CHAPTER 4 - CIVIL CASE PROCEDURES

I. INTRODUCTION

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

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

A. Jurisdiction (Va. Code § 16.1-77)

In civil cases, general district courts have exclusive original jurisdiction over cases involving amounts of $4,500 or less, exclusive of interest and attorneys' fees, except in unlawful detainer actions. Va. Code § 16.1-77(1). The general district courts have exclusive original jurisdiction over cases involving amounts of $500 or less in unlawful detainer actions that involve a default in rent. In unlawful detainer actions that do not involve a default in rent, the general district courts do not have exclusive jurisdiction. The general district courts have concurrent jurisdiction with the circuit courts in civil cases involving amounts between $4,500.01 and $15,000. This ceiling does not apply to cases involving liquidated damages for violations of vehicle weight limits. Va. Code § 16.1-77(1).

Civil cases involving amounts greater than $15,000 are within the exclusive jurisdiction of the circuit courts.

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

B. Venue (See also Section IV.)

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

A defendant may object to the choice of venue, but it is within the court's discretion whether or not to grant the request for a venue transfer. Va. Code §§ 8.01-264; 8.01-

265, 8.01-267. Further, an objection to improper venue does not result in a dismissal, but in a transfer of the action to a proper venue. Va. Code § 8.01-264.

C. Discovery Procedures

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

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

General district courts handle several types of civil cases, including suits in debt, suits in detinue, unlawful detainer actions, and attachments. Subsection B provides an overview of the basic civil case process, while subsection C contains a flowchart that illustrates this procedure. Subsection D is a detailed explanation of venue, and Subsections E through L describe case procedures for specific types of cases heard by general district courts, such as those mentioned above. Subsections E through L cover the following processing stages:

- Case initiation
- Pre-trial procedures
- Case hearing, judgment
- Post-trial procedures
- Execution of judgments
- Case closing

II. NARRATIVE DESCRIPTION

A plaintiff initiates a civil case in the general district court by filing a pleading describing the complaint or dispute with the defendant named in the pleading and remitting all appropriate fees. Va. Code §§ 17.1-272, 16.1-69.48:2, 17.1-278, 17.1-281, 42.1-70. All pleadings, motions, briefs and other documents filed in the court shall be on paper eight and one-half by eleven inches in size, with certain exceptions for evidentiary items. *See* Rule 7A:7.

There are two types of pleadings in general district court: the civil warrant or summons form and the motion for judgment. Va. Code §§ 16.1-79, 16.1-81. The more frequently used

of the two is the civil warrant or summons form, which the plaintiff files, with the appropriate filing fee in the clerk's office or with a magistrate.

If the warrant or summons form is filed in the clerk's office, the clerk marks the date and time of receipt in the clerk's office on the form, issues receipts for fees, assigns the case a sequential case number which is placed on the form, and indexes the case in the case index system. If the civil warrant or summons form and fees are filed with a magistrate, the magistrate forwards all forms and fees to the clerk's office that performs the above listed process.

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

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

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

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

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

In court, cases are called and are either tried on this date or continued to a future date for trial. Court actions on all cases, including completed cases resulting in a judgment, are

recorded in CMS and on the case papers. The cases are returned to the clerk's office after court.

All appeals to the circuit court must begin by noting the appeal within ten days after the date on which the order was entered. Va. Code § 16.1-106. The appellant posts an appeal bond and pays the circuit court writ tax and costs within thirty days from the date of judgment (ten days from date of unlawful detainer judgment) to the general district court clerk. Va. Code § 16.1-107. The clerk's office forwards all case-related materials, bond, writ tax, and costs to the circuit court. Va. Code § 16.1-112. An appeal is permitted only if the amount in controversy exceeds $50. Va. Code § 16.1-106. An appeal bond in an unlawful detainer case must equal the amount of the judgment plus up to one year's rent as determined by the general district court.

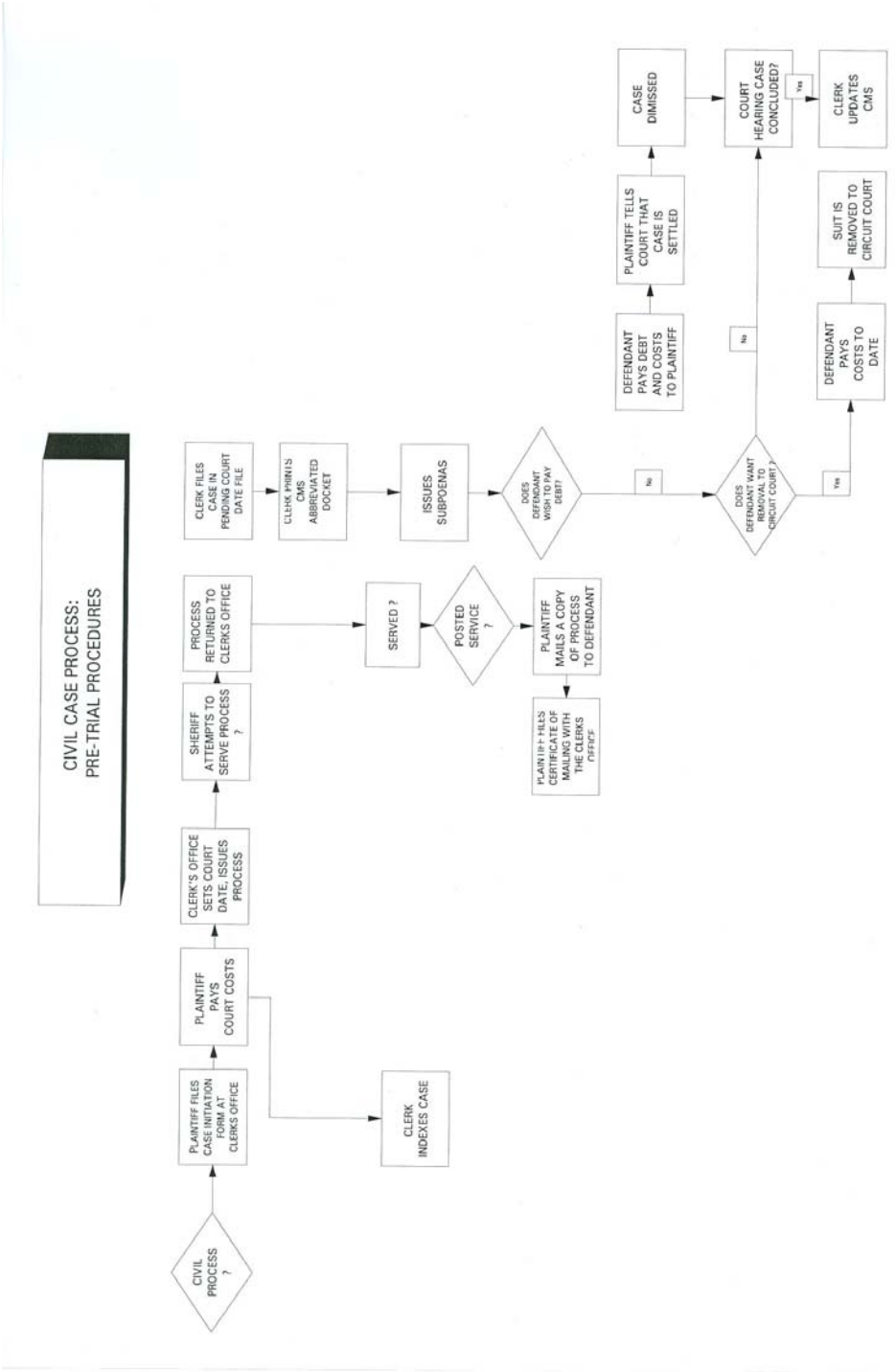
In all civil cases, except trespass, ejectment or any action involving the recovering rents, no indigent person shall be required to post an appeal bond. Va Code § 16.1-107.

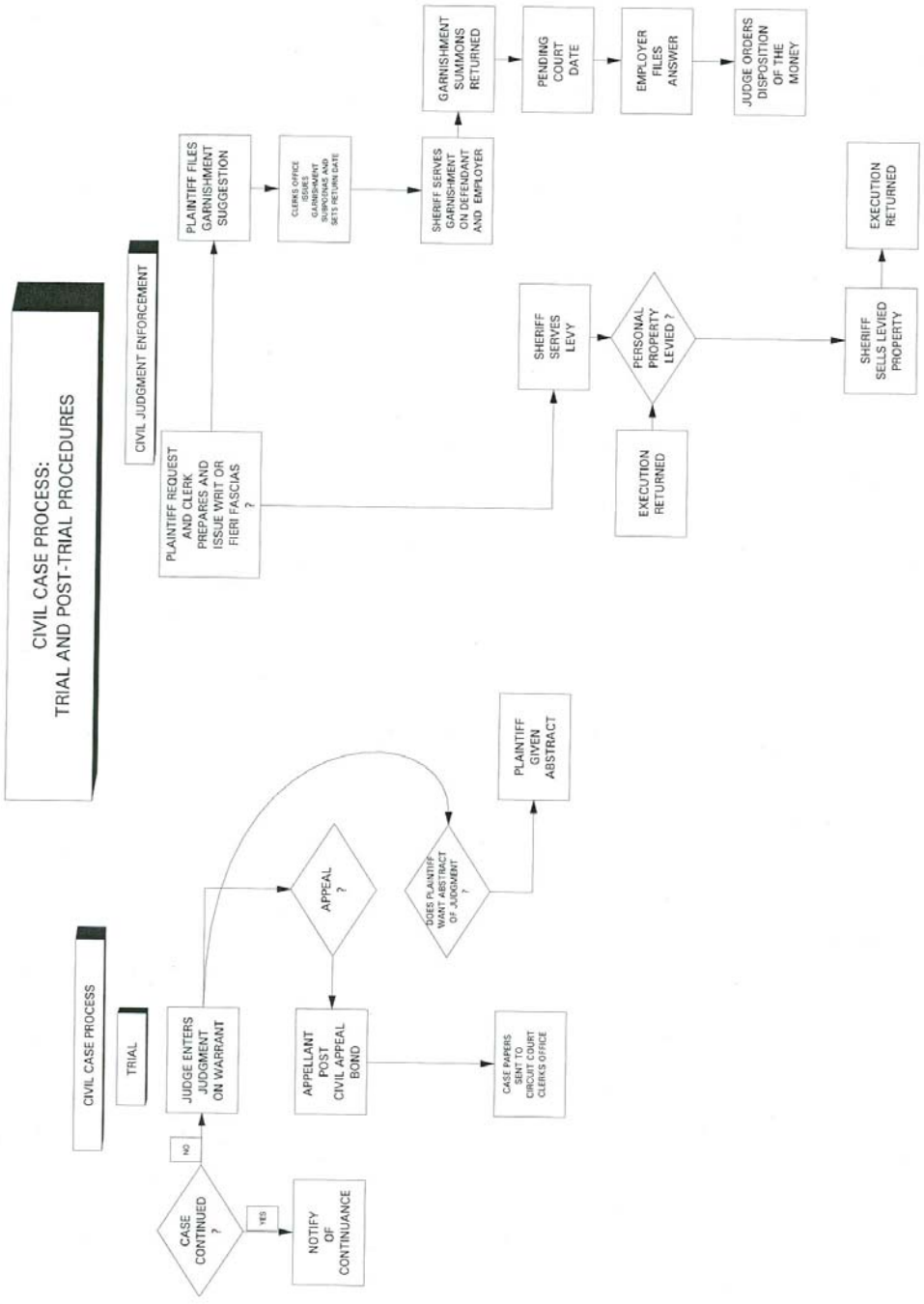
All documents in civil proceedings in district court, which are dismissed, including dismissal under Va. Code § 8.01-335, retain until the completion of the Commonwealth's audit of the court records, then destroy. Civil cases in which there has been no service will be retained for a period of two years.

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

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

III. FLOWCHARTS – PRE-TRIAL PROCEDURES AND TRIAL AND POST-TRIAL PROCEDURE




CIVIL CASE PROCESS:
TRIAL AND POST-TRIAL PROCEDURES
CIVIL JUDGMENT ENFORCEMENT
PLAINTIFF REQUEST AND CLERK PREPARES AND ISSUE WRIT OR FIERI FASCIAS ?
PLAINTIFF FILES GARNISHMENT SUGGESTION
CLERKS OFFICE ISSUES GARNISHMENT SUMMONS AND SETS RETURN DATE
SHERIFF SERVES GARNISHMENT ON DEFENDANT AND EMPLOYER
GARNISHMENT SUMMONS RETURNED
PENDING COURT DATE
EMPLOYER FILES ANSWER
JUDGE ORDERS DISPOSITION OF THE MONEY
SHERIFF SERVES LEVY
PERSONAL PROPERTY LEVIED ?
EXECUTION RETURNED
SHERIFF SELLS LEVIED PROPERTY
EXECUTION RETURNED
CIVIL CASE PROCESS
TRIAL
JUDGE ENTERS JUDGMENT ON WARRANT
CASE CONTINUED ?
NO
YES
NOTIFY OF CONTINUANCE
APPEAL ?
APPELLANT POST CIVIL APPEAL BOND
CASE PAPERS SENT TO CIRCUIT COURT CLERKS OFFICE
DOES PLAINTIFF WANT ABSTRACT OF JUDGMENT ?
PLAINTIFF GIVEN ABSTRACT

IV. VENUE

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

A. Preferred Venue (Va. Code § 8.01-261)

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

- In actions for review of, appeal from, or enforcement of state administrative regulations, decisions, or other orders, venue is preferred where the citizen resides, regularly does business, or where his affected property is located (or if none apply, where the violation took place). Va. Code § 8.01-261 (1)(a)-(c).

- Except where venue is preferred under paragraph 1, in an action against an officer of the Commonwealth in his official capacity, venue is preferred where his official office is located. Va. Code § 8.01-261(2).

- In actions having to do with title or interests in real estate, the preferred place of venue has traditionally been the city or county in which the real estate is located. Va. Code § 8.01-261(3).

- In actions for writs of mandamus, prohibition, or certiorari (except those issued by the Supreme Court), venue is preferred in the jurisdiction where the record to which the writ relates is located or where the proceeding took place. Va. Code § 8.01-261(5).

- In actions on bonds required for public contract, venue is preferred in the city or county in which the project, or any part of it, is situated. Va. Code § 8.01-261(6).

- In actions on any contract between a transportation district and a component government, venue is preferred in any county or city that is within the transportation district. Va. Code § 8.01-261(10).

- In attachments, preferred venue is determined as if the principal defendant is the only defendant or is where the principal defendant has estate or debts owing him. Va. Code § 8.01-261(11).

- In an action to collect state, county, or municipal taxes, venue is preferred where the taxpayer resides or owns real or personal property or has a registered office or regularly conducts business or, if he left the

Commonwealth, where venue was proper at the time taxes were assessed or at the time the person left the Commonwealth. Va. Code § 8.01-261(13)(a).

- In an action for the correction of an erroneous assessment of state taxes and tax refunds, where the taxpayer resides, has a registered office, regularly conducts business, or where the involved real or personal property is located, or the Circuit Court of the City of Richmond. Va. Code § 8.01-261(13)(b).

- In actions under the Virginia Tort Claims Act, where the claimant resides, where the act or omission complained of occurred, or in the City of Richmond if the act occurred outside the Commonwealth and the complainant resides outside the Commonwealth. Va. Code § 8.01-261(18).

- In distress actions, in the county or city where the premises yielding the rent, or some part thereof, may be or where goods liable to distress may be found. Va. Code § 8.01-261(20).

B. Permissible Venue (Va. Code § 8.01-262)

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

- where the defendant resides or has his principal place of employment Va. Code § 8.01-262(1).

- where the defendant has a registered office, has appointed an agent, or an agent has been appointed by the operation of law, where its chief officer resides or, in a case where the defendant has withdrawn from the Commonwealth, where venue would have been proper at the time of withdrawal. This provision applies to legal entities in addition to corporations. Va. Code § 8.01-262(2).

- where the defendant regularly conducts substantial business activity or in the case of withdrawal, where venue was proper at the time of withdrawal. Va. Code § 8.01-262(3).

- where the cause of action, or any part, arose. Va. Code § 8.01-262(4).

- where the personal property is located or where evidence of such property is located or if either of these do not apply, where the defendant resides, in actions to recover or partition personal property. Va. Code § 8.01-262(5).

- for actions based on an improper message transmission or misdelivery, where the message was transmitted or delivered or accepted for delivery or was misdelivered. Va. Code § 8.01-262(7).

- for actions based on delivery of goods where goods were received. Va. Code § 8.01-262(8).

- if none of the other specific forum are available, where the defendant has property or debts owing him, which are subject to seizure by civil process. Va. Code § 8.01-262(9).

- if all of the defendants are unknown or are nonresidents of the Commonwealth, or there is no other forum available under Va. Code §§ 8.01-261 or 8.01-262, then the county or city where any of the plaintiffs reside. Va. Code § 8.01-262(10).

C. Multiple Parties (Va. Code § 8.01-263)

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

- if one or more of the parties is entitled to preferred venue and the action is commenced in a preferred forum; or

- in all other cases, if venue is proper as to any party.

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

D. Objection to Improper Venue (Va. Code § 8.01-264 and Rule 7B: 11)

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

- While venue is subject to objection, this section prohibits dismissal for lack of venue if there is a proper venue somewhere in the Commonwealth.

- Even where venue is subject to objection under this section, the defendant may waive his objection by failure to file a timely objection.

  – In general district courts objection to venue must be made by written motion (which may be by letter or other writing) and filed with or received by the court on or before the day of trial. Defendant shall mail a copy to all counsel of record.

  – All initial pleadings must inform the defendant of his right to object to improper venue in clear, nontechnical language. Supreme Court Rule 7B:3.

- The objecting party's motion shall state in which court(s) he believes that proper venue lies.

- Waiver by one defendant of objection to venue does not constitute a waiver for any other defendant.

- The court shall hear the motion promptly upon reasonable notice by any party.

- Objection to venue on behalf of an original defendant cannot be defeated by the subsequent joinder of another defendant or the intervention of another party.

- If the motion is sustained, the court *shall* order the venue transferred and notify each party.

- If the defendant who objected to venue is not present, a copy of the order is mailed to the defendant.

- If the motion is denied, the case goes to trial. However, if the defendant who objected to venue is not present, the case is continued and the defendant is notified by mail.

- The court shall notify each party of the judge's decision concerning the objection.

E. Motion for Transfer of Venue Va. Code § 8.01-265 and Rule 7B: 11)

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

- No action shall be transferred from a preferred venue to a non-preferred venue, nor shall an action with a preferred venue be retained by a non-preferred venue, except by agreement of all parties.

- An action brought by a non-resident may be dismissed if the cause of action arose outside of the Commonwealth, and if the court determines that there is a more convenient forum in which to hear the case in a jurisdiction outside of the Commonwealth. Va. Code § 8.01-265.

- If the parties are not present and the court transfers venue, the clerk transfers the case papers to the transferee court after the appeal period has run and

sends a copy of the transmittal letter or transfer order to all parties together with information regarding costs awarded.

- If the parties are not present and the court denies the transfer motion, the court sets a trial date, and the clerk notifies the parties by first class mail of the trial date and of any costs awarded.

Good cause shall be deemed to include, but not limited to, agreement of the parties, or avoidance of substantial inconvenience to parties or witnesses. Va. Code § 8.01-265.

F. Civil Transportation of Incarcerated Witnesses.

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

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

G. Discretion of Judge (Va. Code § 8.01-267)

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

H. Docketing a Transferred Case

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

V. SUITS IN DEBT

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

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

A. Case Initiation

Plaintiffs initiate suits in debt in general district court in one of two ways: the plaintiff or his attorney may prepare a motion for judgment, or they may file a complaint with a clerk or magistrate requesting that a Warrant in Debt be issued.

1. Complaint Filed With Clerk

The Clerk receiving the complaint will:

- Request the plaintiff or his attorney or, if a corporation or partnership is the plaintiff, the statutorily authorized officer or employee as provided in Va. Code § 16.1-88.03, to complete a WARRANT IN DEBT, form DC-412, according to the instructions in the District Court FORMS volume.

- Va. Code § 16.1-88.03, to complete a WARRANT IN DEBT, form DC-412, according to the instructions in the District Court FORMS volume.

- Ascertain that all of the necessary information (plaintiff name and phone number, defendant's name and address, amount of claim, reason for claim) is present.

- Mark on the warrant the date and time filed in the clerk's office.

- Collect processing fees. No fee is charged: (1) when the Commonwealth of Virginia is the plaintiff; (2) when the local government is suing to collect taxes; or (3) when the school board is suing to collect overdue school book rentals. *See* Va. Code §§ 17.1-266, 16.1-69.48:2.

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

- Assign a sequential case number to each case and place it on all copies of the WARRANT IN DEBT.

- Index the case in CMS.

- Determine jurisdiction, and if appropriate, issue the process by signing the warrant portion of the WARRANT IN DEBT, DC-412. Va. Code § 16.1-79 allows for the return date to be within 60 days of the date of service on the defendant.

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

2. Complaint Filed With the Magistrate

   The magistrate receiving the complaint will:

   - Request completion of the WARRANT IN DEBT, DC-412.
   - Review the WARRANT IN DEBT as would the clerk's office and collect the processing fee. Insert date and time filed on the pleadings. Individuals seeking to have the filing fee waived due to a claim of poverty should be handled in the same manner as they would be handled in the local clerk's office.
   - Forward the documents and fees to the clerk's office.

Upon receipt, the clerk's office will:

- Mark on the warrant the date and time of receipt of such form or warrant in the clerk's office.
- Assign a sequential case number to each case and place it on all copies of the WARRANT IN DEBT.
- Index the case in CMS.

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

3. Motion for Judgment (*See* Va. Code § 16.1-81.)

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

   - The plaintiff or plaintiff's attorney (or, if a corporation or partnership, the statutorily authorized officer or employee as provided in Va. Code § 16.1-88.03) prepares the entire motion for judgment, including the date and time of the return and hearing which must be within 60 days from service of process on the defendant. Plaintiffs who regularly file motions for judgment should be encouraged to arrange through the clerk's office a return date to avoid docket overcrowding.
   - The motion for judgment can be filed only in the clerk's office.
   - It must be served not fewer than five days before the return date; if returned as "not found," a new motion is required with a payment of all fees for re-service. Va. Code § 16.1-69.48:2.

B. Service of Process

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

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

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

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

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

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

1. Service of Process – By Parties

Party	**Type of Service/Methods**
Natural Person Virginia resident generally (*see* Va. Code § 8.01-296) NOTE: *The person executing substituted service shall note the manner and date of such service on the original and the copy of the process so delivered or posted.* Return of such service shall be effected as provided in Virginia §§ 8.01-294 and 8.01-325. Va. Code § 8.01-296(2)(c).	▪ In person in Virginia ▪ By substituted service: o If not at usual place of abode, then – deliver the process to a family member found at abode who is at least 16 years old and is not a temporary sojourner or guest, and give this person information regarding the purpose of the process delivered. – If the above is not successful, then by posting on front door or other such door as appears to be the main entrance of such abode; however, at least ten days before entry of default judgment, (1) plaintiff must mail by regular mail to the party served by posted service a copy of the process and certify such mailing to the clerk, *or* (2) plaintiff in a general district court case can mail a copy of the *pleading* which contains the date, time and place of the return prior to or after filing such pleading and certify such mailing to the clerk. ▪ Service on the Secretary of the Commonwealth if process has been delivered to the sheriff or to a disinterested person for execution and, if unable to be served, that the person seeking service (usually a plaintiff) has made a bona fide attempt to determine the actual place of abode or location of the person to be served. Va. Code § 8.01-329 B. ▪ By order of publication. Va. Code § 8.01-316. o Serving party unable to locate person to be served after exercising due diligence; *or*

Party	**Type of Service/Methods**
	o Sheriff unable to serve other party at last known address after having process 21 days; or o Other party is unknown.
Convicts (as defendants)	Service may be effected by delivery to the officer in charge of jail or institution whose duty it is to promptly deliver it to convict. Va. Code § 8.01-297.
Non-resident (Va. Code § 8.01-320)	▪ Personal service in Virginia or on the Secretary of the Commonwealth. ▪ Personal service outside Virginia by person authorized to serve process where person to be served is located in the same provided in Chapter 8 of Title 8.01 (§ 8.01-285 *et seq.*). (Personal service on a non-resident outside Virginia is the equivalent of personal service on a non-resident within Virginia, if the "long arm" statute would provide personal jurisdiction.) Va. Code §§ 8.01-320 to 8.01-329. ▪ Order of publication. ▪ Posting in three public places for certain liens (innkeepers, garage men, etc.). Va. Code § 43-34.
Government Entities	
Cities And Towns	On its city or town attorney, if such position exists, otherwise on its mayor, manager or trustee. Service may be made by leaving a copy with the person in charge of the office of any officer designated above. Va. Code § 8.01-300.
Counties – Generally	On its County Attorney where such position exists, otherwise, on it's Attorney for the Commonwealth. Service may be made by leaving a copy with the person in charge of the office of any officer designated above. Va. Code § 8.01-300.

Party	**Type of Service/Methods**
Counties – Against County Official Or Employees	On named defendant plus each supervisor and the County Attorney. If there is not County Attorney, then the clerk of the County Board. Va. Code § 8.01-300.
Virginia Tort Claims Act and Other Public Governmental Entities	On director, chief administrative officer, commissioner, attorney, or member of governing body, or person in charge of office of any above designated official.
Partnerships or Partners	
General	On any general partner, except plaintiff-partner. Va. Code § 8.01-304.
Limited	On any general partner, on limited partner only to enforce limited partner's partnership liability. Va. Code § 8.01-304.
Unincorporated Associations, Orders And Common Carriers	
Domestic and Foreign	On any officer, director, trustee, staff member or other agent. Va. Code § 8.01-305. ▪ Same as above; *or* ▪ On Clerk of State Corporation Commission, if the association, etc., does business in the Commonwealth; *or* ▪ Order of publication. Va. Code § 8.01-306.
Corporations	
Domestic	▪ 1. By personal service on any officer, director or registered agent of the corporation; *or* ▪ 2. By substituted service on stock corporations in accordance with Va. Code § 13.1-637 and on non-stock corporations in accordance with Va. Code § 13.1-836 (Nos. 1 and 2, Va. Code § 8.01-299). ▪ 3. Garnishments, by service on an officer, an employee designated by the corporation other than an officer, or if there is no designated employee or if the designated employee cannot be found, upon a

Party	**Type of Service/Methods**
	managing employee. A "managing employee" is an employee who has control of operations and supervision of employees at the location where process is served. If the creditor files a certificate that she used due diligence and an officer, designated employee or managing employee cannot be found or the designated or managing employee is the debtor, it may be served on the registered agent or upon the clerk of the State Corporation Commission. If the corporation intends to designate an employee for receipt of service, the corporation shall file the designation with the State Corporation Commission. Va. Code § 8.01-513.
Foreign	▪ 1. By personal service on any officer, director, or on the registered agent of a foreign corporation authorized to do business in Virginia. If doing business without such authority, then by personal service on any of the corporation's agents; *or* ▪ 2. By substituted service in accordance with Va. Code §§ 13.1-766 and 13.1-928, if such corporation is authorized to do business in Virginia; *or* ▪ 3. Where jurisdiction is authorized under Va. Code § 8.01-328.1, by substituted service in accordance with Va. Code § 8.01-329, regardless of whether the corporation is authorized to do business in Virginia; *or* ▪ 4. Where jurisdiction *in rem* or *quasi-in-rem* is authorized, by order of publication in accordance with Va. Code §§ 8.01-316 and 8.01-317, regardless of whether the corporation is authorized to do business in Virginia. (No. 1-4, Va. Code § 8.01-301). ▪ 5. Garnishments, by service on an officer, an employee designated by the corporation other than an officer, or if there is no

Party	**Type of Service/Methods**
	designated employee or if the designated employee cannot be found, upon a managing employee. If the creditor files a certificate that she used due diligence and an officer, designated employee or managing employee cannot be found or the designated or managing employee is the debtor, it may be served on the registered agent or upon the clerk of the State Corporation Commission. If the corporation intends to designate an employee for receipt of service, the corporation shall file the designation with the State Corporation Commission. Va. Code § 8.01-513.
Operated by trustees or receivers (Va. Code § 8.01-303)	▪ On any trustee or receiver. ▪ If a trustee or receiver cannot be served, may serve as detailed above for a regular corporation.
Stock Corporations (domestic and foreign)	▪ Substitute service on Clerk of State Corporation Commission. ▪ Order of Publication. ▪ Secretary of the Commonwealth (foreign corporations only).
Non-Stock Foreign Corporations	▪ Substitute service on Clerk of State Corporation Commission when corporation has no registered agent or agent cannot be found at registered office with due diligence. ▪ Order of Publication. ▪ Secretary of the Commonwealth (foreign corporations only).
Automobile Insurers Uninsured Or Underinsured Motorist	Same as party defendant except that Va. Code § 8.01-288 does not apply (*see* Va. Code § 38.2-2206(E)).

2. Special Substitute Service Provisions

Type Of Case Or Party	**Person Served**
Auctioneers (non-resident)	Director of Virginia Auctioneer Board (Va. Code § 54.1-603)
Automobile tort cases	Commissioner of Motor Vehicles
Reciprocal insurance	Clerk of the State Corporation Commission
Non-resident owner and operator of aircraft (tort cases)	Secretary of the Commonwealth (Va. Code § 8.01-309)
Public school tax publishers	Secretary of the Commonwealth
Solicitors of Contributions	Secretary of the Commonwealth
Virginia Tort Claims Actions	Attorney General (Va. Code § 8.01-195.4)
Transportation district	Chairman of the commission of the transportation district. (Va. Code § 8.01-195.4.)

3. Return of Service

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

- The sheriff must make a return on all process delivered to him for service of process as required by law within 72 hours from the date of service except where the third day would fall on a Saturday, Sunday or legal holiday. The return would then be due on the next business day following the Saturday, Sunday or legal holiday. Va. Code § 8.01-294.

- Proof of service by any person other than the sheriff or deputy sheriff must include an affidavit of his qualifications, the date and manner of service and the name of the party served. Va. Code § 8.01-325.

Unless otherwise directed by the court, the person serving process shall make the return within three days of service, except when the third day would end on a Saturday, Sunday, or legal holiday. In this case, the return would be due the day following the Saturday, Sunday, or legal holiday. Va. Code § 8.01-325. Failure to make the return within that time frame does not invalidate the service. If the court finds that a late return prejudices a party or interferes with the handling of the case by the court, the court may grant a continuance, require additional service, or take other appropriate action.

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

- If served through the Secretary of the Commonwealth:

  – Plaintiff, or his attorney or agent, prepares DC-410, AFFIDAVIT FOR SERVICE ON THE SECRETARY OF THE COMMONWEALTH (two copies),

and attaches a copy of the process or notice to each copy of the affidavit. A copy of the affidavit is filed with the clerk of the court.

- Plaintiff, his attorney or agent mails to the Secretary of the Commonwealth the original and one copy of the affidavit for each person to be served with process or notice attached to each copy with the appropriate fee. A green certified mail card for U.S. residents or a pink registered mail card for non-U.S. residents must be included. (While service on the Secretary of the Commonwealth can be made through the sheriff, such service can be slow—the Secretary of the Commonwealth must return unserved all general district court process received within ten days of the return date. If the service of process is to be served on the Secretary of the Commonwealth by the sheriff,

- then the clerk also collects the copies of the affidavit and service of process fee from the plaintiff and forwards to the sheriff the copies of the items to be served, the copies of the affidavits and the fee for service of process on the Secretary of the Commonwealth. The clerk does *not* mail these items directly to the Secretary of the Commonwealth).

- If timely received, the Secretary of the Commonwealth sends a copy by certified mail return receipt requested to the person to be served (usually the defendant), then executes the Certificate of Compliance portion of the AFFIDAVIT FOR SERVICE ON THE SECRETARY OF THE COMMONWEALTH and mails it to the general district court clerk. Upon receipt of the certificate of compliance, the clerk mails verification of filing of the certificate with the court to person filing the affidavit. The clerk shall not mail this verification unless the person filing the affidavit provides the clerk with a self-addressed, stamped envelope. Va. Code § 8.01-329 (c).

- Clerk enters the date and time filed on the affidavit (becomes effective date of service) and files affidavit form with completed certificate with case papers.

- If served through the Clerk of the State Corporation Commission, 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 his/her duties.

- The plaintiff, not the clerk, is responsible for arranging for timely service through any statutory agent, including the Secretary of the Commonwealth.

If an order of publication is to be used:

- The plaintiff files DC-435, AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION, WHICH states statutory reasons authorizing an order of publication.

- The cost of publication shall be paid initially by the person seeking service; however, such costs may ultimately be recoverable as costs under Va. Code § 17.1-601. Va. Code §§ 8.01-316- 8.01-317.

- The clerk's office prepares the DC-436, ORDER OF PUBLICATION.

- The date requiring appearance shall be no sooner than fifty days after entry of order.

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

- The order must be published once a week for four successive weeks in such newspapers as the judge may prescribe which meet the requirements of Va. Code § 8.01-324. The order shall be posted at the front door of the courthouse or at or near the approved principal public entrance to the courthouse where the court is held. Va. Code § 8.01-317; Va. Code §1.211.1.

  An affidavit from the publisher as to the dates of publication and the accompanying copy of the published order are required unless publication in a newspaper is waived within the Order of Publication by the judge. Va. Code § 8.01-317 (see Clerk's Procedures for ORDER OF PUBLICATION in Appendix E).

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

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

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

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

A person, upon whom process has not been served within one year of commencement of the action against him, may make a special appearance, which does not constitute a general appearance, to file a motion to dismiss. Upon finding that the plaintiff DID NOT exercise due diligence to have timely service, and sustaining the motion to dismiss, the court shall dismiss the action with prejudice. Upon finding the that the plaintiff DID exercise due diligence to have timely service and denying the motion to dismiss, the court shall require the person filing such motion to file a responsive pleading within 21 days of such ruling. The plaintiff shall not be prevented from filing a nonsuit under Va. Code § 8.01-380 before the entry of an order granting a motion to dismiss.

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

C. Pre-Trial Procedures

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

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

Pleadings may be signed and filed by attorneys and by parties who are representing themselves. In certain listed general district court civil actions, Va. Code § 16.1-88.03 permits a partnership to sign pleadings by any general partner, manager of a limited liability company, or a trustee of a business trust. Similarly, the statute permits a corporation to sign certain listed pleadings by its president, vice-president, treasurer, or other officer, except when the cause of action was assigned to the corporation or partnership solely for the purpose of enforcing an obligation owed or right inuring to another. A corporate officer, with the approval of the board of directors or manager, general partner or trustee may authorize in writing an employee, a real estate broker or salesperson licensed under Va. Code § 54.1-2106.1, a property manager or a managing agent of a landlord as defined in Va. Code § 55-248.4 to sign pleadings as an agent of the business entity.

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

To prepare the case for court, the clerk's office will:

- File the WARRANT IN DEBT and motion for judgment by court date.

The CMS MANUAL describes the recommended procedures for indexing cases, filing records prior to court, and preparing the docket. Detailed questions concerning these procedures should be referred to the CMS MANUAL. *See also* Va. Code § 8.01-449.

D. Pre-Trial Settlement

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

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

Where a plaintiff executes a release of liability as a condition of settlement in a claim or action for personal injury within thirty days of the incident giving rise to the claim, the plaintiff has the right to rescind the release until midnight on the third business day after the day on which the release was executed. Va. Code § 8.01-425.1. This only applies where the plaintiff was not represented by counsel when the release was

executed, the rescission is made in writing and the plaintiff returns any check or settlement proceeds prior to the rescission.

E. Subpoenas For Witnesses, Subpoenas Duces Tecum

1. Witness Subpoenas.

There are two parallel procedures for issuing witness subpoenas.

a. Issuance By The Clerk.

The DC-325, REQUEST FOR WITNESS SUBPOENA or other writing with the appropriate information is required before any subpoenas can be issued. The party prepares the DC-325, REQUEST FOR WITNESS SUBPOENA.

The judicial officer should:

- Verify that the request is returnable to the proper court and court division (i.e., the same as the court appearance location) and that the court date is correct;

- Obtain phone numbers where possible, to aid the clerk in contacting witnesses in the event of a pre-trial resolution of the case or of a continuance;

- Note date and time of receipt of request and issuance of subpoenas. Supreme Court Rule 7A: 12(a) provides that requests for subpoenas should be filed at least ten days prior to trial.

- Prepare the DC-326, SUBPOENA FOR WITNESS as per the instructions in the FORMS volume of this manual. Subpoenas can be issued by either a clerk or a magistrate.

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

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

b. Attorney Issued Witness Subpoenas.

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

Va. Code § 8.01-407. The following categories of proceedings are excluded from this provision: habeas corpus proceedings under Va. Code § 8.01-654 *et seq.*;

delinquency proceedings; child abuse and neglect proceedings; protective orders in cases of domestic abuse or stalking; civil forfeiture proceedings; habitual offender proceedings; proceedings to contest an administrative license suspension under Va. Code § 46.2-391.2 and pursuant to petitions for writs of prohibition or mandamus in connection with civil proceedings.

The attorney should use DC-497, SUBPOENA FOR WITNESS (CIVIL) ATTORNEY ISSUED. This form is a master form because it is expected that attorneys will produce these witness subpoenas (as well as the attorney-issued subpoena duces tecum, see below) through automated means. The forms are available on the web site of the Supreme Court: www.courts.state.va.us. Any attorney issued subpoena served less than 5 calendar days before appearance and served on a judicial officer generally incompetent to testify pursuant to Va. Code §19.2-271, has no legal force or effect.

The attorney transmits the subpoenas to the sheriff for service, accompanied by a transmittal sheet indicating the name of the person to be served, the jurisdiction in which it is to be served, the style of the case, the court in which the case is pending and the amount of fees paid to the clerk, if any, along with a photocopy of the clerk's receipt or the instrument of payment. The sheriff is not required to serve an attorney-issued witness subpoena if it is not issued at least five business days prior to the date the attendance is sought. These subpoenas may be served by a private process server, in which no service fees would be paid to the clerk. On the same day that the subpoena is issued, the attorney shall transmit a copy of the subpoena, or subpoenas, to the clerk's office.

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

2. Subpoenas Duces Tecum

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

If the subpoena duces tecum is for medical records, please see subsection L. MISCELLANEOUS CASE TYPES, 16. DISCOVERY OF MEDICAL RECORDS in this Chapter.

a. Issuance By The Court.

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

- The requesting person files a written request for a subpoena duces tecum in the REQUEST FOR SUBPOENA DUCES TECUM portion of the DC-336, SUBPOENA DUCES TECUM, describing the items sought with reasonable certainty, naming the person from whom these items are sought, and stating where the items should be produced.

- Supreme Court Rule 7A: 12(b) provides that requests for subpoenas duces tecum should be filed at least 15 days prior to trial; requests for subpoenas duces tecum not timely filed should not be honored except when authorized by a judge for good cause.

- Enough copies of this request are needed for each copy of the subpoena duces tecum.

- The requesting party also certifies that he mailed or delivered a copy of this request to other attorneys in the case and to unrepresented parties.

Upon receipt of the request and certification, the clerk completes and issues the DC-336, SUBPOENA DUCES TECUM as described above.

b. Attorney Issued Subpoenas Duces Tecum

Attorneys who are active members of the Virginia State Bar may also issue subpoenas duces tecum in the same types of pending civil cases in which they may issue witness subpoenas. The issuance and processing of attorney issued subpoenas duces tecum tracks generally that of the attorney issued witness subpoenas, as described above. Va. Code §§ 16.1-89, -265.

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

F. Incarcerated Witness:

The Supreme Court of Virginia has held that Va. Code § 8.01-410 does not give a general district court the authority to issue a transportation order for a person who is a

participant in a civil case. *Commonwealth v. Brown*, 259 Va. 697 (2000). Therefore, the Department of Corrections will not longer comply with such transportation orders issued by general district courts. However, in civil matters under Chapter 6 of Title 16.1 (Va. Code § 16.1-76 et seq.) a general district court may, in its discretion, conduct any hearing using a telephonic communication system or an electronic audio and video communication system to provide for the appearance of any parties and witnesses. Va. Code § 16.1-93.1. Any electronic audio and video communication system used to conduct such a hearing shall meet the standards set forth in subsection B of § 19.2-31.

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

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

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

Whenever a party is served with a warrant, summons, motion for judgment, counterclaim or cross-claim, such party may, within ten days after service or up to the trial date, whichever is sooner, file a third-party civil warrant or motion for judgment on a person not a party to the action who is or may be liable to the party for all or part of the claim being asserted against such party. Supreme Court Rule 7B: 10(a). The person served with a third-party claim is the "third-party defendant." After this time period, such third-party claims may be asserted only with leave of court. Processing fees are to be collected when a third-party claim is filed, although the claim retains the same civil case number as the original case.

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

H. Consolidation of Actions

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

I. Discovery Procedures

1. Bill of Particulars and Grounds of Defense

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

2. Depositions

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

J. Removal to Circuit Court

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

1. Nonsuits

   The plaintiff may take his first nonsuit as a matter of right although the court may allow additional nonsuits upon reasonable notice to counsel of record for all defendants and upon a reasonable attempt to notify any party not represented by counsel, or counsel may stipulate to additional nonsuits. The court, in the event additional nonsuits are allowed, may assess costs and attorney's fees against the plaintiff. When suffering a nonsuit, a party shall inform the court if the cause of action has been previously nonsuited. Any order effecting a subsequent nonsuit shall reflect all prior nonsuits and shall include language that reflects the date of any previous nonsuit together with the court in which any previous nonsuit was taken. The plaintiff prepares the DC-419, MOTION AND ORDER FOR VOLUNTARY NONSUIT. If the notice to take a nonsuit of right is given to the opposing party with seven (7) days of trial, the court has the discretion to assess against the nonsuiting party reasonable witness fees and travel costs of expert witnesses scheduled to appear at trial, which are incurred by the opposing party only because of the failure to give notice of the nonsuit more than seven (7) days before trial. Va. Code § 8.01-380(D). The court shall determine the reasonableness of witness fees and travel costs.

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

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

K. Case Hearing, Judgment

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

L. Interpreters

- **Deaf Person**: If a deaf person is a party or a witness in a civil case, he or she has the right to use an interpreter during the proceeding. If requested, the court must appoint an interpreter provided through the Virginia Department for the Deaf and Hard of Hearing. The deaf person may waive the appointment of an interpreter and retain any interpreter at the deaf person's expense. The cost of a court-ordered interpreter may be paid from state funds or assessed as part of the costs of the proceedings.

- **Non-English Speaking Person**: The court may also appoint an interpreter when a non-English speaking person is either a party or a witness in any trial, hearing or other proceeding before a judge in a civil case. The judge hearing the case may appoint a qualified English-speaking person who is fluent in the language of the non-English speaking person, unless the non-English speaking person obtains a qualified interpreter of his own choosing who is approved by the court as competent. Va. Code § 8.01-384.1:1(a).

The interpreter's compensation shall be set by the court in accordance with guidelines set by the Judicial Council of Virginia and shall be paid from the criminal fund of the state treasury as part of the expense of trial. See the CHART OF ALLOWANCES for instructions regarding the submission of claims for compensation of these interpreters. The compensation of the interpreter may also be assessed against either party as a cost of the case. Va. Code § 8.01-384.1:1 (B).

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

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

M. Exclusion of Witnesses

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

N. Constitutional Rights

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

O. Trial On Affidavit, Denial By Defendant

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

The plaintiff may use a similar procedure to recover when the physical evidence of a debt has been lost. Va. Code § 8.01-32. To recover on a "lost debt" the plaintiff must

verify under oath that a debt exists and that the evidence of the debt has been lost. Such verification may be made either by sworn affidavit or sworn testimony in open court. Recovery may occur only when the "lost debt" is past due.

P. Entry And Docketing of Judgment

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

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

The rate of interest for a judgment shall be the judgment rate of interest in effect at the time of entry of the judgment. Interest in cases in which a judgment has been entered is not affected by subsequent changes in the judgment rate of interest in Va. Code § 6.1-330.54. The current judgment rate of interest is 6% except on contracts for the loan of money, which accrue interest at the lawful rate stated in the contract or 6%, whichever is higher. Va. Code § 6.1-330.54.

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

Q. Bad Check Cases

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

- legal interest from the date of the check
- the protest or bad (bounced) check bank fees
- the check holder's normal bad check processing fee not to exceed $50.00 Va. Code § 8.01-27.1. However, if the plaintiff charges an amount in excess of this statutory limit, the plaintiff is liable to the defendant for the lesser of $50.00 plus the excess of the authorized amount or twice the excess charged over the statutory limit.
- reasonable attorney's fees, if awarded by the court. Va. Code § 8.01-27.1.
- civil penalty of the lesser of $250 or three times the amount of the check pursuant to Va. Code § 8.01-27.2 if:
  - the check was returned for insufficient funds, and

- the check is not paid within thirty days after drawer receives written notice by certified, registered, or regular mail that the check was returned unpaid, no criminal bad check case pursuant to Va. Code § 18.2-181 has been started.

- cost of service of process or mailing, as applicable.

R. Failure to Appear and Default Judgments

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

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

- dismiss the case without prejudice to plaintiff's right to refile if defendant admits owing all or part of the claim, or

- enter judgment for defendant.

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

S. Servicemembers Civil Relief Act Requirements for Default Judgment

A default judgment may not be entered until the plaintiff files an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. The DC-418, AFFIDAVIT – DEFAULT JUDGMENT SERVICEMEMBERS CIVIL RELIEF ACT is available for use by plaintiffs. Failure to file the affidavit is not grounds to set aside an otherwise valid

default judgment against a defendant who was not, at the time of service of process or entry of the default judgment, a service member. However, case law indicates that failure to comply with the affidavit requirement in a case involving a defendant who is a service member and whose military service interfered with his ability to respond to a suit creates a voidable default judgment. See Flynn v. Great Atlantic Management Co., 246 Va. 93; Matthews v. Allstate Ins. Co., 194 F. Supp. 459 (E.D. Va 1961).

If the defendant is believed to be in military service and is unaware of the action, the court must appoint an attorney to represent the defendant prior to entry of a default judgment. The court must grant a stay of not less than 90 days upon request by appointed counsel or upon its own motion if the court believes that (i) there may be a defense that requires the defendant's presence or (ii) counsel has been unable to contact the defendant or otherwise determine if a meritorious defense exists after due diligence. If the service member cannot be contacted within the first 90-day stay period, a default judgment may be entered, but the service member may attack the judgment and the attorney's actions shall not bind him.

If the service member is believed to be in military service and has been provided notice of the action, the court may grant a stay of 90 days or more upon its own motion, and shall grant a stay upon application of a service member with notice, if such service member provides (i) a letter setting forth the reasons why his military duties materially affect his ability to appear, and a date on or after which he could appear and (ii) a letter from his commanding officer stating that his service precludes his ability to appear and that he is not authorized to take leave. Active duty status alone, even in another state, does not necessarily "materially affect" one's ability to appear. Application for this stay does not constitute a waiver of jurisdictional defenses. A service member may apply for additional stays, but the court need not grant them. If the court refuses to grant an additional stay after the first 90 day stay, and the service member still cannot appear by reason of his military service, then the court must appoint an attorney to represent him before entering default judgment.

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

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

A service member who did not have notice of an action that resulted in a default judgment may petition the court to reopen a case within 90 days of his release from service. The court shall rehear the matter and allow the service member to defend the action only if (i) the service member was materially affected in making a timely defense by reason of military service and (ii) the service member has a meritorious or legal defense to the action or some part thereof

T. Civil Action for Bad Check, Shoplifting and Employee Theft

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

VI. POST-TRIAL PROCEDURES

A. Appeals

In a general district court civil case in which the dispute is of a value greater than $50.00, the losing party may appeal the judgment of the lower court to the circuit court provided the appeal is noted within ten calendar days from the date judgment was entered. If the tenth day falls on a Saturday, Sunday, or legal holiday, the last day to note an appeal will be the next day the court is open. Procedures for handling such an appeal are as follows:

For details and step-by-step instructions for handling appeals and withdrawal of appeals, see APPENDIX C-APPEALS.

B. New Trial of Case

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

Any party to the suit files a motion for new trial within thirty days after the entry of judgment (use DC-369, MOTION FOR REHEARING).

The request must be heard by the judge who acted in the case before, or if not available, by another judge. Granting of the motion is within the judge's discretion. The judge must rule on the motion within 45 days after judgment.

In the event that this 30-day time period has passed, a judge is authorized to reopen the case to correct clerical errors, or to set aside a confessed or default judgment because of fraud (if motion made within two years of judgment), a void judgment, or proof of an accord and satisfaction. Va. Code § 8.01-428.

C. Notice of Satisfaction

Once the judgment has been paid or otherwise satisfied, the plaintiff/judgment creditor must notify the court in which the judgment was rendered in writing of that satisfaction. This notice must be provided within thirty days of receipt of payment or satisfaction. The DC-458, NOTICE OF SATISFACTION may be used for this purpose but it is not mandatory. Any type of notice is satisfactory if it contains:

- the case number
- the names of the parties
- the date and the amount of the judgment
- the date of the payment or satisfaction.

Upon receipt of the notice of satisfaction, the clerk should affix a statement of satisfaction using a stamp or hand write the statement on the original judgment case papers. The clerk should sign the statement and insert the date the statement of satisfaction is affixed to the case papers. The notice of satisfaction should then be attached to the original judgment case papers.

If the plaintiff/judgment creditor fails to notify the court of the satisfaction of the judgment within thirty days, the defendant/judgment debtor may file a motion to have the judgment marked satisfied. The DC-459, MOTION FOR JUDGMENT TO BE MARKED SATISFIED may be used for this purpose. The defendant/judgment debtor must have given the plaintiff/judgment creditor ten days notice of the motion prior to filing it with the court. Upon a hearing on the motion, the court may order that the judgment be marked satisfied. The disposition of a MOTION FOR JUDGMENT TO BE MARKED SATISFIED may be appealed to the circuit court.

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

D. Records and Evidence Management

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

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

The clerk may provide for disposal or donation of evidence after the date on which to note an appeal or request a REHEARING has elapsed. If an appeal is not noted, or if a case is appealed, or notice of appeal is pending or the case is being reheard, after the appeal or rehearing is concluded. The clerk must first give notice to the owner or attorney by first class mail and wait until 21 days have elapsed from mailing of the notice to dispose of the evidence, unless the owner or attorney requests its return. Va. Code § 8.01-452.1.

E. Execution of Judgment

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

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

The WRIT OF 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 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 DC-467, WRIT OF FIERI FACIAS from the clerk, who delivers it to the sheriff or any other person authorized to serve process pursuant to Va. Code § 8.01-293 for execution. Va. Code § 8.01-501. Subsequent steps for levy on personal property and garnishments are described below.

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

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

Executions on a judgment in district court can be issued for ten years from the date of judgment. However, the judgment creditor may extend this time period if the judgment creditor, prior to the expiration of the ten years, pays the circuit court docketing and indexing fees along with any other required filing fees and dockets the judgment in the circuit court in the same geographic location as the general district court. The judgment creditor can then request issuance of executions in the general district court after expiration of the ten-year period upon the filing in the district court of an abstract from the circuit court. (*See page 158 for detailed procedures*). Upon the docketing of the judgment in circuit court, the judgment receives the same status as if it was a circuit court judgment and is extended to twenty (20) years from the date of the general district court judgment.

F. Levy on Property in the Hands of the Judgment Debtor

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

- The clerk prepares the DC-467, WRIT OF FIERI FACIAS and attaches a copy of DC-407, REQUEST FOR 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 the judgment creditor posted an indemnifying bond with the sheriff, 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 90-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 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.

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

If more than one WRIT OF 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:
  - Indemnification bond posted prior to sale if required by sheriff.
  - No indemnification bond posted.
- The group of writs for which indemnification bonds were posted takes priority over the group for which no bonds were posted.
- Within each group, order of priority is based on the time that the writs were delivered to the sheriff for execution (first writ delivered takes priority over second writ delivered). If writs are delivered at the same time to the sheriff, the funds are allocated ratably among the writs delivered at the same time.

G. Garnishment of Funds (Va. Code § 8.01-511)

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

- Judgment creditor
  - files a SUGGESTION FOR SUMMONS IN GARNISHMENT, DC-450, and provides the clerk with an envelope, with first class postage attached, addressed to each judgment debtor at his or her last known address.
  - pays the same civil fees required for warrants in debt, and a sheriff's fee per service for each garnishment summons. A separate summons is required for each judgment debtor. If there is more than one garnishee for a judgment debtor, a separate garnishment proceeding for each garnishee is required.
- The clerk's office issues receipts for all fees, verifies that the judgment was granted in at least the amount listed as the "Judgment Principal" on the GARNISHMENT SUMMONS, DC-451, and issues the GARNISHMENT SUMMONS with copies of the REQUEST FOR HEARING--GARNISHMENT EXEMPTION CLAIM, DC-454, and GARNISHMENT INFORMATION SHEET, DC-455, attached to each copy of the GARNISHMENT SUMMONS and with a copy of GARNISHEE'S ANSWER, DC-456, attached to the garnishee's copy of these forms. The GARNISHMENT SUMMONS contains a plain language interpretation of Va. Code § 34-29.
- The summons is made returnable to the court that issued it within 90 days from the writ's issuance, except that, in the case of a wage garnishment, the summons shall be returnable not more than 180 days after such issuance. Va. Code § 8.01-514. The life of the writ of fieri facias will be the same as the summons to which it is attached. Garnishment proceedings for child support pursuant to Va. Code § 20-78.1 continue until the judgment is satisfied or for 180 days.
  - Va. Code § 8.01-511 permits clerks to issue a garnishment summons for wages, salaries, commission or other earnings only if the garnishment summons contains the following data:

- if the judgment is based on a business, trade or professional credit transaction entered into on or after January 1, 1984, the summons must:

- be in the form prescribed by Va. Code § 8.01-512.3;

- be directed to only one garnishee for the garnishment of only one judgment debtor; *and*

- contain both the "Total Balance Due" and the social security number of the judgment debtor.

- specifies that it is a garnishment against the judgment debtor's wages, salary, or other compensation some other debt due or property of the judgment debtor.

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

This information can be found on the SUGGESTION FOR SUMMONS IN GARNISHMENT, DC-450.

- The clerk then provides enough copies for service of the summons with forms attached to each copy as described above plus the pre-addressed stamped envelope which contains a copy of the summons with the NOTICE TO JUDGMENT DEBTOR HOW TO CLAIM EXEMPTIONS FROM GARNISHMENT, DC-454, and the GARNISHEE INFORMATION SHEET, DC-455, attached.

- The summons and attached forms shall be served on the garnishee, and shall be served on the judgment debtor promptly after service on the garnishee. After serving the garnishee, a copy of these papers is mailed to the judgment debtor in the pre-addressed stamped envelope that the judgment creditor provided to the clerk. If the person upon whom there is a suggestion is a corporation, the summons shall be served on an officer, an employee designated by the corporation other than an officer, or if there is no designated employee or if the designated employee cannot be found, upon a managing employee. If the creditor files a certificate that she used due diligence and an officer, designated employee or managing employee cannot be found or the designated or managing employee is the debtor, it may be served on the registered agent or upon the clerk of the State Corporation Commission. The designated employee should be listed with the State Corporation Commission if the corporation has designated such an individual. A "managing employee"

is an employee who has control of operations and supervision of employees at the location where process is served. Va. Code § 8.01-513.

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

- If the service of the summons was not made on the judgment debtor, the mailing shall constitute service of process on the judgment debtor.

- The employer or other garnishee garnishes the judgment debtor's wages and subsequently files an answer (usually by tendering the garnished funds) in the clerk's office on or before the return date. The GARNISHEE'S ANSWER, DC-455, may be used by the garnishee in answering the garnishment summons.

- If the garnishment summons is served on a garnishee-employer and

  – the summons does not comply with the issuance requirements of Va. Code § 8.01-511; or

  – the summons is for the enforcement of a judgment for which the social security number was omitted pursuant to Va. Code § 8.01-511, and the garnishee-employer's records do not have an employee whose name and current address match the same on the garnishment summons, such garnishee-employer may file an answer to that effect and have no liability on such summons (which shall be void upon transmission of such answer).

- If a garnishment summons is served on a financial institution relating to a joint account, the financial institution may file an answer to that effect pursuant to Va. Code § 6.1-125.3 and send a copy by first class mail to the judgment creditor or his attorney. Va. Code § 63.1-260.1. If the judgment creditor wishes to pursue the claim against such an account, the judgment creditor shall provide the clerk with a copy of the GARNISHMENT SUMMONS, DC-451, and its attachments for each party to be served. The address of the parties on the account as shown by the financial institution's records may be used.

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

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

If the judgment debtor executes and returns the REQUEST FOR HEARING-GARNISHMENT Exemption Claim, DC-454, the clerk must advance the garnishment on the docket and schedule a hearing on the claim within seven business days from receiving the request pursuant to Va. Code § 8.01-512.5, and must notify all parties of the date, time, and place of the hearing plus the exemption being claimed. A NOTICE OF HEARING, DC-512, may be used for such purpose. Only if the garnishment summons is modified or dismissed is a copy of the court's order required to be provided to the parties by the clerk.

- A homestead exemption claim may be filed by the judgment debtor prior to or upon the return date of the garnishment summons and shall be considered by the court. Va. Code § 34-17.

- At the garnishment hearing, the judge orders disposition of the money. In most cases, the funds go by default order of payment to the judgment creditor.

- If there is more than one garnishment summons before the court, priority is determined by the date and time that the underlying writ of fieri facias was received by the sheriff; however, judicial or administrative income deduction orders for support will take priority pursuant to Va. Code § 20-79.3 over any

- Other liens created by state law, including garnishments, on an employee's income in the employer's hands.

- A homestead exemption claim may be filed by the judgment debtor prior to or upon the return date of the garnishment summons and shall be considered by the court. Va. Code §34-17.

- If the garnishment funds have not yet been received and the judge determines that the funds are owed based on the garnishee's answer, the clerk will issue a GARNISHMENT DISPOSITION, DC-453. If the garnishee failed to pay in response to an Order of Payment contained in a GARNISHMENT DISPOSITION, DC-453, then the judge may enter a judgment against the garnishee. If the garnishee has not answered, the judge may order the issuance of a SHOW CAUSE SUMMONS (CIVIL), DC-481, to force the garnishee to respond by requiring his personal appearance in court.

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

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

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

- if the garnishment has been served, the judgment creditor should file a Garnishment DISPOSITION, DC-453, asking for release of the garnishment. If not done by the judgment creditor, then a NOTICE OF HEARING, DC-512, should be issued to be served on the judgment creditor, judgment debtor, and garnishee, with the reason being "why the garnishment summons should not be dismissed due to perfection of appeal." The disposition should be noted either in the disposition part of GARNISHMENT SUMMONS, DC-451, or by order as appropriate.

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

H. Abstract of Judgment

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

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

I. Interrogatories

(Va. Code § 8.01-506)

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

NOTE: The interrogatories may be conducted before the court that issued the underlying writ of fieri facias or a commissioner in chancery of such jurisdiction, or before the same type of court or a commissioner in chancery of a contiguous jurisdiction. However, on request of the judgment creditor the interrogatories may be conducted before the same type of court or commissioner in chancery either where the judgment debtor resides or in a contiguous jurisdiction to the place where the judgment debtor resides. *See* Va. Code § 8.01-506. Other than when the summons is to be issued where the judgment debtor resides or contiguous thereto, if the judgment creditor, in completing the SUMMONS TO ANSWER INTERROGATORIES, has the interrogatories set to be heard in one of these different jurisdictions from the one where judgment was entered, the clerk mails the summons to the appropriate sheriff. The clerk of the court hearing an interrogatory from a judgment in another court assigns the interrogatory a new case number, and after the hearing, returns the original interrogatory to the judgment court and retains a copy in the court date disposed file. If the judgment creditor requests that the debtor appear before a court in the place where the debtor resides or contiguous thereto, the case may be filed or docketed in that court. An abstract of judgment must be filed with the court. A summons for interrogatories will issue from that court once appropriate fees are paid. Any subsequent executions must issue from that court. Notices of satisfaction must be filed in both courts.

The procedure for conducting these interrogatory proceedings are:

- The judgment creditor prepares the SUMMONS TO ANSWER INTERROGATORIES, DC-440, as instructed in the FORMS volume of this manual together with a certificate that he has not used this interrogatory process against the judgment debtor within the last six months. The six-month wait may be waived by the judge on motion of the judgment creditor for good cause shown.

- The judgment creditor may also request the issuance of a SUBPOENA DUCES TECUM, DC-336. Such a subpoena would be requested and issued by the same procedures used when a subpoena duces tecum is requested prior to trial (*see* PRE-TRIAL PROCEDURES: Subpoenas, witness summoning, *above*) except that:

  - it may be used only to obtain a book of accounts or other writings containing material evidence; and

- it may be issued by a judge, clerk or commissioner in chancery and require both the production of evidence and appearance of the custodian before the judge or the commissioner in chancery.

- The clerk's office completes the summons portion of SUMMONS TO ANSWER INTERROGATORIES, DC-440, setting forth time and place of hearing, who is to appear, and what records are to be produced. The writ of fieri facias portion of the form is also prepared together with a NOTICE OF HEARING--EXEMPTION CLAIM, DC-407, if a writ of fieri facias is not already in effect.

- The clerk's office issues the SUMMONS TO ANSWER INTERROGATORIES, which is served on the judgment debtor or corporate officer or employee as respondent.

- Prior to the hearing, on motion of the judgment debtor/respondent and for cause shown, the court from which the writ of fieri facias issued shall, pursuant to Va. Code § 8.01-506, transfer the debtor interrogatory proceeding to a forum more convenient to the judgment debtor. *See above*, for procedure for handling requests for exemption hearings.

- At the hearing, the judge or commissioner conducting the examination will permit the examination of the records by the judgment creditor and require the respondent to answer the questions (oral or written) asked by the judgment creditor.

- The commissioner shall, if requested by the parties, file a report with the court together with the interrogatories, answers, and property produced by the hearing.

- If the judgment debtor respondent fails to appear, answers evasively or refuses to deliver property, the judge or commissioner in chancery may have the respondent taken into custody by use of CAPIAS, DC-361, if personal service was held on the SUMMONS TO ANSWER INTERROGATORIES, or proceed on a SHOW CAUSE SUMMONS —CIVIL, DC-481, if there was no personal service. If the respondent is taken into custody on a CAPIAS, DC-361, Va. Code § 8.01-508 requires that if he is not brought promptly before the court or the commissioner in chancery to whom the capias is returnable, he shall be entitled to bail pursuant to Va. Code § 19.2-120. If the respondent appeals, he shall be entitled to bail pursuant to Va. Code § 19.2-120.

J. Interpleader and Postponement of Sale

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

party may wish to protect his interests in the property through a process called interpleader.

A third party to a suit may file a claim to the property to discharge it from the lien by preparing a summons in interpleader. The property in question must not be greater in value than $15,000 and the applicant must claim an interest in the property such that there is sufficient cause to discharge the property from the lien.

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

- Applicant prepares the AFFIDAVIT FOR SUMMONS IN INTERPLEADER, DC-432, as per the instructions in the FORMS volume of this manual.

Upon receipt of the affidavit, the clerk's office will:

- Review the affidavit for completeness and assign a return date.
- Prepare the SUMMONS portion of the SUMMONS IN INTERPLEADER AND ORDER FOR POSTPONEMENT OF SALE, DC-433.
- Verify the date of sale or hearing noted on the affidavit.
- Determine whether the return date on the AFFIDAVIT and on the SUMMONS is before or after the sale date or the return date of any process that would subject the property to a final disposition.
  - If the sale date is after the return date, then the Postponement of Sale portion of SUMMONS IN INTERPLEADER AND ORDER FOR POSTPONEMENT OF SALE is not completed.
  - If the sale date is BEFORE the return date, then complete the Postponement of Sale portion of SUMMONS IN INTERPLEADER AND ORDER FOR POSTPONEMENT OF SALE to postpone sale of the property until after the hearing on the interpleader.

NOTE: This process is similar to, but not the same as, pre-trial interpleader under Va. Code §§ 8.01-364. *See* discussion of INTERPLEADER.

- Forward the affidavit and summons for service.

The hearing is held on the return date. The judge enters an order to determine whether or not the lien will remain on the property and what the rights of the interested parties are in the property, unless the case is removed to circuit court pursuant to Va. Code §§ 16.1-92 and 16.1-122. An appeal may be noted and processed in the same manner as in suits in debt pursuant to Va. Code §§ 16.1-106 and 16.1-122.

VII. SUITS IN DETINUE

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

Many of the procedures for suits in detinue are the same as the procedures for suits in debt reviewed previously. Thus, unless a different procedure is described below, reference should be made to the appropriate sub-section of the procedures in SUITS IN DEBT (section V).

A. Suit in Detinue Without Pre-trial Seizure

1. Case Initiation

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

- The plaintiff, his attorney, or plaintiff's regular and bona fide employee completes a WARRANT IN DETINUE, DC-414, or a motion for judgment (Va. Code § 8.01-114). The clerk's office verifies that the form has been prepared properly and that all necessary information is present.

- The clerk's office collects filing fees.

- The clerk's office distributes copies of the warrant as noted (original and first copy to the law officers for service, other copies distributed as per local practice).

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

2. Case Hearing, Judgment, Post-Trial Procedures

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

- The final judgment of the court pursuant to Va. Code § 8.01-121 shall dispose of the property or its proceeds according to the rights of the parties except as noted below:

- **Secured transaction:** When the judgment is in favor of the plaintiff under a contract made to secure payment, the defendant may, if the judge permits him to do so within thirty days from the date of judgment, elect either to immediately return the disputed property to the plaintiff or to pay him the value determined in the court order. If the defendant fails to make a timely election when so permitted by the judge or permission to make an election is granted to the plaintiff and not to the defendant, then the plaintiff determines whether he wants the property or its value. If the defendant then fails to satisfy the judgment election of the plaintiff, the plaintiff may be forced to obtain execution of the judgment through the court.

- **Animals:** When animals are the items in dispute, the court may order the return to the prevailing plaintiff without regard to any alternative method of recovery.

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

NOTE: For details and step-by-step instructions for handling appeals, see APPENDIX C – APPEALS.

3. Executions

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

- Plaintiff requests that the judge or clerk prepare a WRITS OF POSSESSION AND FIERI FACIAS IN DETINUE, DC-468.

- The judge or clerk prepares the WRITS OF POSSESSION AND FIERI FACIAS IN DETINUE, DC-468, (alternate value of the property listed is the unpaid purchase price).

- The clerk's office records and issues the writ to the sheriff for service. *See* Va. Code § 8.01-293.

- The writ is served on the defendant. *See also* Va. Code § 8.01-293.

- The Sheriff seizes the property named in suit.

- the executed writ is returned by the sheriff to the general district court clerk's office.

- the seized property is returned by the sheriff to the plaintiff.

If the defendant has disposed of the property, the plaintiff may request execution by garnishment or lien; the procedures are then the same as for execution of garnishment summons in suits in debt. The amount to be garnished is the alternate value set forth

in the WARRANT IN DETINUE. The alternate value of the goods is the unpaid purchase price.

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

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

B. Suit in Detinue With Pre-trial Seizure

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

1. Case Initiation

   Plaintiff prepares a PETITION IN DETINUE FOR PRETRIAL SEIZURE, DC-415, and pays civil fees to the judicial officer. A petition in detinue for pretrial seizure pursuant to this article may be filed either to commence the detinue proceeding or may be filed during the pendency of a detinue proceeding which commenced on a warrant or motion for judgment and no additional civil fees are collected except for any sheriff service fees. If a petition is filed, it shall:

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

   The Plaintiff also tenders a PLAINTIFF'S BOND FOR LEVY OR SEIZURE, DC-447, with every petition. The minimum bond amount is twice the fair market value of property to be seized regardless of the type of bond posted (Va. Code § 8.01-115). If surety bonds are tendered, the surety must be approved by the judge or magistrate reviewing the petition. If a property bond is tendered, the bond amount must not exceed the net equity in the property. The plaintiff should be told that the

sheriff will not seize property if the sheriff believes that the property valuation is too low and, therefore, the bond amount is inadequate.

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

- the petition conforms to the statutory requirements, *(See* Va. Code § 8.01-114(a).)

- reasonable cause to believe that the grounds for pre-trial seizure described in the petition may exist, and

- proper bond has been posted, and fees and costs have been paid. Va. Code § 8.01-114(B).

If these requirements are met, the judge or magistrate (not the clerk) signs and issues a DETINUE SEIZURE ORDER, DC-416, with a copy of the petition and the bond and the REQUEST OF HEARING--EXEMPTION CLAIM, DC-407, attached to each copy of the order, and gives the process to the judgment creditor for service. An additional copy is forwarded to the clerk's office if issued by a magistrate.

2. Service of Process and Pre-trial Procedures *(See also* Va. Code § 8.01-293.*)*

   - The order is served on the defendant or other responsible person where the seizure is made, the sheriff takes possession of the property and it is turned over to the PLAINTIFF (who keeps it pending trial), and the executed summons is returned to the clerk's office.

   - If the DEFENDANT wants the property returned to him, defendant posts a counter bond, DEFENDANT'S BOND FOR LEVY OR SEIZURE, DC-448, with the sheriff for twice the value of the property seized.

   - *See* VI F. *above*, for procedure for handling request for exemption hearings.

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

3. Case Hearing

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

   - if the order was issued *ex parte* (no notice to defendant prior to issuance of the order), WITHIN thirty days from issuance of the order.

- if application for an order was made with notice to defendant, then promptly upon application.

- if combined with a hearing on exemption claims, then within ten business days from filing of the request for hearing on exemption claims.

4. Post-trial Procedures

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

     - The court order is sent to the sheriff.

     - The plaintiff posts a bond, if he has not already done so.

     - The sheriff takes possession of the property.

     - The clerk's office voids the defendant's bond if one was posted.

VIII. UNLAWFUL DETAINER

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

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

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

A. Case Initiation

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

- The plaintiff, his attorney, or a person described in Va. Code § 55-246.1 prepares a SUMMONS FOR UNLAWFUL DETAINER, DC-421, in accordance with the instructions in the FORMS volume of this manual. However, if a person described in Va. Code § 55-246.1 is seeking possession of the premises, then venue lies only in a jurisdiction where the premises (in whole or in part) is

situated. The clerk should ask if a five-day pay or quit notice has been served by the sheriff or mailed or delivered by the sheriff, landlord, or his agent. Va. Code § 55-225.

- The clerk checks the index of tenant's complaints for a TENANT'S ASSERTION AND COMPLAINT, DC-429:

  – If a complaint is on file, the file number from the TENANT'S ASSERTION AND COMPLAINT should be noted on the SUMMONS FOR UNLAWFUL DETAINER, DC-421, so that the judge will be alerted and can decide if the unlawful detainer action is prohibited by Va. Code § 55-248.39(a).

  – If there is no complaint on file, proceed to the next step.

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

- The plaintiff pays filing fees and any sheriff service fees.

- The clerk (or magistrate) completes the summons portion of the SUMMONS FOR UNLAWFUL DETAINER, DC-421, in accordance with the instructions in the FORMS volume of the DISTRICT COURT MANUAL.

- If the action is brought under the Virginia Residential Landlord Tenant Act (Va. Code § 55-248.2 *et* seq.), the initial hearing is to be set as soon as practicable, but not more than twenty-one days after the date of filing. If the case cannot be heard within twenty-one days from filing, it shall be heard as soon as possible. The plaintiff may also request a later date for the initial hearing. Va. Code § 8.01-126.

- The clerk issues process to the sheriff for service. Such summons shall be served at least ten days before the return day thereof. *See also* Va. Code §§ 8.01-293-8.01-126.

- A tenant may designate a third party to receive a duplicate copy of a summons in an unlawful detainer action and any other written notices from the landlord. This does not grant standing to any third party to challenge actions of the landlord. The failure of the landlord to give notice to a third party does not affect the validity of any judgment entered against the tenant. Va. Code § 55-248.9:1.

B. Removal and Trial Procedures

Removal of unlawful detainer cases to circuit court is permitted regardless of the amount in dispute. If, however, the action involves a rent default, and if the amount in dispute exceeds $500, a bond must be posted for unpaid past rent and future contracted rent (up to one year's rent) plus unlawful detainer damages. If the dispute does not involve unpaid rent, there is no bond requirement. *See* Va. Code § 8.01-127.1. However, should the defendant fail to pay rent as required by the rental agreement, the landlord may file an affidavit to that effect in the circuit court and serve it on the defendant. If the defendant fails to file an affidavit in the circuit court within three days stating that the rent has been paid, the landlord will be granted immediate possession. If the defendant files an affidavit stating that the rent has been paid, the matter shall come before the circuit court for resolution. Va. Code § 8.01-127.1.

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

A nonresident property owner of four or more commercial or residential rental units in a city or county must have filed in the circuit court clerk's office the designation of a resident agent for service of process. Such a property owner cannot maintain an action in Virginia courts until such a designation has been filed. Whenever any nonresident property owner fails to appoint or maintain an agent, as required, or whenever his agent cannot with reasonable diligence be found, then the Secretary of the Commonwealth may be served as an agent of the nonresident property owner with any process, notice, order or demand. Service by the Secretary shall be by registered or certified mail to the property owner at his address as shown on the official tax records maintained by the locality where the property is located.

The plaintiff may seek judgment as to monetary claims on an affidavit only, without having witnesses testify in court, Va. Code §§ 8.01-28 and 16.1-88. *See* section V, O Suits in Debt, Case Hearing, Judgment, Trial on Affidavit, Denial by Defendant.

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

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

- Once the rent escrow is received in the clerk's office, the case is set for an available court date.

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

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

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

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

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

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

Judgment for plaintiff awards plaintiff possession of the premises, rent due and damages rather than a lump sum dollar judgment as in suits in debt. Plaintiff may be given a simultaneous judgment for money due and for possession without credit for

security deposit, which shall be credited to the tenant's account when the tenant actually vacates the premises.

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

Alternatively, plaintiff may receive a final judgment for possession of the property and continue the case for up to 90 days to establish final rent and damages. The plaintiff must provide notice to the defendant at least 15 days prior to the continuance date advising the defendant of (1) the continuance date, (2) the amounts of final rent and damages, and (3) that the plaintiff is seeking judgment for these sums. A copy of this notice must be filed with the court. Va. Code § 8.01-128.

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

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

C. Post-Trial Procedures

1. Appeal

   After an appeal has been noted, the bond must be posted and the writ tax paid within ten days of the judgment date. The appeal bond is calculated pursuant to Va. Code § 8.01-129, and includes:

   – the district court judgment (principal, interest, district court costs, and attorney's fees). Va. Code § 16.1-107.

   – the rent accruing during the appeal (based on expected length of time for appeal). The portion of the appeal bond covering rent for which both judgment was granted and that may accrue during the appeal period may not exceed *one year's rent.*

   – the damages *from the unlawful use and possession of the premises* accruing during the appeal (based on the expected length of time for appeal). The portion of the appeal bond covering damages for unlawful use and possession of the premises for which both judgment

was granted and that may accrue during the appeal period may not exceed *three month's* damages.

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

2. Execution

If the judgment is in favor of the plaintiff and the defendant has not appealed or satisfied the judgment of the court, the plaintiff may request execution of the court order.

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

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

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

The sheriff executes the writ and the defendant vacates the premises. The writ is effective not only against the tenant, but also against any of the tenant's guests and invitees and against trespassers. The writ should be executed within 15 calendar days after receipt by the sheriff, or as soon as practicable, but no more than thirty days after the date the writ is issued. Va. Code § 8.01-470.

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

In some instances, the judgment debtor will perfect his appeal after the issuance of the WRIT OF POSSESSION, DC-469. Upon perfecting the appeal, the clerk promptly completes a RECALL OF PROCESS, DC-323, with a notation that the defendant perfected his appeal, and transmits it to the sheriff.

IX. ATTACHMENTS

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

The district courts have jurisdiction to try and decide attachment cases when the plaintiff's claim does not exceed $15,000, exclusive of interest and attorney's fees. Va. Code § 16.1-77(2).

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

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

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

Va. Code § 8.01-534 sets forth the following statutory grounds for attachment:

- When the defendant is not a resident of this Commonwealth;
- When the defendant is removing himself out of this Commonwealth with intent to change his domicile;

- When the defendant is removing the property out of this Commonwealth;
- When the defendant is converting his property into money with intent to hinder, delay or defraud his creditors;
- When the defendant has disposed of his estate with intent to hinder, delay or defraud creditors.
- When the defendant has absconded or has concealed himself or his property.

The procedure for an attachment suit is the same as in SUITS IN DEBT, Section V, except as follows.

A. Case Initiation

Plaintiff prepares an ATTACHMENT PETITION, DC-445, including grounds of attachment as listed on the back of the petition.

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

- For recovery of personal property
  - Description of each item with enough detail that a reasonable person can identify such items. The description should include the kind of property and the quantity. If any additional sheet for such listing is used, petition should also state, "see attached list."
  - Total fair market value and items plus damages (if any) for such detention.
  - Plaintiff's claimed property interest (owner, borrower, etc.).
  - The particulars of the plaintiff's claim to the property with enough detail to give the defendant(s) reasonable notice of the true nature of the claim.
- For recovery of debt or damage -
  - Enough details of the claim so that a reasonable person knows what is involved in the claim.
  - Amount sought to be recovered.

- If based on a contract and if the claim is for a debt not then due and payable, at what time or times the debt will become due and payable.

- The petition, in the **grounds of attachmen**t, must show; *(see Va. Code § 8.01-537)*:

  - Which grounds of attachment are claimed. Multiple grounds must be claimed together (connected by "and"). Exception--grounds nos. 4 and 5 on the back of the petition (same as in Va. Code § 8.01-534) may be connected to each other (but not to other grounds) by "or" or "and."

  - A list of specific facts attached to petition that support the grounds listed on the front of the petition.

- In the **statement of relief desired**, the petition must show; *(see Va. Code § 8.01-537)*:

  - Whether "levy" only or "levy and take into possession (seize)" is desired.

  - Whether specific items are to be levied upon or seized or whether any property of the principal defendant may be attached.

The **STATEMENT** portion of the petition must be completed as follows:

- If recovery of specific personal property is sought, the third and seventh lines are completed and, if applicable, the fourth, fifth and eighth lines are completed.

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

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

Plaintiff also tenders a PLAINTIFF'S BOND FOR LEVY OR SEIZURE, DC-447, with every petition. The minimum bond amounts are:

- If pre-trial "levy" only is requested,

  - for a cash or surety bond, the bond shall be at least the estimated fair market value of the property to be levied.

- for a property bond, at least *twice* the estimated fair market value of the property to be attached.

- If "levy and take into possession (seize)" is requested, twice the fair market value of property to be attached.

- If surety bonds are tendered, the surety must be approved by the judge or magistrate reviewing the petition. If a property bond is tendered, the bond amount must not exceed the net equity in the property. The plaintiff should be told that the sheriff will not seize property if the sheriff believes that the property valuation is too low and, therefore, the bond amount is inadequate.

B. Issuance of Attachment, (Va. Code § 8.01-540):

A judge or magistrate, (not a clerk), shall make an *ex parte* review of the attachment petition. An attachment shall issue only upon a determination that:

- There is reasonable cause to believe that grounds of attachment may exist, and

- The petition complies with Va. Code §§ 8.01-534, 8.01-537 and 8.01-538.

If those findings are met, the reviewing judge or magistrate, not a clerk, signs and issues a summons with a copy of the petition and the bond and the NOTICE TO DEBTOR-HOW TO CLAIM EXEMPTIONS AND REQUEST FOR HEARING-EXEMPTION CLAIM, DC-407. If the attachment is issued by a magistrate, it shall be returnable to the clerk's office of the jurisdiction where the petition is filed as directed by Va. Code § 8.01-541, and the magistrate shall promptly send the petition and the bond, if any, to the clerk's office to which the attachment is returnable. Va. Code § 8.01-540. The REQUEST FOR HEARING - EXEMPTION CLAIM, on the reverse of DC-407, is attached to each copy of the summons, and the process is given to the judgment creditor to transmit to the sheriff for service. Plaintiff pays the levy fee directly to the sheriff. The petition must be returnable not more than thirty days after issuance of the summons. Va. Code § 8.01-541.

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

C. Service of Process and Pre-Trial Procedures *(see also Va. Code § 8.01-293.)*

The summons is served on the defendant or other responsible person when the levy or seizure is made, the sheriff takes possession of the property if the plaintiff so requested in the petition, and the executed summons is returned to the clerk's office.

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

- Claims *not exceeding $300* (exclusive of interest and attorneys' fees).

- The plaintiff completes the Affidavit And Petition For Order Of Publication, DC-435.

- The clerk posts a copy of the ATTACHMENT SUMMONS, DC-446, on the courthouse door or the courtroom door and certifies the posting of the ATTACHMENT SUMMONS on the back of the original copy of the AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION, DC-435, in the case file.

- The clerk mails a copy of the ATTACHMENT SUMMONS, DC-446, to the defendant at his last known address as stated in the AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION, DC-435.

Fifteen days after posting and mailing the ATTACHMENT SUMMONS, the court may try the case.

- Claims exceeding $300.

  - Use order of publication process described in SUITS IN DEBT, Section V (B).

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

- The *defendant* posts a counter bond, DEFENDANT'S BOND FOR LEVY AND SEIZURE, DC-448, with the sheriff.

- The sheriff *takes* the bond and returns the property to the defendant.

See VI F, *above*, for procedure for handling request for exemption hearings.

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

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

D. Case Hearing

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

Judicial or administrative income deduction orders for support take priority pursuant to Va. Code § 20-79.3 over any other liens created by state law on an employee's income in an employer's hands.

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

E. Post-Trial Procedures

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

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

X. DISTRESS FOR RENT

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

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

A. Case Initiation

- Plaintiff prepares a DISTRESS PETITION, DC-423, including grounds of attachment as listed on the back of the petition.

The petition in the "claim description" section must show:

  - Rent claimed;

- The property which plaintiff seeks to distrain either by levy or by seizure.

- Which grounds of attachment are claimed. Multiple grounds must be claimed together (connected by "and"). Exception--grounds 4 and 5 on the back of the petition form (same as in Virginia § 8.01-534) may be connected to each other (but not to other grounds) by "or" or "and;" and

- a list of specific facts attached to petition that support the grounds listed on the front of the petition.

In the "statement of relief desired" section the petition must show:

- Whether "levy" only or "levy and take into possession (seize)" is desired; and

- Whether specific items are to be levied upon or seized or whether any property of the principal defendant may be attached.

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

Plaintiff also tenders a PLAINTIFF'S BOND FOR Levy OR SEIZURE, DC-447, with every petition. The minimum bond amounts are:

- If pretrial "levy" only is requested,

  - for a cash or surety bond, the bond shall be at least the estimated fair market value of the property to be levied.

  - for a property bond, at least twice the estimated fair market value of the property to be attached.

  - If "levy and take into possession (seize)" is requested, twice the fair market value of the property to be attached.

If surety bonds are tendered, the surety must be approved by the judge or magistrate reviewing the petition. If a property bond is tendered, the bond amount must not exceed the net equity in the property. The plaintiff should be told that the sheriff will not seize property if the sheriff believes that the property valuation is too low and, therefore, the bond amount is inadequate.

The distress warrant shall not be issued unless the plaintiff pays the proper costs, taxes and fees. Va. Code § 55-230; *see also* Va. Code § 8.01-367.

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

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

If these findings are met, the judge or magistrate (not the clerk) signs and issues a DISTRESS WARRANT, DC-424. A copy of the petition and the bond and the Request FOR HEARING--EXEMPTION CLAIM, DC-407, is attached to each copy of the warrant. Then, the entire package is given to the judgment creditor for service. Plaintiff pays the levy fee directly to the sheriff. An additional copy is filed in the clerk's office if issued by a magistrate.

B. Service Of Process And Pre-Trial Procedures

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

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

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

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

See VI F, *above*, for the PROCEDURE for handling request for exemption hearings.

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

C. Case Hearing

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

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

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

D. Post-Trial Procedures

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

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

E. Execution

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

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

XI. MENTAL HEALTH

A. Procedures In Involuntary Admissions Of Mentally Ill/Mentally Retarded And Medical Emergency Temporary Detention

Civil mental illness/mental retardation proceedings and medical emergency consent proceedings may be heard by a judge of the general district or juvenile and domestic

relations district court or a special justice appointed by the chief judge of the applicable judicial circuit. Va. Code § 37.2-803.

The involuntary mental commitment process begins when a petition/temporary detention order is filed, and alleges a person is mentally ill and in need of hospitalization. For proceedings in this chapter, whenever the term "mental illness" appears, it shall include substance abuse. Va. Code § 37.2-800.

The process may begin with a referral to the localities' Community Service Board, or may be initiated at the magistrate's office. Some Clerks' offices will only receive paperwork after the proceedings and hearings are over, while in some offices the judges themselves may hold the hearing. These are the procedures for filing and indexing under each circumstance.

1. Involuntary Admissions-Mental Illness

   a. Clerk's Procedures – Magistrate Issued

	PROCEDURE	**COMMENTS**
Step 1	The Clerk's office receives one or more of the following documents: DC-492, EMERGENCY CUSTODY ORDER; DC-494, TEMPORARY DETENTION ORDER; or DMH1006, Department of Mental Health form. **Note:** All case papers are stamped received with the date and time. **It is recommended that each proceeding ECO, TDO, commitment hearing, and any subsequent hearings be all indexed as a subsequent case number to the first proceeding (case).**	Once executed, law enforcement files the return of the DC-492, EMERGENCY CUSTODY ORDER, and/or the DC-494, TEMPORARY DETENTION ORDER, with the court. The patient may be hospitalized and the special justice (or Judge) has already conducted the hearing. DC- 492, EMERGENCY CUSTODY ORDERS and DC-494, TEMPORARY DETENTION ORDERS, may be filed, issued, served, or executed by electronic means, and signatures on those documents are to be treated as originals. Va. Code § 37.2-804.1.

Step 2 **EMERGENCY CUSTODY ORDER DC-492**

Index into CMS using the Involuntary Mental commitment Menu using the following codes:

EU	ECO not executed
ES	ECO served
ET	ECO and TDO received

Note: If an emergency custody order is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving that court.

ECO is issued by the magistrate. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department. Va. Code § 37.2-808.

The person shall remain in custody until a temporary detention order is issued, until the person is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed four hours from the time of execution. However, upon a finding by a magistrate that good cause exists to grant an extension, an emergency order may be renewed for one time for a second period not to exceed two hours. Va. Code § 37.2-808 (H).

Step 3 **TEMPORARY DETENTION ORDER DC- 494**

Index into CMS using the Involuntary Mental Commitment Menu using the following codes:

TU	TDO not executed
T	TDO served.

Note: The duration of temporary detention shall not exceed 48 hours prior to a hearing. Va. Code § 37.2-809.

The DC-494, TEMPORARY DETENTION ORDER may accompany a DC-492, EMERGENCY CUSTODY ORDER or be filed on its own. It may be issued by magistrate, Judge or special justice and is returned to the court where it was issued. Must be executed within the time period specified in the order, not to exceed twenty-for (24) hours, while Community Service Board conducts pre-screening evaluation to assess the need for hospitalization or treatment.

If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as herein provided, until the

close of business on the next day that is not a Saturday, Sunday, or legal holiday.

The court shall give notice to the CSB 12 hours prior to commitment hearing. CSB contact information can be located via http://www.vacsb.org.

Step 4 **COMMITMENT HEARING - DMH1006**

Court should receive commitment form and audio recording of hearing. If a special justice holds the hearings, the clerk should also receive DC-60 with commitment paperwork.

A judge or special justice can hold the commitment hearing, the original order is returned to the Court in which the commitment hearing is held. The commitment hearing shall be held and order entered within 48 hours of the execution of the DC-494, TEMPORARY DETENTION ORDER.

Index and finalize in CMS using the following codes:

I	Involuntary commitment
*MO	Involuntary mandatory outpatient treatment commitment
V	Voluntary commitment
D	Dismissed

Note: If the DMH1006 is accompanied by TDO, the DMH1006 is indexed as a subsequent number from the TDO.

The hearing may be conducted by electronic video and audio communication systems.

* For further direction with regard to instances when Mandatory Outpatient Treatment is ordered, please refer to the Mandatory Outpatient Treatment procedures.

Step 5 **AUDIO RECORDING -TAPE**

The judge or special justice shall make or cause to be made a tape or other audio recording of any hearings held under this chapter, Va. Code § 37.2-800, and shall submit the recordings to the clerk of the district court in the locality in which the hearing is held, to be retained in a confidential file.

It is recommended that the tape be labeled with the name of the person who was subject of the hearing, case number and date of hearing.

The person who was subject of the hearing shall be entitled, upon request, to obtain a copy of the tape or other audio recordings of such hearing.

The person who was subject of the hearing will file the DC-4029, APPLICATION FOR COPY OF RECORDING OF COMMITMENT HEARING with the court.

	These recordings shall be retained for at least three years from the date of the commitment hearing. Va. Code §37.2-818.	The clerk shall reproduce a copy of the tape requested and retain the original tape in the court's file as directed.
Step 6	**CCRE- (SP237)** Upon receipt of any order from a commitment hearing issued pursuant to this chapter, Va. Code § 37.2-800, for **involuntary admission to a facility or for mandatory outpatient treatment**, the clerk of the court shall, prior to the close of the business day, certify and forward (fax) to the Central Criminal Records Exchange, the SP237, and a copy of the disposition order. The clerk is also required to mail the SP237 and a certified copy of the dispositional order to the Virginia State Police as directed on the form. The clerk shall, prior to the close of the business day, forward (fax) upon receipt to the Central Criminal Records Exchange, the SP237, and a certified copy of the disposition order of any person who has been the subject of TDO pursuant to Va. Code § 37.2-809, and who after being advised by the judge or special justice that he will be prohibited from possessing a firearm, subsequently agreed to **voluntary admission** pursuant to Va. Code § 37.2-805. The clerk is also required to mail the SP237 and a certified copy of the disposition order to the Virginia State Police as directed on the form. Va. Code § 37.2-819.	In an effort to comply with the close of business day requirement, a copy of the original SP237 should be faxed with a certified copy of the dispositional order to the VSP at 804-674-2268.

Step 7 **CONFIDENTIALITY – MEDICAL AND COURT RECORDS**

Except as provided for in this section and Va. Code § 37.2-819, the court shall keep its copies of the recordings made pursuant to this section, relevant medical records, reports, and court documents pertaining to the hearing provided for in this chapter, Va. Code § 37.2-800, confidential.

File completed cases in numerical order by year and retain the case papers for a period of 10 years.

The person who is subject of the hearing may, in writing, waive the confidentiality provided herein. In the absence of such waiver, access to the dispositional order only may be provided upon court order.

The person who is subject to the hearing may waive confidentiality by filing the DC-4032, WAIVER OF CONFIDENTIALITY OF COURT RECORDS – COMMITMENT FOR INVOLUNTARY TREATMENT.

Any person seeking access to the disposition order may file a written motion setting forth why such access is needed. The court may issue an order to disclose the dispositional order if it finds that such disclosure is in the best interest of the person who is the subject of the hearing or the public. The Executive Secretary of the Supreme Court and anyone acting on his behalf shall be provided access to the court's records upon request. Such recordings, records, and documents shall not be subject of Virginia Freedom of Information Act. Va. Code § 37.2-818(B).

Persons seeking a copy of the dispositional order may file with the court the DC-4035, PETITION AND ORDER FOR ACCESS TO DISPOSITIONAL ORDER. The judge or special justice will review the petition and enter order on same form.

Step 8 **APPEAL OF INVOLUNTARY ADMISSION**

Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment pursuant to Va. Code § 37.2-814-37.2-819 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 he was involuntarily admitted or ordered to mandatory outpatient treatment or certified or where the facility to which he was admitted is located.

An appeal shall be filed within 30 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding Va. Code § 19.2-241 regarding the time within which the court shall set criminal cases for trial. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court.

No appeal bond or writ tax shall be required, and the appeal shall proceed without payment of costs or other fees. Va. Code § 37.2-821.

Clerk retains copies for the file.

Note: The audiotapes are not sent with the file. A subpoena duces tecum must be filed requesting tapes to be forwarded to circuit court.

If appeal is noted in a court in which the case papers have not been received, the clerk should contact the special justice immediately to obtain the original file to process the appeal.

b. Clerk's Procedures – Judge to Conduct Involuntary Commitment Hearing

The magistrate issues the ECO and/or TDO based upon a sworn petition, also filed at the magistrate's office, the documents are executed, delivered to the court, and the court schedules the commitment hearing.

	PROCEDURE	**COMMENTS**
Step 1	**EMERGENCY CUSTODY ORDER DC-492** Index into CMS using the Involuntary Mental commitment Menu using the following codes: EU ECO not executed ES ECO served ET ECO and TDO received It is recommended that all case papers be date and time stamped recorded.	The ECO is served and law enforcement takes the person into custody for four hours, and transports to a convenient location while the Community Services Board conducts a pre-screening evaluation to assess the need for hospitalization or treatment. The person shall remain in custody until a temporary detention order is issued, until the person is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed four hours from the time of execution. However, upon a finding by a magistrate that good cause exists to grant an extension, an emergency order may be renewed for one time for a second period not to exceed two hours. Va. Code § 37.2-808 (H).
Step 2	**TEMPORARY DETENTION ORDER** DC- 494 Index into CMS using the Involuntary Mental commitment Menu using the following codes: TU TDO not executed T TDO served.	TDO may accompany ECO or be filed on its own. Issued by a magistrate and must be executed within the time period specified in the Order, not to exceed 24 hours, while Community Services Board conducts pre-screening evaluation to assess the need for hospitalization or treatment.
	Note: The duration of temporary detention shall not exceed 48 hours prior to a hearing. Va. Code § 37.2-809.	If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal holiday.

Step 3 **PRIOR TO COMMITMENT HEARING**

The clerk's office shall schedule the hearing within 48 hours of the execution of the DC-494, TEMPORARY DETENTION ORDER. If not already represented by counsel, the judge shall appoint an attorney to represent the person, and a DC-493, WRITTEN EXPLANATION OF THE INVOLUNTARY PROCESS shall be given to the person.

The hearing may be conducted by electronic video and/or audio communication systems, or may be conducted at the facility. Va. Code § 37.2-804.1. If held at the facility, the clerk's office must schedule the hearing in coordination with the facility. If the 48 hour period terminates on a Saturday, Sunday or legal holiday, or any day the Court is lawfully closed, the hearing may be held the next day that the court is lawfully open.

The court shall give notice to the CSB 12 hours prior to hearing. CSB contact information can be located via **http://www.vacsb.org**.

The petitioner shall be given adequate notice of place, date and time of the commitment hearing.

The petitioner shall be encouraged but shall not be required to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing. Va. Code § 37.2-814(F).

The court shall require an examination of the person who is the subject of the petition.

The clerk's office shall summons the examiner to certify the examination; or alternatively, may accept written certification.

The examination shall be by a psychiatrist or psychologist or a licensed mental health professional. The examination shall be conducted in private.

If filed, the examination report is to be date and time stamped recorded

The Court shall require a prescreening report from the Community Services Board or behavioral health authority, within 48 hours.

If filed, the prescreening report is to be date and time stamped received.

Step 4 **COMMITMENT HEARING**

The hearing is held and the Judge completes the DMH1006.

Index and finalize in CMS using the following codes:

I	Involuntary commitment
*MO	Mandatory Outpatient treatment commitment
V	Voluntary commitment
D	Dismissed

Note: If DMH1006 is accompanied by TDO, the DMH1006 is indexed as a subsequent number from the TDO.

The Judge shall inform the person of the opportunity for voluntary admission and treatment; if the Judge finds the person is incapable of accepting or unwilling to accept voluntary admission and treatment, the Judge shall inform the person of his right to a commitment hearing and right to counsel.

*For further direction with regard to instances when Mandatory Outpatient Treatment is ordered, please refer to the Mandatory Outpatient Treatment procedures.

No decision shall be rendered on the petition until the examiner has presented his report orally or in writing.

In the case of a person who has been sentenced and committed to the Department of Corrections and who has been examined by a psychiatrist or clinical psychologist, the Judge may proceed to adjudicate whether the person has mental illness and should be involuntarily admitted without requesting a preadmission screening report from the CSB or BHA.

Step 5 **AUDIO RECORDING – TAPE**

The judge or special justice shall make or cause to be made a tape or other audio recording of any hearings held under this chapter, Va. Code § 37.2-800, and shall submit the recordings to the clerk of the district court in the locality in which the hearing is held to be retained in a confidential file.

It is recommended the tape be labeled with the name of the person who was subject of the hearing, case number and date of hearing.

These recordings shall be retained for at least three years from the date of the commitment hearing. Va. Code § 37.2-818.

The Clerk shall reproduce a copy of the tape requested and retain the original tape in the court's file as directed.

Step 6 **CCRE-SP237**

Upon receipt of any order from a commitment hearing issued pursuant to this chapter, Va. Code § 37.2-800, for **involuntary admission to a facility or for mandatory outpatient treatment**, the clerk of the court shall, prior to the close of the business day, certify and forward (fax) to the Central Criminal Records Exchange, the SP237, and a certified copy of the disposition order. The clerk is also required to mail the SP237 and a certified copy of the dispositional order to the Virginia State Police as directed on the form.

The clerk shall, prior to the close of the business day, forward (fax) upon receipt to the Central Criminal Records Exchange, the SP237, and a certified copy of the disposition order of any person who has been the subject of TDO pursuant to Va. Code § 37.2-809, and who after being advised by the judge or special justice that he will be prohibited from possessing a firearm, subsequently agreed to **voluntary admission** pursuant to Va. Code § 37.2-805. The clerk is also required to mail the SP237 and a certified copy of the disposition order to the Virginia State Police as directed on the form. Va. Code § 37.2-819.

DC-60, INVOLUNTARY ADMISSION HEARING INVOICE and or DC-44, INTERPRETER SERVICES LOG AND CERTIFICATION is signed by judge and sent to SCV for payment. Clerk retains copy for file.

In an effort to comply with the close of business day requirement, a copy of the original SP237 should be faxed with a certified copy of the dispositional order to the VSP at 804-674-2268.

Step 7 **CONFIDENTIALITY – MEDICAL AND COURT RECORDS**

File completed cases in numerical order by year and retain the case papers for a period of 10 years.

Except as provided for in this section and Va. Code § 37.2-819, the court shall keep its copies of the recordings made pursuant to this section, relevant medical records, reports, and court documents pertaining to the hearing provided for in this chapter, Va. Code § 37.2-800, confidential.

The person who is subject of the hearing may, in writing, waive the confidentiality provided herein. In the absence of such waiver, access to the dispositional order only may be provided upon court order.

The person who is subject to the hearing may waive confidentiality by filing the DC-4032, WAIVER OF CONFIDENTIALITY OF COURT RECORDS – COMMITMENT FOR INVOLUNTARY TREATMENT.

Any person seeking access to the disposition order may file a written motion setting forth why such access is needed. The court may issue an order to disclose the dispositional order if it finds that such disclosure is in the best interest of the person who is the subject of the hearing or the public. The Executive Secretary of the Supreme Court and anyone acting on his behalf shall be provided access to the court's records upon request. Such recordings, records, and documents shall not be subject of Virginia Freedom of Information Act. Va. Code § 37.2-818(B).

Persons seeking a copy of the dispositional order may file with the court the DC-4035, PETITION AND ORDER FOR ACCESS TO DISPOSITIONAL ORDER. The judge or special justice will review the petition and enter order on same form.

Step 8 **APPEAL OF INVOLUNTARY ADMISSION**

Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment pursuant to Va. Code §§ 37.2-814-37.2-819 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 he was involuntarily admitted or ordered to mandatory outpatient treatment or certified or where the facility to which he was admitted is located.

An appeal shall be filed within 30 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding Va. Code § 19.2-241 regarding the time within which the court shall set criminal cases for trial. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court.

No appeal bond or writ tax shall be required, and the appeal shall proceed without payment of costs or other fees. Va. Code § 37.2-821.

Clerk retains copies for file.

Note: The audiotapes are not sent with the file. A subpoena duces tecum must be filed requesting tapes to be forwarded to circuit court.

If appeal is noted in a court in which the case papers have not been received, the clerk should contact the special justice immediately to obtain the original file to process the appeal.

c. Fees and Costs (Va. Code § 37.2-804)

There are no Clerk's fees or costs associated with the filing or appeal of the Involuntary Mental Commitment process. The only fees and expenses are related to the payment of special justices, physicians, psychologists, other mental health professionals, or interpreters if needed.

Special Justices or any district court substitute judge who presides over involuntary mental commitment hearings are to receive $86.25 for each hearing and necessary mileage. Va. Code § 37.2-804.

Physicians, psychologist or other mental health professionals, attorneys appointed or interpreters appointed for a deaf person are to receive $75.00 and necessary expenses for each hearing. Va. Code § 37.2-804.

Interpreters appointed for a non-English speaking person shall be compensated in accordance with the guidelines set by the Judicial Council of Virginia. Va. Code § 37.2-802. It is recommended that the sitting Judge sign the form DC-60 for payment of professionals used in the commitment hearings.

d. Forms

DC-492	Emergency Custody Order
DC-493	Involuntary Commitment Process -Written Explanation
DC-494	Temporary Detention Order
DC-60	Involuntary Admission Hearing Invoice
DC-44	Interpreter Services Log and Certification
DC-4029	Application for Copy of Recording of Commitment Hearing
DC-4032	Waiver of Confidentiality of Court Records-Commitment for Mental Health Treatment
DC-4035	Petition and Order for Access to Dispositional Order
DMH1006	Provided by the Department of Mental Health
CCRE (SP237)	Form may be obtained from the Virginia State Police

e. Code Reference

37.2-801	Admission procedures; forms.
37.2-802	Interpreters in admission or certification proceedings.
37.2-803	Special Justices to perform duties of Judge.
37.2-804	Fees and expenses.
37.2-804.1	Use of electronic communication.
37.2-808	Emergency custody; issuance and execution of order.
37.2-809	Involuntary temporary detention; issuance and execution of order.
37.2-814	Commitment hearing for involuntary admission…
37.2-815	Commitment hearing for involuntary admission; examination required.
37.2-816	Commitment hearing for involuntary admission; preadmission screening report.
37.2-817	Involuntary admission and outpatient treatment orders.
37.2-818	Commitment hearing for involuntary admission; recordings and records.
37.2-819	Order of involuntary admission forwarded to CCRE: …
37.2-821	Appeal of involuntary admission…

B. Procedures For Involuntary Admission And Mandatory Outpatient Treatment Orders

The district court judge or special justice shall render a decision on the petition for involuntary admission after the appointed examiner has presented the report required by Va. Code § 37.2-815, and after the community services board that serves the county or city where the person resides or, if impractical, where the person is located has presented a preadmission screening report, with the recommendations for that person's placement, care and treatment pursuant to Va. Code § 37.2-816. These reports, if not contested, may constitute sufficient evidence upon which the district court judge or the special justice may base his decision. Va. Code § 37.2-817 (A).

After observing the person and considering (i) the recommendations of any treating physician or psychologist licensed in Virginia, if available, (ii) any past actions of the person, (iii) any past mental health treatment of the person, (iv) any examiner's certification, (v) any health records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, if the judge or special justice finds by clear and convincing evidence that (a) the person has mental illness and that there exists a substantial likelihood that, as a result of the mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing , attempting, or threatening harm and other relevant information, if any or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (b) less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate, and (c) the person (A) has sufficient capacity to understand the stipulations of his treatment, (B) has expressed an interest in living in the community and has agreed to abide by his treatment plan, and (C) is deemed to have a capacity to comply with the treatment plan and understand and adhere to the conditions and requirements of the treatment and service, and (D) the ordered treatment can be delivered on an outpatient basis by the community services board, or designated provider, the judge or special justice shall, by written order and specific finds, so certify and order that the person be admitted involuntarily to mandatory outpatient treatment. Less restrictive alternatives shall not be determined appropriate unless the services are actually available in the community and providers of the services have actually agreed to deliver the services. Va. Code § 37.2-817 (D).

1. Clerk's Procedures

The procedures below detail the various stages that may be encountered when a patient is ordered to mandatory outpatient treatment.

PROCEDURE		**COMMENTS**
Step 1	The Clerk's office may receive one or more of the following documents: DC-492, EMERGENCY CUSTODY ORDER; DC-494, TEMPORARY DETENTION ORDER; or DMH1006, Department of Mental Health form. It is recommended that all case papers be date and time stamped recorded. It is recommended that each proceeding ECO, TDO, commitment hearing, and any subsequent hearings be all indexed as a subsequent case number to the first proceeding (case).	Once executed, law enforcement files the return of the DC-492, EMERGENCY CUSTODY ORDER and/or the DC-494, TEMPORARY DETENTION ORDER, with the court. The patient may be hospitalized and the special justice (or judge) has already conducted the hearing. DC- 492, EMERGENCY CUSTODY ORDERS and DC-494, TEMPORARY DETENTION ORDERS, may be filed, issued, served, or executed by electronic means, and signatures on those documents are to be treated as originals. Va. Code § 37.2-804.1.
Step 2	**IF EMERGENCY CUSTODY ORDER, DC-492 IS RECEIVED:** Index into CMS using the Involuntary Civil Commitment Menu using the following codes: EU ECO not executed ES ECO served ET ECO and TDO received **Note:** If an emergency custody order is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving that court.	The magistrate issues ECO. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board (CSB) or behavioral health authority who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department. Va. Code § 37.2-808. The person shall remain in custody until a temporary detention order is issued, until the person is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed four hours from the time of execution. However, upon a finding by a magistrate that good cause exists to grant an extension, an

emergency order may be renewed for one time for a second period not to exceed two hours. Va. Code § 37.2-808(H).

Step 3 **IF TEMPORARY DETENTION ORDER, DC-494 IS RECEIVED:**

Index into CMS using the Involuntary Civil Commitment Menu using the following codes:

TU	TDO not executed
T	TDO served.

Note: The duration of temporary detention shall not exceed 48 hours prior to a hearing. Va. Code § 37.2-809.

The DC- 494, TEMPORARY DETENTION ORDER may accompany a DC-492, EMERGENCY CUSTODY ORDER or be filed on its own. It may be issued by magistrate, judge or special justice and is returned to the court where it was issued. Must be executed within the time period specified in the order, not to exceed twenty-for (24) hours, while Community Service Board (CSB) conducts pre-screening evaluation to assess the need for hospitalization or treatment.

If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as herein provided, until the close of business on the next day that is not a Saturday, Sunday, or legal holiday.

The court shall give notice to the CSB 12 hours prior to commitment hearing. CSB contact information can be located via http://www.vacsb.org.

Step 4 **COMMITMENT HEARING – DMH1006:**

Court should receive commitment form and audio recording of hearing. If a special justice holds the hearings, the clerk should also receive DC-60 with commitment paperwork.

It is recommended that all case papers be date and time stamped recorded.

Index and finalize in CMS using the following codes:

A judge or special justice can hold the commitment hearing, the original paperwork is returned to the court in which the commitment hearing is held. The commitment hearing shall be held and order entered within 48 hours of the execution of the DC-494, TEMPORARY DETENTION ORDER. The hearing may be conducted by electronic video and audio communication systems.

MO Involuntary mandatory outpatient treatment commitment

Note: If the DMH1006 is accompanied by TDO, the DMH1006 is indexed as a subsequent number from the TDO.

Upon receipt of any order from a commitment hearing issued pursuant to this chapter, Va. Code § 37.2-800, for involuntary admission to a facility **or for mandatory outpatient treatment**, the clerk of the court shall, prior to the close of the business day, certify and forward (fax) to the Central Criminal Records Exchange, the SP237, and a certified copy of the disposition order. The clerk is also required to mail the SP237 and a certified copy of the dispositional order to the Virginia State Police as directed on the form.

In an effort to comply with the close of the business day requirement, a copy of the original CCRE should be faxed with a certified copy of the disposition order to the VSP at 804-674-2268.

Copies of the CCRE are retained in the file. Va. Code § 37.2-819.

MOT duration not to exceed 90 days. Any continuance of MOT not to exceed 180 day.

The CSB will be responsible for preparing preadmission screening report and communicating with patient's resident CSB disposition of hearing and coordination of services.

Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment shall have a right to appeal the order to the circuit court in the jurisdiction where he was involuntarily admitted or ordered to mandatory outpatient treatment. (See Appeal Procedures below)

Note: Due to the various plans and documents that may be received when a patient is ordered to mandatory outpatient treatment it is recommended the court create a file folder for all patients recommended to mandatory outpatient treatment.

Step 5	**MOT – PLANS: INITIAL/COMPREHENSIVE** Upon receipt of dispositional order for mandatory outpatient treatment, the clerk shall provide a copy of the order to the person who is subject of the order, his attorney and to the CSB required to monitor the compliance with the plan. Va. Code § 37.2-817 (I).	The clerk should use the DC-4020, TRACKING DOCUMENT FOR SENDING OR RECEIVING MANDATORY OUTPATIENT TREATMENT ORDER UPON ENTRY when providing a copy of the order as required to the CSB. The clerk should fax the DC-4020 to the CSB and attorney. The CSB should fax the acknowledgement back to the clerk. The copy to the person subject to hearing may be mailed.
	The CSB that completed the preadmission screening report will forward **initial** mandatory outpatient treatment plan to clerk.	Clerk must attach a copy of the **initial** MOT plan to the dispositional order of commitment.
Step 6	No later than 5 days, excluding Saturdays, Sundays, or legal holidays, after an order for mandatory outpatient treatment has been entered, the CSB where the person resides that is responsible for monitoring compliance with the order shall file a **comprehensive** MOT plan. Va. Code § 37.2-817(G).	
	Upon approval, the plan is filed with the court and the clerk is to attach the **comprehensive** plan to the original dispositional order of commitment. Any subsequent substantive modification to the plan shall be filed with the court for review and attached to the order for mandatory outpatient treatment. Va. Code § 37.2-817(G).	The special justice or judge should give approval of the plan.
Step 7	If the CSB responsible for developing the **comprehensive** mandatory outpatient treatment plan determines that the services necessary for the treatment of the person's mental illness are not available and or cannot be provided to the person, the CSB shall notify the court with 5 business days of the entry of the order of MOT.	The CSB may file DC-4005, PETITION FOR REVIEW OF ORDER FOR MANDATORY OUTPATIENT TREATMENT with the court.

	Within 2 business days of receiving such notice that services are not available, the judge or special justice, after notice to the person, the person's attorney and the CSB responsible for developing the comprehensive plan shall hold a hearing pursuant Va. Code § 37.2-817.2. Va. Code § 37.2-817(H).	The clerk should coordinate with the special justice or judge to determine where and who will perform this hearing.
	Clerk must provide notice of hearing to person subject to hearing, his attorney, and CSB responsible for developing the plan.	The clerk may use the DC-512, NOTICE OF HEARING FORM. The CSB, and attorney may be given notice via fax. Notice to person subject to hearing should be served by law enforcement as personal or posted service.
Step 8	**TRANSFER OF MOT**	The judge or special justice will complete DC-4024, ORDER- TRANSFER OF JURISDICTION, PURSUANT TO VA. CODE § 37.2-817(J).
	The court may transfer jurisdiction of the case to the district court where the person resides at any time after the entry of the mandatory outpatient treatment order. The CSB responsible for monitoring compliance with the MOT plan shall remain responsible for monitoring the person's compliance with the plan until the CSB serving the locality to which the jurisdiction of the case has been transferred acknowledges the transfer and receipt of the order to the clerk of the court. Va. Code § 37.2-817(J).	The clerk will document the transfer on the DC-4024. The clerk will then prepare the DC-4022, TRACKING DOCUMENT FOR SENDING OR RECEIVING MANDATORY OUTPATIENT TREATMENT ORDER UPON TRANSFER and transfer the file to the court with notice to the CSBs.

Step 9 **MONITORING: COURT REVIEW OF COMPLIANCE OF MOT**

If the CSB determines that the person materially failed to comply with the order, the CSB shall petition the court for a review of the MOT order as provided in Va. Code § 37.2-817.2. The CSB shall petition the court for a review of the MOT order within three days making that determination, or within 24 hours if the person is being detained under a TDO, and shall recommend an appropriate disposition.

If the CSB determines the person is not materially complying with the MOT order or for any other reason, and there is a substantial likelihood that, as a result of the person's mental illness that the person will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting or threatening harm and other relevant information if any, or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, the CSB shall immediately request that the magistrate issue an ECO pursuant to Va. Code § 37.2-808, or a TDO pursuant to Va. Code § 37.2-809. Va. Code § 37.2-817.1.

CSB to file DC-4005, PETITION FOR REVIEW OF ORDER FOR MANDATORY OUTPATIENT TREATMENT.
Clerk to send copies of petition to person subject to compliance and his attorney.

The judge or special justice shall hold a hearing within five days after receiving the petition for review of the MOT plan; however if the fifth day is a Saturday, Sunday or legal holiday, the hearing shall be held by the close of business the next day that is not a Saturday, Sunday or legal holiday. If the person is detained under a TDO, the hearing shall be scheduled within 48 hours.

The clerk shall provide notice of the hearing to the person, the CSB, all treatment providers listed in the comprehensive MOT order, and the original petitioner for the person's involuntary treatment**. Va. Code § 37.2-817.2 (A).**

The clerk may use the DC-512, NOTICE OF HEARING FORM. The CSB, attorney, and treatment providers may be given notice via fax. Notice to person subject to hearing should be served by law enforcement as personal or posted service.

If the person is not represented by counsel, the court shall appoint an attorney to represent the person in this hearing and any subsequent hearing under Va. Code §§ 37.2-817.3 and 37.2-817.4, giving consideration to appointing the attorney who represented the person at the proceeding that resulted in the issuance of the MOT order. Same judge or special justice is **not** required to preside at the noncompliance hearing or any subsequent hearing. Va. Code § 37.2-817.2.

		The judge or special justice will enter the courts findings on the DC-4007, ORDER –REVIEW OF ORDER FOR MANDATORY OUTPATIENT TREATMENT.
Step 10	**APPOINTMENT OF EXAMINER FOR REVIEW OF COMPLIANCE** If requested by the person, the CSB, a treatment provider listed in the comprehensive MOT plan, or the original petitioner for the person's involuntary treatment, the court shall appoint an examiner in accordance with Va. Code § 37.2-815 who shall personally examine the person and certify to the court whether or not he has probable cause to believe the person meets the criteria for involuntary impatient admission or MOT as specified.	The judge or special justice shall enter an order for appointment of examiner, the DC-4008, ORDER OF APPOINTMENT OF EXAMINER-EXAMINATION FOR INVOLUNTARY TREATMENT may be utilized. The clerk should send a copy of the order of appointment of examiner to the examiner and CSB.
	If the person refuses or fails to appear for the examination, the CSB shall notify the court, or a magistrate if the court is not available, and the court or magistrate shall issue a mandatory examination order and capias directing law enforcement in the jurisdiction where the person resides to transport the person to the examination. Va. Code § 37.2-817.2 (B).	The court or magistrate shall issue the DC-4026, CAPIAS: TRANSPORT AND MANDATORY EXAMINATION ORDER.
Step 11	If the person fails to appear for the hearing the court shall, after consideration of any evidence from the person, from the CSB, or any treatment provider identified in the MOT plan regarding why the person failed to appear at the hearing, (i) reschedule the hearing pursuant to subsection A Va. Code § 37.2-817.2, (ii) issue an ECO pursuant to Va. Code § 37.2-808 or (iii) issue a TDO pursuant to Va. Code § 37.2-809.	Dependant upon the action of the court, the clerk will provide notice again of review hearing in accordance with Va. Code § 37.2-817.2(A). The clerk shall provide notice of the hearing to the person, the CSB, all treatment providers listed in the comprehensive MOT order, and the original petitioner for the person's involuntary treatment. Va. Code § 37.2-817.2(A).

Step 12	**RECESSION OF MOT ORDER** If the CSB determines at any time prior to the expiration of the MOT order that the person has complied with the order and no longer meets the criteria for involuntary treatment, or that continued treatment is no longer necessary, the CSB shall file a petition to rescind the order with the court. Va. Code § 37.2-817.3(A).	CSB will file DC-4010, PETITION FOR RESCISSION OF MANDATORY OUTPATIENT TREATMENT with the court. If the court agrees with the CSB the court shall rescind the order. Court may enter the order on DC-4012, ORDER-RECESSION OF MANDATORY OUTPATIENT TREATMENT ORDER. If the court is not in agreement with the CSB, the court shall schedule a hearing and provide notice of the hearing in accordance with Va. Code § 37.2-817.2 (A). The clerk shall provide notice of the hearing to the person, the CSB, all treatment providers listed in the comprehensive MOT order, and the original petitioner for the person's involuntary treatment. Va. Code § 37.2-817.2 (A).
Step 13	At any time after 30 days from entry of the mandatory outpatient treatment order, the person subject to the MOT order may petition the court to rescind the order on the grounds he no longer meets the criteria for MOT. The CSB required to monitor the person's compliance with the MOT order shall provide a preadmission screening report as required in Va. Code § 37.2-816. The person may not file a petition to rescind the order more than once during a 90-day period. Va. Code § 37.2-817.3(B).	The person subject to the MOT order will file the DC-4010, PETITION FOR RESCISSION OF MANDATORY OUTPATIENT TREATMENT with the court. The court shall schedule a hearing and provide notice of the hearing in accordance with Va. Code § 37.2-817.2 (A). The clerk shall provide notice of the hearing to the person, the CSB, all treatment providers listed in the comprehensive MOT order, and the original petitioner for the person's involuntary treatment. Va. Code § 37.2-817.2 (A).

Step 14 CONTINUATION OF MOT ORDER

At any time within 30 days prior to the expiration of the MOT order, the CSB that is required to monitor the person's compliance with the order, the treating physician, or other responsible person may petition the court to continue the order for a period not to exceed 180 days.

Petitioner will file the DC-4015, PETITION TO CONTINUE MANDATORY OUTPATIENT TREATMENT ORDER with the court.

If the person who is the subject of the order and the monitoring CSB, if it did not initiate the petition but joined the petition, the court shall grant the petition and enter an appropriate order without further hearing.

Court shall enter order on DC4017, ORDER-CONTINUE MANDATORY OUTPATIENT TREATMENT ORDER.

If the person or the CSB does not join the petition, the court shall hold a hearing. Upon receipt of the petition, the court shall appoint an examiner who shall personally examine the person pursuant to Va. Code § 37.2-817. The CSB required to monitor the person's compliance with the MOT order shall provide a preadmission screening report as required in Va. Code § 37.2-816. Va. Code § 37.2-817.4.

The judge or special justice shall enter an order for appointment of examiner, the DC-4008, ORDER OF APPOINTMENT OF EXAMINER-EXAMINATION FOR INVOLUNTARY TREATMENT may be utilized.

The court shall schedule a hearing and provide notice of the hearing in accordance with Va. Code § 37.2-817.2(A).

The clerk shall provide notice of the hearing to the person, the CSB, all treatment providers listed in the comprehensive MOT order, and the original petitioner for the person's involuntary treatment. Va. Code § 37.2-817.2(A).

Step 15 **APPEAL OF INVOLUNTARY ADMISSION**

Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment pursuant to Va. Code §§ 37.2-814-37.2-819 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 he was involuntarily admitted or ordered to mandatory outpatient treatment or certified or where the facility to which he was admitted is located.

An appeal shall be filed within 30 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding Va. Code § 19.2-241 regarding the time within which the court shall set criminal cases for trial. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court.

No appeal bond or writ tax shall be required, and the appeal shall proceed without payment of cots or other fees. Va. Code § 37.2-821.

Clerk retains copies for file.

Note: The audiotapes are not sent with the file. A subpoena duces tecum must be filed requesting tapes to be forwarded to circuit court.

If appeal is noted in a court in which the case papers have not been received, the clerk should contact the special justice immediately to obtain the original file to process the appeal.

Step 16 AUDIO RECORDING - TAPE

The judge or special justice shall make or cause to be made a tape or other audio recording of any hearings held under this chapter, Va. Code § 37.2-800, and shall submit the recordings to the clerk of the district court in the locality in which the hearing is held to be retained in a confidential file.

It is recommended that the tape be labeled with the name of the person who was subject of the hearing, case number and date of hearing.

The person who was subject of the hearing shall be entitled, upon request, to obtain a copy of the tape or other audio recordings of such hearing.

The person who was subject of the hearing will file the DC-4029, APPLICATION FOR COPY OF RECORDING OF COMMITMENT HEARING with the court.

These recordings shall be retained for as least three years from the date of the commitment hearing. Va. Code § 37.2-818.

The clerk shall reproduce a copy of the tape requested and retain the original tape in the court's file as directed.

Step 17 CCRE – SP237

Upon receipt of any order from a commitment hearing issued pursuant to this chapter, Va. Code § 37.2-800, for involuntary admission to a facility or for **mandatory outpatient treatment**, the clerk of the court shall, prior to the close of the business day, certify and forward (fax) to the Central Criminal Records Exchange, the SP237, and a certified copy of the disposition order. The clerk is also required to mail the SP237 and a certified copy of the dispositional order to the Virginia State Police as directed on the form. Va. Code § 37.2-819.

In an effort to comply with the close of business day requirement, a copy of the original CCRE should be faxed with a certified copy of the dispositional order to the VSP at 804-674-2268.

Copies of the CCRE are retained in the file. Va. Code § 37.2-819.

Step 18 **CONFIDENTIALITY – MEDICAL AND COURT RECORDS**

File completed cases in numerical order by year and retain the case papers for a period of 10 years.

Except as provided for in this section and Va. Code § 37.2-819, the court shall keep its copies of the recordings made pursuant to this section, relevant medical records, reports, and court documents pertaining to the hearing provide for in this chapter, Va. Code § 37.2-800, confidential.

The person who is subject of the hearing may, in writing, waive the confidentiality provided herein. In the absence of such waiver, access to the dispositional order only may be provided upon court order.

The person who is subject to the hearing may waive confidentiality by filing the DC-4032, WAVIER OF CONFIDENTIALITY OF COURT RECORDS – COMMITMENT FOR INVOLUNTARY TREATMENT.

Any person seeking access to the disposition order may file a written motion setting forth why such access is needed. The court may issue an order to disclose the dispositional order if it finds that such disclosure is in the best interest of the person who is the subject of the hearing or the public. The Executive Secretary of the Supreme Court and anyone acting on his behalf shall be provided access to the court's records upon request. Such recordings, records, and documents shall not be subject of Virginia Freedom of information Act. Va. Code §37.2-818(B).

Persons seeking a copy of the dispositional order may file with the court the DC-4035, PETITION AND ORDER FOR ACCESS TO DISPOSITIONAL ORDER. The judge or special justice will review the petition and enter order on same form.

2. Fees and Costs (Va. Code § 37.2-804)

There are no Clerk's fees or costs associated with the filing or appeal of the Involuntary Mental Commitment process. The only fees and expenses are related to the payment of special justices, physicians, psychologists, other mental health professionals, or interpreters if needed.

Special Justices or any district court substitute judge who presides over involuntary mental commitment hearings are to receive $86.25 for each hearing and necessary mileage. Va. Code § 37.2-804.

Physicians, psychologist or other mental health professionals, attorneys appointed or interpreters appointed for a deaf person is to receive $75.00 and necessary expenses for each hearing. Va. Code § 37.2-804.

Interpreters appointed for a non-English speaking person shall be compensated in accordance with the guidelines set by the Judicial Council of Virginia. Va. Code § 37.2-802. It is recommended that the sitting Judge sign the form DC-60 for payment of professionals used in the commitment hearings.

3. Forms:

DC-4005	Petition for Review of Order for Mandatory Outpatient Treatment
DC-4007	Order- Review of Order for Mandatory Outpatient Treatment
DC-4008	Order for Appointment of Examiner- Examination for Involuntary Treatment
DC-4010	Petition for Rescission of Mandatory Outpatient Treatment Order
DC-4012	Order- Rescission of Mandatory Outpatient Treatment
DC-4015	Petition to Continue Mandatory Outpatient Treatment Order
DC-4017	Order –Continue Mandatory Outpatient Treatment Order
DC-4020	Tracking Document for Sending or Receiving Mandatory Outpatient Treatment Order Upon Entry
DC-4022	Tracking Document for Sending or Receiving Mandatory Outpatient Treatment Order upon Transfer
DC-4024	Order- Transfer of Jurisdiction Pursuant to Va. Code § 37.2-817 J
DC-4026	Capias-Transport and Mandatory Examination Order
DC-4029	Application for Copy of Recording of Commitment Hearing
DC-4032	Waiver of Confidentiality of Court Records
DC-4035	Petition and Order for Access to Dispositional Order

4. References

37.2-800	Applicability of chapter.
37.2-808	Emergency custody; issuance and execution of order.

37.2-809	Involuntary temporary detention; issuance and execution of order.
37.2-814	Commitment hearing for involuntary admission; written explanation; right to counsel; rights of petitioner.
37.2-815	Commitment hearing for involuntary admission; examination required.
37.2-816	Commitment hearing for involuntary admission; preadmission screening report.
37.2-817	Involuntary admission and mandatory outpatient treatment orders.
37.2-817.1	Monitoring mandatory outpatient treatment; petition for hearing.
37.2-817.2	Court review of mandatory outpatient treatment.
37.2-817.3	Rescission of mandatory outpatient treatment order.
37.2-817.4	Continuation of mandatory outpatient treatment order.
37.2-818	Commitment hearing for involuntary admission; recordings and records.
37.2-821	Appeal of involuntary admission or certification order.

C. CCRE REPORTING

Upon receipt of any order from a commitment hearing issued pursuant to Title 37.2 for involuntary admission to a facility or for mandatory outpatient treatment, and any person volunteering for admission, who was subject of TDO, the clerk of the court shall, prior to close of that business day, certify and forward to Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the order. Va. Code § 37.2-819.

The clerk should fax a copy of the SP237 and other documents, as noted below, to Virginia State Police, CCRE, @ 804-674-2268. The court is also required to mail the SP237 and a certified copy of the dispositional order to the Virginia State Police as directed on the form.

- Involuntary admission to facility (dispositional order)
- Involuntary outpatient treatment plan (dispositional order)
- Any person volunteering for admission who was subject of TDO (dispositional order and TDO)

The copy of the forms and orders sent to the Central Criminal Records Exchange pursuant to Va. Code § 37.2-819 shall be kept confidential in a separate file and used only to determine the person's eligibility to possess, purchase or transfer a firearm. No medical records shall be forwarded to the Central Criminal Records Exchange with any form, order or certification required by Va. Code § 37.2-819.

D. Petition for Permit to Purchase, Possess or Transport A Firearm

1. Overview

Va. Code § 18.2-308.1:1 Possession or transportation of firearms by persons acquitted by reason of insanity; penalty; permit.

A. It shall be unlawful for any person acquitted by reason of insanity and committed to the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Service, pursuant to Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2, or a charge of treason, any felony or any other offense punishable as a misdemeanor under Title 54.1 or a Class 1 or Class 2 misdemeanor under this title, except those misdemeanor violations of (i) Article 2 (§ 18.2-266 et seq.) of Chapter 7 of this title, (ii) Article 2 (§ 18.2-415 et seq.) of Chapter 9 of this title, or (iii) § 18.2-119, or (iv) an ordinance of any county, city, or town similar to the offenses specified in (i), (ii), (iii), to knowingly and intentionally posses or transport any firearm. A violation of this section shall be punishable as a Class 1 misdemeanor.

B. Any person so acquitted may, upon discharge from the custody of the commissioner, petition the general district court in which he resides for a permit to possess or carry a firearm. If the court determines that the circumstances regarding the disability referred to in subsection A and the person's criminal history, treatment record, and reputation are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary public interest, the court shall grant the petition. 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 issue a permit, in which event the provision of subjection A do not apply. The court of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

2. Clerk's Procedure

	PROCEDURE	**COMMENTS**
Step 1	Petitioner will present petition to general district court in which he/she resides.	Note: DC-4040, PETITION FOR PERMIT TO PURCHASE, POSSESS OR TRANSPORT A FIREARM will be available to the public

		via the internet.
Step 2	Clerk will enter petition in the Civil Division of the Case Management System and schedule a hearing date. Petition to be entered with special case type of PR. Petitioner is entered as plaintiff. Commonwealth of Virginia as the Defendant.	**COURT MAY WISH TO NOTIFY THE COMMONWEALTH ATTORNEY'S OFFICE OF THE SCHEDULING OF THESE HEARINGS.**
Step 3	Upon conclusion of hearing, the Clerk will update the case accordingly. Hearing results field is updated with an O and final disposition is entered as ordered. Valid codes are: - D for denied - G for granted.	DC-4042, ORDER - PERMIT TO PURCHASE, POSSESS OR TRANSPORT A FIREARM to be completed by the Judge at hearing. **IT IS RECOMMENDED THAT THE COURT PROVIDE A CERTIFIED COPY OF THE ORDER TO THE PETITIONER.**
Step 4	If the petitioner's rights are **restored**, the clerk shall certify and forward the: SP237, CCRE form; and DC-4042, ORDER – PERMIT TO PURCHASE, POSSESS OR TRANSPORT A FIREARM to the Virginia State Police.	
Step 5	Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial.	An appeal is not filed with general district court. If the general district court denies the petition, the petitioner will simply petition the circuit court.

3. Forms

DC-4040	Petition for Permit to Purchase, Possess or Transport a Firearm
DC-4042	Order –Permit to Purchase, Possess or Transport a Firearm
SP237	CCRE – Virginia State Police

4. References

§18.2-308.1:1 Possession or transportation of firearms by person acquitted by reason of insanity; penalty; permit.

E. Proceeding for Eligibility for Admission of Mentally Retarded Persons
(Va. Code § 37.2-806)

When a person alleged to be mentally retarded is not capable of requesting his own admission to a facility for the training and treatment of the mentally retarded as a voluntary patient, a parent, guardian or other responsible person may initiate a proceeding to certify such person's eligibility for admission.

Prior to initiating any such proceeding, the petitioner shall first obtain

- a pre-screening report from the local community services board or behavioral health authority that recommends admission to a training center and
- the approval of the training center to which it is proposed that the person shall be admitted.

The proceeding shall be initiated by the filing of a petition alleging that the person has mental retardation, is in need of training, treatment or habilitation, and has been approved for admission.

No such person shall be detained pending a hearing except for observation and evaluation for a period not to exceed 48 hours.

A copy of the petition must be personally served on such person, the person's attorney, the person's guardian or conservator.

An attorney shall be appointed for such person before the hearing or the person may retain counsel at his own expense. He shall be allowed sufficient time to prepare a defense, obtain evidence at his own expense and summon witnesses. He shall attend the hearing unless his attorney waives the right and the judge finds one of the following statutory grounds for exclusion by a clear showing after personal observation:

- The person's attendance would subject him to substantial risk of physical or emotional injury, or
- The person's attendance would be so disruptive as to prevent the hearing from taking place.

Prior to the hearing, the judge shall summons either a physician or clinical psychologist who is licensed in Virginia and qualified in assessing persons with

mental retardation, or a community services board designee meeting the board's qualifications who, after assessing the person, shall certify that he has personally assessed the individual and has probable cause to believe that he does or does not have mental retardation, is or is not in need of training, treatment or habilitation in a training center, and is or is not eligible for less restrictive service.

A written report may be given to the judge if the assessment was made within the last thirty days and there is no objection by the person or his attorney.

The judge must make all of the findings required by Va. Code § 37.2-806 (F) before entering an order certifying that the person is eligible for admission to a training center which include:

- The person is not capable of requesting his own admission.
- The facility has approved the proposed admission.
- There is no less restrictive alternative to training center admission, consistent with the best interests of the person who is the subject of the proceeding.
- The person has mental retardation and is in need of training, treatment or habilitation in a training center.

Certification of eligibility of admission is not the equivalent of judicial commitment for involuntary admission of the person. The certification authorizes the parent, guardian or other responsible person to admit the person to a training center and authorizes the training center to accept the person. Va. Code § 37.2-806 (G).

F. Medical Emergency Temporary Detention Proceedings (Va. Code §§ 37.2-1104 and 53.1-40.1(F))

This section addresses those situations in which an adult person is incapable of making, or incapable of communicating, an informed decision regarding treatment of a mental or physical disorder, which a licensed physician has probable cause to believe requires testing, observation or treatment within the next twenty-four hours so as to prevent death, disability or a serious irreversible condition. In such situations, Va. Code § 53.1-40.1(F) sets forth special provisions that apply when the patient is a state prisoner. *See also discussed "Special Procedures for State Prisoners."*

1. Case Initiation, Va. Code § 37.2-1104

The court or, if the court is unavailable, a magistrate, may issue an order authorizing temporary detention of a person, within the court's or magistrate's jurisdiction, by a hospital emergency room or other appropriate facility and authorize such testing, observation or treatment as necessary upon the advice of a licensed physician who has attempted to obtain consent from the person, *and* the court or magistrate finds probable cause to believe that:

- the adult person is incapable of making an informed decision regarding treatment of a physical or mental disorder, or is incapable of communicating such a decision due to a physical or mental disorder, *and*

- the medical standard of care calls for testing, observation or treatment of the disorder within the next twenty-four hours to prevent death, disability or a serious irreversible condition.

If, before issuance of an order or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify or terminate the order. Further, if the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision prior to the completion of authorized testing, observation or treatment, the physician shall rely on the person's decision on whether to consent to further observation, testing or treatment.

The detention may not be for a period exceeding twenty-four hours unless extended by the court as part of an order authorizing treatment under Va. Code § 37.2-1101.

Petitions and orders for temporary detention may be filed, issued, served or executed by electronic means, with or without the use of two-way electronic video and audio communication. If an oral petition is made, the judge should recite back to the physician the information given to the judge.

2. Case Hearings

The judge (or magistrate) reviews the petition, taking into consideration any objections from the patient or immediate family members.

NOTE: Because of the emergency nature of these proceedings and the fact that the patient is usually unrepresented by counsel, the judge (or magistrate) may need to ask the physician questions concerning the patient's capability to grant informed consent and the standard of care; he may also need, if he can communicate with this patient, to ask the patient questions concerning the patient's capability to grant informed consent. While personal observation of the patient by the judge (or magistrate) is desirable, the judge (or magistrate) may be unable, because of the emergency nature of the situation, to go on-site to talk to the patient himself. In all cases, however, the judge (or magistrate) should attempt some form of personal contact with the patient and physician such as by telephone. For example, such questions may include:

- To the physician:

  - Why do you feel the patient is incapable of giving informed consent?

- Is this a situation where the patient must be tested, observed, or treated within 24 hours?
- What might happen to the patient if he/she does not receive this testing, observation, or treatment?
- Explain the treatment to me.
- Are there any side effects or dangers as a result of this treatment?
- Is there a family, committee, legal guardian, etc.?
- Who can I talk to or who can give permission on behalf of the patient?
- Are you aware of any religious objections by the patient?
- Does the patient suffer from dysphasia or some other communication disorder?

- To the patient:
  - What is your name?
  - Where do you live?
  - Do you know what day it is?
  - What month and year is it?
  - Who is the President of the United States?
  - What happened to you?
  - Do you know why you are here?
  - Has the doctor explained to you his concern?
  - Why will you not consent to testing, observation, or treatment?
  - Do you understand what might happen if the doctor's concern proves founded?
  - Do you have any religious objections to this testing, observation, or treatment?
  - Do you suffer from dysphasia or some other communication disorder?

After determining if there is probable cause to believe the petition's allegations, the judge (or magistrate) determines:

- If the patient is a person with dysphasia or some other communication disorder who is competent and able to communicate. If the petition is filed *solely* due to this situation, the patient is statutorily able to give consent and the petition should be denied.

- If family members object to testing or treatment, the judge must take such objections into consideration in deciding the matter.

Upon completion of this process, the judge (or magistrate) may:

- Deny the petition and issue a MEDICAL EMERGENCY TEMPORARY DETENTION ORDER, DC-490, to that effect.

- Grant the petition and issue a MEDICAL EMERGENCY TEMPORARY DETENTION ORDER, DC-490 that grants:

  – The testing, observation and treatment that was requested.

If the physician does not physically appear before the judge (or magistrate), then the contents of the order should be read over the telephone to the physician. The detention may *not* be for a period exceeding 24 hours unless extended by the court as part of an order authorizing treatment under Va. Code § 37.2-1101, which requires appointment of counsel and a hearing.

Service of the MEDICAL EMERGENCY TEMPORARY DETENTION ORDER DC-490 (original, modified or terminated) should be by police or other law enforcement officer as soon as possible after the order is issued. One copy should be served on the patient while a second copy should be served on the physician. The original should be returned to the general district court for filing and indexing. The same filing and indexing shall be done for orders entered by special justices and magistrates.

3. Post-Trial Proceedings

   If the physician learns of an objection by a member of the person's immediate family to the testing, observation or treatment, he shall so notify the judge (or magistrate), who shall consider the objection in determining whether to issue, modify or terminate the order.

   In any case where a previously issued order is being modified or terminated by the judge (or magistrate), a second order should be issued citing the facts received. Use the MEDICAL EMERGENCY TEMPORARY DETENTION ORDER, DC-490, for this purpose and, at the top of the form, check "Modified Order" or "Termination of Order." The judge (or magistrate) and physician should be in

immediate verbal communication with each other following the entry of this changed order.

Any order issued under Va. Code § 37.2-1104, by a judge (or magistrate) may be appealed de novo within ten days to the circuit court for the jurisdiction where the order was entered and any such order of a circuit court, either originally or on appeal, may be appealed within ten days to the Court of Appeals.

G. Special Procedures for State Prisoners

Under Va. Code § 53.1-40.1(F), the following similar provisions apply in this process when applied to prisoners:

- A licensed physician, psychiatrist or clinical psychologist may petition for the order and need not be asking for it from a hospital emergency room.
- The petition only needs to address
  - whether the prisoner is incapable, due to any physical or mental condition, of giving informed consent, and
  - that the medical standard of care calls for testing, observation or other treatment within the next twelve hours to prevent death, disability or a serious irreversible condition.

H. Judicial Authorization of Treatment for Mental or Physical Disorder
(Va. Code § 37.2-1101)

The order may be issued by a judge or, if a judge is unavailable, by a magistrate.

In addition to the previously described provisions for testing, observation and/or treatment on an "emergency" basis, a judge or special justice may conduct a proceeding regarding a claim for the treatment for a mental or physical disorder pursuant to Va. Code § 37.2-1101. "Treatment" in this instance includes the provision, withholding, or withdrawal of a specific treatment or course of treatment upon a showing that the requirements of this section have been met. Judicial authorization for treatment is not required for a person for whom consent or authorization has been granted or issued or may be obtained in accordance with the Health Care Decisions Act, Va. Code §§ 54.1-2981 to 54.1-2993. An appropriate circuit court, district court judge or special justice may authorize, on behalf of an adult person, treatment for a mental or physical disorder, if it finds by clear and convincing evidence that:

- the person is incapable of making an informed decision, or incapable of communicating such a decision because of a physical or mental disorder; *and*

- the proposed action is in the person's best interest and is medically and ethically appropriate with respect to the medical diagnosis and prognosis and any other information provided by the attending physician.

Va. Code § 37.2-1102 sets forth the procedures that the court is prohibited from authorizing. To make such a determination, the following procedures apply:

- A petition is filed (no restrictions on who may a file petition, unlike restrictions on medical emergency or temporary detention petition as described in the prior part).

- The petitioner or the court sends a certified copy of petition to:

  – the person for whom treatment is sought

  – the next of kin (if identity and whereabouts are known and judge does not dispense with such notice when the subject is a patient at a hospital).

- The Court appoints an attorney unless the person for whom treatment is being sought is represented by counsel. Va. Code § 37.2-1101 (C). *See* Va. Code § 37.2-1101(F) regarding the attorney's duties.

After counsel is appointed, the case is scheduled for a hearing, with the court notifying the following of the date and time for the hearing:

- the person for whom treatment is sought;
- his next of kin, if known; and
- the petitioner, and
- counsel appearing for any of the above. Va. Code § 37.2-1101(D).

Use the SUMMONS FOR HEARING, DC-430, for this case, including documenting the hearing date. Note that Va. Code § 37.2-1101 requires the Court to notify the above-listed people but does not state that such notice be by service of process. If treatment is necessary to prevent imminent or irreversible harm, the court in its discretion may dispense with the requirement of providing notice.

Prior to authorizing treatment, the court must find

- That there is no legally authorized representative available to give consent;

- That the person for whom treatment is sought is incapable either of making an informed decision regarding treatment or is physically or mentally incapable of communicating such a decision;

- That the person who is the subject of the petition is unlikely to become capable of making an informed decision or of communicating an informed decision within the time required for decision; and

- That the proposed treatment is in the best interest of the patient and is medically and ethically appropriate with respect to the medical diagnosis and prognosis and any other information provided by the attending physician. However, the court shall not authorize a proposed treatment that is proven by a preponderance of the evidence to be contrary to the person's religious beliefs or basic values unless such treatment is necessary to prevent death or a serious irreversible condition.

The court shall take into consideration the right of the person to rely on nonmedical, remedial treatment in the practice of religion in lieu of medical treatment.

The judge's dispositional powers and limitations on allowable relief are provided in Va. Code § 37.2-1101 (H).

Any report received from the treating physician post-judgment pursuant to Va. Code § 37.2-1101 (H) shall be delivered to the judge prior to the report being filed in the case papers.

NOTE: No employee of the Department or a community services board, behavioral health authority, or local government department with a policy-advisory community services board; a community services board, behavioral health authority, or local government with a policy-advisory community services board contractor; or any other public or private program or facility licensed or funded by the Department shall serve as a legally authorized representative for a consumer being treated in any Department, community services board, behavioral health authority, local government department with a policy-advisory community services board or other licensed or funded public or private program or facility, unless the employee is a relative or legal guardian of the consumer. Va. Code § 37.2-401. The facility or other services board will be required to file a request for judicial authorization of treatment.

XII. SMALL CLAIMS DIVISION

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

Actions are commenced by filing a small claims civil warrant, the WARRANT IN DEBT-SMALL CLAIMS, DC-402, or WARRANT IN DETINUE - SMALL CLAIMS, DC-404. The WARRANT IN DEBT is used for plaintiffs seeking money judgments. The WARRANT IN DETINUE is used for plaintiffs who seek the recovery of personal property, or property used as collateral for a loan in default. The plaintiff must specify a dollar amount of and the basis for the claim. A filing fee is paid, along with any service fees, which are taxed as costs in the case. The plaintiff may receive the information pamphlet "Small Claims Court Procedures" from the clerk prior to filling out the warrant.

The clerk fills out the portion of the warrant which requires service of process on the defendant, and a copy of the warrant is served on the defendant by the method used in general district court. Va. Code § 16.1-122.3. The defendant may also be served with the information pamphlet about small claims court. Although it is not required, a copy of the warrant may be mailed by first class mail by the plaintiff to the defendant at least ten days before the date when the plaintiff and defendant are due to return to court in the same manner as for other civil process. Va. Code § 8.01-296(2)(b). The small claims forms contain a certificate of mailing for the plaintiff to use or the CERTIFICATE OF MAILING, DC-413, may be used, which is delivered to the clerk's office prior to trial or to the court on the return date.

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

A defendant in the small claims division may remove the case to the regular general district court docket at any point in the proceedings prior to judgment. The defendant may complete the "Removal to General District Court" portion of the WARRANT IN DEBT - SMALL CLAIMS DIVISION, DC-402, or WARRANT IN DETINUE - SMALL CLAIMS, DC-404, and give it to the clerk or judge. Such a request may also be made orally. The court notes the remark on the reverse of the warrant.

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

- a plaintiff or defendant that is a corporation or partnership may be represented by an owner, a general partner, an officer, or an employee who has all the rights of a party appearing *pro se*. An attorney may appear in this capacity only if he is representing his own corporation or partnership.

- a plaintiff or defendant who in the judge's opinion cannot understand or participate in the proceedings may be represented by a friend or relative if that person is familiar with the facts of the case and is not an attorney.

- an attorney may appear for the defendant only for the purpose of removing the case to the regular general district court docket at any time before judgment. Va. Code § 16.1-122.4

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

Judgment and collection procedures are the same as for general district courts.

Appeals from the small claims court are taken in the same manner as other civil appeals, using the CIVIL APPEAL NOTICE, DC-475, and other procedures applicable to appeals in civil cases. See 7(a) above

XIII. MISCELLANEOUS CASE TYPES

A. Lien of Mechanic for Repairs (Va. Code § 43-33)

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

1. Clerk's Procedures

	PROCEDURE	**COMMENTS**
Step 1	The Clerk prepares the SUMMONS AND ORDER OF POSSESSION-LIEN OF MECHANIC FOR REPAIRS, DC463. There are 2 copies: original to the court, first copy to defendant and second copy to plaintiff. Number in accordance with civil numbering procedures and enter into CMS using V – civil case, and ML-Mechanic's Lien as case type.	Collect fees/sheriff fees. The plaintiff, (owner), in lieu of a separate certificate of mailing, may complete the back of the form if mailing to defendant occurs at or prior to filing of the case. It is recommended to use the OTHER field to give a brief summary of what the plaintiff alleges.

Step 2	If owner (Plaintiff) desires to have their property returned before trial, the Clerk prepares PLAINTIFF'S BOND-LIEN OF MECHANIC FOR REPAIRS, DC462.	The Clerk should verify the amount of claim with the mechanic (defendant), and complete the Order of Possession area of the SUMMONS AND ORDER OF POSSESSION-LIEN OF MECHANIC FOR REPAIRS, DC463. VERIFICATION OF AMOUNT IN DISPUTE IS DONE WHETHER OR NOT PLAINTIFF REQUESTS PROPERTY BACK PRE-TRIAL.
	The bond shall be equal to the lien claimed by the mechanic (defendant) plus courts cost. The bond may be cash or surety.	Receipt bond (if cash) to 503, using ML case type on receipt.
Step 3	Set case for trial, and issue summons for service.	The summons is served on the mechanic (defendant) by the sheriff, who shall also seize the property IF the plaintiff posted bond. The executed summons is returned to the clerk's office, and the sheriff delivers the seized property to the plaintiff.
Step 4	Finalize in CMS using appropriate code for CASE DISPOSITION: P-PLAINTIFF D-DEFENDANT	At hearing, if judgment in favor of defendant, the property is to be delivered to the plaintiff owner (if not previously returned by posting bond) and the plaintiff owner is to pay to the defendant the amount awarded by the Court. Judgment may also be in favor of owner-plaintiff.
	The bond should be distributed to satisfy the judgment with the remainder returned to plaintiff, after appeal (10 day) time has elapsed.	Where no bond was posted, the plaintiff may recover the property and obtain execution of the order only AFTER he pays the defendant the amount of judgment as determined by the court.
Step 5	APPEAL PROCEDURES Appeal may be noted within 10 calendar days of judgment. See Appendix C-Appeals for procedures. If case perfected, prepare file in accordance to local policy for delivery to the Circuit Court; and send check for fees and any funds in escrow account.	NOTE- bond and Circuit Court costs (including sheriff fees for service) are due within thirty days of **JUDGMENT**-not appeal date.

a. Forms

DC-462	Plaintiff's Bond-Lien of Mechanic for Repair
DC-473	Summons and Order of Possession – Lien of Mechanic for Repair
DC-475	Notice of Appeal –Civil
DC-460	Civil Appeal Bond
DC-25	Circuit Court Transmittal

b. Code References

44-33. Lien of mechanic for repairs.

B. Tenant's Assertion and Complaint

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

1. Clerk's Procedures

	PROCEDURE	**COMMENTS**
Step 1	The tenant prepares and files a TENANT'S ASSERTION AND COMPLAINT, DC-429. This form is also available on the internet to be downloaded, filled out on screen, printed and brought to the court. The clerk may draw to the attention of the tenant the Prerequisite Conditions for Relief on the back of the TENANT'S ASSERTION AND COMPLAINT, DC-429.	This pleading must be accompanied by a copy of the certified mail notice of the conditions causing the complaint that was **previously** sent to the landlord. There are no filing fees associated with the TENANT'S ASSERTION AND COMPLAINT, DC-429, HOWEVER**, costs and sheriff fees are collected for the DC-430 SUMMONS FOR HEARING.**
	There should be the original and at least two copies of the TENANT'S ASSERTION AND COMPLAINT, DC-429.	The original is the courts. The first copy is served on the defendant. If there is more than one defendant, provide a copy to be served on each defendant. The second copy is given to the plaintiff after setting the court date.
Step 2	Enter the case into the CIVIL case entry screen, using "V" for civil case and "TA" (Tenant's Assertion) as case type.	It is recommended that the clerk use the "OTHER" field to give a brief summary of what the plaintiff alleges.

Step 3	The clerk's office prepares and issues a SUMMONS FOR HEARING, DC-430. This should be served on each defendant at the same time as the TENANT'S ASSERTION AND COMPLAINT, DC-429.	This hearing must be set within 15 calendar days from the date of service on the landlord or his agent.
Step 4	The clerk's office sets up an escrow account for the tenant at this step. The tenant sends his/her periodic rent payment to the clerk's office for deposit in the escrow account until an order is entered.	Receipt any monies remitted under the pending civil case number, using account code 509 (escrow/collections for others).
Step 5	Judge hears the case and enters a judgment that determines distribution of the funds in the escrow account (between the landlord and tenant), and the duties to be performed by the landlord. Case would be finalized using appropriate code for CASE DISPOSITION.	Disburse funds in escrow account as directed by court order, after waiting for end of appeal time. (10 days). If judgment is for one (or more) defendant (), update J field (beside def name) with appropriate code. Please note that in this unique case type, the judgment could be for both plaintiff and defendant, and, if so, should be updated accordingly.
Step 6	Appeal may be noted within 10 days of judgment. See APPENDIX C- APPEALS for procedures.	**NOTE-** bond and Circuit Court costs (including sheriff fees for service) are due within thirty days of JUDGMENT- not appeal date. If case perfected, prepare file in accordance to local policy for delivery to the Circuit Court; and send check for fees and any funds in escrow account along with a completed CIRCUIT COURT TRANSMITTAL, DC 25.

a. Forms

DC-429	Tenant's Assertion and Complaint
DC-430	Summons For Hearing
DC-475	Notice of Appeal
DC-460	Civil Appeal Bond
DC-25	Circuit Court Transmittal

b. Code References

55-248.27 Tenant's assertion; rent escrow.

C. Violations Punished by Civil Penalties

1. Zoning and Building Code Violations

In certain localities, zoning violations may be punished by civil penalties if the locality adopts a local zoning offenses prepayment schedule that may be used in lieu of criminal sanctions pursuant to either Va. Code §§ 15.2-730 or 15.2-2209. Such violations would be initiated on a WARRANT IN DEBT, DC-412, filed by the local government together with the processing fee and any local law library tax. An information sheet about such prepayments and/or pre-trial admission of liability/waiver of trial form should be provided by the county to be attached to the defendant's copy of the WARRANT IN DEBT. The clerk's office has no authorization to process these prepayments; all prepayments must be handled by the county treasurer or department of finance. If prepaid to the locality prior to trial, the attorney or other authorized representative of the county shall so advise the judge and request dismissal of the WARRANT IN DEBT. In all other respects, such cases are handled like other suits in debt.

If the person charged does not elect to enter a waiver and admit liability, the court shall try the violation. Upon a finding of liability or admission of liability, the court may order the violator to abate or remedy the violation in compliance with the zoning ordinance within a period of time as determined by the court, but no later than six months of the date of admission or finding of liability. Each day the violation continues after the court-ordered abatement period has ended shall constitute a separate offense.
When civil penalties for a zoning ordinance total $5,000 or more, the violation may be prosecuted as a criminal misdemeanor.

2. Bad Checks

See Suits in Debt, Case Hearings, Bad Checks Cases, *above*.

3. Child Safety Restraints

See Chapter III TRAFFIC CASE PROCEDURES, since such violations are processed in the same manner as traffic infractions.

4. Virginia Clean Indoor Air Act Clean Indoor Air Act
Violations of the Virginia Clean Indoor Air Act (Va. Code §§ 15.2-2800 et seq.) are punishable by a civil penalty not to exceed $25.00. Va. Code §§ 15.2-2801 (E) (F); 15.2-2809. Cases may be initiated by:

- law enforcement officer issuing a VIRGINIA UNIFORM SUMMONS.

- anyone filing a civil warrant or motion for judgment and paying the applicable filing fees.

If the defendant is found to have violated this law the judgment is entered as a civil judgment, and the clerk collects the civil penalties. The clerk does not collect any costs assessed in favor of a private party.

Because the matter in controversy does not exceed $50 as required by Va. Code § 16.1-106, these cases are not appealable.

5. Interpleader

An interpleader action, pursuant to Va. Code § 8.01-364, is filed when, prior to levy or execution, a party wishes the court to determine the rights of various individuals in certain property when two or more people (excluding the plaintiff) claim the property. The parties in the suit are the claimants in the property and include the person holding the property even if this person does not claim to own it. In general district court, an interpleader action may involve personal property not exceeding $15,000.00. The case is initiated by the filing of a WARRANT IN DEBT--INTERPLEADER, DC-428, or a motion for judgment. At trial, the judge disposes of the property according to the rights of the parties.

This interpleader is similar to post-judgment interpleader discussed in SUITS IN DEBT; POST-TRIAL PROCEDURES, *earlier*.

6. Overweight Violations

a. Case Initiation

If a person seeks to contest a motor vehicle overweight violation that has been charged on a Virginia overweight citation pursuant to Va. Code § 46.2-1133, that person must timely file a notice of contest with the Virginia Department of Motor Vehicles (not with the court). Upon receipt, the Virginia Department of Motor Vehicles (DMV) notifies the contesting party and the arresting officer of the pre-set trial date and that the case papers have been sent to the general district court.

When the court receives the papers, the case is docketed and indexed.

No additional service of process or notice of trial date is needed unless a continuance is granted.

If an overweight case has been commenced through an ATTACHMENT SUMMONS, DC-446, the normal attachment procedures apply (*see* ATTACHMENTS) except that

a magistrate may take a defendant's bond and forward it to the court. Va. Code § 46.2-1134.

b. Case Hearing, Judgment

The case is tried as if brought by the government on a WARRANT IN DEBT, DC-412, or (if applicable) on an ATTACHMENT SUMMONS, DC-446, except that:

- judgment is entered on a CASE DISPOSITION, DC-480, and a copy is sent to DMV after the ten-day appeal period has run.

- the court does not collect the judgment. Payments are to be made to DMV. If the defendant offers to pay by check, have the check made payable to DMV (not to the court) and forward it to DMV together with the DMV copy of the CASE DISPOSITION, DC-480.

c. Violations of Town Ordinances Concerning Weight Limits

If the violation is of a town ordinance adopted pursuant to Va. Code § 46.2-1138.2, the liquidated damages assessed are paid into the town treasury.

7. Fire Inspection Warrants (Va. Code §§ 27-98.1 to 27-98.5)

The fire inspection warrant is similar in many ways to a criminal search warrant. There are several key differences that will be of interest to a judge.

- It does not have to be linked to a violation of law. It may be issued in certain instances where entry was refused for a routine inspection, even when no violation of law is suspected. It may also be issued when a violation of fire safety laws is suspected.

- Two different types of facts constituting probable cause can be applied to the issuance of a fire inspection warrant. If entry for a routine inspection is denied, then facts constituting probable cause for the issuance of this inspection warrant center on the legal standards for selecting the site for an inspection and the documentation as to how the selection process is executed. If entry is in connection with a specific violation, then facts constituting probable cause for the issuance of the inspection warrant center on the evidence of the violation.

- A judge or magistrate may issue the fire inspection warrant.

- The warrant may be issued to a fire marshal; however, if forcible entry is sought, then the warrant must be issued and executed jointly by a law enforcement officer and a fire marshal.

- The warrant may be effective for a shorter period of time (up to seven days) but may also be renewed or extended for an additional period (up to seven days). It must be returned to the issuing judge or magistrate, who sends it to circuit court.

- The judge or magistrate may receive information not in the affidavit by examining the affiant under oath to verify data in the affidavit. This information should be reduced to writing.

- Judicial review prior to its return is limited to:

  – defense to a contempt action

  – motion by owner or custodian of property with affidavit containing a substantial preliminary showing accompanied by an offer of proof that

  – a false statement (made knowingly and intentionally or with reckless disregard of the truth) was made by the affiant in the affidavit, and

  – the false statement was necessary to the finding of probable cause.

The review is conducted expeditiously *in camera* (in private, not in open court).

- After execution and return of the warrant, the validity of the warrant may be reviewed as a defense to the citation. It is confined to the face of the warrant and the affidavits unless the owner, operator or agent in charge makes a substantial showing by affidavit accompanied by an offer of proof that

  – a false statement (knowing and intentionally, or with reckless disregard for the truth) was made in support of the warrant, and

  – the false statement was necessary to the finding of probable cause.

  – This review is limited to determining whether there is substantial evidence in the record supporting the decision to issue the warrant.

In this process, the AFFIDAVIT FOR FIRE INSPECTION WARRANT, DC-380, and the FIRE INSPECTION WARRANT, DC-381, are to be used.

8. Freedom of Information Act--Injunctions or Writs of Mandamus

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

- A petition is drafted and filed in the general district or circuit court by the person seeking to enforce these rights. It may be in the form of a formal petition or some other writing. The PETITION AND AFFIDAVIT FOR GOOD CAUSE FOR INJUNCTION OR WRIT OF MANDAMUS--FREEDOM OF INFORMATION ACT, DC-495, may be used for this petition.

- The clerk indexes the petition as a civil case, collects civil fees and sheriff's service fees, issues a SUMMONS FOR HEARING, DC-430, with a copy of the petition. This summons is to be served on the appropriate government official or employee whom the claimant identifies as the person upon whom process is to be served.

If the claimant seeks a preliminary injunction, the case may be heard without notice to the other party if there is not enough time to permit process to be served on the government official or employee. If a preliminary injunction is entered, a subsequent hearing should be held to address the issue of whether a final injunction should be issued.

The ORDER GRANTING PETITION FOR INJUNCTION OR WRIT OF MANDAMUS, DC-496, should be used to either grant or deny the requested relief. The case is tried as an equity case.

If a preliminary or final order is entered, the sheriff should be promptly contacted to insure prompt, timely service of the injunction or the writ of mandamus.

9. Restricted Driver's License

   a. Conviction Outside Virginia of Driving While Intoxicated

While most matters regarding driving while intoxicated cases are handled as criminal matters in Chapter III TRAFFIC CASE PROCEDURES, one exception exists. If a Virginia motorist is convicted in another state of driving while intoxicated, the motorist may petition a general district court *in a civil action* for a restricted driver's license pursuant to Va. Code § 18.2-271.1(D). The provisions applicable to Suits in Debt, Section V., are also applicable to these cases, except as follows:

Case Initiation -Motorist files petition (which may be in any form, including a letter) with the general district court clerk in the locality where the petitioner resides together with the court-processing fee. The petition should include the offense date and the date and place of conviction.

The clerk's office collects civil fees, indexes the petition as a new civil case, and treats the civil case as an "in re" proceeding; therefore, there is no defendant to serve. The defendant field in CMS should be explained as follows: Petition for Rest. OL 18.2-271.1(D).

b. Case Hearing, Judgment And Post-Trial Procedures

If the petition is granted, the clerk prepares a RESTRICTED DRIVER'S LICENSE & ENTRY INTO ALCOHOL SAFETY ACTION PROGRAM, DC-265, and the VASAP copy is transmitted to VASAP. However, if the judge finds that the motorist has a prior conviction for driving while intoxicated, the restricted driver's license order may not be effective for at least four months. A copy of the RESTRICTED DRIVER'S LICENSE & ENTRY INTO ALCOHOL SAFETY ACTION PROGRAM, DC-265, and the petition are sent to the Department of Motor Vehicles.

10. Isolation of Certain Persons with Diseases

a. Code §§ 32.1-48.01 through 32.1-48.04 govern petitions for the isolation of persons with certain communicable diseases. The provisions and procedures are loosely patterned after the procedures for hearing cases for involuntary commitment of mentally ill persons. The procedures involve:

The filing of a petition by the Commissioner of Health or his designee.

The judge may issue a temporary detention order to have the defendant detained if the defendant cannot be conveniently brought before the court, subject to the statutory limits on such detention. Otherwise, a SUMMONS FOR HEARING, DC-430, is issued. In either event, a copy of the petition is attached to the copy of the order or summons served on the defendant.

If a temporary detention order is issued, the hearing must be held within 48 hours after execution of the order. However, if the time period ends on a Saturday, Sunday or legal holiday, the time period may be held within 72 or 96 hours after execution.

The judge must inform the defendant of his right to counsel and, if not represented, must appoint counsel. If requested, the judge must allow a reasonable opportunity to employ counsel at defendant's expense if requested.

Prior to the hearing, the judge must inform the defendant of the basis for detention and the right of appeal.

In order to issue an isolation order, the court must make certain statutory findings. The order is valid only for 120 days.

Appeals must be noted within thirty days from entry of the order.

11. Testing for Blood-Borne Pathogens

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, the person allegedly carrying the blood-borne pathogens may be requested to submit to testing for hepatitis B or C virus and human immunodeficiency virus as provided in Va. Code § 32.1-37.2. Prior to performing any test for the human immunodeficiency virus, the medical care provider shall inform the patient that he has the right to decline the test. If the alleged carrier refuses to consent to testing, or if the individual who is the basis of the exposure is deceased and consent for testing has been refused by the decedent's next of kin, a petition may be filed in general district court to order testing and disclosure of its results. The process is:

- A petition is filed and case scheduled.
- The clerk's office prepares the notice portion of the PETITION TO TEST FOR BLOOD BORNE PATHOGENS, DC-405, and the petition is served. The petition is also sent for service on the Director of the local Health Department, along with a summons to attend the hearing.
- The judge conducts a hearing and enters an appropriate order as provided in Va. Code § 32.1-45.2. In determining whether an "exposure-prone incident" has occurred, the judge shall be advised by the Director of the local Health Department, as the designee of the State Health Commissioner.
- The results of the tests and the case record shall be confidential as provided in Va. Code § 32.1-36.1. The case record shall be sealed.

12. Enforcement of Statutory Liens (Va. Code § 43-34)

In addition to the special provisions in Va. Code § 43-33 for the owner to recover the property held under a mechanic's lien (*see* LIEN OF MECHANIC FOR REPAIR, *earlier*), certain statutory lien holders (innkeepers, livery stable, garage and marina keepers, mechanics and bailees) may bring a civil action to obtain a court order authorizing the sale of personal property held under a statutory lien to satisfy the debt for which the lien arose. In general district court actions, the right to file such an action arises if the *value of the property* held under such a lien (not the debt for which the lien arose) exceeds $5,000 but does not exceed $15,000. Applying Va. Code § 43-34, the applicable procedures are:

- The lien holder files a petition and pays the processing fee.
- The clerk prepares and issues a SUMMONS FOR HEARING, DC-430, with a copy of the petition attached to each copy of the summons. If the present owner of the property is a nonresident, or his address is unknown, notice may be served

by posting such copy in three "public places" (as defined in Va. Code § 43-34) in the county or city wherein the property is located.

- a hearing is conducted.

- If the court is satisfied that the debt and lien are established by the evidence and that the property should be sold to pay the debt, the court orders the sale to be made by the sheriff of the county or city. If the property to be sold is a motor vehicle and the vehicle is owned by an active duty member of the military, the lienholder shall comply with the provisions of the federal Servicemembers Civil Relief Act when disposing of the vehicle, even if the value of the vehicle is less than $7,500.

13. Human Rights Violations

a. Local Ordinances

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

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

b. Wrongful Discharge Claims

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

The employee may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly discharged the employee in violation of this section. Any such action shall be brought within 300 days from the date of the discharge. The court may award up to twelve months' back pay with interest at the judgment rate. However, if the court finds that either party engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment without regard to the twelve-month limitation.
In any case where the employee prevails, the court shall award attorney's fees from the amount recovered, not to exceed twenty-five percent of the back pay awarded. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

14. Arbitration Proceedings

Arbitration is a dispute resolution method where a neutral third party renders a decision after a hearing in which both parties can be heard. It is intended to avoid the delay, formality, and expense of litigation. The courts, however, can enforce arbitration agreements, when a party allegedly does not comply with the agreement.

a. Proceedings to Compel or Stay Arbitration

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

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

If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications for refusal to arbitrate, the application shall be made in that court. Otherwise, the application may be made in any court of competent jurisdiction.
An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or because any fault or grounds for the claim sought to be arbitrated have not been shown. Va. Code § 8.01-581.02.

b. Appointment of Arbitrators

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

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

c. Witnesses, Subpoenas, Depositions

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

d. Change of Award by Arbitrators

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

e. Confirmation of an Award

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

f. Vacating an Award (Va. Code § 8.01-581.010)

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

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

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

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

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

If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

g. Modification or Correction of Award (Va. Code § 8.01-581.011)

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

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

- The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

- The award is imperfect in a matter of form, not affecting the merits of the controversy.

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

An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

h. Judgment or Decree on Award (Va. Code § 8.01-581.012)

Upon granting an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity therewith and be docketed and enforced

as any other judgment or decree. The court may award costs of the application, proceedings, and disbursements.

i. Applications to Court (Va. Code § 8.01-581.013)

An application to the court shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

j. Venue (Va. Code § 8.01-581.015)

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

k. Appeals (Va. Code § 8.01-581.016)

An appeal may be taken from:

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

The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

15. Protective Orders- Stalking or Serious Bodily Injury

a. Overview

Stalking is defined by Va. Code § 18.2-60.3 as “Conduct directed at another person with the intent to place, or with the knowledge that the conduct places that

other person in reasonable fear of death, criminal sexual assault or bodily injury to that other person or to that other person's family or household member."

General district courts have jurisdiction to issue protective orders in cases where an individual engages in stalking or a criminal offense resulting in serious bodily injury to the victim and the object of the stalking or criminal offense is not a family or household member of the alleged stalker.

A violation of an emergency protective order issued pursuant to Va. Code § 19.2-152.8, or a preliminary protective order issued pursuant to Va. Code § 19.2-152.9, or a protective order issued pursuant to Va. Code § 19.2-152.10 is punishable as a class one misdemeanor pursuant to Va. Code § 18.2-60.4

The Department of State Police shall keep and maintain a computerized Protective Order Registry. The purpose of the Registry shall be to assist the efforts of law-enforcement agencies to protect their communities and their citizens.

16. Emergency Protective Orders

    a. Types of Protective Orders

    Any judge or magistrate may issue a written or oral *ex parte* emergency protective order, using the EMERGENCY PROTECTIVE ORDER – STALKING/ SERIOUS BODILY INJURY, DC-382. Va. Code § 19.2-152.8.

    This order prohibits further acts of stalking and/or acts of violence and may prohibit contact between the victim or his or her family or household members and the respondent. This order expires 72 hours after issuance, whether served or not.

    If the order was issued orally, it must be verified by the judge or magistrate. After any required verification, all of these emergency orders are to be returned to the general district court to be filed, regardless of who issued them or of the relationship between the parties. The fact that an emergency protective order has been issued will be entered on the appropriate CMS screen. No hearing is held and no further action is taken, with the exception that the respondent may request a hearing to dissolve or modify the order.

17. Preliminary Protective and Protective Orders

    The general district court may issue preliminary protective orders (Va. Code § 19.2-152.9) and protective orders (Va. Code § 19.2-152.10) in cases of stalking or criminal offense resulting in a serious bodily injury where the parties are not within the jurisdiction of the juvenile and domestic relations district court. The

alleged victim may request either type of order using the PETITION FOR A PROTECTIVE ORDER – STALKING/ SERIOUS BODILY INJURY, DC-383.

If the petitioner alleges that he/she has, within a reasonable time, been subjected to stalking or a criminal offense resulting in serious bodily injury and that a warrant has been issued for the arrest of the alleged stalker or offender, a PRELIMINARY PROTECTIVE ORDER – STALKING/ SERIOUS BODILY INJURY, DC-384, may be issued *ex parte*.

A hearing is scheduled on the petition within 15 days. Either party may, at any time, file a motion requesting a hearing to dissolve or modify the order.

a. Procedures for Emergency Protective Order – Stalking/Serious Bodily Injury:

	PROCEDURE	**COMMENTS**
Step 1	Either a law enforcement officer or person who has been stalked or is the victim of a criminal offense involving serious bodily injury may petition for an emergency protective order, using the PETITION FOR A PROTECTIVE ORDER – STALKING/SERIOUS BODILY INJURY, DC-383. The petitioner will provide information by completing form DC-621, Non-Disclosure Addendum and form DC-651, Addendum-Protective Order. Victim asserts, under oath, that he/she is being or has been subject to stalking or a or a criminal offense resulting in serious bodily injury to the alleged victim. **Note:** Proper venue for this type of protective order is where the underlying criminal offense occurred.	PETITION FOR A PROTECTIVE ORDER – STALKING/SERIOUS BODILY INJURY, DC-383 is completed by law enforcement officer or alleged victim; signed by them. Depending upon the circumstances, the magistrate or judge may issue either a written or oral emergency protective order where a person has violated Va. Code §18.2-60.3 or has committed an offense involving serious bodily injury.
Step 2	If the alleged victim or officer seeks a warrant for stalking pursuant to Va. Code § 18.2-60.3 or for a crime involving serious bodily injury and the magistrate requires the complainant to complete Form DC-311, Criminal Complaint to document the facts for the criminal charge, the magistrate may use this form as the petition for the emergency protective order.	In such case, the magistrate would type "See attached criminal complaint" in the **"REQUEST FOR EMERGENCY PROTECTIVE ORDER"** section of Form DC-382, EMERGENCY PROTECTIVE ORDER - STALKING/SERIOUS BODILY INJURY**.**

Step 3	Judge or magistrate makes determination that there is probability of further such offense and issues order. The emergency protective order hearing is ex parte.	In order to issue the emergency protective order, the judge or magistrate must find that: 1) There is probable danger that the respondent will commit a further act of stalking or an offense involving serious bodily injury against the victim, **and** 2) Magistrate or judge has issued a warrant for stalking or for an offense involving serious bodily injury.
Step 4	Order entered. **Note:** The emergency protective order expires at the end of the third day following issuance. If the expiration occurs at a time that the court having jurisdiction over the underlying criminal warrant is returnable is not in session, the order is extended until the end of the next business day that such court is in session. The legislative history indicates that the term "*in session*" means when the court to which the order is returnable normally is scheduled to convene. If the court to which the emergency protective order is returnable convenes for an emergency hearing on a day other than its normally scheduled date, the court is not in session for purposes of this statute.	The judge or magistrate may order any or all of the following conditions as part of the emergency protective order: Prohibit further acts of violence or acts of stalking; Prohibit contacts of any kind by the respondent with the victim or the victim's family or household members; or Any condition deemed necessary to prevent further acts of stalking or crimes involving serious bodily injury, communication or other contact by the respondent.

Step 5	Copy of the DC-621, NON-DISCLOSURE ADDENDUM, is attached to the petitioner's copy only. The protective order will not contain personal information about the alleged victim. The DC-621, NON-DISCLOSURE ADDENDUM is used to record this sensitive data. The DC-621, NON-DISCLOSURE ADDENDUM 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 his family except as required by law, as necessary for law enforcement purposes or by order for good cause shown. This non-disclosure provision is mandatory and the protected person does not have to file a DC-301, REQUEST FOR CONFIDENTIALITY BY CRIME VICTIM, to prevent disclosure.
Step 6	DC-651, ADDENDUM-PROTECTIVE ORDER delivered to primary law-enforcement agency for service. No fee shall be charged for serving any petition. Va. Code § 19.2-152.8 (J).	Upon receipt of the order and addendum by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network (VCIN)
Step 7	Primary law enforcement makes service forthwith upon the respondent.	If law enforcement fails to personally serve the respondent before the expiration time and date listed in the order, the order is not valid.
Step 8	Once the officer has executed the order by serving a copy on the respondent, the agency must enter the date and time of service and other appropriate information required into VCIN.	
Step 9	Primary law enforcement destroys copy of DC-621, NON-DISCLOSURE ADDENDUM upon service on petitioner and delivers original to the clerk's office. The DC-651, ADDENDUM-PROTECTIVE ORDER will be returned to the clerk's office to be placed in the court file.	If not destroyed, clerk should shred the DC-621 ***service copy*** when it is returned to the clerk's office.

Step 10	Clerk assigns a new case in Civil Division with Case Type – **PE**. Enter respondent's information based on the DC-651, ADDENDUM-PROTECTIVE ORDER. The original copy shall be filed with the clerk of the appropriate district court within 5 business days of the issuance of the order.	All emergency protective orders, except those cases involving stalking or criminal offenses involving serious bodily injury and the respondent and victim are family or household members, are returnable to the general district court.
Step 11	No fee shall be charged for filing any petition. Va. Code § 19.2-152.8 (J). The clerk will send data electronically (through CMS) to the Virginia Criminal Information Network system. For instruction on entering PPO refer to CAIS Gen Dist Case Management Systems User's Guide pages F-24 through F-27. (The current version is available via the intranet at http://oesint/publications/user manuals.) Enter in Protective Order Entry Screen **only** if order has not expired.	Upon request, the clerk shall provide the alleged victim of such crime with information regarding the date and time of service. If the order is later dissolved or modified, a copy of the dissolution or modification order shall be forwarded forthwith to the primary law enforcement agency and the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by VCIN. If order is dissolved, use DC-652, ORDER DISSOLVING PROTECTIVE ORDER.
Step 12	Respondent will surrender any Concealed Handgun permit, clerk will retain permit until the expiration date entered by the judge or magistrate.	Concealed handgun permit is to be returned, upon request, upon expiration of protective order.
Step 13	Clerk seals original DC-621, NON-DISCLOSURE ADDENDUM form and any other case-related documents that contain protected information and attaches to case papers.	*See* form DC-622, SEALED DOCUMENTS for sealing purposes.
Step 14	Clerk closes case in CMS with Disposition Code of 'O'.	

Step 15	Respondent may file a motion with the court to dissolve or modify the order. The Court must give precedence on the docket for such a motion.	If the order is later dissolved or modified, a copy of the dissolution or modification order shall be forwarded and entered in the system as described above. If order is dissolved, use DC-652, ORDER DISSOLVING PROTECTIVE ORDER.

b. The following procedures should be followed when processing a Preliminary Protective Order (PPO) or Protective Order (PO) – Stalking/Serious Bodily Injury:

	PROCEDURE	**COMMENTS**
Step 1	Alleged victim requests a Preliminary or Protective Order by filing DC-383, PETITION FOR PROTECTIVE ORDER-STALKING/SERIOUS BODILY INJURY along with DC-621, NON-DISCLOSURE ADDENDUM , and DC-651, ADDENDUM-PROTECTIVE ORDER. **Note:** No fees shall be charged for filing. Va. Code §§ 19.2-152.9 (E) and 19.2-152.10 (H).	Petition must be attested or an affidavit attached only if the petitioner is requesting the issuance of an *ex parte* preliminary protective order. Petitioner alleges that he/she has, within a reasonable time, been subjected to stalking or a criminal offense resulting in serious bodily injury and that a warrant has been issued for the arrest of the alleged stalker or offender
Step 2	Copy of DC-621, NON-DISCLOSURE ADDENDUM form is attached to Petitioner's copy only. The protective order will not contain personal information about the alleged victim. The Non-Disclosure Addendum (Form 621) 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 his family except as required by law, as necessary for law-enforcement purposes, or by order for good cause shown. This non-disclosure provision is mandatory and the protected person does NOT have to file form DC-301, REQUEST FOR CONFIDENTIALITY BY CRIME VICTIM to prevent disclosure.

Step 3	Clerk assigns a new case number and enters it in the Civil Division with a Case Type **'ST'.**	
Step 4	If requested, ex parte hearing held and order entered. This order is good for 15 days. Order should state date of full hearing.	At the hearing, a preliminary protective order may be issued, Va. Code § 19.2-152.9, using the DC-384, PRELIMINARY PROTECTIVE ORDER – STALKING/ SERIOUS BODILY INJURY upon a showing that: The petitioner alleges that he/she has, within a reasonable time, been subjected to stalking or a criminal offense resulting in serious bodily injury and that a warrant has been issued for the arrest of the alleged stalker or offender.
Step 6	Data is sent electronically (through CMS) to the Virginia Criminal Information Network. For instruction on entering the PPO refer to CAIS Gen Dist Case Management Systems User's Guide pages F-24 through F-27. (The current version is available via the intranet at http://oesint/publications/user manuals.)	The Clerk shall forthwith but in all cases no later than the end of the business day on the day the order is issues, send a copy of the DC-384, PRELIMINARY PROTECTIVE ORDER-STALKING/SERIOUS BODILY INJURY to the appropriate law enforcement agency for their review and verification of entry into VCIN. The DC-651, ADDENDUM-PROTECTIVE ORDER should be attached to the documents with a note indicating that the form is to be used by law enforcement for entry of information into VCIN and to note any changes to the information upon service of the respondent. Upon request after the order is served, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service

Step 7	The primary law enforcement agency destroys copy of DC-621, NON-DISCLOSURE ADDENDUM form upon service on petitioner and delivers original to the clerk's office.	If not destroyed, clerk should shred the DC-621 ***service copy*** when it is returned to the clerk's office. The DC-651 may be returned to the court with changes to the respondent's information. The form is to be filed with the case papers. DO NOT perform a new VCIN entry as law enforcement is responsible for entering those changes into VCIN. Only perform VCIN entries when a new order is entered.
Step 8	Upon motion of the respondent and for good cause shown, the court may continue the hearing. If the court does not find good cause and does not continue the "15 day hearing," the PPO shall remain in effect until the hearing.	The respondent is the only party that may be granted a request for continuance.
	Upon granting the respondent's request for a continuance, the Court should reissue the PPO, with a new expiration date reflecting the continuance. The conditions of the initial PPO will be reflected in the subsequent order. This subsequent order must be served on the parties, forwarded to the local law enforcement agency, entered into CMS. For instruction on entering the PPO refer to CAIS Gen Dist Case Management Systems User's Guide pages F-24 through F-27. (The current version is available via the intranet at http://oesint/publications/user manuals.)	At the judge's discretion, a preliminary protective order may be issued for up to another 15 days OR, with the consent of the respondent or his/her counsel, a protective order is issued until the subsequent hearing date and time beyond the 15 day limitation for preliminary protective orders. The clerk shall attach a copy of DC-621, NON-DISCLOSURE ADDENDUM form to Petitioner's copy ONLY for service purposes, at which time the serving officer will destroy the copy.

Step 9	Full hearing held. A PROTECTIVE ORDER may be issued for a period of up to two years. The protective order shall expire at the end of the last day identified for the two-year period and if no date is identified, it shall expire at the end of the two years following the date of issuance. The clerk shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer identifying information electronically (through CMS) to the Virginia Criminal Information Network . For instructions on entering the PO refer to CAIS Gen Dist Case Management Systems User's Guide pages F-24 through F-27. (The current version is available via the intranet at http://oesint/publications/user manuals.)	At the full hearing on the petition, the Court may issue a protective order pursuant to Va. Code § 19.2-152.10 upon a showing that: a warrant has been issued against the respondent for stalking or for a criminal offense resulting in serious bodily harm to the petitioner, or a preliminary protective order has been issued, or the respondent has been convicted of stalking or a crime resulting in serious bodily harm to the petitioner.
Step 10	The clerk should serve a copy on the petitioner and respondent before leaving court, if at all possible. If service is not obtainable by the clerk, the clerk shall forthwith forward an attested copy of the protective order to the primary law-enforcement agency for service.	After receipt of the order by the primary law –enforcement agency for service, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information on the Virginia Criminal Information Network (VCIN).
Step 11	The order shall be served forthwith and the agency making service shall enter the date and time of service and other appropriate information into VCIN.	
Step 12	Respondent will surrender Concealed Handgun permit if any, clerk will retain permit until the expiration date entered by the judge or magistrate. Va. Code § 18.2-308.1:4.	Concealed handgun permit is to be returned, upon request, upon expiration of protective order, so long as the holder has not been convicted of a disqualifying offense. PPO – 15 days or longer if continued for good cause shown. PO – maximum of 2 years.

Step 13	Clerk closes case in CMS with Disposition Code of 'O'.	
Step 14	Respondent may file a motion with the court to dissolve or modify the order. The Court must give precedence on the docket for such a motion.	If the order is later dissolved or modified, a copy of the dissolution or modification order shall be forwarded and entered in the system as described above. If order is dissolved, use DC-652, ORDER DISSOLVING PROTECTIVE ORDER.

c. Forms

DC-382	Emergency Protective Order-Stalking/Serious Bodily Injury
DC-383	Petition for Protective Order-Stalking/Serious Bodily Injury
DC-384	Preliminary Protective Order-Stalking/Serious Bodily Injury
DC-385	Protective Order – Stalking/Serious Bodily Injury
DC-621	Non-Disclosure Addendum
DC-651	Addendum-Protective Order
DC-652	Order Dissolving Protective Order

d. Code References

Va. Code § 18.2-60.3
Va. Code §§ 19.2-152.8, 19.2-152.9, 19.2-152.10 and 19.2-390 amended.

e. Confidentiality Considerations

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."

See Va. Code §§ 16.1-253, -253.1, -253.4, -279.1, 17.1-272, 19.2-152.8.

Note: Protective orders have had the sensitive information removed from the order and placed on DC-621, NON-DISCLOSURE ADDENDUM which will be used for service purposes but otherwise maintained in a confidential area.

XIV. PROTECTIVE ORDERS IN CRIMINAL CASES

Criminal convictions of stalking pursuant to Va. Code § 18.2-60.3 REQUIRE the court to issue an order prohibiting contact between the defendant and the victim or the victim's

family or household member. Most convictions under the statute will be classified as Class 1 misdemeanors; however, a third or subsequent conviction occurring within five years of a conviction for an offense under this section shall be a Class 6 felony.

Va. Code § 19.2-152.8 provides for the issuance of protective orders following incidents of stalking and acts of violence resulting in serious bodily injury to a person. In order to obtain a protective order under these provisions, an arrest warrant must have been issued for the alleged perpetrator.

	PROCEDURE	**COMMENTS**
Step 1	A stalking conviction entered by a court from a warrant issued following acts of violence of stalking REQUIRE the court to issue an order prohibiting contact between the defendant and the victim or the victim's family or household member, if one is not already in place. Clerk sets up case in the Civil Division with a Case Type **'PC'**.	The Court will issue a protective order pursuant to Va. Code § 19.2-152.10 because the respondent has been convicted of stalking or a crime resulting in serious bodily harm to the petitioner. No filing costs or service fees are assessed for the protective order. Va. Code §§ 19.2-152.10 and 17.1-272(B). Law enforcement should serve a copy on the defendant and victim immediately, before they leave.
Step 2	A PROTECTIVE ORDER may be issued for a period of up to two years. The clerk shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer identifying information electronically (through CMS) to the Virginia Criminal Information Network . For instruction on entering the PO refer to CAIS Gen Dist Case Management Systems User's Guide pages F-24 through F-27. (The current version is available via the intranet at http://oesint/publications/user manuals.)	**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 his family except as required by law, as necessary for law-enforcement purposes, or by order for good cause shown.
Step 3	Clerk closes case in cms with disposition code of "o"	

Step 4	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	Concealed handgun permit is to be returned, upon request, upon expiration of 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.
Step 5	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 protective order shall be given precedence on the docket.	The Court must give precedence on the docket for such a motion. **SPECIAL NOTE:** DOC, Local law enforcement or regional jail director shall give notice prior to the release from incarceration of any person upon a stalking conviction pursuant to this section, to any victim of the offense who, in writing, requests notice, or to any person designated in writing by the victim. Va. Code § 18.2-60.3 (E).

a. Forms

DC-385	Protective Order - Stalking
DC-621	Non-Disclosure Addendum

b. Code References

18.2-60.3	Stalking; penalty
19.2-152.10	Protective order in cases of stalking and acts of violence.

XV. FOREIGN PROTECTIVE ORDER

A foreign protective order is entitled to full faith and credit in Virginia. The person entitled to protection under this foreign order may file the order with the clerk of the appropriate district court. Va. Code § 19.2-152.10. The DC-684, FILING OF FOREIGN PROTECTIVE ORDER, may be used for this purpose.

Foreign protective orders are also eligible to be filed with the appropriate district court. Va. Code § 19.2-152.10. If filed in the juvenile and domestic relations district court, the same records management process applies. However, if filed in the general district court, a civil case number should be assigned and the order filed in the Disposed File unless a motion for modification or enforcement is filed simultaneously, at which time a sub-action number should be assigned to the motion, a hearing date set and the order and motion filed in the appropriate pending date file.

XVI. ANIMAL VIOLATIONS

A. Overview

Several sections of the Code of Virginia relate to the control and care of animals. This section provides recommended clerk's office procedures for handling cases filed pursuant to the statutes below. Although these violations are civil in nature, it is recommended that they be handled administratively in the clerk's office as criminal. Because these cases are being handled as criminal, to address any concerns with public access, the Case Management System (CMS) will automatically preface the charge description field with the word "Civil", i.e. Civil – Animal Sterilization.

Va. Code Section 3.1-796.94 establishes local authority to adopt ordinances which parallel the relevant "animal violation" code sections, including Sections 3.1-796.84 through 3.1-796.93, Sections 3.1-796.95 through 3.1-796.104, Sections 3.1-796.115 through 3.1-796.119, Sections 3.1-796.121, 3.1-796.122, 3.1-796.126:1 through 3.1-796.126:7 and Sections 3.1-796.127 through 3.1-796.129.

Because Section 3.1-796.94 specifies that it not "be construed so as to prevent or restrict any local governing body from adopting local animal control ordinances which are more stringent" than those sections of the Virginia Code, it is possible that a case involving an "animal violation" may be filed under a local ordinance, with requirements that may be different from and may be more stringent than those of the specified state statutes and may result in different procedures in the clerk's office.

In the absence of a local ordinance adopted pursuant to Section 3.1-796.94, a violation of an "animal violation" statute is considered a "state violation."

B. Jurisdiction

The code sections listed below reflect the proper court jurisdiction:

3.1-796.93:1	General District ONLY (includes juveniles)
3.1-796.115	General District ONLY (includes juveniles)
3.1-796.116	General District ONLY (includes juveniles)
3.1-796.126:1	General District & JDR
3.1-796.126:3	General District & JDR
3.1-796.126:4	General District & JDR

C. Declaration of Dog as Dangerous or Vicious 3.1-796.93:1

Note: Case is filed in the General District Court only, even if the owner/defendant is a juvenile.

PROCEDURE	**COMMENTS**

Step 1	Complaint is filed with the Magistrate. Clerk's Office receives from the DC-396, SUMMONS - DANGEROUS OR VICIOUS DOG. The clerk's office may receive DC-395, AFFIDAVIT FOR SUMMONS FOR DANGEROUS OR VICIOUS DOG along with the summons.	The statute indicates that the procedure for appeal and trial shall be the same as provided by law for misdemeanors. Declaration of a dog as dangerous or vicious is civil in nature but will be handled administratively as criminal. No fine, civil penalty, or court costs are authorized by statute.
Step 2	Case entry in CMS: assign criminal case number and enter case in CMS in the Criminal Division. Case type = AV (Animal Violation) Charge = Civil; Dangerous/Vicious Dog Enter subsequent action numbers for any additional defendants/owners listed on summons. Make a copy of the case for the subsequent parties, number them and highlight the name that coincides with the case number. Defendant/owner may be an adult or a juvenile. "Def St" (Defendant Status) field = A (Adult) or M (Minor).	Not reportable to State Police or DMV as a conviction. Juvenile defendant/owner: Entry of "M" in CMS will prevent the juvenile's name from appearing on a public access terminal or on the internet. Name field on the docket will appear as "minor." It is important to index cases properly to ensure confidentiality is maintained when a minor is involved.
Step 3	Following hearing, update criminal H/D screen in CMS. "F/W/C" field in CMS = F (Finalized) "F DISP" field in CMS = OT (Other) or = I (Dismissed) Enter in "Remarks" the disposition of the case.	Disposition is to determine whether the dog is dangerous or vicious; or neither dangerous nor vicious. No fine, civil penalty, or court costs are authorized by statute. The court, through its contempt powers, may issue a criminal or civil show cause to compel the owner, custodian or harborer of the animal to produce the animal at a specific location and/or a specific time.

Step 4	Process as criminal appeal.	Use DC-370, NOTICE OF APPEAL – CRIMINAL, see step-by-step procedure in APPENDIX C

D. Seizure and Impoundment of Animals 3.1-796.115

Note: Case is filed in the General District only, even if the owner/defendant is a juvenile.

	PROCEDURE	**COMMENTS**
Step 1	Upon seizing or impounding an animal, a humane investigator, law-enforcement officer or animal control officer shall petition the general district court in the city or county wherein the animal is seized for a hearing. The hearing shall be not more than ten business days from the date of the seizure of the animal. The humane investigator, law-enforcement officer, or animal control officer shall cause to be served upon the owner/custodian notice of the hearing at least five days prior to the hearing. If the owner/custodian is known but residing out of the jurisdiction where such animal is seized, written notice by any method or service of process as is provided by the Code of Virginia shall be given. If the owner/custodian is not known, service may be effected by the humane investigator, law-enforcement officer, or animal control officer through an order of publication procedure.	The statute directs that the procedure for appeal and trial shall be the same as provided by law for misdemeanors. Clerk's office receives petition or local form prepared by the locality. Magistrate not involved. Service of process is issued by officer, not the Clerk's Office. If the owner of the animal or the custodian is not known, the locality is responsible for order of publication and posting of the publication, not the clerk's office. Any locality may, by separate ordinance, require the owner of any animal held pursuant to this subsection for more than 30 days to post a bond in surety with the locality, not the clerk's office, for the amount of the cost of boarding the animal.

Step 2	Case entry in CMS: assign criminal case number and enter case in CMS in the Criminal Division. Case type = AV (Animal Violation) Charge = Civil: Seize/Impound Animal Enter subsequent action numbers for any additional defendants/owners listed on petition. Make a copy of the case for the subsequent parties, number them and highlight the name that coincides with the case number. **DEFENDANT/OWNER MAY BE AN ADULT OR A JUVENILE. "DEF ST" (DEFENDANT STATUS) FIELD = A (ADULT) OR M (MINOR).**	Not transmittable to State Police or DMV as a conviction. Juvenile defendant/owner: Entry of "M" in CMS will prevent the juvenile's name from appearing on a public access terminal or on the internet. Name field on the docket will appear as "minor." It is important to index cases properly to ensure confidentiality is maintained when a minor is involved.
Step 3	Following hearing, update criminal H/D screen in CMS. "F/W/C" field in CMS = F (Finalized) "F DISP" field in CMS = OT (Other) Enter in "Remarks" the disposition of the case.	While the locality may adopt an ordinance that parallels the state statute, the state statute does not provide for a civil penalty or court costs. The court shall order the owner to pay all reasonable expenses incurred in caring and providing for the animal following seizure directly to the provider of such care.
Step 4	Handle appeal as a criminal case.	Use DC-370, NOTICE OF APPEAL – CRIMINAL, see step-by-step procedure in APPENDIX C.

E. Dogs Killing, Injuring or Chasing Livestock or Poultry Va. Code § 3.1-796.116

Note: Case is filed in the General District only, even if the owner/defendant is a juvenile.

	PROCEDURE	**COMMENTS**
Step 1	Complaint filed with Magistrate. Clerk's Office receives DC-398, Warrant – Depredation By Dog and may also receive DC-397, Affidavit For Warrant For Depredation By Dog.	

Step 2	Case entry in CMS: assign criminal case number and enter case in CMS in the Criminal Division. Case type = AV (Animal Violation) Charge = Civil: Dogs/Livestock Enter subsequent action numbers for any additional defendants/owners listed on warrant. Make a copy of the case for the subsequent parties, number them and highlight the name that coincides with the case number. Defendant/owner may be an adult or a juvenile. "Def St" (Defendant Status) field = A (Adult) or M (Minor).	Not reportable to State Police or DMV as a conviction. Juvenile defendant/owner: Entry of "M" in CMS will prevent the juvenile's name from appearing on a public access terminal or on the internet. Name field on the docket will appear as "minor." It is important to index cases properly to ensure confidentiality is maintained when a minor is involved.
Step 3	Following hearing, update H/D Screen in CMS. "F/W/C" field = F (Finalized) "F DISP" field = OT (Other) Enter in "Remarks" the disposition of the case.	While the locality may adopt an ordinance that parallels the state statute, the state statute does not provide for a civil penalty or court costs. The court, through its contempt powers, may issue a criminal or civil show cause to compel the owner, custodian, or harborer of the dog to produce the dog to a specific location and/or a specific time.
Step 4	If an appeal is noted, handle appeal as a criminal appeal.	Use DC-370, NOTICE OF APPEAL – CRIMINAL, see step-by-step procedure in APPENDIX C.

F. Sterilization of Animals

The following procedures are recommended for cases in violation of:

3.1-796.126:1-Sterilization of Adopted Dogs and Cats
Enforcement – Civil penalty up to $50.

3.1-796.126:3-Sterilization confirmation
Enforcement – Civil penalty up to $150.

3.1-796.126:4 - Notification concerning lost, stolen or dead adopted dogs or cats.
Enforcement – Civil penalty up to $25.

Note: Locality may adopt more stringent ordinance with civil penalty up to $150 pursuant to Va. Code § 3.1-796.94.

	PROCEDURE	**COMMENTS**
Step 1	Clerk's Office receives: Virginia Uniform Summons filed by officer, or Local summons or ticket	Violation of these statutes may result in a civil penalty. Additionally, pursuant to 3.1-796.126:3(E), the clerk's office may receive a separate petition filed by an animal control officer, humane investigator, the State Veterinarian or representative for enforcement. At that time the court may order the new owner to take any steps necessary to comply. This remedy would be exclusive of and in addition to any civil penalty that may have already been imposed and would be handled separately.
Step 2	Case entry in CMS: assign criminal case number and enter case in CMS in the Criminal Division. Case type = AV (Animal Violation) Charge = Civil: Animal Sterilization	Not reportable to State Police or DMV as a conviction.
Step 3	Following hearing, update criminal H/D Screen in CMS, assessing civil penalty and no costs, which will automatically set up an individual account in FMS. "F/W/C" field = F (Finalized) "F DISP" field = OT (Other) FMS account codes: 239 (primary locality) or 240 (secondary locality).	Any and all civil penalties assessed shall be paid into the treasury of the city or county in which the civil action is brought regardless of who initiates the case. Va. Code § 3.1-796.126:7.
Step 4	Handle appeal as criminal case.	Use DC-370, NOTICE OF APPEAL – CRIMINAL, see step-by-step procedure in APPPENDIX C.

1. Forms

	Virginia Uniform summons
DC-370	Notice of Appeal-Criminal
DC-395	Affidavit For Summons for Dangerous or Vicious Dog
DC-396	Summons for Dangerous or Vicious Dog
DC-397	Affidavit For Warrant For Depredation By Dog
DC-398	Warrant-Depredation by Dog

2. Code References:

3.1-796.93:1	Control of dangerous or vicious dogs; penalties.
3.1-796.94	Governing body of county, city, or town may adopt certain ordinances.
3.1-796.115	Seizure and impoundment of animals; notice and hearing; disposition of animal; disposition of proceeds upon sale. Dogs killing, injuring or chasing livestock or poultry.
3.1-796.126:1	Sterilization of Adopted Dogs and Cats.
3.1-796.126:3	Sterilization confirmation.
3.1-796.126:4	Notification concerning lost, stolen or dead adopted dogs or cats.
3.1-796.126:7	Civil penalties.

XVII. *PRO SE* LAWSUITS BY PRISONERS

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

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

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

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

Following the granting of *in forma pauperis* status or upon the receipt of the proper filing fees, section 8.01-694 directs the court to "serve" the motion for judgment and supporting Papers on the Office of the Attorney General. The Office of the Attorney General is willing to accept this service by mail. The address to be used is: Correctional Litigation Section, Office of the Attorney General, 900 East Main Street, Richmond, VA 23219.

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

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

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

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

XVIII. DISCOVERY OF MEDICAL RECORDS

Virginia law protects the privacy of medical records subpoenaed during litigation. These protections apply to both parties and non-party witnesses. Before disclosure occurs, patients whose records are requested must receive notice of the request and must have at least 15 days to file an objection. Disclosure may occur only after the patient (1) consents to the request (2) fails to object within 15 days or (3) files a motion to quash which is overruled by a court.

These restrictions apply both to attorney-issued subpoenas and requests for the issuance of a subpoena to the clerk of court.

A. Who Must Be Notified

Unless exempted from provisions of Va. Code § 32.1-127.1:03(H), a party who subpoenas medical records is subject to heightened notification requirements. When records of a party represented by counsel are subpoenaed, counsel must be notified. When the records of a *pro se* party or non-party witness are requested, notification must be provided to the person whose health care records are to be provided. The requesting party is also required to transmit notification to the health care provider in possession of the records.

B. Form of Notification

Notification must include both a copy of the subpoena or request(s) for subpoena and a statutorily required statement outlining the procedures governing requests for medical records. The text of the statement to be provided to the party whose records are requested is specified in Va. Code § 32.1-127.1:03(H)(1). DC-348, NOTICE TO INDIVIDUAL—SUBPOENA DUCES TECUM FOR HEALTH RECORDS. The text of the statement to be provided to health care providers is specified in Va. Code § 32.1-127.1:03(H)(2). DC-350, NOTICE TO HEALTH CARE ENTITIES—SUBPOENA DUCES TECUM FOR HEALTH RECORDS.

C. Return Date

The return date of any subpoena duces tecum requesting the disclosure of medical records must be at least 15 days after the "date of the subpoena." An earlier return date is permissible only if authorized by court order for good cause shown.

D. Transmittal of Records/Motion to Quash

Either the patient and/or health care provider may move to quash the subpoena. If no motion to quash is filed within 15 days, the requesting party must certify this fact to the health care provider holding the records. The health care provider then has 5 days or until the return date of the original subpoena to transmit the records, whichever is later. While the statute is not explicit, it seems that, when no objection is filed, the

health care provider is to transmit the records to the requesting party. If the health care provider is informed that a motion to quash the subpoena has been filed, the health care provider is required to transmit the records to the clerk of court in a securely sealed envelope, pending adjudication of the motion(s) to quash. When all motions to quash have been adjudicated, the statute charges both the clerk and requesting party with important responsibilities.

Depending upon the resolution of the motion(s) to quash, the clerk must do one of three things:

- If the court determines that no submitted medical records should be disclosed, return all submitted medical records to the provider in a sealed envelope;

- If the court determines that all submitted medical records should be disclosed, provide all the submitted medical records to the party on whose behalf the subpoena was issued; or

- If the court determines that only a portion of the submitted medical records should be disclosed, provide such portion to the party on whose behalf the subpoena was issued and return the remaining medical records to the provider in a sealed envelope

While the clerk is responsible for transmitting the records, the requesting party must certify the result of the motion(s) to quash to the health care provider. Depending upon the outcome of the proceeding, five different certifications are possible:

- If all of the requests are upheld and the medical records have previously been delivered to the clerk, the requesting party must certify that none of the records will be returned to the provider.

- If all of the requests are upheld and no medical records have previously been delivered to the court by the provider, the requesting party certifies that the provider must transmit the medical records designated in the subpoena by the return date on the subpoena or five days after receipt of certification, whichever is later.

- If all of the requests are quashed but the requested medical records already have been delivered to the clerk, the requesting party must certify that the records will be returned to the provider.

- If the court determines that only some of the requested records are to be disclosed, the requesting party must certify to the provider which record(s) are subject to disclosure. If the requested records have previously been transmitted to the clerk, the certification must inform the provider that that those medical records previously delivered to the court for which disclosure was authorized will not be returned to the provider; however, all medical

records for which disclosure has not been authorized will be returned to the provider.

- If only some of the requested records are to be disclosed, the requesting party must certify to the provider which record(s) are subject to disclosure. If the requested records have previously been transmitted to the clerk, the certification must inform the provider that that those medical records previously delivered to the court for which disclosure was authorized will not be returned to the provider; however, all medical records for which disclosure has not been authorized will be returned to the provider.

Each type of certification must indicate that the motion(s) to quash have been adjudicated and must include a copy of the court's order or ruling. The requesting party may not transmit certification until all motions to quash have been resolved.

E. Standards for Adjudicating Motions to Quash

If the patient or health care provider files a motion to quash, the requesting party must demonstrate "good cause" for the disclosure of the records. Va. Code § 32.1-127.1:03(H). In determining whether good cause has been shown, courts must consider:

- the particular purpose for which the evidence was collected
- the degree to which the disclosure of the records would embarrass, injure or invade the privacy of the individual
- the effect of the disclosure upon the individual's future health
- the importance of the information to the law suit or proceeding; and
- any other relevant factor.

F. Exceptions to Heightened Notification Requirements

The heightened notification requirements of Va. Code § 32.1-127.1:03(H) do not apply to requests by a "duly authorized administrative agency." The requirements are also inapplicable when a patient requests medical records from his own healthcare provider pursuant to Va. Code § 8.01-413.

XIX. REINSTATEMENT OF DRIVING PRIVILEGES- FAILURE TO SATISFY JUDGMENT

A person whose driver's license is suspended pursuant to Va. Code § 46.2-417 for failure to pay a judgment and who is unable to locate the judgment creditor may now petition the court in which the judgment was entered for reinstatement of his driver's license. Va. Code

§ 46.2-427. The petition is lodged using DC-472, PETITION FOR REINSTATEMENT OF DRIVING PRIVILEGES—FAILURE TO SATISFY JUDGMENT.

For such petitions to be granted, two conditions must be met. First, the petitioner must prove by a preponderance of the evidence that, after examining the records of the court in which judgment was entered and the records of the Department of Motor Vehicles and exercising due diligence, he was unable to locate the judgment creditor. If the judgment creditor is dead, the petitioner must prove that he was unable to identify the creditor's heirs or assigns or unable to determine where they are located. Second, the petitioner must pay into court an amount equal to the judgment plus court costs and accrued interest. Interest ceases to accrue when payment into court is made.

The court holds such payments for one year. If the payment is not claimed within this period, it is transmitted to the State Treasurer for disposal as unclaimed property.

When the two requirements for reinstatement are met, the court should transmit the order of reinstatement to the Commissioner of the Department of Motor Vehicles. The order is entered using DC-473, ORDER FOR REINSTATEMENT OF DRIVING PRIVILEGES—FAILURE TO SATISFY JUDGMENT.

XX. BANKRUPTCY

A. Types of Bankruptcy

1. CHAPTER 7

Known as "liquidation", typically, 70-80% of bankruptcy filings in Virginia are under this chapter. In the normal Chapter 7 case, the Trustee collects the nonexempt property of debtor, converts the property to cash and distributes the cash to creditors pursuant to statutory priorities while the debtor obtains a "discharge" (release) from personal liability of Dischargeable Debts. Discharge is granted in 60 days after the date first set for creditors meetings unless extended by the Court or an objection is filed.

2. CHAPTER 11

Generally used by business and individual debtors who do not meet Chapter 13 requirements regarding total debt. This chapter, entitled "Reorganization" contemplates debtor rehabilitation. The Debtor generally retains the assets, makes payments to creditors pursuant to court order approved plan from post petition earnings and obtains a discharge from all debt not paid pursuant to the plan. Final discharge order can take up to 10 years for conclusion.

3. CHAPTER 13

Entitled "Adjustment of Debts of an Individual with Regular Income" (assume cure, promise), Chapter 13 is the second most commonly used petition by an individual debtor.

A Chapter 13 petition can only be filed by an individual with regular incomes that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than $100,000 and noncontingent, liquidated, secured debts of less than $350,000. The debtor retains assets, makes payments to the Trustee through court-approved plan, the Trustee sends payments to creditors, and obtains a discharge from all debt not paid pursuant to the plan. The plan may only be filed by the debtor and cannot exceed 5 years in length. Creditors accept payments from the Trustee but when the Discharge order is entered at the conclusion of the case (cannot exceed 5 years), if part of the debt remains, it is discharged and no longer enforceable.

B. Definitions

1. Automatic Stay

When notice ***of filing*** of Bankruptcy petition received, the creditor (court to whom fines and costs are owed at the time the bankruptcy petition is filed) must cease **enforcement** for collection of the debt. Fines and costs debts incurred **after** the bankruptcy petition filing are not affected by the stay. ***Interest on fines and costs accrues during the stay.***

2. Bankruptcy

The state or condition of one who is unable to pay his debts as they are, or become, due. A bankruptcy proceeding is civil in nature and is intended to relieve an honest and unfortunate debtor of his debts and permit him to begin his financial life anew.

3. Discharge

Release (forgiveness) from indebtedness once the bankruptcy court enters an Order of Discharge. Please see the chart below for an explanation of what is dischargeable.

	CHAPTER 7	**CHAPTER 13**
Criminal Fine	NO	NO, if included in the sentence YES, if not included
Criminal Cost	NO	NO, if fine is not dischargeable
Traffic Fine	NO	YES
Traffic Cost	NO	YES
Restitution Award	NO	NO
Accrued Interest	NO	NO, if fine is not dischargeable

Note: It is important to remember that Chapter 13 bankruptcy debts may be discharged only after the debtor successfully completes all payments proposed under the bankruptcy plan. The payment plan could take several years to complete. Until the debtor's payment plan is completed and certified by the Bankruptcy Court, the judgment remains a viable debt frozen by the bankruptcy court's automatic stay, and the judgment should not be released.

The bankruptcy notice to the court only allows the court to stay collections efforts on the judgment. The court cannot remove the judgment from the court records. If the debt was settled via the bankruptcy proceedings the debtor must ask the creditor to provide a notice of satisfaction to the court. The court may mark the judgment satisfied if they receive a notice of satisfaction from the creditor or the debtor may file DC-459, MOTION FOR JUDGMENT TO BE MARKED SATISFIED.

4. Proof Of Claim

A form telling the bankruptcy court how much a debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy was filed.

5. Trustee

An attorney, or someone experienced with business and bankruptcy rules, appointed by the United States Trustees Office to oversee a bankruptcy case.

C. Clerk's Procedures – Criminal and Traffic Cases

The following procedures are recommended when a Notice of Filing is received by the clerk in a **CRIMINAL** or **TRAFFIC** case:

	PROCEDURE	**COMMENTS**
Step 1	Clerk's Office receives NOTICE OF FILING OF THE BANKRUPTCY PETITION from the bankruptcy court. Stamp date received and initial. Notice does not have to list the court as a Creditor for Procedures for Stay of Enforcement to be in effect.	Notice may be in the form of a bankruptcy court form notice or the Clerk may be told verbally about the filing by petitioner or petitioner's counsel. If verbal notice is received, the clerk should require the petitioner to provide a copy of the Bankruptcy. Eastern District 703-258-1200 (general info line) Western District 540-857-2391.
Step 2	Clerk matches notice to the individual account in the Financial Management System (FMS) or Case Management System (CMS).	Clerk should use caution in matching the notice to the individual account or case, relying on the social security number, date of birth or address information to determine the match. If no match no further action is required. Clerk may retain in a file marked "no match".

Step 3	Access the FMS individual account and enter BNK (Bankruptcy) in the Action field. This stops collection activity during the bankruptcy period. Note Do not remove amounts owed from the individual account.	Clerk may not accept payment for fines/costs or restitution once bankruptcy notice is received. Clerk should instruct individual to contact the bankruptcy court or his/her attorney.
	Select F7 function Additional Information Panel and record the name of the Bankruptcy court in which the bankruptcy action has been filed, date of filing, and type of bankruptcy (Chapter 7, 11, or 13)	All individual accounts containing a BNK action code will print monthly on the BU006 INDIVIDUAL ACCOUNT STATUS REPORT> Refer to the FMS USER MANUAL for information regarding the BU006.
Step 4	Send notice to Division of Motor Vehicles (DMV) to terminate suspension of license. See Sample 1 at the end of this section. Attach FMS individual account screen prints.	
Step 5	Recall the account if it has been sent to a collection agent using Form DC-323, RECALL OF PROCESS. Attach FMS individual account screen prints. If already reported to Tax Set-Off, release the hold on the tax refund through IRMS (Integrated Revenue Management System).	
Step 6	For Accounts Over 10 Years Old	
	Reactivate the individual account from inactive. Place BNK in the action field. When the discharge is received the clerk should remove the BNK and enter OFF if the action field. This allows you to maintain the account but will prevent further collection. You should use OFF for this instance ONLY.	Collection activity cannot be pursued after 10 years. However the debt is not forgiven and the clerk has no authority to "write off" a debt.
Step 7	Upon receipt of the order of discharge or dismissal of the case: If the fines and costs are not discharged, collection is enforceable. Clerk should perform the following:	Fines and costs incurred after the bankruptcy filing are not affected.

Remove BNK from the FMS individual account;
Notify DMV via amended abstract to suspend the operator's license for nonpayment of fines and costs (note bankruptcy type and discharge information on the amended abstract);
Re-enter the applicable action code on the FMS individual account to reinitiate collection proceedings COL, TAX or COM.

Step 8 If fines and costs are discharged under Chapter 13 (See chart on page 1-3):

a. Zero out the owed amounts on the individual account affected by the bankruptcy.

D. Clerk's Procedures – Civil Cases

The following procedures are recommended when a Notice of Filing is received by the clerk in a **CIVIL** case:

	PROCEDURE	**COMMENTS**
Step 1	Clerk's Office receives NOTICE OF FILING OF THE BANKRUPTCY PETITION from the bankruptcy court. Stamp date received and initial. Notice does not have to list the court as a Creditor for Stay of Enforcement to be in effect.	Notice may be in the form of a bankruptcy court form notice or the Clerk may be told verbally about the filing by petitioner or petitioner's counsel. If verbal notice is received, the clerk should require the petitioner to provide a copy of the bankruptcy. Eastern District 703-258-1200 (general info line) Western District 540-857-2391.
Step 2	Clerk matches notice to the individual account in the Case Management System (CMS). Enter Y in the BNK field of the civil CMS screen.	Clerk should use caution in matching the notice to the case, relying on the social security number, date of birth or address information to determine the match. If no match no further action is required. Clerk may retain a copy in a file marked "no match".

Step 3 Determine if the case is a garnishment.

If not a garnishment:
For a civil case in which judgment has already been rendered prior to the bankruptcy filing, Clerk may wish to attach bankruptcy notice to the back of the case papers or file in separate bankruptcy file folder.
For a pending civil case, the clerk will either file the notice with the case papers and hold until the hearing date or advance the case on the docket in order that the case may be non-suited/dismissed. The proper procedure to follow will be based on local practice.

If garnishment, proceed with Steps 4-6.

Step 4 Advance the garnishment on the docket in CMS and update with the disposition type of "O" (Other). In REMARKS, note that the advancement is due to bankruptcy.

Step 5 Complete Form DC-453, GARNISHMENT DISPOSITION. Based on local policy, Judge or Clerk may sign "Release of Garnishment" portion of the form.

Step 6 Send copies of executed DC-453, GARNISHMENT SUMMONS to the following:
Trustee (enclose any funds received from garnishee)
Defendant
Plaintiff and plaintiff's attorney
Defendant's bankruptcy attorney
Garnishee

Clerk must forward any money already received and any future money received from the garnishee to the bankruptcy trustee.

Step 7 Upon receipt of the order of **dismissal only** of bankruptcy:

The Y from the BNK field should be removed. Attach a copy of the dismissal to the case papers.

The Clerk may wish to make note in the remarks field the date of the dismissal of the bankruptcy.

NOTE: If the bankruptcy is discharged the Y remains in the BNK field.

a. Forms

Initiating forms are not provided by the clerk's office.
DC-323 Recall Of Process
DC-453 Garnishment Disposition
Sample 1 DMV Notification

b. References

Attorney General opinion dated 10/13/00 to the Honorable J. L. Warren, Clerk of the Smyth County Circuit Court.

c. Notification to DMV-Sample letter

Print on Court Letterhead:

NOTIFICATION TO DIVISION OF MOTOR VEHICLES

Termination of Operator's License Suspension

Filing of Chapter: ☐7 ☐11 ☐13 Bankruptcy

This Court has received notice of the defendant's filing of bankruptcy and is implementing the automatic stay regarding enforcement of the fines and costs debts owed to this Court. Pending further notice, please terminate the suspension imposed by this Court pursuant to Va. Code § 46.2-395 for unpaid fines and costs based on the attached information which itemizes (1) the individual to which this notification applies (2) Social Security number (3) applicable case numbers) (4) charge(s) (5) original conviction date and (6) total fines and costs due per case.

_____ _____
Date ☐Clerk ☐Deputy Clerk

XXI.UNDERAGE PURCHASE/POSSESSION OF TOBACCO

A. Overview

There are several possible violations of Va. Code §18.2-371.2 in the General District court, involving both individuals and establishments. They may include:

- Sell, distribute, or purchase for, tobacco products to minors
- Selling tobacco products to persons without proper identification

- Sell, distribute, or purchase for, bidi products to minors
- Sell of cigarettes other than in sealed packages with health warnings; without signs indicating law prohibits the sale of tobacco products to minors.

These proceedings are civil in nature and will carry penalties based on number of prior violations. Depending on the subsection cited, the penalty may be paid into the State Treasury or the local treasury

There is no filing fee or other costs charged to the county, city or town that instituted the action.

Depending on the subsection cited; violations may be initiated by any attorney for the Commonwealth of the city, county or town in which the alleged violation occurred; or a law enforcement officer of the same; or agents of the Virginia Alcoholic Beverage Control Board.

B. Clerk's Procedures

	PROCEDURE	**COMMENTS**
Step 1	The clerk receives the charge on a Virginia Uniform Summons	
Step 2	The clerk enters the case into the Civil Division of CMS, C for Civil Case, with Case type "TB" -Sale of Tobacco to Minor. Hearing type "CV" – Civil Hearing It is recommended to put the applicable code section being violated in remarks. Example: "18.2-371.2(A) sell tobacco to minor."	Plaintiff is Commonwealth of Virginia or Locality Name. Defendant is individual or establishment being charged.

Step 3	At hearing, the judge will record final disposition directly on the Virginia Uniform Summons.	If found guilty of Va. Code § 18.2-371.2 (A) or (C) the civil penalty is assessed under account code 129 (Safety & Health.)
	If guilty, the judge will assess civil penalty as statue applies; these cases are also prepayable prior to trial.	If found guilty of Va. Code § 18.2-371.2 (E), the civil penalty is assessed under account code 237 (local civil penalty.)
	The clerk finalizes the case with code "O" (other) and disposition code of "O" (other).	The civil entry of these cases does not create an individual account. An individual account must be established in FMS and should generate a DC-224 for billing purposes
Step 4	Civil penalties in excess of $50.00 may be appealed.	The case may be appealed within 10 calendar days of judgment; use DC-580, NOTICE OF APPEAL. See civil appeals index. See also criminal/traffic appeals for FMS procedures.

a. Fees and Costs

There are no fees or costs associated with the filing of these civil charges; however appeal costs do apply.

b. Forms

	Virginia Uniform Summons
DC-475	Notice of Appeal
DC-460	CIVIL APPEAL BOND
DC-224	Notice to Pay – Civil

c. Code References

18.2-371.2	Prohibiting purchase or possession of tobacco products by minors or sale of tobacco products to minors.
16.1-106	Appeals from courts not of record in civil cases –
RULE 3C: 2.	Uniform Fine Schedule.

XXII. BOND FORFEITURES

A. Overview

A bond forfeiture is 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 condition of bail/release. Va. Code § 19.2-143 provides when a person, under a recognizance in a case, either as a party or witness, fails to perform the condition of *appearance*, a hearing shall be held upon

reasonable notice to all parties affording them opportunity to show cause why the recognizance or any part thereof should not be forfeited. The show cause notice shall be issued within 45 days of the breach of the condition of appearance.

Proceedings for the forfeiture of bonds in criminal cases are civil in nature. See *Collins v. Commonwealth*, 145 Va. 468, 471, 134 S.E. 688, 688-89 (1926) ("While the taking of [a] recognizance [grows] out of a matter criminal in its nature, the execution of the bond and the effort of the Commonwealth to collect a debt due by reason of the forfeiture of the recognizance is a matter purely civil."); *see also E.P. Heacock v. Commonwealth*, 228 Va. at 241, 321 S.E.2d at 648.

The show cause summons (bond forfeiture-civil) is used to forfeit both unsecured and secured recognizances for a defendant only, as well as a secured bond for a defendant and surety (ies). The following form is to be used when initiating bond forfeiture:

DC-482, SHOW CAUSE SUMMONS (Bond Forfeiture-Civil)
(Hereinafter in this section referred to as a show cause)

Additional forms, if needed:

DC-331	Surety's Capias/Bailpiece Release
DC-465	Abstract of Judgment
DC-458	Notice of Satisfaction
DC-451	Garnishment Summons
DC-410	Affidavit for Service of Process on the Secretary of the Commonwealth

There are no filing fees to be paid for the forfeiture proceedings.

Operator's Licenses cannot be suspended for bond forfeitures.

1. Optional Additional Preliminary Procedures

	PROCEDURE	**COMMENTS**
Step 1	When the defendant fails to appear on a criminal charge, call to notify the individual/licensed bondsman/surety so they may file dc-331, SURETY'S CAPIAS AND BAILPIECE RELEASE with the clerk's office. The clerk cannot require that a surety's capias be filed, but clerk can notify the party that this procedure is available.	

Step 2	If a licensed bondsman files a Surety's Capias, the bondsman may be given the original Surety's Capias and the service copy to serve. If the surety is not a licensed bondsman, process the Surety's Capias as recommended.	Keep a copy in a separate file to be monitored for service on Surety's Capias. If the Surety's Capias is served and defendant is arrested, DC-482, SHOW CAUSE SUMMONS (BOND FORFEITURE – CIVIL) is not issued because the surety has been released from the bond.
Step 3	If the Surety's Capias is not served within 30 days of the failure to appear date, issue the Show Cause as it must be issued within 45 days of the failure to appear date.	

2. Bond Forfeiture

The following procedures are recommended when processing a bond forfeiture in the General District Court.

	PROCEDURE	**COMMENTS**
Step 1	Case entry: assign <u>one</u> new civil number and enter case in CMS as a civil entry. Enter the first listed surety name from the recognizance as the defendant 01. Enter other defendants under the additional defendants screen. Use case type "SC."	Bond forfeiture show cause may have several defendants. The first listed surety on the recognizance must be entered in the DEFENDANT 01 field on the civil case entry. Principal is bond amount. No costs are to be assessed. Court date is date of first hearing. Plaintiff is: "Commonwealth of VA" (under State Code) or "Locality's Name" (under local code section).

Step 2	Notice is served upon all parties to show cause why all or a part of recognizance should not be forfeited. Parties may include: defendant, surety or sureties, bonding company and/or registered agent for bonding company, insurance company and/or registered agent for insurance company. **Note:** Separate show causes may be issued for each defendant or surety. If information is needed concerning licensed bondsmen, the clerk may refer to a list of current licensed bondsmen maintained by the Department of Criminal Justice Services at the following site: http://www.dcjs.virginia.gov/directories/bailbondsman/ Clerk may also Contact the State Corporation Commission's Clerk's Office at (804-371-9733) if more information is needed for Surety Bail bondsmen.	Show cause must be issued within 45 days of the breach of promise to appear. Show cause is used to forfeit both unsecured and secured recognizances for a defendant only, as well as a secured bond for a defendant and his/her surety (ies). Where the address and social security number of the surety on a cash bail bond are unknown, or the defendant and/or surety are non-residents of the Commonwealth and the procedures detailed in Va. Code § 8.01-329(B) are observed, the Secretary of the Commonwealth may be served with the notice required by Va. Code § 19.2-143 of the forfeiture hearing on the cash bond when the principal on the bond has failed to appear. *See* DC-482, SHOW CAUSE SUMMONS (BOND FORFEITURE – CIVIL) form instructions to properly fill out form
Step 3	First hearing to find default is held. - Judge must determine whether there is a default in bail and to which party the default applies (i.e.: judge determines whether or not the default judgment is against a licensed bondsman personally in addition to whether the default judgment is against the bonding company).	Parties are not required to appear as this is civil in nature and only requires proper notice. Cash bond paid by defendant is immediately forfeited and applied to court fines if defendant is tried in his absence. If a third party surety is on the cash bond, must wait 60 days to record. The judge may also dismiss the show cause if the defendant has been arrested on the surety's capias/bailpiece release or on the criminal capias.

Step 4 Hearing/Disposition:

If default is found by the court at the first hearing, continue forfeiture hearing for 150 days and enter in Remarks field "Default entered: ___/___/___."

Step 5 Hearing/Disposition:

At the 150 day forfeiture hearing if judgment entered:

Enter "O","J" or "DJ" (whichever is applicable) for each individual defendant.

Enter "P" as the hearing result if the judge enters a bond forfeiture order as the judgment.

The judge may also dismiss the show cause if the defendant has been arrested on the surety's capias/bailpiece release or on the criminal capias.

Verify correct plaintiff name: "Commonwealth of Virginia" or "Locality Name."

Step 6 If judgment is entered and defendant/surety (ies) are present to pay the funds to satisfy the judgment, receipt any monies received to the civil case number.

If bond funds have been paid in full to satisfy judgment and monies have been transmitted, no further action is taken.

Revenue code 110 (Commonwealth) or 201/260 (Locality)

Step 7 If judgment is entered and defendant/surety (ies) are not present to pay the funds to satisfy the judgment, set up a civil individual account in FMS under the civil bond forfeiture number in CMS.

FMS type: V (civil)
Account Code: Revenue code 110 (Commonwealth) or 201/260 (Locality)
Owed: Total Amount of Bond

F7 – Additional Information:
Reference all defendants.

One individual account will be established for the entire bond under the name of the 1st listed surety (defendant 01 in CMS).

No other CMS or FMS case will be established for any other defendants on this bond forfeiture show cause.

Step 8	If bond funds have **not** been paid in full: Clerk sends form DC-465, ABSTRACT OF JUDGMENT (automated or manual form) to the local circuit court. Clerk maintains a file copy documenting date of delivery to circuit court with the case paper. Clerk mails a copy of the Abstract Of Judgment to each judgment debtor and documents date of mailing on the file copy.	If certified copy of the DC-482 is used as an Abstract of Judgment, clerk should stamp on the back "I certify that the document on the reverse side hereof, to which this certification is affixed, to be the true abstract of a judgment rendered in this court."
Step 9	If funds are received to satisfy the judgment after sending Abstract of Judgment to the local circuit court, the clerk must notify the local circuit court by sending form DC-458, NOTICE OF SATISFACTION. (CC-1463, AUTHORIZATION OF RELEASE OF JUDGMENT LIEN).	Clerk will keep a copy with the case papers.
Step 10	After entering the judgment in district court and recording in the circuit court, the district court clerk may issue appropriate process (such as form DC-451, GARNISHMENT SUMMONS) to enforce forfeiture as judgment.	If the amount forfeited exceeds $15,000 the process is returnable to the district, not circuit, court. The $15,000 limit shall not apply with respect to cases involving forfeiture of a bond pursuant to Va. Code § 19.2-143. *See* Va. Code § 16.1-77.
Step 11	If bond is forfeited and not paid and relates to bondsmen, send certified copy of show cause to:	Notification pursuant to Regulations relating to Property and Surety Bail Bondsmen
	Dept. of Criminal Justice Services POB 10110 Richmond, VA 23240-9998 ATTN: Lisa McGee	No need to notify DCJS if judgment satisfied.

3. Refunding the Bond

   If defendant WAS tried in his absence AND convicted, the cash bond shall be promptly applied to fines and court costs with the remainder of the bond forfeited to the State/Locality. However, if a rehearing is granted, the judge may remit all or part of such cash bond not applied to fines/costs and order a refund by the State/Locality.

If the defendant WAS NOT tried in his absence, the cash bond shall be promptly forfeited. However, if the defendant appears in court within 60 days of the failure to appear without an order of conviction after the bond is forfeited, the judge may remit all or part of the bond and order a refund by the State/Locality.

If the defendant appears before or is delivered to the court within 24 months of the findings of default, the court shall remit any bond previously ordered forfeited by the courts, less such costs as the court may direct. Va. Code § 19.2-143.

	PROCEDURE	**COMMENTS**
Step 1	Clerk determines legitimacy of refund. Clerk determines whether refund comes from the Clerks Office or from the Department of Accounts in the State Treasury's Office or from the Locality.	Clerk may refund the bond **only if** fund not transmitted. All other bonds previously forfeited should be refunded by the State/Locality and **not the clerk**.
Step 2	If refund is from the State: Clerk prepares the following four (4) refund documents for delivery to the Department of Accounts: 1) Cover letter on court stationary which includes: Clear statement of request; Name of defendant or surety (if bond) and case number if appropriate; and address of refund recipient (where to send check) **2**) Copy of receipt or journal voucher (adjusting) entry to shows funds received; 3) Copy of court order certified by clerk; and 4) Copy of Transmittal to State (Deposit Certificate Treasury Form 270)(only if available).	See samples attached.
Step 3	Court mails to: Department of Accounts General Accounting P.O. Box 1971 Richmond, VA 23219	Department of Accounts usually processes request and mails check to recipient within 4-6 weeks.

Step 4	If refund is from the Locality: Clerk prepares similar refund documents for delivery to the Locality.	Provide similar documentation

B. Time Constraints

The clerk's office, within 45 days of the date the defendant failed to appear, shall issue a show cause bond forfeiture.

Show cause bond forfeiture hearings:

- Court date on show cause is for default finding; and
- After first hearing, then set second hearing within 150 days after default finding for forfeiture order.
- If the defendant comes or is brought to court within 150 days of his failure to appear, the surety is discharged from liability on the bond and is entitled to a return of all securities. See Refund of Bond.
- If defendant was tried in his absence at the criminal hearing, the cash bond shall be promptly forfeited. If the defendant appears in court within 60 days of forfeiture order, the judge may refund all or part of the bond and order a refund by the State Treasurer. This provision does not apply to a cash bond posted by a third-party surety. (See Refund of Bond).
- If the defendant appears before or is delivered to the court within 24 months of the findings of default, the judge shall refund all or part of the bond and order a refund by the State Treasurer, less such costs as the court may direct. The payment of court costs does not apply to a cash bond posted by a third-party surety without due process and written consent of the posting party (see the back of the Recognizance).
- If the court is notified within 48 months of default that the Defendant was incarcerated in another state or country, judge shall refund all or part of the bond and order a refund by the State Treasurer. Again, this provision does not apply to a cash bond posted by a third party surety.

C. Code References

8.01-329(B)	When service is to be made on the Secretary, the party or his agent or attorney seeking service shall file an affidavit with the court…
8.01-457	Marking satisfied judgments for Commonwealth; payment by third parties releasing recognizances.
16.1-258	Bonds and forfeitures thereof

19.2-128	Penalties for failure to appear
19.2-143	Where default recorded; process on recognizance; forfeiture on recognizance; when copy may be used; cash bond
19.2-145	How penalty remitted

Attorney General Opinion to Harvell dated December 10. 1997
Attorney General Opinion to Cunningham dated May 29, 2002 (2002, page 148)

(Court letterhead)

Department of Accounts
General Accounting
P.O. Box 1971
Richmond, VA 23210

Attention: General Accounting

This letter is to provide notice of the request for reimbursement of bond forfeited in this court in the amount of:

Case Number: _____ AMOUNT:_____

In the name of: _____
Requestor/Surety/Defendant
_____
(address of refund recipient)
_____

_____

The attached copies are provided for your review:

- ☐ Certified copy of Court Order
- ☐ Copy of Receipt or Journal Voucher
- ☐ Copy of Deposit Certificate

This notice of request for reimbursement of bond is mailed by the requestor of the refund. The requestor has been notified by this notice that checks are usually processed within 4-6 weeks.

Requestor's signature:_____

Clerk/Deputy Clerk signature: _____

Court: _____ Date: _____

VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE
☐ CITY ☐ COUNTY OF _____

IN THE MATTER OF:

(COMMONWEALTH OF VIRGINIA / LOCALITY)
vs.

_____
NAME OF DEFENDANT

_____
NAME OF SURETY.SURITIES

This cause came to be heard upon the motion of _____, ☐ Surety ☐ Defendant for refund of the bond posted in the above-styled case heretofore forfeited and paid to the Treasurer of Virginia.

It appearing to the court in accordance with § 19.2-145 of the Code of Virginia that the bond of aforesaid defendant was forfeited and said defendant was returned:

☐ within 24 months of finding of default or
☐ within sixty (60) days of failure to appear without an order of conviction

or not returned and

☐ proven to be incarcerated in another state or country within 48 months of the finding of default

It is therefore **ADJUDGED, ORDERED and DECREED** that said bond, less costs ordered by the court, if any, as follows:

COURT DATE: _____
CASE NUMBER: _____
ORIGINAL BOND POSTED: $ _____
COSTS: -- $ _____
AMOUNT REFUNDED: == $ _____

Refunded to:

☐ Surety

NAME: _____

ADDRESS: _____

_____

☐ Defendant

NAME: _____

ADDRESS: _____

_____

The judgment as recorded in the Circuit Court of this jurisdiction is hereby satisfied and released.
ENTERED THIS _____ of _____, 20_____.

_____
JUDGE

XXIII. EXTENSION OF JUDGMENTS

A. Overview

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

B. Clerk's Procedures When Plaintiff/Creditor Filing Abstract From Circuit Court.

The following procedures are recommended when the plaintiff/creditor is filing such abstract from the circuit court.

	PROCEDURE	**COMMENTS**
Step 1	Plaintiff/creditor files CC 1464- Abstract of Judgment, obtained from the Circuit Court. There are no fees associated with this filing, however if the plaintiff/creditor is asking for additional execution off of this abstract, appropriate fees for those executions will apply. This filing may only be accepted if the original 10-year expiration period has passed. Assign a new case number in the Civil division of case management.	The abstract should be issued from the Circuit Court in the same geographic location as the general district court.
	Case type will be AJ. Filing date and hearing date are the same date.	Use the information from the Circuit Court Abstract to fill out the fields in CMS.
Step 2	J/DJ/O/C field is "O" (other). Case Disp field is "O" (other).	

Step 3 Remarks field
In order for the case to properly expunge, users should enter the original General District Court date of judgment as shown on the abstract from Circuit Court (abbreviate as DOJ), followed by a space, followed by the month in two digit format, followed by the day in two digit format, followed by the year in two digit format.

If the first entry in REMARKS is in this EXACT format, CMS will be able to pull from that field for the purge program. The Court can then include any other comments in "REMARKS" to identify the judgment amount, interest, etc.
Remarks will carry over when the case is moved to the inactive database.

EXAMPLE DOJ 050305

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

a. Code References

16.1-94.1 Limitations on enforcement of district court judgments.
16.1-69.55 Retention of case records; limitations on enforcement of judgments; extensions.