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## GETTING SUED

A person or business you owe money to is called a creditor. If a creditor wants to force you to pay a debt, they first must ask the court for a judgment. Many people feel that having a judgment against them is the worst possible thing. A judgment simply is a piece of paper at the local courthouse that says you owe someone a certain sum of money. This allows the creditor to use legal actions to collect the judgment. The creditor first must get a judgment, and then still has to take the proper steps to collect from you.

### How does a creditor get a judgment?

To get a judgment, a creditor must follow these steps:

- File a lawsuit in court.
- Serve (legally deliver) you a copy of the court papers in a manner allowed by law.
- Go to court at the date and time of your hearing.
- Get a judgment from the court saying you must pay.
- Wait 21 days after the date of the judgment.

If a creditor wants a judgment of \$4,500 or less, the lawsuit must be filed in General District Court. A creditor who wants a judgment of more than \$25,000 must file in Circuit Court. If a creditor wants a judgment between \$4,500 and \$25,000, the lawsuit may be filed in either court. Lawsuits between \$4,500 and \$25,000 usually are filed in General District Court.

### How does a creditor file and serve a lawsuit?

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A creditor starts a lawsuit in General District Court by filing a Warrant in Debt. Although this court paper is called a "warrant," it is not used in a criminal case. It is used only in a civil (non-criminal) case. A creditor starts a lawsuit in Circuit Court by filing a Motion for Judgment. Court papers must be served (legally delivered) on you. This may be done three different ways:

- Given to you in person, usually by a Deputy Sheriff.
- Given to a member of your household, usually by a Deputy Sheriff. The household member must be 16 or older. The person serving the court papers must explain what they are.
- Posted on your front door and then mailed to you by first class mail.

Court papers can be legally served on you, even if you never actually get them. If they were properly given to a household member who didn't tell you about them, you still were legally served. If they were properly posted and mailed to you but you never saw them, you still were legally served. Both these things are unusual, but they do happen. You should tell household members to pay attention to court papers, and you should pay attention yourself.

### **Where should a creditor file a lawsuit?**

You should be sued in one of three different places: the county or city where you now live, or where you incurred (took on) the debt, or where you agreed in writing you could be sued. However, under Virginia law, you can be sued anywhere in the state, even if you don't live there and had no dealings there. If this happens, you should ask the court to move, or transfer, the lawsuit to the place where you live. Do this even if you agree on the debt you owe. If the lawsuit is heard and judgment granted far away, any legal action to collect the judgment also will be far away. You could be forced to go far away if the creditor wants to ask questions (called debtor interrogatories) to help collect its judgment.

### **What should I do if a creditor files a lawsuit far away?**

To ask to transfer a lawsuit, you should write a letter to the court. Put the court's name and address in your letter, and your name and return address. Put the name of your case, your case number, and your hearing date in your letter. You can find this information on your court papers. Tell the court you "object to venue" and you move to transfer to your local court. Tell the court where you incurred the debt and where you now live. Sign and date your letter.

Copy your letter and save it. You may want to send your letter by certified mail, return receipt requested. Save the certified mail receipt and the green return receipt. Mail your letter so it will arrive before your hearing date. The court will notify you if the lawsuit is moved. If this happens your local court will tell you the date, time, and place of your new court hearing.

### **What do papers from CIRCUIT COURT say?**

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Papers from the Circuit Court will not give you a date, time, or place of your court hearing. Instead, the papers say you have 21 days after getting them to file a written answer (called a Grounds of Defense) with the Circuit Court. The Grounds of Defense must reply to each numbered paragraph of the Motion for Judgment, and must admit or deny each numbered paragraph. Although you can file your own Grounds of Defense in Circuit Court, you probably will need a lawyer to help with the case. Procedures in the Circuit Court are more complicated.

### **What do papers from GENERAL DISTRICT COURT say?**

Papers from the General District Court will tell you the date, time, and place of your court hearing. This hearing may be your only chance to dispute or oppose the claim against you. If you do not agree with the claim, go to the hearing. Get there early so you can find your courtroom and watch how the court handles other cases.

### **What if I can't go to my General District Court hearing?**

If you can't go to General District Court on the date of your court hearing, you must ask the court for a new hearing date. This is called a "continuance." Different General District Courts have different rules for getting a continuance. In some courts, the Clerk can give a continuance. In other courts, only the Judge can give a continuance.

To find out the rule for your court, call the Clerk's Office as soon as you know you can't go to court on the date of your court hearing. Ask to be told the rule to get a continuance, and follow that rule. In addition to calling the Clerk's Office, it's a good idea to write and/or fax a letter to the court explaining why you need a continuance.

### **What should I do in General District Court?**

If you go to General District Court to dispute or oppose the claim against you, get prepared for your hearing in advance. Bring papers, receipts and witnesses that support your case. If a witness doesn't want to come to court, you can ask the Clerk to subpoena the witness.

A subpoena is a court order that says a witness must come to court. You must pay \$12.00 for the subpoena, and you must ask for it at least 10 days before your hearing date. If you don't have enough money to pay this (or any other) fee, ask the Clerk for the "Petition for Proceeding in Civil Case Without Payment of Fees or Costs." This also is called "Form CC-1414."

### **What happens if I dispute (disagree with) the claim?**

If you do dispute the claim, you must show up on time on the Return Date listed on the court paper.

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When your case is called on the return date, you should tell the judge that you are disputing the claim, and that you want a trial date. The case will not usually be tried on the return date if you dispute the claim. Instead, the judge will give you another date when you must come back with your witnesses and other evidence for a trial.

If you can't tell from the court papers exactly why you are being sued, or if you need further information to help you with your defense, you should tell the judge that you want the person who sued you to file a "Bill of Particulars." This is a paper which will explain to you exactly why you are being sued. The judge will order this at your request, and will give the person who sued you a certain amount of time to file the Bill of Particulars.

The person who sued you can also ask the judge to make you file your "Grounds of Defense." This is a statement that you will have to file with the court that explains to the court why you don't think you owe the money. The judge will give you a certain amount of time to file your Grounds of Defense. You must file your Grounds of Defense with the court by the date that the judge tells you or you will be in "default." What this means is that the person who sued you could get a judgment against you without your even having a chance to have a trial or tell your side.

On the trial date, be sure to bring any papers or receipts that relate to the claim, and any witnesses that can speak for you. If you want a witness who will not come voluntarily, you can ask the Clerk's office of the General District Court for a subpoena ordering that witness to come. You need to ask ten days before the trial date.

A lawyer will be a big help in defending you in a civil case. If you have a serious dispute, it will be worthwhile to consult a lawyer, and probably have him or her represent you in court.

### **Do I need a lawyer in General District Court?**

You don't need a lawyer in General District Court, but a lawyer can help you. If your dispute is serious, talk to a lawyer about representing you in court. Lawyers can help people reduce, or even wipe out, the amount owed. You may have defenses to the claim:

- You may have been sued for someone else's debt.
- You may have been sued too late. Lawsuits based on a writing usually must be filed within five years. Lawsuits not based on a writing usually must be filed within three years.
- The amount of the debt may be figured wrong.
- The person or business suing you may have broken a consumer protection law.
- If you also are asked to pay attorney's fees, you can dispute the amount of the fees even if you agree on the debt you owe.

### **Do I have to go to General District Court?**

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If you don't want to oppose the claim, you don't have to go to court. You won't be arrested if you do not go to court. That only happens in criminal cases. This is a civil (non-criminal) case. If you don't go to court, and the other side does and proves its case, you will lose the case. If you want to dispute or oppose the claim against you, you must go to court.

If both sides come to court, the Judge will hear both sides and decide who wins. The Judge's final decision is the judgment. If you lose, the judgment will include the amount you owe and \$38 in court filing fees. Sometimes, the judgment will include the other side's attorney's fees. So, the judgment can include the money you owe, court fees, attorney's fees (if the Judge orders it), and interest on these items.

### **Can I appeal from General District Court to Circuit Court?**

If you don't agree with the Judge's decision, you can appeal your case to Circuit Court. You must go to the General District Court clerk's office within 10 days of the judgment and file a written Notice of Appeal. You also will have to post an appeal bond, of cash or property, within 30 days for the amount of the judgment and the cost of the appeal. You probably will need a lawyer to help with the appeal. Procedures in the Circuit Court are more complicated.

## **How a Creditor Can Collect a Judgment**

If a creditor wants to force you to pay a debt, they first must ask the court for a judgment. This allows the creditor to use legal actions to collect the judgment. A creditor with a judgment is called a judgment-creditor.

### **How does a judgment-creditor collect a judgment?**

A judgment-creditor may ask the court for these things to help collect a judgment.

- Summons to answer debtor interrogatories.
- Garnishment of your income.
- Levy (or attachment) to sell your personal property.
- Docketing the judgment.
- Creditor's Bill in Equity to sell your real property.
- In certain cases, suspension of your driver's license.

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You will not be arrested if you do not pay your debts, bills, or judgments. Not paying your debts, bills or judgments is not a crime.

## **What is a summons to answer debtor interrogatories?**

A summons to answer debtor interrogatories requires that you come to a court hearing at a certain date, time and place. The hearing allows the judgment-creditor to ask you questions (interrogatories) about your income and property. You are under oath when you answer these questions. When you go to court, you should do these things.

- Answer all questions truthfully.
- Do not volunteer information, but do answer the questions you are asked.
- Take nothing of value with you. No wallet. No cash. No watch. No rings. No jewelry. No car. No car keys. Nothing of value.
- If you get government benefits, bring with you a paper which shows that. Give the paper to the judgment-creditor. Be sure to keep a copy for yourself.
- If you have government benefits in a bank account, bring with you a paper which shows that. Give the paper to the judgment-creditor. Be sure to keep a copy for yourself.

If you don't appear, the court can issue a Motion to Show Cause against you. This requires you to come to another court hearing and explain why you didn't come on the date you were summoned to answer interrogatories. **If you didn't have a good reason for missing court, you can be jailed.** The court also may issue a Capias to have you arrested. (The arrest and/or jailing is because you failed to come to court, not because you failed to pay the judgment.) A judgment-creditor can summon you to court to answer debtor interrogatories only once every six months.

## **What is a garnishment?**

A garnishment means that a creditor who has already gotten a court judgment is trying to get money that belongs to you but is currently in someone else's possession. The most common types of garnishment are of wages you've earned but that have not yet been paid to you, and money that is held in your bank accounts.

Government benefits can't be garnished. This includes Social Security, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), Black Lung benefits, unemployment compensation, workers compensation, and Veterans benefits. These benefits also can't be garnished if you keep them separate from any other money you have (for example, in a separate bank account).

Pensions up to \$25,000 per year can't be garnished. These benefits also can't be garnished if you keep them separate from any other money you have (for example, in a separate bank account).

Child support can't be garnished to pay your judgment.

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Wages can't be garnished unless gross wages minus amounts that must be withheld by law are at least \$290.00 per week. Amounts that must be withheld by law include federal and state taxes. They don't include optional deductions from wages. A judgment-creditor may garnish the smaller of the following amounts:

- The amount by which gross wages minus amounts that must be withheld by law exceed \$290.00 per week, or;
- 25% of gross wages minus amounts that must be withheld by law.

If you have dependent minor children and your gross household income does not exceed \$1,750, then you may claim an additional weekly exemption of \$34 for one child, \$52 for two children, and \$66 for three or more children. You will need to file an affidavit and two forms of proof that you are entitled to these additional exemptions.

If you get garnished, you and your employer (or you and your bank) will receive a Garnishment Summons. Your employer can't fire you the first time your wages are garnished. A garnishment is good for 30, 60, 90 or 180 days, at the choice of the judgment-creditor. The garnished money is under the control of the court until the garnishment period is over.

The garnishment period ends at what is called the **return date**. This gives you a chance to object and claim that the money can't be garnished. You do this by filing a Garnishment Exemption Claim Form with the court that issued the garnishment. You may be able to do this by yourself, but it is not recommended. You may lose income or property if you don't know the law. You should get legal help. You must get a court hearing on or before the return date to object to the garnishment. At the hearing, you have a chance to explain why the money can't be garnished. If the Judge agrees, the money is released to you.

If you have federal benefits, such as Social Security or SSI, directly deposited into your bank account, the bank is required to protect up to two months' worth of such deposits from garnishment and can't freeze those funds. The bank must make those two months' worth of federal benefits fully available to you for writing checks, making withdrawals, etc. If you have funds in your bank account in addition to two months' worth of directly deposited federal benefits, then you will need to file a claim of exemptions in court to get those additional funds released to you. Also, the bank is not allowed to charge any garnishment fees against the protected federal benefits. However, if it's the federal government or a state child support agency that's trying to garnish your bank account, then these rules on protecting your direct-deposited federal benefits do not apply.

## **What is a levy (or attachment)?**

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A levy is when a Sheriff or Deputy comes to your home and makes a list of property that can be sold to pay your judgment. A judgment-creditor can levy on only some of your personal property. A levy can't be placed on the following items, which are exempt (free) from levy.

- Up to \$5,000 worth of household goods.
- Up to \$1,000 worth of clothing.
- Medically prescribed health aids.
- Up to \$10,000 worth of tools and equipment you need for work or school.
- Up to \$6,000 total "equity" value in motor vehicles. "Equity" means the fair market value minus the amount you still owe on the vehicle.
- Up to \$3,000 total value of firearms.
- Up to \$5,000 worth of additional property, if you have listed it in a Homestead Deed filed with the Circuit Court. The amount is \$10,000 rather than \$5,000 if the debtor is a householder who is 65 years of age or older. Disabled veterans are entitled to an additional \$10,000 in exemptions.

A levy can't be placed on property that you don't own. If a levy is placed on your property, the judgment-creditor can ask the Sheriff to take it and sell it. You then would receive a notice of sale. If a levy is placed on exempt property, you should object right away. You do this by filing a Motion to Quash Levy with the court that issued the levy. You may be able to do this by yourself, but it is not recommended. You may lose property if you don't know the law. You should get legal help. You should get a court hearing as soon as possible to object to the levy. At the hearing, you have a chance to explain why the levy isn't proper. If the Judge agrees, the levy is released.

### **What is docketing of the judgment?**

Docketing the judgment is when the judgment-creditor records the judgment in any Circuit Court in Virginia. This puts a lien (or a claim) on any real property (house or land) you may own in that county or city. This alone does not mean that your real property will be sold to pay the judgment. It does mean that you can't sell or give away your real property, and turn over a clear title to the real property to someone else, without paying the judgment.

In Virginia, a judgment in Circuit Court is good for 20 years. During that 20 year period, the judgment can be renewed for additional 20 year periods. (A judgment in General District Court is good for 10 years.) Very few judgments actually are collected by forcing a sale of a debtor's house. Far more often, the judgment gets paid at the time the house is sold by the debtor's own choice.

### **What happens after I pay off the judgment?**

Paying off the judgment in full, including interest and any fees or costs ordered by the court, is called "satisfaction of the judgment." The judgment creditor is required to notify the clerk of court within 30

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days after the debtor has fully paid off (satisfied) the judgment. The clerk will then mark it on the docket as satisfied. If the creditor fails to notify the clerk within 30 days after satisfaction, then the debtor may make a motion to the court to have the judgment marked as satisfied. If the debtor can prove it was paid off in full, then the judge will order that the record show the judgment as being satisfied. The judge may also require the creditor to pay the debtor for the costs of making this motion.

### **What is a creditor's Bill in Equity?**

A creditor's Bill in Equity is a second and separate lawsuit, which must be filed in Circuit Court. The lawsuit asks for an order to sell your real property (house or land) to pay the judgment. As with the first lawsuit that resulted in a judgment, the creditor properly must file the lawsuit, serve the court papers, and get an order for the sale. Even if a judgment-creditor gets an order for the sale and your house or land is sold, if there is any mortgage, it gets paid first. If you have up to \$5,000 in equity in your house or land and list it in a Homestead Deed filed with the Circuit Court, you get paid before the judgment-creditor. For these and other reasons, a creditor's Bill in Equity seldom is used.

### **When can my driver's license be suspended?**

If your judgment was based on damages due to a motor vehicle accident, the Division of Motor Vehicles (DMV) may suspend your driver's license until the judgment is satisfied. To satisfy the judgment you either must pay the judgment or make payment arrangements with the judgment-creditor.

### **If I have a judgment against me, should I give away my property?**

No. This is called a "fraudulent conveyance." A judgment-creditor has up to one year to file a lawsuit to put the property back in your name, and then try to use that property to pay the judgment.

If you are not judgment-proof, and you wish to protect your property then you should discuss with an attorney the possibility of filing for bankruptcy.

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