

What is the case about?

A **civil** case is a lawsuit in which one person or business asks for money or property from another. A suit by a bank or loan company to collect payments which were not made on time; a suit by a doctor or hospital to collect overdue bills; a suit by a landlord for rent or to get the apartment back – these are examples of civil cases. They are very different from **criminal** cases, in which a fine, jail, or prison sentence may result.

Civil cases in General District Courts in Virginia are usually begun with a court paper which may be called “**Warrant in Debt**”, “**Summons for Unlawful Detainer**”, or “**Warrant in Detinue**”. The paper is generally served by a sheriff giving it directly to the person sued, an individual over the age of 16 in the home, or by posting the paper at the door of the residence of the person sued.

Whatever it is called, the court paper in a civil case tells you: who is asking for money or property, how much money, or what property, what gives the person the right to ask for it (for example, a contract, open account, or lease), and when and where you are supposed to go for the trial.

What if you dispute the claim?

If you have received a paper to go to General District Court for a hearing of a civil case, that hearing may be your last and only chance to dispute the claim. If you want to dispute the claim, then appear at the hearing on time. If you cannot go on that particular day, then ask the clerk of the General District Court how to ask for a **continuance** (a postponement until a better day for you).

On the hearing day, you should tell the judge that you are disputing the claim. The case will not usually be tried if you appear on the return date and dispute the claim. Instead, the judge will give you another date when you must come back with your evidence and witnesses for the trial.

If you can’t tell from the court papers 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 a “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.” This means 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 of the General District Court for a subpoena ordering that witness to come. You must request the subpoena at least ten days before the hearing date.

A lawyer may 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 have him or her represent you in court.

There are ways to defend against or reduce a debt, using for example statutes of limitations, required interest rebates, and Truth-in-Lending claims. Don't give up too soon! If the person suing you is asking for attorney's fees, you can complain about the amount of fees even if you admit the debt.

If the person who sues is able to prove their claim, they will get a **judgment** against you. If you win, the case will be **dismissed**.

Do you have to go to court?

You do have to appear in court if you want to dispute the claim. If you don't dispute the claim, and don't think you have a defense, you don't have to show up. You will not be arrested for not showing up, but you can expect the person who sued you to get a judgment against you in your absence.

Can you move the case to another court?

Generally, you should be sued in the court in the city or county in which you live, or where the cause of action occurred. An Unlawful Detainer (eviction) case would be filed in the city or county where the rental property is located. A case against you for money should be filed where you live, where you are employed, or where the contract was signed. If you are sued in an improper court, you can ask the court to change the **venue** (change the case to another court).

If you want to ask the court to change the venue, you should send a letter to the court stating why you do not think you were sued in the proper court, and where you think the case should be transferred. You should mail your letter to the court clerk well ahead of the court date so it will be in court records before the first court date. Make sure you send a copy of the letter to the lawyer for the person suing you, or if there is no lawyer, to the person. You should call the court after the hearing to find out if the judge did agree to transfer the case. If the judge did not transfer the case, state law says that the judge must set a trial date and the clerk must tell you. If the judge did not transfer the case, but entered a judgment against you, call a lawyer right away. If the judge transferred the case, you should check with the clerk of the court to which it was transferred for the new court date.

If the lawsuit is for money based on a bill, a contract, or a customer account, and if the lawyer filed the case in the wrong court (or venue), then you may have a claim for damages against the lawyer under the Fair Debt Collection Practices Act.

What if you lose?

If the person who sued you proves his claim and you have no defense or don't show up, he will get a **judgment** against you. A judgment is just the judge's final decision. If you lose you will owe the amount claimed, the cost of filing the case, and possibly also the lawyer's fees for the other side. The total amount will collect interest from the date of judgment until the debt is paid.

Can you appeal?

If you disagree with the decision in General District Court you can appeal the case to the Circuit Court for a new trial by signing an appeal form in the clerk's office within 10 days. To complete the appeal, however, you must also sign a **bond** (usually secured by your house or a cash deposit) for the judgment amount and cost of the appeal. You will likely need a lawyer in Circuit Court, where the procedures are complicated.

How can a judgment be enforced?

There are two important things to remember. First, a debtor cannot be sent to jail for failure or inability to pay **civil** debts – this is not like a criminal or non-support charge. Second, a judgment does not enforce itself; it just sits there building interest. A judgment is enforceable for 20 years, but the winner may petition the court to reinstate the judgment at the end of 20 years, so the judgment may never go away until it is paid.

You may want to pay off the judgment as soon as possible, and you should contact the creditor about payment in installments if you cannot pay at once. If you have no way to pay, however, that may not be possible. The winner of a judgment may attempt to enforce the judgment by means of:

Garnishment

A garnishment is a court order for a garnishee's employer to pay part of the debtor's wages to the court to pay off the judgment. A garnishment normally cannot be more than 25% of the take home pay, and cannot leave you with less than 40 times the current minimum wage out of each week's pay. The minimum amount exempt from garnishment at this time is \$290 per week, after taxes. If you have children, however, and your total monthly household income is no more than \$1,750.00, that amount increases to \$324 for one child, \$342 for two children, and \$356 for three or more children. You will need to file an affidavit and produce two forms of documentation to prove that you are entitled to these additional exemptions.

Some benefits, such as welfare, social security, child support, and some other types of income, are protected from garnishment.

An employer cannot fire you for being garnished the **first time** it happens. The company's employee handbook should explain the company's policies regarding garnishment.

If a bank account is garnished, the account holder will have to file an exemption claim form and produce documentation that shows the money

in the bank is exempt from garnishment. This can only happen if the money in the bank is not **comingled** with money that is not exempt. Contact an attorney if your account is garnished.

Levy

A levy is an official visit by the sheriff to a debtor's home to draw up a list of property that can be sold to satisfy the judgment. This can be very frightening to the debtor, but it is important to know that most personal property is **exempt** from levy.

Execution

This is a sale by the sheriff of the debtor's property that has been levied upon. Unless the levy turns up some property that will bring a high enough price at auction to justify the cost of the sale, creditors are not likely to do this.

Docketing (Recording) a Judgment

A creditor can have the judgment recorded in the official records of the Circuit Court Clerk's office among the land records. If you own or buy a house or other real estate, then the judgment record will stand as a **lien** against it. In theory that means the land could be sold to satisfy the judgment, but that rarely happens. Usually, however, nobody will buy your land with a lien filed against it unless there is enough money from the sale to pay off the entire mortgage and all liens on the property. If husband and wife own land together as *tenants by entirety*, then a judgment must be against *both* of them to stand against their land.

Debtor Interrogatories

A creditor can call a debtor back to court to question the debtor under oath about their ability to pay the debt, and to see if the debtor is hiding some valuable property.

You **MUST APPEAR IN COURT** if you receive an “**Interrogatory Summons**” or you **CAN BE ARRESTED**. It is important to answer the questions truthfully. The creditor still has to take action to collect, but if there is no property to collect from then there is nothing the creditor can do.

Writ of Possession

A landlord who gets a judgment for possession is entitled to remove you from the apartment or house after 10 days. If you do not leave before then, the landlord can execute a **Writ of Possession** which is delivered by a sheriff. You will have at least 72 hours’ notice to vacate before the sheriff and landlord return to remove you and your belongings, and change the locks. You then have 24 hours to remove any remaining belongings, or they may be considered abandoned and may be disposed of by the landlord.

How can you protect yourself against collection of a judgment?

If you do not have any property or income that could be taken, then you are considered “judgment proof,” which means the creditor will not be able to collect unless you cooperate with them. You can file a Claim of Exemptions if the creditor tries to enforce the judgment.

The **Poor Debtor's Exemption** protects each person from losing certain items like the following:

- clothes worth up to \$1,000
- household furnishings worth up to \$5,000
- tools and equipment (including a car or truck) if necessary for the person's work or education worth up to \$10,000
- motor vehicles worth up to \$6,000
- firearms, not to exceed \$3,000 in value
- burial lot, wedding and engagement rings, certain heirlooms, animals, and medical equipment.

This protection does not apply against a creditor who sold you one of those items and kept the right to take it back for non-payment.

If you have property that might be taken to satisfy a judgment that cannot be protected by the Poor Debtor's Exemption, and you just can't afford to lose it, then you may want to consider several last-ditch protections. A **Homestead Exemption** can be filed by any person to protect other property, up to a maximum of \$5,000 per lifetime; for example – money, wages, a car, a home, a coin collection. The Homestead Deed is filed in a form at the Circuit Court Clerk's office where you live.

THIS INFORMATION IS NOT LEGAL ADVICE.

Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.

Free Legal information by Web and Phone: www.vlas.org and 1-866-LeglAid (534-5243)



Know Your Rights in General District Court

This pamphlet contains general information about your rights. Consult a lawyer if you have specific questions. If you cannot afford a lawyer, contact:

Virginia Legal Aid Society

Offices in Danville, Farmville, Lynchburg,
Martinsville and Suffolk

1-866-534-5243

www.vlas.org

VLAS is a nonprofit organization providing free legal advice and representation to low income or elderly persons in Central, Southside and Western Tidewater Virginia.

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