

Commencing an Action: Virginia

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A Q&A guide to commencing an action in Virginia. This Q&A addresses the requirements for drafting and filing initiating papers, serving process, and amending the complaint. Answers to questions can be compared across a number of jurisdictions (see Commencing an Action: State Q&A Tool).

OVERVIEW OF COMMENCING AN ACTION

1. What are the applicable rules for commencing an action?

Virginia civil procedure is governed by:

- The Rules of the Supreme Court of Virginia.
- The Virginia Code.
- Case law.
- Local court rules.
- The Virginia Constitution.

RULES OF SUPREME COURT OF VIRGINIA

The Virginia Supreme Court has the authority to make rules governing appeals, practice, and procedures to be used in the courts of the Commonwealth (Va. Const. art. VI, § 5). New rules and amendments are generally effective July 1 each year and are available on the Virginia Supreme Court's website.

These rules apply to most civil claims, however, the procedures for initiating certain claims are provided by statute (William Hamilton Bryson, *The Merger of Common-Law and Equity Pleading in Virginia*, 41 U. Rich. L. Rev. 77 (2006); see Question 10).

RULES APPLICABLE TO ALL PROCEEDINGS

The primary applicable rules for commencing an action in any proceeding are:

- Va. Sup. Ct. R. 1:4 governing general provisions for pleadings.
- Va. Sup. Ct. R. 1:8 governing amendments.
- Va. Sup. Ct. R. 1:16 governing filing requirements.
- Va. Sup. Ct. R. 1:17 governing electronic filing and service.

RULES APPLICABLE TO THE CIRCUIT COURTS

The following rules for commencing an action apply only to civil cases filed in the circuit courts:

- Va. Sup. Ct. R. 3:2 governing the commencement of actions.
- Va. Sup. Ct. R. 3:5 providing the form of summons.
- Va. Sup. Ct. R. 3:6 providing the form of proof of service.
- Va. Sup. Ct. R. 3:18 governing pleadings.

RULES APPLICABLE TO THE GENERAL DISTRICT COURTS

The general district courts in Virginia are trial courts that do not allow formal discovery but allow limited motions practice (see Question 2: General District Courts). The following rules apply to commencing a civil action in the district courts:

- Va. Sup. Ct. R. 7A:7 governing general filing format and procedure.
- Va. Sup. Ct. R. 7B:3 governing general provisions for pleadings in civil cases.
- Va. Sup. Ct. R. 7B:4 governing bringing and hearing a civil action.

THE VIRGINIA CODE

Title 8.01 of the Virginia Code governs civil remedies and procedure. Provisions relevant to commencing an action include those governing:

- Parties (Va. Code Ann. §§ 8.01-5 to 8.01-23).
- Actions (Va. Code Ann. §§ 8.01-25 to 8.01-227.23).
- Limitations of actions (Va. Code Ann. §§ 8.01-228 to 8.01-256).
- Venue (Va. Code Ann. §§ 8.01-257 to 8.01-267).
- Commencement, pleadings, and motions in civil actions (Va. Code Ann. §§ 8.01-271 to 8.01-283).
- Process (Va. Code Ann. §§ 8.01-285 to 8.01-327.2).
- Personal jurisdiction (Va. Code Ann. §§ 8.01-328 to 8.01-330).

COURTS NOT OF RECORD

Title 16.1 of the Virginia Code governs courts not of record, which in civil actions includes:

- The general district courts.
- The small claims courts.

Virginia Code Sections 16.1-76 to 16.1-122 apply to venue, jurisdiction, and procedure in civil matters in the general district courts.

COURTS OF RECORD

Title 17.1 of the Virginia Code governs courts of record, which are:

- The circuit courts.
- The Court of Appeals.
- The Supreme Court of Virginia.

Provisions relevant to commencing an action in these courts include:

- Practice, procedure, and jurisdiction in the circuit courts (Va. Code Ann. §§ 17.1-503 and 17.1-513).
- Supreme Court jurisdiction over mandamus and prohibition (Va. Code Ann. §§ 17.1-309).

2. Generally, in which trial level court must an action be commenced? Please address:

- Monetary thresholds for trial level courts.
- Territorial limits for trial level courts.

If the jurisdictional requirements are met, parties in Virginia may generally bring actions in:

- The circuit courts (see Circuit Courts).
- The general district courts (see General District Courts).
- The small claims courts (see Small Claims Courts).

CIRCUIT COURTS

Monetary Thresholds

By statute, the circuit courts have original and general jurisdiction over all civil claims to recover personal property or money with a value of \$100 or more, excluding interest, except where some part of the original jurisdiction of those cases have been assigned by statute to another tribunal (Va. Code Ann. § 17.1-513).

For example, the General Assembly has assigned:

- Exclusive jurisdiction of claims of \$4,500 or less excluding interest and attorneys' fees to the general district court (see General District Courts: Monetary Thresholds).
- Various other claims to administrative tribunals, including:
 - the State Corporation Commission (Va. Code Ann. § 13.1-614); and
 - the Workers' Compensation Commission (Va. Code Ann. § 65.2-700).

TERRITORIAL LIMITS

The Virginia circuit courts have state-wide jurisdiction. However, each city or county in Virginia has its own circuit court that is the court of record for the respective county or city in which it lies and has jurisdiction over each suit, motion, prosecution, or thing properly pending before that court (Va. Code Ann. §§ 17.1-500 and 17.1-513;

see *Porter v. Commonwealth*, 661 S.E.2d 415, 427 (Va. 2008); *Kelso v. Commonwealth*, 710 S.E.2d 470, 473 (Va. 2011)).

Civil cases in the circuit courts are subject to preferred or permissible venue restrictions (Va. Code Ann. § 8.01-260). Unless the case is one given a preferred venue designation under Va. Code Ann. § 8.01-261, a civil action may be brought in the city or county:

- Where the defendant resides or has a principal place of employment.
- Where the defendant has a registered office or an appointed agent.
- Where the defendant regularly conducts substantial business, if a practical nexus to the forum exists. Examples of a practical nexus include the location of witnesses, plaintiffs, or other evidence to the action in that city or county.
- In which the cause of action arose.
- For actions to recover or partition personal property, where:
 - the property is physically located;
 - evidence of the property is located; or
 - the plaintiff resides, if the property or evidence location does not apply.

Additional venue restrictions also apply for certain cases. (Va. Code Ann. § 8.01-262.) A statute may also require that certain claims be brought only in a particular court (see *Marrison v. Dept. of Family Servs.*, 717 S.E.2d 146, 149-50 (Va. 2011)).

No order or judgment is voidable, avoided, or subject to collateral attack solely for improper venue, and an action may not be dismissed solely for improper venue if there is a proper venue in Virginia (Va. Code Ann. §§ 8.01-258 and 8.01-264(A)).

An action filed in an improper forum is subject to objection but may still be tried where it was commenced unless the defendant objects by motion within 21 days of the service of process (Va. Code Ann. § 8.01-264(A)). The court may also transfer the suit to the proper venue on its own motion with proper notice (Va. Code Ann. § 8.01-265).

GENERAL DISTRICT COURTS

Monetary Thresholds

The general district courts have civil jurisdiction over the following types of cases in their territory:

- Exclusive jurisdiction for claims under \$4,500 (excluding interest) for:
 - to specific personal property;
 - any debts, fine, or other money;
 - damages for breach of contract; or
 - damages for injury done to property or to the person.
- Jurisdiction concurrent with the circuit courts for claims between \$4,500 and \$25,000 excluding interest. The \$25,000 jurisdictional limit does not apply to cases involving:
 - distress warrants;
 - liquidated damages for violations of vehicle weight limits; and
 - forfeiture of a bond.
- Attachment cases where the claim is less than \$25,000 excluding interest and attorneys' fees.

- Actions of unlawful entry or detainer involving claims for damages for unpaid rents. These claims are not subject to the \$25,000 maximum jurisdictional limit.
- Suits in interpleader involving personal or real property where the amount of money or value of property is less than \$25,000. The maximum jurisdictional limit does not apply to claims in an interpleader action limited to disposition of an earnest money deposit under a real estate purchase contract.

(Va. Code Ann. § 16.1-77.)

If a plaintiff makes a motion to increase the amount of the claim while the matter is pending in a general district court, the court then orders the matter transferred to the proper circuit court without requiring the case first be dismissed or that the plaintiff suffer a nonsuit (Va. Code Ann. § 16.1-77(1)).

TERRITORIAL LIMITS

Each general district court possesses jurisdiction district-wide, over matters allowed by statute within the limits of the territory it serves (Va. Code Ann. §§ 16.1-69.6 and 16.1-77). They are subject to the same venue restrictions as the Virginia circuit courts (Va. Code Ann. § 8.01-257; see Circuit Courts: Territorial Limits).

If venue is subject to objection, the action may still be tried where it was commenced unless the defendant objects to venue by motion filed on or before the day of trial (Va. Code Ann. § 8.01-264(A)).

SMALL CLAIMS COURTS

Monetary Thresholds

Each general district court maintains a small claims division with which it shares concurrent jurisdiction over civil actions where the amount claimed is less than \$5,000 excluding interest (Va. Code Ann. § 16.1-122.2).

TERRITORIAL LIMITS

The small claims courts exist within the facilities occupied by each local general district court and are subject to the same venue considerations (Va. Code Ann. § 16.1-122.1; see District Courts: Territorial Limits).

3. What documents must be prepared to commence an action? Are there official forms for the initiating papers?

DOCUMENTS

Circuit Courts

A plaintiff generally commences an action in a circuit court by filing with the clerk of the court of relevant jurisdiction either:

- A complaint.
- A petition or application where required either by statute or established practice.

(Va. Sup. Ct. R. 3:2(a); see Question 10: Circuit Courts.)

The plaintiff must also file a civil cover sheet stating the nature of the action.

GENERAL DISTRICT COURTS

A plaintiff brings an action in a general district court by filing either:

- A complaint.

- A warrant.
- A summons.
- A motion for judgment.

A warrant, summons, or complaint must be directed to the sheriff or any other person authorized to serve process (Va. Code Ann. § 16.1-81; Va. Sup. Ct. R. 7B:4(a); see Question 10: General District Courts).

OFFICIAL FORMS

Circuit Courts

The circuit courts do not provide official forms for a complaint, although the format and content of the complaint must comply with Va. Sup. Ct. R. 1:16 and 3:2(c). For more information on the content of the complaint, see Question 7: Circuit Courts.

The Virginia courts website does provide:

- The civil cover sheet in Form CC-1416.
- Forms for petitions for use in certain civil cases.

GENERAL DISTRICT COURTS

There are no official forms for the complaint, but the Virginia courts website provides forms for specific claims, which are variously called warrants, summons, applications, or petitions in reference to the statute assigning jurisdiction to the district court for those claims. Practitioners may choose to draft a complaint rather than use a form provided by the court where the facts supporting a claim do not fit in the concise summary space provided on a court form.

The initiating papers must also follow the general requirements of the following rules:

- Virginia Supreme Court Rule 7B:3, providing general guidelines for the format and contents of warrants, summonses, and complaints.
- Virginia Code Section 16.1-79, providing the format and timelines for warrants and summons.
- Virginia Code Section 16.1-81, providing the format of initiating documents for actions brought by a motion for judgment.

4. Is an action commenced by serving or filing the initiating papers? If an action is commenced by service, by when must the complaint or other pleadings be filed?

A Virginia plaintiff commences an action in the circuit courts by filing the complaint (or, in certain cases, a petition or application, see Question 10) with the court clerk. The filing of the pleading is a prerequisite to service of process. (Va. Sup. Ct. R. 3:2(a).)

A plaintiff commences an action in the general district courts by filing the warrant, summons, or complaint with the clerk of the court. The filing is a prerequisite to service of process. (Va. Code Ann. §§ 16.1-80 and 16.1-86; Va. Sup. Ct. R. 7B:4.)

5. How are the initiating papers filed? Please address:

- Whether the papers are filed electronically or by hard copy.
- Any fees for filing the initiating papers, and in what form those fees must be paid.

FILING INITIATING PAPERS**Circuit Courts**

In Virginia, the plaintiff must file the complaint in the clerk's office of the circuit court in the jurisdiction in which the action is brought, either by:

- Hard copy under Va. Sup. Ct. R 1:16.
- Electronic copy under Va. Sup. Ct. R. 1:17 in participating jurisdictions. The filing must comply with that court's e-filing procedures. (Va. Code Ann. § 17.1-258.3.)

The Virginia Judicial System website provides a list of circuit courts participating in the Virginia Judiciary E-Filing System.

GENERAL DISTRICT COURTS

The plaintiff must file the warrant, summons, or complaint in the clerk's office of the jurisdiction in which the action is brought either by:

- Hard copy (Va. Sup. Ct. R. 7A:7(a)).
- Electronic copy in jurisdictions that have adopted electronic filing. Electronic filing in the general district courts is governed by Va. Code Ann. § 16.1-79.1 and Va. Sup. Ct. R. 1:17.

FILING FEES**Circuit Courts**

Required filing fees in the circuit courts vary by court and the type of action. Virginia law does not specify a method of payment. All statutory writ tax and clerk's fees must be paid before the summons is issued (Va. Sup. Ct. R. 3:2(a)). Fees include:

- Process and service fees, which vary by the type of proceeding and are provided in Va. Code Ann. § 17.1-272.
- Fees that the circuit court clerk may assess, listed in Va. Code Ann. § 17.1-275.

The Virginia Judicial System provides a simple fee calculator for the circuit courts.

Failure to pay the full amount of fees may result in a delay of the effective filing date of the action (see *Landini v. Bil-Jax, Inc.*, 2015 WL 10945237, at *1 (Va. Jan. 30, 2015)). Practitioners are encouraged to contact the civil division of the relevant circuit court to ensure all local fees are paid at the time of filing.

Virginia law generally allows:

- The use of various methods of payment for the collection of fees, including:
 - personal checks;
 - debit cards;
 - credit cards; and
 - electronic funds transfers.
- The court to charge penalties if a payment is rejected or dishonored by a financial institution.

(Va. Code Ann. § 2.2-614.1(A).)

GENERAL DISTRICT COURTS

Filing fees in the general district court vary by court and the type of action. Virginia law does not specify the means of payment of fees

in the general district courts but does provide that fees collected by government bodies generally may be paid by any commercially acceptable means (see Filing Fees: Circuit Courts).

A plaintiff must pay all required fees to commence the action. Practitioners may directly contact the local general district court for specific fee information.

The Virginia Judicial System website provides the following guidance:

- A list of general district court home pages and contact information.
- How to Calculate Civil Filing Fees for General District Courts.
- General District Court Civil Filing Fee Calculator.

INITIATING PAPERS**6. What are the contents that must be included in the summons?****CIRCUIT COURTS**

Virginia Supreme Court Rule 3:5(a) provides the substantial form of a summons in a Virginia circuit court. The summons must include:

- A caption identifying the court of the jurisdiction.
- The civil action number.
- A statement that the recipient must make a response within 21 days of service by a pleading in writing and in proper form or:
 - the allegations and charges may be taken as admitted; and
 - the court may enter judgment or decree by default or after hearing evidence.
- A statement that the summons does not require appearance in person.

The clerk must sign and date the summons. (Va. Sup. Ct. R. 3:5.)

GENERAL DISTRICT COURTS

A summons, warrant, or complaint must include a statement approved by the Committee on District Courts explaining both:

- How a party may object to venue.
- How a trial date is set if the case is contested.

(Va. Sup. Ct. R. 7B:3(b), (c).)

7. What are the contents that must be included in the complaint?**CIRCUIT COURTS**

In Virginia, a complaint filed in the civil courts must include:

- A caption with:
 - the name of the court;
 - the full style of the action, including the names of all parties; and
 - the last known address of each defendant or sufficient facts to identify each defendant with reasonable certainty if addresses are unknown (Va. Code Ann. § 8.01-290).
- A request for the specific relief sought.

- An *ad damnum* clause stating the amount of damages sought, when the plaintiff seeks an award of money damages. A plaintiff cannot recover any amount exceeding the *ad damnum* requested (*Smith v. McLaughlin*, 769 S.E.2d 7 (Va. 2015); *Lee v. Spoden*, 776 S.E.2d 798 (Va. 2015)). The plaintiff may amend the *ad damnum* clause under Va. Sup. Ct. R. 1:8 (see Question 21).

(Va. Sup. Ct. R. 3:2(b) and (c).)

- A simple statement of the essential facts (Va. Sup. Ct. R. 1:4(d), (j)).
- The signature and address of the filing attorney or unrepresented party (Va. Sup. Ct. R. 1:4(c)).
- At the bottom of the document, the submitting counsel's:
 - Virginia State Bar number;
 - office address and telephone number;
 - email address and fax number regularly used for business purposes.

(Va. Sup. Ct. R. 1:4(l).)

GENERAL DISTRICT COURTS

A complaint, warrant, or summons in the general district courts must contain:

- A simple statement of the essential facts (Va. Sup. Ct. R. 1:4(d), (j)).
- At the bottom of the document, the submitting counsel's:
 - Virginia State Bar number;
 - office address and telephone number;
 - email address and fax number regularly used for business purposes.

(Va. Sup. Ct. R. 1:4(l).)

- A statement approved by the Committee on District Courts explaining:
 - how a party may object to venue; and
 - how a trial date is set if the case is contested.

(Va. Sup. Ct. R. 7B:3(b), (c).)

A civil warrant, summons, or complaint must also include a statement that the defendant is not required to appear under the document, but that judgment may be granted in favor of the plaintiff if the defendant does not appear (Va. Sup. Ct. R. 7B:3(b), (c)).

The filing attorney must sign the complaint, civil warrant, or summons and provide their address and phone number (Va. Sup. Ct. R. 7A:8(c)).

8. Must the plaintiff certify or swear to the complaint?

Virginia law generally does not require a party to verify or swear to the complaint. Where the law does require or permit an affidavit, for the person may swear that the person believes it to be true. A sworn pleading is an affidavit for all purposes for which it may be required or permitted. (Va. Code Ann. § 8.01-280; Va. Sup. Ct. R. 1:4(b).)

In an action on a note or contract for the payment of money, the plaintiff may file a verified complaint with:

- An affidavit that the amount claimed is justly due.
- A copy of the account.

The plaintiff is then entitled to judgment without further evidence unless the defendant appears and pleads under oath or files a responsive pleading denying the claim within the time allowed (Va. Code Ann. § 8.01-28).

Where usually not required to provide proof, a plaintiff must also prove or attest to a complaint that alleges one of the following facts if the defendant denies the fact in an affidavit and puts the matter at issue:

- Proof of handwriting, where the plaintiff alleges that a party made, wrote, endorsed, assigned, or accepted a writing.
- Proof of the fact that a person, partnership, corporation, or unincorporated association at a certain time owned, operated, or controlled any property or instrumentality.

- Proof of partnership or incorporation.

(Va. Code Ann. § 8.01-279.)

In the general district court, a summons for unlawful detainer (for possession of rented property and rent) must be verified (Va. Code Ann. § 8.01-126).

9. What is the applicable pleading standard? Please address any:

- Key distinctions from Federal Rules of Civil Procedure 8.
- Different pleadings requirements for particular claims (for example, fraud).

STATE PLEADING STANDARD

In Virginia, every pleading must state the facts on which the party relies so that the pleading clearly informs the opposing party of the true nature of the case. A simple statement of the essential facts is generally sufficient. (Va. Sup. Ct. R. 1:4(d), (j).)

A party may also:

- Plead alternative facts and theories of recovery.
- State any separate claims or defenses the party has, regardless of consistency or basis on legal or equitable grounds.

(Va. Sup. Ct. R. 1:4(k).)

KEY FEDERAL DISTINCTIONS

Pleadings in federal courts must include both:

- A statement of the claim showing the claimant is entitled to relief.
- A demand for the relief sought.

(FRCP 8(a).)

Federal Rule of Civil Procedure 8(a)(2) requires a pleading to plead sufficient facts to show that the claim has plausible grounds for relief on its face (*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007)).

PLEADING REQUIREMENTS FOR PARTICULAR CLAIMS Punitive Damages

To recover punitive damages, a plaintiff must make an express claim for them in the prayer for relief or *ad damnum* clause sufficient to alert the defendant that punitive damages are sought in addition to compensatory damages (*Harrell v. Woodson*, 353 S.E.2d 770, 773

(Va. 1987)). A party may not recover more than \$350,000 in punitive damages in total from all defendants (Va. Code Ann. § 8.01-38.1).

FRAUD

On a claim for fraud, the pleading must allege with particularity the essence of the fraud, so the defendant can shape a defense accordingly (*Ciarochi v. Ciarochi*, 73 S.E.2d 402, 403 (Va. 1952)).

ATTORNEYS' FEES

A party seeking to recover attorneys' fees must include a specific demand for attorneys' fees in the complaint. The party waives the claim for attorneys' fees if it fails to make the demand unless the court grants leave to file an amended pleading under Va. Sup. Ct. R. 1:8 (Va. Sup. Ct. R. 3:25; see Question 21).

On the motion of any party the court must or may on its own motion establish a procedure to adjudicate any claim for attorneys' fees in advance of trial (Va. Sup. Ct. R. 3:25(D)).

10. Please address the circumstances, if any, where a complaint is not part of the initiating papers, including what papers are filed instead of a complaint.

CIRCUIT COURTS

A plaintiff must commence certain actions by filing a pleading titled "Petition" or "Application" where required either by statute or established practice (Va. Sup. Ct. R. 3:2(a)). These actions include:

- By statute:
 - a petition for adoption (Va. Code Ann. § 63.2-1201);
 - a petition for condemnation (Va. Code Ann. § 25.1-206); and
 - an application for personal property and real estate tax appeals (Va. Code Ann. § 58.1-3984).
- By custom or established practice:
 - a petition by a fiduciary for aid and direction in the interpretation of a testamentary document or trust instrument (*Campbell v. Board of Trustees*, 260 S.E.2d 204 (Va. 1979)); and
 - certain claims under Title 20 of the Virginia Code relating to domestic relations (Va. Code Ann. §§ 20-13 to 20-167).

Practitioners should note that the fees for filing a complaint under Va. Sup. Ct. R. 3:2 and filing a petition under a statute are different. Therefore, a pleading filed as a petition that a clerk later finds should have been filed a complaint may be time-barred if:

- The wrong fee was paid.
- The determination results in the rejection of the lawsuit.
- The correct fee is not timely paid.

(See *Landini* 2015 WL 10945237, at *1.)

Many statutes in Virginia still also refer to the common names of pleadings as they were referred to before the merger of law and equity under the Virginia Code in 2006. Other than by a complaint, certain actions in the Virginia circuit courts may also be brought by filing:

- A bill in equity, when the plaintiff seeks the sale, lease, exchange, or other disposal of real property held by a person under a disability (Va. Code Ann. § 8.01-69).

- A writ:
 - in an ejectment action (Va. Code Ann. § 8.01-131);
 - on a petition seeking *mandamus* relief (Va. Code Ann. § 8.01-644);
 - in an action of *quo warranto* (Va. Code Ann. § 8.01-637); and
 - on a petition for habeus corpus (Va. Code Ann. § 8.01-654).
- A motion for judgment, in proceedings:
 - in detinue, to recover goods held by the defendant (Va. Code Ann. § 8.01-114);
 - for unlawful entry or detainer (Va. Code Ann. § 8.01-124); or
 - to establish boundary lines to land (Va. Code Ann. § 8.01-179).

GENERAL DISTRICT COURTS

Other than by a complaint, a party may bring a civil action in a Virginia general district court by either warrant or summons, for example:

- A civil action for money may be brought by a warrant in debt (Va. Code Ann. § 16.1-79).
- A landlord may bring a claim for possession of rented property or past due rent by a summons for unlawful detainer (Va. Code Ann. § 8.01-126).

Virginia Code Section 16.1-79 provides the general form and content of the warrant or summons (Va. Sup. Ct. R. 7B:4). The Virginia Judicial System website also provides various forms of civil warrants.

Civil actions in the district courts may also be brought by motion for judgment. Motions for judgment must:

- Be in writing.
- Be signed by plaintiff or counsel.
- Contain a caption stating:
 - the court; and
 - the style of the action.
- State sufficient facts to clearly inform the defendant of the nature of the asserted claim.

(Va. Code Ann. § 16.1-81.)

11. Please discuss any prerequisites for filing certain claims (for example, filing a complaint against a government entity).

TORT CLAIMS AGAINST THE COMMONWEALTH

To file any claim against the Commonwealth of Virginia or a Virginia transportation district, the injured party must file a written statement of the nature of the claim within a year of the cause of action accruing (Va. Code Ann. § 8.01-195.6).

CLAIMS AGAINST COUNTIES

A party may not bring an action against a county for any claim or demand until the claimant presents the claim to the governing body of the county unless there is a binding arbitration agreement (Va. Code Ann. § 15.2-1248).

NEGLIGENCE CLAIMS AGAINST LOCALITIES

Any claim that is otherwise permitted against any county, city, or town for negligence is barred unless the claimant or the claimant's agent or attorney both:

- Files a written statement of the nature of the claim with the locality being sued within six months after the cause of action accrues.
- Delivers notice of the claim to the attorney, chief executive, or mayor of the locality.

(Va. Code Ann. § 15.2-209.)

SERVICE OF PROCESS

12. When must the defendant be served with process? Can the time to serve the defendant be lengthened?

SERVING THE DEFENDANT WITH PROCESS

Service of process is timely if accomplished within 12 months of commencing the action (Va. Code Ann. § 8.01-275.1).

ADDITIONAL TIME FOR SERVICE

Service of process more than 12 months after commencing the action is timely only if the court finds that the plaintiff exercised due diligence in attempting to serve the defendant (Va. Code Ann. § 8.01-275.1).

13. What documents must be served?

In the Virginia circuit courts, service of the summons in a civil action must include the complaint or initiating papers (Va. Sup Ct. R. 3:5 and 3:6).

In the general district courts, a party must serve either the warrant, summons, or complaint commanding the adverse party to appear and answer the claim (Va. Sup. Ct. R. 7B:4).

14. Who may serve process? Is a license or other certification required?

The following persons may serve process in the Commonwealth of Virginia:

- The sheriff or deputy, within the territory the sheriff or deputy serves (Va. Code Ann. § 8.01-295).
- Any person exceeding the age of 18 not a party to or otherwise interested in the action.
- A private process server, which includes any person:
 - exceeding the age of 18 and not a party to or otherwise interested in the action; and
 - charging a fee for service of process.

(Va. Code Ann. § 8.01-293(A).)

Only the sheriff or the sheriff's deputies may:

- Serve process on a teacher or other school personnel in child custody cases.
- Execute orders or writs of possession or eviction.
- Serve *capias* warrants (for the arrest of a person) or show cause orders.

- Levy on property.

(Va. Code Ann. § 8.01-293(A)(3), (B).)

15. What are the methods for service within the state?

The available methods of service in Virginia vary depending on the defendant.

SERVICE ON NATURAL PERSONS

Service may be made on a natural person by:

- Delivery to the party in person.
- Substituted service by:
 - delivery to the party's usual place of abode to any person there who is both a family member of the party and at least 16 years old;
 - posting process on the front door of the party's place of abode and mailing process at least ten days before the date of default; or
 - order of publication (see Service by Publication).

(Va. Code Ann. § 8.01-296.)

In any case where Virginia may properly exercise personal jurisdiction over a party, service of process may also be made on the secretary of the Commonwealth of Virginia (Va. Code Ann. § 8.01-329).

SERVICE ON DOMESTIC CORPORATIONS AND LIMITED LIABILITY COMPANIES

Service may be made on a domestic corporation or a limited liability company (LLC) by:

- Personally serving any officer, director, or registered agent of the corporation or LLC.
- By substituted service:
 - by fax by the sheriff to the registered agent or on a natural person in the registered agent's office designated by the agent in writing to receive process; or
 - on the clerk of the Virginia State Corporation Commission (VSCC), who may be an agent of the corporation authorized to receive process if the corporation fails to appoint or maintain a registered agent in Virginia, or if the registered agent cannot be found with reasonable diligence.

(Va. Code Ann. §§ 13.1-637, 13.1-836, and 13.1-1018.)

- By substituted service in the same manner as on a natural person if the registered address is a residence (Va. Code Ann. § 8.01-296; see Service on Natural Persons).

(Va. Code Ann. § 8.01-299.)

SERVICE ON GOVERNMENT ENTITIES

Service may be made on municipal and county governments and quasi-government entities in one of the following ways:

- For cities or towns, by serving:
 - the city or town attorney, if the position exists; or
 - the mayor, manager, or trustee.
- For counties, by serving:
 - the county attorney, if the position exists; or
 - the attorney for the Commonwealth.

- For political subdivisions or other public entities created by statute and subject to suit as an entity separate from the Commonwealth, by serving the entity's:
 - director;
 - commissioner;
 - chief administrative officer;
 - attorney; or
 - any member of the governing body of the entity.
- For cases against a supervisor, county officer, employee, or agent of the county board arising out of official actions, by serving:
 - the named defendant; and
 - the county attorney or the clerk of the county board if there is no county attorney.
- Leaving a copy of service with the person in charge of the office of any officer designated for any of the above municipal, government, or quasi-government entities.

(Va. Code Ann. § 8.01-300.)

SERVICE ON FOREIGN CORPORATIONS

Service may be made on a foreign corporation:

- By personal service on any:
 - officer, director, or the registered agent of a corporation authorized to do business; or
 - agent transacting business in Virginia without authorization.
- If the corporation is authorized to transact business in Virginia, by substituted service on:
 - a natural person designated in writing and acknowledged by a notary to receive process by the registered agent; or
 - the clerk of the VSCC, if the corporation fails to appoint or maintain a registered agent in Virginia or the registered agent cannot be found with reasonable diligence.

(Va. Code Ann. §§ 13.1-766 and 13.1-928.)

- Regardless if the corporation is authorized to transact business in Virginia, by:
 - substituted service on the secretary of the Commonwealth (Va. Code Ann. § 8.01-329); or
 - personal service on a non-resident outside of Virginia if jurisdiction under Va. Code Ann. § 8.01-328.1 applies (Va. Code Ann. § 8.01-320).
 - an order of publication (see Service by Publication).

(Va. Code Ann. § 8.01-301.)

SERVICE ON A PARTNERSHIP

Service of process against a partnership or co-partner may be made on any general partner. If the suit is a partnership matter and if the person served is not a plaintiff, the service is effective against the partnership and each partner individually named in the action. (Va. Code Ann. § 8.01-304.)

SERVICE BY PUBLICATION

Virginia allows service by an order of publication in certain circumstances. In any action except condemnation actions, an order

of publication may be entered against a defendant when the party seeking service makes an affidavit stating that:

- The party to be served is:
 - a foreign corporation;
 - a foreign unincorporated association, order, or foreign unincorporated common carrier; or
 - a nonresident individual who is not a nonresident fiduciary.
- The party has been unable to locate the party to be served with proper diligence.
- The last known residence of the party to be served was in the county or city where service is sought and that the sheriff has either:
 - filed a return of process; or
 - been unable to make service for 21 days.

(Va. Code Ann. § 8.01-316(a)(1).)

An order of publication may also be entered against a defendant in any action when either:

- The pleading:
 - states that there are or may be unknown persons interesting in the subject of the action;
 - describes the nature of the interest; and
 - makes the persons defendants by a description of "parties unknown."
- There are more than ten defendants served with process and it appears that they represent like interests with other parties not served with process.

(Va. Code Ann. § 8.01-316(a)(2), (3).)

In any action except condemnation actions, an order of publication must:

- State the abbreviated style of the suit and briefly state its object.
- Require the defendants or unknown parties against whom it is entered to appear within 50 days after entry of the order of publication.
- Be published once a week for four successive weeks in a newspaper selected by the court or by the clerk.
- Be posted at the front door of the courthouse where the court hearing the action is held.
- Be mailed to each defendant listed in the affidavit made by the party seeking service (Va. Code Ann. § 8.01-316(A)).

(Va. Code Ann. § 8.01-317.)

Where it deems proper, the court may dispense with newspaper publication of the order. The applicant or petitioner is responsible for the cost of publication. (Va. Code Ann. § 8.01-317.)

16. What are the methods for service outside the state?

Service may be made on non-residents outside of Virginia:

- In person, by any person:
 - authorized to serve process in the jurisdiction where the party to be served is located; or

- 18 years of age or older not a party to or otherwise interested in the action.
- By serving the secretary of the Commonwealth of Virginia. (Va. Code Ann. §§ 8.01-320 and 8.01-329.)

Foreign corporations must register with the State Corporation Commission (VSCC) to lawfully conduct business in Virginia. Service may be made on:

- The registered agent of the foreign corporation.
- The clerk of the VSCC, if the foreign corporation fails to appoint an agent or the agent cannot be found at the registered office with reasonable diligence.

- The secretary of the Commonwealth of Virginia. (Va. Code Ann. §§ 13.1-766, 13.1-928, and 8.01-329; see Question 15: Service on Foreign Corporations.)

17. Are there any days on which service of process is restricted (for examples, Sundays or holidays)?

Virginia prohibits service of process on Sundays except:

- In cases for persons escaping from custody.
- Where otherwise expressly provided by law.

(Va. Code Ann. § 8.01-289.)

Neither the Virginia Code nor the Rules of the Supreme Court of Virginia prohibit service of process on a Saturday, even if the day is observed as a holy day.

Service of process or execution of any summons, confession, judgment, or other legal process is not rendered invalid because it is done on a legal holiday (Va. Code Ann. §§ 2.2-3300 and 2.2-3301).

18. What are the consequences for ineffective service of process?

If service of process on a defendant is invalid, the defendant may make an objection by motion. If the defendant fails to appear, the court then raises the objection, if observed, and no formal plea is required. (*Com. Ex rel. Duvall v. Hall*, 76 S.E.2d 208, 212 (Va. 1953).)

A person alleging a defect in the issuance, service, or return of service may file a motion to quash filed before or simultaneously with the filing of any pleading to the merits. If it sustains the motion, the court may:

- Strike proof of service.
- Permit amendment of process or the return.

(Va. Code Ann. § 8.01-277(A).)

If a person has not been served within a year of commencement of the action, the person may make a special appearance and file a motion to dismiss. The court then:

- Dismisses the action with prejudice if it finds that the plaintiff did not exercise due diligence.
- Denies the motion to dismiss and require the defendant to file a responsive pleading within 21 days of the ruling if it finds that the plaintiff did exercise due diligence.

(Va. Code Ann. § 8.01-277(B).)

19. How are any defects in serving process cured?

The court may, as it deems just, permit amendment of process or the return (Va. Code Ann. § 8.01-277(A)).

Where service is defective or otherwise invalid, the plaintiff need only file a motion to amend with an amended return disclosing valid service. In these instances, the court grants the motion and deny any defendant's motion to vacate a judgment or dismiss the action. (See *Stotz v. Collins*, 2 S.E. 737 (Va. 1887).)

20. Must proof of service of process be filed? Please address:

- Any required form of proof of service (for example, affidavit, affirmation, or declaration).
- Any information required in the proof of service.
- When the proof of service must be filed.

Requirements for proof of service of process in Virginia (the return) varies depending on the process server or method of service (see Required Information).

REQUIRED FORM

If service is made by the sheriff or deputy, the return must both:

- Be titled "Proof of Service."
- Be in the form required by Va. Sup. Ct. R. 3:6.

There is no prescribed form for proof of service made by a private process server or by publication. (Va. Code Ann. § 8.01-325.)

REQUIRED INFORMATION Service made by Sheriff

The return of service made by a sheriff must:

- List the jurisdiction and case caption in short style.
- State the following:
 - "Returns shall be made hereon, showing service of the summons issued _____, 20__, with a copy of the complaint filed _____, 20__, attached."

(Va. Sup. Ct. R. 3:6.)

SERVICE BY PROCESS SERVER

The return by a private process server must include:

- Whether service was made within or outside of Virginia.
- The server's affidavit of qualifications.
- The date and manner of service.
- The name of the party served.
- A note that the service was by a private server, stamped, typed, or printed on the return of process.
- The name, address, and telephone number of the server.

(Va. Code Ann. § 8.01-325(2).)

SUBSTITUTED SERVICE ON A CORPORATION

If a domestic or foreign corporation is served by substituted service on a natural person designated in writing by the corporation's registered agent, either in person or made by the sheriff by fax, the

return of service must include a photographic copy of the instrument attached to the return (Va. Code Ann. §§ 13.1-637, 13.1-836, 13.1-1018, 13.1-766, and 13.1-928; see Question 15: Service on Domestic Corporations and Limited Liability Companies and Service on Foreign Corporations).

SERVICE BY PUBLICATION

If service is made by publication, the return must include:

- The affidavit of the publisher or its agent, listing the dates of publication.
- A copy of the published order.

(Va. Code Ann. § 8.01-325(3).)

WHEN PROOF MUST BE FILED

Regardless of the process server, proof of service must be filed in the clerk's office within 72 hours of service. If the return is due on a weekend or legal holiday the return is due on the next legal business day. (Va. Code Ann. § 8.01-325; Va. Sup. Ct. R. 3:6.)

AMENDING THE COMPLAINT

21. Can the complaint be amended after it has been filed, but before it has been served?

Virginia law only allows amendments to any pleading after it has been filed by leave of the court. The court must liberally grant leave as is necessary to serve the ends of justice. (Va. Sup. Ct. R. 1:8.)

If the error is a misnomer in any pleading, a party may make a motion and affidavit of the right name to amend the pleading. Where an amendment changes the named party, the amendment must relate back to the original pleading if all of the following are true:

- The claim arose from the same occurrence as the original pleading.
- The new party received notice of the claim within the proper limitations period.

- The new party is not prejudiced.
 - The new party knew or should have known that, but for a mistake in identity, the suit should have been brought against it.
- (Va. Code Ann. § 8.01-6.)

Amendments to a pleading to change or add a claim or defense must relate back to the date of the original pleading for the purposes of the statute of limitations if the court finds that:

- The new claim or defense arose out of the conduct, transaction, or occurrence in the original pleading.
- The amending party was reasonably diligent in asserting the amended claim or defense.
- The parties opposing the amendment are not substantially prejudiced.

(Va. Code Ann. § 8.01-6.1.)

Amendments are also allowed at any time to correct misnomer regarding a corporation's trade name where it is substantially similar to another corporation's name (Va. Code Ann. § 8.01-6.2).

22. Can the complaint be amended after it has been filed and served? If so:

- When can this be done as of right?
- When must a plaintiff seek a court order to amend the complaint?

AMENDMENT AS OF RIGHT

Virginia does not allow amendments to the complaint as of right.

COURT ORDER FOR AMENDING THE COMPLAINT

After filing, a party must obtain leave of the court to amend a complaint regardless of whether the complaint has been served (see Question 21).

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