a Surety Bail Bondsman, Property Bail Bondsman or "Other Solvent Surety" as identified on Form DC-330 RECOGNIZANCE.

**Step 3** If the defendant is not brought before the court by the 150<sup>th</sup> day, and the forfeiture has not been paid, see **STEP 4**.

If the defendant is brought before the court within 150 days of the findings of default, the court shall order a dismissal of the default upon the filing of a motion by the party in default. Form DC-482, ORDER AND NOTICE OF BOND FORFEITURE may be used to file a Motion to Dismiss Default.

The Clerk scans and indexes DC-482, ORDER AND NOTICE OF BOND FORFEITURE, or the Court's own order, evidencing the Court's entry of the dismissal of the default.

**Step 4** If the defendant is not brought before the court and the forfeited recognizance is not paid by 4:00 p.m. on the last day of the 150-day period from the finding of default, the license of any bail bondsman on the bond shall be suspended in accordance with [Va. Code § 9.1-185.8](#). The Order of Forfeiture shall be served upon the surety.

At such time, the court shall issue a DC-224, NOTICE TO PAY to any employer of such bail bondsman if a property bondsman. If the

forfeiture is not paid within 10 business days of the notice to pay, licenses of the employer of the bail bondsman and agents thereof shall be suspended in accordance with [Va. Code § 9.1-185.8](#).

The Clerk endorses Form DC-482, ORDER AND NOTICE OF BOND FORFEITURE, certifying that a Notice to Pay was issued to the employer of the property bail bondsman.

The Clerk scans and indexes Form DC-482, ORDER AND NOTICE OF BOND FORFEITURE, evidencing the clerk's action of issuing the notice.

**Comment:** Form DC-244, NOTICE TO PAY, is sent for the property bail bondsman only. The suspension of license applies to both property bail bondsmen and surety bail bondsmen.

**Step 5** The Clerk notifies the [Department of Criminal Justice Services](#) in the event a bond is forfeited and a property bondsman is involved. Notification should be sent to:

Department of Criminal Justice Services  
Private Security Services Section  
P.O. Box 1300  
Richmond, VA 23218

The Clerk notifies the [Bureau of Insurance](#) in the event a bond is forfeited and a Surety Bondsman is involved. Notification should be sent to:

Bureau of Insurance  
P.O. Box 1157  
Richmond, VA 23218

The Clerk dates and endorses Form DC-482, ORDER AND NOTICE OF BOND FORFEITURE, certifying that notice was sent to the Department of Criminal Justice Services.

The Clerk scans and indexes Form DC-482, ORDER AND NOTICE OF BOND FORFEITURE, evidencing the clerk's action of issuing the notice.

**Step 6** After 150 days of the finding of default, the default shall be recorded and docketed by the clerk as a judgment. Forfeited recognizances from a district court are transmitted as an abstract of judgment to the clerk of the circuit court of the city or county of the district court.

The Clerk shall certify an abstract of judgment to clerk of court of

the circuit court of the county or city where the judgment debtor resides or in any city or county where real estate is owned.

**Step 7** The Clerk follows the procedures in subsection B., below, to transfer proceeds of the forfeited cash bond, or to set up the receivable account for the forfeited surety bond.

The court shall refund part or all of any bond ordered forfeited if accused appears or is brought before the court within 24 months of the finding.

If it is brought to the attention of the court that a defendant who has defaulted on their bond is incarcerated in another state or country within 48 months of the finding of default, thereby preventing their delivery or appearance within that period, the court shall remit any bond previously ordered forfeited.

**Comment:** Court should require proof of incarceration.

**Note:** Refer to subsection C., below, for procedures to request a refund.

Fees/Taxes/Other Monies Assessed

There are no costs for this proceeding.

Form(s)

DC-224, Notice to Pay  
DC-482, Order and Notice of Bond Forfeiture

Reference(s)

[Va. Code § 9.1-185.8](#)  
[Va. Code § 17.1-266](#)  
[Va. Code § 17.1-267](#)  
[Va. Code § 19.2-143](#)  
[Va. Code § 192-147](#)

## Financial Accounting for Processing Bond Forfeitures

Cash Bond Posted by a Third Party.

- At 150 days after default and order of judgment, create an FAS Individual Account with an account code of 201 and FAS Account Type "F".
- Send a copy of the order(s) to the State Treasurer or the local Finance Director.
- If the defendant appears on the court date and is convicted, the third-party sureties may agree to allow fines and costs to be deducted from the cash bond. Distribute the bond to fines and costs by journal voucher with reason code "BD". Refund the balance of the bond by disbursement with reason code "X". Do not format journal voucher if a partial bond distribution is made.

Sureties – Defendant and Third-Party Bonds.

- At 150 days after default and order of judgment, create and FAS Individual Account with an account code of 201 and FAS Account Type "F".
- Enter judgment in the Judgment Lien Docket of the Court.

Sureties – Property Bail Bondsman and Surety Bail Bondsman.

- At 150 days after default and order of judgment, create an FAS Individual Account with an account code of 201 and FAS Account Type "F".
- Enter judgment in the Judgment Lien Docket of the Court.

Unsecured Bond (Personal Recognizance Bond).

- At 150 days after default and order of judgment, create an FAS Individual Account with an account code of 201 and FAS Account Type "F".
- Enter judgment in the Judgment Lien Docket of the Court.



## Bond Refund Requests

Bond refunds can be ordered for the following reasons:

- If the defendant appears or is delivered to the court within 24 months of default. Costs may be deducted as ordered by the court.
- If the defendant is incarcerated in another state or country within 48 months of the finding of default, thereby preventing their delivery or appearance within that period, the court shall remit any bond previously ordered forfeited. If the defendant left the Commonwealth with the permission of the court, the bond shall be remitted without deduction of costs, otherwise, the cost of returning them to the Commonwealth shall be deducted from the bond.
- If evidence is presented that the defendant is incarcerated or subject to court process in another jurisdiction.
- If a medical certificate is presented from a licensed physician that the defendant was physically unable to appear.
- If the defendant was prevented from appearance due to service in the military.

All refunds of forfeited bonds are to be issued by the Treasurer or the Finance Director, depending on who received the proceeds. The Clerk should provide the following to the requestor:

- A letter on court stationery which includes a clear statement of the request, name of the defendant or surety and case number, address of the recipient where the check should be mailed.
- A copy of the receipt or journal voucher where the forfeiture was paid.
- A certified copy of the court order refunding the bond.
- A copy of the BU11, Local Court Remittance, showing the funds transmitted to the State (if available).

## Contraband Seized For ABC Violations

An action in which the court determines whether or not the articles seized by ABC agents were kept or used in violation of Alcoholic Beverage Control regulations. If the Court determines the articles should be forfeited, they are forfeited to the Commonwealth, and if are not used as evidence in a pending prosecution, are turned over to the ABC Board to

be destroyed or sold. The remedy of forfeiture is allowed under [Va. Code § 4.1-336](#).

Document Type

Warrant ([Va. Code § 4.1-338](#)) or Information ([Va. Code §§ 4.1-339](#))

Filing Type

FORF

Procedures

If property seized other than motor vehicles:

**Step 1** Upon return of an ABC officer's search warrant ([Va. Code § 4.1-337](#)) and report, the court must hold a hearing in conformity with [Va. Code § 4.1-338 \(C\)](#).

**Comments:** If no claimant appears, the seized property is forfeited to the Commonwealth. If claimant appears, the court will determine the validity of the claim.

**Step 2** Clerk opens file and places case on the civil docket.

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

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

If motor vehicles are seized:

**Step 1** Forfeiture proceedings are initiated against the owner of the motor vehicle and action on the matter is done in conformity with procedures established in Chapter 22 ([Va. Code § 19.2-386.1](#) et seq) of Title 19.2.

**Step 2** Clerk opens file and places case on the civil docket.

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

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

Fees/Taxes/Other Monies Assessed

No fee/tax/other assessment is collectable from the Commonwealth. The only fee which may be collected is a fee for preparing the bond to secure possession authorized under [Va. Code § 19.2-386.6](#) from the property owner who requests return of the property pending the outcome of the suit.

Form(s)

Initiating forms not provided by clerk's office.

Reference(s)

[Va. Code §§ 4.1-338, 4.1-339](#)  
[Va. Code § 17.1-266](#)  
[Va. Code § 19.2-386.1](#), et seq

FEES	
TYPE CHARGES	CODE REFERENCE
Fee for preparing bond	<a href="#">Va. Code § 17.1-275 A(6)</a>

**Forfeiture of Property, Money**

An action by which the Commonwealth may seize and sell property or money by reason of the violation of any law, or as provided for by statute. Property subject to seizure set out in [Va. Code § 19.2-386.15, et seq](#), including but not limited to automobiles, firearms, weapons, property used in connection with the abduction of children, and property used in connection with drug related crimes or human trafficking.

Document Type

Information

Filing Type

FORF

Procedures

**Step 1** Commonwealth Attorney or Attorney General files an Information in the Clerk's office where (1) property is located (2) property is seized (3) owner could be prosecuted. Contents of Information are prescribed in [Va. Code § 19.2-386.1](#).

Such Information shall ask that all persons concerned or interested be notified to appear and show cause why such property should not be forfeited.

If an information has not been filed, the agency seizing the property shall forthwith notify in writing the attorney for the Commonwealth in the county or city in which the seizure occurred, who shall, within 21 days of receipt of such notice, file a notice of seizure for forfeiture with the clerk of the circuit court.

When property has been seized prior to filing an information, then an information against that property shall be filed within 90 days of the date of seizure or the property shall be released to the owner or lien holder.

**Step 2** When any property has not been seized at the time an Information naming that property is filed, the clerk or judge, upon motion of the Commonwealth Attorney, shall issue a warrant to the sheriff or other law enforcement officer authorized to serve criminal process, describing the property named in the complaint and authorizing its immediate seizure. In all cases of seizure of real property, a notice of Lis Pendens is filed. [Va. Code § 19.2-386.2](#).

**Comments:** Index Lis Pendens in land records as prescribed in [Va. Code § 19.2-386.2 \(B\)](#).

If the property seized is a motor vehicle, the attorney for the Commonwealth shall notify the Commissioner of the Department of Motor Vehicles. The Commissioner will certify to the Commonwealth Attorney the name and address of the person in whose name the vehicle is registered, together with any lien holder. The Commissioner

will also notify the owner and lienor of the reported seizure.  
[Va. Code § 19.2-386.2:1](#)

**Step 3** Clerk mails the notice of seizure, (if no Information filed) to the last known address of all identified owners and lien holders.

**Comments:** Contents of the Notice of Seizure are set out in [Va. Code § 19.2-386.3](#).

**Step 4** All parties except corporations are served in accordance with [Va. Code § 8.01-296](#) with a copy of the Information and Notice to Appear.

Contents of Notice prescribed in [Va. Code § 19.2-386.3](#).

Service upon corporations shall be made in accordance with [Va. Code § 8.01-299](#) or [§ 8.01-301 \(1\) or \(2\)](#). If service cannot be made, then notice is provided by publication according to [Va. Code § 8.01-317](#)

**Step 5** Appraisal, if required, is arranged by the clerk. Clerk also prepares the bond to secure possession. [Va. Code § 19.2-386.6](#). When bond is given, clerk places it in the Bond Book and leaves a copy in the file.

**Comments:** Appraisal may be required if the owner wants the property back pending the outcome of the suit.

**Step 6** Upon request of the clerk, a judge may order a law-enforcement agency to take into its custody or maintain custody of substantial quantities of any controlled substance, etc., used or to be used in a criminal prosecution.

**Step 7** After the hearing, the court may order forfeiture of the property seized, or order destruction of contraband or weapons and property that have minimal value.

**Comments:** The terms of sale and how proceeds are to be distributed are set out in the order.

Upon petition to the court and notice to the Attorney for the

Commonwealth, the court, on good cause shown, shall return any weapons to its lawful owner if conditions in [Va. Code § 19.2-386.29](#) are met. The owner shall acknowledge in a sworn affidavit to be filed in the case that they have retaken possession of the weapon involved.

**Step 8** When the costs of the action cannot be paid from the proceeds, the actual expenses are paid from the Criminal Fund. Clerk would therefore bill Supreme Court on List of Allowances.

**Comments:** Excess proceeds of the sale and what may be realized on a forfeited bond, or on forfeited money, is collected by the clerk, receipted using Account Code 509. Check is then made payable to State Treasurer, and given to the law enforcement agency to mail to DCJS with DCJS-998, [ASSET SEIZURE REPORTING FORM](#) and DCJS-999, [SEIZED PROPERTY DISPOSITION SHARING DECISION FORM](#).

**Step 9** Clerk indexes and enters orders in the Civil Order Book unless otherwise provided by law.

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

#### Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

#### Form(s)

Suggestion: Have the Commonwealth Attorney provide all necessary forms for the Warrant, Notice of Seizure, and Bond.

#### Reference(s)

[Va. Code § 17.1-266](#)  
[Va. Code § 17.1-275A \(6\)](#)  
[Va. Code § 19.2-386.1](#), et seq.

FEES	
TYPE CHARGES	CODE REFERENCE
Fee for preparing bond for owner or lienholder (claimant)	<a href="#">Va. Code § 17.1-275 A(6)</a>
Net Proceeds	
<i>* Fees are not chargeable to Commonwealth</i>	

## Freedom of Information

An action by any person including the Commonwealth Attorney, alleging denial of rights and privileges conferred by chapter 37 ([Va. Code § 2.2-3700](#) et seq.) of Title 2.2, known as the Virginia Freedom of Information Act. The action may be brought in either the district or circuit court.

### Document Type

Petition

### Filing Type

FOI

### Procedures

**Step 1** Person files petition for mandamus or injunction by an affidavit, in the district or circuit court of the city or county from which the public body has been elected or appointed to serve and in which such rights and privileges are alleged to have been denied.

**Comments:** An appeal from an adverse ruling of the district court may be made to the circuit court. The clerk of the circuit court will process appeals according to [Va. Code § 16.1-106](#) et seq.

**Step 2** Clerk collects money, opens file and docketts the case, and issues a notice of hearing. Clerk advises judge of petition.

**Step 3** A hearing must be held within seven days from the date made (filed); if the circuit court is not in regular term (session), a hearing is given precedence on the court's docket. See "Mandamus" or "Injunction" in this manual.

**Step 4** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by clerk's office.

Reference(s)

[Va. Code § 2.2-3700](#) et seq.  
[Va. Code §§ 16.1-106](#) through [16.1-113](#)

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



## Chapter 9 - Suits/Action Types (G-M)

### Garnishment

A post-judgment collection process whereby a judgment creditor may levy against a portion of a judgment debtor's wages or bank accounts. Pursuant to [Va. Code § 34-29](#), the amount subject to garnishment may not exceed the lesser of (i) 25 percent of the worker's disposable weekly earnings or (ii) the amount by which their disposable earnings exceed 40 times the federal minimum hourly wage. See [Va. Code §§ 8.01-466](#), [8.01-511](#), [16.1-116](#) and [16.1-69.55\(B\)\(4\)](#) for authority to issue executions and summons in garnishment. In issuing garnishments on behalf of the Commonwealth for unpaid fines and costs, the clerk may include assessment for filing fees and sheriff fees in the total amount due from the defendant. See Attorney General Opinion to Mitchell, dated 4/5/96 (1996, page 43); *In issuing garnishments on behalf of Commonwealth for unpaid fines and court costs, circuit court clerk may include assessment for filing fees and sheriff's fees in total amount due from defendant.*

#### Notes:

- Service upon the U.S. Postal Service is governed by 39 CFR § 491 "Garnishment of Salaries of Employees of the Postal Service and the Postal Rate Commission." Circuit courts may be required to issue executions and summons in garnishment on judgments entered in juvenile and domestic relations district courts, per [Va. Code § 16.1-278.18 \(B\)](#).
- Child support payments, whether current or arrears, received by a parent for the benefit of and owed to a child in the parent's custody, shall not be subject to garnishment. [Va. Code § 20-108.1 \(G\)](#). Support for dependent minor children shall not be subject to garnishment. [Va. Code § 34-4.2](#). To claim this exemption, the debtor shall attach to the claim for exemption form an affidavit that complies with the requirements of subsection B of [Va. Code § 34-4.2](#) and two items of proof showing that the debtor is entitled to this exemption.
- The Homestead exemption is \$5,000, or \$10,000 if the debtor is 65 years of age or older.
- The exemption for property of disabled veterans is \$10,000. [Va. Code § 8.01-512.4](#).
- The district court has exclusive jurisdiction over the issuance of any writ of execution on any judgment rendered in its court, within the ten year period of enforceability, per [Va. Code § 16.1-94.1](#) even if an abstract has been docketed in the circuit court. If the abstract has been docketed in the circuit court, after ten years, the circuit court may issue execution **or** the general district court may issue following receipt of a circuit court abstract of judgment (use form CC-1464, ABSTRACT OF JUDGMENT) in the general district court. If a district court abstract is docketed in the circuit court, the limitation for the enforcement of that district court judgment is extended to twenty years from the **date of the original district court judgment**, regardless of the disposition of the documents in the district court. See [Va. Code § 16.1-69.55 \(B\)\(4\)](#).

Document Type

Garnishment Summons

Filing Type

GARN

Procedures

- Step 1** Clerk receives Suggestion for Summons in Garnishment. See form CC-1485, [Suggestion for Summons in Garnishment](#). **Note:** If the judgment debtor does not reside in the city or county where the judgment was entered, the judgment creditor may have the case filed or docketed in the court of the city or county where the judgment debtor resides and such court may issue an execution on the judgment, provided that the judgment creditor (a) files with the court an abstract of the judgment rendered, (b) pays fees to the court in accordance with § [16.1-69.48:2](#) or subdivision 17 of § [17.1-275](#), and (c) files in both courts any release or satisfaction of judgment.
- Step 2** Clerk receipts filing fee (clerk's and sheriff's). **Note:** Service and process per individual served is \$12. See [Va. Code § 17.1-272](#) and "Fee Schedule" appendix for further information.
- Step 3** Clerk determines if there is a live execution (i.e., writ of *fieri facias*) by checking original case file for execution paper and/or the Judgment Lien Docket. **Note:** If there is a live execution already, do not charge the execution fee.
- Step 4** Clerk docket case within 90 days or 180 days (wage garnishments only) for garnishment hearing.
- Step 5** Clerk issues CC-1486, [GARNISHMENT SUMMONS](#). Clerk serves the garnishee the GARNISHMENT SUMMONS along with the DC-455, [GARNISHEE INFORMATION SHEET](#) to employer. After the return of service on the garnishee has been received by the Clerk's Office, then serve the judgment debtor the GARNISHMENT SUMMONS along with the DC-454, [REQUEST FOR HEARING – GARNISHMENT/LIEN EXEMPTION CLAIM](#). Also send to the Sheriff the addressed stamped envelope to judgment debtor (which is supplied by creditor and mailed by sheriff to judgment debtor).

**Note:** If it is a third-party process server, you can send the garnishment summons and other documents at the same time to the third-party server. They will serve the Garnishee and Debtor in the correct order. Clerk may want to verify this with the third-party process server if unsure of their process.

**Comments:** Service upon a corporation shall be served upon an officer, an employee designated by the corporation, or if there is no designated employee or they cannot be found, upon a managing employee of the corporation. If the judgment creditor or their attorney files with the court a certificate per [Va. Code § 8.01-513](#), then the summons shall be served on the registered agent of the corporation or upon the clerk of the [State Corporation Commission](#). See also [Va. Code § 12.1-19.1](#).

**Note:** A Summons to Answer Interrogatories may be served by a private service processor. No sheriff's action is requested to levy on tangible personal property, take possession of it, and sell it at public auction. See Attorney General Opinion to Ayers, 10-075 (2011); *Writs of fieri facias, debtor interrogatories and garnishments are distinct, though related, proceedings, so that, although the sheriff or other executing officer may be required to levy on the tangible personal property of a judgment debtor when executing a writ of fieri facias, no such requirement is imposed when serving a Summons for Interrogatories or Garnishment Summons. In addition, the fees sheriffs may charge for these services are governed by the express terms of Va. Code § 17.1-272.*

**Step 6** Clerk records issuance of service in Process Book or automated case management system. [Va. Code § 17.1-215](#).

**Step 7** Proof of Service returned and recorded in Process Book or automated case management system.

**Comments:** Person making service shall note on their return the date of mailing of copy of summons to judgment debtor, with notation indicated in [Va. Code § 8.01-511](#).

**Step 8** If a hearing is requested to contest the garnishment, a hearing must be held within seven business days from the date the notice of exemption and request for hearing form is filed with

the clerk's office. **Note:** Sometimes notice is filed with clerk before return of process or service on judgment debtor; clerk shall notify parties of hearing date (if written notice not given, clerk should document in the file that notification was not given). See form DC-454, [REQUEST FOR HEARING-GARNISHMENT/LIEN EXEMPTION CLAIM](#)

- Step 9** Hearing held in cases of exemption claim.
- Step 10** Clerk or attorney prepares order either dismissing, modifying, or affirming garnishment; clerk sends copy of order to garnishee if garnishment dismissed or modified. A DC-453, Garnishment Disposition may be utilized.
- Step 11** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

**Comments:** Recording and/or Indexing may be accomplished by electronic or micrographic medium as provided in [Va. Code § 17.1-240](#) or [Va. Code § 17.1-249](#).

- Step 12** Prior to return date on garnishment summons (max. of 90 days\*), clerk receives money from garnishee, or clerk receives answer that judgment debtor is not employed, has no assets with garnishee, or that judgment debtor has legal defense.

**Comments:** \*In the case of a wage garnishment, the summons shall not be returnable more than 180 days from issuance. [Va. Code § 8.01-514](#).

- Step 13** Clerk receipts any money received or money may be received in form of a check made payable to judgment creditor. Use Account Code 523 if check is made payable to the Clerk/Commonwealth.
- Step 14** Return date hearing is held (may or may not be attended).
- Step 15** Dispositional order is prepared by attorney or clerk and entered by judge.
- Step 16** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

- Step 17** Clerk disburses money pursuant to court order.
- Step 18** Clerk follows normal case closing procedures.

**Notes:**

- If another garnishment is requested, it would be a new and separate case.
- Who can/cannot be garnished? [Va. Code §§ 8.01-522, 8.01-523, 8.01-525](#). *Hilton v. Amburgey* 198 VA 727, 1957
- If clerk has received funds from garnishee and receives either written or oral notice of filing of bankruptcy by judgment debtor, clerk does not disburse funds until advised by bankruptcy court, judge or trustee. Get order from circuit court to make payment to bankruptcy court or trustee.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

- CC-1485, [SUGGESTION FOR SUMMONS IN GARNISHMENT](#)  
 CC-1486, [GARNISHMENT SUMMONS](#)  
 CC-1486(a), Garnishment Statute  
 DC-454, [REQUEST FOR HEARING - GARNISHMENT EXEMPTION CLAIM](#)

Reference(s)

- [Va. Code § 8.01-511 et seq](#)  
[Va. Code § 17.1-275 A \(7\)](#)  
[Va. Code § 58.1-1727](#)  
 Attorney General Opinion to Crismond, dated 4/17/74 (1973-74, page 415);  
*Writ Tax - Not applicable to garnishment proceeding.*

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(7)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(13)</a>
Clerk's execution fee*	<a href="#">Va. Code § 17.1-275 A(43)</a>
Sheriff's fee (Process and service of summons)	<a href="#">Va. Code § 17.1-272 (1)</a>
<b>NOTE:</b> When the Writ of <i>Fieri Facias</i> portion of the Garnishment Summons has been completed, only one sheriff's fees should be assessed which covers serving the fi fa and the summons. Completion of the Writ of <i>Fieri Facias</i> portion of the Garnishment Summons is necessary unless a live fi fa is already in existence.)	

FEES	
TYPE CHARGES	CODE REFERENCE
Sheriff's fee (out-of-town service)	<a href="#">Va. Code § 17.1-272</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF**	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
* If there is a live execution, no fee may be charged.	
** Not assessed if the amount of the civil action is \$500 or less	

## Guardians/Conservators

### Guardian/Conservator Appointment

A guardian is responsible for the personal affairs of an incapacitated adult. A guardian makes decisions about the person's support, care, therapeutic treatment, and residence.

A conservator is responsible for managing the estate and financial affairs of an incapacitated adult.

Any person, including a community services board or other local or state governmental agency, may file a petition for the appointment of a guardian, a conservator or both.

Where the petition is brought by a parent or guardian of a respondent who is under the age of 18, or by any other person and there is no living parent or guardian of a respondent who is under the age of 18, the petition may be filed no earlier than six months prior to the respondent's eighteenth birthday. Where the petition is brought by any other person and there is a living parent or guardian of a respondent who is under the age of 18, the petition may be filed no earlier than the respondent's eighteenth birthday.

Appointed by the circuit court and qualified by the circuit court clerk, a guardian or conservator may have responsibilities that are unlimited in time or scope, or may be granted powers that are "limited" or "temporary".

**Note:** Except for good cause shown, including a determination by the court that there is no acceptable alternative available to serve, the court shall not appoint as guardian or conservator for the respondent an attorney who has been engaged by the petitioner to represent the petitioner within three calendar years of the appointment. Such prohibition also applies to all other attorneys and employees of the law firm with which such attorney is associated. The court shall require the proposed guardian or conservator to certify at

the time of appointment that they have disclosed to the court any such representation of the petitioner or association with a law firm that represented the petitioner within the three calendar years preceding the appointment. An attorney seeking qualification as a guardian/conservator is required to file [CC-1643, Certificate of Proposed Guardian](#), with the court prior to the hearing. [Va. Code § 64.2-2007](#)

Document Type

Petition

Filing Type

APPT

Procedures

**Step 1** Petition is filed in the circuit court. Petition shall include the sealed filing of the incapacitated person's social security number. [Va. Code § 64.2-2002](#).

**Comments:** Filed where the subject resides, is located, or last resided prior to becoming a patient. The petitioner may request appointment as a guardian and/or conservator.

**Note:** When an addendum is filed containing financial information of the respondent, such addendum shall be filed as confidential.

**Step 2** Clerk receipts money, opens file and docket case.

**Comments:** Petitioner may request waiver of service fees and court costs. However, the Commonwealth will not pay petitioner's counsel or other costs. [Va. Code § 64.2-2007](#).

**Step 3** The court shall appoint a guardian ad litem to represent the interests of the respondent and shall promptly set a date, time and location for a hearing.

**Comments:** The Petitioner shall file with the clerk a statement of compliance of advance notice required by [Va. Code § 64.2-2004](#).

**Step 4** Clerk issues process. The respondent shall be given reasonable notice of the hearing.

**Comments:** Personal service upon the respondent is required. A

Notice of Hearing, copy of the Petition, and copy of the order appointing a guardian ad litem is served.

**Step 5** Clerk files all returns, etc. Any reports evaluating the condition of the respondent shall be filed, under seal, with the court.

**Note:** Any adult individual or entity whose name and post office addresses appear in the petition for appointment may become a party to this action by filing a pleading with the circuit court in which this case is pending. [Va. Code § 64.2-2004](#).

**Step 6** Clerk records the court's order of appointment in the deed records.

Where the petition is brought on behalf of a respondent's just prior to their eighteenth birthday, such order shall specify whether it takes effect immediately upon entry or on the respondent's eighteenth birthday.

A conservator having power to sell real estate must record the order in the clerk's office of any jurisdiction in which the respondent owns real property. [Va. Code § 64.2-2011](#).

**Step 7** Clerk required to report fact of appointment to:

- [Department of Behavioral Health and Developmental Services](#): if the respondent is a patient in a state hospital (copy of order). [Va. Code § 64.2-2014](#)
- [Secretary of State Board of Elections](#) (on form ELECT-410 or ELECT-410E). [Va. Code § 64.2-2014](#)
- Local Department of Social Services, where incapacitated person resides-guardian appointment (copy of order). [Va. Code § 64.2-2011](#)
- [Central Criminal Records Exchange](#) (copy of order with form SP-237). **Note: The SP-237 Shall As Soon As Practicable, But No Later Than The Close Of Business On The Following Business Day, Be Sent To CCCRE.** [Va. Code § 64.2-2014](#)
- Commissioner of the [Department of Motor Vehicles](#) (copy of order or abstract). **Note:** If the court's order specifically permits the person to retain their driver's license or the privilege to drive or to apply for such license, DO NOT send a copy to DMV.
- [Department of Medical Assistance Services](#)  
Program Operations Division  
600 East Broad Street



Richmond, VA 23219 [Va. Code § 64.2-2011](#)

- Commissioner of Accounts-conservator (copy of order). [Va. Code § 64.2-2011](#)

**Note:** The court's order must specify the legal disabilities, if any, of the incapacitated person. An incapacitated person is "mentally incompetent" (and cannot vote) unless the court's order specifically provides otherwise.

**Comments:** Guardian appointed pursuant to [Va. Code § 64.2-2007](#) will not be paid out of the Criminal Fund  
Guardian ad litem or court-appointed counsel appointed for the indigent incapacitated adult will be paid if court determines indigency. A DC-40, LIST OF ALLOWANCES with copy of order attached, should be completed by the GAL or COA and submitted to the court for processing.

**Step 8** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

**Step 9** Clerk qualifies the fiduciary.

**Comments:** Court's appointee must submit form CC-1652, [Incapacitated Adult Information Form](#)

**Step 10** A guardian ad litem may be appointed by the Court. Clerk processes DC-40, LIST OF ALLOWANCES if estate is inadequate to pay guardian ad litem fee.

**Comments:** Reference this Manual regarding appointment of guardian ad litem.

Fees/Taxes/Other Monies Assessed

To File Petition  
[Circuit Court Civil Filing Fee Calculation](#)

To Record Order

[Circuit Court Civil Filing Fee Calculation](#)

Qualification Fee

[Circuit Court Civil Filing Fee Calculation](#)

**Note:** Court may waive fees re: indigency. [Va. Code § 64.2-2008](#)

Form(s)

CC-1642, [ADDENDUM TO PETITION FOR APPOINTMENT OF GUARDIAN OR CONSERVATOR – UNDER SEAL](#)

CC-1643, [Certificate of Proposed Guardian](#)

CC-1644, [ANNUAL REPORT OF GUARDIAN FOR INCAPACITATED PERSON](#)

CC-1652, [INCAPACITATED ADULT INFORMATION FORM](#)

Reference(s)

[Va. Code §§ 17.1-275A \(1\), \(3\), \(42\), 17.1-279](#)

[Va. Code § 24.2-410](#)

[Va. Code §§ 64.2-2000 et seq](#)

[Va. Code § 64.2-2028](#)

[Va. Code § 46.2-400](#)

To File Petition

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(42)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>

Qualification Order

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(3)</a>
Add'l Certificates	<a href="#">Va. Code § 17.1-275 A(9)</a>
Add'l Bonds	<a href="#">Va. Code § 17.1-275 A(6)</a>

## Guardian/Conservator Review Hearings

After the appointment of a guardian and/or conservator, the court shall set a schedule in the order of appointment for periodic review hearings, to be held no later than one (1) year after the initial appointment and no later than every three (3) years thereafter,

unless the court orders that such hearings are to be waived because they are unnecessary or impracticable or that such hearings shall be held on such other schedule as the court shall determine.

Any person may file a petition, which may be on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia, to hold a periodic review hearing prior to the scheduled date set forth in the order of appointment. The court shall hold an earlier hearing upon good cause shown.

Document Type

Petition or Court Order

Filing Type

GCRV

Procedures

**Step 1** Order of appointment is entered that sets out the periodic review hearings or petition in filed in the circuit court for earlier hearing.

**Step 2** When order is entered, the clerk opens new file for reviews, and docket the case. When a petition is filed, Clerk receipts money, and files the petition in the pending review case.

**Step 3** The court shall appoint a guardian *ad litem* to represent the interests of the incapacitated person for the scheduled hearings. If a petition is filed for an earlier hearing, the court shall promptly set a date and time for the hearing.

**Comments:** The guardian *ad litem* shall provide notice of the hearing to the incapacitated person and to all individuals entitled to notice as identified in the court order of appointment.

**Step 4** Clerk files notice, report of guardian *ad litem*, etc. Any reports filed evaluating the condition of the incapacitated person shall be filed, under seal, with the court.

**Step 5** Clerk records and indexes order in the Civil Order Book.

**Note:** The court's order shall reflect any findings made during the review hearing and any modification to the guardianship or

conservatorship.

**Step 6** Clerk processes DC-40, List of Allowances if estate is inadequate to pay guardian *ad litem* fee.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

CC-1646, Petition for Review Hearing

References(s)

[Va. Code §§ 64.2-2003](#), [64.2-2008](#), [64.2-2009](#), [64.2-2009.1](#)

Fees to File Petition

FEES	
TYPE OF CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(42)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>

### Guardianship – Restrict Communication, Visitation, or Interaction

A guardian may restrict the ability of a person with whom the incapacitated person has an established relationship to communicate with, visit, or interact with such incapacitated person only when such restriction is reasonable to prevent physical, mental, or emotional harm to or financial exploitation of such incapacitated person and after consideration of the expressed wishes of such incapacitated person. Any such restriction may include (i) limitations on time, duration, location, or method of visits or communication, (ii) supervised visitation, or (iii) prohibition of in-person visitation and shall be the least restrictive means possible to prevent any such harm or exploitation. [Va. Code § 64.2-2019.1](#)

Document Type

Notice, [Form CC-1645, NOTICE OF RESTRICTION BY GUARDIAN](#)

The Guardian shall provide written notice to the restricted person, on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia, stating (i) the nature and terms of the restriction, (ii) the reasons why the guardian believes the restriction is necessary, and (iii) how the restricted person or incapacitated person may challenge such restriction in court pursuant to [Va. Code § 64.2-2012](#). The guardian shall also inform the incapacitated person of such restriction and provide a copy of such written notice to the incapacitated person, unless the guardian has a good faith belief that such information would be detrimental to the health or safety of such incapacitated person. The guardian shall provide a copy of such written notice to the local department of social services of the jurisdiction where the incapacitated person resides and shall file a copy of such written notice with the circuit court that appointed the guardian. If the incapacitated person is in a hospital, convalescent home, or certified nursing facility licensed by the Department of Health pursuant to [Va. Code § 32.1-123](#), an assisted living facility as defined in [Va. Code § 63.2-100](#), or any other similar institution, the guardian shall also inform such hospital, home, facility, or institution of such restriction.

**Note:** Recommendation to file the Notice of Restriction within the Civil file where Guardian was appointed, and a new/subsequent action is not opened.

\*Pleading/Order Type NOR

#### Document Type

Petition (no form)

#### Filing Type

CNOR

#### Procedures

- Step 1** The restricted person files a petition for judicial review.
- Step 2** Clerk receipts for money collected, opens file, and docketts the case.
- Step 3** Clerk issues all notices as directed.
- Step 4** Hearing is held.
- Step 5** Clerk records and indexes orders in the Civil Order Book. It is also suggested that a copy be placed in the fiduciary file as well.

**Note:** Any court order issued shall be provided to the local department of social services where the incapacitated person resides.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

NONE

Reference(s)

[Va. Code § 54.1-2986.1](#)

[Va. Code §§ 64.2-2009](#), [64.2-2012](#), [64.2-2019](#), [64.2-2019.1](#)

Fees to File Petition

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

### Guardian/Conservator Appointment-Uniform Adult Guardianship and Protective Proceedings Act

Persons living outside of the Commonwealth may petition the circuit court to accept and confirm a transfer of a guardian/conservator appointment from another state.

**Note:** As defined in [Va. Code § 64.2-2115](#), “protected person” means an adult for whom a protective order has been issued, “protective order” means an order appointing a conservator, and “protective proceeding” means a judicial proceeding in which a protective order (conservator) is sought or has been issued.

This appointment is made pursuant to [Va. Code § 64.2-2115](#). In granting a petition, the

court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator. The final order accepting the transfer shall contain a determination of whether the guardianship or conservatorship needs to be modified to conform to the law of the Commonwealth.

**Special Jurisdiction:** [Va. Code § 64.2-2108](#) gives a court of the Commonwealth special jurisdiction to appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in the Commonwealth; issue a protective order with respect to real or tangible personal property located in the Commonwealth; or appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued. **Note:** Special care should be given when issuing any paperwork pursuant to an appointment under this statute, to distinguish the appointment from a permanent one.

Document Type

Petition

Filing Type

APPT

Procedures

- Step 1** Petition is filed in the circuit court. Petition shall include a certified copy of the other state's provisional order of transfer.
- Step 2** Clerk receipts money, opens file and docket case.
- Step 3** Clerk issues process.  
  
**Comments:** Notice shall be given in the same manner as notice is required to be given in the Commonwealth.
- Step 4** On the court's own motion, or on request of the guardian or conservator, or other appropriate parties, the court shall set a hearing.
- Step 5** Clerk files all returns, etc.
- Step 6** The court shall issue an order provisionally granting a petition, unless it finds reason as set forth in [Va. Code § 64.2-2115](#).

**Step 7** In granting a petition, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator. The final order accepting the transfer shall contain a determination of whether the guardianship or conservatorship needs to be modified to conform to the law of the Commonwealth.

**Step 8** Clerk records the court's order of appointment in the deed records.

**Comments:** A conservator having power to sell real estate must record the order in the clerk's office of any jurisdiction in which the respondent owns real property.

**Step 9** Clerk required to report fact of appointment to:

2. [Department of Behavioral Health and Developmental Services](#): if the respondent is a patient in a state hospital (copy of order). [Va. Code § 64.2-2014](#)
3. [Secretary of State Board of Elections](#) (ELECT-410). [Va. Code § 64.2-2014](#)
4. Local Department of Social Services, where incapacitated person resides-guardian appointment (copy of order). [Va. Code § 64.2-2011](#)
5. [Central Criminal Records Exchange](#) (copy of order with form SP-237). **Note: The CCRE Shall As Soon As Practicable, But No Later Than The Close Of Business On The Following Business Day, Be Sent To CCRE.** [Va. Code § 64.2-2014](#)
5. Commissioner of the [Department of Motor Vehicles](#) (copy of order or abstract). The clerk of the court in which the adjudication is made shall send a certified copy or abstract of such adjudication to the Commissioner. The Commissioner shall not suspend the license or prior privilege to drive of any person legally adjudged to be incapacitated in accordance with Article 1 where the court order specifically permits such person to retain their driver's license or the privilege to drive or to apply for such license. In such case, the clerk of the court in which the adjudication is made shall not send a copy of the order to the Commissioner. However, a court may order any person adjudicated legally incapacitated to submit to an examination to determine ability to drive. In such case, the clerk of the court shall forward a copy of the order requiring an examination to the Department. [Va. Code § 46.2-400](#)



7. [Department of Medical Assistance Services](#)  
Program Operations Division  
600 East Broad Street  
Richmond, VA 23219 [Va. Code § 64.2-2011](#)
8. Commissioner of Accounts-conservator (copy of order). [Va. Code § 64.2-2011](#)

**Note:** The court's order must specify the legal disabilities, if any, of the incapacitated person. An incapacitated person is "mentally incompetent" (and cannot vote) unless the court's order specifically provides otherwise.

**Step 10** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

**Step 11** Clerk qualifies the fiduciary.

**Comments:** Court's appointee must submit form CC-1652, [INCAPACITATED ADULT INFORMATION FORM](#)

#### Fees/Taxes/Other Monies Assessed

To File Petition  
[Circuit Court Civil Filing Fee Calculation](#)

To Record Order  
[Circuit Court Civil Filing Fee Calculation](#)

Qualification Fee  
[Circuit Court Civil Filing Fee Calculation](#)

#### Form(s)

Initiating forms not provided by the clerk's office.

#### Reference(s)

[Va. Code § 64.2-2114](#)

To Record Petition

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

To Record Order

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(2)</a>
VSLF	<a href="#">Va. Code § 17.1-275 A(2)</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>

**Guardian of Minor – Appointment of - Estate Filing**

The circuit court or the circuit court clerk may appoint a guardian for the estate of a minor and may appoint a guardian for the person of the minor unless they have a guardian appointed by their father or mother. [Va. Code § 64.2-1702](#).

Until a guardian has given bond, or while there is no guardian, the court or clerk may appoint a temporary guardian, who gives bond, and exercises all the duties of a guardian. [Va. Code § 64.2-1706](#).

Document Type

Petition

Clerk's Order of Appointment of Guardian for a Minor

Filing Type

GMCT – by Court

GMCL – by Clerk

Procedures

**Step 1** Petition is filed in the circuit court or with the clerk.

**Comments:** Filed where the minor resides, or in which they have any estate if they are an out-of-state resident. [Va. Code § 64.2-1702](#).

Every person seeking qualification must submit form CC-1653, [GUARDIAN OF MINOR INFORMATION FORM](#) to the court or clerk. A companion instruction form, CC-1653, [INSTRUCTIONS GUARDIAN OF MINOR INFORMATION FORM](#) is provided to help the petitioner prepare the Information form.

**Step 2** Clerk receipts money for a petition filed as GMCT, opens file and docket case.

**Comments:** If filed pursuant to a Clerk's Order of Appointment for a Minor, (GMCL) no fee would be collected. Go to Step 8, below.

**Step 3** Clerk issues notice of the hearing, if deemed necessary, or required. See Probate and Administration Manual - "Guardians and Conservators"

**Step 4** Court or clerk appoints a guardian ad litem for the minor, if deemed necessary, or required. See, Probate and Administration Manual - "Guardians and Conservators"

**Step 5** Court or clerk holds a hearing. See, Probate and Administration Manual - "Guardians and Conservators"

**Step 6** The guardian of the estate of a minor must take an oath and give bond. This is done *before or contemporaneously* with the order of appointment. [Va. Code § 64.2-1704](#).

**Step 7** If the person is appointed as guardian for the estate of a minor, the court or clerk must give the guardian forms and instructions for filing their inventory and accounting.

**Comments:** CC-1672, [INVENTORY FOR ESTATE OF MINOR](#); CC-1672 (INST), [INVENTORY INSTRUCTIONS FOR GUARDIANS OF MINORS](#); CC-1683, [ACCOUNT FOR MINOR](#); CC-1683 (INST), [INSTRUCTIONS FOR ACCOUNT FOR MINOR](#).

**Step 8** Clerk records and indexes orders in the Will Book and/or Civil Order Book unless otherwise provided by law.

**Comments:** CC-1662, MEMORANDUM OF FACTS – GUARDIAN OF MINOR, may be used by the clerk in documenting the appointment. Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed (When Petition Filed)

[Circuit Court Civil Filing Fee Calculation](#)

Filing of Clerk's Order of Appointment  
None

Form(s)

CC-1662, Memorandum of Facts-Guardian of Minor  
CC-1653, [GUARDIAN OF MINOR INFORMATION FORM](#)  
CC-1653(INST), [INSTRUCTIONS OF GUARDIAN OF MINOR INFORMATION FORM](#)  
CC-1672, [INVENTORY FOR ESTATE OF A MINOR](#)  
CC-1672(INST), [INVENTORY INSTRUCTIONS FOR GUARDIANS OF MINORS](#)  
CC-1683, [ACCOUNT FOR MINOR](#)  
CC-1683(INST) and (SAMP), [INSTRUCTIONS AND SAMPLE FOR ACCOUNT FOR MINOR](#)

Reference(s)

[Va. Code § 64.2-1702](#), *et seq*  
[Va. Code § 17.1-275 A](#)

### Guardian Of Minor – Distribution From Estate

A guardian who desires to make a distribution of income or corpus from the estate of a minor, and who does not have authority to do so by prior court order, deed will or other instrument under which the estate is derived, must file a petition pursuant to [Va. Code § 64.2-1801](#).

A Commissioner of Accounts for the jurisdiction where the guardian qualifies has limited authority to authorize distributions from the estate of a minor - up to \$3,000 in any one year. Refer to [Va. Code § 64.2-1802](#).

Document Type

Petition

Filing Type

PET

Procedures

**Step 1** Petition is filed in the circuit court by the guardian, naming the ward as defendant. JURISDICTION: court in which the guardian's accounts may be settled. Petition may be filed upon five days' notice to the ward, unless it is shown that they are under age fourteen.

**Step 2** Clerk receipts money, opens file and docket case.

**Comments:** See "Fees/Taxes/Other Monies Assessed," below. The Court may fix attorney's fee and shall fix the guardian ad litem fee.

**Step 3** The court or clerk appoints an attorney-at-law as guardian ad litem.

**Comments:** If the court determines that an emergency exists, distribution may be ordered without appointment of a guardian ad litem.

**Step 4** Clerk issues any notice required by the court or the petitioner.

**Comments:** Any notice required to be served may be served by any person other than the guardian.

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

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by clerk's office.

Reference(s)

[Va. Code § 64.2-1801](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(18)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(13)(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
Service Fee	<a href="#">Va. Code § 17.1-272</a>
* Not assessed if the amount of the civil action is \$500 or less	

**Standby Guardian Conservator**

A circuit court may appoint a standby guardian of the person or a standby conservator of the property, or both, of the incapacitated child or ward of the petitioner. [Va. Code § 64.2-2013](#).

A "child" includes those persons eighteen years of age and older.

The appointment shall be confirmed biennially by the parents or legal guardian of the child and by the standby fiduciary, by filing with the court an affidavit which states that the appointee remains available and capable to fulfill the duty. The affidavit should be filed in the case file.

The standby guardian/standby conservator shall without further proceedings assume the duties of office immediately upon the death or adjudication of incapacity of the last surviving parent or legal guardian of the incapacitated person, subject to confirmation of appointment by the circuit court within sixty days following assumption of duties. The confirmation process may be accomplished by reinstating the original case on the docket, or by setting up a new file.

If the incapacitated person is eighteen years of age or older, the court shall conduct a hearing pursuant to Subtitle IV Chapter 20 of Title 64.2. For discussion of these procedures, See "Guardian/Conservator Appointment," in this Manual.

Document Type

Petition

Filing Type

APPT

Procedures

**Step 1** Petition is filed in the circuit court by one or both parents, or legal guardian. Filed where the parent, parents or legal guardian resides and shall include the sealed filing of the incapacitated person's social security number. [Va. Code § 64.2-2002](#).

**Step 2** Clerk receipts money, opens file and docket case.

**Comments:** If the adult subject to the petition is determined to be indigent, the court may order that certain fees and costs shall be paid by the Commonwealth. [Va. Code § 64.2-2008](#).

**Step 3** Clerk issues any requested process.

**Step 4** Clerk files all returns, etc.

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

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

**Step 6** A guardian ad litem may be appointed by the Court. Clerk processes DC-40, List of Allowances if estate is inadequate to pay guardian ad litem fee. Reference this Manual regarding appointment of guardian ad litem.

Fees/Taxes/Other Monies Assessed

To File Petition

[Circuit Court Civil Filing Fee Calculation](#)

To Reinstate on Docket

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

CC-1642, [ADDENDUM TO PETITION FOR APPOINTMENT OF GUARDIAN OR CONSERVATOR – UNDER SEAL](#)

Reference(s)

[Va. Code §§ 17.1-275 A\(42\), 17.1-279](#)  
[Va. Code §§ 64.2-2002, 64.2-2013](#)

To File Petition

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(42)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(13)(26)</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Service Fee	<a href="#">Va. Code § 17.1-272</a>

To Reinstate on Docket

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(42)</a>
Service Fee	<a href="#">Va. Code § 17.1-272</a>

### Transfer of Guardianship or Conservatorship-Uniform Adult Guardianship and Protective Proceedings Act

A guardian or conservator appointed in the Commonwealth may petition the court to transfer the guardianship or conservatorship to another state. [Va. Code § 64.2-2114.](#)

Document Type

Petition

Filing Type

PET

Procedures

- Step 1** Petition is filed in the circuit court.
- Step 2** Clerk receipts money, opens file and docket case.



- Step 3** Clerk issues process.
- Comments:** Notice shall be given to the persons that would be entitled to notice of a petition in the Commonwealth for the appointment of a guardian or conservator.
- Step 4** On the court's own motion, or on request of the guardian or conservator, or other appropriate parties, the court shall set a hearing.
- Step 5** Clerk files all returns, etc.
- Step 6** The court shall issue an order provisionally granting the petition, unless it finds reason as set forth [Va. Code § 64.2-2114](#)
- Step 7** The final order confirming the transfer and terminating the guardianship or conservatorship will be entered once the court receives a provisional order accepting the proceeding from the court to which the proceeding is to be transferred.
- Step 8** Clerk records the court's order of transfer and termination of guardianship and conservatorship in the deed records.
- Step 9** Clerk should report fact of transfer and termination to:
9. [Department of Behavioral Health and Developmental Services](#): if the respondent is a patient in a state hospital (copy of order). [Va. Code § 64.2-2014](#)
  0. [Secretary of State Board of Elections](#) (on form ELECT-410 or ELECT-410E). [Va. Code § 64.2-2014](#)
  1. Local Department of Social Services, where incapacitated person resides-guardian appointment (copy of order). [Va. Code § 64.2-2011](#)
  2. [Central Criminal Records Exchange](#) (copy of order with form SP-237). [Va. Code § 64.2-2014](#)
  3. Commissioner of the [Department of Motor Vehicles](#) (copy of order or abstract). [Va. Code § 46.2-400](#)
  4. [Department of Medical Assistance Services](#)  
Program Operations Division  
600 East Broad Street  
Richmond, VA 23219 [Va. Code § 64.2-2011](#)
  5. Commissioner of Accounts-Conservator (copy of order). [Va. Code § 64.2-2011](#)

**Step 10** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

To File Petition  
[Circuit Court Civil Filing Fee Calculation](#)

To Record Order in the Deed Book.  
[Circuit Court Deed Calculation](#)

Form(s)

Initiating forms not provided by clerk's office.

References

[Va. Code § 64.2-2114](#)

To Record Petition

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

To Record Order

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(2)</a>

FEES	
TYPE CHARGES	CODE REFERENCE
VSLF	<a href="#">Va. Code § 17.1-275 A(2)</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>

## Guardianship For Enrolling Child In School

At times, citizens seeking guardianship to get children into school are referred to the Circuit Court. Schools may use the term “guardianship” when referring to the procedure to get the child enrolled in school. The Circuit Court appoints guardians of minors and incapacitated individuals, but there is no known authority to appoint a guardian for school-related purposes. This issue appears to be more properly addressed by the JDR court, and the citizen should be referred there, to petition that court for custody.

Case law also supports this position. See *In Re: O’Neil*, 18 Va. App. 674, 446 S.E. 2d 475 (1994), in which a distinction is drawn between “legal custody” and “guardianship”.

## Habeas Corpus Ad Subjiciendum

A remedy used to test the legality of the restraints on a person’s liberty by due process of law. The court’s inquiry is not a review of the petitioner’s guilt or innocence. The writ is guaranteed by U.S. Constitution Article I Section IX and by Virginia Constitution Article I Section 9. Limitations on consideration of petition filed by prisoner sentenced to death are provided in [Va. Code § 8.01-654.1](#).

The writ of habeas corpus ad subjiciendum shall be granted forthwith by the Supreme Court or any circuit court, to any person who shall apply for the same by petition, showing by affidavits or other evidence probable cause to believe that they are detained without lawful authority. A petition for writ of habeas corpus ad subjiciendum, other than a petition challenging a criminal conviction or sentence, shall be brought within one year after the cause of action accrues. A habeas corpus petition attacking a criminal conviction or sentence, except as provided in [Va. Code § 8.01-654.1](#) for cases in which a death sentence has been imposed, shall be filed within two years from the date of final judgment in the trial court or within one year from either final disposition of the direct appeal in state court or the time for filing such appeal has expired, whichever is later.

Document Type

Petition

Filing Type

WHC

Procedures

**Step 1** Petition is filed in the circuit court that entered the order of conviction, or in the circuit court in the city or county wherein the district court sits if the district court entered the order of conviction.

**NOTE:** When a petition is filed by an individual that is confined to the Department of Corrections, or another institution, the mailing envelope should be date stamped and filed along with the petition and accompanying documents. Timely filing of a paper by an inmate confined to an institution may be established by (1) an official stamp of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing, (2) an official postmark dated on or before the last day for filing, or (3) a notarized statement signed by an official of the institution showing that the paper was deposited in the internal mail system on or before the last day for filing. [Rule 3A:25](#)

It is recommended that the envelope received by an inmate containing the petition be date/file stamped and filed and/or imaged in the case file.

**NOTE:** Petitions filed by defendants sentenced to death will be filed with the Supreme Court. The Supreme Court shall have exclusive jurisdiction to consider and award writs of habeas corpus. Circuit court will have authority to conduct an evidentiary hearing if directed by the Supreme Court. [Va. Code § 8.01-654 \(C\)](#).

**Step 2** Clerk receipts money, opens file and docket a new case.

The writ shall be served on the person to whom it is directed or, in their absence from the place where the petitioner is confined, on the person having the immediate or potential custody of them.

Pursuant to [Va. Code § 8.01-694](#), the court shall serve the Office of the Attorney General.

Service of all papers filed after the petition shall be accomplished in accordance with Rule 1:12 of the Rules of Supreme Court of Virginia.

**Comments:** The petition will not be filed without payment of court

costs unless the petitioner is entitled to proceed *in forma pauperis* and has executed the affidavit *in forma pauperis*. [Va. Code § 8.01-655](#).

**Step 3** The clerk shall provide the petitioner who proceeds *in forma pauperis*, without cost, certified copies of arrest warrants, indictments and orders of conviction to comply with the instructions of the petition.

**Step 4** The petitioner shall name a proper party respondent, and if they fails to do so, the court shall allow amendment of the petition. If the petitioner fails to amend the petition by naming a proper party respondent in the time provided by the court, the court in which the petition is filed shall dismiss the habeas petition without prejudice. [Va. Code § 8.01-658](#).

Comments: Local procedure will dictate amount of time provided by the court for amendment of the petition. See [Va. Code § 8.01-658](#) for proper party respondents.

**Step 5** The court may require the petitioner to give bond with surety in an amount determined by the court to pay costs/charges as may be awarded against them.

Comments: If prepared by the clerk, the bond shall be made payable to the person to whom the writ is directed. [Va. Code § 8.01-656](#).

**Step 6** The court may appoint an attorney to represent the petitioner.

**Comments:** The [Office of the Attorney General](#) represents the party to whom the writ is directed on behalf of the Commonwealth. [Virginia Code § 19.2-166](#) provides that the judge may appoint a court reporter to record not only felony cases, but habeas corpus proceedings as well.

**Step 7** Upon request of the Office of the Attorney General the clerk will provide certified copies of the indictments, transcripts and any other documentations from the original criminal file.

**Comments:** If transcript is not present in the file, the clerk shall request the proceedings to be transcribed by the court reporter

(may require a court order).

**Step 8** If action survives a motion to dismiss received from the Office of the Attorney General, the court will hold a hearing on the merits of the petition. The petitioner/incarcerated may request to be present at any such hearing.

**Step 9** After the hearing, the court shall either discharge or remand the petitioner, or admit them to bail pending appeal to the Court of Appeals or application for a writ of error from the Supreme Court.

**Comments:** If circuit court ordered to conduct an evidentiary hearing for prisoner held under sentence of death, they shall conduct the hearing within ninety days of Order and report findings and recommend conclusions of law within sixty days of the hearing.

**Step 10** The clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Petition form provided the [Office of the Attorney General](#). Refer to [Va. Code § 8.01-655](#).

Reference(s)

[Va. Code § 8.01-654](#) *et seq*  
[Va. Code §§ 17.1-310](#) and [17.1-313](#)  
[Va. Code §§ 19.2-163.7](#), [19.2-166](#)  
[Rule 3A:25](#)

Attorney General Opinion to Bolt, dated 8/23/85 (1984-85, page 42); *...the clerk may charge a ten dollar fee for filing a petition for the restoration of one's driving privilege pursuant to § 46.1-387.9:1 or § 46.1-387.9:2.*

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

*adversarial vs. nonadversarial law and chancery proceedings.*

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(16)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(13)(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
Fee for preparing bond	<a href="#">Va. Code § 17.1-275 A(6)</a>
* Not assessed if the amount of the civil action is \$500 or less	

## Illegal Gambling Devices

The Attorney General, an attorney for the Commonwealth, or the attorney for any locality may cause an action in equity to be brought in the name of the Commonwealth or of the locality, as applicable, to enjoin the operation of a gambling device in violation of this section and may request attachment against all such devices and any moneys within such devices and to recover a civil penalty of up to \$25,000 per device.

In any action brought under this section, the Attorney General, the attorney for the Commonwealth, or the attorney for the locality may recover reasonable expenses incurred by the state or local agency in investigating and preparing the case, and attorney fees.

In addition to any other penalty provided by law, any person who conducts, finances, manages, supervises, directs, or owns a gambling device that is located in an unregulated location is subject to a civil penalty of up to \$25,000 for each gambling device located in such unregulated location.

### Document Type

Petition

### Filing Type

OGD

### Procedures

**Step 1** Petition is filed in the circuit court. Clerk opens file, docket case and issues any requested process.

**Note:** No filing fees are assessed pursuant to [Va. Code § 17.1-266](#).

- Step 2** Hearing is held.
- Step 3** Clerk certifies copies of any Orders of court for the parties upon direction of the court.
- Step 4** If a civil penalty is awarded, See [FAS Manual](#) for setting up accounts receivable.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code §§ 18.2-325, 18.2-331.1](#)

## Income Deduction Order

All initial child support orders entered after July 1, 1995, shall include an income deduction for support payments, unless the court orders otherwise. An income deduction order may be entered for earlier support orders that are modified. Income deduction orders for support must mirror the provisions of the underlying order of support as to payment provisions and, if ordered, provisions for providing health care coverage through employer-provided health care benefits. If both support payments and health care coverage is ordered, the judge shall determine which provision will take priority if there is insufficient disposable income available to fully cover both provisions. The procedure for entry of such orders is as follows:

Unless the court orders otherwise, upon entry of an order of support, the judge or clerk enters a district court form DC-645 INCOME WITHHOLDING FOR SUPPORT to each current employer and, when made known to the clerk, to each future employer. If the court did not enter a district court form DC-645, INCOME WITHHOLDING FOR SUPPORT at the time of entry of the order of support, the Respondent may voluntarily request that support be withheld from their income. Voluntary requests will be received by the court either by the filing of district court form DC-615, [RESPONDENT'S REQUEST FOR INCOME DEDUCTION ORDER](#) or a contract or other stipulation that provides for such deductions. While entry into such voluntary agreement waives notice as provided in [Va. Code § 20-79.1 \(B\)](#), the court can enter such an order only if the court approves the agreement and for good cause shown.

A copy shall be either served on the employer or sent by electronic means. The employer should also be sent a DC-646, COMPLIANCE PROVISIONS - INCOME DEDUCTION ORDER FOR SUPPORT. Along



with the employer's copy, the employee/obligor's copy of the DC-645, INCOME WITHHOLDING FOR SUPPORT is sent to the employer to be delivered to the employee. If the employer is a corporation, service must be made 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 they 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](#)

Employer's response of inability to comply. If the employer files or mails within five business days from service of process, a reply that the DC-645, INCOME WITHHOLDING FOR SUPPORT does not meet certain statutory requirements, the order is void from transmission of the reply if not materially false. [Virginia Code § 20-79.3 \(B\)](#) requires that the order:

- must contain the obligor's correct social security number.
- must contain a single monetary amount to be deducted for each pay period.
- must not contain information in conflict with the employer's current payroll records.
- must not order payment other than to [the Department of Social Services](#) (of which DCSE is a part) or its contractor.
- must not require that an employer of 10,000 or more persons make payment other than by combined single payment in the case of withholdings from multiple employees.
- must contain the maximum percentage which may be withheld pursuant to [Va. Code § 34-29](#).

Page 3 of the district court form DC-645, INCOME WITHHOLDING FOR SUPPORT may be used for such purposes. If used, it will frequently tell the clerk the information that is needed to issue a new order with correct information.

The DC-645, INCOME WITHHOLDING FOR SUPPORT should include an amount for each of the possible pay periods.

- If an employer allegedly fails to comply with an income deduction order, then a district court form DC-360, SHOW CAUSE SUMMONS (Criminal) should be served on the employer alleging the compliance failure.

**Note:** An employer who withholds money from the pay of their employee for payment of child support and wrongfully or fraudulently fails to make payment is guilty of embezzlement. [Va. Code § 18.2-111.2](#).

- Modification or Termination of Order. Such orders must be modified or

terminated when, after notice and a hearing, the court finds that:

16. the whereabouts of the children and their custodian have become unknown, or
17. the support obligation to an obligee ceases, or
18. the arrearages have been paid in full.

The clerk should use a DC-630, [MOTION TO AMEND OR REVIEW ORDER](#) to schedule such a hearing. If the whereabouts of the children and custodian are unknown or the support obligation for all obligees in the case cease, the order portion of the form can be completed with a copy being served on the employer. If the support obligation is modified, a new DC-645 INCOME WITHHOLDING FOR SUPPORT for each employer must be entered and the underlying order for support must be examined to determine if it must be modified.

## Injunction

An action requesting the court to forbid a party from doing or continuing to do the acts complained of until a final hearing or further Order of the court. There are two types of injunctive relief available - permanent injunctions and temporary injunctions.

Permanent injunction is distinct in which the court aims at the final disposition of the issues presented.

Temporary injunctions are used to stop an action for a limited period of time, which the court would list in its order. A temporary injunction is distinguished from a restraining order in that the restraining order is for a shorter period of time, usually during an attempt to obtain a temporary injunction.

An injunction may be awarded *ex parte*, or after a hearing with notice given the defendant.

Actions are commenced from a complaint or motion. Motions are not considered new actions and are part of the original case. Pure complaints for injunction filed against judicial proceedings are tried in the court in which the proceeding is pending or in which a judgment was rendered; all other injunctions are tried in the circuit in which the act is to be done or apprehended.

Ancillary complaints are prayers for injunctive relief filed with and tried with the main action. The Commonwealth Attorney may file an injunction, mandamus or other appropriate remedy in any appropriate court when a person, firm, partnership, association or corporation that accepts payment devices prints more than the last four digits of the payment device number or the expiration date on any receipt provided to the holder of the payment device. [Va. Code § 6.2-429.](#)

Document Type

Complaint

Filing Type

INJ

Procedures

- Step 1** Clerk receives Complaint.  
**Note:** If a pure complaint (original action) for injunctive relief is filed, follow STEPS 1 through 8. If the request for injunctive relief is ancillary to other equitable relief requested in the action, docket as a single case.
- Step 2** Clerk assigns case number, indexes the case and prepares the case file. See “Case Initiation” for respective procedures in this manual
- Step 3** Clerk receipts for money collected and issues process, if not an *ex parte* hearing. **Note:** For injunction to temporarily enjoin the sale of alcohol at an establishment licensed by the ABC Board when deemed necessary in the interest of public safety pursuant to [Va. Code § 48-17.1](#):
- }. No filing fees or service fees (if waived by sheriff), [Va. Code § 17.1-266](#);
  - }. Serve petitioner, respondent, and [ABC Board](#);
  - l. Hearing held within ten days of service on respondent
- Step 4** Clerk certifies copies of any Orders of court for the parties upon request or upon direction of the court.
- Step 5** Clerk prepares an Injunction Bond ([Va. Code § 8.01-631](#)) at the direction of the court.
- Comments:** For any temporary or permanent injunction sought by, or awarded to, the Commonwealth, or any of its officers or agencies, no bond shall be required. [Va. Code § 8.01-631](#). No bond required when the court grants an injunction to prevent the sale of alcohol at an establishment licensed by the ABC Board in the interest of public safety. [Va. Code § 48-17.1](#).
- Step 6** Clerk may be required to prepare a forthcoming bond ([Va. Code § 8.01-630](#)) if the court awards an injunction to restrain removal of

property out of the Commonwealth by the defendant.

**Step 7** Court may require a defendant seeking a temporary injunction to confess judgment. See “Confession Of Judgment,” this Manual.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk’s office. Circuit Court Forms series 1400 is available for use.

Reference(s)

[Va. Code § 8.01-620](#) *et seq.*  
[Va. Code § 17.1-266](#)  
[Va. Code § 48-17.1](#)

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

## Interdiction

Action against a person who has been convicted of driving while intoxicated, requesting entry of an Order to prohibit sale of alcoholic beverages to the interdicted person. Interdiction is usually imposed by the court in conjunction with a matter in a criminal case. [Va. Code § 4.1-334](#).

Document Type

Petition

Filing Type

INTD

## Procedures

- Step 1** Clerk opens file, docket new case and issues process.
- Step 2** All Orders entered by the court awarding, altering, amending or canceling the interdiction are required to be filed with the [ABC Board](#). The clerk will forward a copy of each Order to the Board.

## Fees/Taxes/Other Monies Assessed

This case is initiated on behalf of the Commonwealth; no fees or taxes are collectable ([Va. Code § 17.1-266](#)) unless authorized by statute.

## Form(s)

Initiating documents not provided by clerk's office.

## Reference(s)

[Va. Code §§ 4.1-333, 4.1-334](#)

**Interpleader**

An action by any person who is or may be exposed to multiple liability through claims by others to the same property held by them or on their behalf, or whereby a defendant in an action is exposed to similar liability may file a pleading to require the multiple claimants to interplead their claims.

## Document Type

Interpleader

## Filing Type

INTP

## Procedures

- Step 1** The clerk files the complaint or petition, receipts money, opens a file, docket the case, and issues any notice or service requested.
- Comments:** Case should be set up as a subsequent action of the original (using the same base case number) and kept in the same file.
- Step 2** The court holds a hearing, and may enter an order restraining all claimants from instituting or prosecuting any proceeding in any court affecting the property involved in the interpleader action,

may discharge the petitioner from further liability, make a permanent injunction and make appropriate orders to enforce the judgment, and may allow the petitioner to pay or tender the property claimed to the court.

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

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by clerk's office.

Reference(s)

[Va. Code § 8.01-364](#)

[Rules of Supreme Court of Va. 3:15](#)

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

## Intervener

A proceeding (not an original action) in which a new party by petition filed with leave of court asserts any claim or defense germane to the subject matter of a pending suit.

**Note:** See also "Third Party Practice."

## Document Type

Petition

## Filing Type

FAS = INTV, changes to PET when transferring to CCMS

## Procedures

**Step 1** Clerk files the petition in the pending suit.

**Comments:** According to Supreme Court of Virginia Rule 3:14, all provisions applicable to complaints, except those requiring payment of writ tax and clerk's fees, apply to such petitions, and all provisions applicable to defendants apply to parties on whom such petitions are served.

**Step 2** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

## Fees/Taxes/Other Monies Assessed

None

## Form(s)

Initiating forms not provided by clerk's office.

## Reference(s)

Rules of Supreme Court of Va. Rule 3:14

## Isolation/Quarantine

## Definitions:

"Isolation" means the physical separation, including confinement, or restriction of movement, of an individual or individuals who are infected with, or are reasonably suspected to be infected with, a communicable disease of public health threat, in order to prevent or limit the transmission of the disease to other uninfected and unexposed individuals.

The State Health Commissioner will order such isolation and restrictions and will state the duration of said isolation and restrictions, consistent with the course, or probable course, of the communicable disease. Such order shall be in writing, and prior to placing any person(s) in isolation, shall be delivered to such person(s), if practicable.

The Commissioner shall, as soon as practicable following the issuance of an order of isolation, file a petition seeking an *ex parte* court hearing to review and confirm the isolation. The petition shall be filed in the circuit court for the city or county in which the person or persons resides, or is located in, or, in the case of an affected area, in the circuit court of the affected jurisdiction or jurisdictions.

Prior to the expiration of the original order of isolation, the Commissioner may extend the duration of the original order, upon finding that such an extension is necessary. The Commissioner, or their legal representative, shall, as soon as practicable following the extension of an order of isolation, file a petition seeking court review and confirmation of the order to extend the duration of the isolation.

“Quarantine” means the physical separation, including confinement or restriction of movement, of an individual or individuals who are present within an affected area, or who are known to have been exposed, or may reasonably be suspected to have been exposed to, a communicable disease of public health threat and who do not yet show signs or symptoms of infection with the disease, in order to prevent or limit the transmission of disease to other unexposed and uninfected individuals.

The State Health Commissioner will order such quarantine, restriction or confinement of any person(s) and will state the duration of such quarantine, consistent with the known incubation period or anticipated incubation period for such disease. The order of quarantine shall be delivered to any person(s) affected by the quarantine, if practicable.

Note: No affected area shall be the subject to an order of quarantine issued by the Commissioner unless the Governor has declared a state of emergency for such affected area of the Commonwealth.

The Commissioner or their legal representative shall, as soon as practicable following the issuance of an order of quarantine, file a petition seeking an *ex parte* court review and confirmation of the quarantine. The petition shall be filed in the circuit court for the city or county in which the person or persons resides or is located or, in the case of an affected area, in the circuit court of the affected jurisdiction or jurisdictions.

Prior to the expiration of the original order of quarantine, the Commissioner may extend the duration of the original order upon finding that such an extension is necessary. The Commissioner, or their legal representative, shall, as soon as practicable following the extension of an order of quarantine, file a petition seeking court review and confirmation of the order to extend the duration of the quarantine.



## Document Type

Petition

## Filing Type

PET

## Procedures

**Step 1** Clerk receives petition, filed by the State Health Commissioner, seeking an *ex parte* review and confirmation of isolation/quarantine.

**Comments:** The Commissioner's order remains in place while petition is pending. The Clerk files any sealed portion of the petition in CC-1075, SEALED/CONFIDENTIAL DOCUMENTS.

**Step 2** Clerk assigns a CIVIL case number, indexes and docket the case and prepares the case file.

Recommendation: If the petition is to extend the order of isolation/quarantine, use the base case number, with an –01 or subsequent action number.

**Comments:** See Civil Manual, "Case Initiation" for respective procedures. Follow local practice for docketing ex-parte hearings to get the petition before the court. Upon receiving multiple orders of isolation/quarantine, the court may consolidate the cases into a single proceeding.

**Step 3** The court may permit the electronic or facsimile filing of any legal documents when such filing is necessary to expedite the proceedings or to protect the public, court officials, or others participating in the proceedings from exposure to a communicable disease.

**Comments:** The court shall grant the petition to confirm or extend the isolation/quarantine upon finding probable cause that isolation/quarantine was necessary.

**Step 4** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

**Comments:** Recording may be accomplished by microphotographic

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

**Step 5** Clerk removes case from docket and places case with ended files.

**Note:** For appeals of Commissioner's orders of isolation/quarantine or appeals of any circuit court order confirming or extending the isolation/quarantine, See Appeals, this chapter.

Fees/Taxes/Other Monies Assessed

None

Form(s)

Initiating forms not provided

CC-1075, Sealed/Confidential Documents

Reference(s)

[Va. Code §§ 32.1-48.01](#) through [32.1-48.014](#)  
42 U.S.C. § 264; 42 C.F.R. Parts 70 and 71  
10th Amendment to Constitution  
Jacobsen v. Massachusetts (1905)

### Judgment Lien (Bill To Enforce)

A common law judgment constitutes a lien on all of the judgment debtor's realty located in Virginia. The provision of a judgment lien is a right given the judgment creditor to have their claim satisfied by the seizure of land of their judgment debtor. The judgment lien is not valid until the judgment is recorded on the Judgment Lien Docket and Execution Book of the clerk's office of the county or city where such land is situated.

The lien on such property can then be enforced by a complaint asking the court to either collect rents and profits until the debt is paid if payment is possible within five years, or to order the sale of the property to satisfy the judgment. [Va. Code § 8.01-462](#).

If the amount of the judgment is less than twenty dollars, exclusive of interest and costs, no bill to enforce the lien will be entered unless the parties were notified at least thirty days before institution of the suit that the judgment must be satisfied within that time period. [Va. Code § 8.01-463](#).

When established by the commissioner in chancery's report that rents and profits from the real

estate at issue will satisfy the liens outstanding against it within five years, then the court must rent the property rather than decree its sale. If the Commissioner's report finds that five years of rents and profits will not satisfy the creditor's claims, the property can be sold.

## Document Type

Complaint

## Filing Type

LIEN

## Procedures

- Step 1** Clerk receives Complaint (Bill in Equity action) filed by the Judgment Creditor.
- Step 2** Clerk assigns case number, docket the case and prepares the case file. See "Case Initiation" chapter, this manual for respective procedures.
- Step 3** Clerk receipts for money collected.
- Step 4** Clerk issues process as directed.
- Step 5** Creditor may file a Notice of *Lis Pendens*. Clerk would then record and index in Deed Book and collect appropriate fee. [Va. Code §§ 8.01-268](#) and [17.1-275 A\(1\)](#).
- Step 6** Clerk certifies copies of any Orders of the court for the parties upon request or upon direction of the court, as set out below.
- Step 7** Decree of Reference appoints a Commissioner in Chancery. Commissioners in Chancery are not utilized in all courts.
- Step 8** Report of Commissioner in Chancery is filed with court. [Va. Code § 8.01-609](#). Exceptions to this report may be filed within ten days of its filing. [Va. Code § 8.01-615](#).
- Step 9** Based upon report, duly confirmed or as amended by the court, a Special Commissioner will be appointed by the court to either collect rents and profits by renting the property, or to sell the property at a judicial sale. [Va. Code §§ 8.01-462](#) and [8.01-96](#).
- Step 10** The Special Commissioner posts bond with approved security per the terms of Order of Appointment before advertising the property

for sale or renting.

**Step 11** The clerk shall issue a certificate that bond has been given by the Special Commissioner.

**Comments:** The court may dispense with the bond if it directs all cash proceeds be deposited to the credit of the court (proceeds not collected by the Special Commissioner). [Va. Code § 8.01-99](#). The clerk will be held liable to any person injured for making a certificate that is untrue, [Va. Code § 8.01-100](#), and will be held criminally liable and upon conviction be removed from office, [Va. Code § 18.2-209.1](#).

**Step 12** The clerk shall serve written notice that the bond of the Special Commissioner has been posted upon the lessee or purchaser.

**Comments:** The clerk will be liable to any person injured by failure to serve such notice, [Va. Code § 8.01-103](#), and will be held criminally liable, [Va. Code § 18.2-209.2](#).

**Step 13** The Special Commissioner files an accounting of rental or sales proceeds with a Commissioner in Chancery who is appointed by the court to settle the accounts of special receivers and special commissioners. [Va. Code § 8.01-618](#).

**Step 14** The Commissioner will act to settle the account and record it with the court. [Va. Code § 8.01-618](#).

**Step 15** The clerk shall record the account in the Fiduciary Book and index it to show the name of the special commissioner and the style of the suit in which the report is made. [Va. Code § 8.01-619](#). Some clerks maintain a "Settlement of Receivers and Commissioners" book in lieu of the Fiduciary Book.

**Step 16** If the property is ordered to be sold, the Special Commissioner sells the property per the terms of the court's order and executes and delivers a Special Commissioner's deed to the purchaser. [Va. Code § 8.01-110](#).

Fees/Taxes/Other Monies Assessed

Bill to Enforce

[Circuit Court Civil Filing Fee Calculation](#)

*Lis Pendens*; Accountings of Special Commissioner

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

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

Reference(s)

[Va. Code §§ 8.01-462, 8.01-463](#)

[Va. Code § 8.01-96 et seq](#)

[Va. Code § 8.01-607 et seq](#)

[Rules of Supreme Court of Virginia Part Three](#)

Bill to Enforce:

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

*Lis Pendens*; Accountings of Special Commissioner:

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(2)</a>
VSLF	<a href="#">Va. Code § 17.1-275 A(2)</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>

## Judicial Reviews

### DMV Revocation/Suspension of License

When the Commissioner of [Department of Motor Vehicles](#) orders a revocation or suspension of a person's driver's license, unless such revocation or suspension is required under [Va. Code § 46.2-390.1](#), the person may, in cases of manifest injustice (defined as an error in the Commissioner's order, order issued without authority, or conflicts with the final order of the court), within 60 days of receipt of notice of suspension or revocation, petition the court for a judicial review.

#### Document Type

Petition

#### Filing Type

JR

#### Procedures

**Step 1** Petition is filed with the circuit court in the jurisdiction where the petitioner resides. Petitioner shall provide notice of their petition to the Commonwealth Attorney.

**Step 2** Clerk receipts for applicable fee, opens new case with CIVIL case number and docket new case.

**Step 3** Hearing held.

**Comments:** If the court finds that the Commissioner's order is unjust, may order the Commissioner to modify the order or issue the person a restricted license in accordance with [Va. Code § 18.2-271.1](#).

**Step 4** Clerk indexes and microfilms all Orders of the Court in the matter and directs copies of any order to the parties as directed by the Court. No appeal shall lie from the determination of the circuit court.

#### Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

#### Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 46.2-410.1](#)

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

### School Board Decision Regarding A Pupil

An action taken by a parent, custodian, or legal guardian of a pupil attending a public school who was aggrieved by an action of the local school board. The action is a request of the circuit court to review the decision of a local school board. The Court will sustain the action of the school board unless it determines the board "exceeded its authority, acted arbitrarily or capriciously, or abused its discretion." [Va. Code § 22.1-87.](#)

Document Type

Petition

Filing Type

JR

Procedures

**Step 1** Petition is filed with the circuit court in the jurisdiction where the school division is located.

**Comments:** Petition must be filed within thirty days of the action of the school board.

**Step 2** Clerk receipts for applicable fee, opens new case with CIVIL case number and docket new case.

**Step 3** Court receives minutes of meeting in which the school's board decision was taken, the orders, if any, of the school board, an

attested copy of the transcript, if any, of any hearing before the school board, and any other evidence found relevant to the issues on appeal.

- Step 4** Court holds review of the board’s action, by review of the petition, record and any other evidence found relevant to the issues on appeal.
- Step 5** Clerk indexes and microfilms/scans all Orders of the Court in the matter and directs copies of any order to the parties as directed by the Court.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk’s office.

Reference(s)

[Va. Code § 22.1-87](#)

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

## Juvenile & Domestic Relations Court Case Matrix

For the most current version of the matrix, please refer to the [Quick Reference Materials](#) on the DJS website.

## Lawyer Discipline

Pursuant to [Va. Code §54.1-3935](#), an attorney subject to a disciplinary procedure, or the Virginia State Bar, may elect to terminate the procedure before the Bar Disciplinary Board or



district committee and demand further proceedings be conducted by a three-judge circuit court. The Virginia State Bar files a complaint in a circuit court where venue is proper. The chief judge of the circuit court shall issue a rule against the attorney to show cause why the attorney shall not be disciplined. At the time the rule is issued, the court shall certify the fact of such issuance and the time and place of the hearing to the Chief Justice of the Supreme Court, who shall designate the three-judge circuit court to conduct the hearing at the time and place set in the rule. The three-judge circuit court shall consist of three circuit court judges of circuits other than the circuit in which the case is pending to hear and decide the case. Bar counsel prosecutes the case. The rules and procedures set forth in [Part Six, Section IV, Paragraph 13 of the Rules of Supreme Court of Virginia](#) shall govern any attorney disciplinary proceeding before a three-judge circuit court.

The three-judge circuit court hearing the case may dismiss the case or impose any sanction authorized by Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia.

Actions filed pursuant to [Va. Code § 54.1-3936](#) shall remain under seal until 1) an injunction has been entered prohibiting the withdrawal of any bank deposits or the disposition of any other assets under the control of the attorney or 2) a receiver has been appointed for all or part of the funds or property of the attorney's law practice.

Document Type

Complaint

Filing Type

LDIS

Procedures

- Step 1** Complaint and rule to show cause filed with the clerk of the circuit court by the Virginia State Bar.
- Step 2** Clerk assigns a CIVIL case number, indexes and docket case and issues process. The Virginia State Bar is an administrative agency of the Supreme Court of Virginia and is exempt from fees. [Virginia Code §17.1-266](#)
- Step 3** The chief judge of the circuit court issuing the rule to show cause will provide the time and place of the hearing, and the Chief Justice of the Supreme Court of Virginia will designate a three-judge panel from other circuits to hear the case. The court will most likely require the rule to show cause be served upon the attorney.

**Note:** Once the rule to show cause has been signed by the chief

judge of the circuit court, the Circuit Court Clerk's Office will notify the Judicial Designation Specialist so that the Chief Justice can appoint the three-judge panel.

**Email:** [designations@vacourts.gov](mailto:designations@vacourts.gov)

Phone number: (804)786-7890

**Notes and Recommendations:** It is important for the Circuit Court Clerk's Office to begin communicating with involved parties as soon as the complaint and rule to show cause are filed by the Bar. The Bar's Clerk's Office will reach out to the Circuit Court to schedule the hearing prior to the complaint being filed, this date will be included in the rule to show cause submitted with the Bar complaint. They may also facilitate the coordination and scheduling of any pre-trial hearings that may be needed.

Once the three-judge panel has been selected, the Circuit Court Clerk's Office in which the case was filed, should reach out to the chief judge of the three-judge panel to determine how the judge(s) would like to view the file prior to any hearings (JIS/CIS, OCRA, or paper copies) and to discuss staff coverage for the trial. The Circuit Court Clerk's Office should also communicate with the Bar's Clerk's Office regarding how exhibits, motions, etc. will be filed and distributed to the three judges.

Specific questions regarding these cases may be directed to the Virginia State Bar's Clerk's Office:

Email: [clerk@vsb.org](mailto:clerk@vsb.org)

Phone number: (804)775-0539

**Step 4** Clerk records and indexes the rule to show cause and orders in the Civil Order Book unless otherwise provided by law.

**Note:** A Summary Order will be prepared by the Bar and entered immediately following the trial. The Circuit Court Clerk's Office should receive the original signed Summary Order the day of the trial and should distribute copies as ordered. A Final Memorandum Order will be prepared by the Bar after the hearing. The Circuit Court Clerk's Office will distribute copies as ordered. The Clerk of the Disciplinary System at the Bar will post a Summary to the VSB website based on the Summary Order at the end of the trial and post the Final Memorandum Order once

it is entered.

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

**Step 5** Any appeal from the court's final order is processed to the Supreme Court of Virginia in the same manner as any other legal cause of action. In any such appeal, the Supreme Court may, upon petition of the attorney, stay the effect of an order of revocation or suspension during the pendency of the appeal. Any other sanction imposed by a three-judge circuit court shall be automatically stayed prior to or during the pendency of the appeal.

Fees/Taxes/Other Monies Assessed

No fees are assessed by the Circuit Court. Fees may be assessed by the Virginia State Bar.

Form(s)

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

Reference(s)

[Va. Code § 54.1-3935](#)  
Rules of the Supreme Court of Virginia, Part 6 Section IV paragraph 13.

### Levy/Seizure - (Post-Judgment)

"Writ of Execution" of judgment is a post-judgment legal process issued by the clerk's office at the request of the judgment or agent, which commands the sheriff to assist in enforcing the judgment by following the directions of the writ.

The most common writs are (1) Writ of Possession or Writ of Eviction - [Va. Code §§ 8.01-470, 8.01-471, 8.01-472](#), (2) Writ of *Fieri Facias* - [Va. Code § 8.01-474](#), and (3) Writ of *Venditioni Exponas* - [Va. Code §§ 8.01-485](#) and [8.01-211](#).

The purpose of a writ of possession is to help the plaintiff recover personal property, in detinue or in unlawful detainer, which, by the court's order, will require the defendant to return possession of the property to the plaintiff. A Writ of Eviction is to help the plaintiff recover real property pursuant to an Order of Possession. See sections titled "Detinue" and "Unlawful Entry

And Detainer” in this Manual for procedures.

The purpose of the writ of *Fieri Facias* is to help the plaintiff obtain sufficient money out of the assets held by the defendant to pay off the plaintiff’s judgment against the defendant. The Writ of *Fieri 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 *Fieri 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 writ of *Fieri Facias* (circuit court form CC-1477, 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](#).

The purpose of the writ of *venditioni exponas* is to continue proceedings against property of the debtor upon which the sheriff has levied and which remains unsold. In effect, the writ functions like a writ of *fieri facias*, and directs the sheriff to sell the property which they have taken under *fieri facias*.

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 CC-1477, WRIT OF *FIERI FACIAS*, attaches a copy of, district court form DC-407, [REQUEST FOR HEARING - EXEMPTION CLAIM](#) to each copy of the Writ of *Fieri Facias*, 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 an indemnifying bond was posted with the sheriff by the judgment creditor, seizes the particular items of personal property noted in the Writ of *Fieri 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 *Fieri 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 DC-407, [REQUEST FOR HEARING - EXEMPTION CLAIM](#), whereupon the clerk:
  - Indexes the form DC-407 request as a subsequent action, 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.

Only if the judge determines that the exemption claim is valid is a copy of the order required to be provided to the parties by the clerk.

- 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.

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

The writs are divided into two groups:

1. Indemnification bond posted prior to sale if required by sheriff.
  2. 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.

Document Type

Writ Of Possession, Writ of Eviction, Writ Of *Fieri Facias*, Writ Of *Venditioni Exponas*

Filing Type

LEVY

Procedures

- Step 1** The judgment creditor or assignee, or attorney for the judgment creditor requests issuance of writ of execution.
- Step 2** Clerk may issue a writ of execution on judgments rendered in (1) the circuit court of that clerk, (2) a district court within the jurisdiction of the circuit court, if docketed according to [Va. Code § 16.1-69.55 \(B\)\(4\)](#), (3) a juvenile and domestic relations court judgement, if docketed according to [Va. Code § 16.1-278.18 \(B\)](#), and (4) a judgment of an out-of-state court “which is entitled to full faith and credit”, and either docketed according to the Uniform Enforcement of Foreign Judgments Act per [Va. Code § 8.01-465.2](#), or which has been “domesticated” in the circuit court per [Va. Code § 8.01-389](#).
- Step 3** The clerk receipts money, prepares the writ and tenders papers to the sheriff, and a Request for Hearing-Exemption Claim form required by [Va. Code § 8.01-466](#) in cases of execution for levy to satisfy a judgment.
- Comments:** The earliest date the clerk may issue a writ of *Fieri Facias* is twenty-one days after the entry of the judgment unless the court determines that for good cause an earlier execution is warranted; there is no minimum waiting period on circuit court judgments for issuing a writ of possession in unlawful detainer or *venditioni exponas*. See Form DC-407, [REQUEST FOR HEARING - EXEMPTION CLAIM](#).
- Step 4** The clerk records an abstract of executions issued on a judgment in the Judgment Lien Docket Book per [Va. Code § 17.1-232](#), and records issuance of process in the process book or enters the

information on the office's automated system per [Va. Code § 17.1-215](#).

- Step 5** If a motion to quash an execution is filed per [Va. Code § 8.01-477](#), the court may order a stay execution, conditioned on the defendant entering a bond as directed by the court. The clerk takes the bond and serves a copy of the court's order upon the plaintiff and officer in whose hands the execution is held. The court holds a hearing on the claim of exemption within ten business days from receipt of the request. The clerk must notify the plaintiff and sheriff of the date, time and place of such hearing.
- Step 6** If a third party files a motion in the proceeding, refer to the section "Interpleader" in this Manual for procedures. The Clerk receipts the Indemnifying Bond of the sheriff per [Va. Code § 8.01-368](#).
- Step 7** If the defendant has given the sheriff a forthcoming bond under [Va. Code § 8.01-526](#), and such bond is forfeited and the amount due on the execution is not tendered to the sheriff, the sheriff shall return it to the clerk, who shall endorse on the bond the date of this return, and record it in a book prescribed by [Va. Code § 8.01-529](#) (the Bond Book).
- Step 8** The Clerk records the return to the sheriff.

#### Fees/Taxes/Other Monies Assessed

##### [Circuit Court Civil Filing Fee Calculation](#)

The fees for process and service in the following instances shall be \$25:

- Service and publication of any notice of a publicly advertised public sale.
- Service of a writ of possession, except that there shall be an additional fee of \$12 for each additional defendant.
- Levying upon current money, bank notes, goods or chattels of a judgment debtor pursuant to [Va. Code § 8.01-478](#).
- Service of a declaration in ejectment on any person, firm or corporation, except that there shall be an additional fee of \$12 for each additional defendant.
- Levying distress warrant or an attachment.
- Levying an execution.

Form(s)

Initiating forms not provided by clerk's office.

DC-407, [REQUEST FOR HEARING - EXEMPTION CLAIM](#)

DC-469, [REQUEST FOR WRIT OF EVICTION IN UNLAWFUL DETAINER PROCEEDINGS](#)

CC-1410, NOTICE OF FILING OF FOREIGN JUDGMENT

CC-1477, WRIT OF *FIERI FACIAS*

CC-1478, [WRIT OF POSSESSION AND \*FIERI FACIAS\* IN DETINUE](#)

Reference(s)

Va. Code Title 8.01 Chs. 17.1, 18, 19.

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(43)</a>
Bond	<a href="#">Va. Code § 17.1-275 A(21)</a>
Sheriff's Fee	<a href="#">Va. Code § 17.1-272</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>

### Liquidated Damages/Overweight Vehicle Violations

Most overweight vehicle violations are state violations rather than local violations. Monies are assessed when a vehicle (truck) is found to exceed statutory weight limits. These state violations are handled as civil administrative matters by the Department of Motor Vehicles (DMV). An appeal from the DMV action is handled by the general district court as a civil matter that may be appealed to the circuit court. The general district court may set an appeal bond and should collect writ tax and costs when noting an appeal. The circuit court does not collect any civil judgment that may be awarded, as the defendant would pay such monies directly to DMV.

If the case is received via a local criminal/traffic summons or warrant, the case should be handled as an appealed traffic infraction. Any liquidated damages ordered from a local violation would be collected by the clerk. See Criminal Manual, Appendix B, Liquidated Damages/Overweight Violations.

### Mandamus

Mandamus is an extraordinary remedy employed to compel a public official to perform a non-discretionary, ministerial or mandatory duty imposed upon them by law. The writ of mandamus should be issued only where there is clear and specific legal right to be enforced or a duty which ought to be and can be performed, and where no other adequate legal remedy exists. Mandamus is used to compel an action and is not a substitute for an appeal and cannot



be used to undo an act that has already been done.

The Commonwealth Attorney may file an injunction, mandamus or other appropriate remedy in any appropriate court when a person, firm, partnership, association or corporation that accepts payment devices prints more than the last four digits of the payment device number or the expiration date on any receipt provided to the holder of the payment device. [Va. Code § 6.2-429.](#)

Document Type

Petition

Filing Type

WM

Procedures

**Step 1** Application for Writ of Mandamus filed by petition verified by oath.

**Note:** There is a statute of limitations in which a Writ of Mandamus may be filed by a defendant that is confined in a correctional facility. It is recommended that the envelope received by an inmate containing the petition be date/file stamped and filed and/or imaged in the case file.

**Step 2** Copy of petition is served on the defendant. [Va. Code § 8.01-644.](#)

**Comments:** Defendant may file a demurrer or answer to the petition. [Va. Code § 8.01-647.](#)

**Step 3** Clerk sets up case file, issues process, assigns a CIVIL case number and docket case.

**Comments:** If proceeding is for enforcement of the Virginia Freedom of Information Act, petition for mandamus shall be heard within seven days of the date the application was made. However, petition should be given precedence on the docket. [Va. Code § 2.2-3713.](#)

**Note:** Court may enter an order, at any time before or after the application of the writ is made, suspending the proceedings sought to be prohibited. Order shall be served upon defendant. [Va. Code § 8.01-650.](#)

**Step 4** Clerk receipts for money collected.

**Step 5** If Order entered based on STEP 4, clerk will record and index in Civil Order Book.

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

**Step 6** Hearing held.

**Comments:** Court awards or denies writ of mandamus with or without costs.

**Step 7** Clerk records Final Order in Civil Order Book and provides service of a copy of the Order awarding or denying the writ of mandamus to the defendant.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 2.2-3713](#)  
[Va. Code § 8.01-639](#)  
[Va. Code § 8.01-644](#), *et seq*

Attorney General Opinion to Bolt, dated 4/23/85 (1984-85, page 42); the clerk may charge a ten dollar fee for filing a petition for the restoration of one's driving privilege pursuant to § 46.1-387.9:1 or § 46.1-387.9:2.

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

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

## Marriage-Authorization Of Persons Other Than Ministers To Perform

Upon petition filed with the clerk and payment of applicable clerk's fees, any circuit court judge may issue an order authorizing one or more persons resident in the circuit in which the judge sits to celebrate the rites of marriage in the Commonwealth. Any person so authorized shall, before acting, enter into bond in the penalty of \$500, with or without surety, as the court may direct, however, upon a showing that the person would otherwise be qualified for in forma pauperis status, the court may waive such bond. Any order made under this section may be rescinded at any time. No oath shall be required of a person authorized to celebrate the rites of marriage, nor shall such person be considered an officer of the Commonwealth by virtue of such authorization. [Va. Code § 20-25.](#)

### Document Type

CC-1498- [PETITION FOR AUTHORIZATION TO CELEBRATE RITES OF MARRIAGE \(PERSONS OTHER THAN MINISTERS\)](#)

### Filing Type

ROMC

### Procedures

- Step 1** Clerk receipts payment, assigns case number, indexes the case and prepares the case file and/or electronic record.
- Step 2** Clerk submits petition and any evidence received to judge for entry of order.
- Step 3** Court enters CC-1499-ORDER FOR AUTHORIZATION TO CELEBRATE RITES OF MARRIAGE (PERSONS OTHER THAN MINISTERS) or may deny the petition.

**Comment:** Depending on local practice, the Court may authorize the petitioner to perform marriages in the Commonwealth of Virginia or may authorize one-time only marriages.

- Step 4** Clerk contacts petitioner and authorizes as directed by the court order. Petitioner enters into the bond as directed by the court, unless the requirement of bond was waived by the court.

**Note:** If a one-time only marriage is authorized, the Clerk may be

directed to refund the bond once the completed marriage license is received.

**Note:** If a bond is ordered with surety, the authorized individual may pay a \$500 cash bond, or another person may sign as surety on their behalf. If a civil file is created for these matters, the cash bond should be receipted under account code 503. If a civil file is not created for these matters, the cash bond should be receipted under account code 501 or 509.

Fees/Taxes/Other Monies Assessed

[CIRCUIT COURT CIVIL FILING FEE CALCULATION](#)

Forms

CC-1498 – [PETITION FOR AUTHORIZATION TO CELEBRATE RITES OF MARRIAGE \(PERSONS OTHER THAN MINISTERS\)](#)

CC-1499 – ORDER FOR AUTHORIZATION TO CELEBRATE RITES OF MARRIAGE (PERSONS OTHER THAN MINISTERS)

Reference(s)

[Va. Code § 20-25](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(5)(18)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Indigent Assistance (INA)	<a href="#">Va. Code § 17.1-278</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Bond	<a href="#">Va. Code § 17.1-275 A(6)</a>

*\* Not assessed if the amount of the civil action is \$500 or less*

## Medical Malpractice

Action in tort based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient. [Va. Code § 8.01-581.2](#).

Document Type

Complaint

Filing Type

MED

Procedures

**Step 1** Complaint filed by plaintiff for medical malpractice in circuit court.

**Comments:** Every motion for judgment, counter claim, or third party claim, at the time the plaintiff requests service of process upon a defendant, or requests a defendant to accept service of process, shall be deemed a certification that the plaintiff has obtained from an expert witness a written opinion signed by the expert witness that the defendant for whom service of process has been requested deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed. [Va. Code § 8.01-20.1](#).

**Step 2** Clerk receipts fees/taxes, opens file, docket case and issues process.

**Step 3** Either plaintiff or defendant may request Medical Malpractice Review Panel; request and copy of the complaint is forwarded by clerk to the Supreme Court of Virginia.

**Comments:** Request for panel should include:

2. Name, address and telephone number of plaintiff;
3. Name, address and telephone number of the attorney of record for plaintiff;
4. Name, address and telephone number of the defendant health care provider(s);
5. Name, address and telephone number of the attorney of record for the health care provider; and
6. Statement specifying the classification of the health care provider in accordance with [Va. Code § 8.01-581.1](#).

**Note:** Party requesting panel shall mail copy of request to the opposing party and its counsel, if known. Rule 2(a) - Medical Malpractice Rules of Practice.

**Step 4** Upon completion of discovery period set out in [Va. Code § 8.01-581.3:1](#), the Office of the Executive Secretary will notify parties of the name, address and professional practice of each panel member and also notify the panel members of their appointment.

**Comments:** The panelists, within ten days of notification, shall advise the Office of the Executive Secretary if they will be unable to serve.

- Step 5** Clerk receives and files all discovery, evidence submitted to the panel, any transcript, and the written opinion of the panel.
- Step 6** Clerk mails copy of the written medical malpractice panel opinion to the plaintiff and defendant within five days of the date of rendering the opinion and also forwards a copy to the Office of the Executive Secretary with apportionment of the costs as determined by the judge.

**Comments:** [Rule 6\(d\)](#) - Medical Malpractice Rules of Practice. File order in case file.

- Step 7** Clerk certifies copies of any Orders of the court upon request or direction of the court.
- Step 8** Clerk docket any judgment for money rendered by the court against any party to the action, without delay, in the Judgment Lien Docket and Execution Book.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office. Clerk has available CC-1400 Series

Reference(s)

[Va. Code § 8.01-581.1 et seq](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(13)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(13)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>

FEES	
TYPE CHARGES	CODE REFERENCE
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

## Chapter 10 - Suits/Action Types (N-W)

### Name Change

Application for name change is filed in the circuit court of the county or city where the applicant resides or is filed in the circuit court in the form of a motion to resume the female's maiden name as part of a pending action for divorce.

#### Document Type

Application

#### Filing Type

NC

#### Procedures

- Step 1** Application for name change is filed under oath (by affidavit) in the circuit court of the county or city where the applicant resides or is filed in the circuit court in the form of a motion to resume the female's maiden name as part of a pending action for divorce.

#### Comments:

Application will state:

- Residence of applicant;
- Names of both parents - including mother's maiden name;
- Date and place of birth;
- Felony conviction(s), if any;
- Status of incarceration or probation;
- Whether applicant is required or is registered with the Sex Offender and Crimes Against Minors Registry; and
- If name or previous name(s) have been changed.

If applicant is incarcerated - Application may be filed in the county or city circuit court where they are incarcerated.

If applicant is a minor with no living parent or guardian - Application filed by any adult "friend" in the county or city circuit court where the juvenile resides.

If applicant is a minor with both parents living - Application filed by consenting parent in the county or city circuit court where the juvenile resides.



See Forms CC-1411, [APPLICATION FOR CHANGE OF NAME \(ADULT\)](#) CC-1427, [APPLICATION FOR CHANGE OF NAME \(MINOR\)](#) CC-1429, ORDER REGARDING APPLICATION FOR CHANGE OF NAME

**Step 2** Clerk receipts for money collected.

**Step 3** PROCEDURE QUESTION: Has applicant (Adult or Minor) answered YES to questions relating to felony convictions, current incarceration or registration with the Sex Offender and Crimes and Against Minors Registry? If yes: GO TO STEP 4, If No: GO TO STEP 7.

**Step 4** Send APPLICATION FOR CHANGE OF NAME (Adult or Minor) AND CC-1429 ORDER REGARDING APPLICATION FOR CHANGE OF NAME to the Court. If good cause exists for the application to be accepted, GO TO STEP 5.

If ORDER REGARDING APPLICATION FOR CHANGE OF NAME is denied, the case is dismissed. This Order serves as the final order. GO TO STEP 8.

**Step 5** If Court finds good cause for application to be accepted, transmit copies of APPLICATION and ORDER REGARDING APPLICATION to the Commonwealth's Attorney in the jurisdiction where application was filed, and any jurisdiction named in the application.

**Comments:** The Commonwealth's Attorney for the jurisdiction where the application is pending has 30 days to file a response, and the Court shall conduct a hearing on the application.

PROCEDURE QUESTION: Is Name Change for a Minor, and if so, are both parents living? If yes, ALSO GO TO STEP 6.

**Step 6** Copy of petition is served on the parent who does not join in the petition. It is not necessary to effect service upon any parent who files an answer to the application. [Va. Code § 8.01-217](#). A hearing will be held if parent, after getting notice, objects to the petition.

**Comments:** *Ex parte* hearing may be held which will reconsider the requirement of notification of other parent if

the court determines that the notice would present a threat to the health and safety of the applicant.

**Step 7** If Court finds that the change of name would not frustrate a legitimate law enforcement purpose, is not sought for a fraudulent purpose, would not otherwise infringe on the rights of others, or complies with the requirements of [Va. Code § 8.01-217](#) or is pursuant to [Va. Code § 20-121.4](#), it shall grant the name change.

**Step 8** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

**Comments:**

- If application is granted:
- Clerk enters in Civil Order Book
- Clerk enters in the Deed Book and indexes same in both the old and new names.
- Index original name as grantor
- Index new name as grantee

If Order Regarding Application for Change of Name is used or if Application is denied, Clerk enters in Civil Order Book  
See CC-1429, ORDER REGARDING APPLICATION FOR CHANGE OF NAME;  
CC-1412, ORDER FOR CHANGE OF NAME (ADULT) and CC-1428, ORDER FOR CHANGE OF NAME (MINOR)

**Step 9** Clerk transmits a certified copy of order and application granting name change to the [State Registrar of Vital Statistics](#):

Bureau of Vital Statistics  
P.O. Box 1000  
Richmond, VA 23208

**and** the Central [Criminal Records Exchange](#).

CCRE  
P.O 27472  
Richmond, VA. 23261-7472

**Comments:** Transmission of certified copy is not required if person who changed their former name by reason of marriage and who makes an application to resume a former name pursuant to [Va. Code § 20-121.4](#). **Note:** Judge may order the record sealed if applicant shows that the record of their name change may cause a threat to the health and safety of the applicant and their family. [Va. Code § 20-124](#). The clerk would not record and index the order.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

**Note:** A clerk's recordation fee is not assessed under [Va. Code § 17.1-275 A\(2\)](#) per Attorney General Opinion to Snow, dated 10/16/86 (1986-87, page 81); *clerk may charge only specific fee required by § 14.1-112(20) for recording in deed book order for name change or divorce decree incorporating restoration of former name.*

Form(s)

- CC-1411, [APPLICATION FOR CHANGE OF NAME \(ADULT\)](#)
- CC-1412, ORDER FOR CHANGE OF NAME (Adult)
- CC-1427, [APPLICATION FOR CHANGE OF NAME \(MINOR\)](#)
- CC-1428, ORDER FOR CHANGE OF NAME (MINOR)
- CC-1429, ORDER REGARDING APPLICATION FOR CHANGE OF NAME

Reference(s)

- [Va. Code § 8.01-217](#)
- [Va. Code § 20-121.4](#)

Attorney General Opinion to Black dated 1/18/90 (1990, page 235); Writ tax not applicable to nonadversarial proceedings in circuit court; determination of adversarial vs. nonadversarial law and chancery proceedings.

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(24)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(13)(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>

FEES	
TYPE CHARGES	CODE REFERENCE
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

## Name Change – Void

The attorney for the Commonwealth for the jurisdiction where an order granting a change of name of a probationer, a person for whom registration with the Sex Offender and Crimes against Minors Registry is required, or an incarcerated person has the authority to bring an independent action at any time to have such order declared void.

### Document Type

Petition/Action

### Filing Type

NCV

### Procedures

**Step 1** Petition/action filed by Commonwealth Attorney asking for the Name Change order to be declared void.

**Step 2** Notice of the petition/action shall be served upon the person who was granted a change of name.

**Comment:** The respondent shall have 30 days after service to respond.

**Step 3** If the person files a response objecting to having the order declared void, the Court shall hold a hearing.

**Step 4** If voided, the clerk shall transmit a certified copy of the order to the [State Registrar of Vital Statistics](#):

Bureau of Vital Statistics  
P.O. Box 1000  
Richmond, VA 23208

[Central Criminal Records Exchange](#).

CCRE  
P.O 27472  
Richmond, VA. 23261-7472

[Department of Motor Vehicles](#)

Virginia Department of Motor Vehicles  
P.O. Box 27412  
Richmond, VA 23269

[State Board of Elections](#)

And

any agency or department of the Commonwealth that has issued a license to the person where such license utilizes the person's changed name, if known to the court and identified in the court order.

- Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

None (filed by the Commonwealth), see [Va. Code § 17.1-266](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 8.01-217](#)

## Partition

An action by which joint owners of real property may request the court to divide the property among them proportionately, or to sell the property in lieu of partition.

Document Type

Complaint

Filing Type

PART

## Procedures

- Step 1** Clerk receives Complaint.
- Step 2** Clerk assigns case number, indexes the case and prepares the case file. See “Case Initiation” chapter for respective procedures.
- Step 3** Clerk receipts for money collected.
- Step 4** Clerk issues process as directed.
- Step 5** Court appoints a Special Commissioner to sell the property.
- Comments:** The court may appoint some person other than a Special Commissioner (a Receiver) to collect the purchase money or rent in which case bond with surety is required. Amount of bond is determined by court. [Va. Code § 8.01-103](#). The Clerk shall serve written notice to the purchaser or lessee of such appointment.
- Step 6** The clerk issues certificate that Special Commissioner (Receiver) has posted bond.
- Comments:** If any clerk fails to give notice as required by [Va. Code § 8.01-103](#) of a Receiver, they shall be guilty of a Class 4 misdemeanor. [Va. Code § 18.2-209.2](#). The Certificate of a copy shall be appended to the Special Commissioners advertisement. [Va. Code § 8.01-9](#).
- Step 7** Clerk certifies copies of any Orders of court for the parties upon request or upon direction of the court.

## Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

## Form(s)

Initiating documents not provided by clerk’s office. Clerk has available CC-1400 series

## Reference(s)

[Va. Code § 8.01-81](#) *et seq.*

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

### Pawnbroker – Application for License

The circuit court of any county or city may authorize any county, city or town to issue to any individual, who has not been convicted of a felony or a crime involving moral turpitude in the last ten years, a license to engage in the business of a pawnbroker in that county, city or town. No such license shall be issued by any county, city or town except with such authority. Prior to the issuance of the license, the applicant shall furnish their date of birth, a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth, and such other information to the licensing authority as may be required by the governing body. The license shall designate the building in which the licensee shall carry on such business. [Va. Code § 54.1-4001](#)

No person shall engage in the business of a pawnbroker in any location other than the one designated in their license, except with consent of the court which authorized the license.

A Pawnbroker license does not provide authority to do business as a Precious Metals Dealer. That profession is regulated by Chapter 41 of Title 54.1 (§§ 4100 to 4111), and a permit for that activity is obtained by application to the local chief law-enforcement officer.

#### Document Type

Application with sworn statement

#### Filing Type

PAWN

#### Procedures

**Step 1** Clerk may receive Application

- Step 2** Clerk receipts for money collected.
- Step 3** Clerk assigns case number, indexes the case and docket the case. See "Case Initiation" chapter for respective procedures.
- Step 4** No service of process is required.
- Step 5** Court enters Order granting or denying authorization for the city, county or town to issue a license to the applicant to engage in the business of a pawnbroker.
- Step 6** If the Court's Order requires the applicant to post bond with surety in the minimum amount of \$50,000 with the Court prior to issuance of the license, the Clerk will record the bond as bonds are normally processed in the clerk's office. If the Court does not set the bond, the locality procures the bond from the applicant prior to licensure.
- Step 7** Clerk certifies copies of any Orders of court for the parties upon request or upon direction of the court.

#### Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

#### Form(s)

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

#### References

Va. Code Title 54.1, Chapter 40 (§§ 4000 to 4014).  
See AG Opinion to Black, 1990 Va. AG 235, January 18, 1990: *[It] is my opinion that the writ tax imposed by § 58.1-1727 is required to be paid only when an adversarial action is filed. Whether a particular matter is adversarial in nature and, therefore, subject to the writ tax described in § 58.1-1727 depends upon whether the particular action is structured to accommodate the assertion of opposing interests inherent in the term "adversarial."* See The Webster Encyclopedic Dictionary of the English Language 14-15 (1967). The essential components of any adversarial action are notice and an opportunity for opposing interests to be heard. See E.P. Heacock v. Commonwealth 228 Va. 235, 241-42, 321 S.E.2d 645, 649 (1984).



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

### Payment Of Funds Into The Circuit Court From 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 pursuant to [Va. Code § 8.01-600](#) requesting that such funds be received and held by the clerk of the circuit court upon payment of fees in accordance with [Va. Code § 17.1-275](#). The party petitioning the circuit court shall provide the clerk of the general district court a certified copy of any order entered by the circuit court directing that such funds held by the clerk of the general district court be transferred to 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.

#### Document Type

Petition

#### Filing Type

PET

#### Procedures

- Step 1** Clerk receives Petition and receipts for monies collected.
- Step 2** Clerk assigns case number, indexes the case and prepares the case file. See "Case Initiation" chapter for respective procedures.

**Comment:** The petition shall be accompanied with an Affidavit of Beneficiary. If not, one should be requested prior to the entry of a final order. Affidavit is to be maintained under seal.

- Step 3** A certified copy of the court order should be given to the party that petitioned the circuit court.
- Step 4** District court will transmit funds to circuit court, to be held pursuant to [Va. Code § 8.01-600](#).
- Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code §§ 8.01-600, 8.01-606](#)

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

## Petition By Public Officials To Prohibit Publication Of Information

[Virginia Code § 18.2-186.4:1](#) permits public officials to file a petition with the circuit court to prohibit a state or local agency from publicly posting or displaying on the internet their home address or personal telephone number.

Public official means any state or federal judge or justice and any law-enforcement officer.

Once the order is signed, the public official takes a copy of the order authorizing the state or locality to remove the information and a written “demand” to the agency. The information must be removed within 48 hours of receipt of demand and order and is effective for 4 years as long as the public official remains active.

#### Document Type

Petition

#### Filing Type

LEP

#### Procedures

- Step 1** Clerk receives Petition and receipts for monies collected.
- Step 2** Clerk assigns case number, indexes the case and prepares the case file. See “Case Initiation” chapter for respective procedures.

- Step 3** Clerk sets hearing date.

**Note:** Any written comments submitted to the clerk should be marked filed.

- Step 4** The court may issue an order permitting or denying request.

**Note:** If the order indicates that the information is to be removed from documents provided through Secure Remote Access (SRA), the redaction tool in COVERS may be used. If the tool is used for marriage licenses, the information will be removed in SRA and images available in the Clerk’s office on the public view stations.

**Comment:** For courts that use a third-party land recording system, the vendor will need to be contacted for information regarding redacting information.

- Step 5** Clerk certifies copies of any Order of court upon request or upon direction of court.

- Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or

microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

None

Reference(s)

[Va. Code § 17.1-295](#)  
[Va. Code § 18.2-186.4:1](#)

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

### Petition For Entry Onto School Property By Sex Offender

A person who is convicted of a sexually violent offense, defined in [Va. Code § 9.1-902](#), is prohibited from being on school or child day center property unless they are lawfully registered to vote and is coming upon such property to cast their vote, they are a student enrolled at the school, or they have obtained a court order allowing them to enter such property. If they have received a court order allowing entry on school or child day center property, they must also obtain permission of the school board or of the owner of the private school or child day center for entry within all or part of the scope of the lifted ban and must do so in compliance with the terms and conditions of both the school or center and the court order. [Va. Code § 18.2-370.5](#).

Every adult who is prohibited from entering upon school or child day center property may, after notice to the attorney for the Commonwealth and either (i) the proprietor of the child day center, (ii) the Superintendent of Public Instruction and the chairman of the school board of the school division in which the school is located, or (iii) the chief administrator of the school if such school is not a public school, petition the circuit court in the county or city where the school or child day center is located for permission to enter such property. Pursuant to court order,

notice of the time and place of the hearing must be published once a week for two successive weeks in a newspaper authorized to be used for publication of such notices. The newspaper notice must contain a provision stating that written comments regarding the petition may be submitted to the clerk of the court at least five days prior to the hearing.

Document Type

Petition

Filing Type

PET

Procedures

- Step 1** Clerk receives Petition and receipts for monies collected.
- Step 2** Clerk assigns case number, indexes the case and prepares the case file. See “Case Initiation” chapter for respective procedures.
- Step 3** Clerk sets hearing date. **Note:** Any written comments submitted to the clerk should be marked filed.
- Step 4** At hearing, court may issue an order permitting or denying request.
- Step 5** Clerk certifies copies of any Order of court upon request or upon direction of court.
- Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

None

Reference(s)

[Va. Code § 18.2-370.5](#)

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

### ***Pro Hac Vice* – When Out-Of-State Lawyer Is Allowed to Participate In A Virginia Case**

A lawyer who is not a member of the Virginia State Bar, but is currently licensed and authorized to practice law in another state, territory, or possession of the United States may apply to appear as counsel *pro hac vice* in a particular case before any court or “tribunal” in the Commonwealth of Virginia upon compliance with Supreme Court of Virginia Rule of Court 1A:4.

#### Document Type

Motion and Notarized Application

#### Filing Type

N/A

#### Procedures

**Step 1** Clerk receives a motion and an original notarized application along with a proposed court order and non-refundable \$250 fee.

**Comments:** There is no fee for filing the motion. A notarized application and fee of \$250.00 must be submitted for each separate case before the tribunal. The \$250 check is made payable to the Supreme Court of Virginia Clerk. [Virginia Code § 17.1-205](#) establishes the *Pro Hac Vice* Fund that is to be used by the Supreme Court of Virginia for improving the administration of justice.

**Step 2** Clerk files the motion in the existing case file and sends the order to the judge for entry.

**Comments:** The tribunal shall deny the motion if the out-of-state lawyer has been previously admitted *pro hac vice* in twelve cases with the last twelve months preceding the date of the current application. This information is maintained in a database which can be accessed at [Pro Hac Vice Lawyer Search](#).

**Step 3** Clerk sends a copy of the application and certified copy of the court's order along with the \$250 check to the Clerk of the Supreme Court of Virginia.

**Comments:** Specifically, per Rule 1A:4, the original application and original orders granting, denying or revoking the application are to be maintained in a "separate file containing all applications". A copy of the court's order should be placed in the case file.

**Step 4** Clerk must maintain the application for a period of three years after completion of the case and all appeals.

**Comments:** At the end of the three-year period the clerk should transfer the original court order back to the case file.

**Step 5** Clerk microfilms/scans and indexes the court order.

#### Fees/Taxes/Other Monies Assessed

None collected by clerk, however, a fee of \$250.00 made payable to the Supreme Court of Virginia Clerk is submitted with motion and application.

#### Form(s)

[Application to Appear Pro Hac Vice Before a Virginia Tribunal](#)

#### Reference(s)

[Rule 1A:4](#) and [Application to Appear Pro Hac Vice Before a Virginia Tribunal Va. Code §§ 17.1-205, 17.1-328 \(B\)](#)

## Prohibition

A writ of prohibition is a remedy by which a higher court prevents a lower court from hearing a case and exercising jurisdiction not granted to it by law and from exceeding its proper legal powers. The writ of prohibition lies to prevent the exercise of the jurisdiction of the court by the judge to whom it is directed, either where they have no jurisdiction at all or is exceeding their jurisdiction. For example, writs of prohibition lie to inferior courts to forbid them to

exceed their jurisdiction and to prevent the execution of void judgments.

Document Type

Petition

Filing Type

WP

Procedures

**Step 1** Application for writ of prohibition filed by petition verified by oath.

**Comments:** Petition will state the grounds and a specific request for the writ. Oath is essentially an affidavit attesting that the facts presented in the petition are true to the best of the knowledge of the petitioner.

**Step 2** Copy of petition is served on the defendant. [Va. Code § 8.01-644](#).

**Comments:** Defendant may file a demurrer or answer to the petition. [Va. Code § 8.01-647](#).

**Step 3** Clerk sets up case file, issues process, assigns a civil case number and docket case. **Note:** court may enter an order, at any time before or after the application of the writ is made, suspending the proceedings sought to be prohibited. Order shall be served upon defendant. [Va. Code § 8.01-650](#).

**Step 4** Clerk receipts for money collected.

**Step 5** If order entered based on step 4, clerk will record and index in civil order book.

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

**Step 6** Hearing held.



**Comments:** Court awards or denies writ of prohibition with or without costs.

**Step 7** Clerk records final order in civil order book and provides service of a copy of the order awarding or denying the writ of mandamus to the defendant.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 8.01-639, 8.01-640, 8.01-641, 8.01-642, 8.01-643, 8.01-644](#)  
Attorney General Opinion to Bolt, dated 8/23/85 (1984-85, page 42); ...*the clerk may charge a ten dollar fee for filing a petition for the restoration of one's driving privilege pursuant to § 46.1-387.9:1 or § 46.1-387.9:2.*

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

## Protective Orders

### Adult Protective Services – Emergency Order

See, Adult Protective Services Emergency Order – Aged or Incapacitated Adults, Chapter 6 of this manual.

## Appeal

An appeal from the entry of a protective order from the Juvenile and Domestic Relations District Court (if the parties are family or household members) or the General District Court (for parties with no relationship).

### Document Type

Petition or Notice of Appeal

### Filing Types \*

GAPE – Emergency Protective Order – General District Court

GAPP – Preliminary Protective Order – General District Court

GAPO – Protective Order – General District Court

JAAP – Non-Family Abuse Protective Order – Juvenile & Domestic Relations

JAFP – Family Abuse Protective Order – Juvenile & Domestic Relations

JAMP – Motion to Modify Protective Order – Juvenile & Domestic Relations

JAPE – Emergency Protective Order – Juvenile & Domestic Relations

JAPS – Violation of Family Abuse Protective Order

JAOT – Other (Child Protective Order)

**\*Note:** These filing types are restricted from public inquiry.

**Note:** The various filing types for protective orders are listed in [Chapter 6](#) of the CCMS User's Guide.

### Procedures

**Step 1** Clerk receives record from lower court.

**Step 2** Clerk receives DC-580, NOTICE OF APPEAL OR DC-475, NOTICE OF APPEAL - CIVIL or a written Notice of Appeal setting forth the basis for the appeal and DC-25, CIRCUIT COURT CASE TRANSMITTAL and FEES REMITTANCE SHEET or CMS generated case transmittal report, together with the case papers. No filing or service fees are required for either type of protective order. [Va. Code § 16.1-279.1](#), [Va. Code § 19.2-152.10](#)

**Comments:** Appeals from protective orders for family abuse ([Va. Code § 16.1-279.1](#)) take precedence on the Circuit Court docket. [Va. Code § 16.1-296 \(F\)](#). No appeal bond is required.

**Step 3** Clerk sets up file and assigns a CIVIL case number.

**Note:** If the subject/respondent of the protective order is a minor, the appeal is filed in the Juvenile Division of CCMS. See [Juvenile Case Matrix](#)

**Step 4** Clerk serves all parties or counsel of appeal by personal service of appearance date. [Va. Code § 16.1-112](#). See CC-1341, Notice of Hearing.

**Step 5** Clerk issues summons as requested. No fee is charged. [Va. Code § 17.1-272 \(B\)](#).

**Step 6** Court conducts hearing. If PO is affirmed with or without changes to original order on appeal, Court should use form DC-385, PROTECTIVE ORDER or form DC-650, PROTECTIVE ORDER –FAMILY ABUSE to enter its judgment. If the Court dismisses or allows a non-suit of the appeal, the Court, counsel, or clerk (depending on local custom) will write an order reflecting the case disposition. The DC- 652, ORDER DISSOLVING PROTECTIVE ORDER should be utilized. In either case, the Clerk will preserve and index the order. It is extremely important that all protective orders are issued using either Circuit Court forms or District Court forms.

**Comments:** The PO may be issued for a specified period; however, unless otherwise authorized by law, a PO may not be issued under these sections for a period longer than two years.

**Step 7** If a PO is issued, law enforcement should serve a copy on the respondent and petitioner immediately, or as soon as possible. The protective order will not contain personal information about the alleged victim. Form DC-621, [NON-DISCLOSURE ADDENDUM](#) is used to record this sensitive data. Form DC-621 may be copied for service purposes and then destroyed by the serving officer. The court will keep the original under seal unless disclosure is allowed under one of the conditions described in the comments column.

**Caution:** Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or their

family except as required by law, as necessary for law-enforcement purposes, or by order for good cause shown.

**Step 8** The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith forward the attested copy of the protective order containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders.

**Comments:** See Circuit Case Management Manual, "Protective Order/Department of State Police Interface Appendix" for information on entering in protective orders into the CCMS.

**Step 9** Once a PO is served, the respondent has 24 hours to surrender, transfer or sell any firearms in their possession. The respondent is required to file Form DC-649, PROTECTIVE ORDER FIREARM CERTIFICATION, with the court that issued the PO within 48 hours of being served with the PO that they are no longer in possession of any firearms. Form DC-649 is served with the PO. [Va. Code § 18.2-308.1:4](#)

**Note:** The willful failure to file the firearm certification constitutes contempt of court. A process should be implemented to ensure the certification is filed in a timely manner. For certifications not filed, go to **Step 13**.

**Step 10** If the subject of the protective order has a concealed handgun permit, the permit shall be surrendered to the court that issued the PO. [Va. Code § 18.2-308.1:4](#)

**Comments:** The permit is not revoked based on the issuance of a protective order. The permit is simply surrendered to the court issuing the protective order for the duration of the protective order. Thereafter, upon the holder's request, the permit may be returned so long as the holder has not been convicted of a disqualifying offense. If the protective order is dissolved by the Court, the permit may be returned to the holder. If the CHP

holder is convicted of a disqualifying offense, and the Court has been notified of this by the Central Criminal Records Exchange, the Court shall revoke the permit. [Va. Code § 18.2-308.013](#)

**Step 11** If the appeal came from the Juvenile Court, the Circuit Court will transmit a certified copy of the order to the J&DR Court within twenty-one days of entry of its order. [Va. Code § 16.1-297](#).

**Step 12** Either party may at any time file a written motion requesting a hearing to dissolve or modify the order. Proceedings to dissolve or modify a PO shall be given precedence on the docket.

**Note:** The petitioner may file an *ex parte* motion to dissolve a PO and the court may grant or deny such motion with or without hearing. If the court grants a motion to dissolve a PO, and the dissolution order is issued *ex parte*, DC- 652, ORDER DISSOLVING PROTECTIVE ORDER should be utilized and served on the respondent. [Va. Code §§ 16.1-279.1, 19.2-152.10](#)

**Comments:** If the case has been concluded at the time a written motion is received, the file should be reinstated on the court's docket as a subsequent action with the appropriate case number suffix. Notice is given parties of hearing date. If the order is later dissolved, a copy of the order should be attested, forwarded and entered into VCIN by law enforcement. If the order is modified, a NEW protective order should be prepared, and a copy of the order should be attested, forwarded and entered into VCIN by law enforcement. Modifications should be clearly stated.

**Step 13** If the respondent fails to file Form DC-649, PROTECTIVE ORDER FIREARM CERTIFICATION, a Rule to Show Cause for contempt will be issued as a separate and subsequent action. The court will determine if the contempt will be a civil or criminal offense. For civil contempt, See Protective Order Firearm Certification Contempt in this chapter. For criminal contempt, See Protective Order Firearm Certification Contempt in the criminal manual.

Fees/Taxes/Other Monies Assessed

No fees are assessed for filing or service of reinstatement.

Form(s)

DC-385, [PROTECTIVE ORDER](#)  
DC-475, NOTICE OF APPEAL – CIVIL  
DC-580, [NOTICE OF APPEAL](#) (J & DR COURT)  
DC-621, [NON-DISCLOSURE ADDENDUM](#)  
DC-649, PROTECTIVE ORDER FIREARM CERTIFICATION  
DC-650, [PROTECTIVE ORDER - FAMILY ABUSE](#)  
CC-1340, NOTICE OF HEARING ON AN APPEAL FROM A DISTRICT COURT  
DC-652, ORDER DISSOLVING PROTECTIVE ORDER

Reference(s)

[Va. Code § 16.1-279.1](#)  
[Va. Code § 19.2-152.10](#)

**Protective Order Extensions**

Upon the filing of a written motion requesting a hearing to extend the protective order, the court may issue an *ex parte* preliminary protective order (PPO) pursuant to [Va. Code §§ 16.1-253.1](#) or [19.2-152.9](#) until the extension hearing. If an *ex parte* PPO is issued because of a motion to extend a protective order that was issued as a result from either a criminal or civil matter, the PPO will be processed in the Civil Division.

Document Type

Motion

Filing Types

PPO

**\*Note:** This filing type is restricted from public inquiry.

Procedures

- Step 1** Clerk receives a written motion requesting a hearing to extend a protective order.
- Step 2** Clerk sets up file and assigns a CIVIL case number.
- Step 3** A hearing is set prior to expiration of the underlying protective order. If a hearing cannot be held before the protective order

expires, the court may enter an *ex parte* preliminary protective order pursuant to [Va. Code §§ 16.1-253.1](#) or [19.2-152.9](#) pending the extension hearing. The *ex parte* preliminary protective order shall specify a date for the extension hearing, which shall be held within 15 days of the issuance of the *ex parte* preliminary protective order and may be held after the expiration of the protective order. [Va. Code § 16.1-279.1](#), [Va. Code § 19.2-152.10](#)

If a preliminary protective order is issued, law enforcement should serve a copy on the respondent and a copy provided to the petitioner immediately, or as soon as possible. The protective order will not contain personal information about the alleged victim. Form DC-621, [NON-DISCLOSURE ADDENDUM](#) is used to record this sensitive data. Form DC-621 may be copied for service purposes and then destroyed by the serving officer. The court will keep the original under seal unless disclosure is allowed under one of the conditions described in the comments column.

**Caution:** Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or their family except as required by law, as necessary for law-enforcement purposes, or by order for good cause shown.

**Step 4** The court shall forthwith, but in all cases no later than the end of the business day on which the preliminary protective order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith forward the attested copy of the protective order containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders.

**Comments:** See Circuit Case Management Manual, "Protective Order/Department of State Police Interface Appendix" for information on entering in protective orders into the CCMS

**Step 5** Court conducts extension hearing. If the underlying protective order is extended, *see* STEP 6.

If the respondent fails to appear at the extension hearing because the respondent was not personally served, the court shall schedule a new date for the extension hearing and may extend the *ex parte* protective order until such new date. The extended *ex parte* protective order shall be served as soon as possible on the respondent. If the respondent was personally served, where the petitioner shows by clear and convincing evidence that a continuance is necessary or the respondent shows good cause, the court may continue the extension hearing and such *ex parte* protective order shall remain in effect until the extension hearing.

**Note:** Information for an extended preliminary protective order will be entered into the Virginia Criminal Information Network by the law enforcement agency and will not be entered by the court.

**Step 6** If the court grants the motion to extend, a new protective order shall be issued and law enforcement should serve a copy on the respondent and a copy provided to the petitioner immediately, or as soon as possible. The protective order will not contain personal information about the alleged victim. Form DC-621, NON-DISCLOSURE ADDENDUM is used to record this sensitive data. Form DC-621 may be copied for service purposes and then destroyed by the serving officer. The court will keep the original under seal unless disclosure is allowed under one of the conditions described in the “Comments” column.

**Note:** Information contained in extended protective orders will be entered into the Virginia Criminal Information Network by the law enforcement agency and will not be entered by the clerk. The extended protective order should contain the same case number as noted on the underlying, expired protective order with “Extension of Protective Order” marked.

**Step 8** Either party may at any time file a written motion requesting a hearing to dissolve or modify the order. Proceedings to



dissolve or modify a PO shall be given precedence on the docket.

**Note:** The petitioner may file an *ex parte* motion to dissolve a PO and the court may grant or deny such motion with or without hearing. If the court grants a motion to dissolve a PO, and the dissolution order is issued *ex parte*, DC- 652, ORDER DISSOLVING PROTECTIVE ORDER should be utilized and served on the respondent. [Va. Code §§ 16.1-279.1, 19.2-152.10](#)

**Comments:** If the case has been concluded at the time a written motion is received, the file should be reinstated on the court's docket as a subsequent action with the appropriate case number suffix. Notice is given parties of hearing date. If the order is later dissolved, a copy of the order should be attested, forwarded and entered into VCIN by law enforcement. If the order is modified, a NEW protective order should be prepared, and a copy of the order should be attested, forwarded and entered into VCIN by law enforcement. Modifications should be clearly stated.

#### Fees/Taxes/Other Monies Assessed

No fees are assessed for filing or service of reinstatement.

#### Form(s)

DC-384, PRELIMINARY PROTECTIVE ORDER  
DC-385, PROTECTIVE ORDER  
DC-621, [NON-DISCLOSURE ADDENDUM](#)  
DC-627, PRELIMINARY PROTECTIVE ORDER – FAMILY ABUSE  
DC-650, PROTECTIVE ORDER - FAMILY ABUSE  
CC-1341, NOTICE OF HEARING  
DC-652, ORDER DISSOLVING PROTECTIVE ORDER

#### Reference(s)

[Va. Code § 16.1-279.1](#)  
[Va. Code § 19.2-152.10](#)

## Hope Card Program

§ 19.2-152.10:1. Hope Card Program for persons protected by protective orders.

The Office of the Executive Secretary of the Supreme Court of Virginia shall develop and all district courts and circuit courts shall implement the Hope Card Program (the Program) for the issuance of a Hope Card to any person who has been issued a protective order pursuant to [§§ 19.2-152.10](#) or [16.1-279.1](#) by any district court or circuit court. A Hope Card issued pursuant to the Program shall be a durable, plastic, wallet-sized card containing, to the extent possible, essential information about the protective order, such as the identifying information and characteristics of the person subject to the protective order, the issuance and expiration date of the protective order, the terms of the protective order, and the names of any other persons protected by the protective order.

### Procedures

**Step 1** May be requested in person or by mail by any protected party or the respondent by filing an application with the clerk of court. The applications may be made available to interested parties by the clerk or court, or may be completed online for submission to the clerk on the Virginia's Judicial System website - [Domestic Violence Programs and Services \(vacourts.gov\)](#)

**Note:** Hope Cards are only available for final protective orders that are in effect for 12 months or longer.

**Comment:** If a Hope Card application was submitted to a district court, the protected parties, or the respondent, will be required to submit an application to the circuit court for a Hope Card if a protective order was subsequently entered by a circuit court judge.

**Step 2** Upon receipt of an application, the clerk will email the application and a copy of the order by encrypted email, to the Hope Card Coordinator at [hopecard@vacourts.gov](mailto:hopecard@vacourts.gov).

**Note:** All emails sent via a vacourts.gov email address will automatically be encrypted. For information regarding encrypting emails sent via all other email providers, contact Jaime Clemmer at [jclemmer@vacourts.gov](mailto:jclemmer@vacourts.gov).

Once processed, the card(s) will be mailed directly to the

applicant by the Hope Card Coordinator.

Fees/Taxes/Other Monies Assessed

None.

Form(s)

[HOPE CARD REQUEST FORM](#)

Reference(s)

Va. Code § 19.2-152.10:1

### **Protective Order Emergency - Family Abuse - Pass-Through (No File Created)**

An emergency civil procedure that allows an alleged victim of family abuse or a law enforcement officer on behalf of the victim to request an immediate but temporary order for protection. Orders of longer duration called Preliminary Protective Orders (PPO) and Protective Orders (PO) can be obtained from the Juvenile and Domestic Relations District Court for victims of family abuse.

Document Type

Request

Filing Type

N/A

Procedures

**Step 1** May be requested in person by a petitioner or a law enforcement officer or by telephone (or electronic means) by a law enforcement officer of any Circuit, General District, or Juvenile and Domestic Relations District Court judge or by a magistrate. No fee shall be charged for filing or serving any petition. [Va. Code § 16.1-253.4](#)

**Comments:** Grounds for Issuance:  
Warrant for violation of [Va. Code § 18.2-57.2](#) has been issued and probable danger of further acts of family abuse; OR Reasonable grounds exist to believe that respondent has committed family abuse, and there is probable danger of further offense.

**Step 2** If the request for the order is made in person, the judge or magistrate completes form DC-626, [EMERGENCY PROTECTIVE ORDER – FAMILY ABUSE](#) that contains the request as well as the order. An officer requesting an order by telephone writes the request on the form, reads it to the judge, and writes the judge's response in the order portion of the form.

The protective order will not contain personal information about the alleged victim. Form DC-621, [NON-DISCLOSURE ADDENDUM](#) is used to record this sensitive data.

Form DC-621 may be copied for service purposes and then destroyed by the serving officer. The court will keep the original under seal unless disclosure is allowed under one of the conditions described in the comments column.

**Note:** It is unlikely that clerk's office personnel would be involved in the initial contact with the petitioner or law enforcement officer. The Circuit Court's involvement would probably arise only in an extraordinary instance when a request was made for an EPO at night when no magistrate or District Court judge could be found. It is also probable that most of these orders issued by a Circuit Court judge would be done orally. It is expected that the staff of the Circuit Court might encounter these orders after their issuance and return to the court for verification by the judge.

**Caution:** Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or their family except as required by law, as necessary for law-enforcement purposes, or by order for good cause shown.

**Step 3** Copy of order is given to alleged victim of family abuse at the time it is issued. Copy is served on respondent as soon as possible. One copy shall be filed with law enforcement officers' written report required by [Va. Code § 19.2-81.3 C](#).

**Comments:** An EPO, if granted, provides protection to family and household members by prohibiting acts of family abuse,

prohibiting such contacts by respondent with family or household members as the judge or magistrate deems necessary to protect the safety of such persons and/or granting the family or household member exclusive possession of the premises.

**Step 4** After entry of service information by law enforcement, the original order is returned to judge or magistrate who issued orally for review and completion of verification. Thereafter, the original order is forwarded WITHOUT FILMING OR SCANNING within five business days of issuance to the J&DR Court.

**Caution:** Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or their family except as required by law, as necessary for law-enforcement purposes, or by order for good cause shown.

An EPO, if granted, provides protection to family and household members by prohibiting acts of family abuse, prohibiting such contacts by respondent with family or household members as the judge or magistrate deems necessary to protect the safety of such persons and/or granting the family or household member exclusive possession of the premises.

Upon receipt of order for service, a local law enforcement agency shall enter in VCIN the name of the person subject to the order, along with date and time of service. **Note:** If order is issued by judge in person, there is no review required by judge after service.

Order may be sent directly to the J&DR Court. **Note:** Since order is returnable to the J & DR Court after issuance, NO CASE NUMBER is assigned by the Circuit Court, and no entry is made in CCMS.

**Step 5** If the person in need of protection is physically or mentally incapable of filing a petition for a PPO or PO, law enforcement may request an extension of the EPO not to exceed seventy-two hours after the expiration of the original order. This request can

also be made orally.

**Comments:** The order is good for seventy-two hours, or if the seventy-two hour period expires at a time that the court is not in session, the EPO shall be extended until 5:00 p.m. of the next business day that the J&DR Court is in session. THE ACTUAL DATE AND TIME OF EXPIRATION SHOULD BE ENTERED ON ORDER WHEN ISSUED.

**Step 6** Respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order. A hearing on this motion must be given precedence on the docket. If the order is later dissolved, a copy of the order should be attested, forwarded and entered into VCIN by law enforcement. If the order is modified, a NEW protective order should be prepared, and a copy of the order should be attested, forwarded and entered into VCIN by law enforcement. Modifications should be clearly stated.

**Comments:** All motions on an EPO would be heard by the J&DR Court, so it is important for Circuit Court to transmit these orders immediately.

**Step 7** If the subject of the protective order has a concealed handgun permit, the permit shall be surrendered to the court that issued the protective order. [Va. Code § 18.2-308.1:4](#)

**Comments:** The permit is not revoked based on the issuance of a protective order. The permit is simply surrendered to the court issuing the protective order for the duration of the protective order. Thereafter, upon the request of the holder, the permit may be returned so long as the holder has not been convicted of a disqualifying offense. If the CHP holder is convicted of a disqualifying offense, and the Court has been notified of this by the Central Criminal Records Exchange, the Court shall revoke the permit. [Va. Code § 18.2-308.013](#)

Fees/Taxes/Other Monies Assessed

None

Form(s)

DC-621, [NON-DISCLOSURE ADDENDUM](#)

DC-626, [EMERGENCY PROTECTIVE ORDER - FAMILY ABUSE](#)

Reference(s)

[Va. Code § 16.1-253.4](#)

### **Protective Orders of Family Abuse Where Divorce, Custody, Visitation or Support Is Pending-Civil or Juvenile (Where Custody/Visitation Appealed)**

As a part of a pending case involving divorce, custody, visitation, or support, the Court may grant protection against family abuse.

Document Type

Petition or Motion in Pending Case

Filing Type

N/A – Issued from the Protective Order screen of CCMS

Procedures

**Step 1** A protective order may be issued upon a showing by a party of reasonable apprehension of physical harm to that party by such party's family or household member as that term is defined in [Va. Code § 16.1-228](#). No fee would be assessed to file the motion or enter a protective order.

**Comments:** In any case where an order is entered pursuant to an *ex parte* hearing, the order shall not exclude a family or household member from the family dwelling for a period in excess of fifteen days from the date the order is served, in person, upon the person excluded.

The order may provide for an extension of time beyond the fifteen days, to become effective automatically. The Court may extend an order entered under [Va. Code § 20-103 \(B\)](#) for such longer period of time as is deemed appropriate, after a hearing on notice to the parties.

**Step 2** A hearing on the motion is conducted with or without notice.

**Step 3** If an order of protection is granted, form CC-1409, PROTECTIVE ORDER IN PENDING CASES OF DIVORCE, CUSTODY, SUPPORT OR VISITATION should be completed using the same case number as is on the underlying case. Order is preserved and indexed in the usual

manner.

**Special Note:** Unlike other types of protective orders, there is no provision in the code that requires that the residential address, telephone number, and place of employment of the person protected by this type of order remain confidential.

**Step 4** A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith forward the attested copy of the protective order containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders.

**Comments:** See Circuit Case Management Manual, "Protective Order/Department of State Police Interface Appendix" for information on entering in protective orders into the CCMS.

**Step 5** The person served may at any time file a written motion to the clerk's office requesting a hearing to dissolve or modify the order.

**Comments:** If the case has been concluded at the time a written motion is received, the file should be reinstated on the court's docket as a subsequent action with the appropriate case number suffix. No fees shall be charged for filing or service.

**Step 6** If the subject of the protective order has a concealed handgun permit, the permit shall be surrendered to the court that issued the protective order. [Va. Code § 18.2-308.1:4](#)

**Comments:** The permit is not revoked based on the issuance of a protective order. The permit is simply surrendered to the court issuing the protective order for the duration of the protective order. Thereafter, upon the holder's request, the permit may be returned so long as the holder has not been convicted of a disqualifying offense. If the CHP holder is convicted of a disqualifying offense, and the Court has been notified of this by



the Central Criminal Records Exchange, the Court shall revoke the permit. [Va. Code § 18.2-308.013](#)

**Step 7** If the respondent fails to file Form DC-649, PROTECTIVE ORDER FIREARM CERTIFICATION, a Rule to Show Cause for contempt will be issued as a separate and subsequent action. The court will determine if the contempt will be a civil or criminal offense. For civil contempt, See Protective Order Firearm Certification Contempt in this manual. For criminal contempt, See Protective Order Firearm Certification Contempt in the criminal manual.

Fees/Taxes/Other Monies Assessed

None

Form(s)

Initiating forms not provided  
CC-1409, PROTECTIVE ORDER IN PENDING CASES OF DIVORCE, CUSTODY, SUPPORT OR VISITATION

Reference(s)

[Va. Code § 17.1-272 \(B\)](#)  
[Va. Code § 20-103](#)

## Protective Order Firearm Certification Contempt

Upon issuance of a protective order pursuant to [Va. Code § 16.1-279.1](#) or [19.2-152.10](#), the person who is subject to the protective order, within 24 hours after being served, shall surrender any firearm in their possession to a designated local law-enforcement agency, sell or transfer any firearm possessed by such person to a dealer, or sell or transfer any firearm to any person who is not otherwise prohibited by law from possessing such firearm. Within 48 hours after being served with a protective order, the respondent shall certify in writing that they does not possess any firearms, or that all firearms have been surrendered, sold, or transferred, and shall file such certification with the clerk of the court that entered the protective order. The willful failure of any person to file the certification shall constitute contempt of court.

Document Type

Protective Order Firearms Certification Order

Filing Type

CCON (Civil Contempt)

Procedures

**Step 1** Clerk sets up case file, assigns a civil case number and docket case. The Clerk issues a Rule to Show Cause and serves upon defendant.

**Comments:** Court will sign the section of Form DC-649, PROTECTIVE ORDER FIREARM CERTIFICATION, ordering a show cause summons for contempt of court be issued for the respondent's failure to file the required certification form with the clerk. This order will be the initiating document for the file.

**Step 2** Hearing held.

**Step 3** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

None

Form(s)

DC-649, PROTECTIVE ORDER FIREARM CERTIFICATION

Reference(s)

[Va. Code §§ 18.2-308.1:4,](#)  
[18.2-308.2:1](#)

### ***Quo Warranto***

An action for *quo warranto* is an extraordinary proceeding whereby a writ commands the defendant to appear before the court with proof of authority under which they act. The action must be brought where the defendant resides or, if a corporation, where the registered office is or where the president or chief officer resides. The remedy of *quo warranto* is available in the following cases:

- For the misuse, abuse, or nonuse of privileges or franchises by a private corporation;

- For the exercise by a private corporation of powers, privileges, or franchises not conferred and thus ultra or of powers obtained for fraudulent or illegal purposes;
- For the misuse, abuse or nonuse of a privilege conferred upon a person;
- For the persons acting as a private corporation without authority;
- For persons intruding into or usurping a public office; and
- For persons practicing professions without being authorized or licensed.

## Document Type

Petition

## Filing Type

WQW

## Procedures

**Step 1** Petition for writ of *quo warranto*, verified by oath, filed with the clerk.

**Comments:** Petition may be filed by the Commonwealth's attorney, Attorney General or any other interested party.

**Step 2** If petition is filed by person other than the Commonwealth, the clerk will approve bond, with sufficient surety, to cover all costs and expenses in the proceedings if not recovered from the defendant.

**Comments:** Purpose of bond is to ensure that the costs and expenses of the proceedings will be covered if the same cannot be recovered and paid by the defendant. A "cost" bond is payable to the Commonwealth. Clerk should prepare bond to ensure proper form and request help from the judge in determining amount of bond.

**Step 3** Clerk sets up case file, assigns a CIVIL case number and receipts for money collected.

**Step 4** Court reviews petition, and if justified, authorizes the issuance of the writ of *quo warranto* summoning the defendant to appear.

**Comments:** Court will indicate date, time and place for defendant to appear.

**Step 5** Clerk docket case.

**Step 6** Petition and writ of *quo warranto* is served on the defendant in the same manner as process served in other civil actions. [Va. Code § 8.01-639](#).

**Comments:** Defendant may plead, demur or answer the petition within the time stated in the writ for their appearance. [Va. Code § 8.01-642](#).

**Step 7** Hearing held.

**Comments:** Defendant may ask for jury trial. [Va. Code § 8.01-643](#). If defendant fails to appear, the court may hear the allegations of the petition and may give judgment. [Va. Code § 8.01-640](#).

**Step 8** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

**Comments:** If defendant is found guilty, they must pay costs and reasonable attorney fees. Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

#### Fees/Taxes/Other Monies Assessed

By Commonwealth

None

By Individual

[Circuit Court Civil Filing Fee Calculation](#)

#### Form(s)

Initiating documents not provided by clerk's office.

#### Reference(s)

[Va. Code § 8.01-635](#) *et seq.*

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

## Receiver (Special)

A receiver is a custodian of assets involved in litigation or the manager of affairs in a bankrupt situation. The receiver is a disinterested person in the matter at hand and is appointed by the court at the discretion of the judge, for a specified time period. The purpose of the receiver is to preserve the assets until the settlement of the action. An order of appointment does not give the receiver ownership or title to the assets in question. Also, the appointment of a receiver does not change or affect the title of the property being held.

The Code of Virginia references two types of receivers - General Receivers and Special Receivers. The general receiver's duty is, unless it is otherwise specially ordered, to receive, take charge of and hold all moneys paid under any judgment, order or decree of the court, and also to pay out or dispose of same as the court orders or decrees. [Va. Code § 8.01-582](#). The special receiver's duty is to receive and preserve the property or fund in litigation and receive rents, issues and profits and apply or dispose of them at the direction of the court. [Va. Code § 8.01-591](#).

This section is intended to provide information regarding the appointment of Special Receivers. For more specific information on General Receivers, See the Circuit Financial Accounting System User's Guide for more information.

### Document Type

Petition

### Filing Type

FAS = REC, changes to PET when transferring to CCMS

### Procedures

**Step 1** A motion is made during pendency of suit to appoint a receiver. Clerk forwards motion to the court. Receiver will take control and preserve property in dispute.

**Step 2** Clerk assigns a CIVIL case number, indexes and docket the case and prepares the case file. See Case Initiation section for respective procedures.

**Step 3** Court gives notice to all interested parties.

**Comments:** Court will give notice of date and time of hearing.

**Notes:** Notice may be provided by counsel of record or plaintiff. Clerk should look for certificate of mailing, notice of hearing, etc.

- If the original Complaint or Petition requested the appointment of a receiver, and copy of the same has been served on defendant, and the case has been docketed, no notice is required to be given to the defendant. Va. Code § 8.01-594.
- Notice is not required if appointment of receiver is made on an emergency basis. [Va. Code § 8.01-592](#).

**Step 4** PROCEDURE QUESTION: Is appointment of receiver made based on an emergency basis? If yes: GO TO STEP; If no: GO TO STEP 11

**Step 5** Order entered stating appointment of emergency receiver.

**Comments:** Order will state the nature of emergency and necessity for immediate appointment. **Note:** Appointment will be for a time not to exceed 30 days. [Va. Code § 8.01-593](#).

**Step 6** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

**Step 7** Applicant for emergency appointment of receiver or person for them posts bond with sufficient surety.

**Comments:** Amount of bond should be sufficient to protect the subject matter taken by the receiver. [Va. Code § 8.01-592](#).

**Note:** Applicant is not necessarily the same person as the receiver.

**Step 8** Prior to the expiration of the thirty-day term of the emergency receiver, the applicant will give notice to all interested parties of any motion to extend such receivership.

**Comments:** Notice will indicate the date and time motion is to be heard. [Va. Code § 8.01-593](#). **Note:** Notice can be as issued as prescribed for civil proceedings in [Va. Code § 8.01-296](#) or by order of publication as set forth in [Va. Code § 8.01-319](#).

**Step 9** Court hears motion.

**Step 10** If receivership **is not extended**, receiver will file an account of their dealing with such property under their control. If receivership **is extended**, order entered continuing receivership until end of the litigation.

**Comments:** [Va. Code § 8.01-593](#). Court may also order any person(s) for whom a receiver was appointed to furnish all creditors names and addresses, if known.

**Step 11** Clerk records and indexes orders in the Civil Order Book otherwise provided by law.

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

**Step 12** Clerk provides copy of the Order of Appointment of special receiver to Commissioner of Accounts or other commissioner appointed per [Va. Code § 8.01-617](#) who will examine and be given final approval of the Receiver's account before the receiver will be discharged from further responsibilities.

**Step 13** Clerk will record and index settlement of account of the Receiver and place the account in the "Settlement of Receivers and Commissioners" book or "Fiduciary" book once returned from the Commissioner of Accounts or other Commissioner

appointed by the Court to exercise oversight of such matters.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

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

Reference(s)

[Va. Code §§ 8.01-630,8.01-632](#)  
[Va. Code § 8.01-591](#) *et seq.*

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

## Reinstatements

### Civil Case

A motion to reinstate a suit can be made at any time pursuant to [Va. Code § 20-121.1](#)

Document type

Petition

Filing Type

REIN

(Other Than Driving Privileges, Reinstatement of Professional License, Restoration of Voting Rights, Driving Privileges for Involuntary Manslaughter/DUI Maiming/Third Offense DUI, Firearm Rights, or to Restore/Modify/Terminate Guardianship/Conservatorship)

Procedures



**Step 1** Clerk receives petition/request to re-open or reinstate the case and issues any process or service as requested.

**Comments:** Receipt filing fees. Recommendation: Open base case number with -01 suffix. If old Divorce/Chancery case, must open a new Civil case. FILING TYPE: **REIN**

**Step 2** Forward petition/request, order, and all case papers to Court.

**Comments:** HEARING TYPE: **OTH**  
In some instances, a hearing may not be required.

**Step 3** Judge grants or denies request to re-open or reinstate the case.

**Comments:** RESULT: **G** (granted) or **D** (Denied). If denied, close case using JUDGMENT: **O** and CONC BY: **OTHER**

Fees/Taxes/Other Monies

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by clerk's office.

Reference(s)

[Va. Code § 20-121.1](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(18)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
* Not assessed if the amount of the civil action is \$500 or less	

## Driving Privileges

[Virginia Code § 46.2-427](#) Allows a person whose driving privileges, registration certificates, and license plates have been suspended for nonpayment of a judgment pursuant to [Va.](#)

[Code § 46.2-417](#) (suspension for failure to satisfy motor vehicle accident judgment; exceptions; insurance in liquidated company; insurer obligated to pay judgment) to petition the court for reinstatement.

**Note:** Judgment creditor may apply to the Commissioner of [DMV](#) (providing copy of authenticated judgment or abstract) after thirty days, but before ten years after date of judgment, to suspend person's license for failure to pay judgment. [Va. Code § 46.2-417](#).

The court may order reinstatement even if the judgment has not been satisfied and no longer may be enforced, if:

- The judgment creditor cannot be found and if their heirs cannot be found; and
- The judgment debtor has paid into the court an amount equal to the judgment, court costs and all interest.

The court is to hold any such payments for one year. If the payment is not claimed by the judgment creditor during that period, the court shall transmit the payments to the [State Treasurer](#) or their designee to be disposed of in accordance with the State Unclaimed Property Fund (Chapter 11.1 of Title 55.1).

Document Type

Petition

Filing Type

DRIV

Procedures

**Step 1** Judgment Debtor files with the circuit court where judgment was originally entered. Petitioner should attach:  
Copy of judgment or abstract from DMV.

See DC-472, [PETITION FOR REINSTATEMENT OF DRIVING PRIVILEGES - FAILURE TO SATISFY JUDGMENT](#).

**Step 2** Clerk collects and receipts money for Civil filing fee; and Judgment amount plus interest from date of judgment and sets up CIVIL case.  
Clerk will assess full Civil filing fees (\$50 plus all add-ons). Clerk receipts judgment amount to Account Code 522.

**Step 3** Clerk holds funds in escrow on behalf of the judgment debtor

for ONE year from date of receipt. Once year has expired and funds are not claimed by the judgment creditor, clerk will transmit to the State Treasurer as unclaimed property.

**Comments:** Funds shall be deposited in an interest bearing account. [Va. Code § 8.01-456](#).

**Step 4** Court approves or denies petitioner’s request. See form DC-473, Order for Reinstatement of Driving Privileges.

**Step 5** If judgment docketed, clerk would enter upon the judgment docket, the date of such deposit, the date of the entry of the order of the court receiving same, referring to the number and page of the order book in which it is entered. [Va. Code § 8.01-456](#).

**Step 6** Clerk forwards copy of the order to DMV.  
 Division of Motor Vehicles  
 Attn: Correspondence/Judgment Work Center  
 P.O. Box 27412  
 Richmond, VA 23269-0001

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

DC-472, [PETITION FOR REINSTATEMENT OF DRIVING PRIVILEGES - FAILURE TO SATISFY JUDGMENT](#).  
 DC-473, ORDER FOR REINSTATEMENT OF DRIVING PRIVILEGES

Reference(s)

[Va. Code § 46.2-427](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk’s Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>

FEES	
TYPE CHARGES	CODE REFERENCE
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

## Reinstatement Of Professional License

An order for the suspension of any state-issued license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued to the obligor pursuant to Title 22.1 (Education), Title 38.2 (Insurance), Title 46.2 (Motor Vehicles) or Title 54.1 (Professions and Occupations) may be entered by a circuit or juvenile and domestic relations court when an obligor is delinquent in child support for ninety days or more or by \$5,000 or more. [Va. Code § 63.2-1937](#). If at any time after the entry of the order the obligor (1) pays the delinquency, or (2) reaches an agreement with the obligee or DCSE and makes at least one payment under the agreement a motion may be filed with the court for reinstatement.

### Document Type

Motion

### Filing Type

REIN

### Procedures

**Step 1** Motion with proof of payment filed with the clerk.

**Comments:** Proof of payment shall be proved by certified copy of the payment record issued by [DCSE](#) or notarized statement of payment of payment signed by the obligee. **Note:** Motion for Reinstatement should be accomplished by application to the court that originally suspended the license.

**Step 2** Clerk forwards motion to judge.

**Step 3** Clerk records and indexes order and forwards copy to respondent and DCSE.

DCSE  
7 N. 8th Street  
Richmond, VA 23219  
Fax #804-692-1438

**Comments:** Court orders or denies suspension of professional license, certificate, etc.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Motion and Order to Reinstate Professional License form provided by DCSE.

Reference(s)

[Va. Code § 63.2-1937](#)

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

### Restoration Of Voting Rights

See Approval of the Right to be Eligible to Register to Vote, this manual.

### Restore Driving Privileges (Third Offense , Involuntary Manslaughter or DUI Maiming)

A petition by any person (i) convicted of a violation of [Va. Code § 18.2-36.1](#) or [Va. Code § 18.2-51.4](#) or (ii) adjudged to be a third offender within a period of 10 years in violation of the provisions of [Va. Code § 46.2-341.24\(A\)](#) or [Va. Code § 18.2-266](#), filed for the purpose of obtaining either a restricted driver's license or an unrestricted license to drive a motor vehicle. [Va. Code § 46.2-391](#).

Document Type

Petition

Filing Type

DRIV

Procedures

**Step 1** The petition for restoration for Third Offense/Involuntary Manslaughter/DUI Maiming may be filed in the circuit court of their residence, or if non-resident, any circuit court. [Va. Code § 46.2-391](#).

**Comments:** Copy of Petition shall be served on the Commonwealth's Attorney and the Commissioner of [DMV](#). DMV shall provide copy of driving record to Commonwealth's Attorney and advise whether any DMV maintained records might make the petitioner ineligible for restoration. Form CC-1470, [PETITION FOR RESTORATION OF DRIVING PRIVILEGE –THIRD OFFENSE](#) may be used or attorney-prepared pleading.

**Step 2** Clerk receipts for money collected, assigns a CIVIL case number and docket case.

**Note:** If multiple petitions are filed, i.e. for DUI third offense and restoration for involuntary manslaughter, Clerk may set up two case files and collect two sets of fees.

**Comments:** Hearing shall not be set for a date sooner than thirty days after petition is **filed and served** as provided herein.

**Step 3** If petitioner is third time offender, a VASAP evaluation is ordered by the court.

**Comments:** Form CC-1465(C), ORDER FOR EVALUATION may be used.

**Step 4** Hearing held.

**Step 5** Court enters order either restoring driving privileges (*See* FORM CC-1471, ORDER RESTORING DRIVING PRIVILEGE-THIRD OFFENSE) or denying same and forwards copy of order to Commissioner.

**Comments:** If restricted license is granted, they shall be supervised by VASAP during the term of the license. The

Court will also order installation of an ignition interlock device for restorations arising from alcohol related declarations. Form DC-269, RESTRICTED LICENSE CONDITIONS – IGNITION INTERLOCK ORDER AND REMOTE ALCOHOL MONITORING or FORM DC-265, RESTRICTED DRIVER'S LICENSE AND ENTRY INTO ALCOHOL SAFETY ACTION PROGRAM should be used if restricted license is granted.

**Step 6** Clerk records and indexes all orders of the court in the Civil Order Book unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

CC-1465(C), ORDER FOR EVALUATION  
 CC-1470, [PETITION FOR RESTORATION OF DRIVING PRIVILEGE – THIRD OFFENSE](#)  
 CC-1471, ORDER RESTORING DRIVING PRIVILEGE – THIRD OFFENSE  
 DC-269 - RESTRICTED LICENSE CONDITIONS – IGNITION INTERLOCK ORDER AND REMOTE ALCOHOL MONITORING

Reference(s)

[Va. Code § 18.2-270.1](#)  
[Va. Code § 46.2-391](#)

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

## Restore, Modify or Terminate Guardian/Conservator

The court may declare an incapacitated person restored to capacity, modify the type of appointment or the areas of protection, management or assistance previously granted or require a new bond, terminate the guardianship or conservatorship, order removal of the guardian or conservator, or order other appropriate relief.

### Document Type

Petition

### Filing Type

APPT

Select from dropdown options.

### Procedures

**Step 1** Petition, including the sealed filing of the incapacitated person's social security number ([Va. Code § 64.2-2002](#)), is filed in the circuit court by the incapacitated person, the guardian or conservator, any other person, or upon the court's motion.

**Comments:** Jurisdiction: court in which appointment was made.

**Step 2** Clerk receipts money, opens file and docket case.

**Comments:** If the adult subject to the petition is determined to be indigent, the court may order that certain fees and costs shall be paid by the Commonwealth. [Va. Code § 64.2-2008](#). Court may direct that any guardian ad litem, attorney or evaluator be paid from the estate.

**Step 3** Clerk issues process.

**Comments:**

Modification to Expand:

- Personal service upon the incapacitated person is required.
- A Notice of Hearing, copy of the Petition, and copy of the order appointing a guardian *ad litem* is served.
- The incapacitated person is entitled to a jury trial.

Other Matters:

- Above is not specifically required.



**Step 4** Clerk files all returns.

Modification to Expand: The Petitioner shall file with the clerk a statement of compliance of advance notice required by [Va. Code § 64.2-2004](#), unless waived by the court.

Other Matters: Above is not specifically required.

**Step 5** Clerk records the court's order of restoration in the deed records.

**Step 6** Clerk required to report fact of appointment to:

- [Commissioner of Behavioral Health and Developmental Services](#) if the respondent is a patient in a state hospital (copy of order).
- [Secretary of State Board of Elections](#) (on form SBE-410).
- Local Department of Social Services where original order sent, and, if different, to local Department of Social Services where the incapacitated person resides - guardian (copy of order).
- [Central Criminal Records Exchange](#) (copy of order with form SP-237). **Note:** The copy of any order adjudicating a person incapacitated under this article and any order of restoration of capacity under [Va. Code § 64.2-2012](#). The copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm. [Va. Code § 64.2-2014](#).
- Commissioner of the [Department of Motor Vehicles](#) (copy of order or abstract).
- Commissioner of Accounts-conservator (copy of order).

**Note:** The court's order must specify the legal disabilities, if any, of the incapacitated person. An incapacitated person is "mentally incompetent" (and cannot vote) unless the court's order specifically provides otherwise.

**Step 7** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

To File Petition

[Circuit Court Civil Filing Fee Calculation](#)

To Record Order

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

CC-1642, [ADDENDUM TO PETITION FOR APPOINTMENT OF GUARDIAN OR CONSERVATOR – UNDER SEAL](#)

Reference(s)

[Va. Code §§ 17.1-275A \(42\), 17.1-279](#)  
[Va. Code §§ 64.2-2012, 64.2-2013, 64.2-2014](#)  
[Va. Code § 46.2-400](#)

To File Petition

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(42)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(13)(26)</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Sheriff Fee	<a href="#">Va. Code § 17.1-272</a>

To Record Order

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(2)</a>
VSLF	<a href="#">Va. Code § 17.1-275 A(2)</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>

**Restore Rights To Possess Firearm**

- Convicted Felon [Va. Code §18.2-308.2](#).

Any person prohibited from possessing, transporting or carrying a firearm, or ammunition for a firearm, under [Va. Code §18.2-308.2 \(A\)](#) may petition the circuit court of the jurisdiction in which they reside, or if the person is not a resident of the Commonwealth, they may petition the circuit court of the county or city where they were last convicted of a felony or adjudicated delinquent of a disqualifying offense, for a permit to possess or carry a firearm or ammunition for a firearm; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless their civil rights have been restored by the Governor or other appropriate authority. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. This section shall not apply to any person who has been granted a permit pursuant to this subsection. **Note:** Although the statute refers to a “permit”, a certified copy of the court order serves as the permit. There is no official OES form for this permit.

Acquitted by reason of Insanity [Va. Code §18.2-308.1:1](#) A person who has been acquitted by reason of insanity after being discharged from the custody of the Commissioner of Mental Health, may petition the general district court of the jurisdiction in which they reside to restore their right to possess or carry a firearm.

**Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial.** Upon a grant of relief in any court, the court shall enter a written order granting the petition and restoring their right to purchase, possess or transport a firearm. The clerk of court shall certify and forward forthwith to the [Central Criminal Records Exchange](#), a certified copy of any such order, along with a completed SP237. (NOTIFICATION OF RESTORATION OF CAPACITY OR RIGHT TO PURCHASE, POSSESS, OR TRANSPORT A FIREARM).

- Involuntary Commitment/Outpatient Treatment [Va. Code § 18.2-308.1:3](#)  
Any person involuntarily admitted to a facility or ordered to mandatory outpatient treatment pursuant to [Va. Code § 19.2-169.2](#), involuntarily admitted to a facility or ordered to mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 ([Va. Code § 37.2-814 et seq.](#)) of Chapter 8 of Title 37.2, or who was the subject of a temporary detention order pursuant to [Va. Code § 37.2-809](#) and subsequently agreed to voluntary admission pursuant to [Va. Code § 37.2-805](#) may, at any time following their release pursuant to [Va. Code § 37.2-817](#), petition the general district court of the city or county in which they reside to restore their right to purchase, possess or transport a firearm.

**Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial.** Upon a grant of relief in any court, the court shall enter a written order granting the petition and restore their right to purchase, possess

or transport a firearm. The clerk of court shall certify and forward forthwith to the [Central Criminal Records Exchange](#), a certified copy of any such order, along with a completed SP237. (NOTIFICATION OF RESTORATION OF CAPACITY OR RIGHT TO PURCHASE, POSSESS, OR TRANSPORT A FIREARM)

#### Document Type

Petition - None for convicted felons  
DC-4040, [PETITION FOR PERMIT TO PURCHASE, POSSESS OR TRANSPORT A FIREARM](#) if seeking de novo review of denial from general district court

#### Filing Type

Restore Rights – Felony – RFRF  
Review of Denial of Firearm Rights by District Court - RFRR  
Restore Rights – Review – GAPR

#### Procedures

**Step 1** Clerk receipts money, opens file and docket case, and issues any requested notices or process.

**Comments:** If petitioning for de novo review, petitioner should provide the DC-4042, ORDER-RESTORATION OF RIGHT TO PURCHASE, POSSESS OR TRANSPORT A FIREARM, from the district court, marked “denied.”

**Step 2** A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. [Va. Code § 18.2-308.2](#)

**Step 3** Court holds a hearing, enters an order either granting or denying the right to purchase, possess or transport a firearm. For review of denial of right from General District Court, the Court will use the DC-4042, ORDER-RESTORATION OF RIGHT TO PURCHASE, POSSESS OR TRANSPORT A FIREARM.

**Step 4** If the petition was granted, go to Step 5.  
If the petition was denied, go to Step 6.

**Step 5** The petitioner shall have fingerprints taken and provide to the Clerk. The fingerprints, a copy of the order restoring rights and a completed SP-337, NOTIFICATION OF RESTORATION OF FIREARM RIGHTS, shall be mailed to:

Department of State Police

Central Criminal Records Exchange  
Post Office Box 27472  
Richmond, Virginia 23261-7472

**Comments:** If the petition was for review of denial of rights from district court, the Clerk sends a copy of any Order to [Virginia State Police](#), along with a completed SP-337 forthwith.

For felony restoration of firearm rights, the petitioner should also be directed to the [Virginia State Police](#) website for information regarding firearm rights that have been restored.

**Step 6** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by clerk's office for felony restoration.

DC-4040, [PETITION TO RESTORE RIGHT TO PURCHASE, POSSESS, OR TRANSPORT A FIREARM\\*](#)

DC-4042, ORDER – RESTORATION OF RIGHT TO PURCHASE, POSSESS, OR TRANSPORT A FIREARM\*

SP-337, NOTIFICATION OF RESTORATION OF FIREARM RIGHTS

\*Used for restoration by person who had been acquitted by reason of insanity, or by person admitted to involuntary commitment or outpatient treatment.

Reference(s)

[Va. Code §§ 18.2-308.1:1](#), [18.2-308.1:3](#), [18.2-308.2](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>

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

## Relief

### Legal Determination of Paternity

An individual may file a petition for relief and the court may set aside a final judgment, court order, administrative order, obligation to pay child support or any legal determination of paternity if a scientifically reliable genetic test performed establishes the exclusion of the individual named as a father in the legal determination.

#### Document Type

Petition

#### Filing Type

FAS = RELF, changes to PET when transferring to CCMS

#### Procedures

**Step 1** Petition is filed with the circuit court wherein the petitioner resides.

**Comments:** The court shall appoint a guardian ad litem to represent the interests of the child. **Note:** Petitioner pays all costs associated with the paternity test.

**Step 2** Clerk receipts for applicable fee, opens new case file with CIVIL case number and docket new case.

**Step 3** Hearing held.

**Comments:** Court that sets aside a determination of paternity shall order completion of a new birth record and may order

any other appropriate relief, including the setting aside an obligation to pay child support.

- Step 4** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. Clerk directs copies of any order to the parties as directed by the Court.
- Comments:** Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by Clerk's office.

Reference(s)

[Va. Code § 20-49.10](#)

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

### Re-Registration - Sexual Offender Registry

Upon expiration of three years from the date upon which the duty to register as a sexually violent offender is imposed, the person required to register may petition the court in which they were convicted for relief from the requirement to reregister every ninety days.

The court shall hold a hearing on the petition, on notice to the attorney for the Commonwealth, to determine whether the person suffers from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others or

significantly impairs their ability to control their sexual behavior. Prior to the hearing the court shall order a comprehensive assessment of the applicant by a panel of three certified sex offender treatment providers as defined in [Va. Code § 54.1-3600](#).

A report of the assessment shall be filed with the court prior to the hearing. The costs of the assessment shall be taxed as costs of the proceeding. [Va. Code § 9.1-909](#)

**Note:** A sex offender may enter school or child day center property only if a voter, a student, or pursuant to a court order. The sex offender may petition the Juvenile & Domestic Relations District or Circuit Court for permission to enter the property. Full civil filing fees would be assessed for filing the petition.

#### Document Type

Petition

#### Filing Type

FAS = RELF, changes to PET when transferring to CCMS

#### Procedures

**Step 1** The clerk receives petition, receipts money, opens file and docket case, and issues any requested notice and process.

**Comments:** A petition for relief pursuant to this subsection may not be filed within three years from the date on which any previous petition for such relief was denied. Clerk would collect full amount of Civil fees.

**Step 2** Court orders a comprehensive assessment of the applicant by a panel of three certified sex offender treatment providers.

A list of Certified Sex Offender Treatment Providers in Virginia may be found through the Department of Health Professions Public Information System License Lookup available at the following URL: [http://www2.vipnet.org/dhp/cgi-bin/search\\_publicdb.cgi](http://www2.vipnet.org/dhp/cgi-bin/search_publicdb.cgi).

**Comments:** The costs of the assessment shall be taxed as costs.

**Step 3** Court holds hearing. The petitioner and any interested persons may present witnesses and other evidence.



**Comments:** If satisfied that the petitioner no longer suffers from a mental abnormality or a personality disorder that makes the person a menace to the health and safety of others, the petition will be granted and the requirement to re-register every ninety days shall be terminated. **Note:** Individual shall, however, be required to re-register annually.

If the petition is denied, the petitioner must wait at least three (3) years from the date of denial to re-file for relief from registering every ninety days. An appeal from the denial of a petition shall lie to the Supreme Court.

**Step 4** Clerk “promptly” sends a copy of the order, if petition granted, to the [Department of State Police](#). Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

**Comments:** [Virginia Code § 9.1-909](#) states that the State Police shall be notified promptly upon entry of an order granting the petition and Registry information on the offender shall be removed from the Internet system.

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

#### Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

#### Form(s)

Initiating forms not provided by clerk’s office.

#### Reference(s)

[Va. Code § 9.1-909](#)

### Removals

#### Circuit to Federal Court

A procedure under 28 U.S.C Chapter 89 ([28 U.S.C. § 1441](#), et seq.) “District Courts: Removal of Cases from State Courts”, whereby the defendant(s) may remove a pending

civil or criminal action in state court to a United States District Court for the district and division embracing the place where such action is pending.

Document Type

Notice of Removal

**Note:** Civil case – Copy of Notice of removal from the Defendant(s);  
Criminal Case – notification from the U.S. District Court of the Removal.

Filing Type

REM

Procedures

**Step 1** The defendant(s) files a Notice of Removal in the federal district court, stating grounds for removal, with copies of all process, pleadings and orders served upon the defendant in the state court action.

**Step 2** Civil case ([28 U.S.C. § 1446\(d\)](#)) – The defendant(s) shall file a copy of the Notice of Removal with the clerk of the State Court, which shall effect the removal.

Criminal case ([28 U.S.C. § 1455\(b\)\(5\)](#)) – If the U.S. District court determines that removal shall be permitted, it shall notify the State Court in which the prosecution is pending.

**Note:** In both types of cases, the State Court is directed to “proceed no further” (unless and until the case is remanded back to the State Court). However, 28 U.S.C. § 1455(b)(3) provides that the State Court may proceed further but may not enter a judgment of conviction unless the prosecution is first remanded.

**Step 3** In any case removed from State court, the U.S. District Court may order the removing party to file with its clerk all records of the State court, or it may enter an order, or may issue a Writ of Certiorari to the State court, to acquire the case record. [28 U.S.C. §§ 1447\(b\)](#) and [1449](#)

**Note:** If the Clerk receives a Writ of Certiorari from the Federal

district court, contact the district court for transfer requirements (electronic transmission or the physical case record).

**Step 4** The clerk removes the case from the docket by reference to the district court notification (criminal case) or the defendant(s) Notice of Removal (civil case).

Fees/Taxes/Other Monies Assessed

None. Removal initiated and concluded in Federal District Court.

Form(s)

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

Reference(s)

28 U.S.C. Chapter 89 (28 U.S.C. § 1441, et seq.)

**Removal of Elected and Certain Appointed Officials**

Upon petition, a circuit court may remove from office any elected officer or officer who has been appointed to fill an elective office, residing within the jurisdiction of the court.

Document Type

Petition

Filing Type

RCAO

Procedures

**Step 1** The clerk receives petition, receipts money, if applicable, opens file and docket case, and issues any requested notice and process.

**Step 2** Clerk assigns case number, indexes and prepares the case file. See "Case Initiation" chapter for respective Procedures.

**NOTE:** The Attorney for the Commonwealth and the officer named in the petition shall be the only parties to the action.

**Step 3** Clerk provides paper or electronic copy of the petition to the officer who is the subject of the removal petition, the Attorney for the Commonwealth, and the General Registrar.

**NOTE:** If the subject of the petition is the Attorney for the Commonwealth the Chief Justice of the Supreme Court of Virginia shall appoint and alternate Attorney for the Commonwealth to receive the copy of the petition.

**Step 4** Within ten (10) days, General Registrar shall file with the Clerk a Certification of Sufficiency.

**NOTE:** The General Registrar may seek an extension of time from the circuit Court for good cause shown.

**Step 5** The Attorney for the Commonwealth shall promptly review the petition and determine if valid grounds exist to remove the officer pursuant to § [24.2-103](#). Upon determining that valid grounds exist for removal, the attorney for the Commonwealth shall notify the circuit court. Otherwise, the attorney for the Commonwealth shall request that the court dismiss the petition.

**Step 6** The court shall issue a rule requiring the officer to show cause why they should not be removed from office, the rule alleging in general terms the cause or causes for such removal. The rule shall be returnable in not less than five and no more than 10 days and shall be served upon the officer with a copy of the petition.

**NOTE:** Upon return of the rule duly executed, the case shall be tried on the day named in the rule and take precedence over all other cases on the docket.

**Step 7** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

None if filed by State or Locality

Form(s)

Petition

Reference(s)

[Va. Code § 17.1-266](#)  
[Va. Code §§ 24.2-233, 24.2-235](#) through 24.2-238

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

**Removal of General Registrar or Electoral Board Member**

Any general registrar or member of a local electoral board may be removed from office by the circuit court in whose jurisdiction they reside upon a petition signed by a majority of the members of the State Board as provided in [Va. Code § 24.2-103](#).

Document Type

Petition

Filing Type

RGR (Removal General Registrar)  
 REBM (Removal Electoral Board Member)

Procedures

- Step 1** The clerk receives petition, receipts money, if applicable, opens file and docket case, and issues any requested notice and process.
- Step 2** Clerk assigns case number, indexes and prepares the case file. See "Case Initiation" chapter for respective Procedures.
- Step 3** The court shall issue a rule requiring the officer to show cause why they should not be removed from office, the rule alleging in general terms the cause or causes for such removal. The rule shall be returnable in not less than five and no more than 10 days and shall be served upon the officer with a copy of the petition.

**NOTE:** Upon return of the rule duly executed, the case shall be tried on the day named in the rule and take precedence over all other cases on the docket.

**Step 4** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

Fees/Taxes/Other Monies Assessed

None

Form(s)

Petition

Reference(s)

[Va. Code §§ 24.2-103](#), [24.2-234](#), [24.2-234.1](#), [24.2-235](#)

### Personal Representative/Trustee

A “personal representative” is defined in the [Va. Code § 1-234](#). The office of “trustee” is not included in the definition of a personal representative. “Trustee” and “fiduciary” are synonymous words, as stated in Black’s Law dictionary. A trustee holds legal title to estate assets while a personal representative does not.

Removal of a fiduciary under [Va. Code § 64.2-1410](#) is accomplished within the probate proceeding according to Lamb, Virginia Probate Practice.

The Code of Virginia, by implication, in [Va. Code § 64.2-1404](#), does not distinguish between a fiduciary and a personal representative, by allowing removal of a personal representative under that statute.

The court may remove a personal representative for failure to properly perform prescribed duties or to obey orders of the court. Once powers of a personal representative are revoked, the court in which they qualified will exercise jurisdiction, either by appointing an administrator *de bonis non*, or otherwise, as if the fiduciary has died during the period of their administration. Refer to Harrison on Wills and Administration.

Further, [Va. Code §§ 64.2-1412](#), [64.2-1405](#) and [64.2-1407](#) gives the court the authority to remove a trustee. Although power to remove a trustee is based on statute, courts of equity may exercise the same powers according to the [Va. Code § 64.2-1408](#).

## Document Type

Complaint

## Filing Type

REM

## Procedures

- Step 1** Clerk receives Complaint.
- Step 2** Clerk receipts for money received, assigns a CIVIL case number, docket case and issues process as directed. **Note:** Some personal representatives can be removed by action of the court within the estate proceedings.
- Step 3** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

## Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

## Form(s)

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

## Reference(s)

[Va. Code §§ 64.2-1412](#), [64.2-1410](#), [64.2-1404](#), [64.2-1405](#), [64.2-1407](#), [64.2-1408](#)

Smith, Harrison on Wills and Administration  
Lamb, Virginia Probate Practice

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>

FEES	
TYPE CHARGES	CODE REFERENCE
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

### Name from Sexual Offender Register or Supplement to the Sex Offender and Crimes Against Minors Registry

**Not applicable to those convicted of any sexually violent offense, two or more offenses for which registration is required, a violation of former Va. Code § 18.2-67.2:1 (marital sexual assault) or murder.**

The registrant may petition the Circuit Court in which they were convicted or the Circuit Court in which they reside for the removal of their name and all identifying information from the Registry or from the Supplement to the Registry. The Supplement to the Registry is composed of persons who were convicted of certain offenses against minors on or after July 1, 1980, and before July 1, 1994, but whose names are not on the Registry.

**Note:** If the requirement to register as a sex offender was ordered by a court in another jurisdiction, the petition to be removed from the registry will be filed in the circuit court in which the applicant resides.

For the Registry, a petition may not be filed earlier than 15 years, or 25 years for violations of [Va. Code § 18.2-64.1](#), [Va. Code § 18.2-374.1:1 \(C\)](#) or [Va. Code § 18.2-374.3 \(C\),\(D\),\(E\)](#) after the date of initial registration nor earlier than 15 years, or 25 years for violations of [Va. Code § 18.2-64.1](#), [Va. Code § 18.2-374.1:1\(C\)](#), or [Va. Code § 18.2-374.3 \(C\),\(D\),\(E\)](#), or of any similar offense under the laws of any foreign country or any political subdivision thereof or the United States of any political subdivision thereof, from the date of their last conviction for (a) a violation of [Va. Code § 18.2-472.1](#) or (b) any felony. A person whose name and conviction information appear on the Supplement may, regardless of the date of conviction, petition the circuit court in which they were convicted or the circuit court where they resides for removal of their name and conviction information if the offense they were convicted of would qualify for removal from the Registry under [Va. Code § 9.1-910](#).

Petition may not be filed until all court ordered treatment, counseling and restitution has been completed.

The Court shall obtain a copy of petitioner's complete criminal history, and of any registration and reregistration history and conduct a hearing wherein the petitioner and



any interested persons may present witnesses and other evidence. The Commonwealth is made a party to such action.

If after such hearing, the court is satisfied that such person does not pose a risk to public safety, the court shall grant the petition.

In the event the petition is not granted, the petitioner shall wait at least twenty-four months from date of denial in which to file a new petition.

#### Document Type

Petition

#### Filing Type

FAS = RELF, changes to PET when transferring to CCMS

#### Procedures

**Step 1** Clerk receives petition, receipts filing fees, opens file, docket case and issues any requested notice and process. Clerk collects full set of civil fees.

**Step 2** Court obtains copy of petitioner's criminal history, registration and any re-registration history.

**Comments:** Since Commonwealth's Attorney is a party to the petition, it seems apparent they would provide these to the court.

**Step 3** Court conducts hearing. Petitioner and any interested persons may present witnesses and other evidence.

**Comments:** If court is satisfied petitioner no longer poses a risk to public safety, court shall grant petition. In the event petition is not granted, petitioner must wait twenty-four months from date of denial to file new petition.

**Step 4** If Court grants petition, Clerk promptly sends copy of order granting petition to Department of State Police at:  
Virginia State Police - CJIS Division  
Attn: Sex Offender Registry  
P O Box 27472  
Richmond, VA 23261-7472

**Comments:** [Virginia Code § 9.1-910 \(B\)](#) requires State Police to remove from Registry the name of petitioner and all identifying information upon receipt of order granting petition per [Va. Code § 9.1-910 \(A\)](#). [Virginia Code § 9.1-923](#) requires State Police to remove the name and conviction information from the Supplement.

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

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by clerk's office.

Reference(s)

[Va. Code § 9.1-910](#)

<b>FEES</b>	
<b>TYPE CHARGES</b>	<b>CODE REFERENCE</b>
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 7.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
* Not assessed if the amount of the civil action is \$500 or less	

**Restricted Driver's License**

**Conviction for Unauthorized Driving**

Any person who has their driver's license suspended solely for a conviction for driving on a

suspended or revoked license, or after having been forbidden to drive. Each court for which the individual has a conviction for driving on a suspended or revoked license must issue an authorization prior to DMV issuing a restricted driver's license.

The Clerk will provide a copy of such authorization, if granted, to the defendant and to DMV.

#### Document Type

Petition - DC-273, [PETITION FOR AUTHORIZATION FOR RESTRICTED DRIVER'S LICENSE - CONVICTION FOR UNAUTHORIZED DRIVING](#)

#### Filing Type

REST

#### Procedures

**Step 1** Petition is filed with the each court that suspended a defendant's license pursuant to [Va. Code § 46.2-301](#).

**Step 2** Clerk receipts money opens file and docket case.

**Comments:** DC-273, [PETITION FOR AUTHORIZATION FOR RESTRICTED DRIVER'S LICENSE - CONVICTION FOR UNAUTHORIZED DRIVING](#).

**Step 3** Court grants or denies the petition. DC-274, AUTHORIZATION FOR RESTRICTED DRIVER'S LICENSE- CONVICTION FOR UNAUTHORIZED DRIVING is used as the Order. **Note:** The clerk should not update the FAS account.

**Step 4** Clerk provides copy of DC-274 to defendant and DMV.

#### Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

#### Form(s)

DC-273, [PETITION FOR AUTHORIZATION FOR RESTRICTED DRIVER'S LICENSE - CONVICTION FOR UNAUTHORIZED DRIVING](#)

DC-274, AUTHORIZATION FOR RESTRICTED DRIVER'S LICENSE - CONVICTION FOR UNAUTHORIZED DRIVING

#### Reference(s)

[Va. Code § 46.2-301](#)

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

### School Board Decision (Teacher or School Board Employee)

A petition filed by an aggrieved party seeking judicial review in a circuit court of a decision of the local school board. The aggrieved party may petition the circuit court for a trial de novo, by judge or jury. Such petition shall be filed within 30 days of the aggrieved person's receipt of the hearing officer's decision in the circuit court in the jurisdiction where the applicable local department is located. Such aggrieved person is barred from filing any action for judicial review of the agency action or the hearing officer's decision under the Administrative Processes Act ([Va. Code § 2.2-4025 et seq.](#)).

**Note:** The clerk shall accept the petition even if the petition is received outside of the 30 days.

#### Document Type

Petition

#### Filing Type

TLD

#### Procedures

- Step 1** The aggrieved party files a petition for judicial review.
- Step 2** Clerk receipts for money collected, opens file, and docket the case.
- Step 3** Clerk issues all notices as directed. Copy of the Petition for Judicial Review is to be served upon the local school board office.

**Step 4** Hearing is held.

**Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law and prepares and transmits Order containing the court's decision to the petitioner, counsel of record, and the local school board office.

**Comments:** In the case of a teacher who is the subject of a founded complaint of child abuse or neglect and whose license has been revoked, in the event that a court reverses such finding of abuse or neglect and the individual submits to the Department an application for the reinstatement of their license as a teacher, the Board shall consider and act upon such application no later than 90 days after the date of such submission. Whenever an appeal of the local department's finding is made and a criminal charge or investigation is also filed or commenced against the appellant for the same conduct involving the same victim as investigated by the local department, the appeal process shall automatically be stayed until the criminal prosecution in the trial court is completed, until the criminal investigation is closed, or, in the case of a criminal investigation that is not completed within 180 days of the appellant's request for an appeal of the local department's finding, for 180 days after the appellant's request for appeal. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in the trial court has been completed, the criminal investigation is closed, or, in the case of a criminal investigation that is not completed within 180 days of the appellant's request for an appeal of the local department's finding, 180 days have passed, the local department shall advise the appellant in writing of their right to resume their appeal within the time frames provided by law and regulation.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

NONE

Reference(s)

[Va. Code § 63.2-1526](#)

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>

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

## Sell

### Land for Delinquent Taxes

An action instituted by a county or city to sell the real estate of persons who have not paid ad valorem taxes upon real property located in the jurisdiction. When any taxes on any real estate in a county, city or town are delinquent on December 31 following the second anniversary of the date on which such taxes have become due, or, in the case of real property upon which is situated any structure that has been condemned by the local building official pursuant to applicable law or ordinance, any nuisance, any derelict building, or any property that has been declared to be blighted, the first anniversary of the date on which such taxes have become due, such real estate may be sold for the purpose of collecting all delinquent taxes on such property.

Proceedings are filed in the circuit court of the county or city in which such real property is located. If the real estate is located in two or more jurisdictions, a suit to sell the entirety of the real estate may be filed in a single jurisdiction if the taxes are delinquent in all jurisdictions for the required time periods and the treasurer of each jurisdiction within which the property is located consents to the suit. The suit must identify the taxes, penalties, interest, and other charges due in each jurisdiction and any publications and notices must identify each of the jurisdictions. Upon sale of the property, the order confirming the sale must provide for the payment of taxes, penalties, interest, and other charges to each jurisdiction, and copies of the order confirming the sale and the deed conveying the property must be recorded among the land records in each jurisdiction in which the property is located.

[Virginia Code § 58.1-3965](#) provides that an owner may terminate a tax sale prior to the date of such sale by entering into a written agreement with the locality to pay all accumulated taxes, penalties, interest, and costs. The agreement may provide for payment of the debt in installments on agreed-upon terms. Any agreement will cause the pending action to be continued on the docket. The agreement will be recorded in the Deed Book in the clerk's office with the appropriate recording fees and taxes being paid. It

will be the duty of the treasurer or other officers responsible for collecting taxes to notify the clerk that the obligation has been satisfied. The notice should be recorded in the Deed Book. Although the Code states that the clerk will then remove the action from the docket, the Court should enter an order removing case from the docket.

## Document Type

Complaint (Bill in Equity)

## Filing Type

DTAX

## Procedures

**Step 1** Clerk receives Complaint (Bill in Equity), indexes and docket case, and issues requested process.

**Note:** No Clerks' Fees are charged, only Sheriff's Fees unless waived by Sheriff. [Va. Code § 17.1-266](#).

**Comments:** Per [Va. Code § 58.1-3968](#), two or more parcel may be combined in one Complaint (Bill in Equity) if they were assessed against or are owned by the same party or parties, or if they are assessed against and owned by different parties but each parcel is assessed at a value which does not exceed \$100,000.

**Step 2** The attorney employed by the county or city may be required to post bond with security per [Va. Code § 58.1-3966](#). Such bond shall be delivered to the clerk of circuit court to be recorded in the "Special Commissioner's Bond Book."

**Step 3** The court appoints a guardian ad litem for persons under a disability as defined in [Va. Code § 8.01-2](#), and for all persons proceeded against by order of publication as parties unknown.

**Comments:** Refer to [Va. Code § 8.01-321](#) for applicable provisions as to orders of publication.

**Step 4** The proceedings are held in accordance with requirements of a creditor's complaint (bill in equity) to subject real estate to the lien of a judgment creditor. Refer to section "Judgment Lien (Bill To Enforce)" in this Manual.

**Step 5** The treasurer or other officer responsible for collecting taxes may suspend any action for sale of the property commenced (i) upon entering into an agreement with the owner of the real property for the payment of all delinquent amounts in installments over a period which that is reasonable under the circumstances, but that in no event shall exceed 60 months, or (ii) upon written notice by an individual, not a party to the action, asserting ownership rights in the property that is the subject of the action arising by virtue of testate or intestate succession, to the treasurer or other officer responsible for collecting taxes. The treasurer or other officer responsible for collecting taxes shall promptly advise the court of such claim and seek leave to add the individual asserting the claim as a party in the action. If the court determines that the individual asserting the claim possesses an ownership interest in the property that is the subject of the action, such individual may, within 30 days of the court's finding, enter into an agreement with the treasurer or other official responsible for collecting taxes for the payment of all delinquent amounts in installments over a period that is reasonable under the circumstances, but that in no event shall exceed 60 months. Any such agreement under this subsection shall provide for the payment of current tax obligations as they come due, which payments shall be credited to current tax obligations notwithstanding the provisions of § [58.1-3913](#) and shall be secured by the lien of the locality pursuant to § [58.1-3340](#).

**Step 6** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

**Note:** No final order confirming sale shall be entered sooner than 90 days following the provision of notice to parties in accordance with subsection A of section [§ 58.1-3965](#) or, if later, 90 days following the receipt of notice by the treasurer or other official responsible for collecting taxes from an individual, not previously made a party to the action, in accordance with clause (ii) of subsection C.

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



**Step 7** Surplus proceeds from the sale of real property are payable to the former owner, heirs or assigns. Unclaimed surplus funds are held by the court and invested as the court directs. If no claim is made on such surplus funds within two years after confirmation of the sale, the clerk shall pay such surplus to the county or city in which the real property is located.

Fees/Taxes/Other Monies Assessed

Filed by Locality

None. Effective 7/1/07, pursuant to [Va. Code § 17.1-266](#), localities are exempt from paying fees for services rendered by a clerk when the locality is a party to a case. See Attorney General Opinion to Smith dated 2/14/1997 (1997, page 44) stating that although this exemption is for “services rendered in Commonwealth *cases* (emphasis added),” the exemption from *clerk’s fee* upon recordation applies as well.

Recording Written Agreement between Treasurer and Owner  
[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by the clerk’s office.

Reference(s)

[Va. Code § 17.1-266](#)  
[Va. Code §§ 58.1-3965](#), [58.1-3965.1](#), [58.1-3966](#), [58.1-3967](#), [58.1-3968](#),  
[58.1-3969](#), [58.1-3970](#), [58.1-3970.1](#), [58.1-3971](#), [58.1-3973](#), [58.1-3974](#)

Recording Written Agreement Between Treasurer and Owner:

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk’s recording fee (if recording written agreement between owner & treasurer/collector.)	<a href="#">Va. Code § 17.1-275 A(2)</a>
State Library Fee	<a href="#">Va. Code § 17.1-275 A(2)</a>
State Recordation tax	<a href="#">Va. Code § 58.1-807</a>
Local Recordation tax	<a href="#">Va. Code § 58.1-814</a>

**Sell, Etc. Land of Person under a Disability**

An action brought on behalf of a person under a disability as defined by [Va. Code § 8.01-2\(6\) \(A-E\)](#) to sell, exchange, lease, encumber, redeem or make other disposition of real estate.

[Virginia Code §§ 8.01-67, 8.01-68, 8.01-69, 8.01-72, 8.01-73, 8.01-74, 8.01-75, 8.01-76, 8.01-77](#) provide for an adversarial action in which all interested parties are made parties plaintiff or defendant.

[Virginia Code §§ 8.01-78, 8.01-79, 8.01-80](#) provide a non-adversarial alternate procedure where a fiduciary of a person under a disability appointed under Title 37.2 may petition for authority to mortgage, lease or sell real estate for purposes of payment of debt and maintenance of the ward or their family.

Document Type

Complaint (Bill in Equity)

Filing Type

FAS = SELL, changes to PET when transferring to CCMS

Procedures

- Step 1** A fiduciary or any person having an interest in the subject matter may file the Complaint.
- Step 2** Clerk receipts for money collected, indexes and docket case.
- Step 3** The Court appoints a guardian ad litem for any person under a disability, and for persons proceeded against by order of publication. [Va. Code § 8.01-73](#)
- Step 4** Clerk issues all notices, etc., as directed.
- Step 5** The Court holds hearings and may appoint a Commissioner in Chancery or Special Commissioner to carry out the terms of any decree of reference.
- Step 6** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by clerk's office.

Reference(s)

[Va. Code §§ 8.01-67, 8.01-68, 8.01-69, 8.01-72, 8.01-73, 8.01-74, 8.01-75, 8.01-76, 8.01-77; 8.01-78, 8.01-79, 8.01-80](#)

Va. Supreme Court Rules Part Three

Attorney General Opinion to Black dated 1/18/90 (1990, page 235); *Writ tax not applicable to nonadversarial proceedings in circuit court; determination of adversarial vs. nonadversarial law and chancery proceedings.*

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

**Special Grand Jury – Public or Common Nuisance**

Pursuant to Virginia Code Section 48.1, when a complaint is made to the circuit court of any county, or the corporation court of any city of the Commonwealth, by five or more citizens of any county, city or town, setting forth the existence of a public or common nuisance, the court, or the judge thereof in vacation, shall summon a special grand jury, in the mode provided by law, to the next term of such court, to specially investigate such complaint.

If upon a full investigation of the complaint, the grand jury is satisfied that the nuisance complained of is of a public nature, it shall proceed to make presentment against such person or persons as they may find have created or caused such a nuisance. [Va. Code Section 48-2.](#)

Upon the trial of any such presentment, the person or persons who have created, caused or

permitted the continuation of any nuisance, if found guilty, shall be ordered to either abate said nuisance or to reimburse the locality for all costs of removal and abatement of said nuisance, if the locality has abated the nuisance pursuant to Virginia Code Section 15.2-900, and further may be fined not more than \$25,000, in addition to the other remedies available under law.

#### Document Type

Complaint

#### Filing Type

COM-Complaint

#### Procedures

- Step 1** Clerk receives Complaint and any other papers filed.
- Step 2** Clerk assigns a CIVIL case number, indexes, and docket the case in CCMS. See “Case Initiation” chapter for respective procedures.
- Step 3** Clerk receipts money collected including service fees when applicable.
- Step 4** An Order to Summon Prospective Special Grand Jurors is prepared. Special grand juries shall consist of not less than seven and not more than 11 members and shall be summoned from a list prepared by the court. [Va. Code § 19.2-207](#).
- Note:** The Court may designate special counsel to assist. [Va. Code § 19.2-211](#).
- Step 5** A Writ of Venire Facias is prepared commanding the Sheriff to summon perspective special grand jurors.
- Step 6** A court reporter shall be provided for a special grand jury to record, manually or electronically, and transcribe all oral testimony taken before a special grand jury. Va. Code Section 19.2-212.
- Note:** The court reporter shall not be present during any stage of deliberations. The notes, tapes and transcriptions of the reporter are for the sole use of the special grand jury, and the contents may only be divulged as provided in [Va. Code § 19.2-212](#).

- Step 7** The presiding judge shall examine each juror individually and under oath to determine a potential juror's qualifications. The judge shall then certify in writing and not under seal that they have examined the members of the special grand jury and has found that they are qualified, impartial, and disinterested in the subject matter and outcome of the investigation. The examination shall be recorded by a court reporter. The court shall appoint one member to be the foreman. [Va. Code § 19.2-207](#).
- Step 8** If upon a full investigation of the complaint, the special grand jury is satisfied that the nuisance complained of is of a public nature, it shall proceed to make presentment against such person(s) as they may find have created or caused such nuisance. [Va. Code § 48-2](#).
- Step 9** Upon any such presentment the court shall order a copy thereof to be served upon the person or persons presented, or whose property is presented, in the manner prescribed by law as to the service of notices. To any such proceeding, if it be *in rem* (relating to property), any person interested, or for an in behalf of the owner of such premises, may make defense. [Va. Code § 48-4](#).
- Step 10** Upon trial of any presentment, if there is a guilty finding, the person shall be ordered to either abate said nuisance or reimburse the locality for all costs of removal and abatement, if the locality has abated the nuisance pursuant to [Va. Code § 15.2-900](#), and further may be fined, not more than \$25,000, in addition to other remedies under the law. [Va. Code § 48-5](#).  
**Note:** The judgment shall be enforced in the same manner as an attachment levied on real estate. [Va. Code § 48-6](#).  
**Comments:** The report of the special grand jury filed with the court at the conclusion of its investigation and deliberations shall be sealed and only opened by order of the court. [Va. Code § 19.2-213](#).

All costs of the special grand jury shall be paid by the Commonwealth. [Va. Code § 19.2-215](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

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

Reference(s)

[Va. Code § 48-1](#), et seq.

[Va. Code §§ 19.2-207](#), [19.2-211](#), [19.2-212](#), [19.2-213](#), [19.2-215](#)

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

### **Structured Settlement – Approval of Transfer**

An application for approval of a transfer of structured settlement payment rights shall be made by the transferee and shall be brought in the circuit court for the county or city in which the payee is domiciled in the Commonwealth, except that if the payee is not domiciled in the Commonwealth, the application may be brought in the court in the Commonwealth that approved the structured settlement agreement. The circuit court may refer the matter to a commissioner of accounts for a report to such court. Such report and recommendation shall be filed with the court and mailed to all interested parties by the transferee, and such report and recommendation and any exceptions thereto shall be examined by the court and confirmed or corrected. A timely hearing shall be held on an application for approval of a transfer of structured settlement payment rights. The payee shall appear in person at the hearing unless the court determines that good cause exists to excuse the payee from appearing in person.

Document Type

Application

Filing Type

SS

Procedures

- Step 1** Clerk receives Application and receipts for monies collected.
- Step 2** Clerk assigns case number, indexes and docket the case. See “Case Initiation” chapter for respective procedures.
- Step 3** A timely hearing date is set.
- Step 4** At hearing, court may issue an order approving or denying transfer.
- Step 5** Clerk certifies copies of any Order of court upon request or upon direction of court.
- Step 6** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

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

Reference(s)

[Va. Code §§ 59.1-475](#) through [59.1-477.1](#)

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

## Substantial Risk Orders

A civil proceeding wherein an attorney for the Commonwealth or a law enforcement officer petitions, a judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate to issue an *ex parte* emergency substantial risk order. Not later than 14 days after the issuance of an emergency substantial risk order the circuit court for the jurisdiction where the order was issued shall hold a hearing to determine whether a substantial risk order should be entered. [Va. Code §§ 19.2-152.13, 19.2-152.14](#)

Such order shall prohibit the person who is subject to the order from purchasing, possessing, or transporting a firearm, and from possessing a concealed handgun permit.

These orders are transmitted to the Virginia State Police through VCIN into the Substantial Risk Order Registry.

### Document Type

Petition

### Filing Type

SRO

### Procedures

**Step 1** The attorney for the Commonwealth or a law enforcement officer petitions a judge of either the circuit or district court, or a magistrate, to request entry and issuance of an *ex parte* emergency substantial risk order. If the petition is filed in circuit court, go to **Step 2**. If the emergency substantial risk order was issued by a district court or magistrate, go to **Step 4**.

**Note:** Circuit court has exclusive jurisdiction of substantial risk orders. Once the emergency substantial risk order has been served, the executed order shall be returned to the circuit court with a written inventory of all firearms relinquished.

**Step 2** Clerk receives DC-4060, PETITION FOR EMERGENCY SUBSTANTIAL RISK ORDER, assigns a CIVIL case number and indexes and docket the case. See “Case Initiation” chapter for respective procedures. No filing fees are required.

**Step 3** Upon entry, the emergency substantial risk order, the petition and supporting affidavit shall be served on the respondent and



a copy of the order provided to the attorney for the Commonwealth. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information. Go to **Step 5**

**Step 4** Clerk receives a copy of the emergency substantial risk order from the district court or magistrate and assigns a CIVIL case number and indexes and docket the case. See "Case Initiation" chapter for respective procedures. No filing fees are required.

**Step 5** A hearing shall be set within 14 days of issuance of the emergency substantial risk order. Notice of the hearing shall be given to the person subject to the order and to the attorney for the Commonwealth.

**Note:** An emergency substantial risk order expires on the fourteenth day following issuance of the order. If a hearing cannot be set or held before expiration of the order, an extension of the emergency substantial risk order shall be entered and served on the respondent and a copy of the order provided to the attorney for the Commonwealth. Emergency substantial risk orders may be extended without limit.

**Note:** Emergency substantial risk orders remain in effect until a substantial risk order is granted or denied, or until the attorney for the Commonwealth moves to dismiss the order or remove it from the docket. If the substantial risk order hearing is continued, an extension of the emergency substantial risk order is entered for the period pending the next hearing and is served on the respondent.

**Note:** Extensions of emergency substantial risk orders are entered and transferred to the Virginia Criminal Information Network by a law enforcement officer upon receipt.

**Note:** The person who is subject to the emergency substantial risk order may file a motion to dissolve the order prior to the hearing. If the order is dissolved the clerk provides a copy of the order to the respondent, the attorney for the Commonwealth and to law enforcement for entry into VCIN.

**Step 6** If the court finds in favor of the Commonwealth, a substantial risk order shall be entered for a period not to exceed 180 days and served upon the respondent. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information.

**Note:** Prior to the expiration of the order, an attorney for the Commonwealth or a law-enforcement officer may file a written motion requesting a hearing to extend the order. A motion to extend a substantial risk order shall take precedence on the docket. If the extension is granted, an extended order shall be entered for a period not to exceed 180 days and served upon the respondent. Substantial risk orders may be extended without limit.

**Note:** Extensions of substantial risk orders are entered and transferred electronically to the Virginia Criminal Information Network by a law enforcement officer upon receipt.

**Note:** The person who is subject to a substantial risk order may file a motion to dissolve the order if at least 30 days have passed from entry of the order. A motion to dissolve may only be filed once during the duration of the order. The same applies to any extended substantial risk order. If the order is dissolved or modified, the clerk provides a copy to the respondent, the attorney for the Commonwealth and to law enforcement for entry into VCIN.

If the court finds in favor of the respondent, an order to dismiss the petition shall be entered and require that any firearm that was previously relinquished, or concealed handgun permit that was surrendered, be returned to the respondent. A copy of the dismissal order shall be provided to the respondent, attorney for the Commonwealth and to law enforcement for entry into VCIN.

**Step 7** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. Recording may be accomplished by microphotographic or electronic recording process per [Va. Code](#)

[§ 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

No fees are assessed.

Form(s)

[DC-4060 PETITION FOR EMERGENCY SUBSTANTIAL RISK ORDER](#)

DC-4061 EMERGENCY SUBSTANTIAL RISK ORDER

CC-1445 SUBSTANTIAL RISK ORDER

Reference(s)

[Va. Code § 17.1-266](#)

[Va. Code § 18.2-308.1:6](#)

[Va. Code §§ 19.2-152.13](#) through [19.2-152.17](#)

### Surcharge And Falsify An Accounting

Fiduciaries are required to periodically file reports with the Commissioner of Accounts of the jurisdiction wherein they qualified. If requested by the Commissioner, the fiduciary shall also provide the vouchers, bills, securities, canceled checks, bank statements, etc. with the accounting. Every account, including a statement of funds held at the terminal date of the account and, where applicable, reports of debts and demands, shall be reported to the Commissioner. It is the duty of the Commissioner to examine the accounting and report to the Court an account of the transactions of such fiduciary. The Commissioner's report is filed in the Court where they was appointed "as soon as practicable after its completion."

After the Commissioner's report is filed, it is held for fifteen days to allow interested persons to file exceptions to the report. If exceptions are filed, the judge must examine those exceptions and correct any errors that appear. The judge may then return the report to the same or another Commissioner; empanel a jury to inquire into any discrepancy; or confirm the report in whole or in a qualified manner. If no exceptions are filed, the report stands confirmed on the 16th day after it was filed. It is the clerk's duty to record these reports in the Will Book or, if one exists, in the book reserved for recording fiduciary accounts.

The *ex parte* settlements of the Commissioner of Accounts are presumed to be correct unless and until they are surcharged or falsified. However, a person who filed exceptions to the report is barred from bringing such a suit. A beneficiary or other interested person who did not file exceptions to the Commissioner's report within the statutory fifteen-day period can seek equitable relief by instituting a suit to surcharge and falsify.

Any person interested may, by bill in equity, surcharge and falsify the whole account, if they can

adduce satisfactory evidence for that purpose. A bill to surcharge and falsify the account must set forth the items of the account which it is desired to surcharge and falsify. The court may refer the controversy to a commissioner in chancery to take and report an account to the matters in controversy.

## Document Type

Complaint

## Filing Type

COM

## Procedures

- Step 1** Clerk receives Complaint and exhibits (copies of accounting, sales contracts, foreclosure deeds, canceled checks, bank statements, etc.)
- Comments:** Plaintiff must provide clerk with as many copies of the Complaint and exhibits as there are defendants to be served. Rule 3:4.
- Step 2** Clerk assigns a CIVIL case number, indexes and docket the case and sets up the case file.
- Step 3** Clerk receipts money collected, including service fees. **Note:** It is up to the plaintiff or the plaintiff's attorney to determine the appropriate service fee when the defendant is a nonresident and service is out of state.
- Step 4** Clerk issues CC-1400, SUMMONS - CIVIL ACTION pursuant to Rules 3:5 and 3:6. The SUMMONS - CIVIL ACTION is attached to copy of the Complaint. The CC-1405, PROOF OF SERVICE is used by the process server to note the date, place and type of service. Rules 3:5 and 3:6.
- Step 5** Clerk makes entry of process in the Process Book or automated Case Management System. See [Va. Code § 17.1-215](#).
- Step 6** Clerk receives and files Answer, Demurrer and other subsequent pleadings in case file and issues process as directed.
- Step 7** Clerk records and indexes orders entered in the Civil Order Book

unless otherwise provided by law.

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

**Step 8** Clerk makes entry in Judgment Lien Docket, if applicable.

**Step 9** Upon entry of Final Order, clerk removes case from docket and places case with ended files.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

CC-1405, PROOF OF SERVICE  
 CC-1400, SUMMONS - CIVIL ACTION

Reference(s)

[Va. Code §§ 64.2-1210](#), [64.2-1211](#), [64.2-1212](#), [64.2-1213](#), [64.2-1214](#)  
 Harrision on Wills and Administration,  
 Virginia Probate Practice, (Lamb, 1957)  
 Radford v. Fowlkes, 85 Va. 820, 8 S.E. 817 (1889)  
 Lister v. Virginia National Bank, 209 Va. 739, 167 S.E.2nd 346 (1969)

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

## Suspension of Professional License

A petition for suspension of a professional license is a measure taken by an obligee or the

[Department of Social Services](#) to request the suspension of any state-issued license, certificate, registration or other authorization to engage in a business, trade, profession or occupation or recreational activity issued to the obligor pursuant to Title 22.1 (Education), Title 38.2 (Insurance), Title 46.2 (Motor Vehicles) or Title 54.1 (Professions and Occupations) or any other provision of law when an obligor is delinquent in child support for 90 days or more or by \$5,000 or more. [Va. Code § 63.2-1937](#).

Upon thirty days' notice to an obligor who (i) has failed to comply with a subpoena, summons or warrant relating to paternity or child support proceedings or (ii) is alleged to be delinquent in the payment of child support, an obligee or the Department on behalf of an obligee may petition either the court that entered or the court that is enforcing the order for child support for an order of suspension. The notice shall specify that (i) the obligor has thirty days from the date of receipt to comply with the subpoena, summons or warrant or to pay the delinquency or to reach an agreement with the obligee or the Department to pay the delinquency and (ii) if compliance is not forthcoming or payment is not made or an agreement cannot be reached within that time, a petition will be filed seeking suspension of certificate, registration or other authorization to engage in a business, trade, profession or occupation or recreational activity issued by the Commonwealth to the obligor.

If the Court determines that the professional license, certificate, etc. shall be suspended, the defendant will be ordered to turn their license, certificate, etc. into the issuing entity within ninety (90) days of the Order. If defendant fails to comply with the Order, a show cause may be requested for contempt.

The following is recommended when a petition to suspend a professional license is presented to the court:

Document Type

Petition

Filing Type

FAS = SUSP, changes to PET when transferring to CCMS

Procedures

- Step 1** Petition is filed, upon thirty days' notice to the obligor who is alleged to be delinquent, with the clerk of the circuit court with copy of notice to obligor and copy of certified mail certificate with proof of actual receipt of notice attached.
- Step 2** Clerk receipts for money collected, assigns a CIVIL case number, indexes and docket case and issues process as directed.

**Step 3** Hearing held. Court orders or denies suspension of professional license, certificate, etc.

**Step 4** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law. Clerk provides copy of order to respondent and DCSE by fax 804-692-1438 or mail:  
 DCSE  
 7 N. 8th Street  
 Richmond, VA 23219

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

**Fees/Taxes/Other Monies Assessed**

Filed by Individuals

[Circuit Court Civil Filing Fee Calculation](#)

Filed by State Agency

None

**Form(s)**

DC-670, PETITION FOR SUSPENSION OF PROFESSIONAL OR OTHER LICENSE  
 DC-671, ORDER FOR SUSPENSION OF PROFESSIONAL OR OTHER LICENSE

**Reference(s)**

[Va. Code § 63.2-1937](#)

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

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

## Third-Party Practice

A separate action filed in a pending case, given special attention under Virginia law and civil procedure. After commencement of an action, a defending party, as a third-party plaintiff may file and serve a third-party complaint upon a person not a party to the current action, who is or may be liable to the defendant for all or a part of the plaintiff's claim against the defendant in the first action. The third-party plaintiff need not obtain leave therefor if they file the third-party complaint not later than twenty-one days after they serve their original pleading in response. Otherwise they must first obtain leave of court on motion after notice to all parties in the action. Likewise, a plaintiff in an action may bring in a third party after a counterclaim has been asserted; thereby bringing a third party, under circumstances that would entitle a defendant to do so.

### Document Type

Third Party Complaint

### Filing Type

CTP

### Procedures

**Step 1** Clerk receipts filing fees for the filing of a third-party complaint, under the conditions set out above, places it in the original case file, and docket the new parties.

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

**Step 2** Refer to procedures in "Complaint" section in this Manual.

### Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

### Form(s)

Initiating forms not provided by clerk's office.

### Reference(s)

Va. Supreme Court Rule 3:13



Attorney General Opinion to Barry, dated 2/2/85 (1984-85 page 135);  
*clerk must charge clerk's fee and writ tax upon filing of third-party motion for judgment. Clerk should not charge writ tax upon filing of counterclaim*

Attorney General Opinion to Stuart, dated 6/25/73 (72-73 page 455);  
*Writ tax - applies to third-party motion for judgment. Clerks - fees - chargeable for filing third-party motion for judgment.*

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

## Trusts

### Aid and Guidance for Established Trusts

Petition filed by a trustee, a beneficiary or an interested person requesting the circuit court provide aid and direction to guide fiduciaries in their administration of estates and trusts.

Examples of petitions:

- A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights. ([Va. Code § 64.2-710](#))
- Court involvement in decanting a trust. ([Va. Code § 64.2-779.6](#))
- Judicial review of exercise of discretionary power; requests for instruction. ([Va. Code § 64.2-1037](#))

Document Type

Petition

Filing Type

AID

Procedures

- Step 1** Trustee, personal representative or beneficiary files a petition.
- Step 2** Petition is filed in the circuit court in which the trustees or personal representative is qualified; OR if there is no such qualification, in the jurisdiction in which the trustee or personal representative resides.  
**Comments:** If the trustee is a corporate trustee and there is no resident beneficiary, petition is filed in the circuit court where the trust account is administered.
- Step 3** Clerk receipts for money collected, indexes and docket case.
- Step 4** Clerk issues all notices, etc. as directed.
- Step 5** The Court holds a hearing. The statute details what evidence and rules apply.
- Step 6** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.  
**Comments:** Recording may be accomplished by microphotographic or electronic recording process per [Va. Code § 17.1-240](#). Indexing may be maintained on computer, microfilm or microfiche per [Va. Code § 17.1-249](#).

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code §§ 64.2-700](#) through [64.2-808](#)

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

### Reformation of Trusts

Petition filed by a trustee, personal representative or beneficiary to reform a trust in any manner. Examples: Consolidation, Division or Termination. This is applicable to all trusts, whether *inter vivos* or testamentary.

#### Document Type

Petition

#### Filing Type

REFT

#### Procedures

- Step 1** Trustee, personal representative or beneficiary files a petition.
- Step 2** Petition is filed in the circuit court in which the trustees or personal representative is qualified; OR if there is no such qualification, in the jurisdiction in which the trustee or personal representative resides.  
**Comments:** If the trustee is a corporate trustee and there is no resident beneficiary, petition is filed in the circuit court where the trust account is administered.
- Step 3** Clerk receipts for money collected, indexes and docket case.
- Step 4** Clerk issues all notices, etc. as directed.
- Step 5** The Court holds a hearing. The statute details what evidence and rules apply.
- Step 6** Clerk records and indexes orders in the Civil Order Book unless

otherwise provided by law.

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

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code §§ 64.2-700](#) through [64.2-808](#)

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

### Creation of Trusts

Document Type

Petition

Filing Type

TRST

Procedures

- Step 1** Interested party files a petition asking circuit court to create and establish a trust with such trustee and terms as the court determines.
- Step 2** Clerk receipts for money collected, indexes and docket case.
- Step 3** Clerk issues all notices, etc. as directed.
- Step 4** In an order creating and establishing the trust, the court shall determine whether the trustee shall have a duty to qualify in the clerk's office; post bond, with or without surety; or file an inventory and annual accounting with the commissioner of accounts as would apply to a testamentary trustee.
- Step 5** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by clerk's office.

Reference(s)

[Va. Code § 64.2-719](#)

Attorney General Opinion to Barry, dated 2/2/85 (1984-85 page 135); *clerk must charge clerk's fee and writ tax upon filing of third-party motion for judgment. Clerk should not charge writ tax upon filing of counterclaim*  
 Attorney General Opinion to Stuart, dated 6/25/73 (72-73 page 455); *Writ tax - applies to third-party motion for judgment. Clerks - fees - chargeable for filing third-party motion for judgment.*

FEES	
TYPE CHARGES	CODE REFERENCE
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>

FEES	
TYPE CHARGES	CODE REFERENCE
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>

## Unlawful Entry And Detainer

An action to recover possession of lands which have been taken from the owner by forcible or unlawful entry, or detained by the holdover tenant whose right to possess same has expired or been terminated. This action may be commenced in either Circuit or General District Court.

The decision of the district court may be appealed to the circuit court upon posting an appeal bond and bond for rents and damages as provided in [Va. Code § 8.01-129](#) and payment of the writ tax.

**Note:** For Expungement of Unlawful Detainers procedures, see Chapter 8 of this manual.

### Document Type

Complaint

### Filing Type

UD – Circuit Court

GAUD – General District Court Appeal

### Procedures

**Step 1** Clerk receipts money, indexes and docket case and issues process as directed.

**Comments:** No investment necessary. [Va. Code § 8.01-600 \(A\)\(B\)\(2\)](#) may apply.

**Step 2** Upon application of either party, a trial by jury shall be had.

**Step 3** Hearing held. Clerk may wish to provide pro se defendant with District Court Form DC-437, [NOTICE OF CHANGE OF ADDRESS](#). [VIRGINIA CODE § 16.1-88.03](#) requires parties that may represent themselves in certain civil proceedings to promptly notify the clerk of court and any adverse parties of address changes.

**Comments:** If tenant seeks to obtain a continuance of the action, the court shall, upon request of the landlord, order the

tenant to pay an amount equal to the rent that is due as of the initial court date into the court escrow account prior to granting the tenant's request for a delayed court date. However, if the tenant asserts a good faith defense and the court so finds, the court shall not require the rent to be escrowed. If the landlord requests a continuance, or to set the case for a contested trial, the court shall not require the rent to be escrowed. [Va. Code § 55.1-1242](#)

Where the court awards a plaintiff judgment for unlawful detainer or entry, the plaintiff may choose to receive a judgment for possession and the plaintiff may continue the case for up to 120 days to establish final rent, damages and other amounts as provided under the lease or Virginia law. [Va. Code § 8.01-128](#).

A tenant, or any third party on behalf of a tenant, may pay the landlord or the landlord's attorney or pay into court all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement and as provided by law, (iv) reasonable attorney fees as contracted for in the rental agreement and as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed, unless there are bases for the entry of an order of possession other than nonpayment of rent stated in the unlawful detainer action filed by the landlord. [Va. Code § 55.1-1250\(C\)](#).

If such payment has not been made as of the return date for the unlawful detainer, the tenant, or any third party on behalf of the tenant, may pay to the landlord, the landlord's attorney, or the court all amounts claimed on the summons in unlawful detainer, including current rent, damages, late charges, costs of court, any civil recovery, attorney fees, and sheriff fees, including the sheriff fees for service of the writ of eviction if payment is made after issuance of the writ, no less than 48 hours before the date and time scheduled by the officer to whom the writ of eviction has been delivered to be executed. Upon receipt of such payment, the landlord, or the landlord's attorney or managing agent, shall promptly notify the officer to

whom the writ of eviction has been delivered to be executed that the execution of the writ of eviction shall be canceled. If the landlord has actual knowledge that the tenant has made such payment and willfully fails to provide such notification, such act may be deemed to be a violation of [§ 55.1-1243.1](#). In addition, the landlord shall transmit to the court a notice of satisfaction of any money judgment in accordance with [§ 8.01-454](#). [Va. Code § 55.1-1250\(D\)](#)

**Note:** Upon perfection of an appeal, the defendant shall pay the rental amount as contracted for in the rental agreement to the plaintiff on or before the fifth day of each month. If any such rental payment is not so paid, upon written motion of the plaintiff with a copy of such written motion mailed by regular mail to the tenant, the judge of the circuit court shall, without hearing, enter judgment for the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of that date, subtracting any payments made by such tenant as reflected in the court accounts and on a written affidavit submitted by the plaintiff, plaintiff's managing agent, or plaintiff's attorney with a copy of such affidavit mailed by regular mail to the tenant, and an order of possession without further hearings or proceedings in such court. [Va. Code § 16.1-107](#).

**Step 4** Clerk records and indexes orders in the Civil Order Book unless otherwise provided by law.

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

**Step 5** The court may enter an Order of Possession for personal property.

**Comments:** An Order of possession is valid for 180 days from the date entered by the court.

The court may enter a Writ of Eviction for possession of real property.

**Comments:** A Writ of Eviction must be issued within the 180-



day period of the Order of Possession. Execution of the writ should occur within 15 days from the date the Writ of Eviction is received by the sheriff, or as soon as practicable thereafter, but in no event later than 30 days from the date the writ is issued. If the writ is not executed within 30 days from the date of issuance, then the writ if will be vacated as a matter of law.

[Va. Code §§ 8.01-470, 8.01-471](#)

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by clerk’s office.  
DC-437, [NOTICE OF CHANGE OF ADDRESS](#)

Reference(s)

[Va. Code §§ 8.01-124, 8.01-125, 8.01-126, 8.01-128, 8.01-129, 8.01-130, 8.01-470, 8.01-471](#)  
[Va. Code 16.1-107](#)  
[Va. Code §§ 55.1-1242, 55.1-1423, 55.1-1250](#)

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

**Violation of Election Laws**

The Attorney General may commence civil action when there is reasonable cause to believe that a violation of an election law has occurred and the rights of any voter or group of voters have been affected by the violation. Civil penalties assessed as a result of such action are payable to the Voter Education and Outreach Fund. This action may additionally award relief to the aggrieved party as the court deems appropriate, including compensatory damages and punitive damages.

As of September 1, 2021, localities are required to provide voting or election materials in the language of a minority group when a specific percentage of the population, as established in [Va. Code § 24.2-128](#), are unable to speak or understand English adequately enough to participate in the electoral process. The Attorney General, or any qualified voter who is a member of a language minority group for whom a covered locality is required to provide voting or election materials in such language, may institute a cause of action in the circuit court of the covered locality to compel the provision of the voting or election materials in the language of the applicable minority group.

Actions may also be initiated by an individual for preventative relief, including an application for a permanent or temporary injunction, restraining order or other order, upon a claim of voter intimidation, threat or coercion by another person, and/or when false communication was provided intended to impede the voter of their right to vote.

Document Type

Complaint

Filing Type

VEL

Procedures

**Step 1**

Clerk receives Complaint, indexes and docketing case, and issues requested process.

**Note:** If the action is initiated by the Attorney General, no Clerks' Fees are charged, only Sheriff's Fees unless waived by Sheriff. [Va. Code § 17.1-266](#). If an action is commenced by an individual, filing/service fees apply.

**Step 2**

Clerk collects applicable fees, opens file and docketing the case, and issues any requested process.

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

**Step 3**

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

**Comments:** [Rules 3:5 and 3:6](#). Clerk may request written

statement from plaintiff if service is not requested at the time of filing.

**Step 4** If a civil penalty is awarded, See [FAS Manual](#) for setting up accounts receivable.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by clerk's office.

Reference(s)

[Va. Code § 24.2-104.1](#)  
[Va. Code §§ 24.2-125](#), et seq.  
[Va. Code §§ 24.2-1005](#), [24.2-1005.1](#)

<b>FEEES</b>	
<b>TYPE CHARGES</b>	<b>CODE REFERENCE</b>
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>

## **Wills**

### **Construe Will**

The entire subject of probate of wills is controlled by statute. Courts in exercise of probate jurisdiction are limited to deciding question whether or not paper was will of decedent. Jurisdiction does not extend to ascertainment and enforcement of rights of property. Probate court cannot refuse probate if any part of will is valid. An appeal of right from the Clerk's order of probate of the clerk is allowed pursuant to [Va. Code § 64.2-445](#).

A Complaint (Declaratory Judgment action) requests the circuit court to determine questions involving the interpretation and construction of the will or trust. An actual justifiable controversy must exist in order to file for this type of relief. In addition to the fiduciary, a party in interest may file this type of relief.

The Complaint (Bill in Equity action), often called a “bill of conformity”, is filed when doubts arise and the fiduciary wants guidance and protection from the court. Examples of reasons for filing are: (1) to identify beneficiaries of the estate; (2) to authorize special fiduciary investments, (3) to aid in the sale of real estate authorized by the will or trust, or (5) to construe fiduciary powers.

#### Document Type

Complaint (Declaratory Judgment) or Complaint (Bill In Equity)

#### Filing Type

CNST

#### Procedures

**Step 1** Contestant, Petitioner or Movant files Complaint (Declaratory Judgment action) or Complaint (Bill in Equity action) with court with enough copies to be served upon the defendant.

**Step 2** Clerk assigns case number, indexes and docket the case.

**Comments:** See “Case Initiation” chapter for respective procedures. If action or suit involves fiduciaries, style of case: “(Name of fiduciary), (type of fiduciary relationship), (Name of the subject of the fiduciary relationship).”

**Step 3** Clerk receipts for money collected.

**Step 4** Clerk issues process as directed.

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

**Comments:** Clerk needs to pay special attention to final order for specific actions requested by the court.

**Step 6** Additional duties may be imposed by court order.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

- CC-1400, SUMMONS – CIVIL ACTION
- CC-1405, PROOF OF SERVICE
- CC-1406, [ACCEPTANCE/WAIVER OF SERVICE OF PROCESS AND WAIVER OF FUTURE SERVICE OF PROCESS AND NOTICE](#)
- CC-1407, [SERVICE OTHER THAN BY VIRGINIA SHERIFF](#)
- CC-1418, [AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH](#)
- CC-1434, [ORDER OF PUBLICATION](#)

Reference(s)

[Va. Code §§ 8.01-6.3, 8.01-184, 64.2-445](#)

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

**Elective Share and Augmented Estate**

The Elective Share is a statutory allowance to the surviving spouse who claims a share of the decedent's "augmented estate". The filing of the initial pleading and subsequent proceedings will follow general equity practice. Refer to Harrison on Wills and Administration, 4<sup>th</sup> Ed., Chapter 2A, "The Elective Share", § 2A.05 (3).

Document Type

Complaint

Filing Type

COM

Procedures

- Step 1** Clerk receives Petition or Complaint.
- Step 2** Clerk receipts for money collected, assigns a case number and indexes and docket the case. *See “Case Initiation” chapter for respective procedures.*
- Step 3** Clerk issues process as directed.
- Step 4** Clerk certifies copies of any Orders of court for the parties upon request or upon direction of the court.

**Comment:** January 1, 2017 and after: An order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk’s office.

Reference(s)

[Va. Code §§ 64.2-306](#), [64.2-308.3](#), [64.2-308.12](#)

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

**Establish/Impeach/Reform**

Action to establish a will which has been offered for probate either before the clerk or

court and rejected or an action to impeach a will that has been offered for probate and accepted. Filed by any party with an interest or who was not a party to the prior probate proceeding.

May also be an action to reform the terms of a decedent's will or codicil to conform to the decedent's intention if there is alleged to be a mistake in the terms of the will or to modify the terms to achieve the decedent's tax objectives.

#### Document Type

Complaint or Petition

#### Filing Type

WILL

#### Procedures

**Step 1** Clerk receives Complaint or Petition.

**Step 2** Clerk assigns case number, indexes and docket the case. See "Case Initiation" chapter for respective procedures.

**Step 3** Clerk receipts for money collected.

**Step 4** Clerk issues process as directed.

**Comments:** If the court order changes any information previously recorded in the Will Book, those changes must be made in the Will Book also.

**Comments:** If petition is filed to reform the will to correct mistakes or achieve decedent's tax objectives, the proceedings are to be filed within one year from the date of the decedent's death and all interested parties are to be made parties to the action.

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

**Step 6** Additional duties may be imposed by court order.

**Step 7** If a complaint is filed to impeach or establish the will, the court shall order a trial by jury pursuant to [Va. Code § 64.2-448](#) to resolve the issues presented.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating documents not provided by clerk's office. Circuit Court Forms series 1400 is available for use.

Reference(s)

[Va. Code §§ 64.2-448, 64.2-449](#)  
[Va. Code § 64.2-404.1](#)

<b>Fees</b>	
<b>Type Charges</b>	<b>Code Reference</b>
Clerk's Fee	<a href="#">Va. Code § 17.1-275 A(26)</a>
Courts Technology Fund	<a href="#">Va. Code § 17.1-275 A(26)</a>
CHMF	<a href="#">Va. Code § 17.1-281</a>
Law Library	<a href="#">Va. Code § 42.1-70</a>
CHCF*	<a href="#">Va. Code § 17.1-281</a>
Legal Aid	<a href="#">Va. Code § 17.1-278</a>
Technology Trust Fund	<a href="#">Va. Code § 17.1-279</a>
Writ Tax	<a href="#">Va. Code § 58.1-1727</a>
<i>* Not assessed if the amount of the civil action is \$500 or less</i>	

**Workers' Compensation Lien – Ascertain Amount**

An employer may, at any time prior to the verdict in a workers' compensation action where the injured employee sues a third party, petition the Court to set the amount of compensation and expenses incurred by the employer under the provisions of the Virginia Workers' Compensation Act. This procedure permits the employer, who has already paid stated benefits to the injured employee as a result of the negligence of a third party, to join in the employee's action for the purpose of recovering the amount they have already paid to their employee.

Document Type

Petition

Filing Type

FAS = WORK, changes to PET when transferring to CCMS

Procedures

**Step 1** Plaintiff files Petition with sufficient copies to be served on defendant(s). Rule 3:4.



**Step 2** Clerk collects writ tax and clerk's fee and issues receipt.

**Comments:** Since a monetary award, if any, is to be established by the Court, a \$5 writ tax and \$50 clerk's fee are assessed. Also assess Legal Aid and TTF fees and, if applicable, Law Library and CHMF fees.

**Step 3** Clerk assigns civil case number, indexes and docket the case. See "Case Initiation" chapter, for procedures.

**Step 4** Clerk issues service and records in process book/automated system. [Va. Code § 17.1-215](#).

**Step 5** Clerk receives sheriff's return(s) and records in process book/automated system.

**Step 6** Clerk indexes and microfilms/scans all orders and provides copies of any order to the parties as directed by the court. No charge for providing attested copies of a final order to the parties. [Va. Code § 17.1-275 A\(8\)](#).

#### Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

#### Form(s)

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

CC-1405, PROOF OF SERVICE

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

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

#### Reference(s)

[Va. Code §§ 65.2-310, 65.2-311](#) (Protection of employer when employee sues third party)

[Va. Code § 8.01-446](#) (Clerks to keep judgment dockets; what judgments to be docketed therein)

Rules of the Supreme Court of Virginia – Rules 3:1, 3:2, 3:4, 3:5

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

## Workers' Compensation Commission Referral

In any civil action, where a party, who is a participating hospital or physician as defined in [Va. Code § 38.2-5001](#), moves to refer a cause of action to the [Workers' Compensation Commission](#) for the purposes of determining whether the cause of action satisfies the requirements of the Virginia Birth-Related Neurological Injury Compensation Act ([Va. Code § 38.2-5000 et seq.](#))

### Document Type

Motion

### Filing Type

N/A – Filed in an existing pending case.

### Procedures

**Step 1** A motion is filed in the circuit court. Filed where the civil case is pending. No additional fees or costs are assessable.

**Step 2** Court refers the case to the [Workers' Compensation Commission](#).

**Comments:** The court will probably enter an order documenting the referral. The court must stay all proceedings pending an award and notification by the Commission of its disposition.

**Step 3** Upon entry of the order of referral by the court, the clerk shall file with the Workers' Compensation Commission, within 30 days, a copy of the motion for judgment and the

responsive pleadings of all the parties to the action. The clerk shall copy all counsel of record in the civil action on the transmittal letter accompanying the materials being filed with the Workers' Compensation Commission.

The clerk sends the motion to refer with a copy of the complaint to the Workers' Compensation Commission at:  
Clerk, Workers' Compensation Commission  
333 E. Franklin Street  
Richmond, VA 23219

**Note:** The original file is retained in the circuit court.

**Step 4** The Commission shall communicate its decision to the referring circuit court "in due course." **Note:** Clerk should give to judge when received to ask for direction.

**Comments:** The Commission shall hold a hearing no sooner than 15 and no later than 90 days after the date of the filing of the petition. [Va. Code § 38.2-5006](#).

**Step 5** Clerk records and indexes any orders in the Civil Order Book.

**Comments:** An award by the Commission may terminate the action in the circuit court. In some instances, the action may continue until the claims of all parties are determined.

Form(s)

Initiating forms not provided by clerk's office.

Reference(s)

[Va. Code § 8.01-273.1](#) and [Va. Code § 38.2-5003](#)

## Writ of Certiorari

Circuit courts have jurisdiction to issue writs of certiorari to all inferior tribunals created or existing under the laws of the Commonwealth. In response to a Writ of Certiorari from circuit court, the record of the proceedings of the inferior tribunal is transmitted to the circuit court. The exercise of such jurisdiction is mandatory in some causes (i.e. appeal of decision of Board of Zoning Appeals) and discretionary in others (i.e. petition to transfer record of case dismissed for want of probable cause in general or juvenile and domestic relations district court).

A proceeding by Writ of Certiorari is not an original action; rather, it is a procedure by which the

circuit court exercises authority over the matter in controversy.

Document Type

Petition/Motion/Request

Filing Type

WC

Procedures

**Step 1** Upon petition, motion or request to the circuit court for entry of a writ, the court shall/may enter a Writ of Certiorari directing the inferior tribunal to produce the record in circuit court.

**Step 2** If the writ is granted, the clerk serves, mails or delivers a copy of the writ to the inferior tribunal, and receives the record. If the matter is already before the court, the record should be marked received. If not, the clerk may need to docket the case, depending on the type of action being appealed. (See Appeals, this manual).

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

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

Fees/Taxes/Other Monies Assessed

None

Form(s)

Initiating documents not provided by clerk's office.

Reference(s)

[Va. Code § 8.01-261 \(5\)](#)  
[Va. Code §15.2-1507](#)  
[Va. Code §15.2-2314](#)  
[Va. Code § 17.1-513](#)  
[Va. Code § 22.1-314](#)  
[Va. Code § 51.1-124.13](#)

## Writ of Coram Nobis/Writ of Coram Vobis

The writ of error *coram vobis*, is an ancient writ of the common law. It is recognized in Virginia by case law: *Neighbors v. Virginia* (2007).

The principal function of the writ is to afford to the court in which an action was tried an opportunity to correct its own record with reference to a vital fact not known when the judgment was rendered, and which could not have been presented by a motion for a new trial, appeal or other existing statutory proceeding.

It lies for an error of fact not apparent on the record, not attributable to the applicant's negligence, and which if known by the court would have prevented rendition of the judgment. It does not lie for newly-discovered evidence or newly-arising facts, or facts adjudicated on the trial. It is not available where advantage could have been taken of the alleged error at the trial, as where the facts complained of were known before or at the trial, or where at the trial the accused or their attorney knew of the existence of such facts but failed to present them. An example of when it might be used includes prosecutorial misconduct hiding exculpatory evidence from the defendant. A writ of *coram nobis* is issued once the petitioner is no longer in custody. Its legal effect is to vacate the underlying conviction. A petition for writ of error *coram nobis* is brought to the court that convicted and sentenced the defendant.

[Virginia Code Section 19.2-303](#) (the authority of the Court to modify its own orders), must be considered in light of the filing of either of these types of writs.

It is recommended that a Writ of *Coram Nobis* or a Writ of *Coram Vobis* be filed in the civil division, with a full set of fees, including service fees, as it does appear that the Commonwealth Attorney needs to be served. If the defendant is granted indigent status, no fees would be collected.

### Document Type

Writ

### Filing Type

FAS = WCN, changes to PET when transferring to CCMS

### Procedures

- Step 1** Clerk receives Writ.
- Step 2** Clerk assigns case number, indexes and docket the case. See "Case Initiation" chapter for respective procedures.

- Step 3** Clerk receipts for money collected.
- Step 4** Clerk issues process as directed.
- Step 5** Additional duties may be imposed by court order.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

Initiating forms not provided by clerk's office.

Reference(s)

Neighbors v. Virginia, 274 Va. 503, 650 S.E.2d 514 (2007)

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

**Writ of Habeas Corpus Ad Subjiciendum**

See, Habeas Corpus Ad Subjiciendum Chapter 9 of this manual.

**Writ of Vacatur**

A Writ of Vacatur provides for Circuit Court to order relief for victims of commercial sex trafficking to have certain convictions vacated, whether convicted or adjudicated delinquent, and the related police and court records expunged for such convictions.

Type

Petition

Filing Type

WV

Procedures

**Step 1** Petition is filed in the locality the conviction(s) occurred. Multiple offenses may be included on the same petition for offenses that occurred in the same city or county.

**Note:** A complete set of fingerprints must be filed at the time of filing the petition. If the petitioner has previously filed a Writ of Vacatur, the petition must also include the disposition of the prior filing.

**Note:** If the petitioner fails to submit a completed form, the court may allow the petitioner to amend the petition to correct any deficiency.

**Step 2** Clerk receipts the money, indexes and docket case, and completes the checklist provided in the bottom portion of the petition. A copy of the petition is provided to the petitioner.

**Note:** The Commonwealth is indexed as the party defendant.

**Step 3** Petitioner provides a copy of the petition, delivery or first-class mail, to the attorney for the Commonwealth.

**Note:** The attorney for the Commonwealth has 30 days to file an objection or answer or may give written notice that there is no objection. The court may allow the Commonwealth up to an additional 30 days to file a response.

**Step 4** Petition is sent to the court for review and determination if a hearing is required.

**Note:** If the attorney for the Commonwealth of the county or city in which the petition is filed (i) gives written notice to the court that they do not object to the petition and (ii) stipulates in such written notice that the petitioner was convicted or adjudicated delinquent of a qualifying offense and that the petitioner committed the qualifying offense as a direct result of being a victim of sex trafficking, the circuit court may grant the

writ and vacate the qualifying offense without conducting a hearing.

If the attorney for the Commonwealth of the county or city in which the petition is filed objects to the petition or does not file an answer, the court shall conduct a hearing on the petition after reasonable notice has been provided to both the petitioner and the attorney for the Commonwealth. The attorney for the Commonwealth shall make reasonable efforts to notify any victim, as defined in § 19.2-11.01, of any qualifying offense of such hearing. The circuit court shall not be required to conduct a hearing if it has previously dismissed a petition for vacatur from the same petitioner for the same qualifying offense.

- Step 5** If the Writ of Vacatur is granted, a copy of the writ is provided to the petitioner and a copy of the writ is filed in each criminal case in which the conviction was vacated. Criminal case information is not sealed and remains available until expungement.

**Note:** If the conviction/adjudication of delinquency that has been vacated was not an appealed offense from a district court, the Virginia State Police will provide notification to the district court of entry of the Writ of Vacatur and no additional notification is required by the Clerk.

- Step 6** Filing fees for the petition are refunded to the petitioner.

- Step 7** Upon request, petitioner is refunded all fines, costs, forfeitures and penalties paid in relation to the offense that was vacated. Restitution is not refundable by the Clerk.

**Note:** If the clerk of the court where the conviction was entered is no longer in possession of any records detailing any fines, costs, forfeitures, and penalties paid by the petitioner for a qualifying offense that was vacated, a refund shall be provided only upon a showing by the petitioner of the amount of fines, costs, forfeitures, and penalties paid.

- Step 8** After 30 days, and no appeal is made to the Supreme Court, or the Supreme Court refuses or denies the appeal, or upholds the decision of the circuit court, an order of expungement for the vacated offense(s) is entered.



See [Expungement](#) procedures, this manual.

**Note:** Neither a petition nor fees are required for the expungement of the vacated convictions.

Clerk sends a copy of the Writ of Vacatur, the order of expungement, and the complete set of petitioner's fingerprints to the Department of State Police.

Department of State Police  
Central Criminal Records Exchange, Expungement Section  
Post Office Box 27472  
Richmond, Virginia 23261-7472

**Note:** The Writ of Vacatur is not expunged but is sealed upon entry and maintained in the court file. Access to the writ may only be obtained by court order. A written motion must be filed stating the reasons why such access is being requested. The petitioner may also file a written motion for disclosure. Online case information remains accessible by the public, and images and remarks will be masked.

**Comment:** If multiple offenses are included in the petition and all are not granted, the writ is still to be sealed and only accessible by court order.

**Note:** If the Writ of Vacatur is denied, fingerprints may be returned to the petitioner and are not submitted to the Department of State Police.

Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

Form(s)

CC-1475, PETITION FOR WRIT OF VACATUR  
CC-1476, WRIT OF VACATUR  
CC-1474, EXPUNGEMENT ORDER

Reference(s)

Va. Code § 19.2-327.15, *et seq.*

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

## Wrongful Death/Personal Injury

A legal cause of action for personal injury or death by wrongful act, originating in the Commonwealth of Virginia, against or on behalf of the estate of a resident or nonresident, for whose estate an executor has not been appointed.

An action for death by wrongful act is usually filed by the estate of a decedent against someone who is deemed responsible for causing their death. The claim for damages is meant to compensate the family for their losses due to the death of this person.

A “survival action” is filed by the estate of the deceased for purposes of compensating the estate for losses and expenses incurred by the decedent from the time of their injury to the time of death. In this action, no one is being sued for causing the death of the decedent. This case usually originates as a claim for personal injury during the lifetime of the decedent. If they dies of sickness or injury unrelated to the claim, the action “survives” their death.

General District courts have exclusive jurisdiction for actions involving personal injury and wrongful death when the amount of such claim does not exceed \$4,500, exclusive of interest and any attorney fees, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds \$4,500 but does not exceed \$50,000, exclusive of interest and any attorney fees.

Type

Complaint

Filing Type

WD

## Procedures

- Step 1** Clerk is requested to qualify a personal representative of the estate of the deceased person, for purposes of filing an action for wrongful death or personal injury. Refer to procedures in the Probate and Estate Administration Manual.
- Step 2** Clerk receipts the money, indexes and docket case.
- Step 3** See, generally, the section titled “Complaint” in this Manual for further procedures.

## Fees/Taxes/Other Monies Assessed

[Circuit Court Civil Filing Fee Calculation](#)

## Form(s)

Initiating forms not provided by clerk's office.

## Reference(s)

[Va. Code § 8.01-50](#) *et seq.*

[Va. Code § 64.2-454](#)

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

# Appendix

## Appendix A - Worksheet for Filing Civil Actions

[Cover Sheet For Filing Civil Actions CC-1416](#)

[Instructions](#)

## Appendix B - Miscellaneous Bond Forms

See also DC and CC series Bond Forms

Performance Bond

PERFORMANCE BOND

Va. Code §§ 16.1-278.16; 20-114

Case No. ....

[ ] Juvenile and Domestic Relations District Court
[ ] Circuit Court

CITY/COUNTY

v./ In re .....

DATE OF ORDER, JUDGMENT OR DECREE

Type of performance to be secured by bond:

[ ] custody [ ] visitation [ ] support [ ] other .....

Name(s) and address(es) of the principal(s): .....

Name(s) and address(es) of the surety and, if executed by someone authorized to act for the surety, the name(s) and address(es) and title (attorney-in-fact, etc.) of such authorized person.

The undersigned each hereby acknowledge himself, his heirs, and his assigns indebted jointly and severally to ..... in the sum of \$..... that is secured by

[ ] Cash [OR] [ ] Surety (and if property is used to establish the solvency of the surety, the undersigned, having demonstrated the nature of their interest in the property to the officer taking this bond, also make oath that the equity of the undersigned in the property equals or exceeds the amount of this bond). The undersigned each waives all benefit of the homestead exemptions as to the debt of this bond.

The condition of this debt shall be that ..... shall perform all of the terms and conditions of an order, decree or judgment entered by this court, which is described above and which is incorporated by reference in this bond, and that such performance shall be made as prescribed in such order, decree or judgment without variance from its terms. If this condition is faithfully filled, this debt is to be void; otherwise, it is to remain in full force and effect until satisfied, declared void, or released either by a court of competent jurisdiction or by a release executed by all persons for whose benefit the bond is posted.

PRINCIPAL (seal) SURETY (seal)
PRINCIPAL (seal) SURETY (seal)
SURETY (seal)

Commonwealth of \_\_\_\_\_, [ ] City [ ] County of \_\_\_\_\_

Acknowledged, subscribed and sworn to/acknowledged before me this day by the above-named persons.

DATE [ ] CLERK [ ] JUDGE [ ] NOTARY PUBLIC My Commission Expires: .....

Court Use Only:

DATE RECEIVED RECEIPT NO. (IF CASH DEPOSITED) DATE DISBURSED/DISCHARGED

Accepted by: .....

FORM DC-660 (MASTER) REVISED 9/02





**Injunction Bond**

**INJUNCTION BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we \_\_\_\_\_, "Obligor", and \_\_\_\_\_, "Surety", are held and firmly bound to \_\_\_\_\_, "Obligee", in the sum of \_\_\_\_\_ Dollars, to the payment whereof we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, by these presents. We hereby waive the benefit of our homestead exemptions as to this obligation.

This debt is:  UNSECURED  
 SECURED BY:  
 CASH  PROPERTY  CORPORATE SURETY  
 OTHER

**THE CONDITION OF THE ABOVE OBLIGATION IS SUCH:**

That whereas the Obligor, \_\_\_\_\_, in the Chancery cause styled \_\_\_\_\_ v. \_\_\_\_\_, Case Number \_\_\_\_\_, on \_\_\_\_\_ obtained from this Court an injunction to enjoin and restrain \_\_\_\_\_ until the further Order of this Court; and said Court having required bond in the above penalty,  with  without surety, conditioned to either pay the judgment or decree of this Court, or to pay the value of any property levied upon, or to have the property forthcoming to abide the future Order of this Court, and in either case, to pay all such costs as may be awarded against the party obtaining the injunction, and all such damages as may be incurred, in case the injunction shall be dissolved, and with further condition, if a forthcoming bond has been given under such judgment or decree, to indemnify and save harmless the sureties in such forthcoming bond and their representatives against all loss or damage in consequence of such suretyship, or, if the injunction be not to proceedings on a judgment or decree, with such condition as the Court or judge may prescribe.

If these conditions are faithfully fulfilled, this obligation shall be void; otherwise it shall remain in full force and effect.

In witness whereof, the undersigned have hereunto set their hands and seals, this day of \_\_\_\_\_, 20\_\_\_\_\_.

.....(SEAL) .....(SEAL)

.....(SEAL) .....(SEAL)

.....(SEAL) .....(SEAL)

Before the Clerk of the Circuit Court of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

The foregoing BOND was subscribed, sworn to and acknowledged by \_\_\_\_\_  
  
the obligors therein, and ordered to be recorded as provided by law.

....., Clerk

Special Commissioner's Bond

SPECIAL COMMISSIONER'S BOND

KNOW ALL MEN BY THESE PRESENTS, that the "OBLIGOR(S)", is(are) held and firmly bound to the COMMONWEALTH OF VIRGINIA, in the sum of Dollars, to the payment whereof I(we) bind myself(ourselves), our heirs, personal representatives, successors and assigns, jointly and severally, by these presents, hereby waiving the benefit of any homestead exemptions as to this obligation.

This debt is: [ ] UNSECURED [ ] SECURED BY: [ ] CASH [ ] PROPERTY [ ] CORPORATE SURETY [ ] OTHER

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH:

That the obligor shall faithfully discharge all duties as Special Commissioner or Receiver to collect and receive the proceeds of sale or rent, by Order of Court, entered on the day of , 20 , in the action styled v. , Case Number , in the penalty prescribed by the Court in said Order, with approved security or surety, conditioned upon the faithful discharge of his duties as such commissioner or receiver, and to account for and pay over as the court may direct all money that may come into his hands as such commissioner or receiver.

If these conditions are faithfully fulfilled, this obligation shall be void; otherwise it shall remain in full force and effect.

In witness whereof, the undersigned have hereunto set their hands and seals, this day of , 20 .

.....(SEAL) .....(SEAL)
.....(SEAL) .....(SEAL)
.....(SEAL) .....(SEAL)

Before the Clerk of the Circuit Court of on the day of , 20 .

The foregoing BOND was subscribed, sworn to and acknowledged by

the obligors therein, and ordered to be recorded as provided by law.

....., Clerk

Special Commissioner's Bond – Clerk's Certificate and Notice

SPECIAL COMMISSIONER'S BOND

Clerk's Certificate

VIRGINIA: In the Circuit Court for the  City  County of

, Plaintiff,

vs.

, Defendant,

I, \_\_\_\_\_, Clerk of said Court, do certify, pursuant to Va. Code § 8.01-99, that the bond required of the Special Commissioner by the Order rendered in said action on the day of \_\_\_\_\_, 20\_\_\_\_, has been duly given, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_, Clerk

Clerk's Notice

VIRGINIA: In the Circuit Court for the  City  County of

, Plaintiff,

vs.

, Defendant,

I, \_\_\_\_\_, Clerk of said Court, pursuant to Va. Code § 8.01-103, do certify that \_\_\_\_\_ has been duly appointed as Special Commissioner/Receiver in the above-described case, and has posted the bond required by the Order of this Court, signed on the day of \_\_\_\_\_, 20\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_, Clerk

**Forthcoming Bond [Relief from Writ of Fieri Facias]**

**FORTHCOMING BOND [Relief from Writ of Fieri Facias]**

**KNOW ALL MEN BY THESE PRESENTS**, that \_\_\_\_\_ the "OBLIGOR(S)", is(are) held and firmly bound to the **COMMONWEALTH OF VIRGINIA**, in the sum of

\_\_\_\_\_ Dollars, to the payment whereof I(we) bind ourself(ourselves), our heirs, personal representatives, successors and assigns, jointly and severally, by these presents, hereby waiving the benefit of any homestead exemptions as to this obligation.

This debt is:  UNSECURED  
 SECURED BY:  
 CASH  PROPERTY  CORPORATE SURETY  
 OTHER

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH:

That whereas \_\_\_\_\_, Obligee, has sued out a writ of fieri facias against the goods and chattels of \_\_\_\_\_, Obligor, upon a judgment obtained on from the \_\_\_\_\_, which writ, with the legal costs attending the same, amounts to the sum of

\$ \_\_\_\_\_ And whereas the Sheriff of \_\_\_\_\_ has by virtue of said writ taken the following property belonging to the Obligor to satisfy the same:

And being desirous of keeping said property in \_\_\_\_\_ possession until the date of sale thereof, the Obligor has tendered the Surety as security for the forthcoming and delivery thereof on the day and at the place of sale.

The above bound shall deliver the aforesaid property to the Sheriff of \_\_\_\_\_ on \_\_\_\_\_, at \_\_\_\_\_, the day and place of sale.

If these conditions are faithfully fulfilled, this obligation shall be void; otherwise it shall remain in full force and effect.

In witness whereof, the undersigned have hereunto set their hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

.....(SEAL) .....(SEAL)

.....(SEAL) .....(SEAL)

.....(SEAL) .....(SEAL)

Before the Clerk of the Circuit Court of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

The foregoing BOND was subscribed, sworn to and acknowledged by \_\_\_\_\_ the obligors therein, and ordered to be recorded as provided by law.

....., Clerk



**Forthcoming Bond [Third-Party Claim to Property Levied On]**

**FORTHCOMING BOND [Third-Party Claim to Property Levied On]**

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_ the "OBLIGOR(S)", is(are) held and firmly bound to the COMMONWEALTH OF VIRGINIA, in the sum of \_\_\_\_\_ Dollars, to the payment whereof I(we) bind myself(ourselves), our heirs, personal representatives, successors and assigns, jointly and severally, by these presents, hereby waiving the benefit of any homestead exemptions as to this obligation.

This debt is:  UNSECURED  
 SECURED BY:  
 CASH  PROPERTY  CORPORATE SURETY  
 OTHER

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH:

That whereas the Sheriff of \_\_\_\_\_ has by virtue of a writ of fieri facias sued out by the obligee against \_\_\_\_\_, the debtor, upon a judgment obtained on \_\_\_\_\_ from the \_\_\_\_\_, against said debtor, which writ, with the legal costs attending the same, amounts to the sum of \$ \_\_\_\_\_. And whereas the Sheriff of \_\_\_\_\_ has by virtue of said writ has taken the following property in the possession of said debtor to satisfy the same to-wit:

And whereas the obligor has initiated action under Chapter 12 of Title 8.01 of the Code of Virginia to suspend the sale of said property pending determination of the claims of the obligor to said property. And being desirous that said property be required to remain in such possession as it was immediately prior to said levy pending determination by the Court or until the date of sale thereof, the obligor has tendered the Surety as security for the forthcoming and delivery thereof on the day and at the place of sale. If required by the Court, the obligor shall deliver the aforesaid property to the Sheriff of \_\_\_\_\_ on \_\_\_\_\_, at \_\_\_\_\_, the day and place of sale.

If these conditions are faithfully fulfilled, this obligation shall be void; otherwise it shall remain in full force and effect.

In witness whereof, the undersigned have hereunto set their hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

.....(SEAL) .....(SEAL)  
.....(SEAL) .....(SEAL)  
.....(SEAL) .....(SEAL)

Before the Clerk of the Circuit Court of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

The foregoing BOND was subscribed, sworn to and acknowledged by the obligors therein, and ordered to be recorded as provided by law.

....., Clerk

**Forthcoming Bond [Injunction Against Removal of Property]**

**FORTHCOMING BOND [Injunction Against Removal of Property]**

**KNOW ALL MEN BY THESE PRESENTS**, that we \_\_\_\_\_, "Obligor", and \_\_\_\_\_, "Surety", are held and firmly bound to \_\_\_\_\_, "Obligee", in the sum of \_\_\_\_\_ Dollars, to the payment whereof we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, by these presents. We hereby waive the benefit of our homestead exemptions as to this obligation.

This debt is:  UNSECURED  
 SECURED BY:  
 CASH  PROPERTY  CORPORATE SURETY  
 OTHER

**THE CONDITION OF THE ABOVE OBLIGATION IS SUCH:**

That whereas the Obligor in the Chancery cause styled \_\_\_\_\_ v. \_\_\_\_\_, Case Number \_\_\_\_\_, on \_\_\_\_\_ obtained from this Court an injunction to enjoin and restrain the Obligee from removing certain property out of this Commonwealth until the further Order of this Court; and said Court having required bond in the above penalty,  **with**  **without** surety, conditioned to have the property forthcoming to abide the future Order of this Court.

If these conditions are faithfully fulfilled, this obligation shall be void; otherwise it shall remain in full force and effect.

In witness whereof, the undersigned have hereunto set their hands and seals, this day of \_\_\_\_\_, 20\_\_\_\_\_.

.....(SEAL) .....(SEAL)

.....(SEAL) .....(SEAL)

.....(SEAL) .....(SEAL)

Before the Clerk of the Circuit Court of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

The foregoing BOND was subscribed, sworn to and acknowledged by

the obligors therein, and ordered to be recorded as provided by law.

....., Clerk

**Indemnifying Bond [Fieri Facias, Attachment, Distress]**

**INDEMNIFYING BOND [Fieri Facias, Attachment, Distress]**

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_, "Obligor", and \_\_\_\_\_, "Surety", are held and firmly bound to \_\_\_\_\_, "Obligee", in the sum of \_\_\_\_\_ Dollars, to the payment whereof we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, by these presents. We hereby waive the benefit of our homestead exemptions as to this obligation.

This debt is:  UNSECURED  
 SECURED BY:  
 CASH  PROPERTY  CORPORATE SURETY  
 OTHER

**THE CONDITION OF THE ABOVE OBLIGATION IS SUCH:**

That whereas the Sheriff of \_\_\_\_\_ has received a writ of fieri facias, an attachment, or a warrant of distress on property, sued out by the obligee against \_\_\_\_\_, the debtor, sued out in the \_\_\_\_\_ against said debtor, which writ, with the legal costs attending the same, amounts to the sum of

\$

And whereas the Sheriff of \_\_\_\_\_ is required by virtue of said writ to execute the same by levy upon the property of said debtor.

And whereas the sheriff doubts whether such property is liable to such levy, the sheriff, as obligee, has required the obligor to post this bond, with good security, conditioned to indemnify the obligee against all damage which he may sustain in consequence of the seizure or sale of such property, and to pay to any claimant of such property all damage which the obligee may sustain in consequence of such seizure or sale, and also to warrant and defend to any purchaser of the property such estate or interest therein as is sold.

If these conditions are faithfully fulfilled, this obligation shall be void; otherwise it shall remain in full force and effect.

In witness whereof, the undersigned have hereunto set their hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

.....(SEAL) .....(SEAL)

.....(SEAL) .....(SEAL)

.....(SEAL) .....(SEAL)

Before the Clerk of the Circuit Court of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

The foregoing BOND was subscribed, sworn to and acknowledged by

the obligors therein, and ordered to be recorded as provided by law.

....., Clerk



**Indemnifying Bond [Action on Lost Evidence of Debt]**

**INDEMNIFYING BOND [Action on Lost Evidence of Debt]**

**KNOW ALL MEN BY THESE PRESENTS**, that we \_\_\_\_\_, "Obligor", and \_\_\_\_\_, "Surety", are held and firmly bound to \_\_\_\_\_, "Obligee", in the sum of \_\_\_\_\_ Dollars, to the payment whereof we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, by these presents. We hereby waive the benefit of our homestead exemptions as to this obligation.

This debt is:  UNSECURED  
 SECURED BY:  
 CASH  PROPERTY  CORPORATE SURETY  
 OTHER

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH:

That the obligor, as plaintiff in an action maintained on a past due lost bond, note, or other written evidence of debt, obtained a judgment against the obligee herein, in an action styled \_\_\_\_\_ v. \_\_\_\_\_, Case Number, \_\_\_\_\_ on \_\_\_\_\_, in this Court.

In accord with §8.01-32, the plaintiff may not enforce such judgment by execution or otherwise, until first entering into bond in such penalty prescribed in the judgment order of the Court.

This bond is conditioned to indemnify and save harmless the defendant from all loss or damage he may sustain or incur by reason of having to pay in whole or in part such past due lost bond, note, or other written evidence of debt to some other person than the plaintiff.

If these conditions are faithfully fulfilled, this obligation shall be void; otherwise it shall remain in full force and effect.

In witness whereof, the undersigned have hereunto set their hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

.....(SEAL) .....(SEAL)

.....(SEAL) .....(SEAL)

.....(SEAL) .....(SEAL)

Before the Clerk of the Circuit Court of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

The foregoing BOND was subscribed, sworn to and acknowledged by

the obligors therein, and ordered to be recorded as provided by law.

....., Clerk



**Bond for Costs**

**BOND FOR COSTS ALONE AS REQUIRED BY THE  
COURT OF APPEALS OF VIRGINIA AND  
§8.01(B) OF THE CODE OF VIRGINIA**

KNOWN ALL MEN BY THESE PRESENTS, that I \_\_\_\_\_, principal, on behalf of \_\_\_\_\_, am held and firmly bound unto the Commonwealth of Virginia, in the sum of \_\_\_\_\_ DOLLARS AND \_\_\_\_\_ CENTS (\$ \_\_\_\_\_) to payment of which I bind myself, my heirs, successors, personal representatives and assigns, jointly and severally, firmly by these presents.

The Condition of this obligation is such that:

WHEREAS, the Court of Appeals of Virginia on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, award an appeal from orders entered against \_\_\_\_\_, by the Circuit Court of the City of \_\_\_\_\_ on \_\_\_\_\_, upon \_\_\_\_\_, or someone for him, filing an appeal bond with sufficient security in the Clerk's office of the Circuit Court of the City of \_\_\_\_\_, in the penalty of \_\_\_\_\_ DOLLARS AND \_\_\_\_\_ CENTS (\$ \_\_\_\_\_) within fifteen (15) days of the date of the certificate of appeal, with conditions as the law directs;

Now therefore, if \_\_\_\_\_ shall pay all damages, costs, and fees which may be awarded against him in the Court of Appeals of Virginia and the Supreme Court of Virginia, then this obligation shall be void, otherwise to remain in full force and virtue.

In Witness whereof, the said \_\_\_\_\_, principal, has hereunto set her hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_(SEAL)

COMMONWEALTH OF VIRGINIA, At Large  
City/County of \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me, the undersigned Notary Public, in the aforementioned jurisdiction, by \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
Notary Registration Number \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

## Appendix C - Fee Schedule

<https://www.vacourts.gov/courts/circuit/resources/manuals/appendixc.pdf>

## Appendix D - Miscellaneous Orders, Decrees, and Documents

### Closing Office for General Holiday

VIRGINIA: IN THE CIRCUIT COURT OF \_\_\_\_\_

IN RE: CLOSING THE CIRCUIT COURT CLERK'S OFFICE IN OBSERVANCE OF THE  
\_\_\_\_\_ HOLIDAY

#### **ORDER**

IN CONSIDERATION of the provisions of Virginia law, particularly those contained in Va. Code § 22-3300, 17.1-207 and 17.1-705.2, it is accordingly

#### **ORDERED**

That, in observance of the \_\_\_\_\_ holiday, the Clerk's Office of the Circuit Court of \_\_\_\_\_, shall be closed as follows:

(date) \_\_\_\_\_

(date) \_\_\_\_\_

DATE: \_\_\_\_\_ ENTER: \_\_\_\_\_  
Judge

ENTER: \_\_\_\_\_  
Judge

**Closing Office for Christmas And New Year's**

Note To Reader: See [Va. Code § 17.1-207](#) For Closing Clerk's Office On Christmas Eve.

VIRGINIA: IN THE CIRCUIT COURT OF \_\_\_\_\_

IN RE: CLOSING THE CIRCUIT COURT CLERK'S OFFICE FOR CHRISTMAS AND  
NEW YEAR'S HOLIDAY

**ORDER**

IN CONSIDERATION of the provisions of Virginia law, particularly those contained in  
Va. Code § 22-3300, 17.1-207 and 17.1-705.2, it is accordingly

**ORDERED**

That, in observance of Christmas and New Year's Holiday, the Clerk's Office of the Circuit  
Court of \_\_\_\_\_, shall be closed as follows:

(date) \_\_\_\_\_

(date) \_\_\_\_\_

(date) \_\_\_\_\_

DATE: \_\_\_\_\_ ENTER: \_\_\_\_\_  
Judge

ENTER: \_\_\_\_\_  
Judge

**Closing Office - (Bad Weather, Office Catastrophe, Etc.)**

VIRGINIA: IN THE CIRCUIT COURT OF \_\_\_\_\_

IN RE: CLOSING THE CIRCUIT COURT CLERK'S OFFICE FOR \_\_\_\_\_

**ORDER**

It appearing to the Court that pursuant to Va. Code § 17.1-207(3) that the clerk's office of the circuit court may be closed on any day which it is determined that the operation of the clerk's office, under prevailing conditions, would constitute a threat to the health and safety of the clerk's office personnel or the general public; it is therefore,

**ORDERED**

That the Circuit Court Clerk's Office of \_\_\_\_\_ shall be closed on:

(date) \_\_\_\_\_

(date) \_\_\_\_\_

DATE: \_\_\_\_\_ ENTER: \_\_\_\_\_  
Judge

**Foreign Deposition Order**

VIRGINIA:

In The Circuit Court for the City/County of \_\_\_\_\_

XXX TELETRONICS, INC.,  
a \_\_\_\_\_ Corporation,  
Plaintiff,

v.

YYY, INC., d/b/a Z.Z.Z.  
TELEVISION CORPORATION  
a \_\_\_\_\_ Corporation,  
THOMAS R. DOE,  
JOHN SMITH,  
MARY SMITH

**ORDER**

It appearing to the Court that XXX Teletronics, Inc., plaintiff in an action of record in the Court of Common Pleas of \_\_\_\_\_ County, \_\_\_\_\_, by and through counsel, has petitioned the clerk of this Court to issue a subpoena to Susan Smith, a resident of \_\_\_\_\_, Virginia, to appear as a witness for depositions and to produce documents identified in plaintiff's Notice of Deposition; and

It further appearing that said request is made pursuant to the Uniform Interstate Depositions and Discovery Act (Va. Code § 8.01-412.8 et seq.), and that said request has satisfied the requirements of Va. Code § 8.01-412.10, i.e., the requesting party has filed a foreign subpoena and a written statement that the law of the foreign jurisdiction grants reciprocal privileges to citizens of the Commonwealth for taking discovery in the jurisdiction that issued the foreign subpoena, with the clerk of court; and

It appearing that the venue of the deposition is placed where the proposed witness resides, as is required by Va. Code § 8.01-420.4, and that the request is made for a legitimate purpose, it is accordingly;

ORDERED that the Petitioner's request be granted, and the clerk of this Court is directed to issue a summons for the appearance of Susan Smith to give testimony and to produce documents at the time and place set out on the Petitioner's Notice of Deposition.

ENTER this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge



**Petition for Proceeding in Civil Case Without Payment of Fees or Costs (CC-1414)**

**PETITION FOR PROCEEDING IN CIVIL CASE  
 WITHOUT PAYMENT OF FEES OR COSTS**  
 COMMONWEALTH OF VIRGINIA VA CODE §§ 16.1-69.48:4; 17.1-606

Case No. \_\_\_\_\_

\_\_\_\_\_ Circuit Court

\_\_\_\_\_ v. \_\_\_\_\_

The undersigned petitioner(s) request the court to permit the petitioner(s) to sue or defend a civil case in this court without the payment of fees or costs and to have from all officers all needful services and process. In support of the petition, the petitioner(s) state that the following information is true:

- I currently receive the following type(s) of public assistance in \_\_\_\_\_ CITY/COUNTY
- TANF \$ \_\_\_\_\_  Medicaid  Supplemental Security Income \$ \_\_\_\_\_
- SNAP (food stamps) \$ \_\_\_\_\_  Other (specify type and amount) \_\_\_\_\_
- I currently do not receive public assistance.
- I am represented in this matter by a legal aid society, an attorney appearing as counsel *pro bono*, or an attorney assigned to me or referred by a legal aid society.

Names and address of employer(s) for myself and spouse:

Self \_\_\_\_\_

Spouse \_\_\_\_\_

NET INCOME:	Self	Spouse	
Pay period (weekly, every second week, twice monthly, monthly) _____	_____	_____	
Net take home pay (salary/wages, minus deductions required by law and tax withholdings)	\$ _____	_____	
Other income sources (please specify) _____	\$ _____	_____	
<b>TOTAL INCOME</b>	\$ _____	+ _____	= <span style="border: 1px solid black; padding: 2px;">COURT USE ONLY</span> <b>A</b>

LIQUID ASSETS:	Self	Spouse	
Cash on hand _____	\$ _____	_____	
Bank Accounts at: _____	\$ _____	_____	
Any other liquid assets: (please specify) _____	\$ _____	_____	
with a value of _____	\$ _____	_____	
<b>TOTAL ASSETS</b>	\$ _____	+ _____	= <span style="border: 1px solid black; padding: 2px;">COURT USE ONLY</span> <b>B</b>

\_\_\_\_\_ Number in household I have financial responsibility for, including myself.

EXCEPTIONAL EXPENSES (Total Exceptional Expenses of Family)			
Medical Expenses (list only unusual and continuing expenses) _____	\$ _____		
Court-ordered support payments/alimony _____	\$ _____		
<input type="checkbox"/> deducted from paycheck <input type="checkbox"/> not deducted from paycheck			
Child-care payments (e.g. day care) _____	\$ _____		
Other (describe): _____	\$ _____		
<b>TOTAL EXPENSES</b>	\$ _____		= <span style="border: 1px solid black; padding: 2px;">COURT USE ONLY</span> <b>C</b>
COLUMN "A" plus COLUMN "B" minus			
COLUMN "C" equals available funds			= <span style="border: 1px solid black; padding: 2px;"></span>

FORM CC-1414 (MASTER, PAGE ONE OF TWO) 07/21

ACKNOWLEDGEMENT

I understand that the court cannot provide me with legal advice, and that it may be advisable to get advice from a lawyer.

..... DATE	..... SIGNATURE - PETITIONER	..... PRINT NAME -PETITIONER
..... RESIDENCE ADDRESS OF PETITIONER		
..... SIGNATURE - PETITIONER		..... PRINT NAME - PETITIONER
..... RESIDENCE ADDRESS OF PETITIONER		

SAMPLE

FORM CC-1414 (MASTER, PAGE TWO OF TWO) 07/21

**Petition for Proceeding in a No-Fault Divorce Without Payment of Fees or Costs  
 (CC-1421)**

**PETITION FOR PROCEEDING IN A NO-FAULT DIVORCE  
 WITHOUT PAYMENT OF FEES OR COSTS**  
 COMMONWEALTH OF VIRGINIA VA CODE § 17.1-606

Case No. \_\_\_\_\_

\_\_\_\_\_  
 Circuit Court  
 \_\_\_\_\_ v. \_\_\_\_\_

The undersigned petitioner requests the court to permit the petitioner to proceed in a no-fault divorce case under Virginia Code § 20-91(A)(9) in this court without the payment of fees or costs and to have from all officers all needful services and process. In support of the petition, the petitioner states that the following information is true:

1.  I currently receive the following type(s) of public assistance in \_\_\_\_\_  
CITY/COUNTY  
 TANF \$ \_\_\_\_\_  Medicaid  Supplemental Security Income \$ \_\_\_\_\_  
 SNAP (food stamps) \$ \_\_\_\_\_  Other (specify type and amount) \_\_\_\_\_  
 I am represented in this matter by a legal aid society, an attorney appearing as counsel *pro bono*, or an attorney assigned to me or referred by a legal aid society.

**If no boxes in this section are checked, complete sections 2 and 3 below. If one or both boxes in this section are checked, skip section 2 and complete only section 3 below.**

2. Names and address of employer(s) for myself and spouse:  
 Self \_\_\_\_\_  
 Spouse \_\_\_\_\_

<b>NET INCOME:</b>	<b>Self</b>	<b>Spouse</b>	
Pay period (weekly, every second week, twice monthly, monthly) _____	_____	_____	
Net take home pay (salary/wages, minus deductions required by law and tax withholdings)	\$ _____	_____	
Other income sources (please specify) _____	\$ _____	_____	
			<small>COURT USE ONLY</small>
	<b>TOTAL INCOME</b>	\$ _____ + _____	= <input type="text"/> <b>A</b>

<b>LIQUID ASSETS:</b>			
Cash on hand _____	\$ _____	_____	
Bank Accounts at: _____	\$ _____	_____	
Any other liquid assets: (please specify) _____	\$ _____	_____	
	with a value of _____	\$ _____	
			<small>COURT USE ONLY</small>
	<b>TOTAL ASSETS</b>	\$ _____ + _____	= <input type="text"/> <b>B</b>

\_\_\_\_\_ Number in household I have financial responsibility for, including myself.

**EXCEPTIONAL EXPENSES (Total Exceptional Expenses of Family)**

Medical Expenses (list only unusual and continuing expenses) _____	\$ _____
Court-ordered support payments/alimony _____	\$ _____
<input type="checkbox"/> deducted from paycheck <input type="checkbox"/> not deducted from paycheck	
Child-care payments (e.g. day care) _____	\$ _____
Other (describe): _____	\$ _____
	\$ _____

	<b>TOTAL EXPENSES</b>	\$ _____	= <input type="text"/> <b>C</b>
	COLUMN "A" plus COLUMN "B" minus		
	COLUMN "C" equals available funds = <input type="text"/>		

---

3. ACKNOWLEDGEMENT

I acknowledge that the foregoing is true and correct. I understand that the court cannot provide me with legal advice, and that it may be advisable to get advice from a lawyer.

..... DATE	..... SIGNATURE - PETITIONER	..... PRINT NAME - PETITIONER
..... RESIDENCE ADDRESS OF PETITIONER		
..... SIGNATURE - PETITIONER		..... PRINT NAME - PETITIONER
..... RESIDENCE ADDRESS OF PETITIONER		

SAMPLE

FORM CC-1421 (MASTER, PAGE TWO OF TWO) 07/21

Order for Proceeding in a Civil Case Without Payment of Fees or Costs (CC-1421(A))

**ORDER FOR PROCEEDING IN CIVIL CASE  
WITHOUT PAYMENT OF FEES OR COSTS**  
Commonwealth of Virginia VA. CODE § 17.1-606

Case No. \_\_\_\_\_

\_\_\_\_\_ Circuit Court

\_\_\_\_\_ v. \_\_\_\_\_

Upon petition filed requesting this court to permit the petitioner(s) to sue or defend a  civil case OR  no-fault divorce proceeding under Virginia Code § 20-91(a)(9) in this court without the payment of fees or costs and to have from all officers all needful services and process, it is hereby **ORDERED** that the petition is

granted.

denied.

and the parties shall \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ DATE

\_\_\_\_\_ JUDGE

FORM CC-1421(A) MASTER 07/21

Petition for Writ of Vacatur

**PETITION FOR WRIT OF VACATUR** Case No. \_\_\_\_\_  
Commonwealth of Virginia VA. CODE § 19.2-327.17

\_\_\_\_\_ Circuit Court  
CITY OR COUNTY

\_\_\_\_\_ STREET ADDRESS OF COURT

\_\_\_\_\_ v. Commonwealth of Virginia  
NAME OF PETITIONER

I, the undersigned Petitioner, swear/affirm that

1. I was  convicted  adjudicated delinquent of the following qualifying offense(s):  
Charge(s) to be vacated \_\_\_\_\_  
Date(s) of final disposition of charge(s) \_\_\_\_\_  
Court(s) disposing of charge(s) \_\_\_\_\_  
Date(s) on which qualifying offense(s) occurred \_\_\_\_\_  
Petitioner's date of birth \_\_\_\_\_  
Petitioner's full name used at time of offense(s) \_\_\_\_\_

2. I further state that I committed the qualifying offense(s) as a direct result of being a victim of sex trafficking.

3. I  have  have not previously filed a PETITION FOR WRIT OF VACATUR. (Include disposition of previously filed Petition, if applicable.) \_\_\_\_\_

4. Provide any additional relevant allegations of fact below:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I declare, under penalty of perjury, that the foregoing is true and correct.

\_\_\_\_\_ DATE \_\_\_\_\_ SIGNATURE OF  PETITIONER  ATTORNEY FOR PETITIONER  
\_\_\_\_\_ PRINT NAME

\_\_\_\_\_ ADDRESS/TELEPHONE NUMBER OF  PETITIONER  ATTORNEY FOR PETITIONER

I certify that I provided the petitioner a certified copy of this petition. Hearing date and time: \_\_\_\_\_

\_\_\_\_\_ DATE \_\_\_\_\_ CLERK

Checklist for Petitioner:

- File completed PETITION FOR WRIT OF VACATUR in the circuit court of the county or city in which the conviction or adjudication of delinquency was entered, together with all applicable fees and costs and, if required by the clerk of the court, a completed COVER SHEET FOR FILING CIVIL ACTIONS, circuit court form CC-1416.
- Obtain one complete set of fingerprints from a law-enforcement agency.
- Provide a copy of this petition to the Commonwealth's Attorney in the county or city in which the PETITION FOR WRIT OF VACATUR is filed by delivery or first-class mail, postage prepaid.

FORM CC-1475 MASTER 07/21

**Order to Open Sealed Record**

VIRGINIA:

In The Circuit Court for the City/County of \_\_\_\_\_

COMMONWEALTH

vs.

Case # 123-12345-01

JOHN DOE

**ORDER TO OPEN SEALED RECORD**

Upon request of William H. Smith, a probation and parole officer for the \_\_\_\_\_ circuit, pursuant to Code of Virginia sections 16.1-307 and 305 A. 4., for purposes of preparation of a background report on John Doe, and for other good cause shown, he is allowed to review the contents of file # 123-12345, Commonwealth vs. John Doe.

It is hereby ORDERED that file # 123-12345, Commonwealth vs. John Doe, shall be opened by the Clerk and the contents thereof delivered to William H. Smith for inspection; and the Clerk is thereafter directed to re-seal said file.

ENTER this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge

**Service of Process Order**

VIRGINIA:

In The Circuit Court for the City/County of \_\_\_\_\_

JOSEPH W. DOE,  
Plaintiff,

v.

DAVID A. SMITH, ADMINISTRATOR  
of the ESTATE of RAYMOND DOE,  
Deceased,  
Defendant.

**ORDER**

This day came the Plaintiff, by Counsel, and moved the Court for leave to withhold service of process on the Defendant at the time of filing the Plaintiff's **Complaint**.

UPON CONSIDERATION WHEREOF, it appearing to the Court that the purpose for the filing of Plaintiff's Complaint is to toll the statute of limitations, and for other reasons acceptable to the Court, it is therefore,

ORDERED that the Plaintiff may defer service of process upon the Defendant until the date of the second docket call following the filing of this **Complaint**, by \_\_\_\_\_, \_\_\_\_\_, at which time the Clerk shall issue service of process upon the Defendant unless same has been previously issued by the Plaintiff. The Plaintiff shall promptly remit fees for service upon the Defendant on or before \_\_\_\_\_, \_\_\_\_\_.

ENTER this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge

I ask for this:

\_\_\_\_\_  
Robert A. Robert, Esquire  
ROBERT, ROBERT, ROBERT & ROBERT, P.C.  
123 Appletree Lane  
Anytown, VA 12345  
(804) 123-4455  
(fax) 233-4444



**Garnishment Exemption Order**

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY/COUNTY OF \_\_\_\_\_

THOMAS E. SMITH, Jr. T/A  
Plaintiff,

v. Case No. CL95012345

JULIAN H. CARTER,  
Judgment Debtor,

and

MILLS AND MILLS, INC.  
Garnishee.

**NOTICE**

TAKE NOTICE, that the Judgment Debtor in the above-described case has filed a Request for Hearing - Garnishment Exemption Claim on \_\_\_\_\_, \_\_\_\_\_.

You are hereby notified that a hearing has been set, to be heard on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_ a.m., in the \_\_\_\_\_ Circuit Court, Courtroom Room \_\_\_\_, 123 West Street, Anytown, Virginia.

On this date and time, the court will hear evidence on the Judgment Debtor's claim for Exemption from Garnishment. You must be present to represent your respective interests.

This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Clerk

**Petition for Authorization to Celebrate Rites of Marriage (Persons Other Than Ministers)**

**PETITION FOR AUTHORIZATION  
TO CELEBRATE RITES OF MARRIAGE  
(PERSONS OTHER THAN MINISTERS)** Case No. \_\_\_\_\_  
Commonwealth of Virginia VA. CODE § 20-25

VIRGINIA: In the Circuit Court of the [ ] City [ ] County of \_\_\_\_\_

Petitioner's Name \_\_\_\_\_  
LAST FIRST MIDDLE SUFFIX

City or County of Residence: \_\_\_\_\_

Residence Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Pursuant to § 20-25 of the Code of Virginia, the petitioner requests that the Court enter an order authorizing the petitioner to celebrate the rites of marriage in the Commonwealth.

[ ] The petitioner requests authority to perform a specific marriage between  
\_\_\_\_\_ and \_\_\_\_\_  
NAME NAME  
on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

OR

[ ] The petitioner requests continuing authority to perform marriages in the Commonwealth of Virginia.

OPTIONAL: Provide any additional information in support of request: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
DATE PETITIONER

FORM CC-1498 MASTER 07/18

Order for Authorization to Celebrate Rites of Marriage (Persons Other Than Ministers)

**ORDER FOR AUTHORIZATION  
TO CELEBRATE RITES OF MARRIAGE  
(PERSONS OTHER THAN MINISTERS)**  
Commonwealth of Virginia VA. CODE § 20-25

Case No. \_\_\_\_\_

VIRGINIA: In the Circuit Court of the [ ] City [ ] County of \_\_\_\_\_

It is hereby ORDERED that the petitioner, \_\_\_\_\_, PETITIONER  
is authorized to celebrate the rites of marriage in the Commonwealth of Virginia as follows:

[ ] The petitioner is authorized to perform a marriage between  
\_\_\_\_\_ and \_\_\_\_\_  
NAME NAME  
on or about the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

[ ] After receipt of a copy of the marriage license indicating proof of the marriage, the Clerk is hereby ordered to refund the previously required bond funds to the petitioner.

[ ] The petitioner is authorized to perform marriages in the Commonwealth of Virginia.

Before acting, the petitioner shall give a bond in the penalty of \$500 [ ] with OR [ ] without surety in the Circuit Court of the [ ] City [ ] County of \_\_\_\_\_

This Order may be rescinded at any time.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
JUDGE

FORM CC-1499 MASTER 07/18

**Order to Celebrate Rites of Matrimony by Ministers**

VIRGINIA:

In The Circuit Court for the City/County of \_\_\_\_\_

IN RE: JOHN W. DOE,  
Petitioner

**ORDER TO CELEBRATE RITES**

Pursuant to Code of Virginia section 20-23, as amended, this day appeared JOHN W. DOE, by Petition, before the Clerk of this Court; and

It appearing that John W. Doe resides at 1234 Appletree Lane, Anytown, Any State 12345, and is a priest in regular communion with the \_\_\_\_\_ Church of the United States of America and canonically resides in the Diocese of \_\_\_\_\_, or that that he is commissioned to pastoral ministry or holds a local minister's license and is serving as a regularly appointed pastor in his denomination, and that he is desirous of obtaining authority to celebrate the Rites of Matrimony in the Commonwealth of Virginia, and has with his petition presented sufficient evidence to support his request, it is

ORDERED that JOHN W. DOE be, and hereby is, authorized to Celebrate the Rites of Matrimony in the Commonwealth of Virginia.

ENTER this the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Thomas R. Clerk, Clerk

**Petition to Appoint Church Trustees**

VIRGINIA:

In The Circuit Court for the City/County of \_\_\_\_\_

IN RE: APPOINTMENT OF TRUSTEES FOR \_\_\_\_\_ CHURCH

**PETITION**

To the Honorable Judge of said Court:

The Congregation of the \_\_\_\_\_ Church of \_\_\_\_\_, Virginia, respectfully shows to your Honor that at a Regular Meeting of the Congregation held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, JOSEPH DOE was duly elected as a Trustee of said Church, such action being evidenced by a written memorandum attached hereto as Exhibit "A"; and

The Congregation also respectfully shows that at a Regular Meeting of the Congregation held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, MARY J. DOE was duly elected as a Trustee of said Church, to serve in the place and stead of Robert Doe (also known as Bob Doe), who resigned from the Board of Trustees, such action being evidenced by a written memorandum/newsletter attached hereto as Exhibit "B"; and

The Congregation also respectfully shows that by Order of \_\_\_\_\_ Circuit Court, entered on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, that TOM DOE, Robert Doe and R.R. Doe were confirmed as the duly elected Trustees of said church, said appointment being of record in Civil/Chancery Order Book \_ at page \_\_, a copy of which is attached hereto as Exhibit "C"; and

The Congregation also respectfully shows that R.R. Doe died on \_\_\_\_\_, \_\_\_\_\_, as evidenced by a copy of his Certificate of Death, which is attached as Exhibit "D".

The Congregation of the \_\_\_\_\_ Church respectfully moves this Court to confirm the election of JOSEPH DOE and MARY J. DOE as Trustees of said Church, to serve in such capacity with TOM DOE, previously confirmed by said Court.

\_\_\_\_\_ CHURCH

By: \_\_\_\_\_

Trustee(s)/Legal Representative

**Order of Appointment of Church Trustees**

VIRGINIA:

In The Circuit Court for the City/County of \_\_\_\_\_

IN RE: APPOINTMENT OF TRUSTEES FOR \_\_\_\_\_ CHURCH

**ORDER**

It appearing to the Court from the Petition of the Congregation of the \_\_\_\_\_ Church of Anytown, Virginia, that \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ were duly confirmed and appointed as Trustees of said Church by Order of this Court on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, of record in Order Book \_ at page \_\_\_\_; and

It further appearing that the Congregation of said church elected \_\_\_\_\_ to serve as Trustee for the Church on \_\_\_\_\_, \_\_\_\_\_, to replace \_\_\_\_\_, who resigned as Trustee; and did also elect \_\_\_\_\_ as Trustee for the Church on \_\_\_\_\_, \_\_\_\_\_; and that \_\_\_\_\_ died on \_\_\_\_\_, \_\_\_\_\_.

Upon consideration whereof the Court doth appoint and confirm \_\_\_\_\_ and \_\_\_\_\_ as Trustees of \_\_\_\_\_ Church of Anytown, Virginia, to serve along with \_\_\_\_\_ in such capacity, all three persons being now clothed with all the powers and privileges and subject to all such duties and obligations conferred and imposed by law upon such trustees.

ENTER this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
JUDGE

\_\_\_\_\_  
CHURCH  
123 Appletree Street  
Anytown, VA 12345

**Clerk's Order - Qualification of Notary Public**

VIRGINIA:

In the Clerk's Office of the Circuit Court for the city/county of \_\_\_\_\_ this the  
\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

IN RE: MARY P. SMITH

**NOTARY PUBLIC**

This day came Mary P. Smith, who was on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
commissioned as a Notary Public for the State of Virginia at large and swore under penalty of  
perjury that she had carefully read the notary laws of this Commonwealth and that she is familiar  
with their provisions, that she will uphold the Constitution of the United States and the  
Constitution and laws of the Commonwealth of Virginia, and that she will faithfully perform, to  
the best of her ability, the duties of the office of Notary Public.

\_\_\_\_\_  
Clerk/Deputy Clerk

**Clerk's Order - Concealed Weapon Permit**

VIRGINIA:

In the Circuit Court of the City/County of \_\_\_\_\_

IN RE: \_\_\_\_\_

**ORDER**

It appearing to the Court that \_\_\_\_\_, whose  
address is \_\_\_\_\_, date of birth  
is \_\_\_\_\_, and social security number is \_\_\_\_\_, is a proper person of  
good character and a suitable person to carry a concealed weapon, and upon the recommendation  
of the Commonwealth Attorney for the City/County of \_\_\_\_\_,  
Virginia, and also the Chief of Police for said City/County further, therefore, said authorization  
to carry a concealed weapon is hereby granted to \_\_\_\_\_  
for a period of FIVE YEARS beginning \_\_\_\_/\_\_\_\_/\_\_\_\_ and ending \_\_\_\_/\_\_\_\_/\_\_\_\_.

ENTERED:

\_\_\_\_\_  
JUDGE

**Order - Reappointment to Electoral Board**

VIRGINIA:

In the Circuit Court of the City/County of \_\_\_\_\_

IN RE: REAPPOINTMENT OF JOHN DOE AS A MEMBER OF THE ELECTORAL BOARD

**ORDER**

The Court has received a letter from John J. Smith, Sr., Chairman of the City/County of \_\_\_\_\_ Democratic Party, informing the Court that the term of John Doe on the City/County Electoral Board will soon expire and recommended the reappointment of John Doe to said Electoral Board. John Doe has filed with the Court a Certificate of Eligibility for appointment to the Electoral Board. Upon consideration of the above, it is hereby

ORDERED that John Doe be and he is hereby appointed as member of the City/County of \_\_\_\_\_ Electoral Board for another term, said term commencing on the first day of \_\_\_\_\_, \_\_\_\_\_, and ending on \_\_\_\_\_, \_\_\_\_\_. John Doe shall take his oath of office before commencing his new term. The Clerk of this court shall forthwith forward a certified copy of this order to John Doe, John J. Smith, Sr., and Mary Doe, Secretary of the \_\_\_\_\_ Electoral Board

Entered this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge

\_\_\_\_\_  
Judge



**Petition - Writ of Habeas Corpus**

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY/COUNTY OF \_\_\_\_\_

FULL NAME AND PRISON NUMBER (if any) OF PETITIONER,  
Petitioner

v. Case No. \_\_\_\_\_ (TO BE SUPPLIED BY THE CLERK OF CIRCUIT COURT)

NAME AND TITLE OF RESPONDENT,  
Respondent.

**PETITION FOR WRIT OF HABEAS CORPUS**

Instructions -- Read Carefully

In order for this petition to receive consideration by the Court, it must be legibly handwritten or typewritten, signed by the petitioner and verified (notarized). It must set forth in concise form the answers to each applicable question. If necessary, petitioner may finish his answer to a particular question on an additional page. Petitioner must make it clear to which question any such continued answer refers. The petitioner may also submit exhibits.

Since every petition for habeas corpus must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury under §18.2-434. Petitioners should, therefore exercise care to assure that all answers are true and correct.

When the petition is completed, the original and two copies (total of three) should be mailed to the Clerk the Court. The petitioner shall keep one copy.

**NOTICE TO THE PETITIONER**

The granting of a writ of habeas corpus does not entitle the petitioner to dismissal of the charges for conviction of which he is being detained, but may gain him no more than a new trial.

Place of detention:

**A. Criminal Trial**

1. Name and location of Court which imposed the sentence from which you seek relief:

\_\_\_\_\_

2. The offense or offenses for which sentence was imposed (include indictment number or numbers of known):
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  
3. The date upon which sentence was imposed and the terms of the sentence:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  
4. Check which plea you made and whether trial was by jury:  
 Plea of guilty       Plea of not guilty  
  
 Trial by jury       Trial by judge without jury
  
5. The name and address of each attorney, if any, who represented you at your criminal trial: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
6. Did you appeal the conviction?  
 Yes       No
  
7. If you answered "yes" to 6, state:
  - a. the result and the date in your appeal or petition for certiorari:
    - 1) \_\_\_\_\_
    - 2) \_\_\_\_\_
    - 3) \_\_\_\_\_
  
  - b. citations of the appellate court opinions or orders:
    - 1) \_\_\_\_\_
    - 2) \_\_\_\_\_
    - 3) \_\_\_\_\_
  
8. List the name and address of each attorney, if any, who represented you on your appeal:  
  
\_\_\_\_\_  
\_\_\_\_\_

**B. Habeas Corpus**

1. Before this petition, did you file with respect to this conviction any other petition for habeas corpus in either a State or Federal court?  
 Yes       No

2. If you answered "yes" to 1, list with respect to each petition:

a. the name and location of the court in which each was filed:

1) \_\_\_\_\_  
2) \_\_\_\_\_

b. the disposition and the date:

1) \_\_\_\_\_  
2) \_\_\_\_\_

c. the name and address of each attorney, if any, who represented you on your habeas corpus:

1) \_\_\_\_\_  
2) \_\_\_\_\_

3. Did you appeal from the disposition of your petition for habeas corpus?  
 Yes       No

4. If you answered "yes" to 3, state:

a. the result and the date of each petition:

1) \_\_\_\_\_  
2) \_\_\_\_\_

b. citations of court opinions or orders on your habeas corpus petitions:

1) \_\_\_\_\_  
2) \_\_\_\_\_

c. the name and address of each attorney, if any, who represented you on appeal of your habeas corpus:

1) \_\_\_\_\_  
2) \_\_\_\_\_

**C. Other Petitions, Motions Or Applications**

1. List all other petitions, motions or applications filed with any court following a final order of conviction and not set out in A or B. Include the nature of the motion, the name and location of the court, the result, the date, and citations to opinions or orders. Give the name and address of each attorney, if any, who represented you:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_

**D. Present Petition**

1. State the grounds which make your detention unlawful, including the facts on which you intend to rely:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

2. List each ground set forth in 1, which has been presented in any other proceeding:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

3. List the proceedings in which each ground was raised:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

4. If any ground set forth in 1 has not been presented to a court, list each ground and the reason why it was not:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

\_\_\_\_\_  
Signature of Petitioner

\_\_\_\_\_  
Address of Petitioner:

STATE OF VIRGINIA:  
CITY/COUNTY OF:

The above named petitioner, \_\_\_\_\_, being first duly sworn, says:

1. He signed the foregoing petition;
2. The facts stated in the petition are true to the best of his information and belief.

\_\_\_\_\_  
Signature of Petitioner

Subscribed and sworn to before me this \_\_\_\_\_ day \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Notary Registration Number: \_\_\_\_\_

The petition will not be filed without payment of court costs unless the petitioner is entitled to proceed *in forma pauperis* and has executed the attached.

#### FORMA PAUPERIS AFFIDAVIT

STATE OF VIRGINIA:  
CITY/COUNTY OF:

The petitioner being duly sworn, says:

1. He is unable to pay the costs of this action or give security therefore;
2. His assets amount to a total of \$ \_\_\_\_\_.

\_\_\_\_\_  
Signature of Petitioner

Subscribed and sworn to before me this \_\_\_\_\_ day \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Notary Registration Number: \_\_\_\_\_

**Order - Writ of Habeas Corpus**

VIRGINIA:

In The Circuit Court for the City/County of \_\_\_\_\_

\_\_\_\_\_, Petitioner

v. Case No. \_\_\_\_\_

\_\_\_\_\_, Respondent

**ORDER**

This day came the petitioner, by mail, and tendered his petition for a Writ of Habeas Corpus ad subjiciendum, and the Court having examined the petition for a Writ of Habeas Corpus ad subjiciendum, it is ORDERED that the same be filed.

It is ORDERED that the Attorney General of the State of Virginia file a response to the petition within forty (40) days from this date.

Let the Clerk send a copy of this order to the Attorney General for the State of Virginia, and to defense counsel.

ENTER this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge

**Writ of Quo Warranto**

VIRGINIA:

In The Circuit Court for the City/County of \_\_\_\_\_

To: Sheriff of the County/City of \_\_\_\_\_

WHEREAS, the Petition by the Commonwealth of Virginia has been presented to this Court praying that a Writ of Quo Warranto be awarded against \_\_\_\_\_ upon the grounds set forth in the Petition; and

WHEREAS, in the opinion of this Court, the reasons set forth in the Petition are sufficient at law;

NOW WHEREFORE, you are hereby commanded in the name of the Commonwealth of Virginia to summon \_\_\_\_\_ to appear on \_\_\_\_\_, at \_\_\_\_\_, before this Court to show by what warrant or authority of law she is \_\_\_\_\_, by serving a true copy of this writ and a copy of the Petition upon \_\_\_\_\_ at \_\_\_\_\_.

Witness the signature of the Judge of this Court, attested by the Clerk of this Court in the County/City of \_\_\_\_\_ on this \_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Judge of the Circuit Court

Attest:

\_\_\_\_\_  
Clerk of the Circuit Court

### Checklist for Completing Expungement Proceedings

File Number(s) \_\_\_\_\_

#### Checklist for Completing Expungement Proceedings

- Make sure all original paperwork is in temporary paper file (check against filings in CIS6). If not, have Civil Dept. pull from daily original paper boxes.
- Delete all images from CIS6 by retrieving the case and clicking on "OPTIONS", then click on "EXPUNGE ALL IMAGES IN CASE". Click "YES" through the next two questions.
- Delete civil case from CCMS. Click on "ADMINISTRATION" and then "CASE DELETE". Change the case number to "CL", type in correct case number and then click "R" to retrieve. Make sure the case description is correct. In the "DELETE REASON" box, type in "Expungement". Click on "DELETE CASE" and type in password. Click "OK". A note will appear at the top of the screen in green type that case has been deleted. Print screen by hitting "Cntl" and "P" at the same time for a screen print proof that case was deleted. Double check by doing a name check in CCMS to make sure that case is deleted.
- Delete J&D or Criminal Case from CIS6 and CCMS using same method described above (if applicable)
- Delete Civil Index and Orders (if any) from Covers and/or LOGAN (if applicable)
- Delete J&D and/or Criminal Index and Orders from Covers and/or LOGAN (if applicable)
- Get new file number from in-house Expungement Index and enter information accordingly on Index
- Make up label and large white envelope for storing expunged file
- Put both Civil and J&D/Criminal files in prepared envelope
- Check Civil and Criminal/J&D (paper) Index for any entries and "black out" any entries
- Check the Grand Jury Indictment list in Covers and/or LOGAN for the specific time period of the charge/indictment. If the defendant's name appears on the list for the expunged case, print out the proper page, make two copies in its original form, white out name from one copy and scan and add the sheet back to the proper place, then delete the duplicate page. Keep both the copy of the page with and without changes for the expungement envelope to be sealed.
- Send State Police compliance letter (correct address as of 9/30/11 is CJIS Division, Attn: Expungement, Dept. of State Police, P. O. Box 27472, Richmond, VA 23261)
- Send letter to Library of Virginia for getting film spliced if applicable
- Make "dummy file" paper file for Civil and Criminal files (*pre-2015 files only*) - use a plain file folder and/or civil folder (with name cut out) for both and hand-right only the file number on the tabs. Place a blank sheet of paper in file with the words "Expunged File" in clip (see sample) (this is necessary so that there isn't a missing file number in paper file system)
- Remove name and reference to expungement from our internal status list
- Make sure refund was timely made prior to deleting the case

*(No need to send copies to lower courts as they get noticed from the State Police)*



Election Recount Clerk's Certification (Sample)

## CLERK'S CERTIFICATION

**Virginia: In the Circuit Court for the County/City of**  
\_\_\_\_\_

RE: 20\_\_ Election Recount for \_\_\_\_\_

I, \_\_\_\_\_, Clerk of this Court, certify that pursuant to Virginia Code §24.2-668, that all paper ballots and other election materials are in sealed boxes and that such items have been placed in a securely locked room, inaccessible to the public, with exception to the necessary access by the Clerk or designated staff of the \_\_\_\_\_ Circuit Court Clerk's Office.

\_\_\_\_\_  
\_\_\_\_\_, Clerk

Officer of Election Oath (SBE-611.1)



\* VIRGINIA \*  
DEPARTMENT of ELECTIONS

COMMONWEALTH OF VIRGINIA  
**OFFICER OF ELECTION  
OATH**

ENVELOPE #2

COMMONWEALTH OF VIRGINIA  
**OFFICER OF ELECTION OATH**

COUNTY/CITY OF \_\_\_\_\_  
ELECTION DATE \_\_\_\_\_ PRECINCT NAME \_\_\_\_\_

**OATH OF OFFICER  
DELEGATED BY THE GENERAL REGISTRAR OR THE SECRETARY OF  
THE ELECTORAL BOARD TO ADMINISTER OATH TO OTHER OFFICERS**

I do solemnly swear (or affirm) that I will perform the duties for this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting this election.

\_\_\_\_\_  
SIGNATURE OF DELEGATED OFFICER OF ELECTION

\_\_\_\_\_  
SIGNATURE OF ELECTORAL BOARD MEMBER  
OR REGISTRAR ADMINISTERING OATH

**OATH OF ALL OTHER OFFICERS OF ELECTION**

I do solemnly swear (or affirm) that I will perform the duties for this election according to law and the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting this election.

Signatures of Officers of Election:

- |          |           |
|----------|-----------|
| 1. _____ | 10. _____ |
| 2. _____ | 11. _____ |
| 3. _____ | 12. _____ |
| 4. _____ | 13. _____ |
| 5. _____ | 14. _____ |
| 6. _____ | 15. _____ |
| 7. _____ | 16. _____ |
| 8. _____ | 17. _____ |
| 9. _____ | 18. _____ |

\_\_\_\_\_  
SIGNATURE OF PERSON ADMINISTERING OATH

\_\_\_\_\_  
TITLE OF PERSON ADMINISTERING OATH

\_\_\_\_\_  
DATE ADMINISTERED

## Appendix E - Records Retention and Disposition Schedule

**Source:** Library of Virginia  
Printed with approval of Archives and Records Division

Reader may obtain latest copy of Retention Schedule No. 12 at the following website:

[http://www.lva.virginia.gov/agencies/records/sched\\_local/GS-12.pdf](http://www.lva.virginia.gov/agencies/records/sched_local/GS-12.pdf)

## Appendix F - Sealing Court Records/Confidentiality Considerations

### Sealed Records

“Sealed” records are not open to anyone and are made available only by court order. The sealed records, if feasible, should physically remain in the court file. Some records are ordered to be sealed by the Court and others are required by statute.

Certain records and documents, both criminal and civil in nature, are required by statute to be sealed when filed in the clerk’s office or upon the performance of a specified act. The Court may order other documents, records, exhibits, etc. to be sealed during the pendency of a case or during the course of a hearing or trial. While the Code of Virginia specifies numerous instances where the court or the clerk is required to seal a particular record, it does not provide procedures for accomplishing that act.

There is a difference between “sealed” records and “confidential” records. Sealed records are placed in an envelope that is sealed making the envelope unable to be opened except by court order. Confidential records do not have to be physically sealed but may be simply placed in an envelope and made unavailable for inspection. Certain confidential records, such as juvenile appeals, are unavailable for inspection except to certain parties as designated by statute. See below for further information on confidentiality.

Unlike an expunged record, most “sealed” records remain a part of the file and, if feasible, should physically remain in the court file. After placing the record(s) in a plain envelope, the envelope should be sealed by tape or other adhesive and the following statement should be typed in a visible location on the outside of the envelope, “Sealed record to be opened only upon order of the Circuit Court of \_\_\_\_\_”. The style of the case should also be typed on the envelope, particularly if the sealed record is too large to be placed in the court file. It is possible that one file may contain numerous sealed records, one or more of which may be ordered to be opened at a later date. To assist in locating a specific sealed record, a general description of the contents or some identifying number should also be written on the outside of the envelope, i.e., “separation agreement”, “presentence report”, “psychological evaluation”, etc. If the court has ordered the record sealed, attach a copy of such order to the outside of the envelope. Original of such order is placed in the file.

**Note:** Form CC-1075, SEALED DOCUMENTS ENVELOPE may also be used.

In all cases, access to sealed records is available only through Court order.

<https://law.lis.virginia.gov/vacodepopularnames/virginia-freedom-of-information-act/>

states that all official records shall be open to inspection “except as otherwise specifically provided by law...” [Va. Code § 2.2-3704 (A)] and

<https://law.lis.virginia.gov/vacodepopularnames/virginia-public-records-act/> specifies “no provision of [that Act] shall be construed to authorize or require the opening of any

records ordered to be sealed by a Court” ([Va. Code § 42.1-78](#)). [Virginia Code §§ 9.1-177.1](#) and [19.2-299](#) identifies who has access to certain sealed records without a court order.

The Code specifies that the following records either must be sealed when they are filed with the Court or may be sealed by Order of the Court.

**Note:** some of the following involve matters sealed by the court in certain cases.

Change of Name - [Va. Code § 8.01-217](#)

If the applicant shall show cause to believe that in the event their change of name should become a public record, a serious threat to the health or safety of the applicant or their immediate family would exist, the chief judge of the circuit court may waive the requirement that the application be under oath or the court may order the record sealed and direct the clerk not to spread and index any orders entered in the cause, and shall not transmit a certified copy to the [State Registrar of Vital Records](#) or the [Central Criminal Records Exchange](#).

Divorce - [Va. Code § 20-124](#)

Upon motion of either party, the court may order the entire record or any agreement of the parties to be sealed. Thereafter, it is to be opened only to the parties, their attorneys or any person the court, in its discretion, decides has a proper interest in the case.

Uniform Child Custody Jurisdiction and Enforcement Act - Information to be submitted to the Court - [Va. Code § 20-146.20](#)

In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child’s present address or whereabouts, the places where the child has lived during the past five years, and the names and present addresses of the persons with whom the child has lived during that period.

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information shall be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child.

Records of Judicial Officers – [Rule 11:3](#)

Records of judicial officers are not publicly accessible and include, but are not limited to (i) memoranda, notes, or drafts prepared by or under the direction of any judicial

officer that relate to the adjudication, resolution, or disposition of any past, present, or future case, controversy, or legal issue, (ii) legal research and analysis prepared or circulated by judicial officers or court personnel, (iii) written communications or discussions relating to procedural, administrative, or legal issues that have or may come before any judicial officer, (iv) information entered into and maintained in an electronic system used to create and issue judicial process, (v) subject to applicable state and federal laws and policies, personnel information concerning identifiable individuals, (vi) telephone numbers, telephone records and email addresses for justices and judges, (vii) documents or information that would compromise the safety of judicial officers, court personnel, jurors, or the public, or jeopardize the integrity of judicial facilities or any information technology or recordkeeping systems, (viii) communications among court personnel and judicial officers, and communications among judicial officers, (ix) legal documents created or received by magistrates that have not been filed with the appropriate clerk of court, and (x) records, documents, information, data or other items that are sealed, confidential, privileged, or otherwise protected by federal or state law, common law, court rule, or court order.

#### Criminal History Records - [Va. Code § 9.1-134](#)

The Criminal Justice Services Board is authorized to “adopt procedures reasonably designed (i) to insure prompt sealing or purging of criminal history record information when required by state or federal statute, regulation or court order, and (ii) to permit opening of sealed information under conditions authorized by law.”

#### Exhibits

*See Attorney General opinion to Judge Sweeny dated 11/13/87 (1987-88, page 255; “...if exhibits are offered into evidence, even though the court may deny their admission into evidence, they become a part of the court’s record and are “public records” generally subject to disclosure under § 17-43.” “if the exhibits are not offered into evidence but are merely offered for identification purposes, they do not become public records subject to disclosure under § 17-43.”*

#### Presentence Reports - [Va. Code § 19.2-299 \(A\)](#)

Reports filed by the probation officer are to be sealed upon entry of the final order and made available only by court order. These reports are also exempt from the Virginia Freedom of Information Act. [Va. Code § 9.1-177.1](#).

The defense attorney is provided with a copy of the report five days before sentencing to give counsel the opportunity to review it with the defendant and to prepare a response, if needed, to items contained in the report.

Counsel representing a person who has been convicted of a crime for which a presentence report was prepared by a probation officer may be provided a copy of the report, without a court order, when the convicted person is pursuing a post-conviction remedy. [Va. Code §§ 9.1-177.1](#) and [19.2-299](#).

Expungements - [Va. Code § 19.2-392.3](#)

It shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the court which ordered the record expunged. For step-by-step procedures for handling expungements, see *Criminal Manual*, "Post Sentencing" chapter.

Presentence Mental Evaluation of Sex Offenders - [Va. Code § 19.2-301](#)

The examiner's report shall be confidential, except as needed for the prosecution or defense of an offense or for assessment by the Attorney General for civil commitment. It shall be sealed once the sentencing order is entered. The defendant is required to return to the court their copy of the report at the conclusion of sentencing.

Pretrial and Community-based Probation Records - [Va. Code §§ 9.1-177.1](#), [19.2-299](#)

Any investigation report prepared by a local probation officer is confidential and is exempt from the <https://law.lis.virginia.gov/vacodepopularnames/virginia-freedom-of-information-act/>. Such reports shall be filed as a part of the case record. Such reports shall be made available only by court order and shall be sealed upon final order by the court; except that such reports shall be available upon request to (i) any criminal justice agency, as defined in [Va. Code § 9.1-101](#), of this or any other state or of the United States; (ii) any agency where the accused is referred for assessment or treatment; or (iii) counsel for the person who is the subject of the report.

Counsel representing a person who has been convicted of a crime for which a presentence report was prepared by a probation officer may be provided a copy of the report, without a court order, when the convicted person is pursuing a post-conviction remedy.

Mental, Psychological and/or Psychiatric Documents - [Va. Code § 2.2-3704 \(A\)](#)

Any evaluation or report of this type should be placed in an envelope with attached notice on the outside of the envelope.

A competency evaluation report ordered by and submitted to a court, pursuant to [Va. Code § 19.21-169.1](#), which is not sealed by court order, is

open to inspection under [Va. Code § 17.1-208](#). See Attorney General Opinion to Schaefer, dated 2/25/09 (2009, page S-14); Competency evaluation report that was ordered by and submitted to court as part of court's record is open to inspection, provided such report is not sealed by court order.

Victim Impact Statement - [Va. Code § 19.2-299.1](#)

This statement, like a presentence report, is confidential and shall be sealed upon entry of the sentencing order. It is not admissible in any civil proceeding for damages arising out of acts upon which the conviction was based but may be used by the [Virginia Workers' Compensation Commission](#) when making a determination on claims by victims of crimes pursuant to [Va. Code § 19.2-368.1](#) et seq.

Request of Confidentiality of Victim - [Va. Code § 19.2-11.2](#) (Form DC-301, [REQUEST FOR CONFIDENTIALITY](#))

Upon request of any crime victim, neither a law-enforcement agency, the Commonwealth's attorney, a court nor the [Department of Corrections](#), nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the victim or a member of the victim's family, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law or [Rules of the Supreme Court](#), (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause.

Except with the written consent of the victim, a law-enforcement agency may not disclose to the public information which directly or indirectly identifies the victim of a crime involving any sexual assault or abuse, except to the extent that disclosure is (i) of the site of the crime, (ii) required by law, (iii) necessary for law-enforcement purposes, or (iv) permitted by the court for good cause.

Special Grand Jury - [Va. Code § 19.2-212](#)

The foreman of the special grand jury shall seal all the notes, tapes and transcripts of the special grand jury proceedings at the conclusion of the investigation. The records are to be placed in a sealed container, dated and delivered to the court for safekeeping. The Court, on motion of the Attorney for the Commonwealth or a witness subsequently prosecuted for perjury, shall grant access to both of them to the testimony given before the special grand jury by that defendant. If no prosecution for perjury is initiated within three years from the special grand jury's report, the sealed container shall be destroyed.



Special Grand Jury Report - [Va. Code § 19.2-213](#)

The report of the special grand jury filed with the court at the conclusion of its investigation and deliberations shall be sealed and opened only by order of the court.

Election Material - [Va. Code § 24.2-668](#)

After ascertaining the results and before adjourning, the electoral officers shall put the pollbooks, the duplicate statements of results, and any printed inspection and return sheets in the envelopes provided by the State Board. The officers shall seal the envelopes and direct them to the clerk of the circuit court for the county or city, by noon on the day following the election. The local electoral board may direct that the officers of election, in lieu of conveying the materials to the clerk of the circuit court, shall convey the materials to the principal office of the general registrar on the night of the election or the morning following the election as the board directs, and the registrar shall secure and retain the materials in their office and shall convey to the clerk of the circuit court by noon of the day following the ascertainment of the results of the election, and the general registrar shall retain for public inspection on copy of the statement of results.

The clerk shall retain custody of the pollbooks, paper ballots, and other electronic materials until the time has expired for initiating a recount, contest or other proceedings in which the materials may be needed as evidence. The clerk shall (i) secure all pollbooks, paper ballots and other election materials in sealed boxes; (ii) place all of the sealed boxes in a vault or room not open to the public or to anyone other than the clerk and their staff; (iii) cause such vault or room to be securely locked except when access is necessary for the clerk and their staff; and (iv) upon the initiation of a recount, certify that these security measures have been taken in whatever form is deemed appropriate by the chief judge.

After that time, the clerk shall deliver the pollbooks to the general registrar. The clerk shall retain the statement of results and any printed inspection and return sheets for two years and may then destroy them.

Voting Machine Keys - [Va. Code § 24.2-659](#)

The keys to each voting machine/device are to be placed in a certified and sealed envelope by the officers of election and delivered to the clerk by noon on the day following the election. They are to be opened only by court order or request of the [State Board of Elections](#) or electoral board. The sealed envelopes are to be returned to the electoral board fifteen days after the ascertainment of the results of the election or at a designated

time after a recount.

Affidavit for Search Warrant - [Va. Code § 19.2-54](#)

An affidavit preliminary to issuance of search warrant shall be certified by the officer who issues such warrant and delivered by such officer or other officer authorized to certify such warrants to the clerk of the circuit court of the county or city wherein the search is made within seven days after the issuance of such warrant and shall by such clerk be preserved as a record and shall at all times be subject to inspection by the public after the warrant that is the subject of the affidavit has been executed or 15 days after issuance of the warrant, whichever is earlier; however such affidavit, any warrant issued pursuant thereto, any return made thereon, and any order sealing the affidavit, warrant, or return may be temporarily sealed for a specific period of time by the appropriate court upon application of the attorney for the Commonwealth for good cause shown in an ex parte hearing.

Search Warrant for Tracking Device - [Va. Code § 19.2-56.2](#)

All affidavits, search warrants and inventories filed pursuant to this code section shall be sealed. Only a court order can authorize the unsealing of these documents.

Wiretaps, Intercepted Communications - [Va. Code § 19.2-68 \(F\)](#)

Applications made for wiretaps or interceptions and the orders granting or denying those applications shall be sealed. Custody of those documents shall be wherever the judge directs. They must be held for ten years and can be destroyed after that period only upon order of the court.

The recording or resume stemming from the court order granting interception is to be turned over to the court and sealed immediately upon expiration of the period outlined in the order. The court retains custody of the recordings or resume for a period of ten years from the date of the order and they may be destroyed after that date upon order of the court.

Pen Register or Trap and Trace Device - [Va. Code § 19.2-70.2 \(D\)\(1\)](#)

An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that the order and application be sealed until otherwise ordered by the court.

Health Records - [Va. Code § 32.1-127.1:03](#)

Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued for an individual's medical records shall include a Notice to Providers in the same part of the request where the provider is

directed where and when to return the records. The notice is to indicate that the records are to be delivered in a sealed envelope. Attached to the sealed envelope will be a cover letter to the clerk of court which states that confidential health care records are enclosed and are to be held under seal pending the court's ruling on the motion to quash the subpoena. The sealed envelope and the cover letter shall be placed in an outer envelope or package for transmittal to the court.

Health care providers shall provide a copy of all records as required by a subpoena duces tecum or court order for such medical records. If the health care entity has actual receipt of notice that a motion to quash the subpoena has been filed or if the health care entity files a motion to quash the subpoena for health records, then the health care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or administrative agency issuing the subpoena or in whose court or administrative agency the action is pending. The court or administrative agency shall place the health records under seal until a determination is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the judge or administrative agency. In the event the court or administrative agency grants the motion to quash, the health records shall be returned to the health care entity in the same sealed envelope in which they were delivered to the court or administrative agency. In the event that a judge or administrative agency orders the sealed envelope to be opened to review the health records in camera, a copy of the order shall accompany any health records returned to the health care entity. The health records returned to the health care entity shall be in a securely sealed envelope.

#### Discovery from a Subpoena Duces Tecum - [Rule 3A:12](#)

The press and public do not have the right to access any documents that have been produced through a subpoena duces tecum in a criminal case which have not been entered into evidence. If the documents are introduced into evidence during a pretrial hearing or during trial, then they become "judicial records" and the right of access is created. Such documents are open to counsel of record for viewing at any stage of the case unless otherwise prohibited by court order.

If an order is entered quashing or limiting access to documents from a subpoena duces tecum, place the original order in the criminal case file, and place a copy of such order on the outside of the envelope containing the documents.

Public Safety Employees; Testing for blood-borne pathogens - [Va. Code § 32.1-45.2 \(E\)](#)

If the court finds by a preponderance of the evidence that an exposure prone incident has occurred, it shall order testing for hepatitis B or C virus and human immunodeficiency virus and disclosure of the test results. The hearing shall be held in camera as soon as practicable after the petition is filed. The record shall be sealed.

Disciplinary proceedings against attorney - [Va. Code § 54.1-3936](#)

Papers filed with the Court pursuant to an ex parte application by Bar Counsel or the chairman of a district committee of the [Virginia State Bar](#) against an attorney who is suspected of engaging in any activity which is unlawful or in violation of the Virginia Code of Professional Responsibility and which will result in loss of property of one or more of their clients or any other person shall be sealed.

A complaint, and all other related papers, filed with the Court seeking an injunction prohibiting the withdrawal of an attorney's deposits or the appointment of a receiver for funds under the control of an attorney who is suspected of engaging in an unlawful activity shall be sealed until such time as the Court acts.

Statement of Facts - Subpoena Duces Tecum for Financial Records - [Va. Code §§ 18.2-246.2](#) and [19.2-10.1](#)

The statement of facts documenting the reasons the records or information are sought will be sealed upon issuance of the subpoena duces tecum upon motion of the Commonwealth's Attorney, and the use of such records or information is limited to the investigation and legitimate law-enforcement purposes. At the end of the investigation the records or information may be sealed.

### Confidentiality Considerations

The vast majority of records filed in the clerk's office are not confidential and are accessible to the public. Virginia courts are not bound by many of the restrictions imposed on governmental agencies, including the Government Data Collections and Dissemination Practices Act ([Va. Code § 2.2-3802](#)), and court personnel should be conscious of the public's right to gain access to most records and documents on file in the clerk's office.

However, while the provisions of the <https://law.lis.virginia.gov/vacodepopularnames/virginia-freedom-of-information-act/> do apply to circuit court clerks' offices, there are certain documents, records and, in fact, entire cases that are statutorily classified as confidential and exempt from disclosure. The Code of Virginia specifies that some confidential records are to be sealed at certain stages during the proceedings of a case and remain a part of the file (presentence reports, victim impact statements, etc.), however most "confidential" records are not physically sealed but simply removed from public access and made unavailable for inspection.

The following records are considered confidential and not accessible to the public:

#### Addendums in Divorce Cases - [Va. Code § 20-121.03](#)

Any petition, pleading, motion, order, or decree, including any agreements of the parties or transcripts, shall not contain the social security number of any party or of any minor child of any party, or any financial information of any party that provides identifying account numbers for specific assets, liabilities, accounts, or credit cards. Such information if required by law to be provided to a governmental agency or required to be recorded for the benefit or convenience of the parties, shall be contained in a separate addendum filed by the attorney or party which shall be incorporated by reference into the petition, pleading, motion, agreement, order or decree. Such separate addendum shall be used to distribute the information only as required by law. Such addendum shall otherwise be made available only to the parties, their attorneys, and to such other persons as the court in its discretion may allow. [Form CC-1426, ADDENDUM FOR PROTECTED IDENTIFYING INFORMATION – CONFIDENTIAL](#), should be utilized.

#### Adoptions - [Va. Code § 63.2-1246](#)

Nonidentifying information from an adoption file "shall not be open to inspection, or to be copied, by anyone other than the adopted person, if eighteen years of age or over, or licensed or authorized child-placing agencies providing services to the child or the adoptive parents, except upon order of a circuit court entered upon good cause shown." If either of the adoptive parents is living when the adult adopted person applies to inspect the file, the home study of the adoptive parents shall not be made available for inspection unless the adoptive parent or parents give written

permission for disclosure. The exceptions to the prohibition of disclosure are enumerated in subsections C, D and E of [Va. Code § 63.2-1247](#) (a physician states that critical medical, psychological or genetic information must be conveyed to the parties; at least one adoptive parent and one biological parent agree to allow the exchange of nonidentifying information and pictures and; in certain parental placement adoptions executed on or after July 1, 1994.)

No identifying information from such adoption file shall be disclosed, open to inspection or made available to be copied except as provided in subsection A, B and E of [Va. Code § 63.2-1247](#) or upon application of the adopted person, if eighteen years of age or over, to the [Commissioner of the Department of Social Services](#), who shall designate the person or agency which made the investigation required by [Va. Code §§ 63.2-1221, 63.2-1208, 63.2-1238](#) or [63.2-1212](#) to attempt to locate and advise the biological family of the application.

The attorney for the Commonwealth and the probation officer shall have direct access to the defendant's juvenile court delinquency records maintained in an electronic format by the court for the strictly limited purposes of preparing a presentence report, preparing discretionary sentencing guidelines or preparing for any transfer or sentencing hearing. [Va. Code § 16.1-305.](#)

Adoptions (foreign) - Issuance of birth certificates for children adopted in the Commonwealth and from foreign countries - [Va. Code § 63.2-1220](#)

Adoptive parents who are residents of the Commonwealth may petition the circuit court in the city or county where they reside for a report of adoption when the adoptive parents are seeking a Virginia certificate of birth for a child adopted in a foreign country that has post-adoption reporting requirements and with whom the United States has diplomatic relations.

No identifying information from such adoption file shall be disclosed, open to inspection or made available to be copied except as provided in [Va. Code § 63.2-1247](#)

Judicial Complaints - [Va. Code § 17.1-107](#)

Complaints made to the Chief Justice of the Supreme Court regarding a circuit court judge who may be holding any matter, claim, motion, issue, or case under advisement for an unreasonable length of time, "shall be absolutely privileged, and the name of the complaint shall not be disclosed without their [her] consent."

**Note:** This Code Section does not contemplate any such petition to the circuit court. Inquiry would be made to the Supreme Court of Virginia.

Judicial Inquiry and Review Commission - [Va. Code §§ 17.1-913, 2.2-3705.7](#)

All papers filed with and proceedings before the [Judicial Inquiry and Review Commission](#) are confidential. However, a judge under investigation “or any person authorized by them, may divulge information pertaining to a complaint filed against such judge as may be necessary for the judge to investigate the allegations in the complaint.” Ethical advice given to a judge by an attorney employed by the Commission and any attendant records shall remain confidential. However, the Commission may share such advice, without identifying the judge, with the judicial ethics advisory committee established by the Supreme Court.

[Virginia Code § 2.2-3705.7](#) exempts the Commission from the Freedom of Information Act.

Juvenile court records - Title 16.1, Chapter 11, Article 12

[Virginia Code § 16.1-307](#) states that in the circuit court proceedings on appeals from the Juvenile and Domestic Relations Court, “the clerk of the court shall preserve all records connected with the proceedings in files separate from other files and records of the court as provided in § [16.1-302](#)”, i.e., separate dockets, files, indices and order books which are not accessible to the public. The exceptions to this rule ([Va. Code § 16.1-302 \(B\)](#)) are (1) cases involving support pursuant to [Va. Code § 20-61](#); (2) cases involving criminal offenses committed by adults which are commenced on a warrant charging an offense described in Title 19.2; and (3) cases involving civil commitments of adults pursuant to Title 37.2.

a. Child or Spousal Support

In any child or spousal support case appealed to the circuit court, the case files shall be open for inspection only as provided by [Va. Code § 16.1-305.01](#).

All child support and spousal support case files, whether physical or digital, shall be open for inspection only to the following:

- The judge, court officials, and clerk or deputy clerk assigned to serve the court in which the case is pending or to which the case is transferred pursuant to court order;
- Any party to the case;
- Attorney of record to the case; and
- The Department of Social Services and the Division of Child

## Support Enforcement.

Any other person, agency, or institution having a legitimate interest in such case files or the work of the court, by order of the court, may inspect the case files.

- b. Children in Need of Services, Children in Need of Supervision, Neglected and Abused Children, Delinquent Children

Any person, agency, or institution that may inspect juvenile case files pursuant to subdivisions A1 through A4 of [Va. Code § 16.1-305](#) shall be authorized to have copies made of such records, subject to any restrictions, conditions, or prohibitions that the court may impose.

- c. Appeal of denial of petition filed by juvenile authorizing a physician to perform an abortion without notice

The clerk should treat this as a matter of deep confidentiality. [Va. Code § 16.1-241 \(W\)](#). See "Suits/Action Types A-B" this manual for detailed procedures in processing these appeals.

- d. Certified cases from J&DR (Juvenile charged with a felony)

In cases where a juvenile is charged with committing a felony and the J&DR court judge has certified the case to the circuit court for the juvenile to be tried as an adult pursuant to [Va. Code § 16.1-269.1](#), the clerk should treat the case as a juvenile appeal (confidential file, index, etc.) until an Indictment is returned by the Grand Jury. At that point the confidential nature of the case ceases and the case assumes the status of any other circuit court criminal case. The juvenile case number previously assigned to that case should be deleted and the case should be assigned a criminal case number and it should be filed and indexed as any other adult criminal case. If the juvenile is subsequently convicted, the clerk should send a copy of the conviction order to the J&DR clerk.

Information on Protective Orders - [Va. Code §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 17.1-272](#)

The residential address, telephone number and place of employment of a person protected by a protective order shall not be disclosed, unless it is required by law or is necessary for law-enforcement purposes. In addition, no fee shall be charged for filing or serving a protective order. Finally, law enforcement agencies shall enter certain information regarding the protective order, upon receipt, into the [Virginia Criminal Information Network System](#) (VCIN). Currently, that information is to be entered "as



soon as practicable.”

**Note:** Protective orders have had the sensitive information removed from the order and placed on a non-disclosure addendum (DC-621, [NON-DISCLOSURE ADDENDUM](#)) that will be used for service purposes but otherwise maintained in a confidential area.

Probate Tax Return - [Va. Code § 58.1-1714](#)

At the time a will is offered for probate or the grant of administration is sought, and when the value of the estate exceeds \$15,000, a return must be made by the proponent of the will or the person requesting the grant of administration and filed with the clerk stating the estimated value of real estate and personal property owned solely by the decedent at the time of death.

The information contained on the probate tax return is “entitled” to the privilege accorded by [Va. Code § 58.1-3](#) even though a detailed listing of the estate is to be subsequently recorded on the estate inventory, which is not a confidential document.

Wills Lodged for Safekeeping - [Va. Code § 64.2-409](#)

The clerk shall carefully preserve the envelope containing the will unopened until it is returned to the testator or their nominee in their lifetime upon their request in writing therefor or until the death of the testator. Should such will be returned in the testator’s lifetime as herein before provided and later returned to the clerk it shall be considered as a separate lodging under the provisions of this section.

Photographs/X-Rays in child abuse cases - [Va. Code § 63.2-1520](#)

The court, in its discretion, may impose confidentiality restrictions on photographs and x-rays of children introduced as evidence in suspected child abuse cases.

Military Discharge Certificates and Reports of Separation - [Va. Code § 17.1-265](#)

Discharge certificates and reports of separation from active military duty which are recorded with the clerk of circuit court shall be open for inspection and copying only by

- The subject of the record;
- The duly qualified conservator or guardian of the subject of the record;
- The duly qualified executor or administrator of the estate of the

- subject of the record, if deceased, or, in the event no executor or administrator has qualified, the next of kin of the deceased subject;
- An attorney, attorney-in-fact, or other agent or representative of any of the persons described in subdivision 1, 2 or 3, acting pursuant to a written power of attorney or other written authorization; or
  - A duly authorized representative of an agency or instrumentality of federal, state, or local government seeking the record in the ordinary course of performing its official duties.

Under the circumstances in which time is of the essence, including but not limited to, requests for copies of records attendant to the making of funeral arrangements or arrangements for medical care, the clerk, in ascertaining whether a person seeking access to discharge certificates or reports of separation from active duty is qualified to do so pursuant to this section, may rely upon the sworn statement of the requestor made in person before the clerk or their deputy.

The clerk may permit access to discharge certificates or reports of separation from active duty of deceased persons for bona fide genealogical or other research purposes.

**Note:**

- Sworn statements of requestors should be placed in a file for this purpose. It is also suggested that copies of authorizing documents be kept to document the reason the court allowed the record to be copied.
- Induction records are not mentioned in this Code section.

Marriage License and Register - [Va. Code § 32.1-267](#)

Applications for marriage licenses filed on and after July 1, 1997, and marriage registers recording such applications, which have not been configured to prevent disclosure of the social security number or control number required pursuant to the provisions of subsection B of this section shall not be available for general public inspection in the offices of clerks of the circuit courts. The clerk shall make such applications and registers available for inspection only (i) upon the order of the circuit court within which such application was made or register is maintained, (ii) pursuant to a lawful subpoena duces tecum issued to the clerk, (iii) upon the written authorization of either of the applicants, or (iv) upon the request of a law-enforcement officer or duly authorized representative of the DCSE in the course of performing their official duties. Nothing in this subsection shall

be construed to restrict public access to marriage licenses or to prohibit the clerk from making available to the public applications for marriage licenses and marriage registers stored in any electronic medium or other format that permits the blocking of the field containing the social security or control number required pursuant to the provisions of subsection B of this section, so long as access to such number is blocked.

*See Attorney General opinion to Carol Black, dated 3/25/02 (2002, page 182); which states that although the Office of the Attorney General is "unable to comment on the practicability of devising a method by which marriage licenses processed and imaged since 1997 may be changed to comply with the nondisclosure requirements" the General Assembly "intends that social security numbers required for a person to obtain a marriage license not be disclosed to the general public, and that this applies retroactively to all marriage licenses filed on and after July 1, 1997."*

Money Under Control of Court; held by Clerk - [Va. Code § 8.01-600](#) and General Receiver - [Va. Code § 8.01-582](#)

Orders creating funds pursuant to these sections shall include information necessary to make prudent investment and disbursement decisions. The orders shall include, except when it is unreasonable, the proposed dates of periodic and final disbursements. Prior to the entry of the order, the beneficiary or their representative shall file an affidavit with the court providing the beneficiary's name, date of birth, address and social security number. The affidavit shall be maintained under seal by the clerk unless otherwise ordered by the court, and the information therein shall be used solely for the purposes of financial management and reporting.

Set-Off Debt Collection - [Va. Code § 58.1-533](#)

The information obtained from the [Department of Taxation](#) pursuant to collection efforts in the Set-Off Debt Collection program shall be used only for debt collection purposes and "any person employed by, or formerly employed by, a claimant agency who discloses such information for any other purpose" shall be penalized pursuant to the provisions of [Va. Code § 58.1-3](#).

Victim Impact Statement - [Va. Code § 19.2-299.1](#)

Like the presentence report, a victim impact statement "shall be kept confidential and shall be sealed upon entry of the sentencing order." See additional information under "Sealed Records."

Restitution Victim Contact Information [Va. Code § 19.2-305.1](#)

At the time of sentencing, the court shall enter the amount of restitution to

be repaid by the defendant, the date by which all restitution is to be paid, the terms and conditions of such repayment, and the victim's name and contact information, including the victim's home address, telephone number, and email address, on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia. A copy of the form, excluding contact information for the victim, shall be provided to the defendant at sentencing. A copy of the form shall be provided to the attorney for the Commonwealth and to the victim, their agent, or their estate upon request and free of charge. Except as provided in this section or otherwise required by law, the victim's contact information shall be confidential, and the clerk shall not disclose such confidential information to any person.

Master Jury and Jury Trial List (Archer and Johnson v. Mayes, 213 Va. 633 and [Prieto v. Commonwealth](#), 283 Va. 142)

The Virginia Supreme Court ruled in the 1973 case of Archer and Johnson v. Mayes, that the master "jury list is not an 'official record' within the intent and meaning of the provisions of the Freedom of Information Act. Thus the right of access to official records allowed under the Freedom of Information Act does not include jury lists."

The appellants asserted that the jury list was a "state document" that all citizens should be permitted to view and examine. The Court disagreed stating that a judge could, in their discretion, permit examination of the list, but it could not be inferred that the jury list was open for inspection to members of the bar or private citizens without "assigning good and sufficient reasons therefor." The Court further stated "the proper administration of justice requires that the jury list be kept secret until the jurors are drawn for service, unless good cause can be shown. The jury list is in no sense a public record to be exposed to the general public. Exposure of the list to the public could lead to tampering or harassment of potential jurors and seriously affect their impartiality and the proper administration of justice."

In the 2012 case of Prieto v. Commonwealth, the Virginia Supreme Court upheld and cited its prior decision about the confidentiality of the jury list, going on to include that the good cause standard is appropriate for the release of both a current and expired jury list.

Jury questionnaires are also not a public record. See Juror Lists for further information

**Note:** Even when good cause is shown, the inspection of the list shall be

permitted only under the 'watchful eye' of the court and copying or photo stating the list is not to be permitted.

**Exception:** Upon request, the clerk or sheriff shall make available to all counsel of record in that case, a copy of the jury panel to be used for the trial of the case 3 full business days before the trial. [Va. Code § 8.01-353](#).

The court may, upon motion of either party or its own motion, and for good cause shown, issue an order regulating the disclosure of the name and home address of a juror who has been impaneled in a **criminal** trial to any person, other than to counsel for either party or a pro se defendant. Additional personal information of a juror who has been impaneled in a criminal case shall be released only to the counsel for the defendant, a pro se defendant, and the attorney for the Commonwealth. The court may, upon motion of either party or its own motion, and for good cause shown, issue an order authorizing the disclosure of any additional personal information of a juror to any other person.

Additional "personal information" means any information other than name and home address collected by the court, clerk, or jury commissioner at any time about a person who is selected to sit on a criminal jury and includes, but is not limited to, a juror's age, occupation, business address, telephone numbers, email addresses, and any other identifying information that would assist another in locating or contacting the juror. [Va. Code §19.2-263.3](#).

See Attorney General Opinion to Hall, dated 9/17/97, (1997, page 27); Circuit court clerk may not release information contained on master jury list or jury commissioner's questionnaires regarding potential jurors to law enforcement or Department of Motor Vehicles authorities without circuit court judge having determined that good cause has been shown by such authorities for obtaining such information.

See Attorney General Opinion to Small, dated 6/3/16; *Counsel of record has the right to view a term jury list. Copying of the list by counsel is permitted only by leave of court upon showing of good cause.*

### Jury Panel List

The jury panel list, or "strike list", is a list that contains only the names or assigned juror numbers of persons summoned to appear on a specific date for a trial and is used to strike or excuse jurors during the process of impaneling. The list is maintained in the case file and may be made

available to the public provided the juror's address, or any other personal identifying information, is not included.

#### Grand Jury List

[Virginia Code §19.2-194](#) requires that the Judge or Judges are to make a list of potential grand jurors, and deliver this list to the clerk of the circuit court. The Clerk holds this list, until time the judge directs names to be selected for service. The list is not a public record, and not subject to inspection and copying under [Va. Code §17.2-208](#). When the names are selected from the list and reproduced on a writ of venire facias, this creates a record of the court that could be subject to [Va. Code §17.1-208](#). This writ, however, is subject to amendment up to the day of court service, depending on the present availability or ability of the grand juror to serve. Although there are no statutory requirements for the grand jury list to be confidential, it is recommended that the Judge make a determination to release the names. At the very least, the identity of grand jurors should not be released until they have served, to protect jurors from outside influences that may rise to the level of jury tampering.

#### Term Jury List

[Virginia Code § 8.01-351](#) directs the clerk to make and list of the names of each potential juror for a term of court and have it available for inspection by counsel in any case to be tried by a jury during the term. This list is not available for copying unless a court finds good cause to permit it. It is not available for inspection or copying by the public at all. *See Attorney General Opinion to Small, dated 6/3/16. Only counsel of record has the right to view a term jury list. Copying of the list by counsel is permitted only by leave of court upon a showing of good cause.*

#### Passport Information (Passport Agent's Reference Guide - Passport Services)

The Privacy Act of 1974 protects information obtained from or in a connection with a passport application. Clerks should not give such information to anyone except the applicant (or, in the case of a minor, the parent or guardian). Other persons or organizations requesting information about a passport applicant should contact: [Passport Services](#).

#### Medical Examiners Reports - [Va. Code § 32.1-283](#)

Reports and findings of the Medical Examiner shall be confidential and shall not under any circumstances be disclosed or made available for discovery pursuant to a court subpoena or otherwise, except as provided in [Va. Code § 32.1-283](#). Nothing shall prohibit the [Chief Medical Examiner](#) from releasing the cause or manner of death, or prohibit disclosure of reports or findings to the parties in a criminal case.

## Appendix G - Manual Updates

Date	Chapter	Section	Description
July 2023	Juror Pay	Various Sections	Updated: Juror Pay Increase to \$50 – Legislative
July 2023	Overview	Circuit Courts	Added: Current jurisdiction with General District Courts for Personal Injury or Wrongful Death, Claim \$4,500 - \$50,000 – Legislative
July 2023	Overview	District Courts	Added: Exclusive Jurisdiction for Personal Injury or Wrongful Death, Claim <=\$4,500 and Concurrent jurisdiction with General District Courts for Personal Injury or Wrongful Death, Claim \$4,500 - \$50,000 – Legislative
July 2023	Case Initiation	When an Increase in Ad Damnum Allowed by the Court	Added: New Section – Non-Legislative
July 2023	Pre-Trial	Interpreters	Added: Interpreters – Deaf and Hard of Hearing – Legislative
July 2023	Suits/Action Types (A-B)	Civil Proceedings From J&DR	Added: Notice of Appeal to be Served on Opposing Party/Counsel of Record by Appellant - Legislative
July 2023	Suits/Action Types (A-B)	Civil Proceedings From J&DR	Added: Form DC-604, Order of Referral and Mediator Appointment Form – Custody, Visitation and Support Cases – Non-Legislative
July 2023	Suits/Action Types (A-B)	Appeals	Added: Testing for Sexually Transmitted Infections – Legislative
July 2023	Suits/Action Types (C)	Civil Commitment for Sexually Violent Predators	Removed: Requirements to Serve Counsel and Provide to the Court Copies of Acts of Assembly, Three US Supreme Court Cases, Civil Commitment of Sexually Violent Predators Summary, Brief Regarding Probable Cause – Education Committee
July 2023	Suits/Action Types (C)	Civil Commitment for Sexually Violent Predators	Added: Sexually Violent Predator Timeframes Chart – Education Committee

Date	Chapter	Section	Description
July 2023	Suits/Action Types (C)	Confession of Judgment	Updated: Added Clarification Recording and Indexing the CC-1420 and Order – Non-Legislative
July 2023	Suits/Action Types (G-M)	Guardians/ Conservators	Added: Confidential Addendum Containing Financial Information to be Maintained Confidential - Legislative
July 2023	Suits/Action Types (G-M)	Guardians/ Conservators	Added: Guardian/Conservator Review Hearings – Legislative
July 2023	Suits/Action Types (G-M)	Guardians/ Conservators	Added: Guardianship – Restrict Communication, Visitation or Interaction – Legislative
July 2023	Suits/Action Types (G-M)	Lawyer Discipline	Updated: Renamed “Revocation of License to Practice Law” to “Lawyer Discipline” and Moved from Chapter 10 – Non-Legislative
July 2023	Suits/Action Types (G-M)	Marriage – Authorization of Persons Other Than Ministers to Perform	Updated: Added the Waiver of Posting a Bond by the Court – Legislative
July 2023	Suits/Actions (N-W)	Protective Orders	Added: Protective Order Extensions – Legislative
July 2023	Suits/Actions (N-W)	Removals	Added: Elected and Certain Appointed Officials – Legislative
July 2023	Suits/Actions (N-W)	Removals	Added: General Registrar or Local Electoral Board Member – Legislative
July 2023	Suits/Action Types (N-W)	Restore, Modify or Terminate Guardian/ Conservator	Updated: Filing Type Changed from REST to APPT and Using the Dropdown Options – Non-Legislative
July 2023	Suits/Action Types (N-W)	Special Elections (Local Governing Body or Local School Board)	Added: New Section – Non-Legislative
July 2023	Suits/Action Types (N-W)	School Board Decision (Teacher or School Board Employee)	Added: New Section – Non-Legislative
Feb 2024	Suits/Action Types (A-B)	Adoption	Added: Summons to be Attached if Service is Requested – Non-Legislative
Feb 2024	Suits/Action Types (A-B)	Civil Proceedings from J&DR	Added: Appellant to Serve Notice of Appeal, Clerk to Send Notice of Hearing When Applicable



Date	Chapter	Section	Description
Feb 2024	Suits/Action Types (C)	Concealed Handgun Permits	Added: Transfers of CHP Applications – Non-Legislative
Feb 2024	Suits/Action Types (G-M)	Marriage – Authorization of Persons Other Than Ministers	Added: Note Regarding Bond – Education Committee
Feb 2024	Suits/Action Types (G-M)	Lawyer Discipline	Added: Language Regarding Sealing of Records and Three-Judge Circuit Court for Case Hearing.

## Index

- Abc Board
  - Appeal Decision Of, 6-34
- ABC Violations
  - Forfeiture of Contraband, 8-64
- Abuse and Neglect
  - Administrative Process Act Appeal, 6-34
- Accounting
  - Surcharge and Falsify, 10-84
- Acknowledging Receipt Of Case Papers, 2-1
- Acts of the General Assembly, 1-18
- Addendum for Protected Identifying Information, 7-14
- ADDENDUM FOR PROTECTED IDENTIFYING INFORMATION, 8-14
- Additional Jurors, 3-20
- Address Confidentiality Program, 2-8
- Administrative Appeal (Employee Grievance), 6-1, 6-3
- Administrative Appeal (Virginia Retirement System Member Grievance), 6-4
- Administrative Appeal (VRS Member Grievance), 6-4
- Administrative Impoundment, 6-5
- Administrative Process Act – Judicial Review, 6-1
- Administrative Suspension of Driver’s License, 6-5
- Administrators
  - Definition, 1-10
- Adoption
  - Disclosure, 6-8
  - Release of Information, 6-8
- Adoption, 6-5
  - Putative Father Registry, 6-6
- Adoption
  - Division of Vital Records, 6-8
- Adoption
  - Adult, 6-9
- Adoption
  - Post Adoption Contact And Communication AGREEMENTS, 6-11
- Adoption
  - Establish Report of Foreign, 8-45
- Adoption Order Book. *See* Order Books
- Adoption-Foreign, 6-9
- Adoptions
  - Confidentiality Considerations, F-10
  - Foreign, F-11
- Adult Adoption, 6-9**
- Adult Protective Services, 6-13
- Affidavit for Search Warrant
  - Confidentiality Considerations, F-7
- Agreed Settlement, 7-16
- Agreed Upon Settlement, 7-27, 7-36
- Aid and Guidance for Established Trusts, 10-90
- Amend Birth Certificate, 6-79
- Amendment of Claim – Case Transfer, 4-14
- Animal Violations, 6-15
- Annexation, 6-15
  - Voluntary Settlements Among Local Governments, 6-15
- Annulment, 8-13
- Answers, 1-14
- Appeal
  - Civil Contempt
    - Fail to Pay Child Support, 6-20
- Appeals
  - Administrative Appeals (Employee Grievance), 6-1, 6-3
  - Administrative Appeals (Member Grievance), 6-4
  - Blood Borne Pathogens Appeal, 6-18
  - Board of Assessors, 6-35
  - Board of Real Estate Review, 6-35
  - Bond, 3-50
  - Civil Contempt From District Court, 6-80
  - Costs, 3-43

- Court Of Appeals, 3-40
- Decision From Board Of Zoning, 6-29
- Decision From Zoning Administrator Decisions, 6-32
- Decision Of Abc Board, 6-34
- Decision Of Child Support Enforcement (DCSE), 6-40
- Decision Of Compensation Board Or Governing Body, 6-37
- Decision Of Employment Commission, 6-41
- Decision Of Local Governing Body (Historic Landmarks), 6-43
- Decision Of Marine Resources Commission, 6-44
- Decision Support Enforcement Set Off Debt Collection, 6-40
- Denial of Voter Registration, 6-49
- Discretionary, 3-47
- Docketing Costs/Fees, 3-44
- Equalization Board, 6-35
- Exhibits, 3-46
- File transcript or statement of facts, 3-43
- General District Court, 6-50
- Interlocutory, 3-52
- Involuntary Commitment/Inpatient and Outpatient, 6-54
- Isolation/Quarantine Order, 6-56
- Mandate, 3-49
- Notice of, 3-50
- Notification, 2-10
- Probate, 6-58
- Refusal to take Blood or Breath Test, 6-59
- Statement of Facts, 3-51
- Termination of Parental Rights, 6-23
- Transcript, 3-51
- Transmission of Record, 3-45
- Withdrawal, 6-62
- Appointment
  - Special Conservator of the Peace, 6-65
  - Special Conservator of the Peace Revocation, 6-68
- Appointment of Church Trustees, 6-63
- Appointment of Fraternal Organization Trustees, 6-63
- Appointment Of Guardian Ad Litem Generally, 4-9
- Appointment of Guardian of Minor, 9-18
- Appointment of Guardian/Conservator, 9-6
  - Uniform Adult Guardianship and Protective Proceeding Act, 9-14
- Appointment Of Guardian/Conservator, 6-70
- Appointment of Special Justice, 6-70
- APPOINTMENT OF STANDBY GUARDIAN/STANDBY CONSERVATOR, 6-71
- APPROVAL OF THE RIGHT TO BE ELIGIBLE TO REGISTER TO VOTE, 6-71
- Ascertain Amount
  - Workers' Compensation Lien, 10-105
- Assessors
  - Appeals, 6-35
- Attachments
  - Clerk's Certificate, 6-75
- ATTACHMENTS, 6-73
  - Defendant's bond, 6-77
  - Plaintiff's bond, 6-77**
- Attorney Issued Subpoena, 3-12
- Attorney Issued Subpoena Duces Tecum, 3-13
- Attorneys
  - Definition, 1-8
  - Exemption from Jury Service, 3-22
- authorization of non ministers to perform marriages, 6-78
- Bail Bond
  - Forfeiture, 8-59
- Bench Trial, 5-1
- Bill of Particulars, 1-14
- Bill To Enforce
  - Judgment Lien, 9-42
- Birth Certificate
  - Application for, 6-8
- Birth Certificate – Amendment, 6-79
- Birth Record

- Certificate, 6-8
- Establish, 8-43
- Blood Borne Pathogens Appeal, 6-18, 6-60
- Blood or Breath Test
  - Appeal of Refusal to Take, 6-59
- Board of Zoning
  - Appeal from Decision of, 6-29
- Bond Book, 3-37
- Bond forfeiture
  - property bondsman, 8-61
  - surety bondsman, 8-61
- Bond Refund Requests, 8-64
- bond-forfeitures, 6-80
- Books
  - Found in Clerk's Office, 3-36
- CASE FILE
  - Preparation of paper, 2-7
- Case Filing
  - Condemnation, 7-26
- CASE NUMBERING, 2-5
- Case Papers
  - Receipt of, 2-1
- Certificate of Deposit, 7-30, 7-31
- Certificate of Persons or Corporation
  - Transacting Business under an Assumed Name. *See* Order Books, *See* Order Books
- Certificate of Take, 7-30, 7-31
- Certiorari
  - Writ of, 10-108
- Challenge
  - Peremptory, 3-20
- Chancery
  - Order Book, 3-37
- Child Abuse or Neglect
  - Photographs/X-Rays in child abuse cases, F-14
  - Release Report, 7-2
  - Unfounded Complaint, 7-2
- Child Custody Proceedings
  - Appointment of Guardian Ad Litem, 4-12
- Child in Need of Services, 1-7
- Church Trustees
  - Appointment of, 6-63
- Circuit Court Clerks
  - Clerks, 1-9
  - Duties In The Courtroom, 5-15
- Civil - No Action Report, 4-39
- Civil Case Reinstatement, 10-41
- CIVIL COMMITMENT FOR SEXUALLY VIOLENT PREDATORS, 7-4
- Civil Contempt, 7-11
- Civil Contempt from District Court, 6-19
- Civil Order Book, 3-37
- Civil Pleadings, 1-11
- Commissioner
  - Chancery, 1-8
  - Condemnation, 1-9
  - Special, 1-9
- Common Law Order Book, 3-37
- Compensation Board
  - Appeal From Decision, 6-37
- Complaint, 7-13
  - Definition, 1-13, 1-16
  - Equitable Action, 7-13
  - Legal Cause of Action, 7-13
- Compromise Settlement
  - No Pending Suit, 7-15
- COMPROMISE SETTLEMENT, 7-15
- Concealed Handgun
  - Change of Address
    - Out of State, 7-22
  - Denial Of, 7-24
  - Revocation/Suspension, 7-25
- Concealed Handgun Permit
  - Renewal of Concealed Handgun Permit, 7-21
  - Replacement Permit for a Change of Address, 7-22
  - Replacement Permit for Lost or Destroyed Permit, Change of Name, 7-23
  - Transfer of Concealed Handgun Application, 7-22
- Concealed Handgun Permit, 7-17
- Concurrent Jurisdiction

- With General District, 1-5
- Condemnation, 7-26
- Agreed Upon Settlement, 7-36
- Agreed Upon Settlement Petition, 7-27
- Amendment to Certificate, 7-36
- Authorized Condemnor, 7-33
- Authorized Condemnors, 7-28
- Case Filings, 7-26
- Certificate, 7-29, 7-30
- Certificate of Deposit, 7-30, 7-31
- Certificate of Take, 7-30, 7-31
- Commissioners, 7-27
- Department of Conservation and Recreation, 7-29
- Determination of Just Compensation, 7-37
- Dispute Resolution Orientation Session, 7-39
- Distribution of Funds, 7-34
- Drawdown Petition, 7-27
- Electric Authorities, 7-28
- inverse, 7-26
- Jamestown-Yorktown Foundation, 7-29
- Juries, 7-27
- Localities, 7-28
- Reconciliation, 7-33
- Revision Petition, 7-28
- Sanitary Districts, 7-29
- Summary, 7-28
- CONDEMNATION
- Certificate of Deposit, 7-26
- Certificate of Take, 7-26
- Condemnation Commissioners, 1-9
- CONDEMNATION/EMINENT DOMAIN
- condemnation petition, 7-27
- Confession Of Judgment
- Motion to Set Aside, 7-47
- CONFESSION OF JUDGMENT, 7-44
- Confidentiality Considerations
- Child Support Appeals, F-12
- Confidentiality Considerations
- Adoptions, F-10
- Foreign, F-11
- Divorce Addendums, F-10
- Judges Notes, F-2
- Judicial Complaints, F-11
- Judicial Inquiry and Review Commission, F-12
- Juvenile Records, F-12
- Confidentiality Considerations
- Spousal Support Appeals, F-12
- Confidentiality Considerations
- Protective Order Information, F-13
- Confidentiality Considerations
- Probate Tax Return, F-14
- Confidentiality Considerations
- Wills Lodged for Safekeeping, F-14
- Confidentiality Considerations
- Photographs, F-14
- Confidentiality Considerations
- Military Discharge Records, F-14
- Confidentiality Considerations
- Marriage License and Register, F-15
- Confidentiality Considerations
- Money Under Control of Court, F-16
- Confidentiality Considerations
- Money Under Control of General Receiver, F-16
- Confidentiality Considerations
- Set Off Debt Collection, F-16
- Confidentiality Considerations
- Victim Impact Statement, F-16
- Confidentiality Considerations
- Restitution Victim Contact Information, F-16
- Confidentiality Considerations
- Master Jury List, F-17
- Confidentiality Considerations
- Jury Trial List, F-17
- Confidentiality Considerations
- Term Jury List, F-19
- Confidentiality Considerations
- Passport Information, F-19
- Confidentiality Considerations
- Medical Examiner Reports, F-19
- Conservator/Guardian
- Standby, 9-22

- Conservator/Guardian Appointment, 9-6  
 Uniform Adult Guardianship and Protective Proceedings Act, 9-14
- Conservator/Guardian Transfer  
 Uniform Adult Guardianship and Protective Proceedings Act, 9-24
- Consolidation of Counties  
 Petition Requesting Consolidation Agreement, 7-50
- CONSOLIDATION OF COUNTIES, 7-49
- Constitutional Officer  
 Special Elections, 8-30
- CONSTRUE WILL, 10-100
- Contraband  
 Forfeiture of (ABC Violation), 8-64
- Contract  
 Rescission, 7-51
- CONTRACT  
 (SEEKING DAMAGES & PERFORMANCE), 7-52  
 (SEEKING MONEY DAMAGES), 7-54  
 (SEEKING SPECIFIC PERFORMANCE), 7-55
- Convey/Encumber Church Property, 7-56
- Correct Orders, 7-61
- Correction Of Erroneous Or Improper Assessments Of Local Levies, 7-69, 8-71
- Correction Of Erroneous Or Improper Assessments Of State Tax, 7-59
- Counter Claim  
 Generally, 1-15
- Counterclaim, 4-22**
- Court Appointed Attorney  
 Appeal  
 Civil Contempt Fail to Pay Child Support, 6-20
- Court of Appeals  
 Appeals, 3-40
- COURT OF APPEALS, 1-5
- Courtroom  
 Duties Of Clerk, 5-15
- Creation of Trusts, 10-93
- Criminal History Records  
 Confidential Nature, F-3
- Cross-Claim  
 Generally, 1-15, 1-18
- Cross-Claims**  
**Rule 3**  
**10, 4-23**
- Death Certificate, 8-1
- Declaratory Judgment, 8-4
- Declare Death, 8-5
- Deed Books, 3-38
- Default Judgment  
 Set Aside, 7-62
- Defendant  
 Definition, 1-8
- Defendant's Bond  
 Attachment, 6-77
- Delinquent Taxes  
 Sell Land for, 10-71
- Demurrer, 1-17
- Demurrers, 1-14, **4-22**
- Denial Of Concealed Handgun, 7-24
- Department of Conservation and Recreation  
 Condemnation, 7-29
- Department of Health  
 Establish Record of Birth, 8-44
- Department of Medical Assistance  
 Administrative Process Act Appeal, 6-34
- Depositions  
 Witness Subpoena, 3-12
- Destroying Records, 5-24
- Destruction of Unexecuted Felony and Misdemeanor Warrants, 8-7
- Detainer  
 Unlawful Entry, 10-95
- Determination of Just Compensation - Condemnation, 7-37
- Detinue, 8-9
- Direct Contempt, 7-12
- Disaster Planning For Records Managers, 5-22
- Discharge and Induction Records  
 Confidentiality Considerations, F-14

- Disciplinary proceedings  
  Against Attorneys, F-9
- Disclaimer, 1-18
- Disclosure  
  Adoption, 6-8
- Discontinued Cases, 4-38
- Discovery from a Subpoena Duces Tecum,  
  F-8
- Discovery Material  
  Purging, 5-25
- Discretionary Appeals, 3-47
- Dismissed Cases, 4-24
- Disposition Of Ended Records, 5-24
- Dispute Resolution Orientation Session, 7-  
  39
- Distribution of Estate  
  Guardian of Minor, 9-20
- Distribution of Funds  
  Condemnation, 7-34
- District Court Papers  
  Retention of, 5-27
- District Courts  
  Appeals from General District, 6-50
- Division of Child Support Enforcement  
  Appeal Decision of, 6-40
- Division of Vital Records  
  Adoptions, 6-8
- Divorce, 8-13  
  Appointment of Guardian Ad Litem, 4-10  
  Confidentiality of, **F-2**, F-10  
  Contested, 8-15  
  Guardian ad Litem, 8-14  
  Income Withholding Order, 6-27, 8-21  
  Qualified Domestic Relations Order, 8-23  
  Transfer to Modify/Enforce Orders, 8-22  
  Uncontested, [8-15](#)
- DIVORCE  
  ADDENDUM FOR IDENTIFYING  
    INFORMATION, 8-14
- Docket  
  Removal of Cases, 4-37
- DOCKET CALL, 3-1
- Drainage Projects  
  Appointment of Guardian Ad Litem, 4-11  
  Drawdown Petition, 7-27  
  Driving Privileges  
    Reinstate, 10-42  
  Duties In Courtroom, 5-15  
  Ejectment, 8-24  
  Election  
    Recount of Election, 8-33  
  Election Laws - Violation of, 10-98  
  Election Material  
    Confidential Considerations, F-6  
    Management of, 5-27  
  Election Recount, 8-33  
  Elections, 8-28  
  Elective Share and Augmented Estate, 10-  
    102  
  Electric Authorities  
    Condemnation, 7-28  
  Electronic Records  
    Dealing with, 5-23  
  Eligibility for In-State Tuition, 8-45  
  Eligibility for Jury Service, 5-6  
  Eligible to Register to Vote  
    Approval of the Right to be, 6-71  
  Emergency Protective Order, 10-28  
  Eminent Domain, 7-26  
    Appointment of Guardian Ad Litem, 4-11  
  Employee Grievance  
    Administrative Appeal, 6-1, 6-3  
  Employment Commission  
    Appeal Decision of, 6-41  
  Encumber/Convey Church Property, 7-56  
  Enforce Mechanic's Lien, 8-36  
  Enforcement Act  
    Confidentiality Considerations, F-2  
  ENROLLING CHILD IN SCHOOL  
    GUARDIANSHIP VS CUSTODY, 9-27  
  Entry onto School Property by Sex Offender,  
    10-13  
  Equalization Board  
    Appeals, 6-35  
  Equitable Action, 7-13  
  Equity

- Commencement of Suits in, 4-17
- Definition, 1-2
- Filing of Pleadings, 4-18
- Suits In, 1-16
- Erroneous Or Improper Assessments Of, 8-71
- Escheat, 8-40
- establish birth record, 8-43
- Establish Property Line, 8-42
- Establish Record of Birth, 8-43
  - Department of Health, 8-44
- ESTABLISH REPORT OF FOREIGN ADOPTION, 8-45
- Establish Residency, 8-45
- ESTABLISH RIGHT-OF-WAY, 8-46
- ESTABLISH/IMPEACH/REFORM WILL, 10-103
- Executors
  - Definition, 1-10
- Exhibits, 5-3, 5-12, 5-16, 5-24, F-3
  - Appeals, 3-46
  - Confidentiality Considerations, F-3
- Expungement
  - Identity Theft Passport, 8-48, 8-55
- EXPUNGEMENT, 8-48, 8-54
  - Automated Records, 8-51, 8-56
  - VOIDING AN EXPUNGEMENT, 8-53
- Expungements, F-4
- Falsify Accounting, 10-84
- Family Abuse
  - Divorce, Custody, Visitation Or Support Pending, 10-32
  - Emergency Protective Order, 10-28
- Fiduciary Book, 3-39
- Fieri Facias
  - Retention, 5-27
- Firearm Certification Contempt, 10-34
- Firearms
  - Restore Rights to Possess, 10-51
- Foreign Adoption
  - Establish Report of, 8-45
- Foreign Country Judgments, 8-58
- Forfeiture
  - Money, 8-66
- Forfeiture
  - Bail Bond, 8-59
  - Contraband Seized for ABC Violations, 8-64
  - Property, 8-66
- FORFEITURE
  - FORFEITURE OF BAIL BOND, 8-59
- Forfeitures, 8-59
- Foster Care, 1-7
- Fraternal Organization Trustees
  - Appointment of, 6-63
- FREEDOM OF INFORMATION, 8-70
- Functions
  - System log in, 1-1
- GARNISHMENT, 9-1
- General District Court Appeal, 6-50
- Governing Body
  - Appeal From Decision, 6-37
- Grand Jury
  - Special
    - Confidetal Considerations, F-5
- Grand Jury List, F-19
- Grievance
  - Administrative Appeal, 6-1, 6-3
- Guardian ad litem, 1-8
- Guardian Ad Litem
  - Action for the Sale, Lease, Exchange, Redemption and Other Disposition of Lands of Persons Under a Disability, 4-10
  - Appointment Of, 4-9
  - Child Custody Proceedings, 4-12
  - Divorce. Incarcerated Felon, 4-10
  - Drainage Projects, 4-11
  - Emergency Order for Protective Services, 4-12
  - Eminent Domain, 4-11
  - Fee, 4-9
  - Local Road Authorities, 4-11
  - Parental Duty of Support, 4-12
  - Process on Convict Defendant, 4-10
  - Servicemen's Readjustment Act, 4-10
  - Specific Appointments, 4-10



- Guardian of Minor
  - Appointment, 9-18
  - Distribution from Estate, 9-20
- Guardian/Conservator
  - Appointment of, 6-70
  - Standby, 9-22
- GUARDIAN/CONSERVATOR APPOINTMENT, 9-6
- Guardians/Conservators
  - Guardianship – Restrict Communication, 9-12
  - Guardianship – Restrict Communication, Visitation, or Interaction, 9-12
- GUARDIANSHIP FOR ENROLLING CHILD IN SCHOOL, 9-27
- Habitual Offender
  - Restore Driving Privileges, 10-46
- Health Records
  - Confidentiality Considerations, F-7
- Highway Condemnation, 7-26
- Historic Landmarks
  - Appeal Decision Of Local Governing Body, 6-43
- Hope Card Program, 10-27
- Identity Theft Passport, 8-48
- Illegal Gambling Devices, 9-31
- Impoundment
  - Administrative, 6-5
- In Forma Pauperis Status, 2-3
- Inactive Cases
  - Purging, 4-37
- Income Deduction Order, 9-32
- Income Withholding Order, 6-27, 8-21
- INDEXING, 2-6
- Indirect Contempt, 7-11
- Infant Settlement, 7-16
- Injunction
  - Permanent, 9-34
  - Temporary, 9-34
- INJUNCTION, 9-34
- In-State Tuition
  - Establish Residency, 8-45
- Interdiction, 9-36
- Interlocutory Appeal, 3-52
- Interpleader, 9-37
  - Statutory, 4-26
- Interpreters, 4-35
- Interpreters – Deaf and Hard of Hearing, 4-35
- Intervener, 4-25, 9-38**
- inverse condemnation, 7-26
- Involuntary Commitment
  - Appeal of, 6-54
- Isolation/quarantine, 9-39
- Isolation/Quarantine Order Appeals, 6-56
- Issuance Of Court Process
  - Address Confidentiality Program, 2-8
- ISSUANCE OF COURT PROCESS, 2-8
- Jail Officers
  - Exemption from Jury Service, 3-22
- Jamestown-Yorktown Foundation
  - Condemnation, 7-29
- Joinder of Additional Parties, 4-24
- Judge
  - Pro Tempore, 1-10
- Judgemnts. See Miscellaneous Manual
- Judges, 1-9
  - Notes, F-2
- Judgment
  - Summary, 4-28
- Judgment Lien
  - Bill to Enforce, 9-42
- Judgments
  - Abstract Destruction, 5-27
- Judicial complaints
  - Confidentiality Considerations, F-11
- Judicial Inquiry and Review Commission
  - Confidentiality Considerations, F-12
- Judicial Review
  - School Board Decision Regarding Pupil, 9-47
- Judicial Reviews, 9-46
- Jurisdictional Limits
  - Circuit, 1-5
  - District, 1-6
- Jury, 1-9

- Additional, 3-20
- Commissioners, 3-21
- Condemnation, 3-21
- Drawing Names, 3-29
- Exemption from Service, 3-22
- for Term, 3-21
- Licensed Drivers List, 3-25
- List Available to Counsel, 5-7
- MANAGEMENT, 3-19
- Master List, 3-21, 3-24, 3-25, 5-27
- Merged List, 3-25
- Orientation, 3-31
- Petit Jury, 3-30
- Questionnaire, 3-32
- Reimbursement, 5-15
- Rention of, 5-27
- Right to Trial by Jury, 5-5
- Swearing In, 5-8
- Trial, 5-5
- Jury Panel List, F-18
- Juvenile And Domestic Relations District
  - Court, 1-6
- Juvenile Appeals
  - Civil Contempt, 6-21
  - Confidentiality Considerations, F-12
  - Non-criminal, 6-22
- Juvenile CASE Matrix, 9-48
- Juvenile Records
  - Confidentiality Considerations, F-12
    - Child Support Appeals, F-12
    - Spousal Support Appeals, F-12
- Lawyer Discipline, 9-48
- Legal Cause of Action, 7-13
  - Complaint, 1-16
  - Filing of Pleadings, 4-18
  - Generally, 1-16
- Legal Determination of Paternity
  - Relief from, 10-55
- Levy/Seizure, 9-51
- Library of Virginia, 5-20
  - Newsletters, 5-22
- License Suspension
  - Professional, 10-86
- Licensed Practicing Attorney
  - Jury Duty, 3-22
- LIQUIDATED DAMAGES, 9-56
- Local Governing Body
  - Appeal Decision Of, 6-43
- Local Levies
  - Correction Of Erroneous Of Improper Assessments Of, 7-69
- Local Road Authorities
  - Appointment of Guardian Ad Litem, 4-11
- Local Rules Of Court, 4-36
- Mandamus, 9-56
- Mandate, 3-49
- Map Book, 3-38
- Marine Resources Commission
  - Appeal Decision of, 6-44
- Mariners
  - Exemption from Jury Service, 3-23
- MARRIAGE
  - AUTHORIZATION OF NON MINISTERS TO PERFORM, 9-59
- Marriage License and Register
  - Confidentiality Considerations, F-15
- Master Jury List
  - Confidentiality Considerations, F-17
  - Creation of, 3-21
- Mechanic's Lien
  - Enforce, 8-36
- Mediation
  - Costs, 4-5
  - Effect Upon Trial Date, 4-4
  - Evaluation, 4-7
  - Objection to Referral, 4-5
- Mediators, 1-10
- Medical Assistance Department
  - Administrative Process Act Appeal, 6-34
- Medical Examiner Reports
  - Confidentiality Considerations, F-19
- Medical Malpractice, 9-60
- Mental, Psychological and/or Psychiatric Documents
  - Confidentiality Considerations, F-4
- Military Discharge and Induction Records

- Confidentiality Considerations, F-14
- Minor
  - Guardian Appointment, 9-18
  - Guardian Distribution from Estate, 9-20
- Money Under Control of Court
  - Confidentiality Considerations, F-16
- Motion to Set Aside Confession Of Judgment, 7-47
- Motions, [4-2](#)
  - Motion to Dismiss, 4-14
  - Post-Trial, 5-17
  - Quash Subpoena, 3-14
- Name Change, 10-1
- Name Change – Void, 10-5
- New Parties, 4-26**
- No Action Report, 4-39
- No-Fault Divorce, 8-13
- NON-MINISTERS AUTHORIZATION TO PERFORM MARRIAGES, 9-59
- Nonsuit
  - Generally, 4-14
- Notice of Appeal, 3-50
- Order Books, 3-36
  - Order Books and Other Information Found in the Clerk', 3-36
  - Order Books and Other Information Found in the Clerk's Office, **3-36**
- Jury Commissioners, 3-24
- Order of Publication, 8-17
  - Indigent Plaintiff, 8-17
- Orders
  - Correction Of, 7-61
- Orientation
  - Jury, 3-31
- OVERWEIGHT VEHICLE VIOLATIONS, 9-56
- Parent Education Seminar
  - Referral to, 6-22, 8-14
- Parentage Issues, 6-23
- Parental Duty of Support
  - Appointment of Guardian Ad Litem, 4-12
- Partition, 10-6
- Passport Information
  - Confidentiality Considerations, F-19
- Paternity
  - Relief from Legal Determination, 10-55
- Pawnbroker license, 10-8
- PAYMENT OF FUNDS
  - CIRCUIT FROM GENERAL DISTRICT, 10-10
- Pen Register, F-7
- Permanent Injunction, 9-34
- Personal Injury, 10-115
- Personal Representative
  - Remove, 10-63
- petition
  - Entry onto School Property by Sex Offender, 10-13
- Petition
  - public officials
    - prohibit publication of information, 10-11
- PETITION
  - PAYMENT OF FUNDS
    - CIRCUIT FROM GENERAL DISTRICT, 10-10
- Photographs
  - Confidentiality Considerations, F-14
- Plaintiff
  - Definition, 1-8
- Plaintiff's Bond Attachment, 6-77**
- Pleadings
  - Description, 1-11
  - General Provisions, 4-26
- Pleas, 1-18, **4-22**
- Police Officers
  - Participants in Civil Action, 1-10
- Post Adoption Contact And Communication AGREEMENTS, 6-11
- Post-Trial Matters, 5-17
- Post-Trial Motions, 5-16
- Preparation of Record on Appeal, 3-44
- Presentence Mental Evaluation of Sex Offenders
  - Confidentiality Considerations, F-4
- Presentence Reports
  - Confidentiality Considerations, F-3

- Preservation Program, 5-22
- Preserving Records, 5-20
- Pretrial Scheduling Order, 3-11
- PRISONER LITIGATION REFORM ACT, 2-15
- Pro Confesso
  - Correct Orders, 7-62
- Pro Hac Vice, 10-15
- Pro Se Litigants, 1-8
- Probate
  - Appeal, 6-58
- Probate Tax Return
  - Confidentiality Considerations, F-14
- Probation Records
  - Confidentiality Considerations, F-4
- Process
  - Service Upon A Corporation, 2-10
- Process Book, 2-11
- PRODUCTION OF DOCUMENTS, 3-11
- Professional License
  - Suspension of, 10-86
- Professional License - Reinstatement Of, 10-45
- Prohibition, 10-16
- Proof of Service, 4-20**
- Protective Order
  - Confidentiality Considerations, F-13
  - Emergency - Family Abuse - Pass-Through, 10-28
  - Family Abuse - Pending Divorce, Custody/Visitation Or Support, 10-32
- Protective Order Appeals, 10-19
- Protective Order Extensions, 10-23
- Protective Order Firearm Certification
  - Contempt, 10-34
- Protective Orders, 10-18
  - Confidentiality Considerations, F-13
  - Custody, 6-22, 8-15
  - Divorce, 6-22, 8-15
  - Hope Card Program, 10-27
  - Protective Order Extensions, 10-23
  - Support, 6-22, 8-15
  - Visitation, 6-22, 8-15
- Protracted Trial, 3-28
- Psychological/Mental Documents
  - Confidentiality Considerations, F-4
- public officials
  - prohibit publication of information, 10-11
- Public or Common Nuisance
  - Special Grand Jury, 10-76
- Public Safety Employees
  - Confidentiality Considerations, F-9
- Public Use
  - Condemnation, 7-26, 7-27
- Purging Cases, 4-37
- Putative Father Registry, 6-6
- Qualified Domestic Relations Order, 8-23
- Quash
  - Motion to, 3-14
- Quo Warranto, 10-35
- Real Estate Review
  - Appeals, 6-35
- Receiver (Special), 10-38
- Reconciliation
  - Condemnation, 7-33
- Record of Birth
  - Establish, 8-43
- Records
  - Disaster Planning, 5-22
  - Open to Public, 5-19
  - Pre-1913, 5-23
  - Preservation Program, 5-22
  - Preserving Records, 5-20
  - Removal, 5-19
- Records Management, 5-18
- Recount of Election, 8-33
- Referendum Elections, 8-28
- Reformation of Trusts, 10-92
- Refusal to Take Blood or Breath Test, 6-59
- Registered Agents
  - Definition, 1-10
- Registration Sexual Offender Registry
  - Relief from, 10-56
- Reimbursement of Jurors, 5-15
- Reinstate Driving Privileges, 10-42
- Reinstatement Of Professional License, 10-45

- Reinstatements, 10-41
- Release Report of Child Abuse/Neglect, 7-2
- Relief from Legal Determination of Paternity, 10-55
- Relief from Re-Registration Sex Offender, 10-56
- Removal from Circuit to Federal Court, 10-58
- Removal of Elected and Certain Appointed Officials, 10-60
- Removal of General Registrar or Electoral Board Member, 10-62
- Removal of Records, 5-19
- Removals
- Removal of Elected and Certain Appointed Officials, 10-60
  - Removal of General Registrar or Electoral Board Member, 10-62
- Remove Name from Sexual Offender Register, 10-65
- Remove Name from Supplement to Sexual Offender Register, 10-65
- Remove Personal Representative, 10-63
- Remove Trustee, 10-63
- Renewal of Concealed Handgun Permit, 7-21
- Replacement Permit for a Change of Address, 7-22
- Replacement Permit for Lost or Destroyed Permit, Change of Name, 7-23
- Request for PRODUCTION OF DOCUMENTS, 3-11
- Rescission of Contract, 7-51
- Residency
- Establish, 8-45
- Restitution Victim Contact Information Confidentiality Considerations, F-16
- Restoration of Voting Rights, 10-46
- Restore Driving Privileges, 10-46
- Restore Rights to Possess Firearms, 10-51
- Restore, Modify Guardian/Conservator, 10-49
- Restricted Driver's License, 10-67
- Restricted Licence - Unauthorized Driving, 10-67
- Revision Petition
- Condemnation, 7-28
- Revocation
- Special Conservator of the Peace, 6-68
  - revocation of COncealed Handgun Permit, 7-25
- Right-of-Way
- Establish, 8-46
- Rule 4
- 13, [4-1](#)
- Rules Of Court
- Local, 4-36
- Sanitary Districts
- Condemnation, 7-29
- Scheduling Order (Pretrial), 3-11
- School Board Decision
- Judicial Review, 9-47
- School Board Decision (Teacher or School Board Employee), 10-69
- Sealed Records, F-1
- Search Warrant (Affidavit for)
- Confidentiality Considerations, F-7
- Sell Land
- Delinquent Taxes, 10-71
  - Person Under a Disability, 10-74
- Service
- Acceptance, 2-9
  - Fee, 3-13, 3-15, 3-19
  - Upon A Corporation, 2-10
- Servicemen's Readjustment Act
- Appointment of Guardian Ad Litem, 4-10
- Set Off Debt Collection
- Appeal Decision of, 6-40
- Set-Off Debt Collection
- Confidentiality Considerations, F-16
- Settlement Of Receivers And Commissioners Book, 3-39
- Sex Offender Registry
- Relief from Re-Registration, 10-56
  - Remove Name, 10-65
- Sexually Violent Predator Timeframes, 7-9

- Sheriff
  - Definition, 1-10
  - Exemption from Jury Service, 5-6
- Sheriffs
  - Exemption from Jury Service, 3-22
- Special Conservator of the Peace, 6-65
- Special Conservator of the Peace
  - Revocation, 6-68
- Special Elections
  - Constitutional Officer, 8-30
- Special Elections (Local Governing Body or Local School Board), 8-32
- Special Grand Jury
  - Confidential Considerations, F-5
- Special Grand Jury – Public or Common
  - Nuisance, 10-76
- Special Grand Jury Report, F-6
- Special Justice
  - Appointment of, 6-70
- Special Receiver, 10-38
- Standby Conservator, 9-22
- Standby Guardian, 9-22
- Standby Guardian/Standby Conservator
  - Appointment of, 6-71
- State Highway Plat Book, 3-38
- State Taxes
  - Correction Of Erroneous Of Improper Assessments Of, 7-59
- Statement of Facts, 3-43, 3-51
- Statutory Interpleader, 4-26
- structured settlement
  - approval of transfer, 10-79
- Subpoena
  - Attorney Issued, 3-12
  - Definition, 3-11
  - Fee for, 3-13
  - How Issued, 3-12
  - Service of, 3-13
  - Who May Serve, 3-13
- Subpoena Duce Tecum
  - Attorney Issued, 3-13
  - Discovery From, F-8
- Subpoena duces tecum
  - Definition, 3-11
- Subpoena Duces Tecum, 3-13
  - Copies, 3-16
  - Court Order Required, 3-15
  - Fees for, 3-15
  - Financial Records, F-9
  - Foreign, 3-18
    - Fees, 3-19
    - Form CC-1439, 3-18
    - Motion to Quash, 3-19
  - How Issued, 3-13
  - Motion to Quash, 3-14
  - Service of, 3-15
  - Who May Serve, 3-15
- Substitution of Parties, 4-26
- Summary Condemnation, 7-28
- Summary Judgment, 4-28
- Superintendents
  - Exemption from Jury Service, 3-22
- Supplement to Sex Offender Registry
  - Remove Name, 10-65
- Support
  - Employer's Income Deduction Order for, 9-33
- Supreme Court Of Virginia, 1-4
- Surcharge and Falsify an Accounting, 10-84
- Suspension of COncEaled Handgun Permit, 7-25
- Suspension of Professional License, 10-86
- Swearing in Jurors, 5-8
- Tax, Improper Assessment/Correction, 7-59
- Temporary Injunction, 9-34
- Terminate Guardian/Conservator, 10-49
- Termination of Parental Rights
  - Appeal, 6-23
- Third Offense
  - Restore Driving Privileges, 10-46
- Third-Party Practice, 10-89
- Three Year Rule, 4-38
- Transcripts, 3-43, 3-51
- Transfer
  - Divorce to Modify/Enforce Orderst, 8-22

- Transfer of Concealed Handgun Application, 7-22
- Transfer of Guardian/Conservator
  - Uniform Adult Guardianship and Protective Proceeding Act, 9-24
- Transmission of Record on Appeal, 3-45
- Trial
  - Protracted, 3-28
- Trustee
  - Remove, 10-63
- Tuition
  - Establish Residency/Eligibility for In-State Tuition, 8-45
- Unfounded Complaint, 7-2
  - Release Report of Child Abuse or Neglect, 7-2
- Uniform Interstate Depositions and Discovery Act, 3-18
- Unlawful Entry and Detainer, 10-95
- Utility Company
  - Condemnation, 7-26
- VDOT
  - Condemnation, 7-26
- Vendor's Lien, 8-38
- Victim
  - Request for Confidentiality, F-5
- Victim Impact Statement, F-5
  - Confidentiality Considerations, F-16
- Violation of Election Laws, 10-98
- Virginia Reports, 1-19
- Voluntary Settlements Among Local Governments, 6-15
- Vote
  - Restoration of Rights, 10-46
- VOTE
  - APPROVAL OF THE RIGHT TO BE ELIGIBLE TO REGISTER TO VOTE, 6-71
- Voter Registration
  - Appeal Denial of, 6-49
- Voting Machine Keys
  - Confidentiality Considerations, F-6
- VRS Grievance
  - Administrative Appeal, 6-4
- VRS member Grievance
  - Administrative Appeal, 6-4
- WILL
  - CONSTRUE, 10-100
  - ESTABLISH/IMPEACH/REFORM, 10-103
  - REFORM, 10-103
- Wills
  - Elective Share and Augmented Estate, 10-102
  - Lodged for Safekeeping
    - Confidentiality Consideration, F-14
- Wiretaps, F-7
- Withdrawal of District Court Appeals, 6-62
- Witness Subpoena
  - Foreign, 3-18
    - Fees, 3-19
    - Form CC-1439, 3-18
    - Motion to Quash, 3-19
- Workers' Compensation Commission
  - Exemption from Jury Service, 3-22
- Workers' Compensation Lien
  - Ascertain Amount, 10-105
- Workers' Compensation Commission
  - Referral, 10-107
- WRIT OF CERTIORARI, 10-108
- WRIT OF CORAM NOBIS, 10-110
- WRIT OF CORAM VOBIS, 10-110
- Writ of HABEAS CORPUS, 9-27
- Writ of Vacatur, 10-111
- Written Statement of facts, 3-43
- Written Statement of Facts, 3-51
- Wrongful Death, 10-115
- Zoning Administrator
  - Appeal from Decision of, 6-32
- Zoning Administrator Appeal, 6-32
- Zoning Board Appeal, 6-29

## Glossary

### A

<b>ADDENDUM</b>	Something to be added, especially to a document; a supplement.
<b>ADJUDICATE</b>	To decide judicially.
<b>ADMISSIONS</b>	The acknowledgement or recognition in a pleading by one party of the truth of some matter alleged by the opposite party through a Request for Admissions, the effect of which is to narrow the area of facts or allegations required to be proved by evidence.
<b>AFFIDAVIT</b>	A written, printed, or videotaped declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath.
<b>AFFIRMATION OF MARRIAGE</b>	A judicial proceeding in which a party seeks to confirm or ratify that a valid marriage exists between that party and the other party to the suit.
<b>ANCILLARY PROCEEDING</b>	One growing out of or auxiliary to another action or suit, or which is subordinate to or in aid of a primary action, either law or in chancery.
<b>ANCILLARY PROCESS</b>	Any process which is in aid of or incidental to the principal suit or action; e.g. attachment.
<b>ANNULMENT</b>	A judicial proceeding in which one party seeks to nullify a void or voidable marriage. A voidable marriage is valid until annulled, while a void marriage never was a valid marriage.
<b>ANSWER</b>	A pleading by which defendant in civil suit at law endeavors to resist the plaintiff's demand by stating facts. The defendant may deny the claims of the plaintiff, or agree to them, and may introduce new matter.
<b>APPELLANT</b>	The party who appeals a case from a court to another court having appellant jurisdiction over the case being appealed.
<b>APPELLEE</b>	The party in a cause against whom an appeal is taken. Sometimes also called the "respondent".
<b>ATTACHMENT</b>	The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons or other judicial order, and bringing the same into custody of the court for purpose of securing satisfaction of the judgment ultimately to be entered in the action.



**ATTORNEY-IN-FACT** A person, not necessarily a lawyer, to whom authority is given by another to act in their place. The authority to act as an Attorney-In-Fact is given by a document containing a power or letter of attorney.

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**B**

**BILL OF COMPLAINT** The pleading filed in equity actions prior to 1/1/06. See COMPLAINT.

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**BOND** A certificate or evidence of a debt with a sum fixed as a penalty, which contains a written agreement binding the parties to pay the penalties. It contains a condition, however, that the payment of the penalty may be avoided by the performance by some one or more of the parties of certain acts.

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**C**

**CALENDAR** The court schedule of the list of pending cases.

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**CHALLENGE FOR CAUSE** A request from a party to a judge that a certain prospective juror not be allowed to be a member of the jury because of specified causes or reasons which would legally justify such person not being allowed to serve as a juror in the case.

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**CHANCERY** A term used in circuit courts prior to 1/1/06, to identify equity cases in which the party filing suit is seeking an award of something other than money. Prior to 1/1/06, equity cases were referred to as "chancery" cases and filed on the "chancery" side of the court. Senate Bill, effective 1/1/06, merged law and chancery into civil and in essence abolished the "chancery" side of the court. See CIVIL.

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**CHANCERY DOCKET** Chancery Dockets were maintained prior to January 1, 2006. The chancery docket listed all chancery cases in the sequence in which they were filed and generally referred to pending cases only. Senate Bill 1118 became effective 1/1/06, merging law and chancery and creating one "civil" docket.

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**CHANCERY ORDER BOOK** Chancery Order Books were maintained prior to 1/1/06. These books contain a copy of all orders (both interlocutory and final) entered in equity cases. They are recorded in the date order in which they were entered in the court, not batched together with other orders in the same case. Senate Bill 1118, effective 1/1/06, merged law and chancery and mandated that civil actions be recorded in a Civil Order Book.

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<b>CIVIL ACTION</b>	An action seeking monetary damages or asking for equitable relief. Senate Bill 1118, effective 1/1/06, eliminated the distinction of cases as "law" or "chancery", instead referring to these types of cases as civil actions.
<b>CIVIL CONTEMPT</b>	A type of contempt of court which generally arises from a willful failure to comply with an order of the court such as an injunction as contrasted with criminal contempt which consists generally of contumelious conduct in the presence of the court. See CONTEMPT.
<b>CIVIL DOCKET</b>	A listing of all pending civil actions, whether "legal" or "equitable" in nature. Prior to 1/1/06 and the implementation of Senate Bill 1118 which merged law and chancery, separate Chancery and Law Dockets were maintained.
<b>CIVIL ORDER BOOK</b>	The Civil Order Book contains a copy of all orders (both interlocutory and final) entered in civil cases. The orders are recorded in the date order in which they were entered in the court, not batched together with other orders in the same case. Prior to 1/1/06 and the implementation of Senate Bill 1118, separate Chancery and Common-Law Order Books were maintained.
<b>COMMISSIONER IN CHANCERY</b>	A lawyer appointed by the chief circuit court judge who conducts evidentiary hearings and makes factual findings in circuit court cases referred to them by the circuit court judge who is conducting the trial. The Commissioner in Chancery collects a fee for their services. Their findings of fact are subject to challenge before the circuit court judge through the "noting of exceptions" by the objecting lawyer or an unrepresented party, which results in a hearing and re-examination of the evidence by the judge.
<b>COMMON LAW</b>	In general, it is a body of law that develops and derives through judicial decisions, as distinguished from legislative enactments. The "common law" also includes all the statutory and case law background of England and the American colonies before the American revolution.

<b>COMPLAINT</b>	The pleading used to state a party's claim in a civil action, whether legal or equitable in nature. Prior to 1/1/06 and the implementation of Senate Bill 1118 which merged law and chancery, a Bill of Complaint was filed in an equity case while a Motion for Judgment was filed in a case seeking monetary damages. Variations include an amended complaint (amendment to the original complaint), complaint for notary service (party accepts or waives service on affidavit pursuant to <a href="#">Va. Code § 20-99.1:1</a> ), complaint for non-resident service (service of process to be made outside Virginia) and a cross-claim (complaint filed by the party being sued in the original complaint).
<b>CONSOLIDATION</b>	Unification of two or more actions. See CONSOLIDATION OF ACTIONS.
<b>CONSOLIDATION OF ACTIONS</b>	The act or process of uniting several actions into one trial and judgment, by order of the court, where all actions are between the same parties, pending in the same court and involving substantially the same subject matter.
<b>CONSTRUE</b>	To put together; to arrange or marshal the words of an instrument. As with a will - to ascertain the meaning of language by a process of arrangement and inference.
<b>CONTEMPT</b>	Any act which is calculated to embarrass, hinder, or obstruct the court in administration of justice, or which is calculated to lessen its authority or its dignity. Contempt can be divided into two categories - civil and criminal. See CIVIL CONTEMPT.
<b>CONTINUANCE</b>	The adjournment or postponement of a session, hearing, trial, or other proceeding to a subsequent day or time; usually on the request or motion of one of the parties. Also the entry of a continuance made upon the record of the court, for the purpose of formally evidencing the postponement.
<b>COSTS</b>	(1) A pecuniary allowance, made to the successful party (and recoverable from the losing party), for their expenses in prosecuting or defending an action or a distinct proceeding within an action. Generally, "costs" do not include attorney fees unless such fees are by a statute classified as costs or are by statute allowed to be recovered as costs in the case. (2) Fees and charges required by law to be paid to the courts or some of their officers, the amount of which is fixed by statute; e.g. filing and service fees.
<b>COUNTERCLAIM</b>	A claim presented by a defendant in opposition to or deduction from the claim of the plaintiff.

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**CROSS-CLAIM** Claim by party against a co-party arising out of the transaction that is the subject matter of the original action or of a counterclaim; i.e. litigated by parties on the same side of the main litigation.

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**D**

**DE NOVO HEARING** A new hearing or a hearing for the second time contemplating an entire trial in the same manner in which the matter was originally heard. Court hears matter as court of original jurisdiction and not appellate jurisdiction.

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**DECREE** The judgment of a court of equity. It is the equivalent to an Order (just a different name).

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**DEMURRER** A pleading by a defendant disputing the legal sufficiency of plaintiff's pleadings. In effect, it is an allegation that "even if the plaintiff's claims are true, they have not stated a claim which is sufficient for the judge to enter an order in their favor for the requested award." It is used to try to get a case dismissed because the legal claims are not sufficient for granting judicial relief.

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**DEPOSITION** The testimony of a witness taken upon oral examination or by written questions, after notice to the adverse party, not in open court, but in pursuance of a notice to take testimony issued by the party wanting the deposition. The adverse party has the right to attend and cross-examine. Testimony is reduced to writing and duly authenticated, and intended to be used in connection with the trial of an action in court.

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**DISCOVERY** Procedures by which one party to a lawsuit may obtain information relevant to the case which is held or known by the other party. Discovery methods include:

- depositions
- interrogatories
- requests for production of evidence
- request for admissions
- request for physical or mental examination of a person
- subpoena duces tecum

---

**DISMISSAL** An order disposing of an action, suit, etc., without trial.

---

**DOCKET** A record of all cases and actions scheduled to be heard in court, whether or not the matter is actually heard in a court on a particular day.

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**E**

<b>ENCUMBRANCE TO PROPERTY</b>	Binding claim or liability attached to real property. Encumbrances are generally liens which affect the title to the property or restrictions which affect the physical use of property, such as easements or encroachments.
<b>ENTRY OF ORDER OR DECREE</b>	Signing of order or decree by judge.
<b>EQUITABLE DISTRIBUTION</b>	The distribution of property between husband and wife in a divorce or annulment case. Each party receives so-called "separate property" outright, while "marital property" acquired during the marriage in which both parties have some legal rights or interests are divided between the parties based on the "equities" of the parties (what would be a fair distribution in light of contributions to the marriage, earning capacity, obligations, etc.).
<b>EQUITY</b>	See CHANCERY and CIVIL ACTION.
<b>EXHIBIT</b>	At trial, it is the document or other tangible item which a party seeks to have the judge accept as valid evidence in the case. An exhibit does not become evidence in the case until the judge rules that it is accepted as evidence in the case.

**F**

<b>FINAL ORDER</b>	One which either terminates the action itself, or finally decides some matter litigated by the parties, or operates to divest some right; or one which completely disposes of the subject-matter and the rights of the parties.
<b>FREEHOLDER</b>	Any person owning an interest in land in fee, including a person owning a condominium unit.

**G**

<b>GARNISHEE</b>	One garnished; a person against whom process of garnishment is issued; one who has money or property in their possession belonging to a judgment debtor, or who owes the judgment debtor a debt, which money, property, or debt is attached in their hands, with notice to them not to delivery or pay over to the judgment debtor the amount claimed in the garnishment summons until the judgment in the suit is entered.
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**GARNISHMENT** A statutory post-judgment proceeding in which a third party who holds property, money or credits belonging to the judgment debtor is required to surrender such property, money or credits (to the extent of the judgment) to the court or sheriff for application against the judgment awarded against the judgment debtor.

**H**

**HABEAS CORPUS** A writ commanding the person holding a person in custody to bring the person before the court for a determination of whether the person is restrained of their liberty by due process.

**I**

**INJUNCTION** A writ (see WRIT) issued by a judge in a chancery case, which is issued at the request of one party and directed to another party, and which either (1) forbids the other party to do some act (or permits their servants or agents to do an act) which they are threatening or attempting to commit, or (2) restrains them from continuing such act, because such act is unjust, inequitable, injurious to the party requesting the injunction, and cannot be adequately redressed by a law action.

**INTERLOCUTORY** Temporary, provisional, interim, preliminary.

**INTERPLEADER** When two or more persons claim the same thing (or fund) of a third, and they, laying no claim to it themselves, are ignorant which of them has right to it, and fears they may be prejudiced by their proceeding against them to recover it, they may join such claimants as defendants and require them to interplead their claims so that they may not be exposed to double or multiple liability.

**INTERROGATORIES** A set or series of written questions drawn up for the purpose of being asked of a party, a garnishee, or a witness or other party to be answered under oath.

**INTERVENOR** Person who voluntarily interposes in an action or other proceeding with the permission of the court.

**ISSUE OUT OF CHANCERY** A factual question that arises in an equity suit because of conflicting evidence. It is an issue of fact rather than an issue of law.

**J**

<b>JUDGMENT CREDITOR</b>	The person who wins an award against some other person in a civil suit.
<b>JUDGMENT DEBTOR</b>	The person against whom an award is made in a civil suit.
<b>JUDGMENT LIEN DOCKET</b>	In circuit court, it is a book in which judgments for money are recorded in the sequence in which the order or decree creating the judgment was entered. Space is also provided to show credits paid to reduce the amount of judgment still outstanding and to show when the judgment lien is released (canceled). Upon the recording of a judgment in this book, a lien is created on all real estate owned in whole or in part by the judgment debtor in the city or county over which the circuit court has jurisdiction.
<b>JURISDICTION</b>	The authority of a court or other governmental agency to adjudicate controversies brought before it. CAUTION: It is sometimes used to mean the county, city or town where something occurred, especially in describing venue.
<b>JURY TRIAL</b>	Trial of matter or cause before jury as opposed to trial before judge. In a jury trial, the jury decides issues of facts, but issues of law are decided by a judge.

**L**

<b>LEVY</b>	The obtaining of money by legal process through seizure and sale of property; the raising of the money for which an execution has been issued.
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**M**

<b>MEMORANDUM</b>	A writing designed to record an agreement or a set of facts.
<b>MOTION (generally)</b>	A request made to the judge by a litigant or other person connected with the case for a ruling or order.
<b>MOTION FOR JUDGMENT</b>	The pleading filed in cases seeking monetary damages prior to January 1, 2006. See COMPLAINT.
<b>MOTION TO QUASH</b>	See QUASH. A party uses it when seeking a determination that service of process was not proper and, therefore, the court has no jurisdiction over an improperly served party. It may also be used to stop execution (enforcement) of a judgment where the writ (see WRIT) of fieri facias is defective, judgment has been satisfied, etc.

**N**

<b>NONSUIT</b>	An oral or written act by a plaintiff at any time prior to judgment which terminates the case without a decision on the merits. The plaintiff may take an initial non-suit as a matter of right; subsequent non-suits can be taken only with the judge's consent. See <a href="#">Va. Code § 8.01-380</a> .
<b>NOTICE</b>	Information, such as notice of a hearing or the taking of depositions. Notices are in writing when required by law.
<b>O</b>	
<b>ORE TENUS</b>	Oral. Used as a technical term to describe a hearing or pleading which is orally presented.
<b>P</b>	
<b>PARTITION</b>	The dividing of lands held by joint tenants or tenants in common into distinct portions so that they may hold them severalty; which may be compulsory (judicial) or voluntary.
<b>PENDENTE LITE</b>	"Pending the suit" during the actual progress of the suit, during litigation. Pendente lite orders or decree are entered while the suit is pending and are always prior to the final order or decree.
<b>PETITION</b>	A pleading used to initiate a case, especially a case styled "In re ...."
<b>PLEA IN EQUITY</b>	A pleading in which a party asserts that the entire case can be decided on one very specific set of facts which, if true, would decide the case in that party's favor.
<b>PLEADINGS</b>	The formal allegations by the parties of their respective claims and defenses, for the judgment of the court.
<b>POWER OF ATTORNEY</b>	An instrument in writing whereby one person, as principal, appoints another as their agent and confers authority to perform certain specified acts or kinds of acts on behalf of principal. An instrument authorizing another to act as one's agent or attorney. The agent is attorney in fact and their power is revoked on the death of the principal by operation of law. Such power may be either general (full) or special (limited).
<b>PRAECIPE</b>	A pleading used by a party with notice to other parties to have the case called at "docket call" of the first day of a term of circuit court to get a trial date set by the judge.
<b>PRO SE</b>	For themselves, in their own behalf, in person. It is used to describe a person who represents themselves in court (without being represented by a lawyer).



<b>PROCESS</b>	Any means used by a court such as a "Capias to Show Cause" or "Witness Subpoena" to acquire or exercise its jurisdiction over a person or over specific property. Means whereby court compels appearance of defendant or property before it or a compliance with its demands which is completed with a notice served on an individual.
<b>PROCESS BOOK</b>	In circuit court, it is a book used to record the issuance of process to a sheriff and recording return of process made by the sheriff.
<b>PRODUCTION OF DOCUMENTS, REQUEST FOR</b>	A discovery request from one party to the other party for such other party to deliver the documents to a particular location for inspection or copying.
<b>PROOF OF SERVICE</b>	Documentation by the person who served the process of how, when, where and on whom process was served.

## Q

<b>QUASH</b>	To vacate, annul, make void, abate or overthrow.
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## R

<b>RECUSAL</b>	The process by which a judge is disqualified on objection of either party (disqualifies themselves) from hearing a lawsuit because of self-interest, bias, or prejudice.
<b>REFERENDUM</b>	The process of referring to the electorate for approval of a proposed new law or amendment to an existing law.
<b>RESTORATION OF MAIDEN NAME</b>	In a divorce action, it is an optional part of the case in which the wife asks and the judge, if they agree, changes in the divorce decree the wife's married name to her former maiden name. The same result can be obtained in a separate case for change of name.
<b>RULE OF SHOW CAUSE</b>	A court ruling directing the recipient to appear and present to the court such reasons and considerations as one has to offer why the recipient should not be punished for violating a court order or legal process or for contempt of court.

## S

<b>SATISFACTION</b>	The discharge of an obligation by paying a party what is due to them or what is awarded to them, by the judgment of a court or otherwise.
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<b>SERVICE OF PROCESS - FEES</b>	Fees charged by persons serving process for serving process. Fees are paid by litigants.
<b>SERVICE OF PROCESS - PERSONAL</b>	Service of a summons or other process made by delivering it in person to the person named in the process.
<b>SERVICE OF PROCESS - PUBLICATION</b>	Service of a summons or other process upon an absent or non-resident defendant, by posting a notice on the courthouse door and, unless dispensed with by the judge, by publishing the same as an advertisement in a designated newspaper, with such other effort to give them actual notice as the particular statute may prescribe.
<b>SERVICE OF PROCESS - SUBSTITUTE</b>	Service of a summons or other process by any means authorized by statute other than by personal service. These include service by publication, posted service, service on alternative individual as authorized by statute.
<b>SERVICE OF PROCESS - WAIVER</b>	A document signed under oath in which a party to be served with process abandons their right to be served with process, which permits the court to proceed with the case for most purposes as if the party had been served.
<b>STIPULATION AGREEMENT</b>	A document in which the parties agree to the correctness of certain statements of fact.
<b>SUBPOENA IN CHANCERY</b>	The form of process used in chancery cases in Virginia prior to 1/1/06. Senate Bill 1118, effective 1/1/06, replaced the Subpoena in Chancery with a Summons - Civil Action as the form of process. The pleadings to be served with the process are attached to the summons.
<b>SUMMONS</b>	Effective 1/1/06 with the implementation of Senate Bill 1118 which merged law and chancery, the summons became the form of process for initiating a civil case in Virginia.
<b>SURETY</b>	One who undertakes to pay money or to do any other act in the event that their principal fails to perform as promised. In criminal cases, the accused is the principal.

## T

<b>TERM DAY</b>	The first day of the period of time prescribed by law during which a court holds session. The docket is set on this day for the session of not set at some other time(s).
<b>TRANSCRIPT</b>	An official copy of the record of proceedings in a trial or hearing. Word-for-word typing of everything that was said "on the record" during the trial. The stenographer (court reporter) types this transcription which is paid for by the parties requesting it.

## V

<b>VENIREMAN</b>	A member of a panel of jurors; a juror summoned by a writ of venire facias.
<b>VENUE</b>	“Venue” designates the particular county or city within which a court with jurisdiction may hear and determine a case. CAUTION: the term “jurisdiction” is used to designate a particular locality for venue purposes.
<b>VOIR DIRE</b>	(French - to see and speak). Questioning of potential jury members by the court, lawyers or parties themselves if not represented by counsel. Voir Dire is intended to determine the suitability of prospective jurors to hear a particular case.

## W

<b>WRIT</b>	An order in writing in the name of the state, issuing from a court of justice, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as the commencement of a suit or other proceeding or as incidental to its progress, and requiring the performance of a specified act, or giving authority and commission to have it done.
<b>WRIT OF CERTIORARI</b>	An order by the appellate court which is used by that court when it has discretion on whether or not to hear an appeal from a lower court. If the writ is denied the court refuses to hear the appeal and, in effect, the judgment below stands unchanged. If the writ is granted, then it has the effect of ordering the lower court to certify the record and send it up to the higher court which has used its discretion to hear the appeal.
<b>WRIT OF FIERI FACIAS</b>	“You cause to be made” - it is a writ of execution commanding the sheriff to levy on (encumber, restrict the ownership) judgment debtor's property and “make” (by sale or otherwise as allowed by law) the amount of the judgment plus costs of executing this process (including costs of conducting the sale).
<b>WRIT OF MANDAMUS</b>	A writ commanding a public official to perform a particular act which is within their public, official or ministerial duty, or directing the restoration of the moving party's rights or privilege of which they were illegally deprived.
<b>WRIT OF PROHIBITION</b>	A writ from a superior court to an inferior court to cease trying a case because the inferior court does not have the authority to try the case.

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<b>WRIT OF VENIRE FACIAS</b>	A judicial writ, directed to the sheriff of the county or city, in which a cause is to be tried, commanding them that they “cause to come” before the court (subpoena) on a certain day therein mentioned, the member of potential jurors (veniremen) mentioned in the writ of venire facias.
<b>WRITTEN STATEMENT OF FACTS</b>	For purposes of appeal to the Court of Appeals, it is an alternative to a transcript of the proceeding as a record of the facts, testimony and other incidents of trial so that the Court of Appeals can be informed of those matters at trial which are now important in the appeal of the case.

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