

CHAPTER 7 - CIVIL PROCEDURES

I. OVERVIEW

Civil cases involve disputes among individuals, corporations, partnerships organized under the laws of this Commonwealth or of another jurisdiction, or groups of individuals. The remedy sought in civil actions involves the right to recover damages, usually in monetary terms, or to recover property, or to require a party to the suit to complete an agreement or refrain from some activity. The person or party who initiates the case in civil court is termed the "plaintiff" and the person or party against whom the suit is brought is termed the "defendant." In certain localities, voluntary civil mediation may be an alternative to resolve civil disputes. Where this alternative is available, the chief general district judge may establish a voluntary civil mediation program paid by the parties or by local governments in whose jurisdiction the program operates. The magistrate should consult local practice for this alternative. The number of plaintiffs or defendants included in a suit is unlimited. In civil cases, the plaintiff must prove his contentions by a preponderance or greater weight of the evidence.

Small claims courts became mandatory within general district courts beginning July 1, 1999. The small claims court provides a forum for plaintiffs and defendants without representation by attorneys, unless the attorney is appearing *pro se*. In this court, the judge may conduct a trial in an informal manner so as to do substantial justice between the parties. Formal rules of procedure are more relaxed. The object of this court is to determine the rights of the litigants on the merits and to dispense expeditious justice between the parties. Small claim courts are limited to cases in which the plaintiff is seeking a money judgment up to \$5,000.00 or recovery of personal property valued up to \$5,000.00. Such courts shall not hear cases involving suits against the Commonwealth 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.

A. Who May Sue

1. Any person 18 years of age or older or who has been legally emancipated by order of a juvenile and domestic relations district court may file a suit at law in his or her own name.
2. A person who is under the age of 18 years and has not been legally emancipated by order of a juvenile and domestic relations district court may bring a suit, but he or she must bring it under the following procedure. Example: John Johnson, an infant, who sues by his father as next friend or by substitution of another person as next friend. [Va. Code § 8.01-8](#). The adult actually files the suit papers. See *Herndon v. St. Mary's Hosp. Inc.*, 266 Va. 472, 587 S.E.2d 567 (2003). Effective July 1, 2018, [Va. Code § 8.01-271.1](#) provides that a minor who is not represented by an attorney shall sign his pleading, motion, or other paper by his next friend. Either or both parents of such minor may sign on behalf of such minor as his next friend. However, a

parent may not sign on behalf of a minor if such signature is otherwise prohibited by subdivision 6 of § [64.2-716](#). By amendment of Va. Code § [8.01-271.1](#) in 2020 the legislature provided that unless a party to the proceedings properly objects to a signature in incorrect form that objection is waived, and further if the signature is objected to, the other party is given an opportunity to correct the defect.

3. Any resident of Virginia may claim indigence to avoid paying civil filing fees. Such individual should be sent to the court for determination of indigence by the judge unless the judge has authorized magistrates to make indigence determinations pursuant to pre-set guidelines.

B. Who May Be Sued

1. Any person 18 years of age or older (or who has been legally emancipated by order of a juvenile and domestic relations district court) may be sued on an oral, written, or implied contractual obligation.
2. Any person 18 years of age or older may be sued for an action in tort. Example: damages to one's automobile in accident, or any kind of personal property damage. A tort is a legal wrong or injury committed upon a person or his property independent of contract, i.e., not based on a right to sue on a contract action.
3. Any person under the age of 18 years may be sued in tort or in contract. When this is done the court must appoint an attorney to represent the infant. This attorney is known as a guardian ad litem. [Va. Code §§ 8.01-9](#) and [8.01-2](#) require treatment of infants (minors under the age of 18 years) as persons under disability. A guardian ad litem is not appointed for a person who has been legally emancipated by order of a juvenile and domestic relations district court. Generally, whoever loses the suit has to pay the costs of the guardian ad litem.

II. JURISDICTION

The jurisdiction (or authority) of a type of court to adjudicate controversies will determine whether civil cases are heard before general district or circuit court.

Original jurisdiction of the General District Courts in civil cases is exclusive in cases involving amounts up to \$4,500 and concurrent with the Circuit Court in cases involving amounts between \$4,500.01 and \$50,000.00. The Circuit Court has exclusive original jurisdiction in civil cases where the amount in dispute is greater than \$50,000.00. Virginia also provides for a small claims court that is established within the general district court.

Small claims courts have jurisdiction, concurrent with general district court, over civil actions specified in [Va. Code §16.1-77 \(1\)](#) when the amount claimed does not exceed

\$5,000, exclusive of interest. There are exceptions to the general rules of jurisdiction, however, and these exceptions will be discussed by appropriate civil process.

The terms "jurisdiction" and "venue" are sometimes confused but their concepts are different. Both jurisdiction and venue must be present for a case to be heard. Venue will be discussed next in this chapter.

III. VENUE

Venue relates to a particular county or city (location) within which a court with jurisdiction may hear a case. The legal name for this location is "venue." Both jurisdiction and venue must be present for a case to be heard.

A defendant may object to the venue for various reasons. Whether the defendant's request for a change of venue is granted depends on the conditions surrounding the individual case unless a statutory provision makes the requested change mandatory.

The venue provisions of the Code of Virginia determine preferred and permissible venue.

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

Certain actions are required to be brought where the preferred venue exists; however, they are not subject to dismissal for improper venue but to transfer ([Va. Code § 8.01-264](#)).

- In an action for review of, appeal from, or enforcement of a state administrative regulation, decision or order, venue is preferred where the party resides, regularly does business, or where his affected property is located (or if none apply, where the violation took place). [Va. Code § 2.2-4003](#).
- Except where venue is preferred under paragraph 1, in an action against an officer of the Commonwealth, venue is preferred where his official office is located.
- In actions having to do with title or interests in real estate, venue is preferred where the real estate is located. (Traditionally the city or county in which the realty is located has been the preferred place of venue).
- 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.
- In actions on a bond required by a public contract, venue is preferred in the jurisdiction in which the project is situated.
- In actions on a contract between a transportation district and a component government, venue is preferred in any jurisdiction in which the transportation district is located.

- In attachments, preferred venue is determined as if the principal defendant is the only defendant or where the principal defendant has estate or debts owing him.
- In action to collect 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 the taxpayer has left the Commonwealth, where venue was proper at the time taxes were assessed.
- In an action for the correction of an erroneous assessment of taxes, where the taxpayer resides, has a registered office, regularly conducts business, or where the involved real or personal property is located.
- In distress actions, in the county or city when the premises yielding the rent or some part thereof, may be or where goods liable to distress may be found.

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

Permissible venue generally brings together those forums in which venue has been proper in the vast majority of cases under the old Code. Permissible venue exists where:

- The defendant resides or has his principal place of employment or if the defendant is not an individual where it has its principal office or place of employment.
- The defendant has a registered office, has appointed an agent, or an agent has been appointed by the operation of law, or, in the case where the defendant has withdrawn from the Commonwealth, where venue would have been proper at the time of withdrawal. This also applies to legal entities in addition to corporations.
- The defendant regularly conducts his business or in the case of withdrawal, where venue was proper at the time of withdrawal, provided that there exists any practical nexus to the forum.
- The cause of action or any part thereof arose.
- The personal property is located in actions to recover the property.
- The message was transmitted or delivered or accepted for delivery or was misdelivered in actions based on an improper message transmission or misdelivery.
- Goods were received in actions based on delivery of goods.
- The defendant has property or debts owing him, which is subject to seizure by civil process, if none of the other specific forums are available.

- The plaintiff resides, in actions where the defendants are unknown or are non-residents, or if there be no other forum available under [Va. Code §§ 8.01-260](#) or [8.01-262](#).

IV. CIVIL CASE PROCESS

A person may initiate a civil suit by filing a civil warrant or a motion for judgment with the appropriate clerk, or by filing a civil warrant, with appropriate fees, with the magistrate.

The Code of Virginia does not authorize magistrates to accept motions for judgment, or to return suits to circuit court unless specifically permitted by statute.

The plaintiff seeking to file a motion for judgment rather than a warrant in debt, would submit that with appropriate fees, directly with the clerk of the court. The motion for judgment normally contains the plaintiff's name, the defendant's name and address, the amount of the claim, the reason for the suit, and the wording requesting judgment in favor of the plaintiff. The motion for judgment notifies the defendant when the court will hear the case. This return date cannot be more than sixty days from the date of service of the motion.

Pursuant to [Va. Code § 8.01-271.1](#), a party who is not represented by an attorney, including a person confined in a state or local correctional facility proceeding pro se, shall sign his pleading, motion, or other paper and state his address.

When the plaintiff files a civil action with the magistrate, [Va. Code § 16.1-86](#) requires that **the officer issuing the warrant shall note on the memorandum the date and time received by him with the required fee**. For purposes of uniformity, this notation should be made at the top right of the form. If a sworn claim accompanies the suit pursuant to [Va. Code § 16.1-88](#), the magistrate should attach copies of the sworn claim to each copy of the warrant issued.

Upon issuance, the magistrate forwards the process to the clerk who indexes the case and forwards the process to the sheriff to serve. The sheriff is required to call or go to the clerk's office each day to receive all process and other papers to be served by him or her. The sheriff may serve process not only in his or her own political subdivision but also in any contiguous city or county. The sheriff may serve the process in person or by substitute methods such as by posting the process at the defendant's front door or such other door as appears to be the main entrance of such abode. Normally, the sheriff serves civil process on the defendant (a high constable exists in certain localities). However, any person eighteen years of age or older, who is not a party or otherwise interested in the case also may serve civil process but they must provide the court with an affidavit of service of process. The authority for civil process servers is limited however. Pursuant to [Va. Code § 8.01-293](#), only a sheriff may execute an order or writ of possession for personal, real or mixed property, including an order or writ of possession arising out of an action in unlawful entry and detainer or ejectment. To obtain a default judgment on posted service, the plaintiff also must mail a copy of the process to the defendant's residence or last known address at least

ten days prior to the return date on the original process, prepare a DC-413, [CERTIFICATE OF MAILING POSTED SERVICE](#) and forward it to the clerk's office.

In the event the whereabouts of the defendant is unknown a DC-436, ORDER OF PUBLICATION may be used. In the case of publication, an affidavit of the publisher as to the dates of publication and the accompanying copy of the published order are required unless publication in a newspaper is dispensed within the order of publication. This process is handled only in the clerk's office, or court, and not by the magistrate. Requests for such orders should be directed to the appropriate clerk's office.

In civil cases, the defendant may file an answer with the court, settle the suit prior to court appearance, remove the case to circuit court if allowed by statute, or appear in court on the date of hearing.

The clerk will file the civil processes which have been unexecuted in a holding file until such time as the plaintiff requests service be attempted again or until three months have passed, at which time the judge may order the destruction of the records.

Exceptional civil actions involving levies, attachments, and seizures may vary in procedure. Such actions involve exceptions to the general rules for civil processes. This chapter will note such exceptions in discussing the various types of processes.

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 by the defendant named in the suit. The basic steps in the civil process include:

- Case initiation
- Service of process

A. Case Initiation

1. Motion For Judgment

If the plaintiff elects to initiate a suit in debt in the form of a motion for judgment, the case is initiated as described earlier in this chapter. The magistrate would have no involvement at this stage.

2. Complaint Filed With Magistrate

- Those who may file a suit in debt include: plaintiff, attorney, corporate officer, manager of a limited liability company, a general partner of any form

of partnership or a trustee of any business trust, or any employee duly authorized in writing. [Va. Code § 16.1-88.03](#).

- The plaintiff will need to complete a DC-412, [WARRANT IN DEBT](#) (DC-402, [WARRANT IN DEBT - SMALL CLAIMS DIVISION](#) for small claims suits).
- Verify that the warrant in debt has been properly prepared and that all necessary information (plaintiff's name and phone number, defendant's name and address, amount of claim, reason for claim) is present. [Virginia Code § 8.01-290](#) requires that upon commencement of every action, the plaintiff shall furnish in writing to the clerk, or other issuing officer the full name and last known address of each defendant and if unable to furnish such name and address, he shall furnish such salient facts as are calculated to identify with reasonable certainty such defendant.
- Pursuant to [Va. Code § 16.1-86](#), the magistrate must note date and time warrant is filed at top margin of form.
- Collect processing fee and legal aid fee unless statutorily exempted. Also collect a law library fee, court technology fee, and indigent defense fund fee, if applicable, and a courthouse maintenance and/or construction fee, if authorized by local ordinance. While [Va. Code § 15.2-1609.3](#) provides that the clerk shall collect the sheriff's fees ([Va. Code § 17.1-272](#)), a practical reading of this statute also would appear to allow the magistrate to collect such sheriff fees as an accommodation to the public. For example, the clerk's office may be closed or the public may have to make additional trips to the clerk's office, etc.) Please note that the sheriff's service fee is to be calculated on a **per defendant basis**. (See the "Accounting & Prepayments" chapter and the "Fee and Prepayment Schedules" appendix for amounts.)
- Set the return date to allow the sheriff time to make service, but not less than five days or more than sixty days from date service is to be made. ([Va. Code §§ 16.1-79](#) and [16.1-80](#))
- Forward case papers, receipt and fees to the appropriate General District Court for indexing and service of process (magistrates have no authority to issue warrants in debt for circuit court).
- Give a copy of Form DC-413, [CERTIFICATE OF MAILING POSTED SERVICE](#) to plaintiff.

B. Service of Process

Any person eighteen years of age or older, not a party or otherwise interested may serve process if they provide an affidavit of service of process to the clerk. In most cases, however, the sheriff or high constable will serve civil process on the defendant.

Service may be made in the following manner:

- Personal service on the party.
- Delivery to a member of his family sixteen years of age or older at the usual place of abode.
- Posting at the front door or such other door as appears to be the main entrance of such place of abode. Not less than ten days before the entry of a default judgment, the party causing service to be made by posting must mail by regular mail to the party served, a copy of the process or, if prior to filing of case, a copy of pleading together with the date, time and place of the return and so certify to the clerk the mailing of the additional copy of the process or pleading.

The person executing the service must note the manner and the date of such service on original and copy of process so delivered or posted.

If service cannot be effected as above, then an order of publication may be used.

Service may also be made upon corporations and certain state agencies with procedures as follows:

- Service upon corporations
 - Service may be made upon an officer, director, or registered agent.
 - Substitute service may be made on a foreign stock corporation (in accordance with [Va. Code § 13.1-766](#)) by service on the Clerk of the [State Corporation Commission](#).
 - Substitute service may be made on a foreign non-stock corporation (in accordance with [Va. Code § 13.1-836](#)) by service on the Clerk of the [State Corporation Commission](#) when such corporation has no registered agent or the registered agent cannot be found at the registered office with due diligence.
- Service on [Commissioner of Motor Vehicles](#)
 - On non-residents for automobile tort cases
- Service on the [Secretary of the Commonwealth](#) for:
 - Reciprocal insurance
 - Nonresident owner and operator of aircraft
 - Nonresident property owners and lessors
 - Public School Text publishers

- Solicitors of contributions
- Resident and Nonresident parties under the Long-Arm Statute ([Va. Code §§ 8.01-328.1, 8.01-329](#))

C. Pre-Trial Procedures

1. Subpoenas, Witness Summoning

The authority of a magistrate to issue subpoenas and subpoenas duces tecum is provided by Virginia law. *See* Va. Code §§ 19.2-45, 8.01-407, and 16.1-265. The procedures for issuing and subsequent processing of subpoenas are as follows:

- The DC-325, [REQUEST FOR WITNESS SUBPOENA](#) or other writing with the appropriate information is required before any subpoenas can be issued.
- 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 a continuance;
 - Note date of receipt of request and issuance of subpoenas.
- The DC-326, [SUBPOENA FOR WITNESSES](#). Either a clerk or magistrate can issue subpoenas.
- Original and copies of the subpoenas are forwarded to the sheriff for service in sufficient time prior to the court date to allow the party adequate notice.

NOTE: For General District Court cases, subpoena requests should be filed at least ten days prior to trial; exceptions are handled through the judge. [Rules of Court 7A: 12.](#)

2. Subpoena Duces Tecum

A magistrate, pursuant to [Va. Code §§ 8.01-2](#) and [19.2-45](#), may issue the DC-336, [SUBPOENA DUCES TECUM](#), as can a judge and clerk of district court, 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 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. The application must be made on the application portion of DC-336, [SUBPOENA DUCES TECUM](#) since the subpoena portion of the form incorporates the request by reference. Enough copies of this request

are needed for each copy of the DC-336, [SUBPOENA DUCES TECUM](#) to be issued. 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. The magistrate will also need certain information such as style of case, case number, return date and name of court. If this information is not provided, the person requesting the subpoena duces tecum should be referred to the clerk of court. Upon receipt of the request, certification and necessary information, the magistrate then issues the DC-336, [SUBPOENA DUCES TECUM](#).

NOTE: For General District Court cases, subpoena requests should be filed at least fifteen days prior to trial; exceptions are handled through the judge. [Rules of Court 7A: 12](#).

VI. SUITS IN DETINUE

A civil suit referred to as a "suit in detinue" is one in which the plaintiff is suing to recover specific personal property, or its value, that is in the possession of the defendant and unlawfully withheld from the plaintiff. There are two variations of the suit in detinue procedures which relate to who has control of the disputed property prior to trial. In the first situation, called a suit in detinue, the plaintiff allows the property to remain in the defendant's hands until the court has reached a decision with respect to plaintiff's claim. In the second set of procedures, a suit in detinue with pre-trial process of seizure, the plaintiff files a petition to have an order issued and the property seized and returned to him (unless defendant obtains a defendant's bond) prior to court.

In either case, a detinue or detinue seizure seeks:

- Specific personal property or its "alternate" value from a defendant who obtained possession of the property but who continues to hold the property after his alleged rights to possess the property have ended, and
- Damages for unlawful detention of such personal property. Both procedures will be reviewed in the discussion to follow.

A. Detinue

1. Case Initiation

A clerk or magistrate can issue a "suit in detinue" without pre-trial seizure.

Requests received by magistrates for a suit in detinue without pre-trial seizure are handled as follows:

- Those who may file a suit in detinue include: plaintiff, attorney, corporate officer, manager of a limited liability company, a general partner of any form

of partnership or a trustee of any business trust, or an employee duly authorized in writing. ([Va. Code § 16.1-88.03](#))

- The plaintiff will complete the DC-414, [WARRANT IN DETINUE](#), (DC-404, [WARRANT IN DETINUE – SMALL CLAIMS DIVISION](#) if a small claims suit).
- Magistrate verifies that the warrant has been prepared properly and that all necessary information is present.
- Pursuant to [Va. Code § 16.1-86](#), the magistrate should note date and time warrant is filed at top margin of form.
- Collect processing fee and legal aid fee unless statutorily exempted. Also collect law library fee, court technology fee, indigent defense fund fee, if applicable, and courthouse maintenance and/or construction fee, if authorized by local ordinance. While [Va. Code § 15.2-1609.3](#) provides that the clerk shall collect the sheriff's fees ([Va. Code § 17.1-272](#)), a practical reading of this statute also would appear to allow the magistrate to collect such sheriff's fees as an accommodation to the public. For example, the clerk's office may be closed or the public may have to make additional trips to the clerk's office. Please note that the sheriff's service fee is to be calculated on a **per defendant basis**. (See the "Accounting & Prepayments" chapter and the "Fee and Prepayment Schedules" appendix for amounts.)
- Set the return date to allow the sheriff time to make service, but not less than five days or more than sixty days from date service is to be made. ([Va. Code §§ 16.1-79](#) and [16.1-80](#)).
- Transmit case papers, receipt and fees to the appropriate General District Court (magistrates have no authority to issue warrants in detinue for circuit court).

2. Service of Process

- Service of process for suits in detinue are handled the same as that of suits in debt.
- Refer to procedures described earlier under "Suits in Debt - Service of Process."

B. Detinue Seizure

A detinue seizure seeks pre-trial seizure by a sheriff. Pre-trial levy without seizure in detinue seizure is not permitted by statute. The plaintiff may initiate a detinue seizure by filing the action as a new case or by filing a detinue seizure petition referencing a pending detinue action. See [Va. Code § 8.01-114](#).

Unlike the warrant in detinue, without pre-trial seizure, only judges and magistrates can issue detinue seizures. Also, unlike warrants in detinue without pre-trial seizure, the plaintiff must post a bond before the order can issue. Detinue seizure cannot issue if the same case has already been adjudicated in court.

1. Case Initiation and Reasonable Cause Review

Those who may file a detinue seizure petition are:

- Plaintiff ([Va. Code § 8.01-114](#) and [Rules of Court 7B:7](#))
- Plaintiff's attorney (but not the attorney's secretary or law clerk) ([Rules of Court 7B:7](#))
- Plaintiff's regular and bona fide employee ([Rules of Court 7B:7](#))

A magistrate who receives a request for detinue seizure must receive from the plaintiff:

- A completed petition, DC-415, [DETINUE SEIZURE PETITION](#) with attached list of facts.
- Court processing fee and legal aid fee unless statutorily exempted. (In the event a detinue seizure petition is filed referencing a pending detinue action, only one court processing fee is required for both actions.) Also collect law library fee, if applicable, and courthouse maintenance fee, if authorized by local ordinance.

In the failure to do so, the order shall not issue ([Va. Code § 8.01-114](#)). While [Va. Code § 15.2-1609.3](#) provides that the clerk shall collect the sheriff's service fees ([Va. Code § 17.1-272](#)), a practical reading of this statute also would appear to allow the magistrate to collect such sheriff's fees as an accommodation to the public. For example, the clerk's office may be closed or the public may have to make additional trips to the clerk's office. Please note that the sheriff's service fee is to be calculated on a **per defendant basis**. Another sheriff's fee, in addition to the sheriff's service fee, is provided for detinue seizure cases. This is the sheriff's levy fee (includes levy with seizure). Both the sheriff's service fee and the sheriff's levy (and levy with seizure) fee can be found in the "Accounting & Prepayments" chapter and "Fee and Prepayment Schedules" appendix.

- Sufficient bond.

Pursuant to [Va. Code § 16.1-86](#), upon receiving a detinue seizure petition with attached list of facts, the magistrate must note the date and time of filing, at the upper margin of DC-415, [DETINUE SEIZURE PETITION](#). The magistrate also must review these documents to determine if "reasonable cause" is present for

the issuance of the order. "Reasonable cause" is essentially the same as "probable cause." The review of a detainee seizure petition is similar, in respect, to that of an affidavit for search warrant. The review of a detainee seizure petition is limited to the sworn information contained in the petition and any attached pages ([Va. Code § 8.01-114](#)). Oral testimony cannot be used.

The detainee seizure order cannot issue until the magistrate:

- Finds that the petition complies with [Va. Code § 8.01-114 \(A\)](#) requiring that the petition shall:
 - Describe the kind, quantity and estimated fair market value of the specific personal property as to which the 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 the particulars thereof 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 statutory grounds mentioned in [Va. Code § 8.01-534](#) and set forth specific facts in support of such allegations.
- Has received from the petitioner a bond secured by a type of security allowed by law and in the amount required by law pursuant to [Va. Code §§ 8.01-115](#) and [8.01-537.1](#), (bonds are discussed later on in this chapter), **and**
- Finds reasonable cause (similar to "probable cause" in search warrant situations) to believe that the statutory grounds for detainee seizure described in the petition exist.

In the content of the petition itself ([Va. Code § 8.01-114](#)), the petitioner's claim must be for:

- Recovery of specific personal property items in which the petitioner/plaintiff has a property interest; **and**
- The alternate value of each such item of specific personal property whose recovery is being sought, the total alternate value of such items, and the basis of such valuation, **and**
- If sought, the amount of damages for detention of such property. The petition must show:
- The specific personal property whose recovery is being sought.

Each item must be described in the item blocks of the DC-415, [DETINUE SEIZURE PETITION](#) with enough detail that a "reasonable person" (such as the

sheriff when he seizes the property) can identify the items. Petitioners may need to use additional pages to list and describe all such items. In such cases, the petition should contain such language as "see attached list" in the "item" blocks of the Detinue Seizure Petition. In the attached list of facts, plaintiff should describe his interest in the property (owner, lessee, secured creditor, etc.)

- The alternate value of the property that the plaintiff is seeking to recover. The plaintiff notes the alternate value next to a description of each item on the DC- 415, [DETINUE SEIZURE PETITION](#).
 - The alternate value of the property is calculated in two different ways depending on the underlying claim of the suit. If the plaintiff's underlying claim is based on a written contract of sale, the alternative value is the amount left unpaid on the contract of sale for that item. If the plaintiff's underlying claim is based on anything other than a written contract of sale, the alternate value is the estimated fair market value of that item.
 - The total alternate value is noted in the block under the list of items for which the petitioner is seeking pre-trial seizure. The total alternate value is simply the sum of the alternate values listed in blocks 1 through 10.
 - If the calculation of the alternate value is based on the amount left unpaid on the contract of sale for the item or items, the plaintiff checks the **"Amount Due on Written Contract of Sale"** box. If the calculation of the alternate value is based on the fair market value of the item or items, the plaintiff then checks the **"Estimated Fair Market Value"** box.
 - If the calculation of the alternate value is based on the amount due on a written contract of sale, the plaintiff still must estimate the fair market value of the items or times to be seized. The plaintiff then must note this amount in the **"ESTIMATED FAIR MARKET VALUE (if different from Alternate Value)"** block, and on the **"ESTIMATED FAIR MARKET VALUE"** line in the **STATEMENT** section of the petition.
 - Damages incurred by plaintiff during the defendant's unlawful detention of the personal property. Damages for such detention are usually the cost of obtaining a substitute or replacement for the property during such detention or the value of its use, which was lost by its detention.
 - Examples include:
 - Failure of your brother-in-law to return your car after borrowing it for a weekend. You have to rent a car to travel to work during the following week (damages measured by cost of obtaining a substitute).
 - Failure of Henry Ford to return a rental car to XYZ Car Rentals, which loses future car rentals (damages measured by loss of use).

Grounds of Seizure:

- On the back of the DC-415, [DETINUE SEIZURE PETITION](#) is a list of eight (8) types of situations in which a detinue seizure may issue. These are the statutorily authorized grounds of seizure. The plaintiff must insert in the petition each number of the grounds relied upon in the case. Any of these eight (8) statutory grounds may apply to a seizure. If more than one statutory ground is alleged, they both must be connected together by "and" (Northern Neck State Bank v. Gilbert Packing, Co., 114 Va. 658, 661 (1913) and each must be supported by reasonable cause with a list of facts for a magistrate to issue. **EXCEPTION:** Grounds numbered A.4 and A.5 may be connected to each other (not to any other grounds) by "or" or "and" ([Va. Code §§ 8.01-114](#) and [8.01-534](#)) and the facts establishing reasonable cause can support either statutory ground.
- Attached to the petition must be a list of specific facts, which allegedly support the grounds of attachment claimed on the front of the petition ([Va. Code § 8.01-114](#)). There is no official DC form provided for this purpose. The plaintiff may provide his or her own format although it is recommended that the list of facts include the style of the case and date with the facts listed in numerical order.

The relief sought:

- a. There are no options in detinue seizure. The sheriff must seize the property (if found) and turn it over to the petitioner.
- b. The STATEMENT contents:
 - In all cases, plaintiff completes:
 - Estimated Fair Market Value
 - Court Fees and Costs
 - TOTAL CLAIMED
 - If (as) applicable, plaintiff completes:
 - Unjust Detention Damages
 - Interest
 - Bond Premium
 - Attorney's Fees
 - Storage
 - Name and Addresses of Parties (per [Va. Code § 8.01-271.1](#) and [8.01-290](#)):
 - Plaintiff/petitioner: In addition to plaintiff's name and address, either the:
 - Name and telephone number of plaintiff's attorney or
 - Plaintiff's telephone number should be obtained if available.

- Defendant: The plaintiff needs to complete the names and street addresses of each defendant. If the plaintiff has listed post office box addresses, the magistrate should request that the plaintiff obtain the street address of each of the defendants, or directions to the address of each defendant.
- Formalities - Petition must be signed under oath by the plaintiff, his agent, authorized employee, or his attorney and properly acknowledged. The magistrate, clerk of court, notary public, or judge may take the acknowledgment.

If the petition is not on a DC-415, [DETINUE SEIZURE PETITION](#) form, use the DC-415, [DETINUE SEIZURE PETITION](#) to insure that the plaintiff's petition is complete. If the petition meets statutory criteria, continue on to procedures for the plaintiff's bond. If the petition does not meet the statutory criteria:

- Tell petitioner in general terms why his petition is defective. Examples include:
 - “I cannot issue a Detinue Seizure Order because your list of facts does not establish reasonable cause to believe that the ground of seizure alleged in your petition may exist.”
 - “I cannot issue a Detinue Seizure Order because you asked for pre-trial seizure and the bond you seek to post is not double the estimated market value of the property to be seized.”
- Do not try to give specific language to the petitioner to insert in the petition or negotiate with the petitioner as to what language is acceptable. In such situations, allow the petitioner to make minor amendments to the petition. If major amendments are needed, have the petitioner draft a new petition.
- If not satisfactorily amended or if rejected without later amendment, mark in the upper right corner of the petition "denied" and add the date of this action and your initials.
- Rejection of petition does not affect plaintiff's filing of a warrant in detinue.

2. Plaintiff's Bond

No detinue seizure order may issue until the proper plaintiff's bond has been posted pursuant to Va. §§ 8.01-115 and 8.01-537.1. There are no exceptions.

- Types of bonds allowed:
 - **Cash** pursuant to Va. Code § 1-205, **OR**

- **Surety** (approved by the court or magistrate). [Virginia Code § 38.2-2406](#) provides the following guidance as to the acceptance of a surety:

Whenever a bond, undertaking, recognizance, guaranty, or similar obligation is required, permitted, authorized or allowed by any law of this Commonwealth, or whenever the performance of any act, duty or obligation, or the refraining from any act, is required, permitted, authorized or allowed to be secured or guaranteed by any law of this Commonwealth, the bond or similar obligation, or the security or guaranty, may be executed by any fidelity and surety insurer licensed to execute such instruments. The execution by any fidelity and surety insurer of a bond, undertaking, recognizance, guaranty or similar obligation by its officer, attorney-in-fact, or other authorized representative shall be accepted as fully complying with every law or other requirement, now or hereafter in force, requiring that the bond, undertaking, recognizance, guaranty or similar obligation be given or accepted or that it be executed by one or more sureties, or that the surety or sureties be residents, householders or freeholders, or possess any other qualifications; (The magistrate should be sure to attach to the bond the power of attorney or a copy or facsimile thereof.) **OR**

- **Property.** If the magistrate is unsure about matters related to bond, he or she should contact the magistrate advisors for information.

For those who would use a power-of-attorney to post bond using real property, ask if the power-of-attorney is duly recorded in the circuit court where the property is located.

While [Va. Code § 8.01-537.1](#) allows the plaintiff to use property to post bond and does not specifically state that only real property may be used, the magistrate should consult their local judges to determine if they approve allowing the plaintiff to post bond in civil matters using personal property, as the court may review any bond contested as inadequate and may order additional bond as provided in [Va. Code § 8.01-553](#).

In the event an agent or attorney-in-fact for the surety seeks to enter into the bond, the following questions should be asked:

- Do you have power-of-attorney?
- Is your power-of-attorney "special" or "general"? ("special" limits the authority to the contents of the document.)
- Is there a limit on the dollar amount by which you may enter into a civil bond?

- For agents or attorneys-in fact for surety companies: Is your power-of-attorney in compliance with the requirements of [Va. Code § 38.2-2416](#)?

Insist on seeing proof of the agent or attorney-in-fact's authority to enter into civil bonds. If the power-of-attorney is acceptable, attach a copy to the original bond.

- Amount of bond required

All bonds (cash, surety or property) must represent double the estimated "fair market" value of the property to be seized.

Advise the plaintiff that the sheriff may not seize property if he feels that the property valuation is too low and, therefore, the bond amount inadequate. Review the DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#) for completeness. If the plaintiff is using a bond form other than DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#), compare the plaintiff's bond to the DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#) for completeness. If you are unable to determine if the bond meets these requirements, request the plaintiff to enter into a bond using the DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#) form.

If the bond meets the statutory requirements, issue a receipt(s) pursuant to standard accounting procedures described in the "Accounting & Prepayments" chapter of this manual.

3. Detinue Seizure Order

If the petition and attached list of facts meet "reasonable cause" and the plaintiff's bond is adequate, the DC-416, [DETINUE SEIZURE ORDER](#) may be issued. Attach a copy of DC-407, [REQUEST FOR HEARING - EXEMPTION CLAIM](#) with the papers. In cases of detinue seizure, [Va. Code § 8.01-114](#) does not provide for post-trial seizures. Unlike attachments, there is no statutory authorization to issue subsequent detinue seizure orders on the basis of the same petition. Detinue seizures may issue and be executed on any day, including Saturday, Sunday or other legal holiday ([Va. Code § 8.01-114](#)).

The return of process must be set not more than thirty days from its date of issuance to the office of the clerk wherein the petition was filed ([Va. Code §§ 8.01-114](#) and [8.01-541](#)). When the return is made, however, to general district court, [Va. Code § 16.1-80](#) also requires that the process must also be served not less than five (5) days before the return date.

After issuance of the order, it is important that the Detinue Seizure Order not be sent directly to the Clerk's Office. Instead, the Detinue Seizure Order and the other papers that are to be served must be delivered to or picked up by a representative of the sheriff's office. Your district may have an established

procedure for ensuring that the petitioner and the papers promptly reach the sheriff. Contact the chief magistrate to confirm whether there is such an established procedure. If there is not, consider making a courtesy call to the sheriff to notify that office that there is a levy to be made.

4. Service of Process

The sheriff serves the order on the defendant or other responsible person where the seizure is made, takes possession of the property, and turns it over to the plaintiff who keeps the property pending trial (Civil Process Servers are not authorized to serve this order pursuant to [Va. Code § 8.01-293](#).) The sheriff returns the executed order to the clerk's office.

If the defendant wants the property returned to him or her, the following steps apply:

- The defendant posts a counter bond, DC-448, [DEFENDANT'S BOND FOR LEVY OR SEIZURE](#) with the sheriff for twice the value of the property seized.
- The sheriff takes the bond and returns the property to the defendant.

VII. UNLAWFUL DETAINER

This suit, filed pursuant to [Va. Code § 8.01-126](#) et seq., seeks the removal of a tenant or other person in possession of a house, land or tenement that is alleged to be unlawfully detained. The landlord, his agent, attorney, or other person entitled to such possession may file this suit. A suit of this type could occur when a defendant refuses to pay rent, refuses to vacate the premises following the termination of a rent or lease agreement, or breaches a term of the lease.

In an unlawful detainer, the plaintiff may simply be suing to seek return of the premises. The plaintiff may, however, be additionally seeking unpaid rent, damages, and attorney's fees. Pursuant to [Va. Code § 8.01-128](#), the plaintiff in an unlawful detainer may seek judgment for possession and then ask for a continuation of the trial to a later date to adjudicate damages to the premises and unpaid rent. The court may continue the trial for up to 120 days. Within fifteen days of the continued trial date, the plaintiff must mail to the defendant's last known address notice of the continued trial date, the amounts of final rent owed and damages, and notice that the plaintiff is seeking a judgment for these amounts. The plaintiff also must file a copy of this notice with the court.

If the defendant does not make an appearance in court, the plaintiff or the plaintiff's attorney may proceed on the plaintiff's affidavit as provided in [Va. Code § 8.01-126](#) and if the unlawful detainer summons served upon the defendant requests judgment for all amounts due as of the date of the hearing, the court shall permit amendment of the amount requested in the summons for unlawful detainer filed in the court in accordance with the affidavit and shall enter a judgment for such amount as of the date of the hearing in addition

to entering a writ of possession or an order of possession for the premises. [Va. Code § 8.01-126](#).

A. Jurisdiction

In unlawful detainer cases, pursuant to [Va. Code §§ 8.01-124](#) et seq. and [16.1-77 \(3\)](#), both the General District Court and Circuit Court have jurisdiction to hear cases involving possession only. In cases that involve more than attempts to gain possession, pursuant to [Va. Code § 16.1-77 \(3\)](#), the maximum jurisdictional limits prescribed in paragraph (1) of [Va. Code § 16.1-77](#) shall not apply to any claim, counter-claim or cross-claim in an unlawful detainer action that includes a claim for damages sustained or rent against any person obligated on the lease or guarantee of such lease. The General District Court has exclusive jurisdiction involving amounts up to \$4,500 and concurrent jurisdiction with the Circuit Court in cases involving amounts exceeding \$4,500. Plaintiffs seeking suit in circuit court should be directed to the circuit court clerk.

The basic steps in processing an unlawful detainer are described as follows:

- Case initiation
- Service of process

B. Case Initiation

When this suit is filed with a magistrate:

- Those who may file a suit for unlawful detainer include: landlord, agent, attorney or other person pursuant to [Va. Code § 8.01-126](#); a property manager, managing agent or authorized employee pursuant to [Va. Code § 55-246.1](#); or a corporation, partnership, limited liability company, business trust, etc. when signed by a corporate officer, with approval of board of directors, or manager, general partner or a trustee may authorize in writing an employee, property manager, or managing agent of a landlord pursuant to [Va. Code § 16.1-88.03](#).
- The plaintiff completes a DC-421, [SUMMONS FOR UNLAWFUL DETAINER](#).
- The magistrate administers an oath.
- The magistrate notes the date and time of filing at the upper margin of form.
- The magistrate should ask if written notice has been given under [Va. Code § 55.1-1245](#), or other notice of termination of tenancy given by the landlord to the tenant of a dwelling unit, or any notice of termination given by a landlord to a tenant of a nonresidential premises. It should be noted that there may be exceptions to the notice requirement. These are not issues relevant to the magistrate's consideration as to whether to issue the process or not. Even when it is thought that the plaintiff

failed to comply with a notice requirement of law, the magistrate should not refuse to issue on that basis, as this is an issue that is more appropriately decided by the court.

- Collect processing fee and legal aid fees unless statutorily exempted. Also collect law library fee, court technology fee, indigent defense fund fee, and courthouse maintenance and/or construction fee, if authorized by local ordinance. While [Va. Code § 15.2-1609.3](#) provides that the clerk shall collect the sheriff's fees ([Va. Code § 17.1-272](#)), a practical reading of this statute also would appear to allow the magistrate to collect such sheriff's fees as an accommodation to the public. For example, the clerk's office may be closed or the public may have to make additional trips to the clerk's office. Please note that the sheriff's service fee is to be calculated on a **per defendant basis**. (See the "Accounting & Prepayments" chapter and "Fee and Prepayment Schedules" appendix for amounts.)

Set the return date to allow the sheriff time to make service, but not less than five days or more than thirty days from date of service is to be made. ([Va. Code §§ 16.1-79](#) and [16.1-80](#)). However, if the plaintiff has checked the box in the Claim and Affidavit section denoting that the summons is filed to terminate a tenancy pursuant to the Virginia Residential Landlord Tenant Act ([Va. Code § 55-248.2](#) et seq.), the initial hearing on such summons shall occur as soon as practicable, but not more than twenty-one days from the date of filing. If the case cannot be heard within twenty-one days from the date of filing, the initial hearing shall be held as soon as practicable. If the plaintiff requests that the initial hearing be set on a date later than twenty-one days from the date of filing, the initial hearing shall be set on a date the plaintiff is available that is also available for the court. Such summons shall be served at least ten days before the return day thereof ([Va. Code § 8.01-126](#)).

The magistrate transmits the court papers, receipt and fees to the appropriate court. Again, magistrates have no authority to issue unlawful detainers for circuit court.

The clerk indexes the case and then forwards the process to the sheriff for service.

C. Service of Process

Procedures for service of process are similar to those in suits in debt. After execution of process, the sheriff returns the papers to the clerk.

Until 2012 landlords not subject to the Virginia Residential Landlord and Tenant Act had greater flexibility with respect to the use of self-help to evict tenants. However, as amended in 2012 [Va. Code §§ 55-225.1](#) and [55-225.8](#) gave occupants of dwelling units not covered by the VRLTA protection against the use by landlords of self-help comparable to that provided by the VRLTA. That protection of residential tenants

was reaffirmed and expanded by amendments in 2018. [Va. Code §§ 55-225](#) and [55-225.01](#); and subsequently by [Va. Code § 55.1-1245](#).

VIII. ATTACHMENTS

A civil attachment is a suit involving claims for recovery of:

- specific personal property; or
- a debt or damage for breach of contract; or
- damages for a “wrong.”

An “attachment” is used when there is "reasonable cause" to believe that one or more of the statutory grounds exist supported by facts from the plaintiff. These grounds are usually, but not always, situations in which the plaintiff believes the normal process of law will not be sufficient to recover debts owed.

There are two types of attachments that will be discussed in this section:

- Attachments pursuant to Chapter 20, Title 8.01; and
- Overweight attachments pursuant to [Va. Code § 46.2-1134](#). There are two basic differences between these two attachments:
 - In an attachment pursuant to Chapter 20, Title 8.01, either a levy or a seizure may be requested. In an overweight attachment pursuant to [Va. Code § 46.2-1134](#), only a seizure can be requested.
 - In an attachment pursuant to Chapter 20, Title 8.01, the magistrate handles the plaintiff's bond but does not become involved in the defendant's counter bond. This reverses with an overweight attachment case under [Va. Code § 46.2-1134](#). Since the plaintiff in an overweight seizure is the Commonwealth of Virginia, a plaintiff's bond is not required. Unlike all other seizures (attachments under Chapter 20, Title 8.01; detinue seizure and distress), the magistrate will handle a defendant's counterbond, if requested, for an overweight attachment under [Va. Code § 46.2-1134](#).

In either type of attachment, only a judge or magistrate can issue such process by law. Clerks cannot issue attachments.

A. Jurisdiction

In cases of attachment, the general criteria for jurisdiction do not specifically apply. Refer to either general attachments issued under Chapter 20, Title 8.01 or overweight attachments issued under [Va. Code § 46.2-1134](#) for specific exceptions to jurisdiction.

B. Venue

In attachments, preferred venue is determined as if the principal defendant is the only defendant or where the principal defendant has estate or debts owing him.

IX. ATTACHMENT PURSUANT TO CHAPTER 20, TITLE 8.01

A. Jurisdiction

Pursuant to [Va. Code § 16.1-77 \(2\)](#), the general district court has concurrent jurisdiction with circuit court when the claim does not exceed \$50,000.00, exclusive of interest and attorney's fees contracted. When real estate only is claimed, the circuit court has exclusive jurisdiction pursuant to [Va. Code § 16.1-105](#).

B. Case Initiation and Reasonable Cause Review

Those who may file an attachment petition are as follows:

1. Plaintiff pursuant to [Va. Code § 8.01-537](#) and [Rules of Court 7B:7](#).
2. Plaintiff's agent pursuant to [Va. Code § 8.01-537](#). An agent is a person expressly authorized by the plaintiff to act for the plaintiff. Family members or friends can be authorized to act as agents. A person licensed under [Va. Code § 54.1-2106.1](#) as a real estate broker, real estate salesperson or rental location agent; also, a resident manager of such licensed person, partnership, association or employer ([Va. Code § 55-246.1](#)).
3. Plaintiff's attorney pursuant to [Rules of Court 1:5](#) and [7B:7](#).
4. Some other person cognizant of the facts therein stated pursuant to [Va. Code § 8.01-537](#).
5. Plaintiff's regular and bona fide employee pursuant to [Rule of Court 7B:7](#).

In an attachment pursuant to Chapter 20, Title 8.01, the plaintiff may request pre-trial or post-trial attachment by:

- Levy (a process by which a defendant's property rights are frozen even though the property remains in the defendant's possession); or
- Seizure

A magistrate who receives a request for attachment levy or seizure must receive from the plaintiff:

- A completed petition, DC-445, ATTACHMENT PETITION with attached list of facts, **AND**

- Court processing fee and legal aid fee unless statutorily exempted, law library fee, court technology fee, indigent defense fund fee, if applicable, and courthouse maintenance and/or construction fee, if authorized by local ordinance. Failure of the plaintiff to pay the filing fees prohibits the attachment to issue ([Va. Code § 8.01-537 \(B\)](#)). [Virginia Code § 8.01-537 \(B\)](#) allows the magistrate to accept such fees. [Virginia Code § 15.2-1609.3](#) also provides that the clerk shall collect the sheriff's fees ([Va. Code § 17.1-272](#)). A practical reading of this statute also would appear to allow the magistrate to collect such sheriff's fees as an accommodation to the public. For example, the clerk's office may be closed or the public may have to make additional trips to the clerk's office. Please note that the sheriff's service fee is to be calculated on a **per defendant basis**. Another sheriff's fee, in addition to the sheriff's service fee, is provided for attachment cases. This is the sheriff's levy fee (includes levy with seizure). Both the sheriff's service fee and the sheriff's levy (or levy with seizure) fee can be found in the "Accounting & Prepayments" chapter and "Fee and Prepayment Schedules" appendix.

- Sufficient bond

Pursuant to [Va. Code § 16.1-86](#), the magistrate must mark the date and time of filing on the upper margin of the petition. As in the detinue seizure previously discussed, a magistrate who receives a DC-445, [ATTACHMENT PETITION](#) with list of facts must review these documents for "reasonable cause." This review is similar to that of an affidavit for search warrant. The review is limited to the information contained in the petition and any attached pages. Oral testimony cannot be used.

The DC-446, [ATTACHMENT SUMMONS](#) cannot issue until the magistrate:

- a. Finds that the petition complies with:
 - 1) [Virginia Code § 8.01-534](#) (a proper statutory ground is alleged) and the attached list of facts support the ground(s) alleged to exist; and
 - 2) [Virginia Code § 8.01-537](#) (petition provides for required information) and
 - 3) [Virginia Code § 8.01-538](#) (does not involve a vessel, ship, boat, etc. in excess of 20 tons. Only a judge can handle these types of attachment cases); and
 - 4) [Virginia Code § 8.01-533](#); and
- b. Has received from the petitioner a bond secured by a type of security allowed by law and in the amount required by law ([Va. Code §§ 8.01-537.1](#) or [8.01-551](#)), and

- c. Finds "reasonable cause" (essentially the same as "probable cause" in search warrant situations) to believe that the alleged facts support the existence of the ground or grounds of attachment selected by the plaintiff.

In the content of the petition itself, ([Va. Code § 8.01-537](#)), the basis for the petitioner's claim must either be for the

- 6. Recovery of specific personal property items in which the petitioner/plaintiff has a property interest and damages (if sought) for detention of such property, or
- 7. Recovery of money for:
 - a. A debt of the principal defendant which is
 - 1) Due and owing, **or**
 - 2) Not yet due and owing when the petition is filed.

In cases of in-state corporations or individual defendants, the debt claimed may be both due and owing or not yet due and owing. The converse, however, applies to out-of-state corporation or individual defendants. According to [Va. Code § 8.01-533](#), claims for a debt against out-of-state corporations or individual defendants must be due and owing if the only statutory ground alleged is that the defendant is a foreign corporation, or is not a resident of the Commonwealth, and has estate, or has debts owing to such defendant, within the Commonwealth (ground number A. (1) on back of petition form) or,

- b. A debt or damages caused by the principal defendant's breach of either an:
 - 1) Express contract (an actual agreement of the parties "expressed" orally or in writing, with the terms of the agreement being stated in distinct and explicit language).

Examples could include:

- Written agreement to purchase a stove from an appliance dealer.
- Oral agreement to sell a used car to a neighbor; or
- 2) Implied contract (a contract not created or evidenced by an explicit agreement, but a contract created by either (i) the acts or conduct of the parties which makes it reasonable to assume that a contract existed or (ii) law).

Examples could include:

- Electrician is requested to make emergency repairs, no specific agreement as to price to be charged for services (implied by act of the parties).
- Plaintiff purchased a water pump for a car engine, the pump failed and the engine was damaged (statutory warranty of fitness implied by law).

Very few, if any, attachments are filed for implied contract cases.

- c. Or, damages for a "wrong" (violation of a plaintiff's legal rights) committed by the principal defendant

Examples could include:

- Plaintiff's car is wrecked in an automobile collision caused by defendant's negligence.

The petition must show:

8. Recovery of specific personal property:

- a. Each item must be described in part I(a) of the Attachment Petition with enough detail that a reasonable person (such as the sheriff when he levies on or seizes the property) can identify the items. Petitioners may need to use additional pages to list and describe all such items - in such cases, the petition should contain such language as "see attached list" in part I(a) of the DC-445, [ATTACHMENT PETITION](#).
- b. The total estimated fair market value of the items of specific personal property must be placed in the **STATEMENT**.
- c. Damages (if any) for detention of such personal property must also be placed in the **STATEMENT**. Damages for such detention are usually the cost of obtaining a substitute or replacement for the property during such detention or the value of its use, which was lost by its detention.

Examples could include:

- Failure of your brother-in-law to return your car after borrowing it for a weekend. You have to rent a car to travel to work during the following week (damages measured by cost of obtaining a substitute).

- Failure of Henry Ford to return a rental car to XYZ Car Rentals, which loses future car rentals (damages measured by loss of use).
- d. The plaintiff's claimed property interests in these specific items of personal property must be stated in "**Character of Estate Claimed By Petition**" (petitioner's interest in the above property) part I (b) of the Attachment Petition. The plaintiff must show that he or she has some right to possess or use the property. A generally understood description of the plaintiff's status as to the property is sufficient.

Some examples are:

- Owner
- Lessee
- Co-tenant
- Borrower

9. Recovery of:

- a. Debt (due and owing or not yet due and owing)
- b. Debt or damages for a breach of contract
- c. Damages for a wrong
- d. A judgment for which no supersedeas or other appeal bond has been posted.

When any of the four types of claims above are involved,

- Check block(s) and (if applicable) the blank lines are completed in part II(a) of the DC-445, [ATTACHMENT PETITION](#).
- Check to see that enough details of the claim are provided in part II(b) of the DC-445, [ATTACHMENT PETITION](#) so that a reasonable person knows what is involved in the claim.

Examples could include:

- “(Principal defendant) failed to pay loan of \$1,000 due March 30, 1993” – debt due and owing.
- “(Principal defendant) breached contract to repair roof at 4512 West Grace St., Richmond, Virginia” - damages for breach of contract.
- “(Principal defendant)” wrecked (plaintiff's) car on April 1, 1993" - damages for a wrong.
- The amount sought to be recovered is inserted in **STATEMENT**.

10. Debt or damages and (if any) interest and attorney fees.

11. Grounds of Attachment:

- a. On the back of the DC-445, [ATTACHMENT PETITION](#) is a list of nine (9) types of situations in which an attachment may issue. These are the statutory authorized grounds for levy or seizure. The number assigned to the statutory ground, which applies in this case must be inserted on the petition. The plaintiff may select more than one ground. Any of these nine (9) statutory grounds may apply to either a levy or seizure. While statutory grounds one through six, under paragraph A. could apply to a levy or seizure of specific or non-specific property, the two statutory grounds listed under paragraph B. applies to a levy or seizure of specific personal property only. If more than one statutory ground is alleged, they both must be connected together by "and" (Northern Neck State Bank V. Gilbert Packing Co., 114 Va. 658, 661 (1913)) and each must be supported by reasonable cause with a list of facts for a magistrate to issue. **EXCEPTION:** Grounds numbered A.4 and A.5 may be connected to each other (not to any other grounds) by "or" or "and" ([Va. Code §§ 8.01-114](#) and [8.01-534](#)) and the facts establishing reasonable cause can support either statutory ground.
- b. Attached to the petition must be a list of specific facts (listed in numbered paragraphs) that allegedly support the grounds of attachment claimed on the front of the petition. It is important to note that when more than one ground of attachment are alleged and are connected by "and", the list of facts has to support all of the alleged grounds. The only exception to this rule applies to numbers A.4 or A.5 (as mentioned above) in which case the list of facts only have to support one (number A.4 or number A.5) of the alleged grounds.

12. Type of relief sought:

“Levy only” or “levy and take into possession (seize)” must be checked.

13. Type of property to be attached:

- a. If recovery of specific personal property is sought, the first box should be checked. If damages for detention are also sought, then the third box should also be checked.
- b. For other claims, the second or third box or both should be checked. If the second box is checked, then the property to be attached should be described with enough detail that a reasonable person, such as the sheriff, can identify the item or items. The estimated fair market value of the property must be available for purposes of setting bond.

14. STATEMENT Contents:

- a. If recovery for debt or damages is sought, the following lines should be completed:
 - 1) Debt or Damages
 - 2) Court Fees and Costs
 - 3) TOTAL CLAIMED
- b. If recovery of specific personal property is sought, the following should be completed:
 - 1) Specific Personal Property
 - 2) Court Fees and Costs
 - 3) TOTAL CLAIMED
- c. If applicable to either type of recovery, the following should also be completed:
 - 1) Detention Damages
 - 2) Bond Premium
 - 3) Storage

15. Names and Addresses of Parties:

- a. Plaintiff/petitioner: In addition to plaintiff's name and address, either the:
 - 1) Name and telephone number of plaintiff's attorney; or
 - 2) Plaintiff's telephone number should be obtained if available.
- b. Principle defendant and co-defendant: The plaintiff needs to complete the names and street addresses of each defendant. If the plaintiff has listed post office box addresses, the magistrate should request that the plaintiff obtain the street address of each of the defendants, or directions to the address of each defendant.

16. Formalities:

Petition must be signed under oath by the plaintiff, his agent or his attorney, or someone cognizant of the facts and properly acknowledged. The magistrate, clerk of court, notary public, or judge may take the acknowledgment.

If the petition is not on a DC-445, [ATTACHMENT PETITION](#) the magistrate should compare the petition to the DC-445, [ATTACHMENT PETITION](#) to insure that the plaintiff's petition is complete.

If the petition meets review criteria, the magistrate follows the procedures for the plaintiff's bond.

If the petition does not meet review criteria, then the magistrate should do the following:

- Tell petitioner in general terms why his petition is defective. Examples include:
 - “I cannot issue an Attachment Summons because your list of facts does not establish reasonable cause to believe that the ground of attachment alleged in your petition may exist.”
 - “I cannot issue an Attachment Summons because you asked for pre-trial seizure and your property bond you propose to post is not double the fair market value of the property to be seized.”
 - Do not try to give specific language to the petitioner to insert in the petition or negotiate with the petitioner as to what language is acceptable. In such situations, allow the petitioner to make minor amendments to the petition. If major amendments are needed, have the petitioner draft a new petition.
 - If not satisfactorily amended or if rejected without later amendment, the magistrate should mark in the upper right corner of the petition "denied," and add the date of this action and his or her initials.

C. Plaintiff's Bond

No DC-446, ATTACHMENT SUMMONS may issue until the proper bond has been posted pursuant to Va. Code § 8.01-537.1.

1. Type of bond allowed:

- **Cash** pursuant to [Va. Code § 1-205](#).
- **Surety** (approved by the court or magistrate). [Virginia Code § 38.2-2406](#) provides the following guidance as to the acceptance of a surety: Whenever a bond, undertaking, recognizance, guaranty, or similar obligation is required, permitted, authorized or allowed by any law of this Commonwealth, or whenever the performance of any act, duty or obligation, or the refraining from any act, is required, permitted, authorized or allowed to be secured or guaranteed by any law of this Commonwealth, the bond or similar obligation, or the security or guaranty, may be executed by any fidelity and surety insurer licensed to execute such instruments. The execution by any fidelity and surety insurer of a bond, undertaking, recognizance, guaranty or similar obligation by its officer, attorney-in-fact, or other authorized representative shall be accepted as fully complying with every law or other requirement, now or hereafter in force, requiring that the bond, undertaking, recognizance,

guaranty or similar obligation be given or accepted or that it be executed by one or more sureties, or that the surety or sureties be residents, householders or freeholders, or possess any other qualifications. (The magistrate should be sure to attach to the bond the power of attorney or a copy or facsimile thereof).

- **Property**, with real property, the bond amount may not exceed the net equity in the property. The plaintiff may pledge his or her own property. If co-owners also pledge, they too must join in executing the bond. The magistrate should use a DC-332, [AFFIDAVIT OF SURETY](#) for establishing net equity and list the names of all co-owners of the property.

While [Va. Code § 8.01-537.1](#) allows the plaintiff to use property to post bond and does not specifically state that only real property may be used, the magistrate should consult their local judges to determine if they approve allowing the plaintiff to post bond using personal property, as the court may review any bond contested as inadequate and may order additional bond as provided in [Va. Code § 8.01-553](#). If the magistrate has any question about any matter related to bonds, he or she should contact the magistrate advisors.

In the event an agent or attorney-in-fact for the surety seeks to enter into the bond, the following questions should be asked:

- Do you have power-of-attorney?
- Is your power-of-attorney "special" or "general"? ("special" limits the authority to the contents of the document.)
- Is there a limit on the dollar amount by which you may enter into a civil bond?
- For agents or attorneys-in fact for surety companies: Is your power-of-attorney in compliance with the requirements of [Va. Code § 38.2-2416](#)?

Insist on seeing proof of the agent or attorney-in-fact's authority to enter into civil bonds. If the power-of-attorney is acceptable, attach a copy to the original bond.

2. Amount of bond required:

a. For levies only

- 1) Cash or surety. The requirement is at least the estimated fair market value of the property to be levied.
- 2) Property. The amount of the bond must be at least double the estimated fair market value of the property to be levied.

b. For levies with seizures

The amount of the bond, whether cash, surety, or property, must be at least double the estimated fair market value of the property to be seized.

Advise the plaintiff that the sheriff may not seize property if he or she feels that the property valuation is too low and, therefore, the bond amount inadequate. Review the DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#) for completeness. If the plaintiff is using a bond form other than the DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#), compare the plaintiff's bond to the DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#) for completeness. If you are unable to determine if the bond meets these requirements, request the plaintiff to enter into a bond using the DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#) form.

Have the bond executed. If a cash bond meets the statutory requirements, issue also a receipt pursuant to standard accounting procedures described in the "Accounting & Prepayments" chapter of the *MAGISTRATE MANUAL*.

D. Attachment Summons

If the petition and attached list of facts meet "reasonable cause" and the plaintiff's bond is adequate, the DC-446, [ATTACHMENT SUMMONS](#) may issue. Attach a copy of DC-407, [REQUEST FOR HEARING - EXEMPTION CLAIM](#) with the papers. Pursuant to [Va. Code § 8.01-543](#), subsequent attachments founded on the original petition may be issued by the clerk of the court where the original attachment is pending upon written application of the plaintiff, his agent or attorney. However, the clerk shall not issue an attachment where new or additional grounds of attachment are relied upon or where any ship, boat or vessel of more than twenty tons is sought to be attached.

An attachment may be issued or executed on any day, including a Sunday or holiday pursuant to [Va. Code § 8.01-542](#). The return of process must be set not more than thirty (30) days from its date of issuance to the office of the clerk wherein the petition was filed ([Va. Code § 8.01-541](#)). When the return is made, however, to the general district court, [Va. Code § 16.1-80](#) requires that the process must also be served not less than five (5) days before the return date. In cases of attachment, [Va. Code § 8.01-533](#) does provide for the issuance of post-trial attachments. After issuance of the summons, it is important that the Attachment Summons and attached papers to be served be delivered to or picked up by a representative of the sheriff's office. Your District may have an established procedure for ensuring that the petitioner and the papers promptly reach the sheriff. Contact the chief magistrate to confirm whether there is such an established procedure. If there is not, consider making a courtesy call to the sheriff to notify that office that there is a levy to be made.

E. Service of Process

The sheriff serves the summons on the defendant or other responsible person where the levy or seizure is made. Civil Process Servers are not authorized to serve this summons pursuant to [Va. Code § 8.01-293](#). If possession is taken, the sheriff holds the property until trial ([Va. Code § 8.01-551](#)). The executed summons is returned to the appropriate clerk.

If the defendant wants the property returned to him, the following steps apply:

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

X. OVERWEIGHT ATTACHMENT ([Va. Code § 46.2-1134](#))

An overweight attachment involves a traffic overweight situation whereby the charging officer will not allow the operator of a vehicle to sign the citation for cases in violation of [Va. Code § 46.2-1126](#).

A. Jurisdiction

In cases of liquidated damages for violations of [Va. Code § 46.2-1135](#), the general criteria for jurisdiction do not apply. For purposes of filing, the general district court has exclusive jurisdiction over these cases regardless of the amount in question.

B. Case Initiation and Reasonable Cause Review

Pursuant to [Va. Code § 46.2-1134](#), an authorized officer may only hold an overweight vehicle as is reasonably necessary to promptly petition for an attachment summons to attach the vehicle. Levies without seizure do not apply in overweight attachments. In such situations the charging officer must file a written petition with attached list of facts, in duplicate, in the same manner as previously described for attachments pursuant to Chapter 20, Title 8.01, in this chapter. The magistrate must note the date and time of pleading on the upper margin of the petition. After receiving a written petition and attached list of facts, the magistrate then conducts a "reasonable cause" hearing to determine if a statutory ground has been met.

1. If "reasonable cause" is not established, the magistrate allows the operator of the vehicle to sign the citation and the hearing is terminated.
2. If "reasonable cause" is established, the magistrate must provide the following information to the operator of the vehicle before proceeding further:

- “You may pay the liquidated damages, civil penalty, weighing fee and processing fee, at this time. If you do not pay in full, an Attachment Summons will be issued and a date will be set for court. The truck will be attached and it will not be released before trial, unless you post a defendant's bond with the magistrate. If you wish to contest the citation, you may do so at the attachment hearing in court. Do you wish to pay the liquidated damages at this time or do you prefer to post a bond for release of the truck prior to trial?”
- a. If the operator elects to pay, the following procedures apply:
 - 1) The magistrate may accept a check or money order. (See procedures set forth in the “Accounting & Prepayments” chapter of this manual for processing procedures).
 - 2) The magistrate may accept cash. (See procedures set forth in the “Accounting & Prepayments” chapter of this manual for processing procedures.)
 - 3) The magistrate mails the check or money order to the [Department of Motor Vehicles](#) along with the citation. The canceled check is the only receipt the magistrate will receive.
 - 4) Nothing is sent to the court under this option.
- b. If the operator does not pay, the following procedures apply:
 - 1) Issue the DC-446, [ATTACHMENT SUMMONS](#) and set the trial date. Do not check data element number 6 since the Commonwealth does not have to post bond.
 - 2) Secure the unserved citation to the original DC-446, [ATTACHMENT SUMMONS](#). Also attach a copy of the petition to the original DC-446, [ATTACHMENT SUMMONS](#). These documents are given to the officer who serves the summons and after service returns the documents to court.
 - 3) The original petition, list of facts, and copy of the DC-446, [ATTACHMENT SUMMONS](#) (as well as the original defendant's bond, if any) should be sent directly to the court by the magistrate.

C. Defendant’s Bond

Pursuant to [Va. Code § 46.2-1134](#), the Commonwealth is not required to post a plaintiff's bond. The defendant may, however, post a defendant's bond. If the defendant chooses to post such bond, the defendant must post it in accordance with [Va. Code § 8.01-553](#) except that the judicial officer must take the bond. This is one of only a few instances where a magistrate will accept a defendant's counter bond.

[Virginia Code § 8.01-553](#) provides that the defendant may post either double the amount or value for which the attachment issued, or double the value of the property attached at the option of the person giving the bond. This section read in conjunction

with [Va. Code § 1-205](#) allows for the defendant to use either cash or surety, but not property, to secure the bond.

In the event the defendant elects to use the value of the property attached as the basis for the defendant's bond, it would appear that the contents of the truck would not be considered as part of that valuation. [Virginia Code § 46.2-1134](#) provides the owner or operator the right to unload and remove cargo from the vehicle at their own risk when the civil penalty, liquidated damages, weighing fee and processing fee are not paid in full, or when no bond is given by or for the person charged with the weight violation. Since this procedural right is provided to the owner or operator, it follows that the contents would not be considered for purposes of bond.

XI. ATTACHMENTS FOR UNPAID FEES AND PENALTIES

An attachment involves a traffic situation whereby the charging officer will not allow the operator of a vehicle to sign the citation for cases in violation of [Va. Code § 46.2-613.1](#).

A. Jurisdiction

In cases of unpaid fees and penalties in violation of [Va. Code § 46.2-613.1](#), the general criteria for jurisdiction do not apply. For purposes of filing, the general district court has exclusive jurisdiction over these cases regardless of the amount in question.

B. Case Initiation and Reasonable Cause Review

Pursuant to [Va. Code § 46.2-613.4](#), any size and weight agent authorized to serve process under the provision of this chapter may hold a vehicle without an attachment summon or court order, but only for such time as is deemed reasonably necessary to promptly petition for an attachment summons to attach the vehicle. Levies do not apply in unpaid fees and penalties attachments. In such situations the charging officer must file a written petition with attached list of facts, in duplicate, in the same manner as previously described for attachments pursuant to Chapter 20, Title 8.01, in this chapter. The magistrate must note the date and time of pleading on the upper margin of the petition. After receiving a written petition and attached list of facts, the magistrate then conducts a "reasonable cause" hearing to determine if a statutory ground has been met.

1. If "reasonable cause" is not established, the magistrate allows the operator of the vehicle to sign the citation and the hearing is terminated.
2. If "reasonable cause" is established, the magistrate must provide the following information to the operator of the vehicle before proceeding further:

“You may pay the previously accessed fees and penalties due the Commonwealth. If you do not pay in full, an Attachment Summons will be issued and a date will be set for court. The truck will be attached and it will not be released before trial, unless you post a defendant's bond with the magistrate. If you wish to contest the citation, you may do so at the attachment hearing in court. Do you wish to pay the liquidated damages at this time or do you prefer to post a bond for release of the truck prior to trial?”

a. If the operator elects to pay, the following procedures apply:

- 1) The magistrate may accept a check or money order. (*See* procedures set forth in the “Accounting & Prepayments” chapter of this manual for processing procedures).
- 2) The magistrate may accept cash. (*See* procedures set forth in the “Accounting & Prepayments” chapter of this manual for processing procedures.)
- 3) The magistrate mails the check or money order to the [Department of Motor Vehicles](#) along with the citation. The canceled check is the only receipt the magistrate will receive.
- 4) Nothing is sent to the court under this option.

b. If the operator does not pay, the following procedures apply:

- 1) Issue the DC-446, [ATTACHMENT SUMMONS](#) and set the trial date. Do not check the block denoting “bond given” since the Commonwealth does not have to post bond.
- 2) Secure the unexpired citation to the original DC-446, [ATTACHMENT SUMMONS](#). Also attach a copy of the petition to the original DC-446, [ATTACHMENT SUMMONS](#). These documents are given to the officer who serves the summons and after service returns the documents to court.
- 3) The original petition, list of facts, and copy of the DC-446, [ATTACHMENT SUMMONS](#) (as well as the original defendant's bond, if any) should be sent directly to the court by the magistrate.

C. Defendant’s Bond

Pursuant to [Va. Code § 46.2-613.4](#), the Commonwealth is not required to post a plaintiff's bond. The defendant may, however, post a defendant's bond. If the defendant chooses to post such bond, the defendant must post it in accordance with [Va. Code § 8.01-553](#) except that the judicial officer must take the bond. This is one of only a few instances where a magistrate will accept a defendant's counter bond. The judicial officer shall return the bond to the clerk of the appropriate court in place of the officer serving the attachment as otherwise provided in [Va. Code § 8.01-554](#).

[Virginia Code § 8.01-553](#) provides that the defendant may post either double the amount or value for which the attachment issued, or double the value of the property

attached at the option of the person giving the bond. This section read in conjunction with [Va. Code § 1-205](#) allows for the defendant to use either cash or surety, but not property, to secure the bond.

In the event the defendant elects to use the value of the property attached as the basis for the defendant's bond, it would appear that the contents of the truck would not be considered as part of that valuation.

[Virginia Code § 46.2-613.4](#) provides that in the event the fees and penalties are not paid in full, or no bond is given by, or for the person charged with the violation, the vehicle involved in the violation shall be stored in a secure place, as may be designated by the owner or operator of the vehicle. If no place is designated, the officer or size and weight compliance agent executing the attachment summons shall designate the place of storage. The owner or operator shall be afforded the right of unloading and removing the cargo from the vehicle. The risk and cost of the storage shall be borne by the owner or operator of the vehicle. Since this procedural right is provided to the owner or operator, it follows that the contents would not be considered for purposes of bond.

XII. DISTRESS FOR RENT

A distress levy or seizure is a suit by a landlord to insure the payment of rent. This type of civil action arises when the defendant fails or refuses to make rent payments for certain premises rented from the plaintiff.

The plaintiff, through this suit, is attempting to enforce his statutory lien on personal property brought onto the rented premises as a means of collecting rent. The lien begins at the time the personal property is brought onto the leased premises. This statutory lien is enforced by obtaining a distress warrant to "distrain" (levy or seize) enough of the defendant's personal property to pay the rent due. Pursuant to [Va. Code § 8.01-130.6](#), the DC- 424, [DISTRESS WARRANT](#) applies only to:

- Personal property of the defendant that is on the rented premises; and
- Any personal property of the defendant previously located on the rented premises that has been removed from the rented premises within thirty days before the date of the DC-424, [DISTRESS WARRANT](#).
- No other personal property is subject to distress.

Pursuant to [Va. Code § 8.01-130.4](#), a distress action for rent may be brought within five years from the time the rent becomes due, and not afterwards, whether the lease is ended or not. As in detinue seizures and attachments, only judges and magistrates can issue distress warrants. In addition, the plaintiff must post a bond before the warrant can issue.

A. Jurisdiction

In distress situations, the general criteria for jurisdiction do not apply. Distress is an exception to the criteria as described in the “Jurisdiction” section of this chapter. For purposes of filing, the general district court has exclusive jurisdiction over distress cases pursuant to [Va. Code §§ 16.1-77](#) and [55.1-130.4](#), regardless of the amount of rent in dispute.

B. Case Initiation and Reasonable Cause Review

Those who may file a distress petition are:

1. Plaintiff pursuant to [Va. Code § 8.01-537](#) and [Rules of Court 7B:7](#).
2. Plaintiff’s agent pursuant to [Va. Code § 8.01-537](#). An agent is a person expressly authorized by the plaintiff to act for the plaintiff. Family members or friends can be authorized to act as agents. A person licensed under [Va. Code § 55.1-1417](#) as a real estate broker, real estate salesperson or rental location agent; also, a property manager, managing agent, or any authorized employee pursuant to [Va. Code § 55.1-1257](#), Plaintiff’s attorney pursuant to [Rules of Court 1:5](#) and [7B:7](#).
3. Some other person cognizant of the facts therein stated pursuant to [Va. Code § 8.01-537](#).
4. Plaintiff’s regular and bona fide employee pursuant to [Rules of Court 7B:7](#).
5. A corporation, partnership, limited liability company, business trust when signed by a corporate officer, with approval of the board of directors, or manager, general partner or trustee may authorize in writing an employee, a person, property manager, or managing agent of a landlord pursuant to [Va. Code § 16.1- 88.03](#).

A magistrate who receives a request for distress levy or levy with seizure must receive from the petitioner:

- a. A completed DC-423, [DISTRESS PETITION](#) with attached list of facts, and
- b. Court processing fee and legal aid fee, indigent defense fund fee, court technology fee. unless statutorily exempted. Also collect law library fee, if applicable, and courthouse maintenance and/or construction fee, if authorized by local ordinance. Failure to do so prohibits the distress from being issued ([Va. Code § 55.1-130.4](#)).

While [Va. Code § 15.2-1609.3](#) provides that the clerk shall collect the sheriff’s fees ([Va. Code § 17.1-272](#)), a practical reading of this statute also

would appear to allow the magistrate to collect such sheriff's fees as an accommodation to the public. For example, the clerk's office may be closed or the public may have to make additional trips to the clerk's office. Please note that the sheriff's service fee is to be calculated on a **per defendant basis**. Another sheriff's fee, in addition to the sheriff's service fee, is provided in distress cases. This is the sheriff's levy (includes levy with seizure) fee. Both the sheriff's service fee and the sheriff's levy (and levy with seizure) fee can be found in the "Accounting & Prepayments" chapter and "Fees and Prepayment Schedules" appendix.

c. Sufficient bond

The magistrate must mark the date and time of filing on the upper margin of the petition. A magistrate who receives a DC-423, [DISTRESS PETITION](#) with list of facts must review these documents for "reasonable cause." This review is similar to that of an affidavit for search warrant. The review is limited to the information contained in the petition and any attached pages. Oral testimony cannot be used.

The DC-424, [DISTRESS WARRANT](#) cannot issue until the magistrate:

6. Finds that the petition complies with:

- a. The statutory grounds (listed on reverse side).
- b. The proper ground or grounds must be alleged and the attached list of facts must support the ground or grounds alleged.

If ground number 1 is alleged (the defendant is an out-of-state corporation or individual having some property rights in Virginia) and the basis of the claim is a debt, the debt must be due and owing. [Va. Code §§ 8.01-533, 8.01-534](#) and [55.1-130.4](#).

- c. Has received from the petitioner a bond secured by a type of security allowed by law and in the amount required by law (Va. Code §§ 8.01-537.1, 55.1-130.4 **and**
- d. Finds "reasonable cause" (essentially the same as probable cause) to believe the grounds of attachment may exist ([Va. Code § 55.1-130.4](#) . In the content of the petition itself ([Va. Code §§ 55.1-130.4](#) , the basis for the claim must be for rent pursuant to [Va. Code § 55.1-130.4](#).

The petitioner may claim for rent:

- By bringing action within five (5) years from the time it became due, and not afterwards ([Va. Code § 55.1-130.4](#)).

- Whether the lease has ended or not ([Va. Code § 55.1-130.4](#)); however,
 - Damages may not be claimed
 - Possession of real estate may not be sought

The petition must show:

7. How much rent is due? If rent is not expressed in money, the plaintiff must give a description and fair market value of the item or service used for rent, e.g., a sharecropping agreement where rent is expressed as a percentage of the crop.
8. What items of property are "subject to distraint" (may be levied on or seized) under a DC-423, [DISTRESS PETITION](#):
 - a. The check box in part II(a) of the DC-423, [DISTRESS PETITION](#) is checked if plaintiff does not want to specify in the petition what property is to be distrained which is on the leased property for whose rental payments the distress petition is being filed.
 - b. The check box in part II(b) of the DC-423, [DISTRESS PETITION](#) is checked and a description of the specific items to be distrained is inserted in the lines below. Underneath these lines, one of the two boxes must be checked to show where the property is located.
 - 1) If the property is in the possession of a co-defendant (someone other than the tenant), the first box is checked and the co-defendant's name and address is added in the right hand column.
 - 2) If the property is in the possession of the defendant/tenant, the second box is checked and the address of the place where the property is located is inserted. It may be on the leased premises involved in this case or it may be elsewhere.

It is possible to have items of personal property that is subject to distraint located at more than one location. In situations such as this, separate petitions with attached list of facts and separate bonds may be required where different sheriff's departments are involved.

9. Grounds of Attachment
 - a. On the back of the DC-423, [DISTRESS PETITION](#) is a list of nine (9) types of situations in which a distress may issue. These are the statutory authorized grounds for levy or seizure. The number(s) assigned to the statutory ground(s) that apply(ies) in this case must be inserted on the petition. Any of these nine

(9) statutory grounds may apply to either a levy or seizure of property subject to the distress. While statutory grounds one through six, under paragraph A., and paragraph C., could apply to a levy or seizure of specific or non-specific property, the two statutory grounds listed under paragraph B. applies to a levy or seizure of specific personal property only. If more than one statutory ground is alleged, they both must be connected together by "and" (Northern Neck State Bank v. Gilbert Packing Co., 114 Va. 658, 661 (1913)) and each must be supported by reasonable cause with a list of facts for a magistrate to issue. **EXCEPTION:** Grounds numbered A.4 and A.5 may be connected to each other (not to any other grounds) by "or" or "and" ([Va. Code §§ 8.01-114](#) and [8.01-534](#)) and the facts establishing reasonable cause can support either statutory ground.

- b. Attached to the petition is a list of specific facts, which allegedly support the grounds of attachment claimed on the front of the petition.

10. Type of relief sought:

- a. "Levy" or "levy and take into possession (seize)" should be checked.
- b. Type of property to be attached should be checked:
 - 1) If distraint of specific personal property is sought, the first box is checked and the fair market value should be shown (for purposes of setting bond).
 - 2)
 - 1) If distraint is sought without specifying what property is to be levied on or seized, the second box should be checked.

11. **STATEMENT** contents:

- a. In all cases, the following should be completed:
 - 1) Rent
 - 2) Court fees and costs
 - 3) TOTAL CLAIMED
- b. If (as) applicable, the following should be completed:
 - 1) Bond premium
 - 2) Attorney's fees
 - 3) Storage

12. Names and Addresses of Parties:

- a. Plaintiff/petitioner: In addition to plaintiff's name and address, either the
 - 1) Name and telephone number of plaintiff's attorney or
 - 2) Plaintiff's telephone number should be obtained if available.
- b. Principle Defendant and Co-defendant: The plaintiff needs to complete the names and street addresses of each defendant. If the plaintiff has listed post office box addresses, the magistrate should request that the plaintiff obtain the street address of each of the defendants, or directions to the address of each defendant.

13. Formalities:

Petition must be signed under oath by the plaintiff, his agent, duly authorized employee, or his attorney and properly acknowledged. The magistrate, clerk of court, notary public or judge may take the acknowledgment.

If the petition is not on a DC-423, [DISTRESS PETITION](#) use the DC-423, [DISTRESS PETITION](#) to insure that the plaintiff's petition is complete. If you cannot determine if the petition meets the requirements, request the plaintiff to complete a DC-423, [DISTRESS PETITION](#).

If the petition meets review criteria, continue on to procedures for plaintiff's bond. If the petition does not meet the criteria, then:

- Tell petitioner in general terms why his petition is defective - Examples include:
 - "I cannot issue a Distress Warrant because your list of facts does not establish reasonable cause to believe that the ground of attachment alleged in your petition may exist."
 - "I cannot issue a Distress Warrant because you asked for the seizure of specific property but failed to show where the property is located."
- Do not try to give specific language to the petitioner to insert in the petition or negotiate with the petitioner as to what language is acceptable. In such situations, allow the petitioner to make minor amendments to the petition. If major amendments are needed, have the petitioner draft a new petition.
- If not satisfactorily amended or if rejected without later amendment, mark in the upper right corner of the petition "denied," add the date of this action and your initials if no amendment is sought.

C. Plaintiff's Bond

No Distress Warrant may be issued until the proper bond has been posted pursuant to [Va. Code §§ 55-130.4](#) and [8.01-537.1](#). There are no exceptions.

1. Type of bond allowed

a. Cash

- b. Surety** (whom the court or magistrate must approve as a surety). Virginia Code § 38.2-2406 provides the following guidance as to the acceptance of a surety: Whenever a bond, undertaking, recognizance, guaranty, or similar obligation is required, permitted, authorized or allowed by any law of this Commonwealth, or whenever the performance of any act, duty or obligation, or the refraining from any act, is required, permitted, authorized or allowed to be secured or guaranteed by any law of this Commonwealth, the bond or similar obligation, or the security or guaranty, may be executed by any fidelity and surety insurer licensed to execute such instruments. The execution by any fidelity and surety insurer of a bond, undertaking, recognizance, guaranty or similar obligation by its officer, attorney-in-fact, or other authorized representative shall be accepted as fully complying with every law or other requirement, now or hereafter in force, requiring that the bond, undertaking, recognizance, guaranty or similar obligation be given or accepted or that it be executed by one or more sureties, or that the surety or sureties be residents, householders or freeholders, or possess any other qualifications. (The magistrate should be sure to attach to the bond the power of attorney or a copy or facsimile thereof.)

- c. Property.** The plaintiff may pledge his own property as long as other co-owners, if any, join in executing the bond. The magistrate should use the DC-332, [AFFIDAVIT OF SURETY](#) for establishing net equity and the names of all co-owners of the property. While [Va. Code § 8.01-537.1](#) allows the plaintiff to use property to post bond and does not specifically state that only real property may be used, the magistrate should consult the local judges to determine if they approve allowing the plaintiff to post bond using personal property, as the court may review any bond contested as inadequate and may order additional bond as provided in [Va. Code § 8.01-553](#).

In the event an agent or attorney-in-fact for the surety seeks to enter into the bond, the following questions should be asked:

- Do you have power-of-attorney?
- Is your power-of-attorney "special" or "general"? ("special" limits the authority to the contents of the document.)

- Is there a limit on the dollar amount by which you may enter into a civil bond?
- For agents or attorneys-in-fact for surety companies: Is your power-of-attorney in compliance with the requirements of [Va. Code § 38.2-2416](#)?

The magistrate should be sure to attach to the bond the power of attorney or a copy or facsimile thereof.

2. Amount of bond required

a. For levies only

- 1) Cash or surety. The requirement is at least the estimated fair market value of the property to be levied.
- 2) Property. The amount of the bond shall be at least double the estimated fair market value of the property to be levied.

b. For Levies with Seizure

The amount of the bond, whether cash, surety, or property, must be at least double the estimated fair market value of the property to be seized.

Advise the plaintiff that the sheriff may not seize property if he feels that the property valuation is too low and, therefore, the bond amount inadequate. Review DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#) for completeness. If the plaintiff is using a bond form other than the DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#) compare the plaintiff's bond to the DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#) for completeness. If you are unable to determine if the bond meets these requirements, request the plaintiff to enter into a bond using the DC-447, [PLAINTIFF'S BOND FOR LEVY OR SEIZURE](#) form. Have the bond executed. If a cash bond meets the statutory requirements, issue also a receipt pursuant to standard accounting procedures described in the "Accounting & Prepayments" chapter of this manual.

D. Distress Warrant

If the petition and attached list of facts meet "reasonable cause" and the plaintiff's bond is adequate, the warrant may issue. The civil fees would be paid (*See* the "Accounting & Prepayments" chapter for amounts) and a receipt would be issued pursuant to accounting procedures.

Attach a copy of DC-407, [REQUEST FOR HEARING - EXEMPTION CLAIM](#) with the papers. Unlike attachments there is no statutory authorization to issue subsequent distress warrants in the same case. Distress warrants may be issued or executed on any day, including a Saturday, Sunday or other legal holiday ([Va. Code § 55.1-130.4](#)). The return of process must be set not more than thirty (30) days from its date of issuance ([Va. Code § 55.1-130.4](#)). When return is made, however, to general

district court, [Va. Code § 16.1-80](#), requires that the process must also be served not less than five (5) days before the return date.

After issuance of the DC-424, [DISTRESS WARRANT](#), it is important that the DC-424, [DISTRESS WARRANT](#) and attached papers to be served with it be delivered to or picked up by a representative of the sheriff's office. Your District may have an established procedure for ensuring that the DC-424, [DISTRESS WARRANT](#) and the papers promptly reach the sheriff. Contact the chief magistrate to confirm whether there is such an established procedure. If there is not, consider making a courtesy call to the sheriff to notify that office that there is a levy to be made.

E. Appeal

A landlord whose petition for attachment is denied should be informed that he may appeal this decision to the General District Court. Pursuant to Va. Code § 8.01-526, the defendant may retain possession of the personal property that has been levied upon by posting bond with the sheriff or the court. Further, if the defendant files with the sheriff or the court an affidavit that he is unable to post a bond and that he has a valid defense to the proceeding in that the proceeding was for rent not due or was otherwise illegal, the defendant is left in possession of the personal property until the further order of the Court, all as provided pursuant to Va. Code § 8.01-130.7. Given these procedures, a plaintiff whose request has been denied or a defendant whose property has been levied upon or seized can seek a review through the general district court.

F. Service of Process

The sheriff serves the warrant on the defendant or other responsible person where the levy or seizure is made. Civil Process Servers are not authorized to serve this warrant pursuant to [Va. Code § 8.01-293](#). If a seizure, the sheriff takes possession of the property and keeps it until trial. The executed warrant is then returned to the clerk.

If the defendant wishes to post a counter bond, he will do so with the sheriff using a DC-448, [DEFENDANT'S BOND FOR LEVY AND SEIZURE](#). The sheriff will take the bond and return the property to the defendant. As noted above, if the defendant submits an affidavit that he is not able to post a Defendants Bond and that he has a valid defense in that the distress is for rent that is not yet due or is otherwise illegal, he will be left in possession of the personal property pending the further order of the court.

XIII. TENANT'S ASSERTION AND COMPLAINT

A tenant whose landlord has refused to make repairs and corrections within a reasonable time after notice of conditions that constitute a fire hazard or serious threat to the life, health or safety of the occupants because of various conditions listed in [Va. Code §§ 55.1-1244](#), may file a Tenant's Assertion and Complaint (Form DC 429) with the aim of paying

rent not to the landlord but to the clerk of court until the further order of the court, thereby creating an incentive for the landlord to make the needed repairs and corrections.

A. Jurisdiction

In Tenant's Assertion and Complaint situations, the general criteria for jurisdiction do not apply as described in the "Jurisdiction" section of this chapter. For purposes of filing, the general district court has exclusive jurisdiction pursuant to [Va. Code §§ 55.1-1244](#).

B. Procedure

The procedures involved in landlord/tenant disputes of this type are as follows:

1. The tenant files with the magistrate (may also file with clerk) a DC-429, [TENANT'S ASSERTION AND COMPLAINT](#). Attached to the DC-429, [TENANT'S ASSERTION AND COMPLAINT](#) form should be a copy of the written notice served on the landlord detailing the conditions causing the complaint. The landlord may also have been notified of such conditions by violation or condemnation notice and refused or failed to remedy such conditions after a reasonable time (*See* reverse side of DC-429, [TENANT'S ASSERTION AND COMPLAINT](#) "Prerequisite Conditions for Relief" which describes methods of service or notification.). The tenant must also certify on the DC-429, [TENANT'S ASSERTION AND COMPLAINT](#) form that all prerequisite conditions for relief, as shown on the back of the form, have been met.
2. Collect processing fee and legal aid fee, indigent defense fund fee, court technology fee unless statutorily exempted. Also collect law library fee, if applicable, and courthouse maintenance and/or construction fee, if authorized by local ordinance. While [Va. Code § 15.2-1609.3](#) provides that the clerk shall collect the sheriff's fees ([Va. Code § 17.1-272](#)), a practical reading of this statute also would appear to allow the magistrate to collect such sheriff's fees as an accommodation to the public. For example, the clerk's office may be closed or the public may have to make additional trips to the clerk's office. Please note that the sheriff's service fee is to be calculated on a **per defendant basis**. *See* the "Accounting & Prepayments" chapter and the "Fee and Prepayment Schedules" appendix for amounts.
3. A court appearance date must be set within fifteen calendar days from the date of service on the landlord or his agent ([Va. Code §§ 55.1-1244](#)).
4. The plaintiff continues to pay rent through the clerk's office of the general district court until the case is heard and decided.

XIV. TENANT'S PETITION FOR RELIEF FROM UNLAWFUL EXCLUSION

The Virginia Residential Landlord and Tenants Act, [Va. Code § 55.1-1243](#), provides a tenant having a residential tenancy with a remedy for situations where a landlord unlawfully removes or excludes a tenant from residential premises or willfully interrupts or stops essential services. A list of tenancies and occupancies that are not residential tenancies for the purposes of this chapter of the code is set forth at [Va. Code § 55.1-1201](#).

A. Jurisdiction

In Tenant's Petition for Relief from Unlawful Exclusion situations, the general criteria for jurisdiction do not apply as described in the "Jurisdiction" section of this chapter. For purposes of filing, the general district court has exclusive jurisdiction pursuant to [Va. Code §55.1-1243](#).

B. Procedure

The procedures involved in landlord/tenant disputes of this type are as follows: The tenant files with the magistrate (may also file with clerk) a DC-431, [TENANT'S PETITION FOR RELIEF FROM UNLAWFUL EXCLUSION](#). The magistrate then collects the processing fee and the legal aid fee unless statutorily exempted. The magistrate also collects the law library fee, indigent defense fund fee, court technology fee, and , if applicable, and the courthouse maintenance and/or construction fee, if authorized by local ordinance. While [Va. Code § 15.2-1609.3](#) provides that the clerk shall collect the sheriff's fees ([Va. Code § 17.1-272](#)), a practical reading of this statute also would appear to allow the magistrate to collect such sheriff's fees as an accommodation to the public. For example, it may be more efficient for the magistrate to collect the fees when the clerk's office is closed or the petitioner would have to make additional unnecessary trips to the clerk's office. Please note that the sheriff's service fee is to be calculated on a **per defendant basis**. See the "Accounting & Prepayments" chapter and the "Fee and Prepayment Schedules" appendix for amounts.

The magistrate should set an early return date, if possible, the earlier the better.

XV. VIRGINIA INDOOR CLEAN AIR ACT

The Virginia Indoor Clean Air Act was enacted to regulate smoking statewide. The provisions of this Act can be found in Chapter 8.1, [Va. Code §§ 15.2-2820](#) through 15.2-2833.

Pursuant to subsection C of [Va. Code § 15.2-2826](#) no person shall smoke in a designated no-smoking area and any person who continues to smoke in such area after having been asked to refrain from smoking may be subject to a civil penalty of not more than twenty-five dollars.

This action is civil in nature as stated in an Attorney General Opinion to Turlington, dated 10/25/90 (1990, page 109); Civil suits brought under the Act may be initiated by a civil warrant issued by the clerk or deputy clerk of a general district court pursuant to § 16.1-69.40, or by a magistrate pursuant to § 19.2-45.2 Suit also may be initiated by the filing of a motion for judgment pursuant to § 16.1-81. Accordingly, it would be inappropriate for a magistrate to issue a criminal warrant or summons under the provisions of [Va. Code §§ 19.2-71](#) through [19.2-82](#). The Opinion concluded that multiple penalties may not be assessed when multiple plaintiffs bring suit to enforce a single violation of the Act.

Private citizens may enforce the Act through normal civil process. Civil suits brought under the Act may be initiated by a motion of judgment pursuant to [Va. Code § 16.1-81](#), a civil warrant issued by a clerk or deputy clerk of a general district court pursuant to [Va. Code § 16.1-69.40](#) or by filing a civil warrant with a magistrate pursuant to [Va. Code § 19.2-45](#).

The basic steps in processing a suit for a violation of the Act are described as follows:

- Case initiation
- Service of process

A. Case Initiation

When this suit is filed with a magistrate:

1. The complaint should be reduced to writing by the plaintiff (no particular form is necessary).
2. The magistrate notes the date and time of filing on the pleading.
3. The magistrate completes Form DC-430, [SUMMONS FOR HEARING](#) citing "Violation of Indoor Clean Air Act" as the allegation.

NOTE: In the event a plaintiff submits a warrant in debt for this violation, allow plaintiff to use debt form for process.

4. Collect processing fee and legal aid fee, indigent defense fund fee, courthouse technology fee unless statutorily exempted. Also collect law library fee, if applicable, and courthouse maintenance and/or construction fee, if authorized by local ordinance. While [Va. Code § 15.2-1609.3](#) provides that the clerk shall collect the sheriff's fees ([Va. Code § 17.1-272](#)), a practical reading of this statute also would appear to allow the magistrate to collect such sheriff's fees as an accommodation to the public. For example, the clerk's office may be closed or the public may have to make additional trips to the clerk's office, etc.) Please note that the sheriff's service fee is to be calculated on a **per defendant basis**. (See the "Accounting &

Prepayments” chapter and the “Fee and Prepayment Schedules” appendix for amounts.)

5. Issue a receipt to plaintiff.
6. Set the return date to allow the sheriff time to make service, but not less than five days or more than sixty days from service. ([Va. Code §§ 16.1-79 and 16.1-80](#)).
7. Attach a copy of the written complaint of plaintiff to each copy of DC-430, [SUMMONS FOR HEARING](#).
8. Transmit the court papers, receipt and fees to the appropriate general district court.
9. The clerk indexes the case and then forwards the process to the sheriff for service.

B. Service of Process

Procedures for service of process are the same as for those in suits for debt. After execution of process, the sheriff returns the papers to the clerk.

XVI.CHECKLISTS

A. Suits in Debt

1. Is the plaintiff over the age of 18 years? If not, is the suit brought by his next friend?
2. Is the suit for \$50,000 or less?
3. Is the suit brought by warrant in debt?
4. Is the warrant in debt made returnable to the General District Court?
5. Is the warrant in debt form substantially filled in?
6. Does the warrant in debt show the address for service of the defendant(s)?
7. Does the plaintiff have the appropriate cash or check for payment of the filing and service fees?
8. If the plaintiff has inserted a date for return is that date more than five and less than sixty days from the date of filing?

9. Does the plaintiff have an affidavit and statement of account or other papers to be served with the warrant? If so, be sure to attach them for filing and service.
10. Have you noted the date and time of filing in the upper righthand corner of the warrant?
11. Have you written a receipt and given it to the plaintiff?

B. Suits in Detinue

1. Is the plaintiff over the age of 18 years? If not, is the suit brought by his next friend?
2. Is the plaintiff aware that a suit in detinue will not immediately involve seizure of the property he is seeking to recover; and that if he seeks seizure of the property, a detinue seizure petition will need to be filed?
3. Is the DC-414, [WARRANT IN DETINUE](#) substantially completed and is the property that is sought valued at \$25,000 or less?
4. Does the DC-414, [WARRANT IN DETINUE](#) show the address for service, a total amount claimed, the property that is sought to be recovered, and the value of that property?
5. Does the DC-414, [WARRANT IN DETINUE](#) list a basis for the claim? If this and the above information are not completed, hand the paper back to the plaintiff and direct his attention to the portions that are not completed. Ask him if he wishes to complete these.
6. Is the DC-414, [WARRANT IN DETINUE](#) made returnable to the General District Court?
7. If the plaintiff has inserted a date for return, is that date more than five and less than sixty days from the date of filing? (Be sure that the filed warrant has a time and date for the return that fits the Court's civil docket.)
8. Have you noted the date and time of filing in the upper right hand corner of the DC-414, [WARRANT IN DETINUE](#) ?
9. Have you written a receipt and given it to the plaintiff?

C. Detinue Seizure

1. Is the plaintiff aware that he will need to post a bond and has he made arrangements to do that?
2. Is the matter either not yet before the court or is this request being made before the court has adjudicated the matter?
3. Is the person who is seeking the seizure either the plaintiff (who is over 18 years of age, or his next friend), or plaintiff's attorney, or plaintiff's regular and bona fide employee?
4. Has the plaintiff given you a completed DC-415, [DETINUE SEIZURE PETITION](#) with an attached list of facts?
5. Does the petition describe the kind, quantity, and estimated value of the property of which possession is sought?
6. Does the petition adequately describe the basis of plaintiff's claim and the amount due on any contract?
7. Does the petition properly allege one or more of the statutory grounds listed in [Va. Code § 8.01-534](#) and has petitioner listed facts in support thereof in his attached list of facts?
8. If the above and/or other information is not properly listed, hand the petition back to petitioner and offer him the opportunity to make the needed additions/entries.
9. Is the petition properly subscribed and sworn to by the plaintiff?
10. Have you calculated the amount of the bond as twice the fair market value of the property to be seized?
11. Is there a pending detinue proceeding which plaintiff has referenced in the DC- 415, [DETINUE SEIZURE PETITION](#)? (If so, do not charge a second processing fee; but do collect the other fees.)
12. Have you calculated service fees on a per defendant basis?
13. Have you included a separate sheriff's service fee for the seizure?
14. Before determining whether there is reasonable cause to find that the seizure order should be issued, have you collected the proper fees?

15. Before issuing the DC-416, [DETINUE SEIZURE ORDER](#), do you have in-hand the proper bond paperwork?
16. Have you noted the date and time of filing in the upper right hand corner of the DC-415, [DETINUE SEIZURE PETITION](#) and have you given the petitioner his receipt for the filing and service fees?
17. If after considering the documents, you have denied issuance of the seizure order, have you offered the petitioner an opportunity to make amendments to his paperwork?
18. If afterward, you still cannot appropriately issue, mark in the upper right hand corner of the petition “denied” and the date and time of this action and your initials.

D. Detinue Seizure Order

1. Have you attached a copy of DC-407, [REQUEST FOR HEARING- EXEMPTION CLAIM](#) to the Order?
2. Have you made the date of return to the General District Court not less than five days or more than 30 days?
3. Have you followed any customary procedure in your District to assure that the DC-416, [DETINUE SEIZURE ORDER](#) and the papers to be served with it reach the hands of the sheriff? If there is no such customary procedure, have you given the Order to the plaintiff with an explanation that he needs to hand- deliver it to the Sheriff to make arrangements for the levy and seizure?

E. Summons for Unlawful Detainer

1. Is plaintiff seeking damages within the jurisdiction of the General District Court?
2. Is the party before you the plaintiff, the agent or attorney of the plaintiff, the property manager, managing agent or other authorized employee, or a corporation, partnership, limited liability company, business trust duly represented by a corporate officer, or a manager, general partner or other person duly authorized to bring the suit?
3. Has the plaintiff submitted a properly completed DC-421, [SUMMONS FOR UNLAWFUL DETAINER](#)?
4. Has a termination notice been sent? Has any other termination notice or any notice of termination been given by a landlord to a tenant of a nonresidential premises? If not, ask the plaintiff if he wants to consider doing that before

proceeding. If he chooses not to, then continue and leave that matter for the court.

5. Calculate and collect filing fees and sheriff's service fees.
6. Note time and date of filing in upper right hand corner of DC-421 [Summons For Unlawful Detainer](#).
7. Have you given the plaintiff his receipt for the filing fees and service fees?
8. Set a return date for no more than 21 days after the filing date, if possible and if not then no longer than 30 days after filing. Set the matter for an appropriate civil docket date and time. If the plaintiff requests that the return date be set on a date later than 21 days from the date of filing, the initial hearing shall be set on a date the plaintiff is available and the court is also available and such summons shall be served at least 10 days before the return date thereof.
9. Transmit the paperwork and fees collected to the General District Court Clerk.

F. Pre-Trial Attachments (Levy or Seizure)

1. Is the person before you the plaintiff, a person properly authorized to serve as plaintiff's agent, plaintiff's attorney, plaintiff's regular and bona fide employee, or some other person cognizant of the facts?
2. Is the petitioner aware that a bond will need to be posted and that if property is seized arrangements will have to be made to pay for movement of the property and storage fees?
3. What kind of bond does the petitioner intend to post?
4. Does the petitioner seek a levy or a seizure? Explain how that affects the bond.
5. Does the petitioner have a completed DC-445, [ATTACHMENT PETITION](#) with an attached list of facts supporting his ground(s) for attachment?
6. Does your initial review of the petition show that it indicates whether seizure is requested, what is sought to be levied upon, the basis of the claim, and other information for which there are blanks? If not, return the petition to the petitioner and offer an opportunity to complete any blanks.

7. Is the petitioner prepared to pay the filing, service, and levy/seizure fees that you have calculated will be due?
8. Has the petition been duly sworn to, signed, and acknowledged by plaintiff or party before you?
9. Have you received the proper documents, filing fees, and do you have the proper bond papers in hand?
10. Have you collected the filing and service fees and given the plaintiff his receipt?
11. Have you written the date and time of filing in the upper right hand corner of the petition?
12. Does the list of facts establish reasonable cause to establish the ground of attachment alleged in the petition?
13. If not, have you given the petitioner an opportunity to make amendments thereto?
14. If after that, the petitioner still has not submitted a petition and statement of facts adequate to establish reasonable cause, have you briefly explained why to the petitioner and have you noted “denied” and added the date and time and your initials on the upper right hand corner of the petition?

G. Attachment Summons

1. Before issuing the DC-446, [ATTACHMENT SUMMONS](#), have you confirmed that the amount of the bond is adequate, and if any power of attorney is involved have you reviewed it and attached a copy to the original bond?
2. Have you attached a DC-407, [REQUEST FOR HEARING-EXEMPTION CLAIM](#) to the papers?
3. Have you set the return on the DC-446, [ATTACHMENT SUMMONS](#) for not more than thirty days and not less than five days after the date of issuance?
4. Have you followed any customary procedure in your District to assure that the DC-446, [ATTACHMENT SUMMONS](#) and the papers to be served with it reach the hands of the sheriff? If there is no such customary procedure have you given the DC-446, [ATTACHMENT SUMMONS](#) with attachments to the petitioner with instructions that he needs to contact the Sheriff’s Office directly to make arrangements for the levy or levy and seizure?

H. Overweight Attachments

1. Has the officer presented in duplicate a written petition for a summons to attach a vehicle?
2. Do the written petition and the copy each have an attached list of facts to support the petition?
3. Has the officer properly sworn to, subscribed, and acknowledged the petition?
4. Have you noted the date and time of filing of the petition in the upper right hand corner?
5. Does the petition and its list of facts establish reasonable cause for issuance of an attachment summons? If not, offer the officer an opportunity to make any minor amendments he may wish to make; then review as amended. If reasonable cause still has not been established, explain briefly to the officer and the operator of the vehicle and advise the officer that the operator should be allowed to sign a citation for the offense.
6. If reasonable cause has been established, have you provided to the operator the information shown in the Manual section that discusses overweight attachments?
7. If the operator of the vehicle elected to pay, have you received and properly processed payment, and have you mailed a check or money order to the [Department of Motor Vehicles](#) along with the citation?
8. If the operator has elected not to pay, have you issued the DC-446, [ATTACHMENT SUMMONS](#) and set the trial date and have you attached copies of the petition and list of facts to the DC-446, [ATTACHMENT SUMMONS](#) and given it to the officer for service?
9. If the operator has elected not to pay, has he posted a defendant's bond in an amount that is either (defendant's option) double the value of the amount for which the attachment was issued or double the value of the property attached?
10. If the operator has elected not to pay, have you forwarded to the Clerk of the General District Court, the original petition, list of facts, and a copy of the DC- 446, [ATTACHMENT SUMMONS](#) (and original defendant's bond, if any)?

I. Attachments for Unpaid Fees and Penalties

1. Has the officer presented in duplicate a written petition for a summons to attach a vehicle?
2. Do the written petition and the copy have an attached list of facts to support the petition?
3. Has the officer properly sworn to, subscribed, and acknowledged the petition?
4. Have you noted the date and time of filing of the petition in the upper right hand corner?
5. Do the petition and its list of facts establish reasonable cause for issuance of a DC-446, [ATTACHMENT SUMMONS](#)? If not, offer the officer an opportunity to make any minor amendments he may wish to make; then review as amended. If reasonable cause still has not been established, explain briefly to the officer and
6. the operator of the vehicle and advise the officer that the operator should be allowed to sign a citation for the offense.
7. If reasonable cause has been established, have you provided to the operator the information shown in the Manual section that discusses Attachments for unpaid fees and penalties?
8. If the operator of the vehicle elected to pay, have you received and properly processed payment, and have you mailed a check or money order to the [Department of Motor Vehicles](#) along with the citation?
9. If the operator has elected not to pay, have you issued the DC-446, [ATTACHMENT SUMMONS](#) and set the trial date and have you attached copies of the petition and list of facts to the DC-446, [ATTACHMENT SUMMONS](#) and given it to the officer for service?
10. If the operator has elected not to pay, has he posted a defendant's bond in an amount that is either (defendant's option) double the value of the amount for which the attachment was issued or double the value of the property attached?
11. If the operator has elected not to pay, have you forwarded to the Clerk of the General District Court, the original petition, list of facts, and a copy of the DC- 446, [ATTACHMENT SUMMONS](#) (and original defendant's bond, if any)?

J. Distress Petition and Distress Warrant

1. Keep in mind for purposes of filing that the General District Court has jurisdiction no matter how large the amount of rent in dispute.
2. Is the petitioner the plaintiff, plaintiff's agent, a licensed real estate broker, real estate agent or rental location agent, a property manager, managing agent or authorized employee thereof, or plaintiff's attorney, plaintiff's regular and bona fide employee, a duly authorized corporation, partnership or limited liability company acting by appropriate officer, partner, or trustee, or plaintiff's regular and bona fide employee?
3. Is the petitioner aware that a bond must be properly posted? Has the petitioner made arrangements for that bond?
4. Is the petitioner aware that the use of this procedure does not provide for damages to be claimed or possession of the real estate; and that there are other procedures by which these may be sought?
5. Is the petitioner aware that the use of this procedure allows the levy or seizure of only the personal property of the defendant that is on the rented premises or personal property of the defendant that was previously located on the rented premises and has been removed from the rented premises within 30 days before the date of the DC-424, [DISTRESS WARRANT](#)?
6. Has the petitioner submitted a petition that is not on a DC-423, [DISTRESS PETITION](#) form? If so, does it contain all the information that would be needed for completion of the DC-423, [DISTRESS PETITION](#) form? If not substantially conforming in related to information provided, give petitioner a DC-423, [DISTRESS PETITION](#) and ask that it be completed.
7. Has the petitioner submitted a properly completed DC-423, [DISTRESS PETITION](#), with an attached list of facts? (Review the Manual to confirm what needs to be completed; then, if there are important items left uncompleted, hand the petition back to the petitioner and offer the opportunity to complete the needed information.)
8. Has the petitioner subscribed, acknowledged and sworn to the petition?
9. Has the petitioner elected to levy or to levy and to seize? (Calculate bond amount accordingly)
10. Is the petitioner prepared to pay the filing fees and sheriff's fees you have calculated?

11. If the petitioner has paid the filing and service fees and has arranged for bond, note the date and time of filing in the upper right hand corner of the petition, and furnish the petitioner with his receipt for filing.
12. Review the documents to determine whether the facts alleged amount to reasonable cause to believe the grounds of attachment may exist.
13. If you do not find reasonable cause to issue the DC-424, [DISTRESS WARRANT](#), tell the petitioner in general terms why his petition is defective and offer the opportunity to make amendments. If he fails to do so, or if he has not established probable cause after amendment, tell petitioner why the petition is defective, then mark “denied” and insert your initials in the top right hand corner of the petition adjacent to where you have already written the date and time. Forward all the papers and the filing fees to the Clerk of the General District Court.
14. If you do find reasonable cause and if you have in hand bond in the proper amount and in the proper form, issue a DC-424, [DISTRESS WARRANT](#), making it returnable no fewer than five days and no more than thirty days after the issuance of the DC-424, [DISTRESS WARRANT](#).
15. Have you attached to the Distress Warrant a copy of DC-407, [REQUEST FOR HEARING-EXEMPTION CLAIM](#) for delivery to each of the defendant(s)?
16. Have you followed any customary procedure in your District to assure that the Distress Warrant and the papers to be served with it reach the hands of the sheriff? If there is no such customary procedure, have you given the original and copies of the DC-424, [DISTRESS WARRANT](#) with attachments -- including a copy of the petition, the list of facts, the DC-407, [REQUEST FOR HEARING-EXEMPTION CLAIM](#) form, and sufficient copies of these documents for service upon each defendant -- to the petitioner and instructed him to make arrangements directly with the Sheriff’s Office for levy or levy with seizure?

K. Tenant’s Assertion and Complaint

1. Jurisdiction lies in the General District Court
2. Tenant should read carefully and properly complete a DC-429, [TENANT’S ASSERTION AND COMPLAINT](#). If incomplete, hand the form back to provide an opportunity for tenant to complete the necessary information.
3. Tenant must certify that all prerequisites for relief have been complied with.
4. Collect court fees and service fees.

5. Tenant is not required to furnish bond.
6. Issue returnable within 15 days from the date of service upon the landlord or his agent.
7. Remind the tenant to pay rent through the Clerk's Office of the General District Court until the case is heard and decided.
8. Transmit fees collected and all paperwork to the General District Court Clerk for service by the Sheriff.

XVII. TABLES AND SUPPLEMENTARY INFORMATION

If a plaintiff asserts that he/they are exempt from payment of any court costs or other fees in a civil proceeding, have plaintiff furnish information supporting that exemption and confirm that with a Magistrate Advisor before proceeding.

A. List of Facts

STYLE OF CASE:

VS.

DATE:

(USE NUMBERED PARAGRAPHS)

B. Civil Processes

| PURPOSE | WARRANT IN DEBT | DETINUE/DETINUE SEIZURE | UNLAWFUL DETAINER | ATTACHMENTS | DISTRESS | TENANT'S ASSERTION & COMPLAINT |
|----------------|---|--|--|--|---|--|
| | Collection of money, by account, contract, note, or damages | Recovery of specific personal property, or value, unlawfully held by defendant. Must have vested interest. Accomplished by detinue or detinue seizure. | Return of real estate by removing tenant or person unlawfully detaining house, land or tenement. | Recover specific property, debt, damage, breach of contract, or damages for a wrong. | Enforces lien on personal property to collect rent due. | Corrects impaired living conditions that landlord failed to correct. |
| | General Rules: | General Rules: | Exception: | Exception: | Exception: | Exception: |

| | WARRANT IN DEBT | DETINUE/DETINUE SEIZURE | UNLAWFUL DETAINER | ATTACHMENTS | DISTRESS | TENANT'S ASSERTION & COMPLAINT |
|---------------------|---|--------------------------------|---|---|-----------------|---|
| JURISDICTION | Up to \$5,000-Debt/Detinue only for Small Claims Court or GDC. Up to \$4,500 = GDC \$4,500.01 - \$50,000 = GDC or Circuit over \$50,000 = Circuit | Same as Warrant in Debt | Possession only = GDC or Circuit Damages and Rent (Bus., Com., Agri.)= GDC or Circuit | Up to \$50,000 = GDC or Circuit if over \$4,500 and plaintiff requests Circuit. Real Estate = Circuit | GDC only | GDC only |

| VENUE | WARRANT IN DEBT | DETINUE/DETINUE SEIZURE | UNLAWFUL DETAINER | ATTACHMENTS | DISTRESS | TENANT'S ASSERTION & COMPLAINT |
|----------------|--|---|--|---|--|---|
| | Depends on action | Permissive | Preferred | Preferred | Permissive | Permissive |
| **FORMS | DC-402 DC-412 | w/o seizure DC-404 & DC- 414 w/seizure – DC-414, DC- 415, DC-416, DC-407, DC-447 | DC-421 | DC-445, DC-407, DC- 447, DC-448, DC-446 | DC-423, DC-424, DC-447, DC-407 | DC-429 |
| FEES | Processing fee and Legal Aid Fee, unless exempted. Law Library Fee and Courthouse Maintenance Fee if authorized. Also sheriff's service fee. | Processing fee and Legal Aid Fee, unless exempted. Law Library Fee and Courthouse Maintenance Fee, if authorized. Also sheriff's service fee. With seizure, service & levy fee. | Processing fee and Legal Aid Fee, unless exempted. Law Library Fee and Courthouse Maintenance Fee if authorized. Also sheriff's service fee. | Processing fee and Legal Aid Fee, unless exempted. Law Library Fee and Courthouse Maintenance Fee. Also sheriff's service fee and levy fee. | Processing fee and Legal Aid Fee, unless exempted. Law Library Fee and Courthouse Maintenance Fee, if authorized. Also sheriff's service fee and levy fee. | Processing fee and Legal Aid Fee, unless exempted. Law Library Fee and Courthouse Maintenance Fee, if authorized. Also sheriff's service fee. |

| | WARRANT IN DEBT | DETINUE/DETINUE SEIZURE | UNLAWFUL DETAINER | ATTACHMENTS | DISTRESS | TENANT'S ASSERTION & COMPLAINT |
|--------------------|------------------------|---|--------------------------|--------------------|-----------------|---|
| LEVY | No | No | No | Yes | Yes | No |
| SEIZURE | No | w/o seizure – No w/seizure – Yes | No | Yes | Yes | No |
| BOND | No | w/o seizure – No w/seizure - Yes | No | Yes | Yes | No |
| RETURN DATE | 5 – 60 days | w/o seizure = 5-60 days w/seizure =*5-30 days | 5-21 days | *5-30 days | *5-30 days | 15 days after Service on landlord |

* If returnable to Circuit Court, calculate from date of issuance (5 day minimum service before return date does not apply.)

* If returnable to General District Court, a five (5) day minimum service before return date applies as well as a 30-day requirement from date of issuance.

** These forms can be accessed through the hyperlinks of these forms throughout this chapter.