



# **TAKING A CIVIL CASE TO GENERAL DISTRICT COURT**

## **Filing and Serving Your Lawsuit**

### **What and where is the General District Court?**

Virginia has a system of General District Courts. Each county or city in Virginia has a General District Court. This court does not have jury trials. All cases are heard by a judge.

### **What types of lawsuits can be filed in the General District Court?**

You may file a lawsuit for money or for return of your property. You may file either lawsuit by yourself, without an attorney, or you can get an attorney to represent you. You can file a lawsuit for up to \$25,000 in General District Court. If suing for personal injury or wrongful death, you can file a lawsuit for up to \$50,000. If you want to sue for more than that, you would need to file in Circuit Court. Procedures in Circuit Court are somewhat more complicated, so it's recommended that you have an attorney.

### **What is the Small Claims Division?**

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Each General District Court also has a Small Claims Division, where attorneys are not allowed. You can file a lawsuit in the Small Claims Division for up to \$5,000.

## **What should I do before I file a lawsuit for money?**

Before you sue someone for money, you should decide why they owe you money and how much they owe. You should have asked them to pay the money they owe, and you should sue when they refuse to pay. Some of the more common claims for money involve unpaid debts, broken contracts, unpaid wages, unreturned security deposits, and injuries to people or property. In a lawsuit for money, you have to prove the other side did not fulfill a legal duty, such as these:

- A duty to use ordinary care.
- A duty to use workman like care.
- A duty to fulfill an agreement or a contract.
- A duty to follow a legal requirement or obligation.

You also have to prove how much you are owed. This depends on the type of lawsuit. In a lawsuit for money you are owed, such as unpaid debts or wages, you have to prove the amount you are owed. In a lawsuit for injury to property, you have to prove the amount of damages or the fair market value of the property. Fair market value is not what you paid for the item when you bought it. It is not how much it will cost you to replace the item. It is how much a stranger would pay for that same used item.

## **How do I file a lawsuit for money?**

To file this lawsuit, you must go to the General District Court Clerk's office. Ask for the proper court form. To sue for money, fill out a "Warrant in Debt." Even though this court form is called a "warrant," it is not the same as a warrant used in a criminal case, such as a warrant for arrest. When you bring a lawsuit, you are in a civil (non-criminal) case.

You will need to state in a few words why the person or business you are suing owes you money. You also need to state the most money you could be owed. You can't get a judgment for any amount larger than what you sued for.

## **Where do I file a lawsuit for money?**

You must file in one of two places. One place is the county or city where the person or business you want to sue is located. The other place is the county or city where your claim for money arose.

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## **What should I do before I file a lawsuit for return of property?**

Before you sue someone for return of property, you might try calling law enforcement. It is theft for someone to take your property and not return it. If law enforcement agrees there may be theft, they may arrest the person who has your property and file a criminal charge against the person. If they can, law enforcement also will get your property back for you.

Sometimes, the person who has your property claims the right to keep it. If that happens, law enforcement probably will not file a criminal charge, and will tell you to go to court to get your property back. In a lawsuit for return of property, you have to prove these things:

- The property is yours.
- The person you are suing has that property.
- The person did not return the property after you asked for it back.
- If the property has been destroyed or disposed of, then you can recover the fair market value of the property. You will have to prove its value.

## **How do I file a lawsuit for return of property?**

To file this lawsuit, you must go to the General District Court Clerk's office. Ask for the proper court form. To sue for return of property, fill out a "Warrant in Detinue." This is a civil (non-criminal) case.

You will need to list each item of property you want returned and give a value for each item. If you forget to list any item, you will not be able to get that item back without filing another Warrant in Detinue.

## **Where do I file a lawsuit for return of property?**

You must file in one of two places. One place is the county or city where the property is located. The other place is the county or city where the person or business you want to sue is located.

## **What are the steps in a General District Court lawsuit?**

- Papers are filed with the court.
- The court papers are served (legally delivered) on all the parties.
- A hearing is held before the General District Court.
- A written order or judgment is issued.

## **What does it cost to file and serve a General District Court lawsuit?**

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You should ask the clerk of your particular General District Court how much it will cost to file and serve your lawsuit. If you win, the judgment will include your filing and service fees.

### **What if I can't afford the filing and service fees?**

If you can't afford the filing and service fees, you should ask the clerk of court for the form to petition for waiver of the fees. This is called "in forma pauperis." You will be asked for the following information:

- Whether you get Medicaid, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or Food Stamps.
- Your take home pay and other income.
- Your assets, such as money in a bank account, cash, homeownership, etc.
- Your unusual expenses, such as medical, court ordered child and spousal support, and child care.
- Number of people you support.
- Number of people you live with.

You must be a Virginia resident to file this form. Only the judge can grant your request to proceed without paying filing or service fees.

### **What do I need when I file a lawsuit in General District Court?**

You must have the complete name and address of the business or person you want to sue. The address must be a physical address, not a mailing address such as a post office box. The name of the business or person must be correct. Sometimes, a business or person will not use their real name. This is an "assumed or fictitious" name. The Circuit Court Clerk has a list of these names. If you are suing a business, you need the name and address of its registered agent. You can get this by calling the State Corporation Commission at (804) 371-9733.

Write on the warrant your name and address, the name and address of the business or person you want to sue, the amount of your claim, and the reason for your lawsuit. After your warrant is filed, the clerk should give you two copies. Mail one copy to the business or person you're suing, at least 10 days before trial. Ask for the "Certificate of Mailing." Fill it out and file it with the court on or before the first hearing date.

The warrant says when and where to appear for court. The clerk gives a copy of the warrant to the Sheriff's Department to deliver (or serve) on the business or person you're suing. Your lawsuit can't be heard unless the other side is served.

### **How long do I have to file my lawsuit?**

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You can't wait forever to file your lawsuit. The time is set by law, and depends on the type of lawsuit. You must file your lawsuit within a period called the "statute of limitations." If your claim is based on personal injuries, you have 2 years. If your claim is based on an oral agreement or contract, you have 3 years. If your claim is based on a written agreement or contract, you have 5 years. Some claims must be filed within one year. There are more rules for other types of cases. You should file your lawsuit as soon as possible.

In a detinue case for return of property you left somewhere, you may not have very long to file. Property you left somewhere could be treated as abandoned, so you should file as soon as possible. Any delay could result in losing your case.

### **What happens after I file court papers?**

The court papers must be served (legally delivered) on all other parties. The papers must be served at least five days before the court hearing. The papers tell all parties the date, time, and place of the General District Court hearing. This hearing may be the only chance for the parties to have their dispute heard by a judge.

### **How do the court papers get served?**

Court papers may be served on a party in Virginia in three different ways:

- Given in person, usually by a Deputy Sheriff.
- Given to a member of the 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 the front door of the party to be served, and then mailed to the party by first class mail.

Court papers can be legally served, even if the party never actually gets them. If they were properly given to a household member who didn't tell the party about them, they still were legally served. If they were properly posted and mailed, but the party never saw them, they still were legally served. Both these things are unusual, but they do happen.

### **If a party does not live in Virginia, how do the papers get served?**

Generally, court papers are served on a party outside Virginia in two different ways.

One way is by mailing a copy to the Secretary of the Commonwealth, who in turn mails a copy to the party who does not live in Virginia. To do this, ask for the "Affidavit for Service of Process on the Secretary of the Commonwealth." The Affidavit asks for this information:

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- The name and physical address of the out-of-state party.
- The reason why the out-of-state party can be sued in Virginia. These reasons are called the “Non-Residence Grounds Requirement.” They are listed on the back of the Affidavit.

The other way is by delivering a copy in person, usually by a Deputy Sheriff in the other state. To do this, ask for the “Service Other Than By Virginia Sheriff.” To use this form, you will need this information:

- The name and physical address of the out-of-state party.
- The name and address of the out-of-state Sheriff’s office.
- How much the out-of-state Sheriff’s office will charge for service of process. You will need to pay these fees directly to the out-of-state Sheriff’s office.

### **If a party is in jail or prison, how do the papers get served?**

If a party is jailed, court papers still can be served on the party in the usual ways. However, if a party is jailed, under the age of 18, in a mental hospital, or legally not competent, another step is needed. An order or judgment can’t be entered unless the court appoints an attorney for that party. This attorney is called a *Guardian Ad Litem*. The guardian ad litem’s fees usually have to be paid by the person filing the case.

### **If a party’s whereabouts are not known, how do the papers get served?**

If a party can’t be found but lives in Virginia, you can use the “Affidavit for Service of Process on the Secretary of the Commonwealth.” This also is called “Form DC-410.” The Affidavit asks for this information:

- The name and last known physical address of the party.
- That the Sheriff has been unable to serve the party.
- That you have tried to find the party’s actual physical address.

This is called the Due Diligence Requirement.

## **Planning and Proving Your Lawsuit**

### **What usually happens at the first court hearing?**

At the first court hearing, the following things can happen:

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- If you filed in the Small Claims Division and the other party wants an attorney, the case will be removed to the regular General District Court. This means you will have a later trial date and time.
- If you filed in the wrong General District Court and the other party wants the case to be heard elsewhere, the case will be transferred to the proper General District Court. You will have a later trial date and time in another General District Court.
- If your claim involves more than \$4,500 and the other party wants the case to be heard in Circuit Court, the case will be removed to Circuit Court. You will have a later trial date and time in Circuit Court.
- The other party could ask the judge to order you to file a “Bill of Particulars.”
- The other party could file a Counterclaim against you.
- The case could be set for a later trial date and time.
- The case could be heard and tried right then.

### **What is a “Bill of Particulars”?**

A “Bill of Particulars” is a written statement giving details of the lawsuit. It is a more complete explanation of why you should get the money or property you are asking for. If the judge orders you to file a Bill of Particulars, you will have a later trial date and time. You also will have a date by which to file your Bill of Particulars. If you don’t file by this date, your lawsuit may be dismissed.

### **What is a “Counterclaim”?**

A “Counterclaim” is a claim that the other party files against you. This must be in writing. It is a claim that you owe money or property to the party you have sued. If a Counterclaim is filed against you and is not a detailed explanation, you may ask the judge to order the other party to file a Bill of Particulars. You also may ask for a later trial date and time.

### **Will the court appoint an attorney for me?**

No. The court will not appoint an attorney for a party in a civil (non-criminal) case in General District Court.

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## **Do I need an attorney to bring a lawsuit in General District Court?**

You can file a lawsuit by yourself without an attorney. If your case is simple, you may not need an attorney in General District Court. If your case is complicated, or if the other side has an attorney, it will help if you have an attorney.

## **When will my case come to trial?**

This differs from court to court and from case to case. On the Warrant in Debt, or Warrant in Detinue, one of two boxes will be checked. One box says: "To dispute this claim, you must appear on the return date to try this case." If this box is checked, the case will be tried at the first court hearing.

The other box says: "To dispute this claim, you must appear on the return date for the judge to set another date for trial." If this box is checked and the other party appears at the first court hearing, the case will be tried at a later date.

## **How long will the trial be?**

This also depends on the nature of the case, and differs from court to court and from case to case. The judge usually wants the trial to take only as much time as needed to reach a fair decision. This can range from 15 minutes to an hour or more.

## **How should I prepare for trial?**

Always be well prepared in advance. This will help you to better present your case in such a way that the judge will clearly understand what you are asking for, and why. Bring papers and witnesses that support your case. These are some of the things you might want to bring:

- Contracts, leases, letters, and other important papers.
- Receipts, cancelled checks, money order receipts, and other proofs of payment.
- Photographs showing any property damage.
- Drawings and repair estimates.
- Medical records showing any personal injuries.

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. Ask for the "Request for Witness Subpoena." You need the full name and current physical address (not a Post Office box) for each witness. You must give this information to the Clerk at least 10 days before the trial date.

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If someone has papers that you think they won't bring it to court, you can ask the Clerk to subpoena the papers. This is called a subpoena duces tecum. This is a court order that says a person must bring the papers to court. Ask for the "Subpoena Duces Tecum." You need the full name and current physical address (not a Post Office box) of the person who has the papers. You must give the name and address of the person who has the papers, and a description of all papers you want, to the Clerk at least 15 days before the trial date.

There is a fee for the subpoena or the subpoena duces tecum. Ask the clerk of court how much it will be. If you don't have enough money to pay this (or any other) fee, ask the clerk for a form to petition for waiver of the fee. You must be a Virginia resident to file this form. Only the judge can grant your request to proceed without paying fees.

### **Can I call, write to, or talk with the judge outside of court?**

No. You may not call, write to, or talk with the judge about your case outside of court. The decision must be based only on the evidence the judge hears in the case. The judge may hear this evidence only in court, after all parties have had notice and a chance for a hearing.

### **What happens at trial?**

You must get to court on time. If you're not there on time, the case could be dismissed or a court order could be entered against you.

Remember always to be polite when talking to the judge. Address the judge as "Sir" or "Ma'am" or "Your Honor." Never interrupt the judge when the judge is speaking. If you are not sure if you can say anything, wait until the judge has stopped talking, and ask the judge if you may say something.

At trial, the judge wants to hear your side of the story and the other party's side. To explain how this is done, let's assume you are the plaintiff – the person who filed the lawsuit. If you are the other party, read this explanation as if you are the defendant.

Both parties are given a chance to give a very short summary of what they are going to prove. This is called an "opening statement." The plaintiff goes first. Then the defendant gives an opening statement.

After the opening statements, you, as the plaintiff, put on evidence and tell your side of the story. Evidence is testimony by sworn witnesses, papers, and anything else that you want to show the judge to help explain why you should get the money or property you are asking for. Asking yourself what would convince you – if you didn't know anything at all about the case – often is a good way to help decide what evidence to offer.

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When you tell your side of the story, you and your witnesses must swear or affirm to tell the truth. You also should show the judge, and the other party, any papers that back up your story or would help the judge decide the case, and can be admitted into evidence. Papers and records kept in the course of business usually can be admitted into evidence. However, letters, statements and affidavits from those not a party generally can't be admitted into evidence, but may be if they are present to testify.

After you have told your side of the story, the defendant can "cross-examine" you by asking you questions about what you have just said. The judge also may ask you questions.

You can have your witnesses testify in any order you wish. After each of your witnesses has testified, the defendant has the right to "cross-examine" that witness by asking the witness questions about what he or she has just said. The judge also may ask your witnesses questions.

Many judges prefer that no more than three or four witnesses testify for each side, so pick your best witnesses. The best witnesses are those who have personal knowledge about why you should get the money or property you are asking for.

After you and all your witnesses have given evidence, the defendant puts on his or her evidence. The defendant and his or her witnesses tell their side of the story. The defendant also may present any papers that can be admitted into evidence which back up his or her side of the story. You have a right to cross-examine the defendant and his or her witnesses by asking them questions about what they have just said. You shouldn't ask the other side any questions until you get the judge's permission. The judge also may ask questions.

After both sides have presented all their evidence, each side has the right to make a short statement summarizing the case. This is called a "closing statement." In the closing statement, you should explain to the judge in a general way why you should win the money or property you are asking for. If the other party's evidence doesn't make any sense, this is your chance to point that out. In his or her closing statement, the other party can point out any weaknesses in your position.

After both sides have finished closing statements, the judge will make a decision about whether you get the money or property, and if so, much how. Usually the judge will tell you right then what that decision is.

## **What happens after trial?**

The judge issues a written order, called a judgment. If the judge rules for the other party, the judgment will be to dismiss your case. If the judge rules in your favor in a lawsuit for money,

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the judgment says how much money you are owed. If no one files an appeal within ten days, the judgment is final. The judgment lets you do certain things to force the other party to pay you the money you are owed. You should get a copy of the judgment.

If the judge rules in your favor in a lawsuit for return of property, the judgment orders the other party to return your property to you, and lists a value for each item. If no one files an appeal within ten days, the judgment is final. The judgment lets you do certain things to get back your property or its value. You should get a copy of the judgment.

## **Can I appeal a General District Court order?**

You can appeal from General District Court to the Circuit Court if the claim involves more than \$20. Only a final order can be appealed from General District Court. You must file the appeal in writing. Ask the clerk of court for the proper form to use. The appeal must be filed within ten days after the final order is entered. If the tenth day falls on a Saturday, Sunday, or legal holiday, the appeal can be filed on the next business day. You must file the appeal in the Clerk's office of the General District Court that heard your case.

You also must file an appeal bond. The General District Court Judge sets the amount of the appeal bond. Ask the clerk of court for the proper form. The appeal bond must be filed within thirty days after the final order is entered. If the thirtieth day falls on a Saturday, Sunday, or legal holiday, the appeal can be filed on the next business day. You must file the appeal bond in the Clerk's office of the General District Court that heard your case. The appeal bond will be waived if you are found to be indigent unless it is a case to recover rent or for trespass.

An appeal bond is either a deposit of money or a signed promise that puts up a piece of property to stand good as a bond. This means the property can be sold to pay the appeal costs if you lose the appeal. If you win your case on appeal, your appeal bond will be returned to you. If you lose your case on appeal, the appeal bond will be used to pay any judgment or fees awarded to the other party.

You also must pay the Circuit Court filing fee and writ tax. If you don't have enough money to pay this (or any other) fee, ask for the "Petition for Proceeding in Civil Case Without Payment of Fees or Costs." You must be a Virginia resident to file this form. Only the Circuit Court Judge can grant your request to proceed on appeal without paying fees.

The appeal will be tried again in the Circuit Court as though the case had not been tried in General District Court. This is called a "trial de novo." Unless ordered by a judge, the General District Court order is not in effect during the appeal. You probably will need a lawyer to help with the appeal. Procedures in the Circuit Court are more complicated.

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# **Collecting and Enforcing Your Judgment**

## **If I get a judgment for money, how do I get my money?**

A judgment for money simply is a piece of paper at the courthouse that says someone owes you a certain sum of money. This lets you use legal actions to collect the judgment. You may ask the court for these things to help collect a judgment:

- Summons to answer interrogatories.
- Garnishment of income, bank accounts, or other money.
- Levy (or attachment) to sell personal property.
- Docketing the judgment.

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

A summons to answer interrogatories requires the person who owes you the judgment to come to a court hearing at a certain date, time and place. The hearing allows you to ask questions (interrogatories) about the person's income and property. The person is under oath when answering these questions.

Ask the Clerk's office of the General District Court that heard your case for the form for "Summons to Answer Interrogatories." You must have the complete name and current address of the person you want to come to court. The address must be a physical address, not a mailing address such as a post office box.

You must pay a fee for each Summons to Answer Interrogatories. The fee is added onto the court costs you are allowed to collect along with your judgment. If you can't afford the fee, ask for a form to petition for waiver of the fee.

## **How long must I wait before filing a summons to answer interrogatories?**

If there is no appeal, you must wait 21 days after the judgment before filing a summons to answer interrogatories. You may file this only once every six months.

## **What happens after I file a summons to answer interrogatories?**

The summons says when and where to appear for court. The clerk gives a copy of the summons to the Sheriff's Department to deliver to the person you want to come to court. The person has to be served before he or she is obligated to come to court. Unlike most other court papers in civil

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cases, once a summons to answer interrogatories has been served, the person must come to court, or else he or she can be jailed.

### **What happens at the hearing on a summons to answer interrogatories?**

You must get to court on time. If you're not there on time, the summons could be dismissed. If you and the other party are in court, what happens will differ from court to court and from case to case. Sometimes, you will ask questions in front of the judge. Other times, the judge will send you and the other party to a private room for you to ask questions. If the other party will not cooperate, you always can ask the judge for help. The other party will be put under oath to tell the truth.

### **What questions should I ask?**

You should ask questions about the person, and his or her income and property, which will help you collect the judgment. You should take careful and detailed written notes of the questions and answers. Here are some questions you might want to ask:

- The person's complete name, and any other names used.
- The person's current physical address, current mailing address, and phone number.
- Whether the person owns or is buying a home or any other real property (house & land), and if so, the physical address and county or city where it is located.
- The person's Social Security number and date of birth.
- The person's source and amount of all income.
- If employed, the employer's name, physical and mailing addresses, phone number, and name of the person who does payroll.
- If employed, the rate of pay, number of hours per week, how often paid (every week, every two weeks, two times a month, once a month), and dates wages are paid.
- Whether the person has any savings or checking accounts in a bank or credit union.
- If there are accounts, the bank's name, physical and mailing addresses, and phone number.
- If there are accounts, all account numbers, the amount of money currently in each account, and the names of all people on each account.
- Whether the person has any other money that is payable to him or her, such as from tenants, customers, businesses or government agencies.
- If the person has other money payable to him or her, the source's name, physical and mailing addresses, phone number, amount payable, and date payable.
- Whether the person has any personal property that would not be protected by law.
- If the person has personal property not protected by law, a detailed description of it (such as year, make, model, color, size, and value), and names of all owners.

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## **What property is protected by law?**

Virginia law protects the following property, which can't be taken to pay a judgment:

- Up to \$5,000 worth of household goods.
- Up to \$1,000 worth of clothing.
- 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.
- Medically prescribed health aids.
- Up to \$10,000 worth of tools and equipment needed for work or school.
- Up to \$3,000 total value of firearms.
- Up to \$5,000 in additional property (\$10,000 if the debtor is age 65 or older) and \$25,000 worth of additional property, if listed in a Homestead Deed filed with the Circuit Court. Disabled veterans are entitled to an additional \$10,000 in exemptions. You can only use all of your homestead exemption once every 8 years.

## **What happens if the other party is not at the hearing to answer interrogatories?**

If the other party doesn't appear, the court can issue a "Rule to Show Cause" against the person. This requires the person to come to another court hearing and explain why he or she didn't come to the hearing to answer interrogatories. If the person didn't have a good reason to miss court, he or she can be jailed. The court also may issue a Capias to have the person arrested.

## **What is a garnishment?**

Garnishment means that wages, bank accounts, and other money payable to the person who owes you the judgment, gets paid to you instead. Ask the Clerk's office of the General District Court that heard your case for the form to begin a garnishment against the person who was ordered by the court to pay you. You must have the following things when you file a garnishment:

- Complete name and Social Security number of the person who owes you the judgment.
- That person's physical address (not a mailing address such as a post office box).
- The date, amount, and payments made (if any) on the judgment.
- If garnishing an employer, the employer's name, physical and mailing addresses, and name of the person who does payroll.
- If garnishing a bank account, the bank's name, physical and mailing addresses, account numbers, and the names of all people on each account.
- If garnishing other money, the source's name and physical and mailing addresses.

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There is a fee to file and serve a garnishment. Ask the clerk about the fees. The fee is added onto the court costs you are allowed to collect along with your judgment. If you can't afford the fee, ask the clerk for the form to petition for waiver of the fee.

### **How long must I wait before filing a garnishment?**

If there is no appeal, you must wait 21 days after the judgment before filing a garnishment. As long as you are trying to collect the same judgment against the same person, there is no waiting period between garnishments. Otherwise, there is a waiting period of eighteen months between garnishments against the same person.

### **What money can, and cannot, be garnished?**

Wages can't be garnished unless gross wages minus amounts that must be withheld by law are at least \$380 per week. Amounts that must be withheld by law include federal and state taxes. They don't include optional deductions from wages. You can garnish the smaller of the following amounts:

- The amount by which gross wages minus amounts that must be withheld by law exceed \$380.00 per week.
- 25% of gross wages minus amounts that must be withheld by law.

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 kept separate from any other money, such as in a separate bank account.

Child support can't be garnished. Child support legally is the property of the child and can't be taken to pay the judgment.

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.

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## **What happens after I file a garnishment?**

A Garnishment Summons is served on both the person who owes you the judgment and the employer, bank, or other source being garnished. A garnishment is good for 30, 60, 90 or 180 days, at your choosing. The garnished money is under the control of the court until the garnishment period is over.

The garnishment period ends on what is called the “return date.” This gives the person who owes you the judgment a chance to object and claim that the money can’t be garnished. If this happens, you will get a Garnishment Exemption Claim Form. This will tell you the date, time and place of the hearing on the objection. You may be able to represent yourself at this hearing, but it is not recommended. You should get legal help. If there is no objection, or if an objection is not upheld, the garnished money is sent to you on, or soon after, the return date.

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

A levy is when a Sheriff or Deputy goes to the home of the person who owes you the judgment, and makes a list of property that can be sold to pay the judgment. However, you can levy on only some personal property. Ask the Clerk’s office of the General District Court that heard your case for the “Writ of Fieri Facias.” You must have the following things when you file a levy:

- Complete name and Social Security number of the person who owes you the judgment.
- That person’s physical address (not a mailing address such as a post office box).
- The date, amount, and payments made (if any) on the judgment.

There is a fee for each levy. Ask the clerk of court about the fee. The fee is added onto the court costs you are allowed to collect along with your judgment. If you can’t afford the fee, ask for the form to petition for waiver of the fee.

## **How long must I wait before filing a levy?**

If there is no appeal, you must wait 21 days after the judgment before filing a levy. There is no waiting period between levies.

## **What happens after I file a levy?**

Within 90 days, a Sheriff or Deputy goes to the home of the person who owes you the judgment, and sees whether there is any property that can be sold to pay the judgment. If so, a list of this property, called an “Inventory Form,” is mailed to the person who owes you the judgment, and to you. If you want the Sheriff to take and sell the property, you must pay a fee and post a bond in

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the amount listed on the Inventory Form. Only if you pay the fee, and post the bond, will the property be taken and sold to pay the judgment.

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

Docketing the judgment is when you record the judgment in any Circuit Court in Virginia. This puts a lien (or a claim) on any real property (house or land), in that county or city, owned by the person who owes you the judgment. This alone does not mean that the real property will be sold to pay the judgment. If the judgment principal is less than \$25,000, then the judgment lien cannot be used to force the sale of the primary residence. It does mean that the real property can't be sold or given away, with a clear title, without paying the judgment.

Ask the Clerk's office of the General District Court that heard your case for the "Abstract of Judgment." You will have to complete it and file it with the Circuit Court. There is no fee to file this.

### **If I get a judgment for return of property, how do I get my property back?**

In a detinue case, your judgment is a piece of paper at the local courthouse that says someone must return your property to you. This allows you to use legal actions to get back your property. Ask the Clerk's office of the General District Court that heard your case for the "Writs of Possession and Fieri Facias in Detinue." You will have to complete it and ask the Sheriff's office to get your property back for you. There is a fee to file this.

If any item is damaged or missing, your judgment also is a money judgment for the value of that item. This lets you use the legal actions discussed above to collect a money judgment.

***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](http://www.vlas.org) and  
1-866-LeglAid (534-5243)*

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