

CIVIL JUDGMENT CHECKLIST

(updated 8/02)

- ✓ Amount requested is within jurisdictional limit.
- ✓ Proper service returned by the Sheriff or other process server.
- ✓ Signed & dated Mailing Certificate (if posted service).
- ✓ Original signed affidavit (if requesting judgment on the affidavit) that has been served on the defendant(s). Amount, interest and attorney's fees should be the same as on the Warrant and supported by necessary documents.
- ✓ Supporting documents with any interest or attorney's fees highlighted:
 - * original note, contract, lease, etc.
 - * original bad check
 - * copy of a statement of account or invoice
 - * copy of homeowner's agreement or bylaws
 - * copy of credit card agreement and signature card
 - * copy of estimate of repairs
- ✓ Affidavit supporting an award of "Reasonable" attorney's fees.
- ✓ Affidavit regarding Soldiers' and Sailors' Civil Relief Act (for default judgment).
- ✓ Plus the following for Unlawful Detainers:
 - * original lease with interest and attorney's fees highlighted
 - * 5 or 30 day pay or quit notice
 - * separate affidavit filed and served with Detainer if requesting judgment on the affidavit.

CIVIL JUDGMENTS

(How to Keep Them Once You've Got Them)

In order to complete a large volume of civil cases in a timely manner, the General District Court judges may not have time to check a case for completeness and accuracy during the calling of the return docket in Courtroom 2A. Instead, they review the files in chambers prior to entering the final judgment to determine if service is proper and to ensure the required documents have been provided. Any file which is not complete at the time of the judge's review in chambers will be dismissed without prejudice as of the date of review and may be refiled as a new case or a Motion to Rehear can be attempted. It is the responsibility of the parties to determine if a final judgment was entered in a case. The Court does not notify parties if a case is dismissed upon review.

In order to avoid having a judgment entered in Court only to have it dismissed later in chambers, we have compiled some of the most common problems encountered in civil judgments.

SERVICE - You must have good service before a judge will enter a default judgment. When services are returned from the various Sheriffs' Offices the clerks sort them as to "served" and "not found". However, they do not necessarily check to see if the Sheriff posted the service on the copier machine next to a defendant's desk (served, but not properly). The plaintiff or plaintiff's counsel must check service prior to a request for judgment. The files are available in the clerk's office prior to the court date and in the courtroom from 9-9:15 a.m. on the morning of court. See Virginia Code Section 8.01, Chapters 8 and 9, for what constitutes proper service. If the defendant has not been served but appears in Court, the clerk will attempt to have the defendant sign a blue form submitting to the jurisdiction of the Court. The General District Court judges generally accept the following types of service:

Individual - Personal service at home or the place of employment, substitute service on a family member at home, or posted service on the defendant's usual place of abode may be acceptable. When service is on a family member the Sheriff must mark on the return the family member's name and the relationship to the defendant. Posted service must be on the front door or the door normally used for entrance to the defendant's usual place of abode. A Mailing Certificate must be presented to the Court when service is by posting. Service at the POE must be in person. No one else may accept service for an individual defendant at the place of employment.

Sole Proprietorship or Partnership - Service on an owner or any General Partner may be made as above.

Corporation - Personal service may be made on any officer or on the Registered Agent. Service on the Registered Agent may be made on another individual who has been designated by the Registered Agent to accept processes in the Registered Agent's absence. The Sheriff must include with his return of service a copy of the notarized document which allows another individual to accept service of process for the Registered Agent (see Code Section 13.1-637). When filing the papers for service you need to identify the person to be served so the Sheriff will mark the return correctly.

Ex: Acme, Inc., SERVE: John Doe, President, or
Acme, Inc., SERVE: Jane Doe, Registered Agent.

Secretary of the Commonwealth - The papers are signed by a clerk and forwarded to the Secretary by the Court, along with the Affidavit for Service on the Secretary of the Commonwealth (form DC-410), the return receipt card, and the service fee of \$19 per defendant to be served, payable to the Secretary of the Commonwealth. The Secretary will indicate service on the Certificate of Compliance located on the bottom of the Affidavit and return it to the Court. As of 7/1/01, you may request a copy of the service be mailed to you by checking the appropriate box on the Affidavit and supplying a SASE. Occasionally judgment is denied because the Affidavit for Service on the Secretary was not completed correctly. If service on the Secretary is based on the defendant's non-residency you must select one of the grounds for service listed on the back of the form. The form also requires an original signature and a notary's or clerk's signature.

State Corporation Commission - The papers are signed by a clerk and forwarded by the Court, along with your affidavit and the service fee of \$30 per party to be served, to the Sheriff of Richmond who will then serve the State Corporation Commission (SCC). When checking service through the SCC you need to look for two returns. The first is the service made by the Sheriff of Richmond on the Clerk of the State Corporation Commission as statutory agent for the corporation. Secondly, look for the SCC's Affidavit of Compliance showing service on the defendant. Normally, the SCC will not make a return if the original affidavit filed with the case naming the Clerk as agent is not proper (see Va. Code Sections 13.1-637, 13.1-766, 13.1-758, and 13.1-769(D)). **(Filing Reminder: Service through the SCC requires three fees - \$24 filing fee, \$12 Sheriff's service fee, and \$30 SCC fee.)**

Division of Motor Vehicles - The papers will be signed by a clerk and forwarded by the Court along with your affidavit and the service fee of \$19 per defendant to be served to the Division of Motor Vehicles (DMV). To check service, you must look for DMV's return on their Certificate of Compliance. Again, if the affidavit for service was not correct, DMV will not make service but will most likely return the papers with an explanation of the problem.

SERVICE BY PRIVATE PROCESS - A variety of errors are commonly made in this type of service. The judges check carefully to ensure service made by private server complies with the Code.

Who May Serve Process - See Virginia Code Section 8.01-293.

Manner of Service - See Virginia Code Section 8.01-296 when serving an individual. The most common error found in private process service is the language on the return. The return should follow the same progressive order as the Sheriff's return of service found on the back of the Warrant. In other words, the return should state that personal service was attempted, and then substitute service was attempted before service by posting was made.

Return of Service - See Virginia Code Section 8.01-325. The most common errors include:

- * The person serving process "shall make return to the clerk's office within 72 hours of service." (As of 7/02, failure to comply no longer invalidates the service/judgment.)
- * An affidavit is required stating the qualifications of the person serving process.
- * The return must include the date and manner of service and the name of the party served. The server's name, address, and telephone number are also required.
- * Note on the return of process that service was by private process server.

MAILING CERTIFICATE - When service of process is correctly made by "posting" on the defendant's usual residence, a copy of the process must be mailed to the defendant at least 10 days in advance of a default judgment pursuant to the Code of Virginia, Section 8.01-296. It would be helpful if the Certificate of Mailing located on the back of the Warrant in Debt was signed at the time of filing in order to cut down on the paperwork that the clerks receive and have to file away at a later date.

JUDGMENT ON THE AFFIDAVIT - When judgment is requested on the affidavit, the original affidavit must be **FILED** with the Warrant, Unlawful Detainer or Motion for Judgment and a copy **SERVED** on the defendant pursuant to the Code of Virginia, Section 8.01-28. If sufficient copies of the affidavit were not provided when the case was filed, the clerks note on the file cover that the affidavit was not served with the case papers due to insufficient copies.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT - When an individual defendant does not appear in court and a default judgment is requested, an affidavit must be presented stating the defendant is not in military service pursuant to the Soldiers and Sailors Civil Relief Act of 1940.

ORIGINAL DOCUMENT - When a suit is brought on a written contract, note, lease, or other instrument, the original document shall be tendered to the Court for entry of judgment thereon unless the production of the original is excused by the Court for good cause or by statute (see Code of Virginia, Rule 7B:5). If the original document cannot be found, a lost instrument affidavit is acceptable. Other documents required include:

Bad check - our judges require the **ORIGINAL** bad check.

Statement of Account - the judges require a statement of account if the suit is based on an open account.

Credit Card Agreement - when a suit is brought on a credit card the judges require a **copy** of the credit card agreement (with the attorney's fees and interest highlighted) and a **copy** of the signature card. A statement of the overdue account is also required.

Homeowner Associations - the judges require a **copy** of the page of the association bylaws which allows for attorney's fees and interest, with these areas highlighted. You may also have to provide the book and page number where the bylaws are recorded in Circuit Court.

ATTORNEY'S FEES AND INTEREST - Attorney's fees are normally not awarded unless an original signed note, contract or lease, which supports the award of attorney's fees, is presented to the Court. The areas on the document that allow attorney's fees and interest **must** be highlighted. The judges do not want to search through a 30 page lease looking for attorney's fees and interest. If a default judgment is entered on the affidavit, and the affidavit does not mention attorney's fees or interest, the judges will usually enter the judgment without awarding attorney's fees or pre-judgment interest. All requests for attorney's fees and interest (other than judgment rate of interest) **must** be supported by documentation.

REASONABLE ATTORNEY'S FEES - If a contract, note, lease, or other instrument allows for "reasonable" attorney's fees, but does not state a specific amount (such as 20%, 25%, etc.), then evidence must be proffered to support the award of attorney's fees. Our judges still consider "reasonable" attorney's fees to mean 20%, however, the amount must be supported with an affidavit or accounting as to the hours worked times the rate.

JURISDICTIONAL LIMIT - The jurisdictional limit of the General District Court in civil cases is \$15,000. Exceptions to this include Distress Warrants where the General District Court has exclusive original jurisdiction, and Unlawful Detainers brought for damages or rent owed on property which was used primarily for business, commercial or agricultural purposes (see Code of Virginia, Section 16.1-77). The General District Court also has exclusive jurisdiction on all civil matters involving \$4,500 or less.

UNLAWFUL DETAINERS - When judgment is awarded on an Unlawful Detainer the judges look for the following in the file:

Proper Service - as outlined above.

Mailing Certificate - is necessary if service was properly made by posting.

5 or 30 Day Pay or Quit Notice - if possession is sought, the proper Notice to Quit (see Code Sec. 55-248.31) must be supplied to the Court before judgment for possession will be entered.

Original Lease - the original lease is required unless the possession is based on a month-to-month tenancy. If the original lease was broken by a prior judgment in Unlawful Detainer, and no new lease exists, the judge will treat the current Unlawful Detainer as based on a month-to-month tenancy. Judgment may be awarded for possession, rent and/or damages, however, no attorney's fees or pre-judgment interest will be awarded since the lease is no longer in effect.

Note: The Writ of Possession must be filed within one year from the date of judgment. If filed more than 30 days after judgment, the Court will require, at least, an affidavit that no rent has been accepted without reservation and a copy of any letters of reservation.

JUDGMENT ON THE AFFIDAVIT IN UNLAWFUL DETAINERS - Judgment may be taken on an affidavit in Unlawful Detainer cases if the affidavit is filed and served with the original Unlawful Detainer papers (see Section 8.01-28, Code of Virginia). The small affidavit found on the Unlawful Detainer form is not sufficient for judgment. The judges require a separate affidavit stating the amount that is currently due and owing and the prorated amount that will be due as of the court date. A statement of account should also be filed with the affidavit and Unlawful Detainer.