CODE OF VIRGINIA

Title 8.01

Civil Remedies and Procedure

Title 8.01 - CIVIL REMEDIES AND PROCEDURE

Chapter 1 - GENERAL PROVISIONS AS TO CIVIL CASES

§ 8.01-1. How proceedings may be in actions pending when title takes effect

Except as may be otherwise provided in § 8.01-256 of Chapter 4 (§ 8.01-228 et seq.) (Limitations of Actions), all provisions of this title shall apply to causes of action which arose prior to the effective date of any such provisions; provided, however, that the applicable law in effect on the day before the effective date of the particular provisions shall apply if in the opinion of the court any particular provision (i) may materially change the substantive rights of a party (as distinguished from the procedural aspects of the remedy) or (ii) may cause the miscarriage of justice.

Code 1950, § 8-2; 1977, c. 617.

§ 8.01-1.1. References to former sections, articles and chapters of Title 8 and other titles

Whenever in this title any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 8 or any other title of this Code as such titles existed prior to October 2, 1977, are transferred in the same or in modified form to a new section, article or chapter of this title or any other title of this Code and whenever any such former section, article or chapter is given a new number in this or any other title, all references to any such former section, article or chapter of Title 8 or such other title appearing elsewhere in this Code than in this title shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

1978, c. 422.

§ 8.01-2. General definitions for this title

As used in this title, unless the context otherwise requires, the term:

1. "Action" and "suit" may be used interchangeably and shall include all civil proceedings whether upon claims at law, in equity, or statutory in nature and whether in circuit courts or district courts;

2. "Decree" and "judgment" may be used interchangeably and shall include orders or awards;

3. "Fiduciary" shall include any one or more of the following:

a. guardian,

b. committee,

c. trustee,

d. executor,

e. administrator, and administrator with the will annexed,

f. curator of the will of any decedent, or

g. conservator;

4. "Rendition of a judgment" means the time at which the judgment is signed and dated;

5. "Person" shall include individuals, a trust, an estate, a partnership, an association, an order, a corporation, or any other legal or commercial entity;

6. "Person under a disability" shall include:

a. a person convicted of a felony during the period he is confined;

b. an infant;

c. an incapacitated person as defined in § 64.2-2000;

d. an incapacitated ex-service person under § 64.2-2016; or

e. any other person who, upon motion to the court by any party to an action or suit or by any person in interest, is determined to be (i) incapable of taking proper care of his person, or (ii) incapable of properly handling and managing his estate, or (iii) otherwise unable to defend his property or legal rights either because of age or temporary or permanent impairment, whether physical, mental, or both. Such impairment may also include substance abuse as defined in § 37.2-100;

7. "Sheriff" shall include deputy sheriffs and such other persons designated in § 15.2-1603;

8. "Summons" and "subpoena" may be used interchangeably and shall include a subpoena duces tecum for the production of documents and tangible things;

9. "Court of equity," "law and equity court," "law and chancery court," "chancery court," "corporation court," "the chancery side," "court exercising powers in chancery," "court with equitable jurisdiction," and "receivership court" shall mean the circuit court when entertaining equitable claims;

10. A "motion for judgment," "bill," "bill of complaint," or "bill in equity" shall mean a complaint in a civil action, as provided in the Rules of Supreme Court of Virginia;

11. "Equity practice," "equity procedure," "chancery practice," and "chancery procedure" shall mean practice and procedure in a civil action as prescribed by this Code and the Rules of Supreme Court of Virginia.

1977, c. 617; 1988, c. 37; 1997, c. 921; 2005, cc. 681, 716.

§ 8.01-3. Supreme Court may prescribe rules; effective date and availability; indexed, and annotated; effect of subsequent enactments of General Assembly

A. The Supreme Court, subject to §§ 17.1-503 and 16.1-69.32, may, from time to time, prescribe the forms of writs and make general regulations for the practice in all courts of the Commonwealth; and may prepare a system of rules of practice and a system of pleading and the forms of process and may prepare rules of evidence to be used in all such courts. This section shall be liberally construed so as to eliminate unnecessary delays and expenses.

B. New rules and amendments to rules shall not become effective until 60 days from adoption by the Supreme Court, and shall be made available to all courts, members of the bar, and the public.

C. The Virginia Code Commission shall publish and cause to be properly indexed and annotated the rules adopted by the Supreme Court, and all amendments thereof by the Court, and all changes made therein pursuant to subsection D.

D. The General Assembly may, from time to time, by the enactment of a general law, modify or annul any rules adopted or amended pursuant to this section. In the case of any variance between a rule and an enactment of the General Assembly such variance shall be construed so as to give effect to such enactment.

E. Any amendment or addition to the rules of evidence shall be adopted by the Supreme Court on or before November 15 of any year and shall become effective on July 1 of the following year unless the General Assembly modifies or annuls any such amendment or addition by enactment of a general law. Notwithstanding the foregoing, the Supreme Court, at any time, may amend the rules to conform with any enactment of the General Assembly and correct unmistakable printer's errors, misspellings, unmistakable errors to statutory cross-references, and other unmistakable errors in the rules of evidence.

F. When any rule contained in the rules of evidence is derived from one or more sections of the Code of Virginia, the Supreme Court shall include a citation to such section or sections in the title of the rule.

Code 1950, §§ 8-1, 8-1.1, 8-1.2, 8-86.1; 1950, p. 3; 1952, c. 234; 1954, c. 333; 1971, Ex. Sess., c. 2; 1972, c. 856; 1977, c. 617; 1979, c. 658; 1984, c. 524; 2003, c. 280; 2012, cc. 688, 708.

§ 8.01-4. District courts and circuit courts may prescribe certain rules

The district courts and circuit courts may, from time to time, prescribe rules for their respective districts and circuits. Such rules shall be limited to those rules necessary to promote proper order and decorum and the efficient and safe use of courthouse facilities and clerks' offices. No rule of any such court shall be prescribed or enforced which is inconsistent with this statute or any other statutory provision, or the Rules of Supreme Court or contrary to the decided cases, or which has the effect of abridging substantive rights of persons before such court. Any rule of court which violates the provisions of this section shall be invalid.

The courts may prescribe certain docket control procedures which shall not abridge the substantive rights of the parties nor deprive any party the opportunity to present its position as to the merits of a case solely due to the unfamiliarity of counsel of record with any such docket control procedures. No civil matter shall be dismissed with prejudice by any district or circuit court for failure to comply with any rule created under this section.

Code 1950, § 8-1.3; 1970, c. 366; 1977, c. 617; 1999, c. 839; 2000, c. 803; 2014, c. 348.

§ 8.01-4.1. How jurisdiction determined when proceeding is on penal bond

When a proceeding before a court is on a penal bond, with condition for the payment of money, the jurisdiction shall be determined as if the undertaking to pay such money had been without a penalty. And when jurisdiction depends on the amount of a judgment, if it be on such a bond, the jurisdiction shall be determined by the sum, payment whereof will discharge the judgment.

Code 1950, § 8-3; 1977, c. 617.

§ 8.01-4.2. Who may execute bond for obtaining writ or order

A bond for obtaining any writ or order may be executed by any person with sufficient surety, though neither be a party to the case.

Code 1950, § 8-4; 1977, c. 617.

§ 8.01-4.3. Unsworn declarations under penalty of perjury; penalty

If a matter in any judicial proceeding or administrative hearing is required or permitted to be established by a sworn written declaration, verification, certificate, statement, oath, or affidavit, such matter may, with like force and effect, be evidenced, by the unsworn written declaration, certificate, verification, or statement, which is subscribed by the maker as true under penalty of perjury, and dated, in substantially the following form:

"I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct."

This section shall not apply to a deposition, an oath of office, or an oath required to be taken before a specified official other than a notary public.

2005, c. 423.

Chapter 2 - PARTIES

Article 1 - GENERAL PROVISIONS

§ 8.01-5. Effect of nonjoinder or misjoinder; limitation on joinder of insurance company

A. No action or suit shall abate or be defeated by the nonjoinder or misjoinder of parties, plaintiff or defendant, but whenever such nonjoinder or misjoinder shall be made to appear by affidavit or otherwise, new parties may be added and parties misjoined may be dropped by order of the court at any time as the ends of justice may require.

B. Nothing in this section shall be construed to permit the joinder of any insurance company on account of the issuance to any party to a cause of any policy or contract of liability insurance, or on account of the issuance by any such company of any policy or contract of liability insurance for the benefit of or that will inure to the benefit of any party to any cause.

Code 1950, § 8-96; 1954, c. 333; 1977, c. 617.

§ 8.01-6. Amending pleading; relation back to original pleading

A misnomer in any pleading may, on the motion of any party, and on affidavit of the right name, be amended by inserting the right name. An amendment changing the party against whom a claim

is asserted, whether to correct a misnomer or otherwise, relates back to the date of the original pleading if (i) the claim asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading, (ii) within the limitations period prescribed for commencing the action against the party to be brought in by the amendment, that party or its agent received notice of the institution of the action, (iii) that party will not be prejudiced in maintaining a defense on the merits, and (iv) that party knew or should have known that but for a mistake concerning the identity of the proper party, the action would have been brought against that party.

Code 1950, § 8-97; 1954, c. 333; 1977, c. 617; 1990, c. 80; 1996, c. 693; 2004, cc. 141, 326.

§ 8.01-6.1. Amendment of pleading changing or adding a claim or defense; relation back

Subject to any other applicable provisions of law, an amendment of a pleading changing or adding a claim or defense against a party relates back to the date of the original pleadings for purposes of the statute of limitations if the court finds (i) the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading, (ii) the amending party was reasonably diligent in asserting the amended claim or defense, and (iii) parties opposing the amendment will not be substantially prejudiced in litigating on the merits as a result of the timing of the amendment. In connection with such an amendment, the trial court may grant a continuance or other relief to protect the parties. This section shall not apply to eminent domain or mechanics' lien claims or defenses.

1996, c. 693.

§ 8.01-6.2. Amendment of pleading; relation back to original pleading; confusion in trade name

A. A pleading which states a claim against a party whose trade name or corporate name is substantially similar to the trade name or corporate name of another entity may be amended at any time by inserting the correct party's name, if such party or its agent had actual notice of the claim prior to the expiration of the statute of limitations for filing the claim.

B. In the event that suit is filed against the estate of a decedent, and filed within the applicable statute of limitations, naming the proper name of estate of the deceased and service is effected or attempted on an individual or individuals as executor, administrator or other officers of the estate, such filing tolls the statute of limitations for said claim in the event the executor, administrator or other officers of the estate are unable to legally receive service at the time service was attempted, or defend suit because their authority as executor, administrator or other officer of the estate excludes defending said actions, or their duties as executor, administrator or other officer of the estate had expired at the time of service or during the time of defending said action.

1999, c. 686.

§ 8.01-6.3. Actions or suits against fiduciaries; style of the case; amendment of pleading

A. In any action or suit required to be prosecuted or defended by or in the name of a fiduciary, including a personal representative, trustee, conservator, or guardian, the style of the case in regard to the fiduciary shall be substantially in the following form: "(Name of fiduciary), (type of fiduciary relationship), (Name of the subject of the fiduciary relationship)."

B. Any pleading filed that does not conform to the requirements of subsection A but otherwise identifies the proper parties shall be amended on the motion of any party or by the court on its own motion. Such amendment relates back to the date of the original pleading.

2010, c. 437.

§ 8.01-7. When court may add new parties to suit

In any case in which full justice cannot be done, or the whole controversy ended, without the presence of new parties to the suit, the court, by order, may direct the clerk to issue the proper process against such new parties, and, upon the maturing of the case as to them, proceed to make such orders or decrees as would have been proper if the new parties had been made parties at the commencement of the suit.

Code 1950, § 8-129; 1977, c. 617.

Article 2 - SPECIAL PROVISIONS

§ 8.01-8. How minors may sue

Any minor entitled to sue may do so by his next friend. Either or both parents may sue on behalf of a minor as his next friend.

Code 1950, § 8-87; 1977, c. 617; 1998, c. 402.

§ 8.01-9. Guardian ad litem for persons under disability; when guardian ad litem need not be appointed for person under disability

A. A suit wherein a person under a disability is a party defendant shall not be stayed because of such disability, but the court in which the suit is pending, or the clerk thereof, shall appoint a discreet and competent attorney-at-law as guardian ad litem to such defendant, whether the defendant has been served with process or not. If no such attorney is found willing to act, the court shall appoint some other discreet and proper person as guardian ad litem. Any guardian ad litem so appointed shall not be liable for costs. Every guardian ad litem shall faithfully represent the estate or other interest of the person under a disability for whom he is appointed, and it shall be the duty of the court to see that the interest of the defendant is so represented and protected. Whenever the court is of the opinion that the interest of the defendant so requires, it shall remove any guardian ad litem and appoint another in his stead. When, in any case, the court is satisfied that the guardian ad litem has rendered substantial service in representing the interest of the person under a disability, it may allow the guardian reasonable compensation therefor, and his actual expenses, if any, to be paid out of the estate of the defendant. However, if the defendant's estate is inadequate for the purpose of paying compensation and expenses, all, or any part thereof, may

be taxed as costs in the proceeding or, in the case of proceedings to adjudicate a person under a disability as an habitual offender pursuant to former § 46.2-351.2 or former § 46.2-352, shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges. In a civil action against an incarcerated felon for damages arising out of a criminal act, the compensation and expenses of the guardian ad litem shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges. If judgment is against the incarcerated felon, the amount allowed by the court to the guardian ad litem shall be taxed against the incarcerated felon as part of the costs of the proceeding, and if collected, the same shall be paid to the Commonwealth. By order of the court, in a civil action for divorce from an incarcerated felon, the compensation and expenses of the guardian ad litem shall be paid by the Commonwealth out of the state treasury from the appropriation for criminal charges if the crime (i) for which the felon is incarcerated occurred after the date of the marriage for which the divorce is sought, (ii) for which the felon is incarcerated was committed against the felon's spouse, child, or stepchild and involved physical injury, sexual assault, or sexual abuse, and (iii) resulted in incarceration subsequent to conviction and the felon was sentenced to confinement for more than one year. The amount allowed by the court to the guardian ad litem shall be taxed against the incarcerated felon as part of the costs of the proceeding, and if collected, the same shall be paid to the Commonwealth.

B. Notwithstanding the provisions of subsection A or the provisions of any other law to the contrary, in any suit wherein a person under a disability is a party and is represented by an attorney-at-law duly licensed to practice in this Commonwealth, who shall have entered of record an appearance for such person, no guardian ad litem need be appointed for such person unless the court determines that the interests of justice require such appointment; or unless a statute applicable to such suit expressly requires that the person under a disability be represented by a guardian ad litem. The court may, in its discretion, appoint the attorney of record for the person under a disability as his guardian ad litem, in which event the attorney shall perform all the duties and functions of guardian ad litem.

Any judgment or decree rendered by any court against a person under a disability without a guardian ad litem, but in compliance with the provisions of this subsection B, shall be as valid as if the guardian ad litem had been appointed.

Code 1950, §§ 8-88, 8-88.1; 1972, c. 720; 1977, c. 617; 1996, c. 887; 1999, cc. 945, 955, 987; 2001, c. 127; 2003, c. 563.

§ 8.01-10. Joinder of tenants in common

Tenants in common may join or be joined as plaintiffs or defendants.

Code 1950, § 8-90; 1977, c. 617.

§ 8.01-11. Proceedings on writing binding deceased person

A. A bond, note, or other written obligation to a person or persons who, or some of whom, are dead at the time of its execution may be proceeded on in the name of the personal representative of such person, or the survivors or survivor, or of the representative of the last survivor of such persons.

B. If one person bound either jointly or as a partner with another by a judgment, bond, note, or otherwise for the payment of a debt, or the performance or forbearance of an act, or for any other thing, die in the lifetime of such other, the representative of the decedent may be charged in the same manner as the decedent might have been charged, if those bound jointly or as partners, had been bound severally as well as jointly, otherwise than as partners.

Code 1950, §§ 8-92, 8-93; 1977, c. 617.

§ 8.01-12. Suit by beneficial owner when legal title in another

When the legal title to any claim or chose in action, for the enforcement of the collection of which a court of equity has jurisdiction, is in one person and the beneficial equitable title thereto is in another, the latter may either maintain a suit in the name of the holder of the legal title for his use and benefit or in his own name to enforce collection of the same. In either case the beneficial equitable owner shall be deemed the real plaintiff and shall be liable for costs.

Code 1950, § 8-93.1; 1977, c. 617.

§ 8.01-13. Assignee or beneficial owner may sue in own name; certain discounts allowed

The assignee or beneficial owner of any bond, note, writing or other chose in action, not negotiable may maintain thereon in his own name any action which the original obligee, payee, or contracting party might have brought, but, except as provided in § 8.9A-403, shall allow all just discounts, not only against himself, but against such obligee, payee, or contracting party, before the defendant had notice of the assignment or transfer by such obligee, payee, or contracting party, and shall also allow all such discounts against any intermediate assignor or transferor, the right to which was acquired on the faith of the assignment or transfer to him and before the defendant had notice of the assignment or transfer by such assignor or transferor to another.

Code 1950, § 8-94; 1964, c. 219; 1966, c. 396; 1977, c. 617.

§ 8.01-14. Suit against assignor

Any assignee or beneficial owner may recover from any assignor of a writing; but only joint assignors shall be joined as defendants in one action. A remote assignor shall have the benefit of the same defense as if the suit had been instituted by his immediate assignee.

Code 1950, § 8-95; 1977, c. 617.

§ 8.01-15. Suits by and against unincorporated associations or orders

All unincorporated associations or orders may sue and be sued under the name by which they are commonly known and called, or under which they do business, and judgments and executions

against any such association or order shall bind its real and personal property in like manner as if it were incorporated.

Code 1950, § 8-66; 1962, c. 250; 1977, c. 617.

§ 8.01-15.1. Anonymous plaintiff; motion for identification; factors to be considered by court

A. In any legal proceeding commenced anonymously, any party may move for an order concerning the propriety of anonymous participation in the proceeding. The trial court may allow maintenance of the proceeding under a pseudonym if the anonymous litigant discharges the burden of showing special circumstances such that the need for anonymity outweighs the public's interest in knowing the party's identity and outweighs any prejudice to any other party. The court may consider whether the requested anonymity is intended merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a sensitive and highly personal matter; whether identification poses a risk of retaliatory physical or mental harm to the requesting party or to innocent nonparties; the ages of the persons whose privacy interests are sought to be protected; whether the action is against a governmental or private party; and the risk of unfairness to other parties if anonymity is maintained.

B. If the court initially permits a party to proceed anonymously, the issue of the propriety of continued anonymous participation in the proceedings may be raised at any stage of the litigation when circumstances warrant a reconsideration of the issue. In all cases, all parties have the right to know the true identities of all other parties under such provisions of confidentiality as the court may deem appropriate.

C. If the court orders that the anonymous litigant be identified, the pleadings and any relevant dockets shall be reformed to reflect the party's true name, and the identification shall be deemed to relate back to the date of filing of the proceeding by the anonymous party.

D. In any legal proceeding in which a party is proceeding anonymously, the court shall enter appropriate orders to afford all parties the rights, procedures and discovery to which they are otherwise entitled.

2003, c. 572.

§ 8.01-15.2. Servicemembers Civil Relief Act; default judgment; appointment of counsel

A. Notwithstanding the provisions of § 8.01-428, in any civil action or proceeding in which the defendant does not make an appearance, the court shall not enter a judgment by default until the plaintiff files with the court an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. Subject to the provisions of § 8.01-3, the Supreme Court shall prescribe the form of such affidavit, or the requirement for an affidavit may be satisfied by a written statement, declaration, verification or certificate, subscribed and

certified or declared to be true under penalty of perjury. Any judgment by default entered by any court in any civil action or proceeding in violation of subchapter II of the Servicemembers Civil Relief Act (50 U.S.C. § 3901 et seq.) may be set aside as provided by the Act. Failure to file an affidavit shall not constitute grounds to set aside an otherwise valid default judgment against a defendant who was not, at the time of service of process or entry of default judgment, a servicemember as defined in 50 U.S.C. § 3911.

B. Where appointment of counsel is required pursuant to 50 U.S.C. § 3931 or 3932 or another section of the Servicemembers Civil Relief Act, the court may assess reasonable attorney fees and costs against any party as the court deems appropriate, including a party aggrieved by a violation of the Act, and shall direct in its order which of the parties to the case shall pay such fees and costs. Such fees and costs shall not be assessed against the Commonwealth unless it is the party that obtains the judgment.

C. The appointed counsel may issue a subpoena duces tecum for all discoverable electronic and print files, records, documents, and memoranda regarding the transactional basis for the suit. If requested in the subpoena, the plaintiff shall also deliver all documents or information concerning the location of the servicemember.

D. Counsel appointed pursuant to the Servicemembers Civil Relief Act shall not be selected by the plaintiff or have any affiliation with the plaintiff. However, counsel for the plaintiff may provide a list of attorneys familiar with the provisions of the Servicemembers Civil Relief Act upon the request of the court.

2004, c. 381; 2005, c. 909; 2016, c. 643.

Article 3 - DEATH OR CHANGE OF PARTIES

§ 8.01-16. New parties may have continuance

Except in the Supreme Court any new party to a case, whether he be joined or substituted, may in the discretion of the court have a continuance; and the court may allow him to plead anew or amend the pleadings so far as it deems reasonable, but in other respects the case shall proceed to final judgment or decree for or against him, in like manner as if he had been an original party to the case.

Code 1950, § 8-150; 1977, c. 617.

§ 8.01-17. When party whose powers cease is defendant

When the party whose powers cease is defendant, the plaintiff may continue his suit against him to final judgment or decree; provided that a successor in interest may be substituted in accordance with the Rules of Court; and provided further that upon motion the court may order that the suit proceed against the former party as well as the successor.

Code 1950, § 8-152; 1954, c. 333; 1977, c. 617.

§ 8.01-18. When suit discontinued unless revived

If the committee, personal representative, heir, or devisee of the plaintiff or appellant who was a party, or of the decedent whose personal representative was plaintiff or appellant, shall not make a motion for substitution of parties under the applicable Rules of Court within a reasonable time after there may have been a suggestion on the record of the fact making such motion proper, the suit of such plaintiff or appellant shall be discontinued, unless good cause be shown to the contrary.

Code 1950, § 8-153; 1954, c. 333; 1977, c. 617.

§ 8.01-19. Effect of marriage or change of name of party

The marriage of a party shall not cause a suit or action to abate. If a party changes his name, upon affidavit or other proof of the fact, the suit or action shall proceed in the new name, but if the change of name be not suggested before judgment, the judgment shall be as valid, and may be enforced in like manner, as if no such change of name had taken place.

Code 1950, § 8-147; 1973, c. 401; 1977, c. 617.

§ 8.01-20. Effect of marriage, change of name or death on appeal

If at any time after verdict or judgment in the trial court during the pendency of an appeal or before the appeal is granted, the marriage, change of name or death of a party, or any other fact which might otherwise be relied on in abatement occurs, and such fact is suggested or relied on in abatement in the Court of Appeals or the Supreme Court, the court may, in its discretion, take or retain jurisdiction and enter judgment or decree in the case as if such event had not occurred.

Code 1950, § 8-148; 1973, c. 401; 1977, c. 617; 1984, c. 703.

§ 8.01-20.1. Certification of expert witness opinion at time of service of process

Every motion for judgment, counter claim, or third party claim in a medical malpractice action, at the time the plaintiff requests service of process upon a defendant, or requests a defendant to accept service of process, shall be deemed a certification that the plaintiff has obtained from an expert witness whom the plaintiff reasonably believes would qualify as an expert witness pursuant to subsection A of § 8.01-581.20 a written opinion signed by the expert witness that, based upon a reasonable understanding of the facts, the defendant for whom service of process has been requested deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed. This certification is not necessary if the plaintiff, in good faith, alleges a medical malpractice action that asserts a theory of liability where expert testimony is unnecessary because the alleged act of negligence clearly lies within the range of the jury's common knowledge and experience.

The certifying expert shall not be required to be an expert witness expected to testify at trial nor shall any defendant be entitled to discover the identity or qualifications of the certifying expert or the nature of the certifying expert's opinions. Should the certifying expert be identified as an expert expected to testify at trial, the opinions and bases therefor shall be discoverable pursuant

to Rule 4:1 of the Rules of Supreme Court of Virginia with the exception of the expert's status as a certifying expert.

Upon written request of any defendant, the plaintiff shall, within 10 business days after receipt of such request, provide the defendant with a certification form that affirms that the plaintiff had obtained the necessary certifying expert opinion at the time service was requested or affirms that the plaintiff did not need to obtain a certifying expert witness opinion. The court, upon good cause shown, may conduct an in camera review of the certifying expert opinion obtained by the plaintiff as the court may deem appropriate. If the plaintiff did not obtain a necessary certifying expert opinion at the time the plaintiff requested service of process on a defendant as required under this section, the court shall impose sanctions according to the provisions of § 8.01-271.1 and may dismiss the case with prejudice.

2005, cc. 649, 692; 2007, c. 489; 2013, cc. 65, 610.

§ 8.01-21. Judgment when death or disability occurs after verdict but before judgment

When a party dies, or becomes convicted of a felony or insane, or the powers of a party who is a personal representative or committee cease, if such fact occurs after verdict, judgment may be entered as if it had not occurred.

Code 1950, § 8-145; 1977, c. 617.

§ 8.01-22. When death or disability occurs as to any of several plaintiffs or defendants

If a party plaintiff or defendant becomes incapable of prosecuting or defending because of death, insanity, conviction of felony, removal from office, or other reason and there are one or more co-plaintiffs or co-defendants, the court on motion may in its discretion either (i) suspend the case until a successor in interest is appointed in accordance with the Rules of Court, or (ii) sever the action or suit so that the case shall proceed against the remaining parties without delay, with the case as to the former party being continued and tried separately against the successor in interest when he is substituted as provided by the Rules of Court.

Code 1950, § 8-146; 1977, c. 617.

§ 8.01-23. Decree in suit when number of parties exceeds 30 and one of them dies

When, in any suit involving a decedent's estate or a trust, the number of parties exceeds 30, and any one of the parties jointly interested with others in any question arising therein, dies, the court may, notwithstanding, if in its opinion all classes of interests are represented and no one will be prejudiced thereby, proceed to render a decree in such suit as if such party were alive; decreeing to the heirs, devisees, legatees, distributees, or personal representatives, as the case may be, such interest as the deceased person, if alive, would be entitled to. The provisions of § 8.01-322 shall apply to decrees entered hereunder.

Code 1950, §§ 8-155, 8-156; 1977, c. 617; 2005, c. 681.

Article 4 - WRIT OF SCIRE FACIAS ABOLISHED

§ 8.01-24. Writ of scire facias abolished; substitutes therefor

The writ of scire facias is hereby abolished. Relief heretofore available by scire facias may be obtained by appropriate action or motion pursuant to applicable statutes and Rules of Court.

1977, c. 617.

Chapter 3 - ACTIONS

Article 1 - SURVIVAL AND ASSIGNMENT OF CAUSES OF ACTIONS

§ 8.01-25. Survival of causes of action

Every cause of action whether legal or equitable, which is cognizable in the Commonwealth of Virginia, shall survive either the death of the person against whom the cause of action is or may be asserted, or the death of the person in whose favor the cause of action existed, or the death of both such persons. Provided that in such an action punitive damages shall not be awarded after the death of the party liable for the injury. Provided, further, that if the cause of action asserted by the decedent in his lifetime was for a personal injury and such decedent dies as a result of the injury complained of with a timely action for damages arising from such injury pending, the action shall be amended in accordance with the provisions of § 8.01-56.

As used in this section, the term "death" shall include the death of an individual or the termination or dissolution of any other entity.

Code 1950, § 8-628; 1950, p. 948; 1952, c. 378; 1954, c. 607; 1964, c. 34; 1977, c. 617.

§ 8.01-26. Assignment of causes of action

Only those causes of action for damage to real or personal property, whether such damage be direct or indirect, and causes of action ex contractu are assignable. The provisions of this section shall not prohibit any injured party or his estate from making a voluntary assignment of the proceeds or anticipated proceeds of any court award or settlement as security for new value given in consideration of such voluntary assignment.

1977, c. 617; 1991, c. 256 .

Article 2 - ACTIONS ON CONTRACTS GENERALLY

. Civil action on note or writing promising to pay money

A civil action may be maintained upon any note or writing by which there is a promise, undertaking, or obligation to pay money, if the same be signed by the party who is to be charged thereby, or his agent. The action may also be maintained on any such note or writing for any past due installment on a debt payable in installments, although other installments thereof be not due.

Code 1950, § 8-509; 1954, c. 333; 1977, c. 617.

§ 8.01-27.1. Additional recovery in certain civil actions concerning checks or rejected electronic funds transfers

A. Except as otherwise provided in Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, in any civil claim or action made or brought against the drawer of a check, draft or order, payment of which has been refused by the drawee depository because of lack of funds in or credit with such drawee depository, or because such check, draft or order was returned because of a stop-payment order placed in bad faith on the check, draft or order by the drawer, the holder or his agent shall be entitled to claim, in addition to the face amount of the check (i) legal interest from the date of the check, (ii) the protest or bad check return fee, if any, charged to the holder by his bank or other depository, (iii) a processing charge of $50, and (iv) reasonable attorney's fees if awarded by the court.

B. Except as otherwise provided in Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, any holder of a check, draft or order, payment of which has been refused by the drawee for insufficient funds or credit or because of a stop-payment order placed in bad faith, who charges the drawer amounts in excess of those authorized in subsection A on account of payment being so refused shall, upon demand, be liable to the drawer for the lesser of (i) $50 plus the excess of the authorized amount or (ii) twice the amount charged in excess of the authorized amount.

C. If an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, the authorizing party and the payee shall have the same rights and remedies as if the drawer had issued a bad check under subsection B. For purposes of this subsection, "electronic funds transfer" has the same meaning as provided in 15 U.S.C. § 1693 (a).

1981, c. 230; 1992, c. 238; 1996, c. 334; 2003, c. 233; 2008, c. 489; 2009, c. 182; 2013, c. 63.

§ 8.01-27.2. Civil recovery for giving bad check

A. Except as otherwise provided in Chapter 13 (§ 55-217 et seq.) or Chapter 13.2 (§ 55-248.2 et seq.) of Title 55, in the event a check, draft or order, the payment of which has been refused by the drawee because of lack of funds in or credit with such drawee, is not paid in full within thirty days after receipt by the drawer of (i) written notice by registered, certified, or regular mail with the sender retaining an affidavit of service of mailing or other sufficient proof of mailing, which may be a U.S. Postal Certificate of Mailing or (ii) if for nonpayment of rent under § 55-225 or 55-248.31, written notice in accordance therewith, from the payee that the check, draft or order has been returned unpaid, the payee may recover from the drawer in a civil action brought by the filing of a warrant in debt, the lesser of $250 or three times the amount of the check, draft or order. The amount recovered as authorized by this section shall be in addition to the amounts authorized for recovery under § 8.01-27.1. No action may be initiated under this section if any action has been initiated under § 18.2-181. The drawer shall be obligated to pay the cost of service and the cost of mailing, as applicable.

B. If an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, the authorizing party and the payee shall have the same rights and remedies as if the drawer had issued a bad check under § 8.01-27.1. For purposes of this subsection, "electronic funds transfer" has the same meaning as provided in 15 U.S.C. § 1693 (a).

1985, c. 579; 1988, c. 433; 1992, c. 501; 2002, c. 763; 2008, c. 489; 2013, c. 63.

§ 8.01-27.3. Evidence in actions regarding issuance of bad check

In any civil action growing out of an arrest under § 18.2-181 or § 18.2-182, no evidence of statements or representations as to the status of the check, draft, order or deposit involved, or of any collateral agreement with reference to the check, draft, or order, shall be admissible unless such statement, or representation, or collateral agreement, is written upon the instrument at the time it is given by the drawer.

2004, c. 462.

§ 8.01-27.4. Civil recovery for professional services

In the event any insured or enrollee of an accident and sickness insurance policy, health services plan or health maintenance organization receives payment from the insurance company, health services plan or health maintenance organization licensed under Title 38.2, pursuant to a claim that involves the provision of services to the insured or enrollee by a professional licensed under Title 54.1, and within 30 days of receipt of the payment does not forward the payment with the necessary endorsement to the professional for application towards the unpaid balance on the professional services subject to the claim, the professional may in a civil action brought by the filing of a warrant in debt recover from the insured or enrollee the lesser of $250 or three times the amount of the payment, together with the amount of the payment. The amount recovered as authorized by this section shall be in addition to the amounts authorized for recovery under § 8.01-27.1. No action may be initiated under this section unless the professional, prior to receipt of payment by the insured or enrollee, forwards to the insured or enrollee via first class mail an invoice for services rendered.

2004, c. 909; 2005, c. 141.

§ 8.01-27.5. Duty of in-network providers to submit claims to health insurers; liability of covered patients for unbilled health care services

A. As used in this section:

"Covered patient" means a patient whose health care services are covered under terms of a health care policy.

"Health care policy" means any health care plan, subscription contract, evidence of coverage, certificate, health services plan, medical or hospital services plan, accident and sickness insurance policy or certificate, or other similar certificate, policy, contract, or arrangement, and any endorsement or rider thereto, offered, arranged, issued, or administered by a health insurer to an

individual or a group contract holder to cover all or a portion of the cost of individuals, or their eligible dependents, receiving covered health care services. "Health care policy" includes coverages issued pursuant to (i) Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 (state employees); (ii) § 2.2-1204 (local choice); (iii) 5 U.S.C. § 8901 et seq. (federal employees); and (iv) an employee welfare benefit plan as defined in 29 U.S.C. § 1002 (1) of the Employee Retirement Income Security Act of 1974 (ERISA) that is self-insured or self-funded. "Health care policy" does not include (a) coverages issued pursuant to Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq. (Medicare), Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. (Medicaid), or Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq. (CHIP), or Chapter 55 of Title 10 of the United States Code, 10 U.S.C. § 1071 et seq. (TRICARE); (b) subscription contracts for one or more dental or optometric services plans that are subject to Chapter 45 (§ 38.2-4500 et seq.) of Title 38.2; (c) insurance policies that provide coverage, singly or in combination, for death, dismemberment, disability, or hospital and medical care caused by or necessitated as a result of accident or specified kinds of accidents, including student accident, sports accident, blanket accident, specific accident, and accidental death and dismemberment policies; (d) credit life insurance and credit accident and sickness insurance issued pursuant to Chapter 37.1 (§ 38.2-3717 et seq.) of Title 38.2; (e) insurance policies that provide payments when an insured is disabled or unable to work because of illness, disease, or injury, including incidental benefits; (f) long-term care insurance as defined in § 38.2-5200; (g) plans providing only limited health care services under § 38.2-4300 unless offered by endorsement or rider to a group health benefit plan; (h) TRICARE supplement, Medicare supplement, or workers' compensation coverages; or (i) medical expense coverage issued pursuant to § 38.2-2201.

"Health care provider" has the same meaning ascribed to the term in § 8.01-581.1.

"Health care services" means items or services furnished to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury, or physical disability.

"Health insurer" means any entity that is the issuer or sponsor of a health care policy.

"In-network provider" means a health care provider that is employed by or has entered into a provider agreement with the health insurer that has issued the health care policy, under which agreement the health care provider has agreed to provide health care services to covered patients.

"Patient" means an individual who receives health care services from a health care provider, or any person authorized by law to consent on behalf of the individual incapable of making an informed decision, or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian, or as otherwise provided by law.

"Provider agreement" means a contract, agreement, or arrangement between a health care provider and a health insurer, or a health insurer's network, provider panel, intermediary, or representative, under which the health care provider has agreed to provide health care services to

patients with coverage under a health care policy issued by the health insurer and to accept payment from the health insurer for the health care services provided.

B. An in-network provider that provides health care services to a covered patient shall submit its claim to the health insurer for the health care services in accordance with the terms of the applicable provider agreement, provided that the covered patient provides the in-network provider with information required by the terms of the covered patient's health care policy's plan documents, including the information that is required to verify the individual's coverage under the health care policy, within not fewer than 21 business days before the deadline for the in-network provider to submit its claim to the health insurer as required by the terms of the provider agreement. If an in-network provider does not submit its claim to the health insurer in accordance with the requirements of this subsection, then (i) the covered patient shall have no obligation to pay for health care services for which the in-network provider was required to submit its claim, (ii) the in-network provider shall not have the benefit of the liens provided by §§ 8.01-66.2 and 8.01-66.9 with regard to health care services for which the in-network provider was required to submit its claim, and (iii) the in-network provider shall be prohibited from recovering payment for any of the health care services for which it was required to submit its claim from an insurer providing medical expense benefits to the covered patient under a policy of motor vehicle liability insurance pursuant to § 38.2-2201, by exercising an assignment of the covered patient's rights to the medical expense benefits or by other means. If the in-network provider submits its claim to the health insurer in accordance with the requirements of this subsection, the covered patient or the health insurer shall be obligated to pay for the health care services in accordance with the terms of the provider agreement or health care policy's plan documents. To the extent that self-insured or self-funded plans governed by ERISA provide otherwise, health care providers shall be permitted to submit claims and coordinate benefits as provided for in the provider agreements or plan documents.

2013, c. 700; 2014, cc. 157, 417.

. When judgment to be given in action upon contract or note unless defendant appears and denies claim under oath

In any action at law on a note or contract, express or implied, for the payment of money, or unlawful detainer pursuant to § 55-225 or 55-248.31 for the payment of money or possession of the premises, or both, if (i) the plaintiff files with his motion for judgment or civil warrant an affidavit made by himself or his agent, stating therein to the best of the affiant's belief the amount of the plaintiff's claim, that such amount is justly due, and the time from which plaintiff claims interest, and (ii) a copy of the affidavit together with a copy of any account filed with the motion for judgment or warrant and, in actions pursuant to § 55-225 or 55-248.31, proof of required notices is served on the defendant as provided in § 8.01-296 at the time a copy of the motion for judgment or warrant is so served, the plaintiff shall be entitled to a judgment on the affidavit and statement of account without further evidence unless the defendant either appears and pleads under oath or files with the court before the return date an affidavit or responsive pleading

denying that the plaintiff is entitled to recover from the defendant on the claim. A denial by the defendant in general district court need not be in writing. The plaintiff or defendant shall, on motion, be granted a continuance whenever the defendant appears and pleads. If the defendant's pleading or affidavit admits that the plaintiff is entitled to recover from the defendant a sum certain less than that stated in the affidavit filed by the plaintiff, judgment may be taken by the plaintiff for the sum so admitted to be due, and the case will be tried as to the residue.

In the event of a defect in the affidavit, the plaintiff shall be entitled to a continuance.

Code 1950, § 8-511; 1954, c. 610; 1960, c. 426; 1977, c. 617; 1983, c. 136; 1991, cc. 56, 503; 2014, c. 688.

§ 8.01-29. Procedure in actions on annuity and installment bonds, and other actions for penalties for nonperformance

In an action on an annuity bond, or a bond for money payable by installments, when there are further payments of the annuity, or further installments to become due after the commencement of the action, or in any other action for a penalty for the nonperformance of any condition, covenant, or agreement, the plaintiff may assign as many breaches as he may think fit, and shall, in his motion for judgment assign the specific breaches for which the action is brought. The jury impaneled in any such action shall ascertain the damages sustained, or the sum due, by reason of the breaches assigned, and judgment shall be entered for the penalty, to be discharged by the payment of what is so ascertained, and such further sums as may be afterwards assessed. Motion may be made by any person injured against the defendant and, for what may be assessed or found due upon the new breach or breaches assigned, execution may be awarded.

Code 1950, § 8-513; 1954, c. 333; 1977, c. 617.

§ 8.01-30. Procedure in actions on contracts made by several persons

Upon all contracts hereafter made by more than one person, whether joint only or joint and several, an action may be maintained and judgment rendered against all liable thereon, or any one or any intermediate number, and if, in an action on any contract heretofore or hereafter made, more than one person be sued and process be served on only a part of them, the plaintiff may dismiss or proceed to judgment as to any so served, and either discontinue as to the others, or from time to time as the process is served, proceed to judgment against them until judgment be obtained against all. Such dismissal or discontinuance of the action as to any defendant shall not operate as a bar to any subsequent action which may be brought against him for the same cause.

Code 1950, § 8-514; 1954, c. 333; 1977, c. 617.

§ 8.01-31. Accounting in equity

An accounting in equity may be had against any fiduciary or by one joint tenant, tenant in common, or coparcener for receiving more than comes to his just share or proportion, or against the personal representative of any such party.

Code 1950, § 8-514.1; 1956, c. 160; 1977, c. 617.

§ 8.01-32. Action on lost evidences of debt

A. A civil action may be maintained on any past-due lost bond, note, contract, open account agreement, or other written evidence of debt, provided the plaintiff verifies under oath either in open court or by affidavit that said bond, note, contract, open account agreement, or other written evidence of debt has been lost or destroyed.

B. Where a true and accurate copy of the written evidence of debt exists, which copy was produced in the normal course of business, the court shall accept such copy into evidence and shall give effect to its terms as if the original had been placed into evidence.

C. In the event of any inconsistency between this section and any applicable provisions of § 8.3A-309, the provisions of that section shall control.

Code 1950, § 8-517; 1954, c. 333; 1964, c. 219; 1977, c. 617; 2000, c. 245; 2003, c. 125.

§ 8.01-33. Equitable relief in certain cases

A court shall not grant equitable relief in a suit upon a bond, note, or writing, by an assignee or holder thereof, unless it appears that the plaintiff had no adequate remedy thereon at law.

Code 1950, § 8-518; 1977, c. 617; 2005, c. 681.

Article 3 - INJURY TO PERSON OR PROPERTY

§ 8.01-34. When contribution among wrongdoers enforced

Contribution among wrongdoers may be enforced when the wrong results from negligence and involves no moral turpitude.

Code 1950, § 8-627; 1977, c. 617.

§ 8.01-35. Damages for loss of income not diminished by reimbursement

In any suit brought for personal injury or death, provable damages for loss of income due to such injury or death shall not be diminished because of reimbursement of income to the plaintiff or decedent from any other source, nor shall the fact of any such reimbursement be admitted into evidence.

Code 1950, § 8-628.3; 1974, c. 155; 1977, c. 617.

§ 8.01-35.1. Effect of release or covenant not to sue in respect to liability and contribution

A. When a release or a covenant not to sue is given in good faith to one of two or more persons liable for the same injury to a person or property, or the same wrongful death:

1. It shall not discharge any other person from liability for the injury, property damage or wrongful death unless its terms so provide; but any amount recovered against the other person or any one of them shall be reduced by any amount stipulated by the covenant or the release, or in the amount of the consideration paid for it, whichever is the greater. In determining the amount of consideration given for a covenant not to sue or release for a settlement which consists in whole or in part of future payment or payments, the court shall consider expert or other evidence as to

the present value of the settlement consisting in whole or in part of future payment or payments. A release or covenant not to sue given pursuant to this section shall not be admitted into evidence in the trial of the matter but shall be considered by the court in determining the amount for which judgment shall be entered; and

2. It shall discharge the person to whom it is given from all liability for contribution to any other person liable for the same injury to person or property or the same wrongful death.

B. A person who enters into a release or covenant not to sue with a claimant is not entitled to recover by way of contribution from another person whose liability for the injury, property damage or wrongful death is not extinguished by the release or covenant not to sue, nor in respect to any amount paid by the person which is in excess of what was reasonable.

C. For the purposes of this section, a covenant not to sue shall include any "high-low" agreement whereby a party seeking damages for injury to a person or property, or for wrongful death, agrees to accept as full satisfaction for any judgment no more than one sum certain and the party or parties from whom the damages are sought agree to pay no less than another sum certain regardless of whether any judgment rendered at trial is higher or lower than the respective sums certain set forth in the agreement and whereby such party provides notice to all of the other parties of the terms of such "high-low" agreement immediately after such agreement is reached.

D. A release or covenant not to sue given pursuant to this section shall be subject to the provisions of §§ 8.01-55 and 8.01-424.

E. This section shall apply to all such covenants not to sue executed on or after July 1, 1979, and to all releases executed on or after July 1, 1980. This section shall also apply to all oral covenants not to sue and oral releases agreed to on or after July 1, 1989, provided that any cause of action affected thereby accrues on or after July 1, 1989. A release or covenant not to sue need not be in writing where parties to a pending action state in open court that they have agreed to enter into such release or covenant not to sue and have agreed further to subsequently memorialize the same in writing.

1979, c. 697; 1980, c. 411; 1982, c. 196; 1983, c. 181; 1985, c. 330; 1989, c. 681; 2000, c. 351; 2007, c. 443.

§ 8.01-36. Joinder of action of tort to infant with action for recovery of expenses incurred thereby and claim for recovery of expenses by infant

A. Where there is pending any action by an infant plaintiff against a tort-feasor for a personal injury, where the cause of action accrued prior to July 1, 2013, any parent or guardian of such infant, who is entitled to recover from the same tort-feasor the expenses of curing or attempting to cure such infant from the result of such personal injury, may bring an action against such tort-feasor for such expenses, in the same court where such infant's case is pending, either in the action filed in behalf of the infant or in a separate action. If the claim for expenses be by separate action, upon motion of any party to either case, made to the court at least one week before the

trial, both cases shall be tried together at the same time as parts of the same transaction. But separate verdicts when there is a jury trial shall be rendered, and the judgment shall distinctly separate the decision and judgment in the separate causes of action.

In the event of the cases being carried to the Supreme Court, which may be done if there be the jurisdictional amount in either case, they shall both be carried together as one case and record, but the Supreme Court shall clearly specify the decision in each case, separating them in the decision to the extent necessary to do justice among the parties.

B. For causes of action that accrue on or after July 1, 2013, the past and future expenses of curing or attempting to cure an infant of personal injuries proximately caused by a tort-feasor are damages recoverable by an infant in a cause of action against the tort-feasor and, if applicable to the infant's cause of action, are subject to the limitation on damages in § 8.01-581.15. Any parent or guardian of such infant who has paid for or is personally obligated to pay for past or future expenses to cure or attempt to cure the infant shall have a lien and right of reimbursement against any recovery by the infant up to the amount the parent or guardian has actually paid or is personally obligated to pay. The right to reimbursement of any parent or guardian shall accrue upon the first tender of funds of any recovery from a tort-feasor to the infant. Court approval of the infant settlement shall release party defendants from all claims for past or future expenses of curing or attempting to cure the infant.

Nothing in this section shall relieve a parent of the obligation to pay for the medical expenses of curing or attempting to cure the infant as such obligation exists under current law.

Code 1950, § 8-629; 1954, c. 333; 1973, c. 277; 2013, cc. 551, 689.

§ 8.01-37. Recovery of lost wages in action for injuries to emancipated infant

In any suit for personal injuries brought on behalf of an emancipated infant, when such infant has sustained lost wages as a result of such injuries, he shall be entitled to recover such lost wages as a part of his damages. Where recovery is made hereunder or where recovery is attempted to be made and a decision on the merits adverse to said infant results, no other person may recover such lost wages.

Code 1950, § 8-629.1; 1970, c. 421; 1977, c. 617.

§ 8.01-37.1. Claims for medical services provided by United States; proof of reasonable value

Whenever any person sustains personal injuries caused by the alleged negligence of another, and a claim against any person alleged to be liable is created in favor of the United States under federal law (42 U.S.C. § 2651 et seq.) for the reasonable value of medical, surgical or dental care and treatment provided, the injured party may, on behalf of the United States, claim the reasonable value of the medical services provided as an element of damages in a civil action against the person alleged to be liable. It shall not be required that the United States intervene in the action or be made a party in order to establish its claim. A sworn written statement of the authorized

representative of the department or agency providing such services prepared in accordance with the regulations promulgated pursuant to 42 U.S.C. § 2652 shall be admissible as evidence of the reasonable value of the care and treatment provided.

1984, c. 42; 1985, c. 205.

§ 8.01-38. Tort liability of hospitals

Hospital as referred to in this section shall include any institution within the definition of hospital in § 32.1-123.

No hospital, as defined in this section, shall be immune from liability for negligence or any other tort on the ground that it is a charitable institution unless (i) such hospital renders exclusively charitable medical services for which service no bill for service is rendered to, nor any charge is ever made to the patient or (ii) the party alleging such negligence or other tort was accepted as a patient by such institution under an express written agreement executed by the hospital and delivered at the time of admission to the patient or the person admitting such patient providing that all medical services furnished such patient are to be supplied on a charitable basis without financial liability to the patient. However, notwithstanding the provisions of § 8.01-581.15 a hospital which is exempt from taxation pursuant to § 501(c) (3) of Title 26 of the United States Code (Internal Revenue Code of 1954) and which is insured against liability for negligence or other tort in an amount not less than $500,000 for each occurrence shall not be liable for damage in excess of the limits of such insurance, or in actions for medical malpractice pursuant to Chapter 21.1 (§ 8.01-581.1 et seq.) for damages in excess of the amount set forth in § 8.01-581.15.

Code 1950, § 8-629.2; 1974, c. 552; 1976, c. 765; 1977, c. 617; 1983, c. 496; 1986, cc. 389, 454; 2000, c. 464.

§ 8.01-38.1. Limitation on recovery of punitive damages

In any action accruing on or after July 1, 1988, including an action for medical malpractice under Chapter 21.1 (§ 8.01-581.1 et seq.), the total amount awarded for punitive damages against all defendants found to be liable shall be determined by the trier of fact. In no event shall the total amount awarded for punitive damages exceed $350,000. The jury shall not be advised of the limitation prescribed by this section. However, if a jury returns a verdict for punitive damages in excess of the maximum amount specified in this section, the judge shall reduce the award and enter judgment for such damages in the maximum amount provided by this section.

1987, c. 255.

§ 8.01-39. Completion or acceptance of work not bar to action against independent contractor for personal injury, wrongful death or damage to property

In any civil action in which it is alleged that personal injury, death by wrongful act or damage to property has resulted from the negligence of or breach of warranty by an independent contractor, it shall not be a defense by such contractor to such action that such contractor has completed such

work or that such work has been accepted as satisfactory by the owner of the property upon which the work was done or by the person hiring such contractor.

Nothing contained herein shall be construed to limit, modify or otherwise affect the provisions of § 8.01-250.

Code 1950, § 8-629.3; 1974, c. 669; 1977, c. 617.

§ 8.01-40. Unauthorized use of name or picture of any person; punitive damages; statute of limitations

A. Any person whose name, portrait, or picture is used without having first obtained the written consent of such person, or if dead, of the surviving consort and if none, of the next of kin, or if a minor, the written consent of his or her parent or guardian, for advertising purposes or for the purposes of trade, such persons may maintain a suit in equity against the person, firm, or corporation so using such person's name, portrait, or picture to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use. And if the defendant shall have knowingly used such person's name, portrait or picture in such manner as is forbidden or declared to be unlawful by this chapter, the jury, in its discretion, may award punitive damages.

B. No action shall be commenced under this section more than 20 years after the death of such person.

Code 1950, § 8-650; 1977, c. 617; 2015, c. 710.

§ 8.01-40.1. Action for injury resulting from violation of Computer Crimes Act; limitations

Any person whose property or person is injured by reason of a violation of the provisions of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.) may sue and recover damages as provided in § 18.2-152.12. An action shall be commenced before the earlier of (i) five years after the last act in the course of conduct constituting a violation of the Computer Crimes Act or (ii) two years after the plaintiff discovers or reasonably should have discovered the last act in the course of conduct constituting a violation of the Computer Crimes Act.

1985, c. 92.

§ 8.01-40.2. Unsolicited transmission of advertising materials by facsimile machine

A. Any person aggrieved by the intentional electronic or telephonic transmission to a facsimile device of unsolicited advertising material may bring an action against the person responsible for the transmission to enjoin further violations and to recover the greater of (i) actual damages sustained, together with costs and reasonable attorneys' fees, or (ii) $500. Carriers or other companies which provide facsimile transmission services shall not be responsible for transmissions of unsolicited advertising materials by their customers. An action brought pursuant to this section shall be commenced within two years of the transmission.

B. Any intentional transmission to a facsimile device of any unsolicited advertising material shall be a violation of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

1990, c. 246; 2003, c. 800.

§ 8.01-40.3. Unauthorized dissemination, etc., of criminal history record information; civil action

A. Any person who disseminates, publishes, or maintains or causes to be disseminated, published, or maintained the criminal history record information as defined in § 9.1-101 of an individual pertaining to that individual's charge or arrest for a criminal offense and solicits, requests, or accepts money or other thing of value for removing such criminal history record information shall be liable to the individual who is the subject of the information for actual damages or $500, whichever is greater, in addition to reasonable attorney fees and costs.

B. Nothing in this section shall be construed to impose liability on:

1. An interactive computer service, as defined in 47 U.S.C. § 230(f), for content provided by another person.

2. Any speech protected by Article I, Section 12 of the Constitution of Virginia.

C. As used in this section, "criminal history record information" means the same as that term is defined in § 9.1-101.

2015, cc. 414, 415.

§ 8.01-41. Wrongful distraint, attachment

If property be distrained for any rent not due, or attached for any rent not accruing, or taken under any attachment sued out without good cause, the owner of such property may, in an action against the party suing out the warrant of distress or attachment, recover damages for the wrongful distraint, seizure, or sale.

Code 1950, § 8-651; 1977, c. 617.

§ 8.01-42. Loss or injury to clothing in dyeing, dry cleaning, or laundering

No person engaged in the business of dyeing, dry cleaning, or laundering wearing apparel, cloth or other articles, shall be liable, or in any action or suit against him be held liable, for the loss of, or injury to, any wearing apparel, cloth or other articles delivered to him to be dyed, dry cleaned, or laundered, in an amount greater than the purchase price minus depreciation of such wearing apparel, cloth or other articles, unless at the time of the delivery to him of any such wearing apparel, cloth or other articles, the value of the same, and when there is more than one piece or article the value of each piece or article, be agreed upon and evidenced by a writing stating such value, or separate values when there is more than one piece or article, signed by him; provided, however, that:

1. Nothing in this section contained shall be construed as requiring of any such person more than the exercise of such degree of care as is now imposed by existing law;

2. In no event shall any such person be held liable in any suit or action involving any such loss or injury for any sum greater than the damages suffered, and proved, by the plaintiff therein when such damages would not under the rules of law existing prior to June 18, 1920, exceed the purchase price minus depreciation of such wearing apparel, cloth, or other article;

3. Nothing in this section shall be construed as interfering with or inhibiting, or impairing the obligation of, any written contract between any hotel, railroad company, steamboat company or other patron and any person engaged in the business of dyeing, dry cleaning, or laundering of wearing apparel, cloth or other article, in relation to such work;

4. No liability shall rest upon or be borne by any hotel for any loss of or damage to wearing apparel, cloth or other article, the property of any guest of such hotel who shall have delivered, or caused the same to have been delivered, for dyeing, dry cleaning, or laundering to any person engaged in the business of dyeing, dry cleaning, or laundering.

5. [Repealed.]

Code 1950, § 8-654; 1977, cc. 192, 617.

§ 8.01-42.1. Civil action for racial, religious, or ethnic harassment, violence or vandalism

A. An action for injunctive relief or civil damages, or both, shall lie for any person who is subjected to acts of (i) intimidation or harassment or (ii) violence directed against his person; or (iii) vandalism directed against his real or personal property, where such acts are motivated by racial, religious, or ethnic animosity.

B. Any aggrieved party who initiates and prevails in an action authorized by this section shall be entitled to damages, including punitive damages, and in the discretion of the court to an award of the cost of the litigation and reasonable attorneys' fees in an amount to be fixed by the court.

C. The provisions of this section shall not apply to any actions between an employee and his employer, or between or among employees of the same employer, for damages arising out of incidents occurring in the workplace or arising out of the employee-employer relationship.

1988, c. 492.

§ 8.01-42.2. Liability of guest for hotel damage

Any registered guest in a hotel, motel, inn or other place offering to the public transitory lodging or sleeping accommodations for compensation shall be civilly liable to the innkeeper for all property damage to such accommodation or its furnishings which occurs during the period of such person's occupancy when such damage results (i) from the negligence of the guest or of any person for whom he is legally responsible or (ii) from the failure of the guest to comply with reasonable rules and regulations of which he is given actual notice by the innkeeper.

1989, c. 426 .

§ 8.01-42.3. Civil action for stalking

A. A victim has a civil cause of action against an individual who engaged in conduct that is prohibited under § 18.2-60.3, whether or not the individual has been charged or convicted for the alleged violation, for the compensatory damages incurred by the victim as a result of that conduct, in addition to the costs for bringing the action. If compensatory damages are awarded, a victim may also be awarded punitive damages.

B. As used in this section:

"Compensatory damages" includes damages for all of the defendant's acts prohibited by § 18.2-60.3.

"Victim" means a person who, because of the conduct of the defendant that is prohibited under § 18.2-60.3, was placed in reasonable fear of death, criminal sexual assault, or bodily injury to himself or to a minor child of whom the person is a parent or legal guardian.

C. No action shall be commenced under this section more than two years after the most recent conduct prohibited under § 18.2-60.3.

2001, c. 444.

§ 8.01-42.4. Civil action for trafficking in persons

A. Any person injured by reason of (i) a violation of clause (iii), (iv), or (v) of § 18.2-48; (ii) a violation of § 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, or 18.2-368; or (iii) a felony violation of § 18.2-346 may sue therefor and recover compensatory damages, punitive damages, and reasonable attorney fees and costs.

B. No action shall be commenced under this section more than seven years after the later of the date on which such person (i) was no longer subject to the conduct prohibited by clause (iii), (iv), or (v) of § 18.2-48 or § 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, 18.2-357.1, or 18.2-368 or under a felony violation of § 18.2-346 or (ii) attained 18 years of age.

2016, cc. 557, 668.

§ 8.01-43. Action against parent for damage to public property by minor

The Commonwealth, acting through the officers having charge of the public property involved, or the governing body of a county, city, town, or other political subdivision, or a school board may institute an action and recover from the parents or either of them of any minor living with such parents or either of them for damages suffered by reason of the willful or malicious destruction of, or damage to, public property by such minor. No more than $2,500 may be recovered from such parents or either of them as a result of any incident or occurrence on which such action is based.

Code 1950, § 8-654.1; 1960, c. 132; 1972, c. 825; 1977, c. 617; 1983, c. 330; 1987, c. 193; 1994, cc. 508, 552; 1996, c. 698.

§ 8.01-44. Action against parent for damage to private property by minor

The owner of any property may institute an action and recover from the parents, or either of them, of any minor living with such parents, or either of them, for damages suffered by reason of

the willful or malicious destruction of, or damage to, such property by such minor. No more than $2,500 may be recovered from such parents, or either of them, as a result of any incident or occurrence on which such action is based. Any recovery from the parent or parents of such minor shall not preclude full recovery from such minor except to the amount of the recovery from such parent or parents. The provisions of this statute shall be in addition to, and not in lieu of, any other law imposing upon a parent liability for the acts of his minor child.

Code 1950, § 8-654.1:1; 1966, c. 532; 1972, c. 825; 1977, c. 617; 1984, c. 48; 1987, c. 193; 1994, cc. 508, 552; 1996, c. 698.

§ 8.01-44.1. Immunity from civil liability of members of certain committees, etc

Every member of any committee, board, group, commission, or other entity established pursuant to federal or state law or regulation which functions to authorize, review, evaluate, or make recommendations on the nature, conduct, activities, or procedures involved in or related to programs or research protocols conducted under the supervision of members of the faculty or staff of any hospital, college, or university, including but not limited to the design or conduct of experiments involving human subjects, shall be immune from civil liability for any act, decision, omission, or utterance done or made in performance of such duties as a member of such committee, board, group, commission, or other entity, unless such act, decision, omission, or utterance is done or made in bad faith or with malicious intent or unless the member, when acting to authorize the nature, conduct, activities, or procedures involved in or related to a program or research protocol, knows or reasonably should know that the program or research protocol is being or will be conducted in violation of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1. However, the immunity created herein shall not apply to those persons engaged in the actual conduct of the programs or research protocols.

1980, c. 479; 1981, c. 40; 1992, c. 603 .

§ 8.01-44.2. Action against physician for vaccine-related injury or death

In any case where a person could file or could have filed a petition for compensation pursuant to Subtitle 2 of Title XXI of the Public Health Services Act of the United States (42 U.S.C. § 300aa-10 et seq.) for the vaccine-related injury or death associated with the administration of a vaccine in the Commonwealth by or under the supervision of a physician licensed to practice medicine in Virginia, no civil action shall lie against such physician, or any person administering such vaccine on behalf of such physician for injury or death resulting from an adverse reaction to such vaccine, except where such injury or death was caused by gross negligence of the physician, his agents or employees, in the administration of such vaccine.

1987, c. 664.

§ 8.01-44.3. Divulgence of communications by qualified interpreters and communications assistants

If the content of any communication which is facilitated for compensation in the professional capacity of a qualified interpreter, as defined in § 51.5-113, or in the professional capacity of any communications assistant employed by the statewide dual party relay service established under Article 5 (§ 56-484.4 et seq.) of Chapter 15 of Title 56, is divulged by such interpreter or assistant, any such party to the communication aggrieved by such divulgence may recover from such interpreter or assistant the greater of (i) actual damages sustained, together with costs and reasonable attorneys' fees, or (ii) $100. No such recovery shall be permitted if the interpreter or assistant and the parties to the communication have agreed that the interpreter or assistant may divulge the content of the communication.

1992, c. 614 .

§ 8.01-44.4. Action for shoplifting and employee theft

A. A merchant may recover a civil judgment against any adult or emancipated minor who shoplifts from that merchant for two times the unpaid retail value of the merchandise, but in no event an amount less than $50. However, if the merchant recovers the merchandise in merchantable condition, he shall be entitled to liquidated damages of no more than $350.

B. A merchant may recover a civil judgment against any person who commits employee theft for two times the unpaid retail value of the merchandise, but in no event an amount less than $50. However, if the merchant recovers the merchandise in merchantable condition, he shall be entitled to liquidated damages of no more than $350.

C. The prevailing party in any action brought pursuant to this section shall be entitled to reasonable attorneys' fees and costs not to exceed $150.

D. A conviction of or a plea of guilty to a violation of any other statute is not a prerequisite to commencement of a civil action pursuant to this section or enforcement of a judgment. No action may be initiated under this section during the pendency of a criminal prosecution based on the same allegations of fact; however the initiation of any criminal action against the perpetrator for the alleged offense under § 18.2-95, 18.2-96, 18.2-102.1, or 18.2-103 or any other criminal offense defined under subsection F does not preclude a merchant from initiating or maintaining an action under this section once the prosecution has been concluded. A merchant may not recover more than the retail value of the merchandise, or more than the unpaid retail value of the merchandise if the merchandise is not recovered in a merchantable condition, for the same loss if both criminal and civil actions are initiated. However, nothing herein shall preclude a merchant from recovering damages in excess of the retail value of the merchandise, or the unpaid retail value of the merchandise if the merchandise is not recovered in a merchantable condition, if a criminal action is initiated. Nothing herein shall preclude a merchant from nonsuiting the civil action brought pursuant to this section and proceeding criminally under § 18.2-95, 18.2-96, 18.2-102.1, or 18.2-103 or any other criminal offense defined under subsection F.

E. Prior to the commencement of any action under this section, a merchant may demand, in writing, that an individual who may be civilly liable under this section make appropriate payment to the merchant in consideration for the merchant's agreement not to commence any legal action under this section.

F. For purposes of this section:

"Employee theft" means the removal of any merchandise or cash from the premises of the merchant's establishment or the concealment of any merchandise or cash by a person employed by a merchant without the consent of the merchant and with the purpose or intent of appropriating the merchandise or cash to the employee's own or another's use without full payment.

"Shoplift" means any one or more of the following acts committed by a person without the consent of the merchant and with the purpose or intent of appropriating merchandise to that person's own or another's use without payment, obtaining merchandise at less than its stated sales price, or otherwise depriving a merchant of all or any part of the value or use of merchandise: (i) removing any merchandise from the premises of the merchant's establishment; (ii) concealing any merchandise; (iii) substituting, altering, removing, or disfiguring any label or price tag; (iv) transferring any merchandise from a container in which that merchandise is displayed or packaged to any other container; (v) disarming any alarm tag attached to any merchandise; or (vi) obtaining or attempting to obtain possession of any merchandise by charging that merchandise to another person without the authority of that person or by charging that merchandise to a fictitious person.

1992, c. 721; 2005, cc. 142, 234; 2012, c. 526.

§ 8.01-44.5. Punitive damages for persons injured by intoxicated drivers

In any action for personal injury or death arising from the operation of a motor vehicle, engine or train, the finder of fact may, in its discretion, award punitive damages to the plaintiff if the evidence proves that the defendant acted with malice toward the plaintiff or the defendant's conduct was so willful or wanton as to show a conscious disregard for the rights of others.

A defendant's conduct shall be deemed sufficiently willful or wanton as to show a conscious disregard for the rights of others when the evidence proves that (i) when the incident causing the injury or death occurred, the defendant had a blood alcohol concentration of 0.15 percent or more by weight by volume or 0.15 grams or more per 210 liters of breath; (ii) at the time the defendant began drinking alcohol, or during the time he was drinking alcohol, he knew or should have known that his ability to operate a motor vehicle, engine or train would be impaired, or when he was operating a motor vehicle he knew or should have known that his ability to operate a motor vehicle was impaired; and (iii) the defendant's intoxication was a proximate cause of the injury to or death of the plaintiff. For the purposes of clause (i), it shall be rebuttably presumed that the blood alcohol concentration at the time of the incident causing injury or death was at least as high as the test result as shown in a certificate issued pursuant to § 18.2-268.9 or in a certificate of analysis for a blood test administered pursuant to § 18.2-268.7, provided that the test was

administered in accordance with the provisions of §§ 18.2-268.1 through 18.2-268.12. In addition to any other forms of proof, a party may submit a copy of a certificate issued pursuant to § 18.2-268.9 or a certificate of analysis for a blood test administered pursuant to § 18.2-268.7, which shall be prima facie evidence of the facts contained therein and compliance with the provisions of §§ 18.2-268.1 through 18.2-268.12.

However, when a defendant has unreasonably refused to submit to a test of his blood alcohol content as required by § 18.2-268.2, a defendant's conduct shall be deemed sufficiently willful or wanton as to show a conscious disregard for the rights of others when the evidence proves that (a) when the incident causing the injury or death occurred the defendant was intoxicated, which may be established by evidence concerning the conduct or condition of the defendant; (b) at the time the defendant began drinking alcohol, or during the time he was drinking alcohol, he knew or should have known that his ability to operate a motor vehicle was impaired; and (c) the defendant's intoxication was a proximate cause of the injury to the plaintiff or death of the plaintiff's decedent. In addition to any other forms of proof, a party may submit a certified copy of a court's determination of unreasonable refusal pursuant to § 18.2-268.3, which shall be prima facie evidence that the defendant unreasonably refused to submit to the test.

Evidence of similar conduct by the same defendant subsequent to the date of the personal injury or death arising from the operation of a motor vehicle, engine, or train shall be admissible at trial for consideration by the jury or other finder of fact for the limited purpose of determining what amount of punitive damages may be appropriate to deter the defendant and others from similar future action.

1994, c. 570; 1998, c. 722; 1999, c. 324; 2002, c. 879; 2013, c. 636; 2015, c. 710; 2016, cc. 510, 624.

§ 8.01-44.6. Action for injury to cemetery property

The owner or operator of a cemetery company may bring an action to recover damages sustained, together with costs and reasonable attorneys' fees, against any person who willfully or maliciously destroys, mutilates, defaces, injures, or removes any tomb, monument, gravestone, or other structure placed within any cemetery, graveyard, or place of burial, or within any lot belonging to any memorial or monumental association, or any fence, railing, or other work for the protection or ornament of any tomb, monument, gravestone, or other structure aforesaid, or of any cemetery lot within any cemetery. The cemetery owner or operator may recover, as part of damages sustained, the cost of repair or replacement of damaged property, including any labor costs, regardless of whether the property damaged is owned by the cemetery or by another person.

2004, c. 203.

§ 8.01-44.7. Action for tampering with metering device and diverting service

Any provider of services that have been tampered with or diverted in violation of § 18.2-163 may seek both injunctive and equitable relief, and an award of damages, including reasonable attorney

fees and costs. In addition to any other remedy provided by law, the party aggrieved may recover an award of actual damages or $500 whichever is greater for each action.

2006, c. 350.

Article 4 - DEFAMATION

§ 8.01-45. Action for insulting words

All words shall be actionable which from their usual construction and common acceptance are construed as insults and tend to violence and breach of the peace.

Code 1950, § 8-630; 1977, c. 617.

§ 8.01-46. Justification and mitigation of damages

In any action for defamation, the defendant may justify by alleging and proving that the words spoken or written were true, and, after notice in writing of his intention to do so, given to the plaintiff at the time of, or for, pleading to such action, may give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity of doing so in case the action shall have been commenced before there was an opportunity of making or offering such apology.

Code 1950, § 8-631; 1977, c. 617.

§ 8.01-46.1. Disclosure of employment-related information; presumptions; causes of action; definitions

A. Any employer who, upon request by a person's prospective or current employer, furnishes information about that person's professional conduct, reasons for separation or job performance, including, but not limited to, information contained in any written performance evaluations, shall be immune from civil liability for furnishing such information, provided that the employer is not acting in bad faith. An employer shall be presumed to be acting in good faith. The presumption of good faith shall be rebutted if it is shown by clear and convincing evidence that the employer disclosed such information with knowledge that it was false, or with reckless disregard for whether it is false or not, or with the intent to deliberately mislead.

B. In a civil action brought against an employer for disclosing the information described in subsection A, if the trier of fact determines the employer acted in bad faith, punitive damages may be awarded, as provided by § 8.01-38.1.

C. As used in this section, the following words and phrases shall have the following meanings:

"Employee" means any person, paid or unpaid, in the service of an employer.

"Employer" means any person, firm or corporation, including the Commonwealth of Virginia and its political subdivisions, and their agents, who has one or more employees or individuals performing services under any contract of hire or service, express or implied, oral or written.

"Information" includes, but is not limited to, facts, data and opinions.

"Job performance" includes, but is not limited to, ability, attendance, awards, demotions, duties, effort, evaluations, knowledge, skills, promotions, productivity and disciplinary actions.

"Professional conduct" includes, but is not limited to, the ethical standards which govern the employee's profession, or lawful conduct which is expected of the employee by the employer.

"Prospective employer" means any employer who is considering a person for employment.

2000, c. 1005.

§ 8.01-47. Immunity of persons investigating or reporting certain incidents at schools

In addition to any other immunity he may have, any person who, in good faith with reasonable cause and without malice, acts to report, investigate or cause any investigation to be made into the activities of any student or students or any other person or persons as they relate to conduct involving bomb threats, firebombs, explosive materials or other similar devices as described in clauses (vi) and (vii) of subsection A of § 22.1-279.3:1, alcohol or drug use or abuse in or related to the school or institution or in connection with any school or institution activity, or information that an individual poses any credible danger of serious bodily injury or death to one or more students, school personnel, or others on school property shall be immune from all civil liability that might otherwise be incurred or imposed as the result of the making of such a report, investigation or disclosure.

Code 1950, § 8-631.1; 1972, c. 762; 1977, c. 617; 1982, c. 259; 1988, c. 159; 1995, c. 759; 2000, c. 79; 2001, cc. 688, 820; 2003, c. 954; 2013, c. 665.

§ 8.01-48. Mitigation in actions against newspapers, etc

In any civil action against the publisher, owner, editor, reporter or employee of any newspaper, magazine or periodical under § 8.01-45, or for libel or defamation, because of any article, statement or other matter contained in any such newspaper, magazine or periodical, the defendant, whether punitive damages be sought or not, may introduce in evidence in mitigation of general and punitive damages, or either, but not of actual pecuniary damages, all the circumstances of the publication, including the source of the information, its character as affording reasonable ground of reliance, any prior publication elsewhere of similar purport, the lack of negligence or malice on the part of the defendant, the good faith of the defendant in such publication, or that apology or retraction, if any, was made with reasonable promptness and fairness; provided that the defendant may introduce in evidence only such circumstances and to the extent set forth in his or its grounds of defense.

Code 1950, § 8-632; 1954, c. 333; 1977, c. 617.

§ 8.01-49. Defamatory statements in radio and television broadcasts

The owner, licensee or operator of a radio and television broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator, shall not be liable for

any damages for any defamatory statement published or uttered in or as a part of any such broadcast, by one other than such owner, licensee or operator, or agent or employee thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator, such agent or employee, failed to exercise due care to prevent the publication or utterance of such statement in such broadcast; provided, however, that in no event shall any owner, licensee or operator, or the agents or employees of any such owner, licensee or operator of such a station or network of stations be held liable for damages for any defamatory statement broadcast over the facilities of such station or network by or on behalf of any candidate for public office.

Code 1950, § 8-632.1; 1977, c. 617.

§ 8.01-49.1. Liability for defamatory material on the Internet

A. No provider or user of an interactive computer service on the Internet shall be treated as the publisher or speaker of any information provided to it by another information content provider. No provider or user of an interactive computer service shall be liable for (i) any action voluntarily taken by it in good faith to restrict access to, or availability of, material that the provider or user considers to be obscene, lewd, lascivious, excessively violent, harassing, or intended to incite hatred on the basis of race, religious conviction, color, or national origin, whether or not such material is constitutionally protected, or (ii) any action taken to enable, or make available to information content providers or others, the technical means to restrict access to information provided by another information content provider.

B. Definitions. As used in this section:

"Information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

"Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

"Internet" means the international computer network of interoperable packet-switched data networks.

2000, c. 930.

Article 5 - DEATH BY WRONGFUL ACT

§ 8.01-50. Action for death by wrongful act; how and when to be brought

A. Whenever the death of a person shall be caused by the wrongful act, neglect, or default of any person or corporation, or of any ship or vessel, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action, or to proceed in rem against such ship or vessel or in personam against the owners thereof or those having control of

her, and to recover damages in respect thereof, then, and in every such case, the person who, or corporation or ship or vessel which, would have been liable, if death had not ensued, shall be liable to an action for damages, or, if a ship or vessel, to a libel in rem, and her owners or those responsible for her acts or defaults or negligence to a libel in personam, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances, as amount in law to a felony.

B. Whenever a fetal death, as defined in § 32.1-249, is caused by the wrongful act, neglect, or default of any person, ship, vessel, or corporation, the natural mother of the fetus may bring an action pursuant to this section against such tortfeasor. Nothing in this section shall be construed to create a cause of action for a fetal death against the natural mother of the fetus.

C. Every such action under subsection A shall be brought by and in the name of the personal representative of such deceased person. Actions for fetal death under subsection B shall be brought by and in the name of the natural mother; provided, however, if the natural mother dies, or is or becomes a person under a disability as defined in § 8.01-2, such action may be initiated or maintained by the administrator of the natural mother's estate, her guardian, or her personal representative qualified to bring such action. In an action for fetal death under subsection B brought under Chapter 21.1 (§ 8.01-581.1 et seq.) where the wrongful act that resulted in a fetal death also resulted in the death of another fetus of the natural mother or in the death or injury of the natural mother, recovery for all damages sustained as a result of such wrongful act shall not exceed the limitations on the total amount recoverable for a single patient for any injury under § 8.01-581.15. The person bringing an action under subsection B shall have the power to compromise a claim pursuant to § 8.01-55 and any damages recovered shall be distributed pursuant to this article. Every such action under this section shall be brought within the time limits specified in § 8.01-244.

D. If the deceased person was an infant who was in the custody of a parent pursuant to an order of court or written agreement with the other parent, administration shall be granted first to the parent having custody; however, that parent may waive his right to qualify in favor of any other person designated by him. If no such parent or his designee applies for administration within 30 days from the death of the infant, administration shall be granted as in other cases.

E. For purposes of this section, "natural mother" means the woman carrying the child.

Code 1950, § 8-633; 1958, c. 470; 1977, c. 617; 1981, c. 115; 2012, c. 725.

§ 8.01-50.1. Certification of expert witness opinion at time of service of process

Every motion for judgment, counter claim, or third party claim in any action pursuant to § 8.01-50 for wrongful death against a health care provider, at the time the plaintiff requests service of process upon a defendant, or requests a defendant to accept service of process, shall be deemed a certification that the plaintiff has obtained from an expert witness whom the plaintiff reasonably believes would qualify as an expert witness pursuant to subsection A of § 8.01-581.20 a written

opinion signed by the expert witness that, based upon a reasonable understanding of the facts, the defendant for whom service of process has been requested deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed. This certification is not necessary if the plaintiff, in good faith, alleges in his wrongful death action a medical malpractice theory of liability where expert testimony is unnecessary because the alleged act of negligence clearly lies within the range of the jury's common knowledge and experience.

The certifying expert shall not be required to be an expert expected to testify at trial nor shall any defendant be entitled to discover the identity or qualifications of the certifying expert or the nature of the certifying expert's opinions. Should the certifying expert be identified as an expert expected to testify at trial, the opinions and bases therefor shall be discoverable pursuant to Rule 4:1 of the Rules of Supreme Court of Virginia with the exception of the expert's status as a certifying expert.

Upon written request of any defendant, the plaintiff shall, within 10 business days after receipt of such request, provide the defendant with a certification form which affirms that the plaintiff had obtained the necessary certifying expert opinion at the time service was requested or affirms that the plaintiff did not need to obtain a certifying expert opinion. The court, upon good cause shown, may conduct an in camera review of the certifying expert opinion obtained by the plaintiff as the court may deem appropriate. If the plaintiff did not obtain a necessary certifying expert opinion at the time the plaintiff requested service of process on a defendant, the court shall impose sanctions according to the provisions of § 8.01-271.1 and may dismiss the case with prejudice.

2005, cc. 649, 692; 2007, c. 489; 2013, cc. 65, 610.

§ 8.01-51. No action when deceased has compromised claim

No action shall be maintained by the personal representative of one who, after injury, has compromised for such injury and accepted satisfaction therefor previous to his death.

Code 1950, § 8-635; 1977, c. 617.

§ 8.01-52. Amount of damages

The jury or the court, as the case may be, in any such action under § 8.01-50 may award such damages as to it may seem fair and just. The verdict or judgment of the court trying the case without a jury shall include, but may not be limited to, damages for the following:

1. Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent;

2. Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;

3. Expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death;

4. Reasonable funeral expenses; and

5. Punitive damages may be recovered for willful or wanton conduct, or such recklessness as evinces a conscious disregard for the safety of others.

Damages recoverable under 3, 4 and 5 above shall be specifically stated by the jury or the court, as the case may be. Damages recoverable under 3 and 4 above shall be apportioned among the creditors who rendered such services, as their respective interests may appear. Competent expert testimony shall be admissible in proving damages recoverable under 2 above.

The court shall apportion the costs of the action as it shall deem proper.

Code 1950, § 8-636.1; 1974, c. 444; 1977, cc. 460, 617; 1982, c. 441.

§ 8.01-52.1. Admissibility of expressions of sympathy

In any wrongful death action brought pursuant to § 8.01-50 against a health care provider, or in any arbitration or medical malpractice review panel proceeding related to such wrongful death action, the portion of statements, writings, affirmations, benevolent conduct, or benevolent gestures expressing sympathy, commiseration, condolence, compassion, or a general sense of benevolence, together with apologies that are made by a health care provider or an agent of a health care provider to a relative of the patient, or a representative of the patient about the death of the patient as a result of the unanticipated outcome of health care, shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest. A statement of fault that is part of or in addition to any of the above shall not be made inadmissible by this section.

For purposes of this section, unless the context otherwise requires:

"Health care" has the same definition as provided in § 8.01-581.1.

"Health care provider" has the same definition as provided in § 8.01-581.1.

"Relative" means a decedent's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister, or spouse's parents. In addition, "relative" includes any person who had a family-type relationship with the decedent.

"Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a medical power of attorney, or any person recognized in law or custom as a patient's agent.

"Unanticipated outcome" means the outcome of the delivery of health care that differs from an expected result.

2005, cc. 649, 692; 2009, c. 414.

§ 8.01-53. Class and beneficiaries; when determined

A. The damages awarded pursuant to § 8.01-52 shall be distributed as specified under § 8.01-54 to (i) the surviving spouse, children of the deceased and children of any deceased child of the deceased or (ii) if there be none such, then to the parents, brothers and sisters of the deceased,

and to any other relative who is primarily dependent on the decedent for support or services and is also a member of the same household as the decedent or (iii) if the decedent has left both surviving spouse and parent or parents, but no child or grandchild, the award shall be distributed to the surviving spouse and such parent or parents or (iv) if there are survivors under clause (i) or clause (iii), the award shall be distributed to those beneficiaries and to any other relative who is primarily dependent on the decedent for support or services and is also a member of the same household as the decedent or (v) if no survivors exist under clause (i), (ii), (iii), or (iv), the award shall be distributed in the course of descents as provided for in § 64.2-200. Provided, however, no parent whose parental rights and responsibilities have been terminated by a court of competent jurisdiction or pursuant to a permanent entrustment agreement with a child welfare agency shall be eligible as a beneficiary under this section. For purposes of this section, a relative is any person related to the decedent by blood, marriage, or adoption and also includes a stepchild of the decedent.

B. The class and beneficiaries thereof eligible to receive such distribution shall be fixed (i) at the time the verdict is entered if the jury makes the specification, or (ii) at the time the judgment is rendered if the court specifies the distribution.

C. A beneficiary may renounce his interest in any claim brought pursuant to § 8.01-50 and, in such event, the damages shall be distributed to the beneficiaries in the same class as the renouncing beneficiary or, if there are none, to the beneficiaries in any subsequent class in the order of priority set forth in subsection A.

Code 1950, §§ 8-636.1, 8-638; 1954, c. 333; 1973, c. 401; 1974, c. 444; 1977, cc. 460, 617; 1979, c. 356; 1992, c. 74; 1994, c. 515; 2003, c. 632.

§ 8.01-54. Judgment to distribute recovery when verdict fails to do so

A. The verdict may and the judgment of the court shall in all cases specify the amount or the proportion to be received by each of the beneficiaries, if there be any. No verdict shall be set aside for failure to make such specification.

B. If either party shall so request the case shall be submitted to the jury with instructions to specify the distribution of the award, if any. If the jury be unable to agree upon or fail to make such distribution, the court shall specify the distribution and enter judgment accordingly. For the purpose of distribution the court may hear additional evidence.

C. The amount recovered in any such action shall be paid to the personal representative who shall first pay the costs and reasonable attorney's fees and then distribute the amount specifically allocated to the payment of hospital, medical, and funeral expenses. The remainder of the amount recovered shall thereafter be distributed by the personal representative, as specified in subsections A and B above, to the beneficiaries set forth in § 8.01-53; provided that any distribution made to any such beneficiaries shall be free from all debts and liabilities of the decedent. If there be no

such beneficiaries, the amount so recovered shall be assets in the hands of the personal representative to be disposed of according to law.

Code 1950, § 8-638; 1954, c. 333; 1973, c. 401; 1977, c. 617.

§ 8.01-55. Compromise of claim for death by wrongful act

The personal representative of the deceased may compromise any claim to damages arising under or by virtue of § 8.01-50, including claims under the provision of a liability insurance policy, before or after an action is brought, with the approval of the court in which the action was brought, or if an action has not been brought, with the consent of any circuit court. Such approval may be applied for on petition to such court, by the personal representative, or by any potential defendant, or by any interested insurance carrier. If a potential defendant or any insurance carrier petitions the court for approval, the personal representative shall be made a party to the proceeding. The petition shall state the compromise, its terms and the reason therefor. The court shall require the convening of the parties in interest in person or by their authorized representative, but it shall not be necessary to convene grandchildren whose living parents are made parties to the proceeding. The parties in interest shall be deemed to be convened if each such party (i) endorses the order by which the court approves the compromise or (ii) is given notice of the hearing and proposed compromise as provided in § 8.01-296 if a resident of the Commonwealth or as provided in § 8.01-320 if a nonresident, or is otherwise given reasonable notice of the hearing and proposed compromise as may be required by the court.

If the court approves the compromise, and the parties in interest do not agree upon the distribution to be made of what has been or may be received by the personal representative under such compromise, or if any of them are incapable of making a valid agreement, the court shall direct such distribution as a jury might direct under § 8.01-52 as to damages awarded by them. In other respects, what is received by the personal representative under the compromise shall be treated as if recovered by him in an action under § 8.01-52.

Code 1950, § 8-639; 1960, cc. 35, 587; 1977, c. 617; 1981, c. 286; 1991, c. 97; 1995, c. 366.

§ 8.01-56. When right of action not to determine nor action to abate

The right of action under § 8.01-50 shall not determine, nor the action, when brought, abate by the death, dissolution, or other termination of a defendant; and when a person who has brought an action for personal injury dies pending the action, such action may be revived in the name of his personal representative. If death resulted from the injury for which the action was originally brought, a motion for judgment and other pleadings shall be amended so as to conform to an action under § 8.01-50, and the case proceeded with as if the action had been brought under such section. In such cases, however, there shall be but one recovery for the same injury.

Code 1950, § 8-640; 1954, c. 333; 1977, c. 617.

Article 6 - INJURIES TO RAILROAD EMPLOYEES

§ 8.01-57. Liability of railroads for injury to certain employees

Every common carrier by railroad engaged in intrastate commerce shall be liable in damages to any of its employees suffering injury while employed by such carrier or, in the case of the death of any such employee, to his personal representative, for such injury or death, resulting in whole or in part from the wrongful act or neglect of any of its officers, agents, servants, or employees, or by reason of any defect, or insufficiency due to its neglect in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment, except when such employee is injured while engaged in interstate commerce, and except when such employee is injured in the course of his regular employment and such regular employment does not expose such employee to the hazards incident to the maintenance, use and operation of such railroad. If the action be for the death of an employee, §§ 8.01-50 through 8.01-56 shall apply thereto.

Code 1950, § 8-641; 1954, c. 614; 1977, c. 617.

§ 8.01-58. Contributory negligence no bar to recovery; violation of safety appliance acts

In all actions brought against any such common carrier to recover damages for personal injuries to any employee or when such injuries have resulted in his death, the fact that such employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee; and no such employee, who may be injured or killed, shall be held to have been guilty of contributory negligence in any case when the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

Code 1950, § 8-642; 1954, c. 614; 1977, c. 617.

§ 8.01-59. Assumption of risk; violation of safety appliance acts

In any action brought against any common carrier, under or by virtue of § 8.01-57, to recover damages for injuries to, or death of, any of its employees, the knowledge of any employee injured or killed of the defective or unsafe character or condition of any machinery, ways, appliances, or structures of such carrier shall not of itself be a bar to recovery for an injury or death caused thereby, nor shall such employee be held to have assumed the risk of his employment in any case in which the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury, or death of such employee.

Code 1950, § 8-643; 1977, c. 617.

§ 8.01-60. Contracts exempting from liability void; set-off of insurance

Any contract, rule, regulation or device whatsoever the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by § 8.01-57, shall to that extent be void; but in any action brought against any such common carrier under or by virtue of such section, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief, benefit or indemnity company that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which such action was brought.

Code 1950, § 8-644; 1977, c. 617.

§ 8.01-61. Definition of "common carrier" as used in article

The term "common carrier" as used in §§ 8.01-57 to 8.01-60 shall include the receivers or other persons or corporations charged with the duty of the management or operation of the business of a common carrier by railroad; but shall not include persons, firms or corporations owning or operating railroads when such railroads are primarily and chiefly used as incidental to the operation of coal, gypsum or iron mines or saw mills, nor shall it apply to any railroad owned or operated by any county.

Code 1950, § 8-645; 1954, c. 614; 1977, c. 617.

§ 8.01-62. Action may embrace liability under both State and federal acts

The motion for judgment or other pleading in any such action may embrace a cause of action growing out of any statute of the United States or this Commonwealth for such injury or death, without being demurrable on this account, and without the plaintiff being required to elect under which statute he claims. Sections 8.01-57 through 8.01-61 shall not apply to electric railways operated wholly within this Commonwealth.

Code 1950, § 8-646; 1954, c. 614; 1977, c. 617.

Article 7 - MOTOR VEHICLE ACCIDENTS

§ 8.01-63. Liability for death or injury to guest in motor vehicle

Any person transported by the owner or operator of any motor vehicle as a guest without payment for such transportation and any personal representative of any such guest so transported shall be entitled to recover damages against such owner or operator for death or injuries to the person or property of such guest resulting from the negligent operation of such motor vehicle. However, this statute does not limit any defense otherwise available to the owner or operator.

Code 1950, § 8-646.1; 1974, c. 551; 1977, c. 617.

§ 8.01-64. Liability for negligence of minor

Every owner of a motor vehicle causing or knowingly permitting a minor under the age of sixteen years who is not permitted under the provisions of § 46.2-335 to drive such a vehicle upon a highway, and any person who gives or furnishes a motor vehicle to such minor, shall be jointly or severally liable with such minor for any damages caused by the negligence of such minor in driving such vehicle.

Code 1950, § 8-646.2; 1977, c. 617.

§ 8.01-65. Defense of lack of consent of owner

It shall be a valid defense to any action brought for the negligent operation of a motor vehicle for the owner of such vehicle to prove that the same was being driven or used without his knowledge or consent, express or implied, but the burden of proof thereof shall be on such owner.

Code 1950, § 8-646.8; 1977, c. 617.

§ 8.01-66. Recovery of damages for loss of use of vehicle

A. Whenever any person is entitled to recover for damage to or destruction of a motor vehicle, he shall, in addition to any other damages to which he may be legally entitled, be entitled to recover the reasonable cost which was actually incurred in hiring a comparable substitute vehicle for the period of time during which such person is deprived of the use of his motor vehicle. However, such rental period shall not exceed a reasonable period of time for such repairs to be made or if the original vehicle is a total loss, a reasonable time to purchase a new vehicle. Nothing herein contained shall relieve the claimant of the duty to mitigate damages.

B. Whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 or any self-insured company refuses or fails to provide a comparable temporary substitute vehicle to any person entitled to recover the actual cost of hiring a substitute vehicle as set forth in subsection A, and if the trial judge of a court of proper jurisdiction subsequently finds that such refusal or failure was not made in good faith, such company shall be liable to that person in the amount of $500 or double the amount of the rental cost he is entitled to recover under subsection A, whichever amount is greater. If the trial court finds that an action brought against an insurance company or any self-insured company under subsection B is frivolous, or not to have been brought in good faith, the court may in its discretion require the plaintiff to pay the reasonable attorney's fees, not to exceed $350, incurred by the defendant in defending the action. This section shall in no way preclude any party from seeking such additional common law remedies as might otherwise be available.

Code 1950, § 8-646.9; 1975, c. 478; 1977, c. 617; 1979, c. 499; 1986, c. 296; 1987, c. 116; 1989, c. 348; 2010, c. 343.

§ 8.01-66.1. Remedy for arbitrary refusal of motor vehicle insurance claim

A. Whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to its insured a claim of $3,500 or less in excess of the deductible, if any, under the provisions of a policy of motor vehicle insurance issued by such company to the insured and it is subsequently found by the judge of a court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, the company shall be liable to the insured in an amount double the amount otherwise due and payable under the provisions of the insured's policy of motor vehicle insurance, together with reasonable attorney's fees and expenses.

The provisions of this subsection shall be construed to include an insurance company's refusal or failure to pay medical expenses to persons covered under the terms of any medical payments coverage extended under a policy of motor vehicle insurance, when the amount of the claim therefor is $3,500 or less and the refusal was not made in good faith.

B. Notwithstanding the provisions of subsection A, whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to a third party claimant, on behalf of an insured to whom such company has issued a policy of motor

vehicle liability insurance, a claim of $3,500 or less made by such third party claimant and if the judge of a court of proper jurisdiction finds that the insured is liable for the claim, the third party claimant shall have a cause of action against the insurance company. If the judge finds that such denial, refusal or failure to pay was not made in good faith, the company, in addition to the liability assumed by the company under the provisions of the insured's policy of motor vehicle liability insurance, shall be liable to the third party claimant in an amount double the amount of the judgment awarded the third party claimant, together with reasonable attorney's fees and expenses.

C. Notwithstanding the provisions of subsections A and B whenever any person who has paid a fee to the Department of Motor Vehicles to register an uninsured motor vehicle pursuant to § 46.2-706 or any person who has furnished proof of financial responsibility in lieu of obtaining a policy or policies of motor vehicle liability insurance pursuant to the provisions of Title 46.2 or any person who is required and has failed either to pay such fee or to furnish such proof pursuant to the provisions of Title 46.2 denies, refuses or fails to pay to a claimant a claim of $3,500 or less made by such claimant as a result of a motor vehicle accident; and if the trial judge of a court of proper jurisdiction finds that such denial, refusal or failure to pay was not made in good faith, such person shall be liable to the claimant in an amount double the amount otherwise due and payable together with reasonable attorney's fees and expenses.

For the purposes of this subsection C "person" shall mean and include any natural person, firm, partnership, association or corporation.

D.1. Whenever a court of proper jurisdiction finds that an insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to its insured a claim of more than $3,500 in excess of the deductible, if any, under the provisions of a policy of motor vehicle insurance issued by such company to the insured and it is subsequently found by the judge of a court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, the company shall be liable to the insured in the amount otherwise due and payable under the provisions of the insured's policy of motor vehicle insurance, plus interest on the amount due at double the rate provided in § 6.2-301 from the date that the claim was submitted to the insurer or its authorized agent, together with reasonable attorney's fees and expenses.

2. The provisions of this subsection shall be construed to include an insurance company's refusal or failure to pay medical expenses to persons covered under the terms of any medical payments coverage extended under a policy of motor vehicle insurance when the refusal was not made in good faith.

1977, c. 621; 1979, c. 521; 1980, c. 437; 1989, c. 698; 1991, c. 155; 1997, c. 401; 2002, c. 631.

. (For January 1, 2016, applicability date, see Editor's note) Subrogation claims by underinsured motorist benefits insurer

A. Any underinsured motorist benefits insurer paying such benefits to an insured, by way of settlement or payment pursuant to a judgment, shall have no right of subrogation against any

individual or entity who settled with the underinsured motorist benefits insurer's insured pursuant to subsection K of § 38.2-2206 unless the underinsured motorist failed to reasonably cooperate in the defense of any lawsuit brought against him. An underinsured motorist shall be presumed to have failed to reasonably cooperate if he fails or refuses:

1. To attend his deposition or trial if subpoenaed to appear at least 21 days in advance of either event;

2. To assist in responding to written discovery;

3. To meet with defense counsel for a reasonable period of time after reasonable notice, by phone or in person, within 21 days of being served with any lawsuit and again prior to his deposition and trial; or

4. To notify counsel for the underinsured motorist benefits insurer of any change in address.

The underinsured motorist may rebut the presumption that he failed to reasonably cooperate. If the court finds that the underinsured motorist's failure to cooperate was not unreasonable or that the underinsured motorist otherwise acted in good faith in attempting to comply with his duty to reasonably cooperate with the underinsured motorist benefits insurer, then the underinsured motorist benefits insurer will not regain its right of subrogation.

B. The underinsured motorist benefits insurer seeking the cooperation of the underinsured motorist shall pay the reasonable costs and expenses related to procuring such cooperation, including any travel costs if the underinsured motorist resides more than 100 miles from the location of his deposition or trial. Travel costs may be considered by the court in determining whether the underinsured motorist's failure to cooperate was unreasonable or not.

C. If the court finds that the underinsured motorist satisfied his duty to cooperate with the underinsured motorist benefits insurer or that his failure to do so was not unreasonable, then the court may award him his costs in defending such subrogation action, including reasonable attorney fees.

2015, cc. 584, 585.

Article 7.1 - LIEN FOR HOSPITAL, MEDICAL AND NURSING SERVICES

§ 8.01-66.2. Lien against person whose negligence causes injury

Whenever any person sustains personal injuries caused by the alleged negligence of another and receives treatment in any hospital, public or private, or nursing home, or receives medical attention or treatment from any physician, or receives nursing service or care from any registered nurse, or receives physical therapy treatment from any registered physical therapist in this Commonwealth, or receives medicine from a pharmacy, or receives any emergency medical services and transportation provided by an emergency medical services vehicle, such hospital, nursing home, physician, nurse, physical therapist, pharmacy or emergency medical services and transportation provided by an emergency medical services vehicle shall each have a lien for the amount of a just

and reasonable charge for the service rendered, but not exceeding $2,500 in the case of a hospital or nursing home, $750 for each physician, nurse, physical therapist, or pharmacy, and $200 for each emergency medical services agency providing emergency medical services or emergency medical services vehicle transportation on the claim of such injured person or of his personal representative against the person, firm, or corporation whose negligence is alleged to have caused such injuries.

Code 1950, § 32-138; 1979, c. 722; 1981, c. 313; 1988, cc. 505, 544; 1995, cc. 470, 550, 669; 2003, cc. 455, 525; 2010, c. 343; 2015, cc. 502, 503.

§ 8.01-66.3. Lien inferior to claim of attorney or personal representative

The lien provided for in § 8.01-66.2 shall be of inferior dignity to the claim or lien of the attorney of such injured person or of his personal representative for professional services for representing such injured person or his personal representative in his claim or suit for damages for such personal injuries.

Code 1950, § 32-139; 1979, c. 722.

§ 8.01-66.4. Subrogation

Any municipal corporation or any person, firm or corporation who may pay the charges for which a lien is provided in § 8.01-66.2 shall be subrogated to such lien.

Code 1950, § 32-140; 1979, c. 722.

§ 8.01-66.5. Written notice required

A. No lien provided for in § 8.01-66.2, 8.01-66.9, or 19.2-368.15 shall be created or become effective in favor of the Commonwealth, an institution thereof, or a hospital, nursing home, physician, nurse, or physical therapist, or emergency medical services and transportation provided by an emergency medical services vehicle, unless and until a written notice of lien setting forth the name of the Commonwealth or the institution, hospital, nursing home, physician, nurse, physical therapist, or emergency medical services agency that provided emergency medical services or emergency medical services vehicle transportation and the name of the injured person has been served upon or given to the person, firm, or corporation whose negligence is alleged to have caused such injuries, or to the attorney for the injured party, or to the injured party. Such written notice of lien shall not be required if the attorney for the injured party knew that medical services were either provided or paid for by the Commonwealth.

B. In any action for personal injuries or wrongful death against a nursing home or its agents, if the Department of Medical Assistance Services has paid for any health care services provided to the injured party or decedent relating to the action, the injured party or personal representative shall, within 60 days of filing a lawsuit or 21 days of determining that the Department of Medical Assistance Services has paid for such health care services, whichever is later, give written notice to the Department of Medical Assistance Services that the lawsuit has been filed. The Department of Medical Assistance Services shall provide a written response, stating the amount of the lien as of

the date of their response, within 60 days of receiving a request for that information from the injured party or personal representative.

Code 1950, § 32-142; 1979, c. 722; 1980, c. 623; 1983, c. 263; 1988, c. 544; 1998, c. 183; 2003, cc. 455, 525; 2013, c. 273; 2015, cc. 502, 503.

§ 8.01-66.6. Liability for reasonable charges for services

The notice set forth in subsection A of § 8.01-66.5, when served upon or given to the person, firm or corporation whose negligence is alleged to have caused injuries or to the attorney for the injured party, shall have the effect of making such person, firm, corporation or attorney liable for the reasonable charges for the services rendered the injured person to the extent of the amount paid to or received by such injured party or his personal representative exclusive of attorney's fees, but, except in liens created under § 8.01-66.9 or 19.2-368.15, not in excess of the maximum amounts prescribed in § 8.01-66.2.

Code 1950, § 32-143; 1979, c. 722; 1980, c. 623; 2003, c. 525; 2013, c. 273.

§ 8.01-66.7. Hearing and disposal of claim of unreasonableness

If the injured person questions the reasonableness of the charges made by a hospital, nurse, physician, or emergency medical services agency that provided emergency medical services or emergency medical services vehicle transportation claiming a lien pursuant to § 8.01-66.2, the injured person or the hospital, physician, nurse, or emergency medical services agency that provided emergency medical services or emergency medical services vehicle transportation may file, in the court that would have jurisdiction of such claim if such claim were asserted against the injured person by such hospital, physician, nurse, or emergency medical services agency that provided emergency medical services or emergency medical services vehicle transportation, a petition setting forth the facts. The court shall hear and dispose of the matter in a summary way after five days' notice to the other party in interest.

Code 1950, § 32-145; 1979, c. 722; 2003, c. 455; 2015, cc. 502, 503.

§ 8.01-66.8. Petition to enforce lien

If suit is instituted by an injured person or his personal representative against the person, firm, or corporation allegedly causing the person's injuries, a hospital, nursing home, physician, nurse, or emergency medical services agency that provided emergency medical services or emergency medical services vehicle transportation, in lieu of proceeding according to §§ 8.01-66.5 to 8.01-66.7, may file in the court wherein such suit is pending a petition to enforce the lien provided for in § 8.01-66.2 or 8.01-66.9. Such petition shall be heard and disposed of in a summary way.

Code 1950, § 32-146; 1979, c. 722; 1980, c. 623; 2003, cc. 455, 525; 2015, cc. 502, 503.

§ 8.01-66.9. Lien in favor of Commonwealth, its programs, institutions or departments on claim for personal injuries

Whenever any person sustains personal injuries and receives treatment in any hospital, public or private, or nursing home, or receives medical attention or treatment from any physician, or

receives nursing services or care from any registered nurse in this Commonwealth, or receives pharmaceutical goods or any type of medical or rehabilitative device, apparatus, or treatment which is paid for pursuant to the Virginia Medical Assistance Program, the State/Local Hospitalization Program and other programs of the Department of Medical Assistance Services, the Maternal and Child Health Program, or the Children's Specialty Services Program, or provided at or paid for by any hospital or rehabilitation center operated by the Commonwealth, the Department for Aging and Rehabilitative Services or any state institution of higher education, the Commonwealth shall have a lien for the total amount paid pursuant to such program, and the Commonwealth or such Department or institution shall have a lien for the total amount due for the services, equipment or devices provided at or paid for by such hospital or center operated by the Commonwealth or such Department or institution, or any portion thereof compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or of his personal representative against the person, firm, or corporation who is alleged to have caused such injuries.

The Commonwealth or such Department or institution shall also have a lien on the claim of the injured person or his personal representative for any funds which may be due him from insurance moneys received for such medical services under the injured party's own insurance coverage or through an uninsured or underinsured motorist insurance coverage endorsement. The lien granted to the Commonwealth for the total amounts paid pursuant to the Virginia Medical Assistance Program, the State/Local Hospitalization Program and other programs of the Department of Medical Assistance Services, the Maternal and Child Health Program, or the Children's Specialty Services Program shall have priority over the lien for the amounts due for services, equipment or devices provided at a hospital or center operated by the Commonwealth. The Commonwealth's or such Department's or institution's lien shall be inferior to any lien for payment of reasonable attorney's fees and costs, but shall be superior to all other liens created by the provisions of this chapter and otherwise. Expenses for reasonable legal fees and costs shall be deducted from the total amount recovered. The amount of the lien may be compromised pursuant to § 2.2-514.

The court in which a suit by an injured person or his personal representative has been filed against the person, firm or corporation alleged to have caused such injuries or in which such suit may properly be filed, may, upon motion or petition by the injured person, his personal representative or his attorney, and after written notice is given to all those holding liens attaching to the recovery, reduce the amount of the liens and apportion the recovery, whether by verdict or negotiated settlement, between the plaintiff, the plaintiff's attorney, and the Commonwealth or such Department or institution as the equities of the case may appear, provided that the injured person, his personal representative or attorney has made a good faith effort to negotiate a compromise pursuant to § 2.2-514. The court shall set forth the basis for any such reduction in a written order.

Code 1950, § 32-139.1; 1972, c. 481; 1974, c. 518; 1979, c. 722; 1981, c. 562; 1982, c. 491; 1983, c. 263; 1984, c. 767; 1985, c. 580; 1986, c. 238; 1988, c. 544; 1989, c. 624; 1992, c. 104; 2003, c. 525; 2012, cc. 803, 835.

§ 8.01-66.9:1. Lien against recovery for medical treatment provided to prisoner

In any civil action brought for injuries or death suffered by any person while confined in a state or local correctional facility, the Commonwealth or the locality, as the case may be, shall have a lien against any recovery by settlement or verdict for all actual expenses incurred by the Commonwealth or the locality for medical, surgical and hospital treatment and supplies for the prisoner, whether provided by public or private health care providers, as a result of the injury. Such lien shall be subject to the payment of reasonable attorneys' fees and costs.

1984, c. 519.

§ 8.01-66.10. Death claims settled by compromise or suit

In case of personal injuries resulting in death and settlement therefor by compromise or suit under the provisions of §§ 8.01-50 to 8.01-56, the liens provided for in this article may be asserted against the recovery, or against the estate of the decedent, but not both. If asserted against the recovery and paid, such liens shall attach pro rata to the amounts received respectively by such beneficiaries as are designated to receive the moneys distributed and in their respective amounts; and such beneficiaries, or the personal representative for their benefit, shall be subrogated to the liens against the estate of such decedent provided for by § 64.2-528.

Code 1950, § 32-141; 1979, c. 722.

§ 8.01-66.11. Necessity for settlement or judgment

Nothing contained in this article shall be construed as imposing liability on any person, firm or corporation whose negligence is alleged to have caused injuries or on the attorney for the injured party where no settlement is made, or, in case of an attorney, where no funds come into his hands, or where no judgment is obtained in favor of such injured party or his personal representative.

Code 1950, § 32-144; 1979, c. 722.

§ 8.01-66.12. Term physician to include chiropractor

Wherever the term physician is used in this article, it shall include chiropractor.

1993, c. 702 .

Article 8 - ACTIONS FOR THE SALE, LEASE, EXCHANGE, REDEMPTION AND OTHER DISPOSITION OF LANDS OF PERSONS UNDER A DISABILITY

§ 8.01-67. Definitions; persons under a disability; fiduciary

The terms "fiduciary" and "person under a disability" as used in this article shall have the meanings ascribed to them in § 8.01-2.

1977, c. 617.

§ 8.01-68. Jurisdiction

Circuit courts in the exercise of their equity jurisdiction, upon being satisfied by competent evidence independent of the admissions in the pleadings or elsewhere in the proceedings, that one or more of the types of relief hereinafter specified will promote the interest of an owner of land, or any interest therein, who is a person under a disability as defined in this chapter for whom a conservator has not been appointed pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2, and taking into consideration the rights of any other party interested in such land, may order the sale, exchange, lease, encumbrance, redemption, or other disposition of such real estate as to the court may seem just and equitable.

In the case of the sales of such lands or interest therein, the court shall be governed by the established practices for judicial sales generally except as they may be specifically modified by provisions of this article.

Code 1950, §§ 8-675, 8-677, 8-681, 8-682, 8-683; 1952, c. 360; 1977, c. 617; 1997, c. 921.

§ 8.01-69. Commencement of suit; parties

Any of the relief specified in this article may be sought by bill in equity filed by a fiduciary, as defined in this article, or by any other person having an interest in the subject matter of the proceedings. A person under a disability, fiduciary, all those who would be the heirs or distributees of the defendant person under disability if he had died at the time of the commencement of this proceeding, except as provided in § 8.01-78, and all other persons interested in the subject matter of the proceeding, shall be made parties defendant when not parties plaintiff.

Code 1950, § 8-676; 1952, c. 360; 1972, c. 361; 1973, c. 338; 1977, c. 617; 1983, c. 459.

§§ 8.01-70, 8.01-71. Repealed

Repealed by Acts 1990, c. 831, effective January 1, 1991.

§ 8.01-72. When death to abate such suit

A suit instituted under this article shall abate by reason of the death of the person under a disability unless a sale, exchange, lease, encumbrance, redemption, or other disposition of real estate has been confirmed by a decree in such suit.

Code 1950, § 8-678; 1952, c. 360; 1977, c. 617.

§ 8.01-73. Guardian ad litem to be appointed

In every suit brought under this article, a guardian ad litem shall be appointed for any person under a disability not otherwise represented by a guardian or committee, or trustee appointed pursuant to § 64.2-2003, and for all persons proceeded against by an order or publication under the designation of "parties unknown" as provided for in § 8.01-316. The guardian ad litem shall file an answer as such.

Code 1950, § 8-679; 1952, c. 360; 1972, c. 361; 1977, c. 617; 1997, c. 540.

§ 8.01-74. Leases on behalf of persons under disability; new leases

A. Leases on behalf of persons under a disability. -- When a person under a disability is entitled to or bound to renew any lease, any fiduciary on behalf of such person under a disability or any other interested person may apply by motion after reasonable notice to parties having a present interest in the property to be leased, to the circuit court as prescribed in subdivision 3 of § 8.01-261, and by the order of the court any person appointed by it may, from time to time, surrender or accept a surrender of such lease, or take or make a new lease of the same premises for such term and with such provisions as the court directs. Such reasonable sums as are incurred to renew any such lease shall, with interest thereon, be paid out of the profits of the leasehold premises, and be a charge thereon until payment.

B. New leases. -- When it shall appear to a circuit court that the interests of a person under a disability will be promoted by the execution of a new lease, where no prior lease exists, any fiduciary or any other person interested in the subject matter may apply in like summary fashion as stated in subsection A of this section and upon showing to the satisfaction of the court that the provisions therein were complied with, including reasonable notice to parties having a present interest to the property to be leased, the circuit court upon the consideration of the probable length of the disability and the duration of the proposed lease, may order such lease to be executed. Such lease may be renewed or surrendered at any time pursuant to subsection A of this section and under such conditions as the court may direct.

Code 1950, § 8-674; 1952, c. 360; 1977, c. 617.

§ 8.01-75. Who not to be purchaser

At any sale under this article neither a fiduciary for a person under a disability, as defined under this article, nor the guardian ad litem shall be a purchaser directly or indirectly; provided, however, such fiduciary may be a purchaser if the court finds that such a purchase by the fiduciary is in the best interests of the person under a disability.

Code 1950, § 8-684; 1977, c. 617; 1980, c. 346.

§ 8.01-76. How proceeds from disposition to be secured and applied; when same may be paid over

The proceeds of sale, or rents, income, or royalties, arising from the sale or lease, or other disposition, of lands of persons under a disability, whether in a suit for sale or lease thereof, or in a suit for partition, or in condemnation proceedings, shall be invested under the direction of the court for the use and benefit of the persons entitled to the estate; and in case of a trust estate subject to the uses, limitations, and conditions, contained in the writing creating the trust. The court shall take ample security for all investments so made, and from time to time require additional security, if necessary, and make any proper order for the faithful application and safe investment of the fund, and for the management and preservation of any properties or securities in which the same has been invested, and for the protection of the rights of all persons interested therein, whether such rights be vested or contingent, but nothing hereinbefore contained shall prevent the court having charge thereof from directing such funds to be paid over to the legally appointed and

qualified fiduciary (as defined in § 8.01-67) of the person under a disability, whenever the court is satisfied that such fiduciary has executed sufficient bond; or from applying at any time all or any portion thereof to the proper needs and requirements of the person under a disability. Provided, however, that if such funds do not exceed $4,000, the court, in its discretion and without the intervention of a fiduciary, may pay such funds to any person deemed appropriate by the court for the use and benefit of a person under a disability, whether such person resides within or without the Commonwealth. Such funds not in excess of $4,000 shall, when paid over to such person deemed appropriate, be treated as personal property.

Code 1950, § 8-685; 1952, c. 360; 1968, c. 380; 1970, c. 355; 1972, c. 159; 1974, c. 139; 1977, c. 617; 1978, c. 419; 1981, c. 129.

§ 8.01-77. What proceeds of sale to pass as real estate

The proceeds received under the preceding provisions of this article or under Article 9 (§ 8.01-81 et seq.) of this chapter, from the sale or division of real estate of a person under a disability or so much thereof as may remain at such person's death, if such person continue until death incapable from any cause of making a will, shall pass to those who would have been entitled to the land if it had not been sold or divided.

Code 1950, § 8-689; 1952, c. 360; 1968, c. 66; 1977, c. 617.

§ 8.01-78. Alternate procedure for sale of real estate of person under disability

If the personal estate of any person under a disability for whom a fiduciary has been appointed under any of the provisions of Title 37.2, be insufficient for the discharge of his debts or if the personal estate or residue thereof after payment of debts and the rents and profits of his real estate be insufficient for his maintenance and that of his family, if any, the fiduciary of his estate may petition a circuit court for authority to mortgage, lease or sell so much of the real estate of such person as may be necessary for the purposes aforesaid, or any of them, setting forth in the petition the particulars and amount of the estate, real and personal, and a statement of the application of any personal estate, and debts and demands existing against the estate. Those persons who would be heirs or distributees of the person under a disability if he had died at the time of commencement of the proceeding need not be made parties defendant to a proceeding pursuant to this section.

Code 1950, § 8-689.1; 1952, c. 360; 1977, c. 617; 1983, c. 459.

§ 8.01-79. Same; reference of petition to commissioner

On the presenting of such petition it may be referred to a commissioner in chancery or to a special commissioner appointed by the court, to inquire into and report upon the matters therein contained, whose duty it shall be to make such inquiry, to give notice to and hear all parties interested in such real estate and to report thereon with all convenient speed.

Code 1950, § 8-689.2; 1977, c. 617.

§ 8.01-80. Same; action of court on report; application of proceeds of transaction

If upon the filing of the report and examination of the matter it shall appear to the court to be proper, an order shall be entered for the mortgaging, leasing, or sale, on such terms and conditions as the court may deem proper, of so much of such real estate as may be necessary; but no conveyance shall be executed until such shall have been confirmed by the court. The proceeds of such transactions shall be secured and applied under the order of the court.

Code 1950, § 8-689.3; 1977, c. 617.

Article 9 - PARTITION

§ 8.01-81. Who may compel partition of land; jurisdiction; validation of certain partitions of mineral rights

Tenants in common, joint tenants, executors with the power to sell, and coparceners of real property, including mineral rights east and south of the Clinch River, shall be compellable to make partition and may compel partition, but in the case of an executor only if the power of sale is properly exercisable at that time under the circumstances; and a lien creditor or any owner of undivided estate in real estate may also compel partition for the purpose of subjecting the estate of his debtor or the rents and profits thereof to the satisfaction of his lien. Any court having general equity jurisdiction shall have jurisdiction in cases of partition; and in the exercise of such jurisdiction may take cognizance of all questions of law affecting the legal title that may arise in any proceedings, between such tenants in common, joint tenants, executors with the power to sell, coparceners and lien creditors.

All partitions of mineral rights heretofore had, are hereby validated.

Code 1950, § 8-690; 1964, c. 167; 1968, c. 412; 1977, c. 617; 1984, c. 226.

§ 8.01-82. When shares of two or more laid off together

Any two or more of the parties, if they so elect, may have their shares laid off together when partition can be conveniently made in that way.

Code 1950, § 8-691; 1977, c. 617.

§ 8.01-83. Allotment to one or more parties, or sale, in lieu of partition

When partition cannot be conveniently made, the entire subject may be allotted to any one or more of the parties who will accept it and pay therefor to the other parties such sums of money as their interest therein may entitle them to; or in any case in which partition cannot be conveniently made, if the interest of those who are entitled to the subject, or its proceeds, will be promoted by a sale of the entire subject, or allotment of part and sale of the residue, the court, notwithstanding any of those entitled may be a person under a disability, may order such sale, or an allotment of a part thereof to any one or more of the parties who will accept it and pay therefor to the other parties such sums of money as their interest therein may entitle them to, and a sale of the residue, and make distribution of the proceeds of sale, according to the respective rights of those entitled, taking care, when there are creditors of any deceased person who was a tenant in

common, joint tenant, or coparcener, to have the proceeds of such deceased person's part applied according to the rights of such creditors.

Code 1950, § 8-692; 1950, p. 467; 1977, c. 617.

§ 8.01-84. Application of proceeds of sale to payment of lien

When there are liens on the interest of any party in the subject so sold, the court may, on the petition of any person holding a lien, ascertain the liens, and apply the dividend of such party in the proceeds of sale to the discharge thereof, so far as the same may be necessary.

Code 1950, § 8-693; 1977, c. 617.

§ 8.01-85. Disposition of share in proceeds of person under disability

The court making an order for sale shall, when the dividend of a party exceeds $2500, if such party be a person under a disability, order the same to be disposed as the proceeds of a sale under the provisions of § 8.01-76 are required to be invested.

Code 1950, § 8-694; 1952, c. 249; 1968, c. 381; 1977, c. 617.

§ 8.01-86. Repealed

Repealed by Acts 1990, c. 831, effective January 1, 1991.

§ 8.01-87. Validation of certain partitions prior to act of 1922

All partitions heretofore had, when the proceedings conformed to the law as it existed prior to the amendment of § 5281 of the Code of 1919 by an act approved March 27, 1922, although they did not conform to such section as it read under the amendment of 1922, as aforesaid, are hereby validated; but nothing in this validating section shall be construed as intended to affect vested rights.

Code 1950, § 8-696; 1977, c. 617.

§ 8.01-88. Decree of partition to vest legal title

A decree heretofore or hereafter made, confirming any partition or allotment in a suit for partition, shall vest in the respective co-owners, between or to whom the partition or allotment is made, the title to their shares under the partition or allotment, in like manner and to the same extent, as if such decree direct such title be conveyed to them and the conveyance was made accordingly.

Code 1950, § 8-698; 1977, c. 617.

§ 8.01-89. When proceeds of sale deemed personal estate

The proceeds of any sale made under § 8.01-83 shall, except as provided in § 8.01-77, be deemed personal estate from the time of the confirmation of such sale by the court.

Code 1950, § 8-699; 1977, c. 617.

§ 8.01-90. When name or share of parties unknown

If the name or share of any person interested in the subject of the partition be unknown, so much as is known in relation thereto shall be stated in the bill.

Code 1950, § 8-700; 1977, c. 617.

§ 8.01-91. Effect of partition or sale on lessee's rights

Any person who, before the partition or sale, was lessee of any of the lands divided or sold, shall hold the same of him to whom such land is allotted or sold on the same term on which by his lease he held it before the partition.

Code 1950, § 8-701; 1977, c. 617.

§ 8.01-92. Allowance of attorneys' fees out of unrepresented shares

In any partition suit when there are unrepresented shares, the court shall allow reasonable fees to the attorney or attorneys bringing the action on account of the services rendered to the parceners unrepresented by counsel.

Code 1950, § 8-701.1; 1950, p. 96; 1977, c. 617.

§ 8.01-93. Partition of goods, etc., by sale, if necessary

When an equal division of goods or chattels cannot be made in kind among those entitled, a court of equity may direct the sale of the same, and the distribution of the proceeds according to the rights of the parties.

Code 1950, § 8-702; 1977, c. 617.

Article 10 - SALE, LEASE, OR EXCHANGE OF CERTAIN ESTATES IN PROPERTY

§ 8.01-94. When sold, leased or exchanged

Whenever an interest in property, real or personal, is held by a person, natural or artificial, with remainder or limitation over contingent upon any event, or for his life or for the life of another, and there is limited thereon any other estate, vested or contingent, to any other such person, whether in being or to be thereafter born or created in any manner whatsoever, such person holding an interest in the property so subject to remainder or limitation over or for his own life, or his committee, guardian, if a minor, or conservator, or, if the estate so held be for the life of another, then his heir or personal representative, as the case may be, may for the purpose of obtaining a sale or leasing or exchange of the fee simple interest or absolute estate in such property, if the sale or leasing or exchange thereof is not prohibited by the instrument creating the estate, and the remaindermen, or any of them, whether in being or hereafter to be born or created, are from any cause incapable at the time of filing the bill as herein provided or of giving their assent, or the remainder or limitation over is contingent or defeasible, file a bill in equity in the circuit court stating plainly the property to be sold or leased or exchanged and all facts calculated to show the propriety of such sale or lease or exchange. A like bill may be filed for the sale or leasing or exchange of the remainder in such estate by a remainderman, his guardian, conservator or committee. All persons interested in the property presently or contingently, other than the plaintiff, shall be made defendants, and if such remaindermen be not born or created at such time of filing such bill, such suit shall not for such cause abate, but such unborn person or uncreated artificial

person shall be made defendant and subject to the decree of the court by the name of "person unknown or person yet to be born or created," and the court shall upon the filing of such bill appoint a guardian ad litem to defend the interest of such unborn person or uncreated artificial person. If it be clearly shown independently of any admissions in the pleadings that the interest of the plaintiff will be promoted and the rights of no other person will be violated thereby, the court may decree a sale or lease or exchange of the property or any part thereof, or of the remainder therein. In case of a sale on credit, the court shall take ample security. If such sale on credit be of real estate, a lien thereon shall be reserved. The title to any land acquired in any exchange herein provided for shall be held and owned by the same persons in the same way, to the same extent and subject to the same conditions that they owned the land given in such exchange.

Code 1950, § 8-703.1; 1958, c. 271; 1977, c. 617; 1997, c. 801.

§ 8.01-95. Procedure in such case

The procedure in such suit and the investment of the proceeds of sale shall be in accordance with §§ 8.01-73, 8.01-75 and 8.01-76, so far as the same can be made applicable, and the court may, in its discretion, commute the life estate according to § 55-269.1. In the case of a lease, however, the rents may be made payable direct to the person or persons entitled thereto, for the time being.

Code 1950, § 8-703.2; 1977, c. 617.

Article 11 - GENERAL PROVISIONS FOR JUDICIAL SALES

§ 8.01-96. Decree for sale; how made; bond of commissioner

In decreeing a sale under any provisions of law, the court may provide for the sale of property in any part of the Commonwealth, and may direct the sale to be for cash, or on such credit and terms as it may deem best, and it may appoint one or more special commissioners to make such sale. No special commissioner, appointed by a court, shall receive money under a decree, until he gives bond, with approved security, before such court or its clerk, in a penalty to be prescribed by the court, conditioned upon the faithful discharge of his duties as such commissioner and to account for and pay over as the court may direct all money that may come into his hands as such commissioner.

Code 1950, § 8-655; 1977, c. 617.

§ 8.01-97. Delinquent taxes to be ascertained

In every suit brought in this Commonwealth for the sale of lands for the payment of debts or to subject lands to the payment of liens binding thereon, it shall be the duty of the court, or any commissioner to whom the cause is referred, to ascertain all delinquent taxes on such land together with interest and penalties if any.

Code 1950, § 8-656; 1977, c. 617.

§ 8.01-98. Sales of land when purchase price insufficient to pay taxes, etc

In any proceedings for the sale of real estate or to subject real estate to the payment of debts, it appears to the court that the real estate cannot be sold for enough to pay off the liens of taxes, levies, and assessments returned delinquent against it, and it further appears that the purchase price offered is adequate and reasonable, such sale shall be confirmed, and the court shall decree the payment and distribution of the proceeds of such sale pro rata to the taxes, levies, and assessments due the Commonwealth or any political subdivision thereof, after having first deducted the cost of such proceedings in court. Such decree shall be certified to the clerk of the appropriate court who has charge of the delinquent tax books, and such clerk shall cause the lien of such taxes, levies, and assessments to be marked satisfied upon the list of delinquent lands regardless of whether the same shall have been paid in full.

Code 1950, § 8-657; 1977, c. 617.

§ 8.01-99. Bond required of special commissioner for sale

Except as hereinafter provided, no special commissioner shall advertise the property for sale or renting, or sell or rent the same, until he shall have given bond in a penalty to be prescribed by the court sufficient to cover at least the probable amount of the whole purchase money or such portion of the rent the court deems appropriate, and shall have obtained from such clerk a certificate that such bond has been given. The certificate or a copy thereof shall be appended to the advertisement; provided, however, that in any case of such sale or rental, the court may direct all the cash proceeds thereof to be deposited by the purchaser or lessee to the credit of such court in some bank to be designated by it, and may direct that all evidences of indebtedness arising from such transaction or rent be deposited for safekeeping with such bank or the clerk of such court and the court may in its discretion thereafter dispense with the bond.

The clerk shall make the certificate whenever the bond has been given and note the same in the proceedings in the cause. The certificate or a copy thereof shall be returned with the report of the sale or renting.

Code 1950, § 8-658; 1977, c. 617.

§ 8.01-100. Liability of clerk for false certificate or failure to give bond

If any clerk make a certificate as to the bond, which is untrue, he and the sureties on his official bond shall be liable to any person injured thereby.

Code 1950, § 8-661; 1977, c. 617; 1978, c. 718.

§ 8.01-101. Purchasers relieved of liability for purchase money paid to such commissioner

When the certificate pursuant to the provisions in § 8.01-99 shall have been published with an advertisement of the sale or renting of property, or when such bond shall have been given prior to a sale or renting not publicly advertised, any person purchasing or renting such property in pursuance of such advertisement or in pursuance of the decree or order of sale or renting, shall be relieved of all liability for the purchase money or rent, or any part thereof, which he may pay to

any special commissioner, as to whom the proper certificate shall have been appended to such advertisement, or who shall have given the bond aforesaid.

Code 1950, § 8-659; 1977, c. 617.

§ 8.01-102. Purchasers not required to see to application of purchase money

No purchaser or renter at a duly authorized sale or renting made by a receiver, personal representative, trustee, or other fiduciary shall be required to see to the application of the purchase money.

Code 1950, § 8-660; 1977, c. 617.

§ 8.01-103. Special commissioner or other person appointed to do so to receive purchase money, etc.; liability of clerk for failure to give notice of appointment

The special commissioner, who makes the sale or renting, shall receive and collect all the purchase money or rent, unless some other person be appointed to collect the same and in such case the court shall require of such person bond with surety in such penalty as to it may seem fit. When such appointment is made, it shall be the duty of the clerk to give notice thereof, in writing, to the purchaser or lessee, to be served as other notices are required by law to be served; but no payment shall be made to the person so appointed, until he shall have given the bond required by the decree or order; provided, however, that if, before the purchaser or lessee has received notice of such appointment, he shall have made any payment on account of the purchase money or rent to the special commissioner, or any person appointed for the purpose, who made the sale or renting, such special commissioner, or other person, who made the sale or renting, and the sureties on his bond, shall be responsible for the money so paid, and the purchaser or lessee, who made the payment, shall not be responsible therefor.

If any clerk fail to give the notice hereinbefore required to be given by him, he and the sureties on his official bond shall be liable to any person injured by such failure.

Code 1950, § 8-662; 1977, c. 617; 1978, c. 718.

§ 8.01-104. Repealed

Repealed by Acts 1978, c. 718.

§ 8.01-105. Rule against special commissioner, purchaser, etc., for judgment for amounts due

Any court of this Commonwealth, may, at the instance of any party in interest, award a rule against any special commissioner or receiver appointed by or acting under the authority of such court, and against the surety of such commissioner or receiver, or against a purchaser at a judicial sale under a decree of such court, and against the surety or sureties of such purchaser, returnable to such date as the court may fix, to show cause why judgment shall not be entered against them for any amount which the court may ascertain to be due from such commissioner, receiver, or purchaser. A rule issued under this section shall be executed at least fifteen days before the return day thereof.

Code 1950, § 8-664; 1977, c. 617.

§ 8.01-106. How cause heard upon rule and judgment rendered

Upon the return of a rule executed under § 8.01-105 upon any of the parties thereto, the court may if neither party demand a jury, proceed to hear and determine all questions raised by such rule, and shall enter a judgment against such special commissioner, receiver, or purchaser, as the case may be, and his surety or sureties, for the amount appearing to be due by such commissioner, receiver or purchaser, or may enter judgment against such of them as have been summoned to answer such rule. If it appears in such proceeding that such commissioner, receiver, purchaser, or any of them, or their sureties is dead, or under a disability, then such rule shall be awarded against the personal representative of those dead, and the fiduciary of those who are under a disability, and judgment may be rendered jointly and severally against such personal representative, fiduciary and those laboring under no disability in the same proceeding.

Code 1950, § 8-665; 1977, c. 617.

§ 8.01-107. Trial by jury of issues made upon rule

If, upon the return of such rule, any party thereto demand a trial by jury, the court shall order a trial by jury to ascertain what liability, if any, exists against any such special commissioner, receiver, or purchaser, and their sureties; and the court shall enter judgment on the verdict awarded by the jury. New trials may be granted as in other cases; and notwithstanding such rules be awarded and judgment be rendered against part only of the persons liable thereto, the court may award new rules and proceed to judgment against all the parties who are liable thereto. The provisions of this section, and §§ 8.01-105 and 8.01-106, shall apply to any officers and their sureties, acting under the decree of the court.

Code 1950, § 8-666; 1977, c. 617.

§ 8.01-108. When sureties of commissioner, purchaser, etc., proceeded against by rule

Whenever a special commissioner, a receiver, purchaser at a judicial sale, or his personal representative, or any of them, can be proceeded against by rule for the recovery of money under §§ 8.01-105, 8.01-106 and 8.01-107, the surety of such commissioner, receiver, or purchaser, and the personal representatives of such sureties, may also be proceeded against under such sections.

Code 1950, § 8-667; 1977, c. 617.

§ 8.01-109. Commission for selling, collecting, etc.; each piece of property to constitute separate sale

For the services of commissioners or officers under any decree for a sale, including the collection and paying over of the proceeds, there may be allowed a commission of five percent on amounts up to and including $100,000, and two percent on all amounts above $100,000. If the sale is made by one commissioner or officer and the proceeds collected by another, the court under whose decree they acted shall apportion the commission between them as may be just.

For the purposes of this section, each piece of property so sold shall constitute a separate sale, even though more than one piece of property is sold under the same decree.

Code 1950, § 8-669; 1950, p. 459; 1966, c. 416; 1974, c. 197; 1977, c. 617; 1993, c. 311 .

§ 8.01-110. Appointment of special commissioner to execute deed, etc.; effect of deed

A court in a suit wherein it is proper to decree the execution of any deed or writing may appoint a special commissioner to execute the same on behalf of any party in interest and such instrument shall be as valid as if executed by the party on whose behalf it is so executed.

Code 1950, § 8-670; 1977, c. 617.

§ 8.01-111. What such deed to show

Every deed executed by any such commissioner pursuant to the provisions of § 8.01-110 shall specifically set out as nearly as practicable the name of the person on whose behalf the same is executed; provided, that when such deed conveys the right, title or interest of the heirs of a person who is dead it shall be sufficient for such deed to set out that the same is executed on behalf of the heirs of such decedent. But a failure to comply with the provisions of this section shall not affect or invalidate any such deed; and all deeds heretofore executed by any such commissioner in which such persons or heirs are not specifically set out are hereby validated.

Code 1950, § 8-671; 1977, c. 617.

§ 8.01-112. Reinstatement of cause to appoint special commissioner to make deed

Any ended cause may be reinstated for the purpose of entering a decree directing a deed to be made to any party clearly shown by the record to be entitled thereto, or for the purpose of substituting a new commissioner to make a deed in the place of one previously appointed for that purpose, but who has died or become incapacitated to act before making such deed.

Code 1950, § 8-672; 1977, c. 617.

§ 8.01-113. When title of purchaser at judicial sale not to be disturbed

If a sale of property is made under a decree of a court, and such sale is confirmed, the title of the purchaser at such sale shall not be disturbed unless within twelve months from such confirmation the sale is set aside by the trial court or an appeal is taken to the Court of Appeals or allowed by the Supreme Court, and a decree is therein afterwards entered requiring such sale to be set aside. This limitation shall not affect any right of restitution of the proceeds of sale.

Code 1950, § 8-673; 1977, c. 617; 1984, c. 703.

Article 12 - DETINUE

§ 8.01-114. When property to be taken by officer; summary of evidence, affidavits and report to be filed

A. A proceeding in detinue to recover personal property unlawfully withheld from the plaintiff may be brought on a warrant or motion for judgment if pretrial seizure is not sought at the time of filing.

A petition in detinue for pretrial seizure pursuant to this article may be filed either to commence the detinue proceeding or may be filed during the pendency of a detinue proceeding which commenced on a warrant or motion for judgment. If a petition is filed, it shall:

1. Describe the kind, quantity and estimated fair market value of the specific personal property as to which plaintiff seeks possession;

2. Describe the basis of the plaintiff's claim of entitlement to recover the property, with such certainty as will give the adverse party reasonable notice of the true nature of the claim and the particulars thereof and, if based on a contract to secure the payment of money, the amount due on such contract; and

3. Allege one or more of the grounds mentioned in § 8.01-534 and set forth specific facts in support of such allegation. Further, if a petition is filed, a judge, or a magistrate appointed pursuant to Article 3 (§ 19.2-33 et seq.) of Chapter 3 of Title 19.2, may issue an order or other process directed to the sheriff or other proper officer, as the case may be, commanding him to seize the property for the recovery of which such action or warrant is brought, or a specified portion thereof, and deliver same to the plaintiff pendente lite under the circumstances hereinafter set forth.

B. The judge or the magistrate may issue such an order or other process in accordance with the prayer of the petition after an ex parte review of the petition only upon a determination that: (i) the petition conforms with subsection A and (ii) there is reasonable cause to believe that the grounds for detinue seizure described in the petition exist. The plaintiff praying for an order shall, at the time that he files his petition, pay the proper costs, fees and taxes, and in the event of his failure to do so, the order shall not be issued.

C. The judge or magistrate, as the case may be, may receive evidence only in the form of a sworn petition which shall be filed with the papers in the cause.

D. The order commanding the seizure of property shall be issued and served together with the form for requesting a hearing on a claim of exemption from seizure as provided in § 8.01-546.1. The order shall be issued and returned as provided in § 8.01-541 and may be issued or executed on any day, including a Saturday, Sunday or other legal holiday. Service shall be in accordance with the methods described in § 8.01-487.1. The provisions of § 8.01-546.2 shall govern claims for exemption.

Code 1950, § 8-586; 1973, c. 408; 1974, c. 122; 1977, c. 617; 1978, c. 403; 1986, c. 341; 1993, c. 841 .

§ 8.01-115. Bond required as prerequisite

No such order or process, however, shall be issued until a bond, conforming with the requirements of § 8.01-537.1, is posted with the judge or magistrate, in a penalty at least double the estimated fair market value of the property claimed, payable to the defendant, with the additional condition to redeliver the property so seized to the defendant, or to the person from whose possession it was taken, if the right to the possession shall be adjudged against the plaintiff.

Code 1950, § 8-587; 1977, cc. 230, 617; 1986, c. 341; 1993, c. 841 .

§ 8.01-116. Return of property to defendant or other claimant

A. Subject to the provisions of subsection B below, the defendant in any such proceeding, or any other person claiming title to the property so seized and taken possession of by the officer, may have such property returned to him at any time after such seizure upon executing a bond, with sufficient surety, to be approved by the officer, payable to the plaintiff, in a penalty at least double the estimated value of the property. The bond shall contain a condition to (i) pay all costs and damages which may be awarded against the defendant in the proceeding and all damages which may accrue to any person by reason of the return of the property to the defendant or the claimant and (ii) have the property forthcoming to answer any judgment or order of the court or judge respecting the same. The bond shall be delivered to the officer and returned by him to the office of the clerk. The officer, on receiving the bond, shall forthwith return the property taken by him to the defendant or any other person claiming title thereto or from whose possession it was taken.

B. In any such proceeding, upon application of the defendant after reasonable notice to the plaintiff or his attorney, the judge of the court in which the proceeding is pending may order the property returned to the defendant upon such lesser security and upon such terms as in the nature of the case may be just and reasonable.

C. If no bond or security is delivered to the officer after his seizing and taking possession of such property, the property, if in the hands of the officer, shall be kept by him. However, if the property is perishable or expensive to keep, it may be sold by order of the court in the same manner as if it were a sale under execution.

Code 1950, § 8-588; 1973, c. 408; 1977, c. 617; 1993, c. 841 .

§ 8.01-117. Exceptions to sufficiency of bonds

Either party may file exceptions to the sufficiency of the bond of the other or of the claimant of the property, if he has given bond, or such claimant may file exceptions to the sufficiency of the bond of either party. The court before whom the proceeding is pending, may, on the motion of either party or of the claimant, after reasonable notice to the others, pass upon such exceptions and make such order thereupon as may be just and reasonable.

Code 1950, § 8-589; 1977, c. 617; 1993, c. 841 .

§ 8.01-118. Repealed

Repealed by Acts 1986, c. 341.

§ 8.01-119. Hearing to review issuance of order or process under § 8.01-114 or to consider request for such order or process

A. Within thirty days after the issuance of any ex parte order or process pursuant to § 8.01-114, or promptly upon application of either party, and in either event after reasonable notice, the court in which such proceeding is pending shall conduct a hearing to review the decision to issue the order or other process described in § 8.01-114, or to consider the request of the plaintiff for issuance of such order or other process, whether or not the plaintiff has attempted to previously obtain an order pursuant to § 8.01-114. The hearing may be combined with a prompt hearing held pursuant to § 8.01-546.2 on an exemption claimed or a trial on the merits or both. If combined with a hearing on an exemption claim, the hearing shall be conducted within ten business days of the filing of the request for a hearing. If the plaintiff gives reasonable notice of his intention to apply for such an order or process before the court, such hearing may be on the return day of the warrant. Evidence may be presented in the same manner as in subsection B of § 8.01-114.

B. At the conclusion of the hearing, if the evidence establishes the facts set forth in subdivision 1 of subsection A of § 8.01-114, and the court is satisfied from the evidence that (i) one or more of the grounds set forth in § 8.01-534 exist, (ii) there is good reason to believe that the defendant is insolvent, so that any recovery against him for the alternate value of the property and for damages and costs will probably prove unavailing, or (iii) the plaintiff may suffer other irreparable harm if his request is denied, and if it further appears to the court that there is a substantial likelihood that the plaintiff's allegations will be sustained at the trial, then the court shall issue the order or other process requested by the plaintiff, or let stand an order issued in the cause pursuant to § 8.01-114.

If the decision of the court is in favor of the defendant, the former order or process issued in the cause shall be abated and the property returned to the possession of the person from whom it was taken to abide the final trial of the action or warrant. Proof of insolvency as grounds for possession of goods by the plaintiff shall not be introduced for purposes of affirming a prior ex parte order, but only upon an initial application for possession after reasonable notice.

C. Issuance of any order or process pursuant to this section shall be subject to the provisions of §§ 8.01-115 and 8.01-116.

Code 1950, § 8-591; 1973, c. 408; 1977, c. 617; 1986, c. 341; 1993, c. 841 .

§ 8.01-120. No verdict as to some items; omission of price or value

If in such detinue action, on an issue concerning several things, in one or more counts, no verdict be found for part of them, it shall not be error, but the plaintiff shall be barred of his title to the things omitted; and if the verdict omit the price or value, the court may at any time have a jury impaneled to ascertain the same.

Code 1950, § 8-592; 1977, c. 617.

§ 8.01-121. Final judgment

When final judgment is rendered on the trial of such detinue proceeding, the court shall dispose of the property or proceeds according to the rights of those entitled. When, in any such proceeding, the plaintiff prevails under a contract which, regardless of its form or express terms, was in fact made to secure the payment of money to the plaintiff or his assignor, judgment shall be for the recovery of the amount due the plaintiff thereunder or for the specific property, and costs. The defendant shall have the election of paying the amount of such judgment or surrendering the specific property. The court may grant the defendant a reasonable time not exceeding thirty days, within which to make the election upon such security being given as the court may deem sufficient. When the property involves an animal as defined in § 3.2-6500, the court may order the return of the animal to the prevailing plaintiff without regard to any alternative method of recovery.

If the defendant elects to surrender the property as aforesaid, upon delivery of the property to the plaintiff or repossession thereof by him, the plaintiff may proceed to sell the property in accordance with the applicable provisions of the Uniform Commercial Code (Part 6 (§§ 8.9A-601 et seq.) of Title 8.9A) with all the rights and responsibilities therein provided.

Code 1950, § 8-593; 1964, c. 219; 1977, c. 617; 1987, c. 1; 1993, c. 841 .

§ 8.01-122. Charges for keeping property

The legal charges, if any, for keeping any such property, while in the possession of the officer, shall be paid by the plaintiff and certified by the officer to the court who, in case such order or process be not abated and final judgment be rendered for the plaintiff, shall tax the same along with the other costs of the suit.

Code 1950, § 8-594; 1977, c. 617.

§ 8.01-123. Recovery of damages sustained for property withheld during appeal

When a judgment for specific personal property is affirmed by an appellate court, or an injunction to such judgment is dissolved, the person who is entitled to execution of such judgment, or who would be entitled if execution had not been had, may, on motion to the court from which such execution has issued, or might issue, after fifteen days' notice to the defendant or his personal representative, have a jury impaneled to ascertain the damages sustained by reason of the detention of such property, subsequent to such judgment, or if it was on a verdict, subsequent to such verdict; and judgment shall be rendered for the damages, if any, so ascertained.

Code 1950, § 8-595; 1977, c. 617.

Article 13 - UNLAWFUL ENTRY AND DETAINER

§ 8.01-124. Motion for judgment in circuit court for unlawful entry or detainer

If any forcible or unlawful entry be made upon lands, or if, when the entry is lawful and peaceable, the tenant shall detain the possession of land after the right has expired, without the consent of him who is entitled to the possession, the party so turned out of possession, no matter

what right of title he had thereto, or the party against whom such possession is unlawfully detained may file a motion for judgment in the circuit court alleging that the defendant is in possession and unlawfully withholds from the plaintiff the premises in question.

Code 1950, § 8-789; 1954, c. 549; 1975, c. 235; 1977, c. 617.

§ 8.01-125. When summons returnable to circuit court; jury

When the action is commenced in the circuit court, the summons is returnable thereto and, upon application of either party trial by jury shall be had.

Code 1950, § 8-792; 1954, c. 333; 1970, c. 272; 1977, c. 617.

§ 8.01-126. Summons for unlawful detainer issued by magistrate or clerk or judge of a general district court

A. In any case when possession of any house, land or tenement is unlawfully detained by the person in possession thereof, the landlord, his agent, attorney, or other person, entitled to the possession may present to a magistrate or a clerk or judge of a general district court a statement under oath of the facts which authorize the removal of the tenant or other person in possession, describing such premises; and thereupon such magistrate, clerk or judge shall issue his summons against the person or persons named in such affidavit. The process issued upon any such summons issued by a magistrate, clerk or judge may be served as provided in § 8.01-293, 8.01-296, or 8.01-299. When issued by a magistrate it may be returned to and the case heard and determined by the judge of a general district court. If the summons for unlawful detainer is filed to terminate a tenancy pursuant to the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.), the initial hearing on such summons shall occur as soon as practicable, but not more than 21 days from the date of filing. If the case cannot be heard within 21 days from the date of filing, the initial hearing shall be held as soon as practicable. If the plaintiff requests that the initial hearing be set on a date later than 21 days from the date of filing, the initial hearing shall be set on a date the plaintiff is available that is also available for the court. Such summons shall be served at least 10 days before the return day thereof.

B. Notwithstanding any other rule of court or provision of law to the contrary, the plaintiff in an unlawful detainer case may submit into evidence a photocopy of a properly executed paper document or paper printout of an electronically stored document including a copy of the original lease or other documents, provided that the plaintiff provides an affidavit or sworn testimony that the copy of such document is a true and accurate copy of the original lease. An attorney or agent of the landlord or managing agent may present such affidavit into evidence.

C.1. Notwithstanding any other rule of court or provision of law to the contrary, when the defendant does not make an appearance in court, the plaintiff or the plaintiff's attorney or agent may submit into evidence by an affidavit or sworn testimony a statement of the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of the date of the hearing. The plaintiff or the plaintiff's attorney or agent shall advise the court of any payments by the

defendant that result in a variance reducing the amount due the plaintiff as of the day of the hearing.

2. If the unlawful detainer summons served upon the defendant requests judgment for all amounts due as of the date of the hearing, the court shall permit amendment of the amount requested on the summons for unlawful detainer filed in court in accordance with the evidence and shall enter a judgment for such amount due as of the date of the hearing in addition to entering an order of possession for the premises.

3. In determining the amount due the plaintiff as of the date of the hearing, if the rental agreement or lease provides that rent is due and payable on the first of the month in advance for the entire month, at the request of the plaintiff or the plaintiff's attorney or agent, the amount due as of the date of the hearing shall include the rent due for the entire month in which the hearing is held, and rent shall not be prorated as of the actual court date. Otherwise, the rent shall be prorated as of the date of the hearing. However, nothing herein shall be construed to permit a landlord to collect rent in excess of the amount stated in such rental agreement or lease. If a money judgment has been granted for the amount due for the month of the hearing pursuant to this section and the landlord re-rents such dwelling unit and receives rent from a new tenant prior to the end of such month, the landlord is required to reflect the applicable portion of the judgment as satisfied pursuant to § 16.1-94.01.

Code 1950, § 8-791; 1954, c. 333; 1966, c. 436; 1968, c. 639; 1972, c. 397; 1975, c. 235; 1977, c. 617; 1978, c. 344; 1980, c. 502; 2000, c. 1055; 2008, cc. 551, 691; 2012, c. 788; 2013, c. 63; 2014, c. 168; 2015, c. 547.

§§ 8.01-127, 8.01-127.1. Repealed

Repealed by Acts 2007, c. 869, cl. 2.

§ 8.01-128. Verdict and judgment; damages

A. If it appears that the plaintiff was forcibly or unlawfully turned out of possession, or that it was unlawfully detained from him, the verdict or judgment shall be for the plaintiff for the premises, or such part thereof as may be found to have been so held or detained. The verdict or judgment shall also be for such damages as the plaintiff may prove to have been sustained by him by reason of such forcible or unlawful entry, or unlawful detention, of such premises, and such rent as he may prove to have been owing to him.

B. The plaintiff may, alternatively, receive a final, appealable judgment for possession of the property unlawfully entered or unlawfully detained and be issued a writ of possession, and continue the case for up to 120 days to establish final rent and damages. If the plaintiff elects to proceed under this section, the judge shall hear evidence as to the issue of possession on the initial court date and shall hear evidence on the final rent and damages at the hearing set on the continuance date, unless the plaintiff requests otherwise or the judge rules otherwise. Nothing in this section

shall preclude a defendant who appears in court at the initial court date from contesting an unlawful detainer action as otherwise provided by law.

If under this section an appeal is taken as to possession, the entire case shall be considered appealed. The plaintiff shall, in the instance of a continuance taken under this section, mail to the defendant at the defendant's last known address at least 15 days prior to the continuance date a notice advising of (i) the continuance date; (ii) the amounts of final rent and damages; and (iii) that the plaintiff is seeking judgment for additional sums. A copy of such notice shall be filed with the court.

C. No verdict or judgment rendered under this section shall bar any separate concurrent or future action for any such damages or rent as may not be so claimed.

Code 1950, § 8-793; 1954, c. 609; 1977, c. 617; 2005, c. 779; 2010, c. 550; 2011, c. 76; 2016, c. 281.

§ 8.01-129. Appeal from judgment of general district court

An appeal shall lie from the judgment of a general district court, in any proceeding under this article, to the circuit court in the same manner and with like effect and upon like security as appeals taken under the provisions of § 16.1-106 et seq. except as specifically provided in this section. The appeal shall be taken within 10 days and the security approved by the court from which the appeal is taken. Notwithstanding the provisions of § 16.1-106 et seq. the bond shall be posted and the writ tax paid within 10 days of the date of the judgment. Unless otherwise specifically provided in the court's order, no writ of execution shall issue on a judgment for possession until the expiration of this 10-day period, except in cases of judgment of default (i) wherein the case arises out of a trustee's deed following foreclosure, (ii) for the nonpayment of rent where the writ of execution shall issue immediately upon entry of judgment for possession, if requested by the plaintiff, or (iii) for immediate nonremediable terminations where the writ of execution shall issue immediately upon entry of judgment for possession, if requested by the plaintiff. When the appeal is taken by the defendant, he shall be required to give security also for all rent which has accrued and may accrue upon the premises, but for not more than one year's rent, and also for all damages that have accrued or may accrue from the unlawful use and occupation of the premises for a period not exceeding three months. Trial by jury shall be had upon application of any party.

Code 1950, § 8-794; 1950, p. 68; 1977, c. 617; 1984, c. 565; 1998, c. 750; 2004, c. 343; 2008, c. 489.

§ 8.01-130. Judgment not to bar action of trespass or ejectment

No judgment in an action brought under the provisions of this article shall bar any action of trespass or ejectment between the same parties, nor shall any such judgment or verdict be conclusive, in any such future action, of the facts therein found.

Code 1950, § 8-795; 1977, c. 617.

Article 14 - EJECTMENT

§ 8.01-131. Action of ejectment retained; when and by whom brought

A. The action of ejectment is retained, subject to the provisions hereinafter contained, and to the applicable Rules of Court.

B. Such action may be brought in the same cases in which a writ of right might have been brought prior to the first day of July, 1850, and by any person claiming real estate in fee or for life or for years, either as heir, devisee or purchaser, or otherwise.

Code 1950, §§ 8-796, 8-797; 1954, c. 333; 1977, c. 617.

§ 8.01-132. What interest and right plaintiff must have

No person shall bring such ejectment action unless he has, at the time of commencing it, a subsisting interest in the premises claimed and a right to recover the same, or to recover the possession thereof, or some share, interest or portion thereof.

Code 1950, § 8-799; 1977, c. 617.

§ 8.01-133. Who shall be defendants; when and how landlord may defend

The person actually occupying the premises and any person claiming title thereto or claiming any interest therein adversely to the plaintiff may also, at the discretion of the plaintiff, be named defendants in the action. If there be no person actually occupying the premises adversely to the plaintiff, then the action must be against some person exercising ownership thereon or claiming title thereto or some interest therein at the commencement of suit. If a lessee be made defendant at the suit of a party claiming against the title of his landlord such landlord may appear and be made a defendant with or in place of his lessee.

Code 1950, § 8-800; 1954, c. 333; 1977, c. 617.

§ 8.01-134. How action commenced and prosecuted

The action shall be commenced and prosecuted as other actions at law. The name of the real claimant shall be inserted as plaintiff, and all the provisions of law concerning a lessor of a plaintiff shall apply to such plaintiff.

Code 1950, § 8-801; 1977, c. 617.

§ 8.01-135. What is to be stated in motion for judgment

It shall be sufficient for the plaintiff to aver in his motion for judgment that on some day specified therein, which shall be after his title accrued, he was possessed of the premises claimed, and, being so possessed thereof, the defendant afterwards, on some day likewise specified, entered into such premises or exercised acts of ownership thereon or claimed title thereto or some interest therein, to the damage of the plaintiff in such sum as he shall state in his motion for judgment.

Code 1950, § 8-802; 1954, c. 333; 1977, c. 617.

§ 8.01-136. How premises described

The premises claimed shall be described in the motion for judgment with convenient certainty, so that, from such description, with the aid of information derived from the plaintiff, possession thereof may be delivered.

Code 1950, § 8-803; 1954, c. 333; 1977, c. 617.

§ 8.01-137. Plaintiff to state how he claims

The plaintiff shall also state whether he claims in fee or for his life, or the life of another, or for years, specifying such lives or the duration of such term, and when he claims an undivided share or interest he shall state the same.

Code 1950, § 8-804; 1977, c. 617.

§ 8.01-138. There may be several counts and several plaintiffs

The motion for judgment may contain several counts, and several parties may be named as plaintiffs jointly in one count and separately in others.

Code 1950, § 8-805; 1954, c. 333; 1977, c. 617.

§ 8.01-139. What proof by plaintiff is sufficient

The consent rule, formerly used, remains abolished. The plaintiff need not prove an actual entry on, or possession of, the premises demanded, or receipt of any profits thereof, or any lease, entry, or ouster, except as hereinafter provided. But it shall be sufficient for him to show a right to the possession of the premises at the time of the commencement of the suit.

Code 1950, § 8-809; 1977, c. 617.

§ 8.01-140. Effect of reservation in deed; burden of proof

In any action, suit or other judicial proceeding involving the title to land embraced in the exterior boundaries of any patent, deed or other writing, which reserves one or more parcels of land from the operation of such patent, deed or other writing, if there be no claim made by a party to the proceedings that the land in controversy, or any part thereof, lies within such reservation, such patent, deed or other writing shall be construed, and shall have the same effect, as if it contained no such reservation; and if any party to such proceeding claims that the land in controversy, or any part thereof, lies within such reservation, the burden shall be upon him to prove the fact, and all land not shown by a preponderance of the evidence to lie within such reservation shall be deemed to lie without the same.

This section shall apply in cases involving the right to the proceeds of any such land when condemned or sold, as well as in cases where the title to land is directly involved, and shall apply in any case in which the title to any part of the land, or its proceeds, but for this section, would or might be in this Commonwealth.

Code 1950, § 8-810; 1977, c. 617.

§ 8.01-141. When action by cotenants, etc., against cotenants, what plaintiff to prove

If the action be by one or more tenants in common, joint tenants or coparceners against their cotenants, the plaintiff shall be bound to prove actual ouster or some other act amounting to total denial of the plaintiff's right as cotenant.

Code 1950, § 8-811; 1977, c. 617.

§ 8.01-142. Verdict when action against several defendants

If the action be against several defendants, and a joint possession of all be proved, and the plaintiff be entitled to a verdict, it shall be against all, whether they pleaded separately or jointly.

Code 1950, § 8-812; 1977, c. 617.

§ 8.01-143. When there may be several judgments against defendants

If the action be against several defendants, and it appear on the trial that any of them occupy distinct parcels in severalty or jointly, and that other defendants possess other parcels in severalty or jointly, the plaintiff may recover several judgments against them, for the parcels so held by one or more of the defendants, separately from others.

Code 1950, § 8-813; 1977, c. 617.

§ 8.01-144. Recovery of part of premises claimed

The plaintiff may recover any specific or any undivided part or share of the premises, though it be less than he claimed in the motion for judgment.

Code 1950, § 8-814; 1954, c. 333; 1977, c. 617.

§ 8.01-145. When possession of part not possession of whole

In a controversy affecting real estate, possession of part shall not be construed as possession of the whole when an actual adverse possession can be proved.

Code 1950, § 8-815; 1977, c. 617.

§ 8.01-146. When vendee, etc., entitled to conveyance of legal title, vendor cannot recover

A vendor, or any claiming under him, shall not, at law any more than in equity, recover against a vendee, or those claiming under him, lands sold by such vendor to such vendee, when there is a writing, stating the purchase and the terms thereof, signed by the vendor or his agent and there has been such payment or performance of what was contracted to be paid or performed on the part of the vendee, as would in equity entitle him, or those claiming under him, to a conveyance of the legal title of such land from the vendor, or those claiming under him, without condition.

Code 1950, § 8-816; 1977, c. 617.

§ 8.01-147. When mortgagee or trustee not to recover

The payment of the whole sum, or the performance of the whole duty, or the accomplishment of the whole purpose, which any mortgage or deed of trust may have been made to secure or effect, shall prevent the grantee, or his heirs, from recovering at law, by virtue of such mortgage or deed

of trust, property thereby conveyed, whenever the defendant would in equity be entitled to a decree, revesting the legal title in him without condition.

Code 1950, § 8-817; 1977, c. 617.

§ 8.01-148. Right of defendant to resort to equity not affected

Whether the defendant shall or shall not make or attempt a defense under §§ 8.01-146 and 8.01-147, he shall not be precluded from resorting to equity for any relief to which he would have been entitled if such sections had not been enacted.

Code 1950, § 8-818; 1954, c. 333; 1977, c. 617.

§ 8.01-149. Verdict when jury finds for plaintiffs or any of them

If the jury be of opinion for the plaintiffs, or any of them, the verdict shall be for the plaintiffs, or such of them as appear to have right to the possession of the premises, or any part thereof, and against such of the defendants as were in possession thereof or claimed title thereto at the commencement of the action.

Code 1950, § 8-819; 1977, c. 617.

§ 8.01-150. Verdict when any plaintiff has no right

When any plaintiff appears to have no such right, the verdict as to such plaintiff shall be for the defendants.

Code 1950, § 8-820; 1977, c. 617.

§ 8.01-151. How verdict to specify premises recovered

When the right of the plaintiff is proved to all the premises claimed, the verdict shall be for the premises generally as specified in the motion for judgment, but if it be proved to only a part or share of the premises, the verdict shall specify such part particularly as the same is proved, and with the same certainty of description as is required in the motion for judgment.

Code 1950, § 8-821; 1954, c. 333; 1977, c. 617.

§ 8.01-152. How verdict to specify undivided interest or share

If the verdict be for an undivided share or interest in the premises claimed, it shall specify the same, and if for an undivided share or interest of a part of the premises, it shall specify such share or interest, and describe such part as before required.

Code 1950, § 8-822; 1977, c. 617.

§ 8.01-153. Verdict to specify estate of plaintiff

The verdict shall also specify the estate found in the plaintiff, whether it be in fee or for life, stating for whose life, or whether it be a term of years, and specifying the duration of such term.

Code 1950, § 8-823; 1977, c. 617.

§ 8.01-154. When right of plaintiff expires before trial, what judgment entered

If the right or title of a plaintiff in ejectment expire after the commencement of the suit, but before trial, the verdict shall be according to the fact, and judgment shall be entered for his damages sustained from the withholding of the premises by the defendant, and as to the premises claimed, the judgment shall be for the defendant.

Code 1950, § 8-824; 1977, c. 617.

§ 8.01-155. How judgment for plaintiff entered

The judgment for the plaintiff shall be, that he recover the possession of the premises, according to the verdict of the jury, if there be a verdict, or if the judgment be by default, or on demurrer, according to the description thereof in the motion for judgment.

Code 1950, § 8-825; 1954, c. 333; 1977, c. 617.

§ 8.01-156. Authority of sheriffs, etc., to store and sell personal property removed from premises; recovery of possession by owner; disposition or sale

In any county or city, when personal property is removed from premises pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from premises in order to restore such premises to the person entitled thereto, the sheriff shall oversee the removal of such personal property and it shall be placed in a storage area designated by the governing body of the county or city if such an area has been so designated, or, in the case of a manufactured home, at the request of the owner of the real property, to be placed into a storage area designated by the owner of the real property which may be the manufactured home lot or other location within the manufactured home park, unless the owner of such personal property then and there removes it from the public way. The sheriff and the owner of the real property shall not have any liability for the loss of any such manufactured home remaining on the manufactured home lot, nor shall they have any liability for the loss of any removed personal property.

The owner, before obtaining possession of such personal property so placed in a storage area shall pay to the parties entitled thereto the reasonable and necessary costs incidental to such removal and storage. Should such owner fail or refuse to pay such costs within 30 days from the date of placing the property in storage, the sheriff shall, after due notice to the owner and holders of liens of record, dispose of the property by publicly advertised public sale. The proceeds from such sale shall be used to pay all costs of removal, storage, and sale, all fees and liens, and the balance of such funds shall be paid to the person entitled thereto. Should the cost of removal and storage exceed the proceeds realized from such sale the county or city shall reimburse the sheriff for such excess, except that any such excess costs related to the disposal of a manufactured home shall be paid by the owner of the real property from which the manufactured home was removed. The sheriff, in his discretion, may refuse to remove or dispose of such manufactured home until the owner of the real property pays to the sheriff the estimated cost of such removal and disposition. Subsequent to disposition, the sheriff shall reimburse the owner to the extent the actual cost is less than the estimated cost, or shall request additional payment to the extent the actual cost exceeds the estimated cost.

Code 1950, § 8-825.1; 1964, c. 387; 1977, c. 617; 1992, c. 454; 1993, c. 16; 2005, c. 791; 2006, c. 129.

§ 8.01-157. Repealed

Repealed by Acts 1990, c. 831, effective January 1, 1991.

§ 8.01-158. How claim of plaintiff for profits and damages assessed

If the plaintiff file with his motion for judgment a statement of the profits and other damages which he means to demand, and the jury find in his favor, they shall, at the same time, unless the court otherwise order, assess the damages for mesne profits of the land for any period not exceeding five years previously to the commencement of the suit until the verdict, and also the damages for any destruction or waste of the buildings or other property during the same time for which the defendant is chargeable.

Code 1950, § 8-827; 1954, c. 333; 1977, c. 617.

§ 8.01-159. When court to assess damages

If there be no issue of fact tried in the cause, and judgment is to be rendered for the plaintiff on demurrer, or otherwise, such damages shall be assessed by the court, unless either party shall move to have them assessed by a jury, or the court shall think proper to have them so assessed, in which case a jury shall be impaneled to assess them. If the defendant is in default the court shall proceed to render judgment and assess damages as provided in Rule of Court 3:19.

Code 1950, § 8-828; 1954, c. 333; 1977, c. 617.

§ 8.01-160. Defendant to give notice of claim for improvements

If the defendant intends to claim allowance for improvements made upon the premises by himself or those under whom he claims, he shall file with his pleading a statement of his claim therefor, in case judgment be rendered for the plaintiff.

Code 1950, § 8-829; 1954, c. 333; 1977, c. 617.

§ 8.01-161. How allowed

In such case, the damages of the plaintiff, and the allowance to the defendant for improvements, shall be estimated, and the balance ascertained, and judgment therefor rendered, as prescribed in Article 15 (§ 8.01-166 et seq.) of this chapter.

Code 1950, § 8-830; 1977, c. 617.

§ 8.01-162. Postponement of assessment and allowance

On the motion of either party, the court may order the assessment of such damages and allowance to be postponed until after the verdict on the title is recorded.

Code 1950, § 8-831; 1977, c. 617.

§ 8.01-163. Judgment to be conclusive

Any such judgment in an action of ejectment shall be conclusive as to the title or right of possession established in such action, upon the party against whom it is rendered, and against all persons claiming from, through, or under such party, by title accruing after the commencement of such action, except as hereinafter mentioned.

Code 1950, § 8-832; 1977, c. 617.

§ 8.01-164. Recovery of mesne profits, etc., not affected

Nothing in this chapter shall prevent the plaintiff from recovering mesne profits, or damages done to the premises, from any person other than the defendant, who may be liable to such action.

Code 1950, § 8-834; 1977, c. 617.

§ 8.01-165. Writ of right, etc., abolished

No writ of right, writ of entry, or writ of formedon, shall be hereafter brought.

Code 1950, § 8-835; 1977, c. 617.

Article 15 - IMPROVEMENTS

§ 8.01-166. How defendant may apply therefor, and have judgment suspended

Any defendant against whom a decree or judgment shall be rendered for land, when no assessment of damages has been made under Article 14 (§ 8.01-131 et seq.) of this chapter, may, at any time before the execution of the decree or judgment, present a pleading to the court rendering such decree or judgment, stating that he, or those under whom he claims while holding the premises under a title believed by him or them to have been good, have made permanent improvements thereon, and moving that he should have an allowance for the same which are over and above the value of the use and occupation of such land; and thereupon the court may, if satisfied of the probable truth of the allegation, suspend the execution of the judgment or decree, and impanel a jury to assess the damages of the plaintiff, and the allowances to the defendant for such improvements.

Code 1950, § 8-842; 1977, c. 617.

§ 8.01-167. How damages of plaintiff assessed

The jury, in assessing such damages, either under this article or under Article 14 (§ 8.01-131 et seq.) of this chapter, shall determine the annual value of the premises during the time the defendant was in possession thereof, exclusive of the use by the tenant of the improvements thereon made by himself or those under whom he claims, and also the damages for waste or other injury to the premises committed by the defendant.

Code 1950, § 8-843; 1977, c. 617.

§ 8.01-168. For what time

The defendant shall not be liable for such annual value for any longer time than five years before the suit, or for damages for any such waste or other injury done before such five years, except when he claims for improvements as aforesaid.

Code 1950, § 8-844; 1977, c. 617.

§ 8.01-169. How value of improvements determined in favor of defendant

If the jury shall be satisfied that the defendant, or those under whom he claims, made on the premises, at a time when there was reason to believe the title good under which he or they were holding the same, permanent and valuable improvements, they shall determine the value of such improvements as were so made before receipt by the person making the same of notice in writing of the title under which the plaintiff claims, not exceeding the amount actually expended in making them, and not exceeding the amount to which the value of the premises is actually increased thereby at the time of such determination.

Code 1950, § 8-845; 1977, c. 617.

§ 8.01-170. If allowance for improvements exceed damages, what to be done

If the sum determined for the improvements exceed the damages determined by the jury against the defendant as aforesaid, they shall then determine against him, for any time before such five years, the rents and profits accrued against, or damage for waste or other injury done by him, or those under whom he claims, so far as may be necessary to balance his claim for improvements, but in such case he shall not be liable for the excess, if any, of such rents and profits, or damages, beyond the value of the improvements.

Code 1950, § 8-846; 1977, c. 617.

§ 8.01-171. Verdict for balance, after offsetting damages against improvements

After offsetting the damages assessed for the plaintiff and the allowances to the defendant for improvements, if any, the jury shall find a verdict for the balance for the plaintiff or defendant, as the case may be, and judgment or decree shall be entered therefor according to the verdict.

Code 1950, § 8-847; 1977, c. 617.

§ 8.01-172. Balance for defendant a lien on the land

Any such balance due to the defendant shall constitute a lien upon the land recovered by the plaintiff, until the same shall be paid.

Code 1950, § 8-848; 1977, c. 617.

§ 8.01-173. How tenant for life, paying for improvements, reimbursed

If the plaintiff claim only an estate for life in the land recovered, and pay any sum allowed to the defendant for improvements, he, or his personal representative at the determination of his estate, may recover from the remainderman or reversioner, the value of such improvements as they then exist, not exceeding the amount so paid by him, and shall have a lien therefor on the premises, in

like manner as if they had been mortgaged for the payment thereof, and may keep possession of such premises until the same be paid.

Code 1950, § 8-849; 1977, c. 617.

§ 8.01-174. Exception as to mortgagees and trustees

Nothing in this article, nor anything concerning rents, profits, and improvements, in Article 14 (§ 8.01-131 et seq.) of this chapter, shall extend or apply to any suit brought by a mortgagee, or trustee in a deed of trust to secure creditors, his heirs, or assigns, against a mortgagor or grantor in such deed of trust, his heirs, or assigns, for the recovery of the mortgaged premises or of the land conveyed by such deed of trust.

Code 1950, § 8-850; 1977, c. 617.

§ 8.01-175. When plaintiff may require his estate only to be valued; how determined; how he may elect to relinquish his title to defendant

A. When the defendant shall claim allowance for improvements, the plaintiff may, by an entry on the record, require that the value of his estate in the premises, without the improvements, shall also be ascertained.

B. The value of the premises in such case shall be determined as it would have been at the time of the inquiry, if no such improvements had been made, and shall be ascertained in the manner hereinbefore provided for determining the value of improvements.

C. The plaintiff in such case, if judgment is rendered for him, may at any time, enter on the record his election to relinquish his estate in the premises to the defendant at the value so ascertained under this section, and the defendant shall thenceforth hold all the estate that the plaintiff had therein at the commencement of the suit, provided he pay therefor such value, with interest, in the manner in which the court may direct.

Code 1950, §§ 8-851, 8-852, 8-853; 1977, c. 617.

§ 8.01-176. How payment of such value to be made by defendant; when land sold therefor

The payments shall be made to the plaintiff, or into court for his use, and the land shall be bound therefor, and if the defendant fail to make such payments within or at the times limited therefor respectively, the court may order the land to be sold and the proceeds applied to the payment of such value and interest, and the surplus, if any, to be paid to the defendant; but if the net proceeds be insufficient to satisfy such value and interest, the defendant shall not be bound for the deficiency.

Code 1950, § 8-854; 1977, c. 617.

§ 8.01-177. When such value to be deemed real estate

If the party by or for whom the land is claimed in the suit be a person under a disability, such value shall be deemed to be real estate, and be disposed of as the court may consider proper for the benefit of the persons interested therein.

Code 1950, § 8-855; 1977, c. 617.

§ 8.01-178. When and how defendant, if evicted, may recover from plaintiff amount paid
If the defendant or his heirs or assigns shall, after the premises are so relinquished to him, be evicted thereof by force of any better title than that of the original plaintiff, the person so evicted may recover from such plaintiff or his representative the amount so paid for the premises, as so much money had and received by such plaintiff in his lifetime for the use of such person, with lawful interest thereon from the time of such payment.

Code 1950, § 8-856; 1977, c. 617.

Article 16 - ESTABLISHING BOUNDARIES TO LAND

§ 8.01-179. Motion for judgment to establish boundary lines
Any person having a subsisting interest in real estate and a right to its possession, or to the possession of some share, interest or portion thereof, may file a motion for judgment to ascertain and designate the true boundary line or lines to such real estate as to one or more of the coterminous landowners. Plaintiff in stating his interest shall conform to the requirements of § 8.01-137, and shall describe with reasonable certainty such real estate and the boundary line or lines thereof which he seeks to establish.

Code 1950, § 8-836; 1954, c. 606; 1977, c. 617.

§ 8.01-180. Parties defendant; pleadings
The plaintiff shall make defendants to such motion for judgment all persons having a present interest in the boundary line or lines sought to be ascertained and designated.

Code 1950, § 8-837; 1954, c. 606; 1977, c. 617.

§ 8.01-181. Surveys
The court may appoint a surveyor and direct such surveys to be made as it deems necessary, and the costs thereof shall be assessed as the court may direct.

Code 1950, § 8-838; 1954, c. 606; 1977, c. 617.

§ 8.01-182. Claims to rents, etc., not considered
In a proceeding under this article, no claim of the plaintiff for rents, profits or damages shall be considered.

Code 1950, § 8-839; 1977, c. 617.

§ 8.01-183. Recordation and effect of judgment
The judgment of the court shall be recorded in the current deed book of the court. The judgment shall forever settle, determine, and designate the true boundary line or lines in question, between the parties, their heirs, devisees, and assigns. The judgment may be enforced in the same manner as a judgment in an action of ejectment.

Code 1950, § 8-840; 1977, c. 617.

Article 17 - DECLARATORY JUDGMENTS

§ 8.01-184. Power to issue declaratory judgments

In cases of actual controversy, circuit courts within the scope of their respective jurisdictions shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed and no action or proceeding shall be open to objection on the ground that a judgment order or decree merely declaratory of right is prayed for. Controversies involving the interpretation of deeds, wills, and other instruments of writing, statutes, municipal ordinances and other governmental regulations, may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right.

Code 1950, § 8-578; 1977, c. 617.

§ 8.01-184.1. Declaratory judgment to adjudicate constitutional nexus

A. Circuit courts shall have original jurisdiction over civil actions seeking declaratory judgment where:

1. The party seeking declaratory relief is a business that (i) is organized under the laws of the Commonwealth or a sole proprietorship owned by a Commonwealth domiciliary, or (ii) has qualified to do business in the Commonwealth; and

2. The responding party is a government official of another state, or political subdivision of another state, who asserts that the business in question is or was in the past obliged to collect sales or use taxes for such state or political subdivision based upon conduct of the business occurring wholly or partially within the Commonwealth.

B. Any business meeting the requirements and facing the circumstances described in subsection A shall be entitled to declaratory relief on the issue of whether the requirement of another state, or political subdivision of another state, that the business collect and remit sales or use taxes to that state, or political subdivision, in the factual circumstances of the business' operations giving rise to the demand, constitutes an undue burden on interstate commerce within the meaning of Article I, Section 8, Clause 3 of the United States Constitution.

C. Any government official meeting the requirements of subdivision A 2 shall be subject to the personal jurisdiction of Virginia circuit courts to the extent permitted by the Constitution of the United States. This subsection shall govern personal jurisdiction in actions under this section, and shall constitute authorization for purposes of § 8.01-330.

2004, cc. 609, 647; 2005, cc. 736, 800.

§ 8.01-185. Venue

The venue of actions seeking declarations of right with or without consequential relief shall be determined in accordance with provisions of Chapter 5 (§ 8.01-257 et seq.) of this title.

Code 1950, § 8-579; 1954, c. 333; 1977, c. 617.

§ 8.01-186. Further relief

Further relief based on a declaratory judgment order or decree may be granted whenever necessary or proper. The application shall be by motion to a court having jurisdiction to grant the relief. If the application is deemed sufficient the court shall, on reasonable notice, require an adverse party whose rights have been adjudicated by the declaration of right to show cause why further relief should not be granted forthwith.

Code 1950, § 8-581; 1977, c. 617.

§ 8.01-187. Commissioners or condemnation jurors to determine compensation for property taken or damaged

Whenever it is determined in a declaratory judgment proceeding that a person's property has been taken or damaged within the meaning of Article I, Section 11 of the Constitution of Virginia and compensation has not been paid or any action taken to determine the compensation within 60 days following the entry of such judgment order or decree, the court which entered the order or decree may, upon motion of such person after reasonable notice to the adverse party, enter a further order appointing commissioners or condemnation jurors to determine the compensation. The appointment of commissioners or condemnation jurors and all proceedings thereafter shall be governed by the procedure prescribed for the condemning authority. Notwithstanding the provisions of § 25.1-100, the date of valuation in actions pursuant to this section shall be the date determined by the court to be the date the property was taken or damaged.

Code 1950, § 8-581.1; 1968, c. 782; 1971, Ex. Sess., c. 1; 1977, c. 617; 2007, cc. 450, 720; 2010, c. 835; 2014, c. 618.

§ 8.01-188. Jury trial

When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.

Code 1950, § 8-582; 1977, c. 617.

§ 8.01-189. Injunction

The pendency of any action at law or suit in equity brought merely to obtain a declaration of rights or a determination of a question of construction shall not be sufficient grounds for the granting of any injunction.

Code 1950, § 8-583; 1977, c. 617.

§ 8.01-190. Costs

The costs, or such part thereof as the court may deem proper and just in view of the particular circumstances of the case, may be awarded to any party.

Code 1950, § 8-584; 1977, c. 617.

§ 8.01-191. Construction of article

This article is declared to be remedial. Its purpose is to afford relief from the uncertainty and insecurity attendant upon controversies over legal rights, without requiring one of the parties interested so to invade the rights asserted by the other as to entitle him to maintain an ordinary action therefor. It is to be liberally interpreted and administered with a view to making the courts more serviceable to the people.

Code 1950, § 8-585; 1977, c. 617.

Article 18 - RECOVERY OF CLAIMS AGAINST THE COMMONWEALTH OF VIRGINIA

§ 8.01-192. How claims to be prosecuted

When the Comptroller or other authorized person shall disallow, either in whole or in part, any such claim against the Commonwealth as is provided for by §§ 2.2-814, 2.2-815 or 8.01-605 at which time a right of action under this section shall be deemed to accrue, the person presenting such claim may petition an appropriate circuit court for redress.

Code 1950, § 8-752; 1966, c. 452; 1977, c. 617.

§ 8.01-193. Defense and hearing

In every such case, the Comptroller shall be a defendant. He shall file an answer stating the objections to the claim. The cause shall be heard upon the petition, answer, and the evidence.

Code 1950, § 8-753; 1977, c. 617.

§ 8.01-194. Jury may be impaneled; judgment

The court may, and on the motion of any party shall, cause a jury to be impaneled to ascertain any facts which are disputed, or the amount of any claim which is unliquidated.

Code 1950, § 8-754; 1977, c. 617.

§ 8.01-195. No judgment to be paid without special appropriation

No judgment against the Commonwealth, unless otherwise expressly provided, shall be paid without a special appropriation therefor by law.

Code 1950, § 8-756; 1977, c. 617.

Article 18.1 - TORT CLAIMS AGAINST THE COMMONWEALTH OF VIRGINIA

§ 8.01-195.1. Short title

This article shall be known and may be cited as the "Virginia Tort Claims Act."

1981, c. 449.

§ 8.01-195.2. Definitions

As used in this article:

"Agency" means any department, institution, authority, instrumentality, board or other administrative agency of the government of the Commonwealth of Virginia and any transportation

district created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and Chapter 630 of the 1964 Acts of Assembly.

"Employee" means any officer, employee or agent of any agency, or any person acting on behalf of an agency in an official capacity, temporarily or permanently in the service of the Commonwealth, or any transportation district, whether with or without compensation.

"School boards" as defined in § 22.1-1 are not state agencies nor are employees of school boards state employees.

"Transportation district" shall be limited to any transportation district or districts which have entered into an agreement in which the Northern Virginia Transportation District is a party with any firm or corporation as an agent to provide passenger rail services for such district or districts while such firm or corporation is performing in accordance with such agreement.

1981, c. 449; 1986, cc. 534, 584; 1991, c. 23 .

§ 8.01-195.3. Commonwealth, transportation district or locality liable for damages in certain cases

Subject to the provisions of this article, the Commonwealth shall be liable for claims for money only accruing on or after July 1, 1982, and any transportation district shall be liable for claims for money only accruing on or after July 1, 1986, on account of damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee while acting within the scope of his employment under circumstances where the Commonwealth or transportation district, if a private person, would be liable to the claimant for such damage, loss, injury or death. However, except to the extent that a transportation district contracts to do so pursuant to § 33.2-1919, neither the Commonwealth nor any transportation district shall be liable for interest prior to judgment or for punitive damages. The amount recoverable by any claimant shall not exceed (i) $25,000 for causes of action accruing prior to July 1, 1988, $75,000 for causes of action accruing on or after July 1, 1988, or $100,000 for causes of action accruing on or after July 1, 1993, or (ii) the maximum limits of any liability policy maintained to insure against such negligence or other tort, if such policy is in force at the time of the act or omission complained of, whichever is greater, exclusive of interest and costs.

Notwithstanding any provision hereof, the individual immunity of judges, the Attorney General, attorneys for the Commonwealth, and other public officers, their agents and employees from tort claims for damages is hereby preserved to the extent and degree that such persons presently are immunized. Any recovery based on the following claims are hereby excluded from the provisions of this article:

1. Any claim against the Commonwealth based upon an act or omission which occurred prior to July 1, 1982.

1a. Any claim against a transportation district based upon an act or omission which occurred prior to July 1, 1986.

2. Any claim based upon an act or omission of the General Assembly or district commission of any transportation district, or any member or staff thereof acting in his official capacity, or to the legislative function of any agency subject to the provisions of this article.

3. Any claim based upon an act or omission of any court of the Commonwealth, or any member thereof acting in his official capacity, or to the judicial functions of any agency subject to the provisions of this article.

4. Any claim based upon an act or omission of an officer, agent or employee of any agency of government in the execution of a lawful order of any court.

5. Any claim arising in connection with the assessment or collection of taxes.

6. Any claim arising out of the institution or prosecution of any judicial or administrative proceeding, even if without probable cause.

7. Any claim by an inmate of a state correctional facility, as defined in § 53.1-1, unless the claimant verifies under oath, by affidavit, that he has exhausted his remedies under the adult institutional inmate grievance procedures promulgated by the Department of Corrections. The time for filing the notice of tort claim shall be tolled during the pendency of the grievance procedure.

Nothing contained herein shall operate to reduce or limit the extent to which the Commonwealth or any transportation district, agency or employee was deemed liable for negligence as of July 1, 1982, nor shall any provision of this article be applicable to any county, city or town in the Commonwealth or be so construed as to remove or in any way diminish the sovereign immunity of any county, city or town in the Commonwealth.

1981, c. 449; 1982, c. 397; 1986, c. 584; 1988, c. 884; 1989, c. 446; 1993, c. 481; 1998, cc. 203, 820; 2007, c. 250.

§ 8.01-195.4. Jurisdiction of claims under this article; right to jury trial; service on Commonwealth or locality

The general district courts shall have exclusive original jurisdiction to hear, determine, and render judgment on any claim against the Commonwealth or any transportation district cognizable under this article when the amount of the claim does not exceed $4,500, exclusive of interest and any attorneys' fees. Jurisdiction shall be concurrent with the circuit courts when the amount of the claim exceeds $4,500 but does not exceed $25,000, exclusive of interest and such attorneys' fees. Jurisdiction of claims when the amount exceeds $25,000 shall be limited to the circuit courts of the Commonwealth. The parties to any such action in the circuit courts shall be entitled to a trial by jury.

In all actions against the Commonwealth commenced pursuant to this article, the Commonwealth shall be a proper party defendant, and service of process shall be made on the Attorney General.

The notice of claim shall be filed pursuant to § 8.01-195.6 on the Director of the Division of Risk Management or the Attorney General. In all such actions against a transportation district, the district shall be a proper party and service of process and notices shall be made on the chairman of the commission of the transportation district.

1981, c. 449; 1984, c. 698; 1986, c. 584; 1987, cc. 567, 674; 1989, cc. 121, 337; 1991, c. 23; 1992, cc. 111, 796; 2002, c. 645; 2005, c. 144; 2011, cc. 14, 702.

§ 8.01-195.5. Settlement of certain cases

The Attorney General shall have authority in accordance with § 2.2-514 to compromise and settle claims against the Commonwealth cognizable under this article.

The chairman of the commission for a transportation district against which a claim was filed pursuant to this article, or such other person as may be designated by the commission, shall have the authority to compromise, settle and discharge the claim provided (i) the proposed settlement and reasons therefor are submitted to the commission in writing and approved by its members or (ii) the settlement is made in accordance with a written policy approved by the transportation district commission for such settlements. The Director of the Division of Risk Management may adjust, compromise and settle claims against the Commonwealth cognizable under this article prior to the commencement of suit unless otherwise directed by the Attorney General.

1981, c. 449; 1986, c. 584; 1991, c. 23; 1992, c. 796 .

§ 8.01-195.6. Notice of claim

A. Every claim cognizable against the Commonwealth or a transportation district shall be forever barred unless the claimant or his agent, attorney or representative has filed a written statement of the nature of the claim, which includes the time and place at which the injury is alleged to have occurred and the agency or agencies alleged to be liable, within one year after such cause of action accrued. Failure to provide such statement shall not bar a claim against the Commonwealth or a transportation district, provided that (i) for claims against the Commonwealth, the Division of Risk Management or any insurer or entity providing coverage or indemnification of the claim or the Attorney General or (ii) for claims against a transportation district, the chairman of the commission of the transportation district, had actual knowledge of the claim, which includes the nature of the claim, the time and place at which the injury is alleged to have occurred, and the agency or agencies alleged to be liable, within one year after such cause of action accrued. However, if the claimant was under a disability at the time the cause of action accrued, the tolling provisions of § 8.01-229 shall apply.

B. If the claim is against the Commonwealth, the statement shall be filed with the Director of the Division of Risk Management or the Attorney General, except as otherwise provided herein. If the claim is against a transportation district, the statement shall be filed with the chairman of the commission of the transportation district. If the claim is against the Commonwealth and the agency alleged to be liable is the Department of Transportation, then notice of such claim shall be

filed with the Commissioner of Highways. If notice of such claim is filed with the Commissioner of Highways and is outside of any settlement authority delegated to the Department of Transportation by the Attorney General, then the Commissioner of Highways shall promptly deliver the notice of such claim to the Attorney General.

C. The notice is deemed filed when it is received in the office of the official to whom the notice is directed. The notice may be delivered by hand, by any form of United States mail service (including regular, certified, registered or overnight mail), or by commercial delivery service. If notice is to be filed with the Commissioner of Highways, it may also be delivered electronically in a manner prescribed by the Commissioner of Highways.

D. In any action contesting the filing of the notice of claim, the burden of proof shall be on the claimant to establish receipt of the notice in conformity with this section. A signed United States mail return receipt indicating the date of delivery, or any other form of signed and dated acknowledgment of delivery given by authorized personnel in the office of the official with whom the statement is filed, shall be prima facie evidence of filing of the notice under this section.

E. Claims against the Commonwealth involving medical malpractice shall be subject to the provisions of this article and to the provisions of Chapter 21.1 (§ 8.01-581.1 et seq.) of this title. However, the recovery in such a claim involving medical malpractice shall not exceed the limits imposed by § 8.01-195.3.

1981, c. 449; 1984, cc. 638, 698; 1986, c. 584; 1991, c. 23; 1992, c. 796; 2002, c. 207; 2007, c. 368; 2016, cc. 760, 772.

§ 8.01-195.7. Statute of limitations

Every claim cognizable against the Commonwealth or a transportation district under this article shall be forever barred, unless within one year after the cause of action accrues to the claimant the notice of claim required by § 8.01-195.6 is properly filed. An action may be commenced pursuant to § 8.01-195.4 (i) upon denial of the claim by the Attorney General or the Director of the Division of Risk Management or, in the case of a transportation district, by the chairman of the commission of that district or (ii) after the expiration of six months from the date of filing the notice of claim unless, within that period, the claim has been compromised and discharged pursuant to § 8.01-195.5. All claims against the Commonwealth or a transportation district under this article shall be forever barred unless such action is commenced within 18 months of the filing of the notice of claim, or within two years after the cause of action accrues.

The limitations periods prescribed by this section and § 8.01-195.6 shall be subject to the tolling provision of § 8.01-229 and the pleading provision of § 8.01-235. Additionally, claims involving medical malpractice in which the notice required by this section and § 8.01-195.6 has been given shall be subject to the provisions of § 8.01-581.9. Notwithstanding the provisions of this section, if notice of claim against the Commonwealth was filed prior to July 1, 1984, any claimant so filing

shall have two years from the date such notice was filed within which to commence an action pursuant to § 8.01-195.4.

1981, c. 449; 1984, cc. 638, 698; 1985, c. 514; 1986, c. 584; 1988, cc. 778, 801; 1992, c. 796; 2016, c. 772.

§ 8.01-195.8. Release of further claims

Notwithstanding any provision of this article, the liability for any claim or judgment cognizable under this article shall be conditioned upon the execution by the claimant of a release of all claims against the Commonwealth, its political subdivisions, agencies, and instrumentalities or against the transportation district, and against any officer or employee of the Commonwealth or the transportation district in connection with, or arising out of, the occurrence complained of.

1981, c. 449; 1986, c. 584; 1991, c. 23 .

§ 8.01-195.9. Claims evaluation program

The Division of Risk Management of the Department of the Treasury and the Attorney General shall develop cooperatively an actuarially sound program for identifying, evaluating and setting reserves for the payment of claims cognizable under this article.

1988, c. 644; 2000, cc. 618, 632.

Article 18.2 - COMPENSATION FOR WRONGFUL INCARCERATION FOR A FELONY CONVICTION

§ 8.01-195.10. Purpose; action by the General Assembly required; definitions

A. The purpose of this article is to provide directions and guidelines for the compensation of persons who have been wrongfully incarcerated in the Commonwealth. Compensation for wrongful incarceration is governed by Article IV, Section 14 of the Constitution of Virginia, which prohibits the General Assembly from granting relief in cases in which the courts or other tribunals may have jurisdiction and any individual seeking payment of state funds for wrongful incarceration shall be deemed to have waived all other claims. The payment and receipt of any compensation for wrongful incarceration shall be contingent upon the General Assembly appropriating funds for that purpose. This article shall not provide an entitlement to compensation for persons wrongfully incarcerated or require the General Assembly to appropriate funds for the payment of such compensation. No estate of or personal representative for a decedent shall be entitled to seek a claim for compensation for wrongful incarceration.

B. As used in this article:

"Incarceration" or "incarcerated" means confinement in a local or regional correctional facility, juvenile correctional center, state correctional facility, residential detention center, or facility operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.).

"Wrongful incarceration" or "wrongfully incarcerated" means incarceration for a felony conviction for which (i) the conviction has been vacated pursuant to Chapter 19.2 (§ 19.2-327.2 et seq.) or 19.3 (§ 19.2-327.10 et seq.) of Title 19.2, or the person incarcerated has been granted an absolute pardon for the commission of a crime that he did not commit, (ii) the person incarcerated must have entered a final plea of not guilty, or regardless of the plea, any person sentenced to death, or convicted of a Class 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life, and (iii) the person incarcerated did not by any act or omission on his part intentionally contribute to his conviction for the felony for which he was incarcerated.

2004, cc. 818, 840; 2010, cc. 496, 557.

§ 8.01-195.11. Compensation for wrongful incarceration

A. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth and is wrongfully incarcerated for such felony may be awarded compensation in an amount equal to 90 percent of the inflation adjusted Virginia per capita personal income as reported by the Bureau of Economic Analysis of the United States Department of Commerce for each year of incarceration, or portion thereof.

B. Any compensation computed pursuant to subsection A and approved by the General Assembly shall be paid by the Comptroller by his warrant on the State Treasurer in favor of the person found to have been wrongfully incarcerated. The person wrongfully incarcerated shall be paid an initial lump sum equal to 20 percent of the compensation award with the remaining 80 percent of the principal of the compensation award to be used by the State Treasurer to purchase an annuity from any A+ rated company, including any A+ rated company from which the Virginia Lottery may purchase an annuity, to provide equal monthly payments to such person for a period certain of 25 years commencing no later than one year after the effective date of the appropriation. The annuity shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages by the person awarded compensation. The annuity shall, however, contain beneficiary provisions providing for the annuity's continued disbursement in the event of the death of the person awarded compensation. All payments or costs of annuities under this section shall be made by check issued by the State Treasurer on warrant of the Comptroller.

C. Any person who is convicted of a felony by a county or city circuit court of the Commonwealth and is wrongfully incarcerated for such felony shall receive a transition assistance grant of $15,000 to be paid from the Criminal Fund, which amount shall be deducted from any award received pursuant to subsection B. In addition, such person shall be entitled to receive reimbursement up to $10,000 for tuition for career and technical training within the Virginia community college system contingent upon successful completion of the training. Reimbursement for tuition shall be provided by the community college at which the career or technical training was completed.

2004, cc. 818, 840; 2010, c. 557; 2012, c. 675; 2014, c. 225.

§ 8.01-195.12. Conditions for continued compensation

A. Any person awarded compensation under this article who is subsequently convicted of a felony shall, immediately upon such conviction, not be eligible to receive any unpaid amounts from any compensation awarded and his beneficiaries shall not be eligible to receive any payments under an annuity purchased pursuant to subsection B of § 8.01-195.11. Any unpaid amounts remaining under any annuity shall become the property of the Commonwealth and shall be deposited into the general fund of the state treasury.

A1. Any person awarded compensation under this article who is subsequently incarcerated upon the revocation of parole or probation resulting from the commission of an act that constitutes a crime shall, during the period of such incarceration, forfeit any payments under an annuity purchased pursuant to subsection B of § 8.01-195.11. Any forfeited amounts under any annuity shall become the property of the Commonwealth and shall be deposited into the general fund of the state treasury.

B. As a condition of receiving any compensation under this article, a person shall execute a release and waiver forever releasing (i) the Commonwealth or any agency, instrumentality, officer, employee, or political subdivision thereof, (ii) any legal counsel appointed pursuant to § 19.2-159, and (iii) all other parties of interest, from any present or future claims the person receiving compensation may have against such enumerated parties and arising out of the factual situation in connection with the conviction for which compensation is being sought under this article. In addition, the person receiving compensation shall not have been awarded a finally adjudicated judgment in a court of law against or received any funds pursuant to a settlement agreement with any person or entity described in this subsection for compensation or damages arising out of the factual situation in connection with the conviction.

2004, cc. 818, 840; 2010, c. 557.

Article 19 - ACTIONS BY THE COMMONWEALTH

§ 8.01-196. Comptroller to institute proceedings

The Comptroller shall institute and prosecute all proceedings proper to enforce payment of money to the Commonwealth.

Code 1950, § 8-758; 1977, c. 617.

§ 8.01-197. In what name; when not to abate

Any such action shall be in the name of the Commonwealth of Virginia except when it is on a bond payable to, or a contract made with, the Governor or some other person. And then it may be in the name of such Governor or other person for the use of the Commonwealth, notwithstanding such Governor or other person may have died, resigned, or been removed from office before the commencement of the action. And there shall be no abatement thereof, by reason of the death, resignation, or removal from office of any such plaintiff pending the action.

Code 1950, § 8-760; 1977, c. 617.

§ 8.01-198. Action, against whom instituted

Any such action may be instituted against any person indebted or liable to the Commonwealth in any way whatever, and against his sureties, and against his and their personal representatives. And it may be made when the debt or liability is created or secured by a bond or other instrument, whether the same be payable to the Commonwealth or to any person acting in a public character on behalf of the Commonwealth, or be for the payment of money or the performance of other duties. Every judgment on any such motion shall be in the name of the Commonwealth.

Code 1950, § 8-761; 1954, c. 550; 1977, c. 617.

§ 8.01-199. Judgment, nature of

On any such motion, the judgment shall be for so much principal and interest as would be recoverable by action. It may be also for fifteen per centum damages in addition thereto when the proceeding is against a treasurer, sheriff, or other collector, or his sureties, or his or their personal representatives, for taxes or other public money which ought to have been paid into the state treasury. In such proceeding, the court, in pronouncing judgment, may consider all the circumstances, and give judgment for the damages or not, or for such part of the damages, as it may deem proper.

Code 1950, § 8-762; 1977, c. 617.

§ 8.01-200. Mistakes against State corrected

After a debt to the Commonwealth shall have been paid, if it appear that an error or mistake has been committed to its prejudice, whether before or after the issuing of execution, a motion may be made on ten days' notice against any person liable for the debt, for the amount of such error or mistake, and judgment may be given therefor, without interest or damages thereon.

Code 1950, § 8-763; 1977, c. 617.

§ 8.01-201. Execution; real estate to be sold

In a writ of fieri facias upon a judgment or decree against any person indebted or liable to the Commonwealth, or against any surety of his, after the words "we command you that of the," the clerk shall insert the words "goods, chattels, and real estate," and conform the subsequent part of such writ thereto. And under any writ so issued, real estate may be taken and sold.

Code 1950, § 8-764; 1977, c. 617.

§ 8.01-202. Execution, to whom issued

An execution on behalf of the Commonwealth from the Circuit Court of the City of Richmond may, if the Comptroller see fit, be directed to any sheriff, of any political subdivision, and shall be served by any of such officers in whose hands the Comptroller may cause it to be placed.

Code 1950, § 8-765; 1977, c. 617.

§ 8.01-203. Goods and chattels liable before real estate

Every writ of fieri facias, issued according to § 8.01-201, shall be levied first on the goods and chattels of the person against whose estate such writ issued. If, in the political subdivision, the

residence of such person, there are no goods and chattels liable thereto, or not a sufficiency thereof, then the officer having such writ shall levy it on the real estate of such person.

Code 1950, § 8-766; 1977, c. 617.

§ 8.01-204. Notice of sale of real estate; when sale to be made

When a levy is so made upon real estate, the officer making it shall post notice thereof, and of the time and place of sale, at such public places as may seem to him expedient, and at the front door of the courthouse of the political subdivision in which the real estate is, on a court day. The time of selling real estate shall be not less than sixty nor more than ninety days from the time of posting the notice at the courthouse door. And the sale shall take place at the premises or at the door of the courthouse, as the officer may deem most advisable.

Code 1950, § 8-767; 1977, c. 617.

§ 8.01-205. How sale made

If the amount of the execution be not sooner paid, such officer shall proceed, on the day mentioned in the notice, to sell at public auction the interest of the party against whom the execution issued in the real estate or so much thereof as the officer may deem sufficient; and if a part only be sold it shall be laid off in one parcel in such place and manner as the debtor or his agent may direct or, if he give no direction, as the officer may deem best.

Code 1950, § 8-768; 1977, c. 617.

§ 8.01-206. Terms of sale

The sale shall be upon six months' credit; and if the land be not purchased for the Commonwealth, the officer shall take bond of the purchaser, with sureties, for the payment of the purchase money to the Commonwealth. Every such bond shall mention on what occasion the same was taken, and be returned to the office of the court from which the execution issued, and the clerk shall endorse thereon the date of its return.

Code 1950, § 8-769; 1977, c. 617.

§ 8.01-207. Who to collect purchase money and make deed; disposition of proceeds of sale

On or before the maturity of such bond the sheriff or other officer who made the sale shall withdraw the bond from the clerk's office, leaving his receipt therefor and an attested copy thereof, and collect the same. So soon as the purchase money has been paid, the sheriff or other principal officer, or the deputy who acted in making the sale, shall, as commissioner, and in the name of the Commonwealth, convey the land to the purchaser by deed executed at his costs, reciting the execution, the sale and the price of the land. Such deed shall pass to the purchaser all the interest which the party against whom the execution issued had in the land at the date of the judgment or decree. Out of the money so collected the sheriff or officer who made the sale shall pay all costs attending such execution and sale, the costs of a survey, if there was one, all delinquent and unpaid taxes and levies on such land and the debt due the Commonwealth, and the residue, if any, he shall pay to the judgment debtor.

Code 1950, § 8-770; 1977, c. 617.

§ 8.01-208. When successor of officer to make deed

When the officer and his deputy who acted in making the sale have both died or removed from the Commonwealth before making such deed, the same may be executed by any successor of such officer.

Code 1950, § 8-771; 1977, c. 617.

§ 8.01-209. Bond for purchase money to have force of judgment

When any bond taken under § 8.01-206 becomes payable and is returned to the office of the court from which the execution issued, it shall have the force of a judgment against such of the obligors therein as may be then alive. Execution may be issued thereon against them. And the same shall be proceeded under in like manner as an execution issued on such a judgment or decree as is mentioned in § 8.01-201, save only that the clerk shall endorse "no security is to be taken," and the officer shall govern himself accordingly and sell for ready money any real estate which he may levy on under the same.

Code 1950, § 8-772; 1977, c. 617.

§ 8.01-210. Judgment against deceased obligors

A judgment may be obtained against the survivors of a deceased obligor of a bond taken under the provisions of § 8.01-206 by an action at law against the personal representative of such obligor.

Code 1950, § 8-773; 1954, c. 550; 1977, c. 617.

§ 8.01-211. When venditioni exponas issued to sheriff of adjacent county; what to contain

When return is made on any execution on behalf of the Commonwealth that goods, chattels or real estate remain unsold for want of bidders, or to that effect, the clerk of the court from which such execution issued shall, when required by the Comptroller, issue a writ of venditioni exponas, directed to the sheriff of any county adjacent to that in which the levy was made that the Comptroller may designate. Such writ shall recite the execution under which the levy was made, the nature of such levy and return that the property remains unsold for the want of bidders and shall command the sheriff of such adjacent county, if the property remaining unsold be goods or chattels, to go into the county in which the levy was made and receive the same from the officer that made the levy and, whether the property be goods, chattels, or real estate, to sell the same.

Code 1950, § 8-774; 1977, c. 617.

§ 8.01-212. Officer to deliver to sheriff goods and chattels levied on

The officer who made the levy shall deliver the goods and chattels to the sheriff to whom such writ of venditioni exponas may be directed, upon such sheriff's producing to him such writ and executing a receipt for such goods and chattels. If the officer shall fail to deliver the same and return be made on such writ to that effect, the court from which it issued, upon motion, may give judgment

against him and his sureties for the whole sum that the execution amounted to at the time of such failure, with interest thereon from that time.

Code 1950, § 8-775; 1977, c. 617.

§ 8.01-213. Where same to be sold

The sheriff to whom such writ of venditioni exponas is directed, shall sell the goods and chattels in the county where received, if they can be sold therein, and if not he shall cause them to be removed to the courthouse of his own county and there sold. The removal shall be at the costs of the party against whom the execution issued, and the sale under the execution shall be to raise the cost of removal, in addition to the amount which it would otherwise have been necessary to raise.

Code 1950, § 8-776; 1977, c. 617.

§ 8.01-214. Where real estate to be sold

Such sheriff shall also sell the real estate levied on in the county wherein the levy was made, if it can be done, and if it cannot he shall make the sale at the courthouse of his own county.

Code 1950, § 8-777; 1977, c. 617.

§ 8.01-215. Return of officer when sale not made because of prior encumbrance

In any case in which an officer, having an execution on behalf of the Commonwealth, shall decline levying it because of any previous conveyance, execution, or encumbrance, a return shall be made setting forth the nature of such conveyance, execution or encumbrance, in whose favor, and for what amount, and the court in which the conveyance or encumbrance is recorded, or from which the execution issued.

Code 1950, § 8-778; 1977, c. 617.

§ 8.01-216. Comptroller's power to adjust old claims

The Comptroller, with the advice of the Attorney General, may adjust and settle upon equitable principles, without regard to strict legal rules, any doubtful or disputed account or claim in favor of the Commonwealth which may have been standing on the books of his office not less than two years, and may, with the like advice, dismiss any proceedings instituted by him; but before such adjustment or settlement can in any wise affect the rights of the Commonwealth it shall be approved and endorsed by the Attorney General and shall then be submitted to the supervision of the judge of the Circuit Court of the City of Richmond, accompanied by a written statement signed by the Comptroller of the facts and reasons which, in his opinion, render such adjustment or settlement just and proper. When such judge endorses the same with his written approval, signed in his official character, it shall be considered and treated as valid and binding.

Code 1950, § 8-779; 1977, c. 617.

Article 19.1 - VIRGINIA FRAUD AGAINST TAXPAYERS ACT

§ 8.01-216.1. Citation

This article may be cited as the Virginia Fraud Against Taxpayers Act.

2002, c. 842.

§ 8.01-216.2. Definitions

As used in this article, unless the context requires otherwise:

"Attorney General" means the Attorney General of Virginia, the Chief Deputy, other deputies, counsels or assistant attorneys general employed by the Office of the Attorney General and designated by the Attorney General to act pursuant to this article.

"Claim" means any request or demand, whether under a contract or otherwise, for money or property, regardless of whether the Commonwealth has title to the money or property, that (i) is presented to an officer, employee, or agent of the Commonwealth or (ii) is made to a contractor, grantee, or other recipient (a) if the money or property is to be spent or used on the Commonwealth's behalf or to advance a governmental program or interest and (b) if the Commonwealth provides or has provided any portion of the money or property requested or demanded or will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. For purposes of this article, "claim" does not include requests or demands for money or property that the Commonwealth has paid to an individual as compensation for employment with the Commonwealth or as income subsidy with no restriction on that individual's use of the money or property.

"Commonwealth" means the Commonwealth of Virginia, any agency of state government, and any political subdivision of the Commonwealth.

"Documentary material" means the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery.

"Employee" includes an employee or officer of the Commonwealth.

"Employer" includes the Commonwealth.

"Investigation" means any inquiry conducted by an investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of this article.

"Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

"Obligation" means an established duty, whether or not fixed, arising from (i) an express or implied contractual, grantor-grantee, or licensor-licensee relationship; (ii) a fee-based or similar relationship; (iii) a statute or regulation; or (iv) the retention of any overpayment.

"Official use" means any use that is consistent with the law, regulations, and policies of the Commonwealth, including use in connection with (i) internal memoranda and reports of the Office of the Attorney General; (ii) communications between the Office of the Attorney General and a federal, state, or local government agency, or a contractor of a federal, state, or local government agency, undertaken in furtherance of an Office of the Attorney General investigation or prosecution of a case; (iii) interviews of any qui tam relator or other witness; (iv) oral examinations; (v) depositions; (vi) the preparation for and response to civil discovery requests; (vii) the introduction into the record of a case or proceeding; (viii) applications, motions, memoranda, and briefs submitted to a court or other tribunal; and (ix) communications with government investigators, auditors, consultants, experts, the counsel of other parties, arbitrators, and mediators, concerning an investigation, case, or proceeding.

"Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business or trust.

"Product of discovery" means (i) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature; (ii) any digest, analysis, selection, compilation, or derivation of any item listed in clause (i); and (iii) any index or other manner of access to any item listed in clause (i).

2002, c. 842; 2011, cc. 651, 676.

§ 8.01-216.3. False claims; civil penalty

A. Any person who:

1. Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

2. Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

3. Conspires to commit a violation of subdivision 1, 2, 4, 5, 6, or 7;

4. Has possession, custody, or control of property or money used, or to be used, by the Commonwealth and knowingly delivers, or causes to be delivered, less than all such money or property;

5. Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Commonwealth and, intending to defraud the Commonwealth, makes or delivers the receipt without completely knowing that the information on the receipt is true;

6. Knowingly buys or receives as a pledge of an obligation or debt, public property from an officer or employee of the Commonwealth who lawfully may not sell or pledge the property; or

7. Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Commonwealth or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Commonwealth;

shall be liable to the Commonwealth for a civil penalty of not less than $5,500 and not more than $11,000, plus three times the amount of damages sustained by the Commonwealth.

A person violating this section shall be liable to the Commonwealth for reasonable attorney fees and costs of a civil action brought to recover any such penalties or damages. All such fees and costs shall be paid to the Attorney General's Office by the defendant and shall not be included in any damages or civil penalties recovered in a civil action based on a violation of this section.

B. If the court finds that (i) the person committing the violation of this section furnished officials of the Commonwealth responsible for investigating false claims violations with all information known to the person about the violation within 30 days after the date on which the defendant first obtained the information; (ii) such person fully cooperated with any Commonwealth investigation of such violation; (iii) at the time such person furnished the Commonwealth with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation; and (iv) the person did not have actual knowledge of the existence of an investigation into such violation, the court may assess not less than two times the amount of damages that the Commonwealth sustains because of the act of that person. A person violating this section shall also be liable to the Commonwealth for the costs of a civil action brought to recover any such penalty or damages.

C. For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information, (i) has actual knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity of the information; or (iii) acts in reckless disregard of the truth or falsity of the information and require no proof of specific intent to defraud.

D. This section shall not apply to claims, records or statements relating to state or local taxes.

2002, c. 842; 2004, c. 589; 2007, c. 569; 2011, c. 676.

§ 8.01-216.4. Attorney General; investigation, civil action

The Attorney General shall investigate any violation of § 8.01-216.3. If the Attorney General finds that a person has violated or is violating § 8.01-216.3, the Attorney General may bring a civil action under this section.

2002, c. 842.

§ 8.01-216.5. Civil actions filed by private persons; Commonwealth may intervene

A. A person may bring a civil action for a violation of § 8.01-216.3 for the person and for the Commonwealth. The action shall be brought in the name of the Commonwealth. The action may be dis-

missed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

B. A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Commonwealth. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The Commonwealth may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.

C. The Commonwealth may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any motion for judgment filed under this section until twenty-one days after the complaint is unsealed and served upon the defendant.

D. Before the expiration of the 120-day period or any extensions obtained under subsection C, the Commonwealth shall proceed with the action, in which case the action shall be conducted by the Commonwealth, or notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to prosecute the action.

E. When a person brings an action under this section, no person other than the Commonwealth may intervene or bring a related action based on the facts underlying the pending action.

2002, c. 842; 2007, c. 569.

§ 8.01-216.6. Rights of private plaintiff and Commonwealth

A. If the Commonwealth proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations of this section.

B. The Commonwealth may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Commonwealth of the filing of the complaint and the court has provided the person with an opportunity for a hearing on the complaint.

C. The Commonwealth may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera. The Commonwealth may, for good cause shown, move the court for a partial lifting of the seal to facilitate the investigative process or settlement.

D. Upon a showing by the Commonwealth that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Commonwealth's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as

(i) limiting the number of witnesses the person may call; (ii) limiting the length of the testimony of such witnesses; (iii) limiting the person's cross-examination of witnesses; and (iv) otherwise limiting the participation by the person in the litigation.

E. Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

F. If the Commonwealth elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Commonwealth so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the Commonwealth's expense. When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Commonwealth to intervene at a later date upon a showing of good cause.

G. Whether or not the Commonwealth proceeds with the action, upon a showing by the Commonwealth that certain actions of discovery by the person initiating the action would interfere with the Commonwealth's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the Commonwealth has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

H. Notwithstanding the provisions of subsection B of § 8.01-216.5, the Commonwealth may elect to pursue its claim through any alternate remedy available to the Commonwealth, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this article. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to a court of competent jurisdiction of the Commonwealth, if the time for filing an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

2002, c. 842; 2007, c. 569.

§ 8.01-216.7. Award to private plaintiff

A. Except as hereinafter provided, if the Commonwealth proceeds with an action brought by a person under § 8.01-216.5, such person shall receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the

action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor of Public Accounts' report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this section shall be made from the proceeds of the award. Any such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

B. If the Commonwealth does not proceed with an action, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent and not more than thirty percent of the proceeds of the award or settlement and shall be paid out of the proceeds. Such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

C. Whether or not the Commonwealth proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 8.01-216.3 upon which the action was brought, or if the person bringing the action is convicted of criminal conduct arising from his role in the violation of § 8.01-216.3, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the Commonwealth to continue the action.

D. If the Commonwealth does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

2002, c. 842.

§ 8.01-216.8. Certain actions barred; relief from employment discrimination; waiver of sovereign immunity

No court shall have jurisdiction over any action brought under this article by an inmate incarcerated within a state or local correctional facility as defined in § 53.1-1.

No court shall have jurisdiction over an action brought under this article against any department, authority, board, bureau, commission, or agency of the Commonwealth, any political subdivision of the Commonwealth, a member of the General Assembly, a member of the judiciary, or an exempt official if the action is based on evidence or information known to the Commonwealth when the action was brought. For purposes of this section, "exempt official" means the Governor,

Lieutenant Governor, Attorney General and the directors or members of any department, authority, board, bureau, commission or agency of the Commonwealth or any political subdivision of the Commonwealth.

In no event may a person bring an action under this article that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the Commonwealth is already a party.

The court shall dismiss an action or claim under § 8.01-216.5 unless opposed by the Commonwealth if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil or administrative hearing in which the Commonwealth or its agent is a party, in a Virginia legislative, administrative, or Auditor of Public Accounts' report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information. For purposes of this section, "original source" means an individual (i) who either prior to a public disclosure has voluntarily disclosed to the Commonwealth the information on which the allegations or transactions in a claim are based or (ii) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions and who has voluntarily provided the information to the Commonwealth before filing an action under this article.

Except as otherwise provided in this section, the Commonwealth shall not be liable for expenses a person incurs in bringing an action under this article.

Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under this article or other efforts to stop one or more violations of this article. Relief shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. Any relief awarded to an employee under this section shall be reduced by any amount awarded to the employee through a state or local grievance process. An action under this section may be brought in a court of competent jurisdiction for the relief provided in this section, but may not be brought more than three years after the date the discrimination occurred. This paragraph shall constitute a waiver of sovereign immunity and creates a cause of action by an employee against the Commonwealth if the Commonwealth is the employer responsible for the adverse employment action that would entitle the employee to the relief set forth in this paragraph.

2002, c. 842; 2011, cc. 651, 676; 2012, c. 479; 2014, c. 403.

§ 8.01-216.9. Procedure; statute of limitations

A subpoena requiring the attendance of a witness at a trial or hearing conducted under this article may be served at any place in the Commonwealth.

A civil action under § 8.01-216.4 or 8.01-216.5 may not be brought (i) more than six years after the date on which the violation is committed or (ii) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the Commonwealth charged with responsibility to act in the circumstances, but in that event no more than ten years after the date on which the violation is committed, whichever occurs last.

If the Commonwealth elects to intervene and proceed with an action brought under § 8.01-216.5, the Commonwealth may file its own complaint or amend the complaint of a person who has brought an action under § 8.01-216.5 to clarify or add detail to any claim in which the Commonwealth is intervening and to add any additional claim for which the Commonwealth contends it is entitled to relief. Any complaint filed by the Commonwealth pursuant to this paragraph shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Commonwealth arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in such person's complaint.

In any action brought under § 8.01-216.4 or 8.01-216.5, the Commonwealth shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Notwithstanding any other provision of law, a final judgment rendered in favor of the Commonwealth in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and which is brought under § 8.01-216.4 or 8.01-216.5.

2002, c. 842; 2007, c. 569; 2011, c. 676.

§ 8.01-216.10. Civil investigative demands; issuance; sharing information

A. Whenever the Attorney General or his designee has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General or his designee may, before commencing a civil proceeding or making an election under this article, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person (i) to produce such documentary material for inspection and copying, (ii) to answer in writing written interrogatories with respect to such documentary material or information, (iii) to give oral testimony concerning such documentary material or information, or (iv) to furnish any combination of such material, answers, or testimony.

B. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General shall cause to be served, in any manner authorized by this article, a copy of such

demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

C. Any information obtained by the Attorney General or his designee pursuant to this section may be shared with any qui tam relator and any state or federal governmental entity if the Attorney General or his designee determines that such information is necessary as part of any false claims investigation.

2002, c. 842; 2011, c. 676; 2012, c. 479.

§ 8.01-216.11. Civil investigative demands; contents and deadlines

Each civil investigative demand issued under this article shall state the nature of the conduct constituting the alleged violation of a false claims law that is under investigation, and the applicable provision of law alleged to be violated.

If such demand is for the production of documentary material, the demand shall (i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified; (ii) prescribe a return date for each such class that will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and (iii) identify the false claims law investigator to whom such material shall be made available.

If such demand is for answers to written interrogatories, the demand shall (i) set forth with specificity the written interrogatories to be answered; (ii) prescribe dates at which time answers to written interrogatories shall be submitted; and (iii) identify the false claims law investigator to whom such answers shall be submitted.

If such demand is for the giving of oral testimony, the demand shall (i) prescribe a date, time, and place at which oral testimony shall be commenced; (ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted; (iii) specify that such attendance and testimony are necessary to the conduct of the investigation; (iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and (v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry that will be taken pursuant to the demand.

Any civil investigative demand that is an express demand for any product of discovery shall not be returned or returnable until twenty-one days after a copy of such demand has been served upon the person from whom the discovery was obtained.

The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this article shall be a date that is not less than seven days after the date on which the demand is received, unless the Attorney General determines that exceptional cir-

cumstances are present that warrant the commencement of such testimony within a lesser period of time.

The Attorney General shall not authorize the issuance of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

2002, c. 842.

§ 8.01-216.12. Civil investigative demands; protected material or information

A civil investigative demand issued under this article shall not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under (i) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of this Commonwealth to aid in a grand jury investigation or (ii) the standards applicable to discovery requests under the Rules of the Supreme Court of Virginia, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this article.

Any such demand that is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law, other than this section, preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege that the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

2002, c. 842.

§ 8.01-216.13. Civil investigative demands; service and jurisdiction

Any civil investigative demand issued under this article may be served by an investigator, or by any person authorized to serve process on individuals in the Commonwealth.

Any such demand or any petition filed under this article may be served upon any person who is not found within Virginia in such manner as the Rules of the Supreme Court of Virginia or the Code of Virginia prescribe for service of process outside Virginia. To the extent that the courts of this Commonwealth can assert jurisdiction over any such person consistent with due process, the courts of this Commonwealth shall have the same jurisdiction to take any action respecting compliance with the provisions of this article by any such person that the court would have if such person were personally within the jurisdiction of the court.

Service of any civil investigative demand issued under this article or of any petition filed under this article may be made upon a partnership, corporation, association, or other legal entity by (i) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such

partnership, corporation, association, or entity; (ii) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or (iii) depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

Service of any such demand or petition may be made upon any natural person by (i) delivering an executed copy of such demand or petition to the person, or (ii) depositing an executed copy of such demand or petition in the United States mail by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

A verified return by the individual serving any civil investigative demand issued under this article or any petition filed under this article setting forth the manner of such service shall be proof of service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

2002, c. 842.

§ 8.01-216.14. Civil investigative demands; documentary material

The production of documentary material in response to a civil investigative demand served under this article shall be made under a sworn certificate, in such form as the demand designates, by (i) in the case of a natural person, the person to whom the demand is directed, or (ii) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the investigator identified in the demand.

Any person upon whom any civil investigative demand for the production of documentary material has been served shall make such material available for inspection and copying to the investigator identified in such demand at the principal place of business of such person, or at such other place as the investigator and the person thereafter may agree and prescribe in writing, or as the court may direct. Such material shall be made available on the return date specified in such demand, or on such later date as the investigator may prescribe in writing. Such person may, upon written agreement between the person and the investigator, substitute copies for originals of all or any part of such material.

2002, c. 842.

§ 8.01-216.15. Civil investigative demands; interrogatories

Each inquiry in a civil investigative demand served under this article shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by (i) in the case of a natural person, the person to whom the demand is

directed, or (ii) in the case of a person other than a natural person, the person or persons responsible for answering each inquiry. If any inquiry is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

2002, c. 842.

§ 8.01-216.16. Civil investigative demands; oral examinations

A. The examination of any person pursuant to a civil investigative demand for oral testimony served under this article shall be taken before an officer authorized to administer oaths under the laws of this Commonwealth or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the Attorney General. This section shall not preclude the taking of testimony by any means authorized by and in a manner consistent with the Rules of the Supreme Court of Virginia.

B. The investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Commonwealth, any person who may be agreed upon by the attorney for the Commonwealth and the person giving the testimony, the officer before whom the testimony is to be taken, and any court reporter taking such testimony.

C. The oral testimony of any person taken pursuant to a civil investigative demand served under this article shall be taken in the county or city within which such person resides, is found, or transacts business or in such other place as may be agreed upon by the investigator conducting the examination and such person.

D. When the testimony is fully transcribed, the investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance that the witness desires to make shall be entered and identified upon the transcript by the officer or the investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days after being afforded a reasonable

opportunity to examine it, the officer or the investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

E. The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the Attorney General.

F. Upon payment of reasonable charges therefor, the investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

G. Any person compelled to appear for oral testimony under a civil investigative demand may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the circuit court for an order compelling such person to answer such question. If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with applicable law.

H. Any person appearing for oral testimony under a civil investigative demand issued under this article shall be entitled to the same fees and allowances paid to witnesses in the circuit court.

2002, c. 842.

§ 8.01-216.17. Civil investigative demands; custodian of documents; answers

A. The Attorney General shall serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this article.

B. An investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the Attorney General. The Attorney General shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material.

C. The Attorney General may cause the preparation of such copies of documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any investigator, or other officer or employee of the Attorney General or employee of the Department of State Police. Such material, answers, and transcripts may be used by any authorized

investigator or other officer or employee in connection with the taking of oral testimony under this article.

D. Except as otherwise provided in this section, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the Attorney General, shall be available for examination by any individual other than an investigator or other officer or employee of the Attorney General or employee of the Department of State Police authorized by the Attorney General. The prohibition on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subsection is intended to prevent disclosure to the General Assembly, including any committee or subcommittee of the General Assembly, or to any other state agency for use by such agency in furtherance of its statutory responsibilities.

E. While in the possession of the Attorney General and under such reasonable terms and conditions as the Attorney General shall prescribe, (i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers, and (ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony or by a representative of that person authorized by that person to examine such transcripts.

F. Any attorney employed by the Office of the Attorney General designated to appear before any court, grand jury, or state agency in any case or proceeding may use any documentary material, answers to interrogatories, or transcripts of oral testimony in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered that have not passed into the control of the court, grand jury, or agency through introduction into the record of such case or proceeding.

G. If any documentary material has been produced by any person in the course of any investigation pursuant to a civil investigative demand under this article, and (i) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any state agency involving such material, has been completed, or (ii) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the Attorney General shall, upon written request of the person who produced such material, return to such person any material, other than copies furnished to the investigator, or made for the Attorney General that has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

2002, c. 842; 2011, c. 676.

§ 8.01-216.18. Civil investigative demands; judicial proceedings for noncompliance

A. Whenever any person fails to comply with any civil investigative demand issued under this article, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender the material, the Attorney General may file in the appropriate circuit court for the county or city in which such person resides, is found, or transacts business, and serve upon such person a petition for a court order for the enforcement of the civil investigative demand.

B. Any person who has received a civil investigative demand issued under this article may file, in the circuit court of any county or city within which such person resides, is found, or transacts business, and serve upon the investigator identified in such demand a petition for an order of the court to modify or set aside the demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the circuit court of the county or city in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this section shall be filed (i) within twenty-one days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or (ii) within such longer period as may be prescribed in writing by any investigator identified in the demand.

C. The petition shall specify each ground upon which the petitioner relies in seeking relief, and may be based upon any failure of the demand to comply with the provisions of this article or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

D. In the case of any civil investigative demand issued under this article that is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the circuit court of the county or city in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any investigator identified in the demand and upon the recipient of the demand a petition for a court order to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subsection shall be filed (i) within twenty-one days after the date of service of the civil investigative demand or at any time before the return date specified in the demand, whichever date is earlier, or (ii) within such longer period as may be prescribed in writing by any investigator identified in the demand.

E. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon any failure of the demand from which relief is sought to comply with the provisions of this article, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

F. At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given by any person in compliance with any civil investigative demand issued under this article, such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the circuit court of the county or city within which the office of such custodian is situated, and serve upon such custodian a petition for a court order to require the performance by the custodian of any duty imposed upon the custodian by this section. Whenever any petition is filed in any circuit court under this section, the court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal in the same manner as appeals of other final orders in civil matters. Any disobedience of any final order entered under this section by any court shall be punished as contempt of the court.

G. Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under this article shall be exempt from disclosure under the Virginia Administrative Process Act (§ 2.2-4000 et seq.).

2002, c. 842.

§ 8.01-216.19. Application of the Rules of the Supreme Court

The Rules of the Supreme Court of Virginia shall apply to all proceedings under this article, except when those Rules are inconsistent with this article.

2002, c. 842.

Article 20 - CHANGE OF NAME

§ 8.01-217. How name of person may be changed

A. Any person desiring to change his own name, or that of his child or ward, may apply therefor to the circuit court of the county or city in which the person whose name is to be changed resides, or if no place of abode exists, such person may apply to any circuit court which shall consider such application if it finds that good cause exists therefor under the circumstances alleged. An incarcerated person may apply to the circuit court of the county or city in which such person is incarcerated. In case of a minor who has no living parent or guardian, the application may be made by his next friend. In case of a minor who has both parents living, the parent who does not join in the application shall be served with reasonable notice of the application pursuant to § 8.01-296 and, should such parent object to the change of name, a hearing shall be held to determine whether the change of name is in the best interest of the minor. It shall not be necessary to effect service upon any parent who files an answer to the application. If, after application is made on behalf of a minor and an ex parte hearing is held thereon, the court finds by clear and convincing evidence that such notice would present a serious threat to the health and safety of the applicant, the court may waive such notice.

B. Every application shall be under oath and shall include the place of residence of the applicant, the names of both parents, including the maiden name of his mother, the date and place of birth of the applicant, the applicant's felony conviction record, if any, whether the applicant is a person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, whether the applicant is presently incarcerated or a probationer with any court, and if the applicant has previously changed his name, his former name or names.

C. On any such application and hearing, if such be demanded, the court, shall, unless the evidence shows that the change of name is sought for a fraudulent purpose or would otherwise infringe upon the rights of others or, in a case involving a minor, that the change of name is not in the best interest of the minor, order a change of name.

D. No application shall be accepted by a court for a change of name of a probationer, person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, or incarcerated person unless the court finds that good cause exists for consideration of such application under the reasons alleged in the application for the requested change of name. If the court accepts the application, the court shall mail or deliver a copy of the application to the attorney for the Commonwealth for the jurisdiction where the application was filed and the attorney for the Commonwealth for any jurisdiction in the Commonwealth where a conviction occurred that resulted in the applicant's probation, registration with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, or incarceration. The attorney for the Commonwealth where the application was filed shall be entitled to respond and represent the interests of the Commonwealth by filing a response within 30 days after the mailing or delivery of a copy of the application. The court shall conduct a hearing on the application and may order a change of name if, after receiving and considering evidence concerning the circumstances regarding the requested change of name, the court determines that the change of name (i) would not frustrate a legitimate law-enforcement purpose, (ii) is not sought for a fraudulent purpose, and (iii) would not otherwise infringe upon the rights of others. Such order shall contain written findings stating the court's basis for granting the order.

E. The provisions of subsection D are jurisdictional and any order granting a change of name pursuant to subsection D that fails to comply with any provision of subsection D is void ab initio. The attorney for the Commonwealth for the jurisdiction where such an application was filed has the authority to bring an independent action at any time to have such order declared void. If the attorney for the Commonwealth brings an independent action to have the order declared void, notice of the action shall be served upon the person who was granted a change of name who shall have 30 days after service to respond. If the person whose name was changed files a response objecting to having the order declared void, the court shall hold a hearing. If an order granting a change of name is declared void pursuant to this subsection, or if a person is convicted of perjury pursuant to § 18.2-434 for unlawfully changing his name pursuant to § 18.2-504.1 based on conduct that

violates this section, the clerk of the court entering the order or the order of conviction shall transmit a certified copy of the order to (i) the State Registrar of Vital Records, (ii) the Department of Motor Vehicles, (iii) the State Board of Elections, (iv) the Central Criminal Records Exchange, and (v) any agency or department of the Commonwealth that has issued a license to the person where such license utilizes the person's changed name, if known to the court and identified in the court order.

F. The order shall contain no identifying information other than the applicant's former name or names, new name, and current address. The clerk of the court shall spread the order upon the current deed book in his office, index it in both the old and new names, and transmit a certified copy of the order and the application to the State Registrar of Vital Records and the Central Criminal Records Exchange. Transmittal of a copy of the order and the application to the State Registrar of Vital Records and the Central Criminal Records Exchange shall not be required of a person who changed his or her former name by reason of marriage and who makes application to resume a former name pursuant to § 20-121.4.

G. If the applicant shall show cause to believe that in the event his change of name should become a public record, a serious threat to the health or safety of the applicant or his immediate family would exist, the chief judge of the circuit court may waive the requirement that the application be under oath or the court may order the record sealed and direct the clerk not to spread and index any orders entered in the cause, and a certified copy shall not be transmitted to the State Registrar of Vital Records or the Central Criminal Records Exchange. At such time as a name change order is received by the State Registrar of Vital Records, for a person born in the Commonwealth, together with a proper request and payment of required fees, the Registrar shall issue certifications of the amended birth record which do not reveal the former name or names of the applicant unless so ordered by a court of competent jurisdiction. Such certifications shall not be marked "amended" and show the effective date as provided in § 32.1-272. Such order shall set forth the date and place of birth of the person whose name is changed, the full names of his parents, including the maiden name of the mother and, if such person has previously changed his name, his former name or names.

Code 1950, § 8-577.1; 1956, c. 402; 1973, c. 401; 1976, c. 115; 1977, cc. 457, 617; 1979, cc. 599, 603, 612; 1980, cc. 448, 455; 1981, c. 297; 1983, c. 335; 1985, c. 483; 1991, c. 144; 2003, c. 258; 2005, c. 579; 2014, c. 232; 2015, c. 631.

Article 21 - MISCELLANEOUS PROVISIONS

§ 8.01-218. Replevin abolished

No action of replevin shall be hereafter brought.

Code 1950, § 8-647; 1977, c. 617.

§ 8.01-219. Effect of judgment in trover

A judgment for the plaintiff in an action of trover shall not operate to transfer the title to the property converted unless and until such judgment has been satisfied.

Code 1950, § 8-648; 1977, c. 617.

§ 8.01-219.1. Responsibility of possessor of real property for harm to trespasser

A. A possessor of real property, including an owner, lessee, or other lawful occupant, owes no duty of care to a trespasser except in those circumstances where a common-law right of action, statutory right of action, or judicial exception existed as of July 1, 2013.

B. This section does not affect any immunities from or defenses to liability established by another section of the Code or available at common law to which a possessor of real property may be entitled.

2013, c. 217.

§ 8.01-220. Action for alienation of affection, breach of promise, criminal conversation and seduction abolished

A. Notwithstanding any other provision of law to the contrary, no civil action shall lie or be maintained in this Commonwealth for alienation of affection, breach of promise to marry, or criminal conversation upon which a cause of action arose or occurred on or after June 28, 1968.

B. No civil action for seduction shall lie or be maintained where the cause of action arose or accrued on or after July 1, 1974.

Code 1950, § 20-37.2; 1968, c. 716; 1974, c. 606; 1977, c. 617.

§ 8.01-220.1. Defense of interspousal immunity abolished as to certain causes of action arising on or after July 1, 1981

The common-law defense of interspousal immunity in tort is abolished and shall not constitute a valid defense to any such cause of action arising on or after July 1, 1981.

1981, c. 451.

§ 8.01-220.1:1. Civil immunity for officers, partners, members, managers, trustees and directors of certain tax exempt organizations

A. Directors, partners, members, managers, trustees and officers of organizations exempt from income taxation under § 501(c) or § 528 of the Internal Revenue Code who serve without compensation shall be immune from civil liability for acts taken in their capacities as officers, partners, members, managers, trustees or directors of such organizations.

B. In any proceeding against a director, partner, member, manager, trustee or officer of an organization exempt from income taxation under § 501(c) or § 528 of the Internal Revenue Code who receives compensation, the damages assessed for acts taken in his capacity as an officer, partner, member, manager, trustee or director and arising out of a single transaction, occurrence or course of conduct shall not exceed the amount of compensation received by the officer, partner, member, manager, trustee or director during the 12 months immediately preceding the act or omission for

which liability was imposed. As used herein "compensation" shall mean payment for services over and above per diem and expenses.

C. The liability of an officer, partner, member, manager, trustee or director shall not be limited as provided in this section if the officer, partner, member, manager, trustee or director engaged in willful misconduct or a knowing violation of the criminal law or if liability derives from the operation of a motor vehicle, or from the violation of a fiduciary obligation imposed during the period of declarant control by § 55-79.74.

D. The immunity provided by this section shall survive any termination, cancellation, or other discontinuance of the organization.

1987, c. 637; 1988, c. 566; 2005, c. 255; 2011, cc. 693, 704.

§ 8.01-220.1:2. Civil immunity for teachers under certain circumstances

A. Any teacher employed by a local school board in the Commonwealth shall not be liable for any civil damages for any acts or omissions resulting from the supervision, care or discipline of students when such acts or omissions are within such teacher's scope of employment and are taken in good faith in the course of supervision, care or discipline of students, unless such acts or omissions were the result of gross negligence or willful misconduct.

B. No school employee or school volunteer shall be liable for any civil damages arising from the prompt good faith reporting of alleged acts of bullying or crimes against others to the appropriate school official in compliance with §§ 22.1-279.6 and 22.1-291.4 and specified procedures.

C. This section shall not be construed to limit, withdraw, or overturn any defense or immunity already existing in statutory or common law, to affect any claim occurring prior to the effective date of this law, or to prohibit any person subject to bullying or a criminal act from seeking redress under any other provision of law.

1997, cc. 349, 879; 2005, c. 462; 2013, c. 575.

§ 8.01-220.1:3. Immunity for members of church, synagogue or religious body

No member of any church, synagogue or religious body shall be liable in tort or contract for the actions of any officer, employee, leader, or other member of such church, synagogue or religious body solely because of his membership in such church, synagogue or religious body. Nothing in this section shall prevent any person from being held liable for his own actions.

1997, c. 480.

§ 8.01-220.1:4. Civil immunity for officers and directors of certain nonprofit organizations

A. Directors and officers of any entity created to ensure the implementation in the Commonwealth of a national tobacco trust established to provide payments to tobacco growers and tobacco quota owners to ameliorate adverse economic consequences resulting from a national settlement of states' claims against tobacco manufacturers shall be immune from civil liability for acts taken in their capacities as officers or directors of such entities.

B. The liability of an officer or director shall not be limited as provided in this section if the officer or director was grossly negligent or engaged in willful misconduct or a knowing violation of the criminal law.

2000, c. 1048.

§ 8.01-220.2. Spousal liability for medical care

Each spouse shall be jointly and severally liable for all emergency medical care furnished to the other spouse by a physician licensed to practice medicine in the Commonwealth or by a hospital located in the Commonwealth, including all follow-up inpatient care provided during the initial emergency admission to any such hospital, which is furnished while the spouses are living together. For the purposes of this section, emergency medical care shall mean any care the physician or other health care professional deems necessary to preserve the patient's life or health and which, if not rendered timely, can be reasonably anticipated to adversely affect the patient's recovery or imperil his life or health.

Any lien arising out of a judgment under this section against the judgment debtor's principal residence held as tenants by the entireties shall not be enforced unless the residence is refinanced or is transferred to a new owner.

1984, c. 482; 2009, c. 797; 2016, c. 240.

§ 8.01-221. Damages from violation of statute, remedy therefor and penalty

Any person injured by the violation of any statute may recover from the offender such damages as he may sustain by reason of the violation, even though a penalty or forfeiture for such violation be thereby imposed, unless such penalty or forfeiture be expressly mentioned to be in lieu of such damages. And the damages so sustained together with any penalty or forfeiture imposed for the violation of the statute may be recovered in a single action when the same person is entitled to both damages and penalty; but nothing herein contained shall affect the existing statutes of limitation applicable to the foregoing causes of action respectively.

Code 1950, § 8-652; 1954, c. 333; 1977, c. 617.

§ 8.01-221.1. Unestablished business damages; lost profits

Damages for lost profits of a new or unestablished business may be recoverable upon proper proof. A party shall not be deemed to have failed to prove lost profits because the new or unestablished business has no history of profits. Such damages for a new or unestablished business shall not be recoverable in wrongful death or personal injury actions other than actions for defamation.

2002, c. 624.

§ 8.01-221.2. Rescission; undue influence; attorney fees

In any civil action to rescind a deed, contract, or other instrument, the court may award to the plaintiff reasonable attorney fees and costs associated with bringing such action where the court

finds, by clear and convincing evidence, that the deed, contract, or other instrument was obtained by fraud or undue influence on the part of the defendant.

2014, c. 164.

§ 8.01-222. Repealed

Repealed by Acts 2007, c. 368, cl. 2.

§ 8.01-223. Lack of privity no defense in certain cases

In cases not provided for in § 8.2-318 where recovery of damages for injury to person, including death, or to property resulting from negligence is sought, lack of privity between the parties shall be no defense.

Code 1950, § 8-654.4; 1966, c. 439; 1977, c. 617.

§ 8.01-223.1. Use of constitutional rights

In any civil action the exercise by a party of any constitutional protection shall not be used against him.

1985, c. 192.

§ 8.01-223.2. Immunity of persons at public hearing

A person shall be immune from civil liability for a violation of § 18.2-499 or a claim of tortious interference with an existing contract or a business or contractual expectancy based solely on statements made by that person at a public hearing before the governing body of any locality or other political subdivision, or the boards, commissions, agencies and authorities thereof, and other governing bodies of any local governmental entity concerning matters properly before such body. The immunity provided by this section shall not apply to any statements made with knowledge that they are false, or reckless disregard for whether they are false.

Any person who has a suit against him dismissed pursuant to the immunity provided by this section may be awarded reasonable attorney fees and costs.

2007, c. 798; 2016, c. 239.

§ 8.01-224. Defense of governmental immunity not available to certain persons in actions for damages from blasting, etc

The defense of governmental immunity shall not be available to any person, firm or corporation in any cause of action for damages to the property of others proximately or directly resulting from blasting or the use of explosives in the performance of work for or on behalf of any governmental agency.

Code 1950, § 8-654.5; 1970, c. 642; 1977, c. 617.

§ 8.01-225. Persons rendering emergency care, obstetrical services exempt from liability

A. Any person who:

1. In good faith, renders emergency care or assistance, without compensation, to any ill or injured person (i) at the scene of an accident, fire, or any life-threatening emergency; (ii) at a location for screening or stabilization of an emergency medical condition arising from an accident, fire, or any life-threatening emergency; or (iii) en route to any hospital, medical clinic, or doctor's office, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such care or assistance. For purposes of this subdivision, emergency care or assistance includes the forcible entry of a motor vehicle in order to remove an unattended minor at risk of serious bodily injury or death, provided the person has attempted to contact a law-enforcement officer, as defined in § 9.1-101, a firefighter, as defined in § 65.2-102, emergency medical services personnel, as defined in § 32.1-111.1, or an emergency 911 system, if feasible under the circumstances.

2. In the absence of gross negligence, renders emergency obstetrical care or assistance to a female in active labor who has not previously been cared for in connection with the pregnancy by such person or by another professionally associated with such person and whose medical records are not reasonably available to such person shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care or assistance. The immunity herein granted shall apply only to the emergency medical care provided.

3. In good faith and without compensation, including any emergency medical services provider who holds a valid certificate issued by the Commissioner of Health, administers epinephrine in an emergency to an individual shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if such person has reason to believe that the individual receiving the injection is suffering or is about to suffer a life-threatening anaphylactic reaction.

4. Provides assistance upon request of any police agency, fire department, emergency medical services agency, or governmental agency in the event of an accident or other emergency involving the use, handling, transportation, transmission, or storage of liquefied petroleum gas, liquefied natural gas, hazardous material, or hazardous waste as defined in § 10.1-1400 or regulations of the Virginia Waste Management Board shall not be liable for any civil damages resulting from any act of commission or omission on his part in the course of his rendering such assistance in good faith.

5. Is an emergency medical services provider possessing a valid certificate issued by authority of the State Board of Health who in good faith renders emergency care or assistance, whether in person or by telephone or other means of communication, without compensation, to any injured or ill person, whether at the scene of an accident, fire, or any other place, or while transporting such injured or ill person to, from, or between any hospital, medical facility, medical clinic, doctor's office, or other similar or related medical facility, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment, or assistance, including but in no way limited to acts or omissions which involve violations of State Department of Health regulations or any other state regulations in the rendering of such emergency care or assistance.

6. In good faith and without compensation, renders or administers emergency cardiopulmonary resuscitation (CPR); cardiac defibrillation, including, but not limited to, the use of an automated external defibrillator (AED); or other emergency life-sustaining or resuscitative treatments or procedures which have been approved by the State Board of Health to any sick or injured person, whether at the scene of a fire, an accident, or any other place, or while transporting such person to or from any hospital, clinic, doctor's office, or other medical facility, shall be deemed qualified to administer such emergency treatments and procedures and shall not be liable for acts or omissions resulting from the rendering of such emergency resuscitative treatments or procedures.

7. Operates an AED at the scene of an emergency, trains individuals to be operators of AEDs, or orders AEDs, shall be immune from civil liability for any personal injury that results from any act or omission in the use of an AED in an emergency where the person performing the defibrillation acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances, unless such personal injury results from gross negligence or willful or wanton misconduct of the person rendering such emergency care.

8. Maintains an AED located on real property owned or controlled by such person shall be immune from civil liability for any personal injury that results from any act or omission in the use in an emergency of an AED located on such property unless such personal injury results from gross negligence or willful or wanton misconduct of the person who maintains the AED or his agent or employee.

9. Is an employee of a school board or of a local health department approved by the local governing body to provide health services pursuant to § 22.1-274 who, while on school property or at a school-sponsored event, (i) renders emergency care or assistance to any sick or injured person; (ii) renders or administers emergency cardiopulmonary resuscitation (CPR); cardiac defibrillation, including, but not limited to, the use of an automated external defibrillator (AED); or other emergency life-sustaining or resuscitative treatments or procedures that have been approved by the State Board of Health to any sick or injured person; (iii) operates an AED, trains individuals to be operators of AEDs, or orders AEDs; or (iv) maintains an AED, shall not be liable for civil damages for ordinary negligence in acts or omissions on the part of such employee while engaged in the acts described in this subdivision.

10. Is a volunteer in good standing and certified to render emergency care by the National Ski Patrol System, Inc., who, in good faith and without compensation, renders emergency care or assistance to any injured or ill person, whether at the scene of a ski resort rescue, outdoor emergency rescue, or any other place or while transporting such injured or ill person to a place accessible for transfer to any available emergency medical system unit, or any resort owner voluntarily providing a ski patroller employed by him to engage in rescue or recovery work at a resort not owned or operated by him, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such emergency care, treatment, or assistance, including but not limited to acts or omissions which involve violations of any state regulation or any standard of the National

Ski Patrol System, Inc., in the rendering of such emergency care or assistance, unless such act or omission was the result of gross negligence or willful misconduct.

11. Is an employee of (i) a school board, (ii) a school for students with disabilities as defined in § 22.1-319 licensed by the Board of Education, or (iii) a private school accredited pursuant to § 22.1-19 as administered by the Virginia Council for Private Education and is authorized by a prescriber and trained in the administration of insulin and glucagon, who, upon the written request of the parents as defined in § 22.1-1, assists with the administration of insulin or administers glucagon to a student diagnosed as having diabetes who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if the insulin is administered according to the child's medication schedule or such employee has reason to believe that the individual receiving the glucagon is suffering or is about to suffer life-threatening hypoglycemia. Whenever any such employee is covered by the immunity granted herein, the school board or school employing him shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such insulin or glucagon treatment.

12. Is a school nurse, an employee of a school board, an employee of a local governing body, or an employee of a local health department who is authorized by a prescriber and trained in the administration of epinephrine and who provides, administers, or assists in the administration of epinephrine to a student believed in good faith to be having an anaphylactic reaction, or is the prescriber of the epinephrine, shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment.

13. Is an employee of a school for students with disabilities, as defined in § 22.1-319 and licensed by the Board of Education, or an employee of a private school that is accredited pursuant to § 22.1-19 as administered by the Virginia Council for Private Education who is authorized by a prescriber and trained in the administration of epinephrine and who administers or assists in the administration of epinephrine to a student believed in good faith to be having an anaphylactic reaction, or is the prescriber of the epinephrine, shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment. Whenever any employee is covered by the immunity granted in this subdivision, the school shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from such administration or assistance.

14. Is an employee of a provider licensed by the Department of Behavioral Health and Developmental Services, or provides services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services, who has been trained in the administration of insulin and glucagon and who administers or assists with the administration of insulin or administers glucagon to a person diagnosed as having diabetes who requires insulin injections or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia

in accordance with § 54.1-3408 shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if the insulin is administered in accordance with the prescriber's instructions or such person has reason to believe that the individual receiving the glucagon is suffering or is about to suffer life-threatening hypoglycemia. Whenever any employee of a provider licensed by the Department of Behavioral Health and Developmental Services or a person who provides services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services is covered by the immunity granted herein, the provider shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such insulin or glucagon treatment.

15. Is an employee of a provider licensed by the Department of Behavioral Health and Developmental Services, or provides services pursuant to a contract with a provider licensed by the Department of Behavioral Health and Developmental Services, who has been trained in the administration of epinephrine and who administers or assists in the administration of epinephrine to a person believed in good faith to be having an anaphylactic reaction in accordance with the prescriber's instructions shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment.

16. In good faith prescribes, dispenses, or administers naloxone or other opioid antagonist used for overdose reversal in an emergency to an individual who is believed to be experiencing or about to experience a life-threatening opiate overdose shall not be liable for any civil damages for ordinary negligence in acts or omissions resulting from the rendering of such treatment if acting in accordance with the provisions of subsection X of § 54.1-3408 or in his role as a member of an emergency medical services agency.

B. Any licensed physician serving without compensation as the operational medical director for an emergency medical services agency that holds a valid license as an emergency medical services agency issued by the Commissioner of Health shall not be liable for any civil damages for any act or omission resulting from the rendering of emergency medical services in good faith by the personnel of such licensed agency unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any person serving without compensation as a dispatcher for any licensed public or nonprofit emergency medical services agency in the Commonwealth shall not be liable for any civil damages for any act or omission resulting from the rendering of emergency services in good faith by the personnel of such licensed agency unless such act or omission was the result of such dispatcher's gross negligence or willful misconduct.

Any individual, certified by the State Office of Emergency Medical Services as an emergency medical services instructor and pursuant to a written agreement with such office, who, in good faith and in the performance of his duties, provides instruction to persons for certification or recertification as a certified basic life support or advanced life support emergency medical services

provider shall not be liable for any civil damages for acts or omissions on his part directly relating to his activities on behalf of such office unless such act or omission was the result of such emergency medical services instructor's gross negligence or willful misconduct.

Any licensed physician serving without compensation as a medical advisor to an E-911 system in the Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering medical advice in good faith to establish protocols to be used by the personnel of the E-911 service, as defined in § 58.1-1730, when answering emergency calls unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any licensed physician who directs the provision of emergency medical services, as authorized by the State Board of Health, through a communications device shall not be liable for any civil damages for any act or omission resulting from the rendering of such emergency medical services unless such act or omission was the result of such physician's gross negligence or willful misconduct.

Any licensed physician serving without compensation as a supervisor of an AED in the Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering medical advice in good faith to the owner of the AED relating to personnel training, local emergency medical services coordination, protocol approval, AED deployment strategies, and equipment maintenance plans and records unless such act or omission was the result of such physician's gross negligence or willful misconduct.

C. Any communications services provider, as defined in § 58.1-647, including mobile service, and any provider of Voice-over-Internet Protocol service, in the Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering such service with or without charge related to emergency calls unless such act or omission was the result of such service provider's gross negligence or willful misconduct.

Any volunteer engaging in rescue or recovery work at a mine, or any mine operator voluntarily providing personnel to engage in rescue or recovery work at a mine not owned or operated by such operator, shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue or recovery work in good faith unless such act or omission was the result of gross negligence or willful misconduct. For purposes of this subsection, "Voice-over-Internet Protocol service" or "VoIP service" means any Internet protocol-enabled services utilizing a broadband connection, actually originating or terminating in Internet Protocol from either or both ends of a channel of communication offering real time, multidirectional voice functionality, including, but not limited to, services similar to traditional telephone service.

D. Nothing contained in this section shall be construed to provide immunity from liability arising out of the operation of a motor vehicle.

E. For the purposes of this section, "compensation" shall not be construed to include (i) the salaries of police, fire, or other public officials or personnel who render such emergency assistance; (ii)

the salaries or wages of employees of a coal producer engaging in emergency medical services or first aid services pursuant to the provisions of § 45.1-161.38, 45.1-161.101, 45.1-161.199, or 45.1-161.263; (iii) complimentary lift tickets, food, lodging, or other gifts provided as a gratuity to volunteer members of the National Ski Patrol System, Inc., by any resort, group, or agency; (iv) the salary of any person who (a) owns an AED for the use at the scene of an emergency, (b) trains individuals, in courses approved by the Board of Health, to operate AEDs at the scene of emergencies, (c) orders AEDs for use at the scene of emergencies, or (d) operates an AED at the scene of an emergency; or (v) expenses reimbursed to any person providing care or assistance pursuant to this section.

For the purposes of this section, "emergency medical services provider" shall include a person licensed or certified as such or its equivalent by any other state when he is performing services that he is licensed or certified to perform by such other state in caring for a patient in transit in the Commonwealth, which care originated in such other state.

Further, the public shall be urged to receive training on how to use CPR and an AED in order to acquire the skills and confidence to respond to emergencies using both CPR and an AED.

Code 1950, § 54-276.9; 1962, c. 449; 1964, c. 568; 1968, c. 796; 1972, c. 578; 1975, c. 508; 1977, c. 441; 1978, cc. 94, 707; 1979, cc. 713, 729; 1980, c. 419; 1983, c. 72; 1984, cc. 493, 577; 1987, cc. 260, 382; 1990, c. 898; 1996, c. 899; 1997, cc. 334, 809; 1998, cc. 493, 500; 1999, cc. 570, 1000; 2000, cc. 928, 1064; 2003, cc. 18, 978, 1020; 2005, c. 426; 2006, c. 780; 2008, c. 229; 2012, cc. 787, 833; 2013, cc. 183, 267, 300, 336, 617; 2014, c. 468; 2015, cc. 340, 387, 502, 503, 725, 732, 752; 2016, c. 144.

§ 8.01-225.01. Certain immunity for health care providers during disasters under specific circumstances

A. In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster by delivering health care to persons injured in such disaster shall be immune from civil liability for any injury or wrongful death arising from abandonment by such health care provider of any person to whom such health care provider owes a duty to provide health care when (i) a state or local emergency has been or is subsequently declared; and (ii) the provider was unable to provide the requisite health care to the person to whom he owed such duty of care as a result of the provider's voluntary or mandatory response to the relevant disaster.

B. In the absence of gross negligence or willful misconduct, any hospital or other entity credentialing health care providers to deliver health care in response to a disaster shall be immune from civil liability for any cause of action arising out of such credentialing or granting of practice privileges if (i) a state or local emergency has been or is subsequently declared and (ii) the hospital has followed procedures for such credentialing and granting of practice privileges that are consistent with the applicable standards of an approved national accrediting organization for granting emergency practice privileges.

C. For the purposes of this section:

"Approved national accrediting organization" means an organization granted authority by the Centers for Medicare and Medicaid Services to ensure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb).

"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and defined in § 44-146.16; and

"Health care provider" means those professions defined as such in § 8.01-581.1.

D. The immunity provided by this section shall be in addition to, and shall not be in lieu of, any immunities provided in other state or federal law, including, but not limited to, §§ 8.01-225 and 44-146.23.

2003, c. 507; 2008, cc. 121, 157; 2014, c. 320.

§ 8.01-225.02. Certain liability protection for health care providers during disasters

A. In the absence of gross negligence or willful misconduct, any health care provider who responds to a disaster shall not be liable for any injury or wrongful death of any person arising from the delivery or withholding of health care when (i) a state or local emergency has been or is subsequently declared in response to such disaster, and (ii) the emergency and subsequent conditions caused a lack of resources, attributable to the disaster, rendering the health care provider unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and which resulted in the injury or wrongful death at issue.

B. For purposes of this section:

"Disaster" means any "disaster," "emergency," or "major disaster" as those terms are used and defined in § 44-146.16; and

"Health care provider" has the same definition as provided in § 8.01-581.1.

2008, cc. 121, 157.

§ 8.01-225.1. Immunity for team physicians

Any physician, surgeon or chiropractor licensed to practice by the Board of Medicine in the Commonwealth who, in the absence of gross negligence or willful misconduct, renders emergency medical care or emergency treatment to a participant in an athletic event sponsored by a public, private or religious elementary, middle or high school while acting without compensation as a team physician, shall not be liable for civil damages resulting from any act or omission related to such care or treatment.

1989, c. 436; 1993, c. 702; 2005, c. 928.

§ 8.01-225.2. Immunity for those rendering emergency care to animals

Any person, including a person licensed to practice veterinary medicine, who in good faith and without compensation renders emergency care or treatment to an injured animal at the scene of

an emergency or accident shall not be liable for any injuries to such animals resulting from the rendering of such care or treatment.

1998, c. 669.

§ 8.01-225.3. Immunity for volunteer first responders en route to an emergency

Notwithstanding any other provision of law, no volunteer firefighter or volunteer emergency medical services personnel shall be liable for any injury to persons or property arising out of the operation of an emergency vehicle as defined in § 46.2-920 when such volunteer is en route to respond to a fire or to render emergency care or assistance to any ill or injured person at the scene of an accident, fire, or life-threatening emergency and the emergency vehicle displays warning lights as provided in § 46.2-1022 or 46.2-1023 and sounds a siren, exhaust whistle, or air horn, unless such injury results from gross negligence or willful or wanton misconduct. The immunity provided by this section shall be in addition to, not in lieu of, any other applicable immunity provided by state or federal law, including § 2.2-3605 or 27-6.02.

2015, c. 417.

§ 8.01-226. Duty of care to law-enforcement officers and firefighters, etc

An owner or occupant of real property containing premises normally open to the public shall, with respect to such premises, owe to firefighters, Department of Emergency Management hazardous materials officers, nonfirefighter regional hazardous materials emergency response team members, and law-enforcement officers who in the performance of their duties come upon that portion of the premises normally open to the public the duty to maintain the same in a reasonably safe condition or to warn of dangers thereon of which he knows or has reason to know, whether or not such premises are at the time open to the public.

An owner or occupant of real property containing premises not normally open to the public shall, with respect to such premises, owe the same duty to firefighters, Department of Emergency Management hazardous materials officers, nonfirefighter regional hazardous materials emergency response team members, and law-enforcement officers who he knows or has reason to know are upon, about to come upon or imminently likely to come upon that portion of the premises not normally open to the public.

While otherwise engaged in the performance of his duties, a law-enforcement officer, Department of Emergency Management hazardous materials officer, nonfirefighter regional hazardous materials emergency response team member, or firefighter shall be owed a duty of ordinary care.

For purposes of this section, the term "law-enforcement officers" shall mean only police officers, sheriffs and deputy sheriffs and the term "firefighter" includes (i) emergency medical personnel and (ii) special forest wardens designated pursuant to § 10.1-1135.

1987, c. 442; 1992, c. 731; 1996, cc. 646, 660; 2000, c. 962.

§ 8.01-226.1. Civil immunity when participating in Lawyers Helping Lawyers

Any person shall be immune from civil liability for, or resulting from, any act, decision, omission, communication, finding, opinion or conclusion made or conducted in connection with the investigation, intervention, counseling or monitoring of a lawyer, judge, paralegal, or other member of the legal profession by "Lawyers Helping Lawyers," a Virginia nonprofit, nonstock corporation dedicated to assisting members of the legal profession engaged in substance abuse or suffering from mental illness, if such act, decision, omission, communication, finding, opinion or conclusion is made or conducted in good faith and without malicious intent.

Nothing in this section shall be construed to grant immunity to any claim by a client against a person licensed to practice law.

1987, c. 527; 1992, c. 534; 2003, c. 571.

§ 8.01-226.2. Civil immunity for licensed professional engineers and licensed architects participating in rescue or relief assistance

Any licensed professional engineer or licensed architect who, in good faith and without charge or compensation, utilizes his professional skills in providing rescue or relief assistance at the scene of or in connection with a natural or man-made disaster or other life-threatening emergency, shall not be liable for any civil damages for acts or omissions on his part resulting from the rendering of such assistance or professional services in the absence of gross negligence or willful misconduct.

1992, c. 702; 1997, c. 866.

§ 8.01-226.3. Civil immunity for officers, directors and members of certain crime information-gathering organizations

Any officer, director or member of a nonprofit organization which, pursuant to a written agreement with a local government or a law-enforcement agency, regularly assists law-enforcement agencies by (i) publicly soliciting information from anonymous informants concerning criminal activity; (ii) gathering such information from informants; (iii) offering and paying rewards to informants for such information; and (iv) communicating such information to law-enforcement agencies, shall not be liable for any civil damages for acts or omissions on his part directly relating to his activities on behalf of such organization but only in the absence of gross negligence or willful misconduct.

1993, c. 769 .

§ 8.01-226.4. Civil immunity for hospice volunteers

Any individual who, in good faith, without compensation, and in the absence of gross negligence or willful misconduct, renders care to a terminally ill patient pursuant to a hospice program whose sole purpose is to provide care and treatment to terminally ill patients and whose services are equally available to all members of the community, shall not be liable for any civil damages for acts or omissions resulting from the rendering of such care.

1994, c. 738.

§ 8.01-226.5. Immunity for installers and inspectors of child restraint devices

Any person who has successfully met the minimum required training standards for installation of child restraint devices established by the National Highway Traffic Safety Administration of the United States Department of Transportation, who in good faith and without compensation installs, or inspects the installation of, a child restraint device shall not be liable for any damages resulting from an act or omission related to such installation or inspection, unless such act or omission was the result of the person's gross negligence or willful misconduct.

1999, c. 293.

§ 8.01-226.5:1. Civil immunity for school board employees supervising self-administration of certain medication

A. Any school principal or other employee of a school board who, in good faith, without compensation, and in the absence of gross negligence or willful misconduct, supervises the self-administration of inhaled asthma medications or auto-injectable epinephrine by a student, pursuant to § 22.1-274.2, shall not be liable for any civil damages for acts or omissions resulting from the supervision of self-administration of inhaled asthma medications or auto-injectable epinephrine by such student. Further, no such principal or school board employee shall be liable for any civil damages for any injuries or deaths resulting from the misuse of such auto-injectable epinephrine.

B. For the purposes of this section, "employee" shall include any person employed by a local health department who is assigned to a public school pursuant to an agreement between a local health department and a school board.

2000, c. 871; 2005, c. 785.

§ 8.01-226.5:2. Immunity of hospital and emergency medical services agency personnel for the acceptance of certain infants

Any personnel of a hospital or emergency medical services agency receiving a child under the circumstances described in the second paragraph of § 18.2-371, subdivision B 2 of § 18.2-371.1, or subsection B of § 40.1-103 shall be immune from civil liability or criminal prosecution for injury or other damage to the child unless such injury or other damage is the result of gross negligence or willful misconduct by such personnel.

2003, cc. 816, 822; 2015, cc. 502, 503.

§ 8.01-226.6. Repealed

Repealed by Acts 2007, c. 250, cl. 2.

§ 8.01-226.7. Owner and agent compliance with residential lead-based paint notification; maintenance immunity

A. As used in this section, the following definitions apply:

"Agent" means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing a residential dwelling. This term includes all persons licensed under Chapter 21 (§ 54.1-

2100 et seq.) of Title 54.1. This term does not apply to purchasers or any purchaser's representative who receives compensation from the purchaser.

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

"Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate federal or state agency.

"Lead-based paint maintenance" means ensuring that the painted surfaces are maintained in accordance with the provisions of the International Property Maintenance Code adopted as part of the Uniform Statewide Building Code.

"Residential dwelling" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, whether single family or multifamily.

B. Any agent who has complied with the requirements of the United States Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. § 4851 et seq.) shall not be liable for civil damages in any personal injury or wrongful death action for lead poisoning arising from the condition of a residential dwelling, provided that before the purchaser signs any contract to purchase the residential dwelling or the tenant signs any lease for an initial term to rent the residential dwelling:

1. An EPA-approved lead hazard information pamphlet was provided to the purchaser or lessee;

2. The agent disclosed to the lessee the presence of any known lead-based paint and/or lead-based paint hazards and any additional information or reports about which the agent had actual knowledge concerning the known lead-based paint or lead-based paint hazards;

3. The purchaser or tenant signed a written statement acknowledging the disclosure and receipt of the literature;

4. If the agent is a public housing authority, it has complied with all applicable federal laws and regulations. Nothing in this subdivision shall be construed to require compliance with the federal laws and regulations that are applicable to federal housing authorities by owners or agents who are not a public housing authority; and

5. The disclosure requirements in subsection B shall continue during the term of the tenancy for any new information in the possession of the agent or about which the agent has actual knowledge concerning the presence of lead-based paint or lead-based paint hazards. The agent shall make a written disclosure of any new information and provide the tenant with a copy of a summary thereof, advising the tenant that the full package of information and any report is available for inspection and copying if requested by the tenant.

However, if the agent is responsible for lead-based paint maintenance on the residential dwelling, the agent shall not be entitled to immunity unless the agent has also met the requirements of subsection C of this section. For purposes of subsection B, an agent is responsible for lead-based paint maintenance if the agent is a party to a written agreement that requires the agent to be responsible for the maintenance of the painted surfaces in accordance with the International Property Maintenance Code adopted as part of the Uniform Statewide Building Code.

C. An owner of a residential dwelling, or agent responsible for the lead-based paint maintenance of a residential dwelling, who has complied with the requirements of the United States Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. § 4851 et seq.) shall not be liable for civil damages in a personal injury or wrongful death action for lead poisoning arising from the condition of the residential dwelling, provided that before the purchaser signs any contract to purchase the residential dwelling, or the tenant signs any lease for an initial term to rent the residential dwelling:

1. An EPA-approved lead hazard information pamphlet was provided to the purchaser or lessee;

2. The owner or agent responsible for the lead-based paint maintenance of a residential dwelling disclosed to the lessee the presence of any known lead-based paint and/or lead-based paint hazards and any additional information or reports about which the owner or such agent had of their own actual knowledge concerning the known lead-based paint or lead-based paint hazards;

3. The purchaser or tenant signed a written statement acknowledging the disclosure and receipt of the literature;

4. With regards to lead-based paint and lead-based paint hazards, the painted surfaces of the residential dwelling were maintained in compliance with the International Property Maintenance Code of the Uniform Statewide Building Code; and

5. The disclosure requirements in subsection C shall continue during the term of the tenancy for any new information in the possession of the owner or about which the owner has actual knowledge concerning the presence of lead-based paint or lead-based paint hazards. Further, the disclosure requirements in subsection C shall continue during the term of the tenancy for any new information in the possession of such agent or about which such agent has actual knowledge concerning the presence of lead-based paint or lead-based paint hazards. The agent shall make a written disclosure of any new information and provide the tenant with a copy of a summary thereof, advising the tenant that the full package of information and any report is available for inspection and copying if requested by the tenant.

D. An owner or agent claiming immunity under this section may assert such immunity in responsive pleadings and request a hearing, after discovery on issues related to immunity, before the court to determine entitlement to such immunity prior to further proceedings in the case.

2000, c. 1071; 2006, c. 855; 2007, c. 255.

§ 8.01-226.8. Civil immunity for public officials and private volunteers participating in certain programs for probationers

Probation officers; court personnel; county, city and town personnel; any other public officials; and private volunteers who participate in a program where persons on probation or community service are ordered as a condition of probation or community service to pick up litter along a section of public roadway or waterway, to perform recycling duties at landfills, garbage transfer sites, and other waste disposal systems, to mow rights-of-way or to perform other landscaping maintenance tasks shall not be liable for any civil damages to a probationer or person on community service, or the property of such person, for acts or omissions resulting from such participation, unless such act or omission is the result of willful misconduct. The provisions of this section shall not be interpreted to grant any immunity to a driver transporting the persons on probation or community service or a motorist who, by his negligence, may injure such probationer or person on community service.

2004, cc. 387, 434; 2007, c. 182; 2008, c. 688.

§ 8.01-226.9. Exemption from civil liability in connection with arrest or detention of person suspected of shoplifting

A merchant, agent or employee of the merchant, who causes the arrest or detention of any person pursuant to the provisions of §§ 18.2-95, 18.2-96 or § 18.2-103, shall not be held civilly liable for unlawful detention, if such detention does not exceed one hour, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested or detained, whether such arrest or detention takes place on the premises of the merchant, or after close pursuit from such premises by such merchant, his agent or employee, provided that, in causing the arrest or detention of such person, the merchant, agent or employee of the merchant, had at the time of such arrest or detention probable cause to believe that the person had shoplifted or committed willful concealment of goods or merchandise. The activation of an electronic article surveillance device as a result of a person exiting the premises or an area within the premises of a merchant where an electronic article surveillance device is located shall constitute probable cause for the detention of such person by such merchant, his agent or employee, provided such person is detained only in a reasonable manner and only for such time as is necessary for an inquiry into the circumstances surrounding the activation of the device, and provided that clear and visible notice is posted at each exit and location within the premises where such a device is located indicating the presence of an antishoplifting or inventory control device. For purposes of this section, "electronic article surveillance device" means an electronic device designed and operated for the purpose of detecting the removal from the premises, or a protected area within such premises, of specially marked or tagged merchandise.

Code 1950, § 18.1-127; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 515; 1980, c. 149; 1985, c. 275, § 18.2-105; 2004, c. 462.

§ 8.01-226.10. Civil immunity for causing the arrest of a person for a bad check

If payment of any check, draft, or order for the payment of money is refused by the financial institution, trust company or other depository upon which such instrument is drawn, and the person who drew or uttered such instrument is arrested or prosecuted under the provisions of § 18.2-181 or § 18.2-182, for failure or refusal to pay such instrument, the one who arrested or caused such person to be arrested and prosecuted, or either, shall be conclusively deemed to have acted with reasonable or probable cause in any suit for damages that may be brought by the person who drew or uttered such instrument, if the one who arrested or caused such person to be arrested and prosecuted, or either, shall have, before doing so, presented or caused such instrument to be presented to the depository on which it was drawn where it was refused, and then waited five days after notice, as provided in § 18.2-183, without the amount due under the provisions of such instrument being paid.

2004, c. 462.

§ 8.01-226.11. Civil immunity for operation of victim notification program

The Virginia Sheriffs' Association and the Virginia Community Policing Institute, and the directors, managers, members, officers and employees of such entities shall be immune from civil liability for their acts or omissions relating to the establishment and operation of an automated victim notification system unless such act or omission was the result of gross negligence or willful misconduct.

2006, c. 267.

§ 8.01-226.12. Duty of landlord and managing agent with respect to visible mold

A. As used in this section, the following definitions apply:

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the rights and obligations as a tenant under the rental agreement.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, whether single family or multifamily, including, but not limited to, a manufactured home.

"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the dwelling unit, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner or lessor of the dwelling unit or the building of which such residential dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03.

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the United States Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

"Notice" means notice given in writing by either regular mail or hand delivery, with sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, or he received a verbal notice of it. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If a notice given is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment, or similar items.

"Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Visible evidence of mold" means the existence of mold in the residential dwelling unit that is visible to the naked eye of the landlord or tenant at the time of the move-in inspection.

Any term not expressly defined herein shall have the same meaning as those defined in § 55-248.4.

B. Neither the landlord nor the managing agent shall be liable for civil damages in any personal injury or wrongful death action brought by a tenant, authorized occupant, or guest or invitee for exposure to mold arising from the condition within the interior of a dwelling unit, or for any property damage claims arising out of the landlord-tenant relationship, if the mold condition is caused solely by the negligence of the tenant.

C. A managing agent with no maintenance responsibilities shall not be liable for civil damages in any personal injury or wrongful death action brought by the tenant, authorized occupant, or guest

or invitee for exposure to mold, or for any property damage claims arising out of the residential landlord-tenant relationship, unless the managing agent fails to disclose the existence of a mold condition of which the managing agent has actual knowledge to the landlord and any prospective or actual tenants.

D. If the written move-in inspection report authorized under Chapter 13 (§ 55-217 et seq.) or 13.2 (§ 55-248.2 et seq.) of Title 55 reflects that there is no visible evidence of mold in areas readily accessible within the interior of the dwelling unit, and the tenant does not object thereto in writing within five days after receiving the report, there shall be a rebuttable presumption that no mold existed at the time of the move-in inspection.

E. If visible evidence of mold occurs within the dwelling unit, the landlord or managing agent with the maintenance responsibilities shall, exercising ordinary care, perform mold remediation in accordance with professional standards.

F. The landlord or managing agent with maintenance responsibilities shall comply with any other applicable provisions of law.

2008, cc. 162, 341.

§ 8.01-226.13. Limited standing to seek injunctive relief against manufacturing companies

A. As used in this section:

"Manufacturing company" means a domestic or foreign corporation primarily engaged in activities that, in accordance with the North American Industrial Classification System (NAICS), United States Manual, United States Office of Management and Budget, 2012 Edition, would be included in Sector 31, 32, or 33.

"Public greenway" means any system of hiking, biking, or horseback riding trails established by a locality or political subdivision.

"Public park, recreational facility, or playground" means any such facility established by a locality pursuant to § 15.2-1806.

B. No action shall be initiated or maintained to enjoin the continued use and operation of a manufacturing company solely on the basis of the claimant's use of a public park, recreational facility, or playground or public greenway, when such manufacturing company existed prior to the creation of such public park, recreational facility, or playground, or public greenway.

C. This section shall not limit actions brought by the Commonwealth, a locality, or an entity designated pursuant to subdivision A 3 of § 15.2-1806.

2016, c. 669.

§ 8.01-227. Remedy by motion on certain bonds given or taken by officers; notice

The court in which any bond given or taken by an officer is required to be returned, filed or recorded, may, on motion of any person protected by such bond, give judgment in favor of such person

for such amount as he would be entitled by virtue of the bond to recover in an action at law. Any such motion shall be made after reasonable notice, not less than ten days, to the obligors on the bond. Service may be in any manner sufficient to support a judgment in personam.

Code 1950, §§ 8-140.1, 8-140.2; 1954, c. 546; 1977, c. 617.

Article 22 - YEAR 2000 LIABILITY AND DAMAGES

§§ 8.01-227.1 through 8.01-227.3. Repealed
Repealed by Acts 2007, c. 250, cl. 2.

Article 23 - DRUG DEALER LIABILITY ACT

§ 8.01-227.4. Definitions
As used in this article:

"Controlled substance" means a controlled substance as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

"Health care provider" means a health care provider as defined in § 8.01-581.1.

2002, c. 863.

§ 8.01-227.5. Persons who may bring action; persons against whom actions may be brought; damages recoverable
A. A parent or legal custodian may bring an action for damages incurred because of his child's unlawful use of a controlled substance while under the age of eighteen against a natural person age eighteen years or older who sold, administered, furnished or knowingly participated in the unlawful distribution of a controlled substance to the child.

B. A parent or legal custodian entitled to bring an action under this article may recover damages limited to physical and emotional pain and suffering, the cost of treatment and rehabilitation and medical expenses, proximately caused to the parent or legal custodian by the child's unlawful use of a controlled substance.

2002, c. 863.

§ 8.01-227.6. Law-enforcement officer or agency; health care provider not liable under certain conditions
A law-enforcement officer or agency shall not be liable under this article if acting in furtherance of an official investigation. A health care provider who in good faith and in compliance with state or federal law, sells, administers, furnishes or distributes a controlled substance shall not be liable under this article.

2002, c. 863.

§ 8.01-227.7. Statute of limitations

Every action brought pursuant to this article shall be commenced no later than two years after the child's eighteenth birthday.

2002, c. 863.

Article 24 - SPACE FLIGHT LIABILITY AND IMMUNITY ACT

§ 8.01-227.8. Definitions

For purposes of this section:

"Participant" means any space flight participant as that term is defined in 49 U.S.C. § 70102.

"Participant Injury" means any bodily injury, including death; emotional injury; or property damage sustained by the participant.

"Space flight activities" means launch services or reentry services as those terms are defined in 49 U.S.C. § 70102.

"Space flight entity" means any public or private entity holding, either directly or through a corporate subsidiary or parent, a license, permit, or other authorization issued by the United States Federal Aviation Administration pursuant to the Federal Space Launch Amendments Act (49 U.S.C. §70101 et seq.), including, but not limited to, a safety approval and a payload determination. "Space flight entity" shall also include any manufacturer or supplier of components, services, or vehicles that have been reviewed by the United States Federal Aviation Administration as part of issuing such a license, permit, or authorization.

2007, c. 893.

§ 8.01-227.9. Civil immunity for space flight entities

A. Except as provided in subsection B, a space flight entity is not liable for a participant injury resulting from the risks of space flight activities, provided that the participant has been informed of the risks of space flight activities as required by federal law pursuant to federal law and this article, and the participant has given his informed consent that he is voluntarily participating in space flight activities after having been informed of the risks of those activities as required by federal law and this article. Except as provided in subsection B, no (i) participant, (ii) participant's representative, including the heirs, administrators, executors, assignees, next of kin, and estate of the participant, or (iii) any person who attempts to bring a claim on behalf of the participant for a participant injury, is authorized to maintain an action against or recover from a space flight entity for a participant injury that resulted from the risks of space flight activities.

B. Nothing in subsection A shall prevent or limit the liability of a space flight entity if the space flight entity does either of the following:

1. Commits an act or omission that constitutes gross negligence evidencing willful or wanton disregard for the safety of the participant, and that act or omission proximately causes a participant injury; or

2. Intentionally causes a participant injury.

C. Any limitation on legal liability afforded by this section to a space flight entity is in addition to any other limitations of legal liability otherwise provided by law.

2007, c. 893.

§ 8.01-227.10. Warning required

A. Every space flight entity providing space flight activities to a participant shall have each participant sign the warning statement specified in subsection B.

B. The warning statement described in subsection A shall contain, at a minimum and in addition to any language required by federal law, the following statement:

"WARNING AND ACKNOWLEDGEMENT: I understand and acknowledge that, under Virginia law, there is no civil liability for bodily injury, including death, emotional injury, or property damage sustained by a participant in space flight activities provided by a space flight entity if such injury or damage results from the risks of the space flight activity. I have given my informed consent to participate in space flight activities after receiving a description of the risks of space flight activities as required by federal law pursuant to 49 U.S.C. § 70105 and 14 C.F.R. § 460.45. The consent that I have given acknowledges that the risks of space flight activities include, but are not limited to, risks of bodily injury, including death, emotional injury, and property damage. I understand and acknowledge that I am participating in space flight activities at my own risk. I have been given the opportunity to consult with an attorney before signing this statement."

C. Failure to comply with the requirements concerning the warning statement provided in this section shall prevent a space flight entity from invoking the privileges of immunity provided by this article.

2007, c. 893.

Article 25 - WINTER SPORTS SAFETY ACT

§ 8.01-227.11. Definitions

As used in this article, unless the context requires a different meaning:

"ANSI Ski Lift Code" means the American National Standard (B77.1-2006): Passenger Ropeways -- Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors -- Safety Requirements, as published by the American National Standards Institute, including any supplements thereto or revisions thereof.

"Competition" means any contest or event operated by a winter sports area operator or any other party authorized by the operator at a winter sports area involving comparison of skills, including, but not limited to, a ski race, mogul contest, jumping event, freestyle event, snowcross contest, or other similar contest or event. "Competition" includes training sessions or practice for a contest or event.

"Competition terrain" means any part of a winter sports area in which an operator has authorized a competition to take place.

"Competitor" means a winter sports participant who actually is engaged in a competition in any portion of a winter sports area made available by the winter sports area operator.

"Designated trail" means a winter sports area trail on which a participant is permitted by the operator to participate in a winter sport.

"Freestyle terrain" and "freestyle terrain park" means any portion of a winter sports area that has been designated as such by the operator for freestyle skiing, freestyle snowboarding, or similar freestyle winter sports and includes, but is not limited to, the terrain park itself and features such as rails, boxes, jumps, hits, jibs, tabletops, spines, ramps, banks, pipes, half-pipes, quarter-pipes, tables, logs, or other man-made features such as buses and other vehicles, propane tanks, and tractor tires; snowcross terrain and features; and other constructed or natural features, but does not include moguls, bumps, or rollers or jumps not built by the operator, unless they are within a designated freestyle terrain park.

"Freestyler" means a winter sports participant utilizing freestyle terrain or a freestyle terrain park.

"Helmet" means a type of molded headgear equipped with a neck or chin strap specifically designed by the manufacturer to be used while engaged in the winter sport of alpine skiing or snowboarding.

"Inherent risks of winter sports" or "inherent risks of the winter sport" include:

1. Existing and changing weather conditions and visibility;

2. Hazards associated with varying surface or subsurface conditions on a single trail or from one trail to another, including but not limited to hazards such as participant use, snow in any condition and changing snow conditions, man-made snow, synthetic snow, ice, synthetic ice, snow or ice falling from a tree or natural or man-made structure, crust, slush, soft spots, ridges, rollers, knobs, holes, grooves, tracks from winter sports area vehicles, bare spots, rocks, boulders, stumps, logs, and brush or other forest growth or debris, or piles thereof;

3. Variations in difficulty of terrain, whether natural or as a result of slope use, slope design, or both;

4. Trails that have, or fall away or drop off toward, natural or man-made obstacles or hazards, including but not limited to sharp corners, ridges, jumps, bumps, rollers, moguls, valleys, dips, compressions, cliffs, ravines, drop-offs, streams, rivers, ponds, lakes, stream beds, open water or water with thin ice, holes, steep, flat, and uphill sections, and all variants and combinations thereof;

5. The potential for collision with other participants or other individuals, including with winter sports area personnel, whether or not those personnel are on duty or off duty; with wild or

domestic animals; or with equipment or objects such as winter sports area infrastructure, snow-making equipment, buildings and posts, and stationary and moving lit or flagged winter sports area vehicles;

6. The potential for a participant to act in a negligent or reckless manner that may cause or contribute to the injury or death of the participant or other individuals or damage to property;

7. The location, construction, design, layout, configuration, and condition of trails, freestyle terrain, and competition terrain;

8. The fact that use of trails, freestyle terrain, and competition terrain and participation in or being near races or other competitions or events, including but not limited to as a participant, employee at a winter sports area, spectator, or observer, involves the risk of serious injury or death or damage to property;

9. The fact that a helmet may not afford protection in all instances and that failure to wear a helmet that is properly sized, fitted, and secured may increase the risk of injury or death or the risk of more severe injury; and

10. The fact that the use of passenger tramways may be hazardous to passengers, including but not limited to risks resulting from loading or unloading a tramway and the potential for a passenger to fall from a tramway.

"Operator" or "winter sports area operator" means any person who has responsibility for the operations of a winter sports area, including its officers, directors, and employees and agents acting within the scope of their employment.

"Participant" or "winter sports participant" means an individual of any age or physical or mental ability who is an amateur or professional invitee of the operator or a trespasser and who participates in a winter sport at the winter sports area, whether or not consideration is paid to participate in the winter sport and whether or not the participant holds a valid admission ticket for all or a portion of the winter sports area, and any employee of the operator who participates in a winter sport either as part of his employment duties or as recreation.

"Participates in a winter sport" or "participating in a winter sport" means:

1. Using a trail or other terrain at a winter sports area to engage in a winter sport;

2. Participating in training or lessons for a winter sport as either an instructor or a student;

3. Being a spectator, observer, bystander, or pedestrian of or to any activity on a trail or other terrain at or near a winter sports area; or

4. Being a passenger on a passenger tramway.

"Passenger" means any individual, including a winter sports participant, while being transported or conveyed by a passenger tramway, while waiting in the immediate vicinity for such transportation or conveyance, while moving away from the disembarkation or unloading point of a

passenger tramway to clear the way for the following passengers, or while boarding or embarking upon or unloading or disembarking from a passenger tramway.

"Passenger tramway" means any ski lift, chairlift, gondola, tramway, cable car, or other aerial lift and any rope tow, conveyor, t-bar, j-bar, handle tow, or other surface lift used by an operator to transport participants, spectators, observers, or pedestrians at a winter sports area, and any associated components including, but not limited to, lift towers, concrete tower foundations, tower bolts, tower ladders, lift terminals, chairs, gondolas, t-bars, j-bars, conveyors, and other structures relating to passenger tramways.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Snowmaking equipment" means any machine used to make snow, including but not limited to snow guns and any associated towers, components, pipe, hydrant, hose, or other structures or equipment, including electrical equipment.

"Trail" or "winter sports area trail" means any slope, trail, run, freestyle terrain, or competition terrain located in a winter sports area. "Trail" includes edges and transition areas to other terrain, but does not include a tubing park.

"Tubing" means sliding on inflatable tubes, minibobs, sleds, toboggans, or any other comparable devices down a prepared course or lanes at a winter sports area.

"Tubing park" means an area designated by an operator for tubing.

"Winter sport" means a recreational or sporting activity, including sliding, jumping, walking, or traveling on a winter sports area trail for alpine skiing; Nordic skiing; telemark skiing; freestyle skiing; snowboarding; freestyle snowboarding; snowshoeing; tobogganing; sledding; or use of a snowmobile, minibob, snowbike, or comparable device; or any similar activity or use of a device that takes place at any time of the year on natural snow, man-made snow, ice, synthetic snow, synthetic ice, or any other synthetic surface, including a competition or the use of any device by a disabled or adaptive participant for a winter sport. "Winter sport" does not include ice skating or tubing.

"Winter sports area" means all the real and personal property under control of the operator or on the premises of such property that is being occupied by the operator by fee simple, lease, license, easement, permission, or otherwise, including but not limited to any and all trails, freestyle terrain, competition terrain, passenger tramways, or other areas of real property. "Winter sports area" does not include a tubing park except for any passenger tramway serving a tubing park and the immediate vicinity of such a passenger tramway in which individuals embark upon or disembark from the passenger tramway.

"Winter sports area infrastructure" means:

1. Passenger tramways;

2. Snowmaking equipment;

3. Towers, buildings, shacks, fixtures, furniture, and other structures, including utility infrastructure, located on the winter sports area property; and

4. Signs, fences, ropes, flags, posts, poles, and any other materials or structures used for posting signs or to manage or direct winter sports participants, spectators, observers, or pedestrians or any combination thereof.

"Winter sports area vehicle" means a vehicle used on a winter sports area trail in the operation and maintenance of winter sports areas and competitions and includes, but is not limited to, snowmobiles, all-terrain vehicles, and any other similarly sized vehicles as well as larger maintenance vehicles such as snow grooming equipment.

2012, c. 713.

§ 8.01-227.12. Warnings and other winter sports area operator requirements

A. Each winter sports area operator shall include the following warning on each ticket, season pass, and written contract for professional services, instruction, or the rental of equipment to a winter sports participant and on each sign required by this subsection:

"WARNING: Under Virginia law, a ski area operator or other winter sports area operator is not liable for an injury to or death of a winter sports participant in a winter sport conducted at this location, or for damage to property, if such injury, death, or damage results from the inherent risks of the winter sport or from the participant's own negligence. The inherent risks of a winter sport include, among others, risks associated with the land, equipment, other participants, and animals, as well as the potential for you or another participant to act in a negligent manner that may contribute to the injury, death, or damage. You are assuming the inherent risks of participating in a winter sport at this location. Complete copies of the applicable Virginia law and the participant responsibility code published by the National Ski Areas Association are available for review at each ticket sales office of this winter sports area and online at [insert website for winter sports area]."

Every ticket, season pass, and written contract for professional services, instruction, or the rental of equipment to a participant shall contain the warning required by this subsection in clearly readable print. Every sign required by this section shall contain the warning required by this subsection in black letters, with each letter to be a minimum of one inch in height. An operator also may print on a ticket; season pass; written contract for professional services, instruction, or rental of equipment to a participant; or any sign required by this section any additional warning it deems appropriate. The warning required by this section does not constitute a preinjury contractual release and nothing in this section alters the common law of Virginia with regard to preinjury contractual releases.

B. Each operator shall install and maintain a sign containing the warning set forth in subsection A (i) at each designated ticketing office, (ii) at each front desk at each building or facility at which guests check in, (iii) at or near each ticket sales office of the winter sports area, and (iv) at, near, or en route to the loading area of each passenger tramway.

C. Each operator shall install and maintain at or near the beginning of each designated trail a sign that contains the name of the trail and any of the applicable difficulty-level words and emblems contained in this subsection, as determined by the operator. Directional arrows may be included on any sign, but shall be included if the sign is located at such a distance or position relative to the beginning of a trail that it would not be understandable by a reasonably prudent participant without directional arrows. As applicable, the signs shall indicate: (i) "Easiest" and include a green circle emblem, (ii) "More Difficult" and include a blue square emblem, (iii) "Most Difficult" and include a black diamond emblem, (iv) "Expert" or "Extreme Terrain" and include a two black diamond emblem, (v) "Freestyle Terrain" and include an orange oval emblem, or (vi) "Closed" and include a border around a black figure in the shape of a skier inside with a band running diagonally across the sign.

D. Each operator shall install and maintain at, near, or en route to the loading area for each passenger tramway that does not service trails that are designated by the operator as "Easiest" a sign that includes the following warning:

"WARNING. This lift does not service any trails that are designated Easiest (green circle emblem). All of the trails serviced by this lift are designated [as applicable, More Difficult (blue square emblem), Most Difficult (black diamond emblem), Expert (two black diamond emblem), or Freestyle Terrain (orange oval emblem)]."

E. Each operator shall install and maintain at, near, or en route to the entrance to each trail containing freestyle terrain a sign that indicates the location of the freestyle terrain. Each sign shall be denoted by an orange oval emblem, a stop sign emblem, and the statements "Freestyle skills required" and "Helmets are recommended." Each sign also may include any other freestyle warning the operator deems appropriate.

F. Whenever trail grooming or snowmaking operations are being undertaken, or trail grooming equipment is being operated, on a trail that is at that time open to the public, the operator shall place or cause to be placed a sign to that effect at the top or beginning of the trail.

G. An operator may vary from the specific location requirements required by this section provided that the location is substantially the same as the location required by this section and that the sign is plainly visible to a reasonably prudent winter sports participant abiding by all of the participant's duties and responsibilities.

H. Each operator shall make available, by oral or written report or otherwise, information concerning the daily conditions of its trails.

I. Each operator that offers a winter sport at nighttime shall meet the lighting standards for that winter sport provided by Illuminating Engineering Society of North America RP-6-01, Sports and Recreational Area Lighting § 6.24, including any supplements thereto or revisions thereof.

J. Each operator shall, upon request, provide (i) a freestyler who holds a valid admission ticket to the winter sports area's freestyle terrain a reasonable opportunity to view the freestyle terrain and (ii) a competitor who has properly registered for the competition a reasonable opportunity to visually inspect the portion of the winter sports area designated by the operator for the competition.

K. Each operator shall provide a ski patrol and first-aid services.

L. Each operator shall make available on the winter sports area's website and at each ticket sales office of the winter sports area for review by any winter sports participant, upon request, a copy of the participant responsibility code posted and available at each winter sports area and a copy of this article.

2012, c. 713.

§ 8.01-227.13. Winter sports area trail maps

Each operator, upon request, shall provide to a participant a trail map of all trails located in the operator's winter sports area. The maps shall be available at each ticket sales office and at other locations at the winter sports area such that the maps are easily accessible to participants. All trail maps shall indicate the skill-level designation for each trail at the winter sports area as designated in subsection C of § 8.01-227.12.

2012, c. 713.

§ 8.01-227.14. Freestyle terrain

In addition to providing the signage and warnings set forth in subsections C and E of § 8.01-227.12, an operator shall construct a barricade through use of fencing, flagging, or similar means at the entrance to any trail containing freestyle terrain. The barricade shall contain an entrance opening not wider than 30 feet.

2012, c. 713.

§ 8.01-227.15. Winter sports area vehicles

An operator shall install and maintain on or near the top of each winter sports area vehicle that is present on any designated trail of a winter sports area during the operating hours of any passenger tramway serving that trail a flashing or rotating light that flashes or rotates whenever the vehicle is on any such trail. An operator also shall install and maintain on any snowmobile, all-terrain vehicle, or any other similarly sized vehicle that is present on any designated trail during the operating hours of any passenger tramway serving that trail a red or orange flag that is at least 40 square inches in size and is mounted at least five feet from the bottom of the vehicle's tracks or tires.

2012, c. 713.

§ 8.01-227.16. Passenger tramways

A. Each operator shall be responsible for the safe operation and maintenance of each passenger tramway in its winter sports area whenever the tramway is in use, and for the safe construction of any passenger tramway that the operator constructed. At least once during each calendar year, each operator shall have all passenger tramways within the operator's winter sports area inspected by an individual who is qualified pursuant to Virginia law to inspect passenger tramways for compliance with the requirements of the ANSI Ski Lift Code and shall not operate a passenger tramway that is not in compliance until that passenger tramway is certified by such an individual as being in compliance. An operator's compliance with this inspection requirement does not by itself preclude potential liability on the part of the operator for any failure to operate or maintain a passenger tramway safely.

B. If a participant or a passenger using a passenger tramway at a winter sports area with the permission of the operator is unfamiliar with the use of a passenger tramway and asks for instruction on its use, the operator shall provide a reasonable opportunity for such instruction. In addition to the signs required by subsections A, B, and D of § 8.01-227.12, an operator shall install and maintain at or near the loading area for each passenger tramway in the winter sports area a sign stating that if a participant or other passenger is unfamiliar with the use of the passenger tramway and asks for instruction for its use, the operator will provide a reasonable opportunity for such instruction.

2012, c. 713.

§ 8.01-227.17. Duties and responsibilities of winter sports participants and certain other individuals

A. A winter sports participant has a duty and responsibility to:

1. Exercise reasonable care in engaging in winter sports at the winter sports area, including, but not limited to, the exercise of reasonable care in:

a. Participating in a winter sport at a winter sports area only on designated trails that are not marked "closed" and refraining from participating in a winter sport in any portion of a winter sports area that is not a designated trail or is marked "closed";

b. Knowing the range of his ability to participate in the winter sport in which he is participating and acting within the limits of that ability;

c. Being the sole judge of his knowledge of and ability to successfully negotiate any trail or passenger tramway and refraining from negotiating any trail or passenger tramway until obtaining sufficient knowledge and ability to do so;

d. Heeding and obeying all warnings, notices, and signs provided by an operator and not altering, defacing, removing, or destroying any such warning, notice, or sign;

e. Maintaining control of his speed and course at all times and maintaining a proper lookout so as to be able to avoid other participants and objects;

f. Staying clear of any winter sports area vehicle or infrastructure, other than when embarking on or disembarking from a passenger tramway or when present at or in a residential building or other building that is open to the public;

g. Wearing retention straps, ski brakes, or other devices to prevent runaway equipment;

h. Making a visual inspection of any winter sports area competition terrain and viewing any free-style terrain the participant intends to use;

i. Acting in a safe manner that will avoid contributing to the injury or death of himself or others or the damage to property, including refraining from participating in a winter sport when the participant's ability to do so safely is impaired by the consumption of alcohol or by the use of any narcotic or other drug or while under the influence of alcohol or any narcotic or other drug, or placing, fabricating, or shaping any object in a trail;

j. Embarking on a passenger tramway only with the authority of the operator;

k. Boarding or dismounting from a passenger tramway only at a designated area;

l. Acting in a manner while riding a passenger tramway that is consistent with posted rules and that will not interfere with the proper and safe operation of the passenger tramway;

m. Refraining from throwing or expelling any object while riding on a passenger tramway, and from placing an object on or about the uphill track, the entry area, or the exit area of any passenger tramway;

n. Crossing the uphill track of a passenger tramway only at designated locations; and

o. When involved in a winter sports collision or other accident involving another individual who the participant knows or reasonably should know is in need of medical or other assistance, obtaining assistance for that individual, notifying the proper authorities, and not leaving the scene of the collision or accident without giving the participant's personal identification, including his name and local and permanent address, to an employee or representative of the operator or to someone providing assistance to the individual, except for the purpose of obtaining assistance for the individual, in which case the participant shall give his personal identification to an employee or representative of the operator or to someone providing assistance to the individual after obtaining such assistance; and

2. When requested, provide his personal identification to an employee or representative of the winter sports area or operator.

B. Each passenger using a passenger tramway with the permission of an operator shall abide by and fulfill each duty and responsibility set forth in subsection A that is applicable to use of a passenger tramway.

C. Each participant, and each passenger using a passenger tramway with the permission of an operator, shall be deemed as a matter of law to have seen and understood all postings, signs, and other warnings provided by the winter sports area operator as required by this article.

D. An operator is entitled to assume that each passenger who boards a passenger tramway has sufficient knowledge, ability, and physical dexterity to embark upon, disembark from, and negotiate the passenger tramway. Any passenger who is unfamiliar with the use of a passenger tramway or who believes he does not have sufficient knowledge to embark upon, disembark from, and negotiate a passenger tramway shall ask the operator for instruction on such use or to provide such knowledge. Nothing in this article shall be construed to extend liability to an operator for injury to or death of a participant or other individual or damage to property resulting from a passenger who is unfamiliar with the use of a passenger tramway or believes he does not have sufficient knowledge to embark, disembark from, or negotiate a passenger tramway and does not ask the operator for instruction on such use or to provide such knowledge, or who does not have the ability or physical dexterity to embark upon, disembark from, or negotiate a passenger tramway.

E. Any individual who is not authorized by the operator to use or be present at the winter sports area shall be deemed a trespasser.

2012, c. 713.

§ 8.01-227.18. Helmets

Each winter sports participant, or the parent or legal guardian of, or adult acting in a supervisory position over, a participant under the age of 18, shall be responsible for determining whether the participant will wear a helmet and whether the helmet is sufficiently protective and properly sized, fitted, and secured.

Nothing in this article shall be construed to extend liability to an operator for injury to or death of a participant or other individual or damage to property resulting from a participant not wearing a helmet while participating in a winter sport.

2012, c. 713.

§ 8.01-227.19. Assumption of risks

A. A winter sports participant shall be presumed to have known the inherent risks of the winter sport in which he participates, to have fully appreciated the nature and extent of such risks, and to have voluntarily exposed himself to such risks, even if a particular risk was not specifically presented or stated to the participant by the operator. A passenger who uses a passenger tramway with the permission of an operator shall be presumed to have known the risks of winter sports that are applicable to the use of passenger tramways, to have fully appreciated the nature and extent of such risks, and to have voluntarily exposed himself to such risks, even if a particular risk was not specifically presented or stated to the individual by the operator. Such presumption may be rebutted by the participant or passenger by proving that the participant or passenger did not know the particular inherent risk of winter sports that proximately caused the injury or death or damage to

property at issue, did not fully appreciate the nature and extent of such risk, or did not voluntarily expose himself to such risk.

B. An operator's negligence is not an inherent risk of winter sports, and a participant or passenger is not presumed to have accepted the risk of such negligence and the injuries proximately caused therefrom.

C. In determining if the presumption set forth in subsection A applies in a particular case, whether a particular circumstance or set of circumstances constitutes an inherent risk of winter sports shall be a question of law, and whether the participant or passenger assumed the particular inherent risk of winter sports shall be a question of fact.

D. Nothing herein shall prevent a participant or passenger from offering evidence that he did not know the particular inherent risk of winter sports that proximately caused the injury or death or damage to property at issue, did not fully appreciate the nature and extent of such risk, or did not voluntarily expose himself to such risk.

2012, c. 713.

§ 8.01-227.20. Liability of winter sports area operator

A. A winter sports area operator shall be liable if the operator does any of the following:

1. Commits an act or omission related to a winter sport that constitutes negligence or gross negligence regarding the safety of an individual, or of property, and that act or omission proximately causes injury to or the death of the individual or damage to property; or

2. Recklessly, knowingly, or intentionally commits an act or omission related to a winter sport that proximately causes injury to or the death of a winter sports participant or other individual or damage to property.

B. No operator shall be liable and no individual or individual's representative may recover from an operator under subdivision A 1 or subsection C if the individual is found to have assumed the risk of his injury or death, or damage to property, pursuant to § 8.01-227.19 or if a proximate cause of the injury, death, or damage was his own negligence, provided that in any action for damages against an operator pursuant to subdivision A 1 or subsection C, the operator shall plead, as appropriate, the affirmative defense of (i) assumption of the risk by the individual, (ii) contributory negligence by the individual, or (iii) both assumption of the risk and contributory negligence.

C. A winter sports area operator shall not be considered a common carrier under Virginia law but shall be liable for any injury to or death of an individual or damage to property caused by the operator's failure to operate a passenger tramway in a reasonable manner or to comply with any mandatory provision of the ANSI Ski Lift Code.

D. The liability of a winter sports area operator to another individual who is not authorized by the operator to use or be present at the winter sports area shall be only the liability for the duty owed under Virginia law to a trespasser.

2012, c. 713.

§ 8.01-227.21. Common law regarding minors

Nothing in this article shall abrogate Virginia common law regarding either (i) the capacity of a minor to be contributorily negligent or to assume a risk or (ii) the standard for measuring the conduct of a minor.

2012, c. 713.

§ 8.01-227.22. Failure to fulfill duty or responsibility not negligence per se

An operator's or participant's failure to abide by or fulfill a duty or responsibility under this article shall not constitute negligence per se.

2012, c. 713.

§ 8.01-227.23. Applicability of article

Any liabilities and presumptions pursuant to this article apply only with regard to actions or potential actions between an operator and a participant or passenger. This article has no applicability to actions between a participant or passenger and any other person.

2012, c. 713.

Chapter 4 - LIMITATIONS OF ACTIONS

Article 1 - IN GENERAL

§ 8.01-228. Scope of limitations; "personal action" defined

Every action for which a limitation period is prescribed by law must be commenced within the period prescribed in this chapter unless otherwise specifically provided in this Code. As used in this chapter, the term "personal action" shall include an action wherein a judgment for money is sought, whether for damages to person or property.

1977, c. 617.

§ 8.01-229. Suspension or tolling of statute of limitations; effect of disabilities; effect of death; injunction; prevention of service by defendant; dismissal, nonsuit or abatement; devise for payment of debts; new promises; debts proved in creditors' suits

A. Except as otherwise specifically provided in §§ 8.01-237, 8.01-241, 8.01-242, 8.01-243, 8.01-243.1 and other provisions of this Code,

1. If a person entitled to bring any action is at the time the cause of action accrues an infant, except if such infant has been emancipated pursuant to Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1, or incapacitated, such person may bring it within the prescribed limitation period after such disability is removed; or

2. After a cause of action accrues,

a. If an infant becomes entitled to bring such action, the time during which he is within the age of minority shall not be counted as any part of the period within which the action must be brought except as to any such period during which the infant has been judicially declared emancipated; or

b. If a person entitled to bring such action becomes incapacitated, the time during which he is incapacitated shall not be computed as any part of the period within which the action must be brought, except where a conservator, guardian or committee is appointed for such person in which case an action may be commenced by such conservator, committee or guardian before the expiration of the applicable period of limitation or within one year after his qualification as such, whichever occurs later.

For the purposes of subdivisions 1 and 2, a person shall be deemed incapacitated if he is so adjudged by a court of competent jurisdiction, or if it shall otherwise appear to the court or jury determining the issue that such person is or was incapacitated within the prescribed limitation period.

3. If a convict is or becomes entitled to bring an action against his committee, the time during which he is incarcerated shall not be counted as any part of the period within which the action must be brought.

B. The death of a person entitled to bring an action or of a person against whom an action may be brought shall toll the statute of limitations as follows:

1. If a person entitled to bring a personal action dies with no such action pending before the expiration of the limitation period for commencement thereof, then an action may be commenced by the decedent's personal representative before the expiration of the limitation period including the limitation period as provided by subdivision E 3 or within one year after his qualification as personal representative, whichever occurs later.

2. a. If a person against whom a personal action may be brought dies before the commencement of such action and before the expiration of the limitation period for commencement thereof then a claim may be filed against the decedent's estate or an action may be commenced against the decedent's personal representative before the expiration of the applicable limitation period or within one year after the qualification of such personal representative, whichever occurs later.

b. If a person against whom a personal action may be brought dies before suit papers naming such person as defendant have been filed with the court, then such suit papers may be amended to substitute the decedent's personal representative as party defendant before the expiration of the applicable limitation period or within two years after the date such suit papers were filed with the court, whichever occurs later, and such suit papers shall be taken as properly filed.

3. Upon the death of any person in whose favor or against whom an action for recovery of realty, or a proceeding for enforcement of certain liens relating to realty, may be brought, such right of

action shall accrue to or against his successors in interest as provided in Article 2 (§ 8.01-236 et seq.).

4. If a personal cause of action against a decedent accrues subsequent to his death, an action may be brought against the decedent's personal representative or a claim thereon may be filed against the estate of such decedent before the expiration of the applicable limitation period or within two years after the qualification of the decedent's personal representative, whichever occurs later.

5. If a person dies before a personal cause of action which survives would have accrued to him, if he had continued to live, then an action may be commenced by such decedent's personal representative before the expiration of the applicable limitation period or within one year after the qualification of such personal representative, whichever occurs later.

6. If there is an interval of more than two years between the death of any person in whose favor or against whom a cause of action has accrued or shall subsequently accrue and the qualification of such person's personal representative, such personal representative shall, for the purposes of this chapter, be deemed to have qualified on the last day of such two-year period.

C. When the commencement of any action is stayed by injunction, the time of the continuance of the injunction shall not be computed as any part of the period within which the action must be brought.

D. When the filing of an action is obstructed by a defendant's (i) filing a petition in bankruptcy or filing a petition for an extension or arrangement under the United States Bankruptcy Act or (ii) using any other direct or indirect means to obstruct the filing of an action, then the time that such obstruction has continued shall not be counted as any part of the period within which the action must be brought.

E. Dismissal, abatement, or nonsuit.

1. Except as provided in subdivision 3, if any action is commenced within the prescribed limitation period and for any cause abates or is dismissed without determining the merits, the time such action is pending shall not be computed as part of the period within which such action may be brought, and another action may be brought within the remaining period.

2. If a judgment or decree is rendered for the plaintiff in any action commenced within the prescribed limitation period and such judgment or decree is arrested or reversed upon a ground which does not preclude a new action for the same cause, or if there is occasion to bring a new action by reason of the loss or destruction of any of the papers or records in a former action which was commenced within the prescribed limitation period, then a new action may be brought within one year after such arrest or reversal or such loss or destruction, but not after.

3. If a plaintiff suffers a voluntary nonsuit as prescribed in § 8.01-380, the statute of limitations with respect to such action shall be tolled by the commencement of the nonsuited action, regardless of whether the statute of limitations is statutory or contractual, and the plaintiff may

recommence his action within six months from the date of the order entered by the court, or within the original period of limitation, or within the limitation period as provided by subdivision B 1, whichever period is longer. This tolling provision shall apply irrespective of whether the action is originally filed in a federal or a state court and recommenced in any other court, and shall apply to all actions irrespective of whether they arise under common law or statute.

F. No provision in the will of any testator devising his real estate, or any part thereof, subject to the payment of his debts or charging the same therewith, or containing any other provision for the payment of debts, shall prevent this chapter from operating against such debts, unless it plainly appears to be the testator's intent that it shall not so operate.

G. Effect of new promise in writing.

1. If any person against whom a right of action has accrued on any contract, other than a judgment or recognizance, promises, by writing signed by him or his agent, payment of money on such contract, the person to whom the right has accrued may maintain an action for the money so promised, within such number of years after such promise as it might be maintained if such promise were the original cause of action. An acknowledgment in writing, from which a promise of payment may be implied, shall be deemed to be such promise within the meaning of this subsection.

2. The plaintiff may sue on the new promise described in subdivision 1 or on the original cause of action, except that when the new promise is of such a nature as to merge the original cause of action then the action shall be only on the new promise.

H. When an action is commenced as a general creditors' action, or as a general lien creditors' action, or as an action to enforce a mechanics' lien, the running of the statute of limitations shall be suspended as to debts provable in such action from the commencement of the action, provided they are brought in before the commissioner in chancery under the first reference for an account of debts; but as to claims not so brought in the statute shall continue to run, without interruption by reason either of the commencement of the action or of the order for an account, until a later order for an account, under which they do come in, or they are asserted by petition or independent action.

In actions not instituted originally either as general creditors' actions, or as general lien creditors' actions, but which become such by subsequent proceedings, the statute of limitations shall be suspended by an order of reference for an account of debts or of liens only as to those creditors who come in and prove their claims under the order. As to creditors who come in afterwards by petition or under an order of recommittal, or a later order of reference for an account, the statute shall continue to run without interruption by reason of previous orders until filing of the petition, or until the date of the reference under which they prove their claims, as the case may be.

I. When an action is commenced within a period of 30 days prior to the expiration of the limitation period for commencement thereof and the defending party or parties desire to institute an action as third-party plaintiff against one or more persons not party to the original action, the

running of the period of limitation against such action shall be suspended as to such new party for a period of 60 days from the expiration of the applicable limitation period.

J. If any award of compensation by the Workers' Compensation Commission pursuant to Chapter 5 (§ 65.2-500 et seq.) of Title 65.2 is subsequently found void ab initio, other than an award voided for fraudulent procurement of the award by the claimant, the statute of limitations applicable to any civil action upon the same claim or cause of action in a court of this Commonwealth shall be tolled for that period of time during which compensation payments were made.

K. In any personal action for damages, if a criminal prosecution arising out of the same facts is commenced, the time such prosecution is pending shall not be computed as part of the period within which such a civil action may be brought. For purposes of this subsection, the time during which a prosecution is pending shall be calculated from the date of the issuance of a warrant, summons or capias, the return or filing of an indictment or information, or the defendant's first appearance in any court as an accused in such a prosecution, whichever date occurs first, until the date of the final judgment or order in the trial court, the date of the final disposition of any direct appeal in state court, or the date on which the time for noting an appeal has expired, whichever date occurs last. Thereafter, the civil action may be brought within the remaining period of the statute or within one year, whichever is longer.

If a criminal prosecution is commenced and a grand jury indictment is returned or a grand jury indictment is waived after the period within which a civil action arising out of the same set of facts may be brought, a civil action may be brought within one year of the date of the final judgment or order in the trial court, the date of the final disposition of any direct appeal in state court, or the date on which the time for noting an appeal has expired, whichever date occurs last, but no more than 10 years after the date of the crime or two years after the cause of action shall have accrued under § 8.01-249, whichever date occurs last.

Code 1950, §§ 8-8, 8-13, 8-15, 8-20, 8-21, 8-25, 8-26, 8-29 through 8-34; 1964, c. 219; 1966, c. 118; 1972, c. 825; 1977, c. 617; 1978, cc. 65, 767; 1983, cc. 404, 437; 1986, c. 506; 1987, cc. 294, 645; 1988, c. 711; 1989, c. 588; 1990, c. 280; 1991, cc. 693, 722; 1993, c. 844; 1997, c. 801; 2000, c. 531; 2001, cc. 773, 781; 2016, cc. 189, 268.

§ 8.01-230. Accrual of right of action

In every action for which a limitation period is prescribed, the right of action shall be deemed to accrue and the prescribed limitation period shall begin to run from the date the injury is sustained in the case of injury to the person or damage to property, when the breach of contract occurs in actions ex contractu and not when the resulting damage is discovered, except where the relief sought is solely equitable or where otherwise provided under § 8.01-233, subsection C of § 8.01-245, §§ 8.01-249, 8.01-250 or other statute.

1977, c. 617; 1996, c. 328.

§ 8.01-231. Commonwealth not within statute of limitations

No statute of limitations which shall not in express terms apply to the Commonwealth shall be deemed a bar to any proceeding by or on behalf of the same.

Code 1950, § 8-35; 1958, c. 221; 1977, c. 617; 1988, c. 544.

§ 8.01-232. Effect of promises not to plead statute

A. Whenever the failure to enforce a promise, written or unwritten, not to plead the statute of limitations would operate as a fraud on the promisee, the promisor shall be estopped to plead the statute. In all other cases, an unwritten promise not to plead the statute shall be void, and a written promise not to plead such statute shall be valid when (i) it is made to avoid or defer litigation pending settlement of any case, (ii) it is not made contemporaneously with any other contract, and (iii) it is made for an additional term not longer than the applicable limitations period. No provision of this subsection shall operate contrary to subsections B and C of this section.

B. No acknowledgment or promise by any personal representative of a decedent shall charge the estate of the decedent, revive a cause of action otherwise barred, or relieve the personal representative of his duty to defend under § 64.2-1415 in any case in which but for such acknowledgment or promise, the decedent's estate could have been protected under a statute of limitations.

C. No acknowledgment or promise by one of two or more joint contractors shall charge any of such contractors in any case in which but for such acknowledgment another contractor would have been protected under a statute of limitations.

Code 1950, §§ 8-27, 8-28; 1977, c. 617; 2006, c. 278.

§ 8.01-233. When action deemed brought on counterclaim or cross-claim; when statute of limitations tolled; defendant's consent required for dismissal

A. A defendant who pleads a counterclaim or cross-claim shall be deemed to have brought an action at the time he files such pleading.

B. If the subject matter of the counterclaim or cross-claim arises out of the same transaction or occurrence upon which the plaintiff's claim is based, the statute of limitations with respect to such pleading shall be tolled by the commencement of the plaintiff's action.

Code 1950, § 8-244; 1954, c. 611; 1977, c. 617.

§ 8.01-234. Repeal of limitation not to remove bar of statute

If, after a right of action or remedy is barred by a statute of limitations, the statute be repealed, the bar of the statute as to such right or remedy shall not be deemed to be removed by such repeal.

Code 1950, § 8-36; 1977, c. 617.

§ 8.01-235. Bar of expiration of limitation period raised only as affirmative defense in responsive pleading

The objection that an action is not commenced within the limitation period prescribed by law can only be raised as an affirmative defense specifically set forth in a responsive pleading. No statutory limitation period shall have jurisdictional effects and the defense that the statutory limitation period has expired cannot be set up by demurrer. This section shall apply to all limitation periods, without regard to whether or not the statute prescribing such limitation period shall create a new right.

1977, c. 617.

Article 2 - LIMITATIONS ON RECOVERY OF REALTY AND ENFORCEMENT OF CERTAIN LIENS RELATING TO REALTY

§ 8.01-236. Limitation of entry on or action for land

No person shall make an entry on, or bring an action to recover, any land unless within fifteen years next after the time at which the right to make such entry or bring such action shall have first accrued to such person or to some other person through whom he claims; provided that an action for unlawful entry or detainer under § 8.01-124 shall be brought within three years after such entry or detainer.

Code 1950, § 8-5; 1954, c. 604; 1977, c. 617; 1978, c. 471.

§ 8.01-237. Effect of disabilities upon right of entry on, or action for, land

Notwithstanding the provisions of subsection A of § 8.01-229, no disabilities or tacking of disabilities shall preserve to any person or his successors a right to make entry on or bring an action to recover land for more than twenty-five years after such right first accrued, although such person or persons shall have been disabled during the whole of such twenty-five years.

Code 1950, §§ 8-7, 8-8; 1977, c. 617.

§ 8.01-238. To repeal grant

A bill in equity to repeal, in whole or in part, any grant of land by the Commonwealth, shall be brought within ten years next after the date of such grant.

Code 1950, § 8-9; 1977, c. 617.

§ 8.01-239. Ground rents

No action shall be brought for the recovery of any ground rent reserved upon real estate after the expiration of ten years from the time such ground rent becomes due and payable.

Code 1950, § 8-10; 1977, c. 617.

§ 8.01-240. Liens for water, sewer, or sidewalk assessments

No suit shall be brought to enforce the lien of any water, sewer, or sidewalk assessment, heretofore or hereafter made, against lands which have been conveyed by the person owning them at the time of such assessment to a grantee for value unless the same be brought within ten years

from the due recordation of the deed from such person to grantee and within twenty years from the due docketing of such assessment.

Code 1950, §§ 8-10.1, 8-10.2; 1958, c. 516; 1966, c. 434; 1977, c. 617.

§ 8.01-241. Limitation of enforcement of deeds of trust, mortgages and liens for unpaid purchase money

A. No deed of trust or mortgage heretofore or hereafter given to secure the payment of money, and no lien heretofore or hereafter reserved to secure the payment of unpaid purchase money, shall be enforced after 10 years from the time when the original obligation last maturing thereby secured shall have become due and payable according to its terms and without regard to any provision for the acceleration of such date; provided that the period of one year from the death of any party in interest shall be excluded from the computation of time.

B. Notwithstanding the limitations prescribed by subsection A, a deed of trust or mortgage given, and a lien reserved to secure the payment of money, for which the original obligation last maturing thereby secured became due and payable according to its terms between July 1, 1988, and July 1, 2000, without regard to any provision for the acceleration of the date such obligation became due and payable, shall not be enforced after July 1, 2010. However, the provisions of this subsection shall have no effect on the rights of a person who (i) acquired an interest in the real property securing such deed of trust or mortgage between July 1, 2008, and the date of enactment of this subsection and (ii) would otherwise have priority over or take free of such deed of trust or mortgage under the laws of the Commonwealth at that time.

C. The limitations prescribed by this section may be extended by the recordation of a certificate in the form provided in § 8.01-241.1 prior to the expiration of the limitation period prescribed herein in the clerk's office in which such lien is recorded and executed either by the party in whom the beneficial title to the property so encumbered is vested at the time of such recordation or by his duly authorized attorney-in-fact, or agent. Recordation of the certificate shall extend the limitations of the right to enforce the lien for 10 years from the date of the recordation of the certificate. The clerk of the court shall index the certificate in both names in the index of the deed book and give reference to the book and page in which the original writing is recorded. Unless the deed or deeds executed pursuant to the foreclosure of any mortgage or to the execution of or sale under any deed of trust is recorded in the county or city where the land is situated within one year after the time the right to enforce the mortgage or deed of trust shall have expired as hereinabove provided, such deed or deeds shall be void as to all purchasers for valuable consideration without notice and lien creditors who make any purchase of or acquire any lien on the land conveyed by any such deed prior to the time such deed is so recorded.

Code 1950, § 8-11; 1950, p. 19; 1977, c. 617; 1980, c. 499; 1994, c. 547; 1999, c. 788; 2008, c. 226; 2009, c. 163.

§ 8.01-241.1. Permissible form for certificate

Any extension of the limitations of the right to enforce the lien of a deed of trust or mortgage shall conform substantially with the following form:

CERTIFICATE OF EXTENSION OF LIMITATION OF
RIGHT TO ENFORCE DEED OF TRUST OR MORTGAGE

Place of Record.....
Date of Deed of Trust/Mortgage.....
Deed Book ..... Book Page.....
Name of Guarantor(s).....
Name of Trustee(s).....
Maker(s) of Note.....
Date of Note(s).....

I/we, the beneficial title holder(s) of the property encumbered by the above mentioned deed of trust/mortgage, do hereby certify that the lien of the same is hereby extended 10 years from the date of my/our endorsement upon this certificate.

.....

Beneficial Titleholder/Attorney-in-Fact/Agent
Commonwealth of Virginia
County/City of ..... :

Subscribed, sworn to and acknowledged before me by

....., this ... day of ....., 20 ...

My Commission expires: .....

Notary Public

1994, c. 547; 2008, c. 226.

§ 8.01-242. Same; when no maturity date is given; credit line deeds of trust

No deed of trust or mortgage given to secure the payment of money, other than credit line deeds of trust described in § 55-58.2, and no lien reserved to secure the payment of unpaid purchase money, in which no date is fixed for the maturity of the debt secured by such deed of trust, mortgage, or lien, shall be enforced after twenty years from the date of the deed of trust, mortgage, or other lien; provided that the period of one year from the death of any party in interest shall be excluded from the computation of time, and provided further that the limitation may be extended by recordation of a certificate within the twenty-year period in the manner set forth in § 8.01-241. No credit line deed of trust described in § 55-58.2 in which no date is fixed for the maturity of the debt secured thereby shall be enforced after forty years from the date of the credit line deed of

trust; provided that the period of one year from the death of any party in interest shall be excluded from the computation of time.

Code 1950, § 8-12; 1977, c. 617; 1994, c. 547; 1999, c. 788.

Article 3 - PERSONAL ACTIONS GENERALLY

§ 8.01-243. Personal action for injury to person or property generally; extension in actions for malpractice against health care provider

A. Unless otherwise provided in this section or by other statute, every action for personal injuries, whatever the theory of recovery, and every action for damages resulting from fraud, shall be brought within two years after the cause of action accrues.

B. Every action for injury to property, including actions by a parent or guardian of an infant against a tort-feasor for expenses of curing or attempting to cure such infant from the result of a personal injury or loss of services of such infant, shall be brought within five years after the cause of action accrues. An infant's claim for medical expenses pursuant to subsection B of § 8.01-36 accruing on or after July 1, 2013, shall be governed by the applicable statute of limitations that applies to the infant's cause of action.

C. The two-year limitations period specified in subsection A shall be extended in actions for malpractice against a health care provider as follows:

1. In cases arising out of a foreign object having no therapeutic or diagnostic effect being left in a patient's body, for a period of one year from the date the object is discovered or reasonably should have been discovered;

2. In cases in which fraud, concealment, or intentional misrepresentation prevented discovery of the injury within the two-year period, for one year from the date the injury is discovered or, by the exercise of due diligence, reasonably should have been discovered; and

3. In a claim for the negligent failure to diagnose a malignant tumor, cancer, or an intracranial, intraspinal, or spinal schwannoma, for a period of one year from the date the diagnosis of a malignant tumor, cancer, or an intracranial, intraspinal, or spinal schwannoma is communicated to the patient by a health care provider, provided that the health care provider's underlying act or omission was on or after July 1, 2008, in the case of a malignant tumor or cancer or on or after July 1, 2016, in the case of an intracranial, intraspinal, or spinal schwannoma. Claims under this section for the negligent failure to diagnose a malignant tumor or cancer, where the health care provider's underlying act or omission occurred prior to July 1, 2008, shall be governed by the statute of limitations that existed prior to July 1, 2008. Claims under this section for the negligent failure to diagnose an intracranial, intraspinal, or spinal schwannoma, where the health care provider's underlying act or omission occurred prior to July 1, 2016, shall be governed by the statute of limitations that existed prior to July 1, 2016.

However, the provisions of this subsection shall not apply to extend the limitations period beyond 10 years from the date the cause of action accrues, except that the provisions of subdivision A 2 of § 8.01-229 shall apply to toll the statute of limitations in actions brought by or on behalf of a person under a disability.

D. Every action for injury to the person, whatever the theory of recovery, resulting from sexual abuse occurring during the infancy or incapacity of the person as set forth in subdivision 6 of § 8.01-249 shall be brought within 20 years after the cause of action accrues.

E. Every action for injury to property brought by the Commonwealth against a tort-feasor for expenses arising out of the negligent operation of a motor vehicle shall be brought within five years after the cause of action accrues.

Code 1950, § 8-24; 1954, c. 589; 1973, c. 385; 1977, c. 617; 1986, cc. 389, 454; 1987, cc. 294, 645, 679; 2008, c. 175; 2011, cc. 617, 641; 2013, cc. 551, 689; 2014, c. 586; 2016, c. 190.

§ 8.01-243.1. Actions for medical malpractice; minors

Notwithstanding the provisions of § 8.01-229 A and except as provided in subsection C of § 8.01-243, any cause of action accruing on or after July 1, 1987, on behalf of a person who was a minor at the time the cause of action accrued for personal injury or death against a health care provider pursuant to Chapter 21.1 (§ 8.01-581.1 et seq.) shall be commenced within two years of the date of the last act or omission giving rise to the cause of action except that if the minor was less than eight years of age at the time of the occurrence of the malpractice, he shall have until his tenth birthday to commence an action. Any minor who is ten years of age or older on or before July 1, 1987, shall have no less than two years from that date within which to commence such an action.

1987, cc. 294, 645.

§ 8.01-243.2. Limitations of actions by confined persons; exhaustion

No person confined in a state or local correctional facility shall bring or have brought on his behalf any personal action relating to the conditions of his confinement until all available administrative remedies are exhausted. Such action shall be brought by or on behalf of such person within one year after cause of action accrues or within six months after all administrative remedies are exhausted, whichever occurs later.

1998, c. 596; 1999, c. 47.

§ 8.01-244. Actions for wrongful death; limitation

A. Notwithstanding the provisions of § 8.01-229 B, if a person entitled to bring an action for personal injury dies as a result of such injury with no such action pending before the expiration of the limitations period set forth in § 8.01-243, then an action under § 8.01-50 may be commenced within the time limits specified in subsection B of this section.

B. Every action under § 8.01-50 shall be brought by the personal representative of the decedent within two years after the death of the injured person. If any such action is brought within such

period of two years after such person's death and for any cause abates or is dismissed without determining the merits of such action, the time such action is pending shall not be counted as any part of such period of two years and another action may be brought within the remaining period of such two years as if such former action had not been instituted. However, if a plaintiff suffers a voluntary nonsuit pursuant to § 8.01-380, the nonsuit shall not be deemed an abatement nor a dismissal pursuant to this subsection, and the provisions of subdivision E 3 of § 8.01-229 shall apply to such a nonsuited action.

Code 1950, §§ 8-633, 8-634; 1958, c. 470; 1977, c. 617; 1991, c. 722; 2008, c. 175.

§ 8.01-245. Limitation on actions upon the bond of any fiduciaries or as to suits against fiduciaries themselves; accrual of cause of action where execution sustained

A. No action shall be brought upon the bond of any fiduciary except within ten years next after the right to bring such action shall have first accrued.

B. When any fiduciary has settled an account under the provisions of Part A (§ 64.2-1200 et seq.) of Subtitle IV of Title 64.2, and whether or not he has given bond, a suit to surcharge or falsify such account, or to hold such fiduciary or his sureties liable for any balance stated in such account, to be in his hands, shall be brought within ten years after the account has been confirmed.

C. In actions upon the bond of any personal representative of a decedent or fiduciary of a person under a disability against whom an execution has been obtained or where a court acting upon the account of such representative or committee shall order payment or delivery of estate in the hands of such committee and representative, the cause of action shall be deemed to accrue from the return day of such execution or from the time of the right to require payment or delivery upon such order, whichever shall happen first.

Code 1950, §§ 8-13, 8-15, 8-16; 1964, c. 219; 1966, c. 118; 1972, c. 825; 1977, c. 617.

§ 8.01-246. Personal actions based on contracts

Subject to the provisions of § 8.01-243 regarding injuries to person and property and of § 8.01-245 regarding the application of limitations to fiduciaries, and their bonds, actions founded upon a contract, other than actions on a judgment or decree, shall be brought within the following number of years next after the cause of action shall have accrued:

1. In actions or upon a recognizance, except recognizance of bail in a civil suit, within ten years; and in actions or motions upon a recognizance of bail in a civil suit, within three years, omitting from the computation of such three years such time as the right to sue out such execution shall have been suspended by injunction, supersedeas or other process;

2. In actions on any contract which is not otherwise specified and which is in writing and signed by the party to be charged thereby, or by his agent, within five years whether such writing be under seal or not;

3. In actions by a partner against another for settlement of the partnership account or in actions upon accounts concerning the trade of merchandise between merchant and merchant, their factors, or servants, within five years from the cessation of the dealings in which they are interested together;

4. In actions upon any unwritten contract, express or implied, within three years.

Provided that as to any action to which § 8.2-725 of the Uniform Commercial Code is applicable, that section shall be controlling except that in products liability actions for injury to person and for injury to property, other than the property subject to contract, the limitation prescribed in § 8.01-243 shall apply.

Code 1950, §§ 8-13, 8-17, 8-23; 1964, c. 219; 1966, c. 118; 1977, c. 617.

§ 8.01-247. When action on contract governed by the law of another state or country barred in Virginia

No action shall be maintained on any contract which is governed by the law of another state or country if the right of action thereon is barred either by the laws of such state or country or of this Commonwealth.

Code 1950, § 8-23; 1977, c. 617.

§ 8.01-247.1. Limitation on action for defamation, etc

Every action for injury resulting from libel, slander, insulting words, or defamation shall be brought within one year after the cause of action accrues.

If a publisher of statements actionable under this section publishes anonymously or under a false identity on the Internet, an action may be filed under this section and the statute of limitations shall be tolled until the identity of the publisher is discovered or, by the exercise of due diligence, reasonably should have been discovered.

1995, c. 9; 2015, c. 128.

§ 8.01-248. Personal actions for which no other limitation is specified

Every personal action accruing on or after July 1, 1995, for which no limitation is otherwise prescribed, shall be brought within two years after the right to bring such action has accrued.

Code 1950, § 8-24; 1954, c. 589; 1973, c. 385; 1977, c. 617; 1995, c. 9.

§ 8.01-249. When cause of action shall be deemed to accrue in certain personal actions

The cause of action in the actions herein listed shall be deemed to accrue as follows:

1. In actions for fraud or mistake, in actions for violations of the Consumer Protection Act (§ 59.1-196 et seq.) based upon any misrepresentation, deception, or fraud, and in actions for rescission of contract for undue influence, when such fraud, mistake, misrepresentation, deception, or undue influence is discovered or by the exercise of due diligence reasonably should have been discovered;

2. In actions or other proceedings for money on deposit with a bank or any person or corporation doing a banking business, when a request in writing be made therefor by check, order, or otherwise;

3. In actions for malicious prosecution or abuse of process, when the relevant criminal or civil action is terminated;

4. In actions for injury to the person resulting from exposure to asbestos or products containing asbestos, when a diagnosis of asbestosis, interstitial fibrosis, mesothelioma, or other disabling asbestos-related injury or disease is first communicated to the person or his agent by a physician. However, no such action may be brought more than two years after the death of such person;

5. In actions for contribution or for indemnification, when the contributee or the indemnitee has paid or discharged the obligation. A third-party claim permitted by subsection A of § 8.01-281 and the Rules of Court may be asserted before such cause of action is deemed to accrue hereunder;

6. In actions for injury to the person, whatever the theory of recovery, resulting from sexual abuse occurring during the infancy or incapacity of the person, upon the later of the removal of the disability of infancy or incapacity as provided in § 8.01-229 or when the fact of the injury and its causal connection to the sexual abuse is first communicated to the person by a licensed physician, psychologist, or clinical psychologist. As used in this subdivision, "sexual abuse" means sexual abuse as defined in subdivision 6 of § 18.2-67.10 and acts constituting rape, sodomy, object sexual penetration or sexual battery as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

7. In products liability actions against parties other than health care providers as defined in § 8.01-581.1 for injury to the person resulting from or arising as a result of the implantation of any prosthetic device for breast augmentation or reconstruction, when the fact of the injury and its causal connection to the implantation is first communicated to the person by a physician;

8. In actions on an open account, from the later of the last payment or last charge for goods or services rendered on the account;

9. In products liability actions against parties other than health care providers as defined in § 8.01-581.1 for injury to the person resulting from or arising as a result of the implantation of any medical device, when the person knew or should have known of the injury and its causal connection to the device.

Code 1950, §§ 8-13, 8-14; 1964, c. 219; 1966, c. 118; 1977, c. 617; 1985, c. 459; 1986, c. 601; 1991, c. 674; 1992, c. 817; 1993, c. 523; 1995, c. 268; 1997, cc. 565, 801; 2005, c. 213; 2013, c. 292; 2016, c. 353.

§ 8.01-250. Limitation on certain actions for damages arising out of defective or unsafe condition of improvements to real property

No action to recover for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained as a result of such injury, shall be brought against any person performing or furnishing the design, planning, surveying, supervision of construction, or construction of such improvement to real property more than five years after the performance or furnishing of such services and construction.

The limitation prescribed in this section shall not apply to the manufacturer or supplier of any equipment or machinery or other articles installed in a structure upon real property, nor to any person in actual possession and in control of the improvement as owner, tenant or otherwise at the time the defective or unsafe condition of such improvement constitutes the proximate cause of the injury or damage for which the action is brought; rather each such action shall be brought within the time next after such injury occurs as provided in §§ 8.01-243 and 8.01-246.

Code 1950, § 8-24.2; 1964, c. 333; 1968, c. 103; 1973, c. 247; 1977, c. 617.

§ 8.01-250.1. Limitation on actions involving removal of asbestos

Notwithstanding the provisions of § 8.01-234 or any other section in this chapter, every action against a manufacturer or supplier of asbestos or material containing asbestos brought by or on behalf of any agency of the Commonwealth incorporated for charitable or educational purposes; counties, cities or towns; or school boards, to recover for (i) removal of asbestos or materials containing asbestos from any building owned or used by such entity, (ii) other measures taken to correct or ameliorate any problem related to asbestos in such building or (iii) reimbursement for such removal, correction or amelioration which would otherwise be barred prior to July 1, 1990, as a result of expiration of the applicable period of limitation, is hereby revived or extended. Any action thereon may be commenced prior to July 1, 1990.

1985, c. 262; 1986, c. 458.

Article 4 - LIMITATIONS ON ENFORCEMENT OF JUDGMENTS AND DECREES

§ 8.01-251. Limitations on enforcement of judgments

A. No execution shall be issued and no action brought on a judgment, including a judgment in favor of the Commonwealth and a judgment rendered in another state or country, after 20 years from the date of such judgment or domestication of such judgment, unless the period is extended as provided in this section.

B. The limitation prescribed in subsection A may be extended on motion of the judgment creditor or his assignee with notice to the judgment debtor, and an order of the circuit court of the jurisdiction in which the judgment was entered to show cause why the period for issuance of execution or bringing of an action should not be extended. Any such motion shall be filed within the 20-year period from the date of the original judgment or from the date of the latest extension thereof. If upon the hearing of the motion the court decides that there is no good cause shown for not extending the period of limitation, the order shall so state and the period of limitation

mentioned in subsection A shall be extended for an additional 20 years from the date of filing of the motion to extend. Additional extensions may be granted upon the same procedure, subject in each case to the recording provisions prescribed in § 8.01-458. This extension procedure is subject to the exception that if the action is against a personal representative of a decedent, the motion shall be within two years from the date of his qualification, the extension may be for only two years from the time of the filing of the motion, and there may be only one such extension.

C. No suit shall be brought to enforce the lien of any judgment, including judgments in favor of the Commonwealth, upon which the right to issue an execution or bring an action is barred by other subsections of this section, nor shall any suit be brought to enforce the lien of any judgment against the lands which have been conveyed by the judgment debtor to a grantee for value, unless the same be brought within 10 years from the due recordation of the deed from such judgment debtor to such grantee and unless a notice of lis pendens shall have been recorded in the manner provided by § 8.01-268 before the expiration of such 10-year period.

D. In computing the time, any time during which the right to sue out execution on the judgment is suspended by the terms thereof, or by legal process, shall be omitted. Sections 8.01-230 et seq., 8.01-247 and 8.01-256 shall apply to the right to bring such action in like manner as to any right.

E. The provisions of this section apply to judgments obtained after June 29, 1948, and to judgments obtained prior to such date which are not then barred by the statute of limitations, but nothing herein shall have the effect of reducing the time for enforcement of any judgment the limitation upon which has been extended prior to such date by compliance with the provisions of law theretofore in effect.

F. This section shall not be construed to impair the right of subrogation to which any person may become entitled while the lien is in force, provided he institutes proceedings to enforce such right within five years after the same accrued, nor shall the lien of a judgment be impaired by the recovery of another judgment thereon, or by a forthcoming bond taken on an execution thereon, such bond having the force of a judgment.

G. Limitations on enforcement of judgments entered in the general district courts shall be governed by § 16.1-94.1, unless an abstract of such judgment is docketed in the judgment book of a circuit court. Upon the docketing of such judgment, the limitation for the enforcement of a district court judgment is the same as for a judgment of the circuit court.

Code 1950, §§ 8-393, 8-394, 8-396, 8-397; 1956, c. 512; 1958, c. 221; 1960, c. 274; 1977, c. 617; 1983, c. 499; 2002, c. 394; 2005, cc. 139, 203.

§ 8.01-252. Repealed

Repealed by Acts 2005, cc. 139, 203.

Article 5 - MISCELLANEOUS LIMITATIONS PROVISIONS

§ 8.01-253. Limitation of suits to avoid voluntary conveyances, etc

No gift, conveyance, assignment, transfer, or charge, which is not on consideration deemed valuable in law, or which is upon consideration of marriage, shall be avoided in whole or in part for that cause only, unless within five years from its recordation, and if not so recorded within five years from the time the same was or should have been discovered, suit be brought for that purpose, or the subject thereof, or some part of it, be distrained or levied on by or at the suit of a creditor, as to whom such gift, conveyance, assignment, transfer, or charge, is declared to be void by § 55-81.

Code 1950, § 8-19; 1977, c. 617.

§ 8.01-254. Limitation on enforcement of bequests and legacies

Wherever by any will, the testator devises any real estate to some person and requires such person to pay some other person a specified sum of money, or provides a legacy for some person which constitutes a charge against the real estate of the testator, or any part thereof, no suit or action shall be brought to subject such real estate to the payment of such specified sum of money or such legacy, as the case may be, after twenty years from the time when the same shall have been payable, and if the will specifies no time for the payment thereof, it shall be deemed to have been payable immediately upon death of the testator.

Code 1950, § 8-21; 1977, c. 617.

§ 8.01-255. Time for presenting claim against Commonwealth

Any pecuniary claim authorized to be presented under §§ 2.2-814 and 2.2-815 shall be barred unless presented in writing to the comptroller or other authorized person no later than five years after the right to such claim shall arise. If such claim be not thus barred, any action thereon against the Commonwealth must be brought no later than three years after disallowance of such claim in whole or in part.

Code 1950, § 8-752; 1966, c. 452; 1977, c. 617.

§ 8.01-255.1. Limitation of action for breach of condition subsequent or termination of determinable fee simple estate

No person shall commence an action for the recovery of lands, nor make an entry thereon, by reason of a breach of a condition subsequent, or by reason of the termination of an estate of fee simple determinable, unless the action is commenced or entry is made within ten years after breach of the condition or within ten years from the time when the estate of fee simple determinable has been terminated. Where there has been a breach of a condition subsequent or termination of an estate fee simple determinable which occurred prior to July 1, 1965, recovery of the lands, or an entry may be made thereon by the owner of a right of entry or possibility of reverter, by July 1, 1977. Possession of land after breach of a condition subsequent or after termination of an estate of fee simple determinable shall be deemed adverse and hostile from the first breach of a condition subsequent or from the occurrence of the event terminating an estate of fee simple determinable.

Code 1950, § 8-5.1; 1975, c. 136; 1977, c. 617.

§ 8.01-255.2. Limitation on motion for new execution after loss of property sold under indemnity bond

A motion made pursuant to § 8.01-476 shall be made within five years after the right to make the same shall have accrued.

Code 1950, § 8-408; 1977, c. 617.

§ 8.01-256. As to rights and remedies existing when this chapter takes effect

No action, suit, scire facias, or other proceeding which is pending before October 1, 1977, shall be barred by this chapter, and any action, suit, scire facias or other proceeding so pending shall be subject to the same limitation, if any, which would have been applied if this chapter had not been enacted. If a cause of action, as to which no action, suit, scire facias, or other proceeding is pending, exists before October 1, 1977, then this chapter shall not apply and the limitation as to such cause of action shall be the same, if any, as would apply had this chapter not been enacted. Any new limitation period imposed by this chapter, where no limitation previously existed or which is different from the limitation existing before this chapter was enacted, shall apply only to causes or rights of action accruing on or after October 1, 1977.

Code 1950, § 8-37; 1977, c. 617.

Chapter 5 - VENUE

§ 8.01-257. Venue generally

It is the intent of this chapter that every action shall be commenced and tried in a forum convenient to the parties and witnesses, where justice can be administered without prejudice or delay. Except where specifically provided otherwise, whenever the word "action(s)" is used in this chapter, it shall mean all actions at law, suits in equity, and statutory proceedings, whether in circuit courts or district courts.

1977, c. 617.

§ 8.01-258. Venue not jurisdictional

The provisions of this chapter relate to venue -- the place of trial -- and are not jurisdictional. No order, judgment, or decree shall be voidable, avoided, or subject to collateral attack solely on the ground that there was improper venue; however, nothing herein shall affect the right to appeal an error of court concerning venue.

1977, c. 617.

§ 8.01-259. Application

Nothing in this chapter shall apply to venue in the following proceedings:

(1), (2) [Repealed.]

(3) Habeas corpus;

(4) Tax proceedings, other than those in Title 58.1;

(5) Juvenile and domestic relations district courts proceedings concerning children; or

(6) [Repealed.]

(7) Adoptions.

(8) [Repealed.]

In all other actions, venue shall be in accordance with the provisions of this chapter, and, with respect to such actions, in case of conflict between the provisions of this chapter and other provisions outside this chapter relating to venue, all such other provisions are hereby superseded.

1977, c. 617; 1987, c. 567; 1989, c. 556 .

§ 8.01-260. Proper venue; preferred forum in certain actions; permissible forums for other actions

Except for those actions expressly excluded from the operation of this chapter, and subject to the provisions of §§ 8.01-264 and 8.01-265, the venue for any action shall be deemed proper only if laid in accordance with the provisions of §§ 8.01-261 and 8.01-262.

1977, c. 617.

§ 8.01-261. Category A or preferred venue

In the actions listed in this section, the forums enumerated shall be deemed preferred places of venue and may be referred to as "Category A" in this title. Venue laid in any other forum shall be subject to objection; however, if more than one preferred place of venue applies, any such place shall be a proper forum. The following forums are designated as places of preferred venue for the action specified:

1. In actions for review of, appeal from, or enforcement of state administrative regulations, decisions, or other orders:

a. If the moving or aggrieved party is other than the Commonwealth or an agency thereof, then the county or city wherein such party:

(1) Resides;

(2) Regularly or systematically conducts affairs or business activity; or

(3) Wherein such party's property affected by the administrative action is located.

b. If the moving or aggrieved party is the Commonwealth or an agency thereof, then the county or city wherein the respondent or a party defendant:

(1) Resides;

(2) Regularly or systematically conducts affairs or business activity; or

(3) Has any property affected by the administrative action.

c. If subdivisions 1 a and 1 b do not apply, then the county or city wherein the alleged violation of the administrative regulation, decision, or other order occurred.

2. Except as provided in subdivision 1 of this section, where the action is against one or more officers of the Commonwealth in an official capacity, the county or city where any such person has his official office.

3. The county or city wherein the subject land, or a part thereof, is situated in the following actions:

a. To recover or partition land;

b. To subject land to a debt;

c. To sell, lease, or encumber the land of persons under disabilities;

d. [Repealed.]

e. To sell wastelands;

f. To establish boundaries;

g. For unlawful entry or detainer;

h. For ejectment; or

i. To remove clouds on title.

4. [Reserved.]

5. In actions for writs of mandamus, prohibition, or certiorari, except such as may be issued by the Supreme Court, the county or city wherein is the record or proceeding to which the writ relates.

6. In actions on bonds required for public contract, the county or city in which the public project, or any part thereof, is situated.

7. In actions to impeach or establish a will, the county or city wherein the will was probated, or, if not probated at the time of the action, where the will may be properly offered for probate.

8., 9. [Repealed.]

10. In actions on any contract between a transportation district and a component government, any county or city any part of which is within such transportation district.

11. In attachments,

a. With reference to the principal defendant and those liable with or to him, venue shall be determined as if the principal defendant were the sole defendant; or

b. In the county or city in which the principal defendant has estate or has debts owing to him.

12. [Repealed.]

13. a. In any action for the collection of state, county, or municipal taxes, any one of the following counties or cities shall be deemed preferred places of venue:

(1) Wherein the taxpayer resides;

(2) Wherein the taxpayer owns real or personal property;

(3) Wherein the taxpayer has a registered office, or regularly or systematically conducts business; or

(4) In case of withdrawal from the Commonwealth by a delinquent taxpayer, wherein venue was proper at the time the taxes in question were assessed or at the time of such withdrawal.

b. In any action for the correction of an erroneous assessment of state taxes and tax refunds, any one of the following counties or cities shall be deemed preferred places of venue:

(1) Wherein the taxpayer resides;

(2) Wherein the taxpayer has a registered office or regularly or systematically conducts business;

(3) Wherein the taxpayer's real or personal property involved in such a proceeding is located; or

(4) The Circuit Court of the City of Richmond.

14. In proceedings by writ of quo warranto:

a. The city or county wherein any of the defendants reside;

b. If the defendant is a corporation, the city or county where its registered office is or where its mayor, rector, president, or other chief officer resides; or

c. If there is no officer or none of the defendants reside in the Commonwealth, venue shall be in the City of Richmond.

15. In proceedings to award an injunction:

a. To any judgment or judicial proceeding of a circuit court, venue shall be in the court in the county or city in which the judgment was rendered or such proceeding is pending;

b. To any judgment or judicial proceeding of a district court, venue shall be in the circuit court of the county or city in which the judgment was rendered or such proceeding is pending; or

c. To any other act or proceeding, venue shall be in the circuit court of the county or city in which the act is to be done, or being done, or is apprehended to be done or the proceeding is pending.

16. [Repealed.]

17. In disbarment or suspension proceedings against any attorney-at-law, in the county or city where the defendant:

a. Resides;

b. Has his principal office or place of practice when the proceeding is commenced;

c. Resided or had such principal office or place of practice when any misconduct complained of occurred; or

d. Has any pending case as to which any misconduct took place.

18. In actions under the Virginia Tort Claims Act, Article 18.1 (§ 8.01-195.1 et seq.) of Chapter 3 of this title:

a. The county or city where the claimant resides;

b. The county or city where the act or omission complained of occurred; or

c. If the claimant resides outside the Commonwealth and the act or omission complained of occurred outside the Commonwealth, the City of Richmond.

19. In suits for annulment, affirmance, or divorce, the county or city in which the parties last cohabited, or at the option of the plaintiff, in the county or city in which the defendant resides, if a resident of this Commonwealth, and in cases in which an order of publication may be issued against the defendant under § 8.01-316, venue may also be in the county or city in which the plaintiff resides.

20. In distress actions, in the county or city when the premises yielding the rent, or some part thereof, may be or where goods liable to distress may be found.

1977, c. 617; 1978, c. 334; 1979, c. 331; 1985, c. 433; 1987, c. 567; 1988, c. 766; 1989, c. 556; 1990, c. 831; 1993, c. 841 .

§ 8.01-262. Category B or permissible venue

In any actions to which this chapter applies except those actions enumerated in Category A where preferred venue is specified, one or more of the following counties or cities shall be permissible forums, such forums being sometimes referred to as "Category B" in this title:

1. Wherein the defendant resides or has his principal place of employment or, if the defendant is not an individual, wherein its principal office or principal place of business is located;

2. Wherein the defendant has a registered office, has appointed an agent to receive process, or such agent has been appointed by operation of the law; or, in case of withdrawal from the Commonwealth by such defendant, wherein venue herein was proper at the time of such withdrawal;

3. Provided there exists any practical nexus to the forum including, but not limited to, the location of fact witnesses, plaintiffs, or other evidence to the action, wherein the defendant regularly conducts substantial business activity, or in the case of withdrawal from the Commonwealth by such defendant, wherein venue herein was proper at the time of such withdrawal;

4. Wherein the cause of action, or any part thereof, arose;

5. In actions to recover or partition personal property, whether tangible or intangible, the county or city:

a. Wherein such property is physically located; or

b. Wherein the evidence of such property is located;

c. And if subdivisions a and b do not apply, wherein the plaintiff resides.

6. In actions against a fiduciary as defined in § 8.01-2 appointed under court authority, the county or city wherein such fiduciary qualified;

7. In actions for improper message transmission or misdelivery wherein the message was transmitted or delivered or wherein the message was accepted for delivery or was misdelivered;

8. In actions arising based on delivery of goods, wherein the goods were received;

9. If there is no other forum available in subdivisions 1 through 8 of this category, then the county or city where the defendant has property or debts owing to him subject to seizure by any civil process; or

10. Wherein any of the plaintiffs reside if (i) all of the defendants are unknown or are nonresidents of the Commonwealth or if (ii) there is no other forum available under any other provisions of § 8.01-261 or this section.

1977, c. 617; 1978, c. 414; 1979, c. 331; 1985, c. 213; 1999, c. 73; 2004, c. 979; 2013, cc. 71, 103.

§ 8.01-262.1. Place for bringing action under a contract related to construction

A. Where a party whose principal place of business is in the Commonwealth enters into a contract on or after July 1, 1997, to design, manage construction of, construct, alter, repair, maintain, move, demolish, or excavate, or supply goods, equipment, or materials for the construction, alteration, repair, maintenance, movement, demolition, or excavation of a building, structure, appurtenance, road, bridge, or tunnel which is physically located in the Commonwealth, any cause of action arising under such contract may be brought in the jurisdiction where the construction project is located, or such other jurisdiction where the venue is proper under the provisions of this chapter. Any provision in the contract mandating that such action be brought in a location outside the Commonwealth shall be unenforceable.

B. The forum for any arbitration proceedings required in such a contract entered into on or after July 1, 1991, shall be in this Commonwealth. If the contract provides for arbitration proceedings outside the Commonwealth, such provision is unenforceable and arbitration proceedings shall be in the county or city where the work is to be performed, unless the parties agree to conduct the proceedings elsewhere within the Commonwealth. The enforceability of the remaining provisions of the arbitration agreement and the method of selecting a forum for the conduct of the arbitration proceedings are as provided in this Code, the Federal Arbitration Act, and any applicable rules of arbitration.

1991, c. 489; 1997, c. 424; 1999, c. 130.

§ 8.01-263. Multiple parties

In actions involving multiple parties, venue shall not be subject to objection:

1. If one or more of the parties is entitled to preferred venue, and such action is commenced in any such forum; provided that in any action where there are one or more residents and one or more nonresidents or parties unknown, venue shall be proper (preferred or permissible, as the case may be) as to at least one resident defendant;

2. In all other cases, if the venue is proper as to any party.

1977, c. 617.

§ 8.01-264. Venue improperly laid; objection

A. Venue laid in forums other than those designated by this chapter shall be subject to objection, but no action shall be dismissed solely on the basis of venue if there be a forum in the Commonwealth where venue is proper. In actions where venue is subject to objection, the action may nevertheless be tried where it is commenced, and the venue irregularity shall be deemed to have been waived unless the defendant objects to venue by motion filed, as to actions in circuit courts, within twenty-one days after service of process commencing the action, or within the period of any extension of time for filing responsive pleadings fixed by order of the court. As to actions in general district courts, a motion objecting to venue, which may be in the form of a letter or other written communication, shall be filed with or received by the court on or before the day of trial. Waiver by any defendant shall not constitute waiver for any other defendant entitled to object to venue. Such motion shall set forth where the defendant believes venue to be proper, may be in writing, and shall be promptly heard by the court upon reasonable notice by any party. The court shall hear the motion only on the basis of the action as commenced against the original defendant and not on the basis of subsequent joinder or intervention of any other party. If such motion is sustained, the court shall order the venue transferred to a proper forum under the appropriate provisions of §§ 8.01-195.4, 8.01-260, 8.01-261 and 8.01-262 and shall so notify each party.

B. In the event a party defendant whose presence created venue is dismissed after the parties are at issue, then the remaining parties defendant may object to venue within ten days after such dismissal if the remaining defendants can demonstrate that the dismissed defendant was not properly joined or was added as a party defendant for the purpose of creating venue. However, nothing in this section shall impair the right of the court under § 8.01-265 to retain the action for trial on motion of a plaintiff and for good cause shown.

C. The initial pleading, in any action brought in a general district court, shall inform the defendant of his right to object to venue if the action is brought in any forum other than that specified in §§ 8.01-261, 8.01-262, or § 8.01-263. The information to the defendant shall be stated in clear, nontechnical language reasonably calculated to accomplish the purpose of this subsection.

D. Where a suit described in subdivision 19 of § 8.01-261 is filed in a venue that is not described therein, the court, on its own motion and upon notice to all parties, may transfer the suit to a venue described in such subdivision provided the transfer is implemented within sixty days after service of process upon all parties.

1977, c. 617; 1982, c. 601; 1985, cc. 433, 492; 1986, cc. 396, 403; 1987, c. 709; 1991, c. 692 .

§ 8.01-265. Change of venue by court

In addition to the provisions of § 8.01-264 and notwithstanding the provisions of §§ 8.01-195.4, 8.01-260, 8.01-261 and 8.01-262, the court wherein an action is commenced may, upon motion by any party and for good cause shown, (i) dismiss an action brought by a person who is not a resident of the Commonwealth without prejudice under such conditions as the court deems appropriate if the cause of action arose outside of the Commonwealth and if the court determines that a more convenient forum which has jurisdiction over all parties is available in a jurisdiction other than the Commonwealth or (ii) transfer the action to any fair and convenient forum having jurisdiction within the Commonwealth. Such conditions as the court deems appropriate shall include, but not be limited to, a requirement that the defendant agree not to assert the statute of limitations as a defense if the action is brought in a more convenient forum within a time specified by the court. The court, on motion of any party and for good cause shown, may retain the action for trial. Except by agreement of all parties, no action enumerated in Category A, § 8.01-261, shall be transferred to or retained by a forum not enumerated in such category. Good cause shall be deemed to include, but not to be limited to, the agreement of the parties or the avoidance of substantial inconvenience to the parties or the witnesses, or complying with the law of any other state or the United States.

The provisions of (i) of this section shall not apply to causes of action which accrue under § 8.01-249(4) .

Code 1950, §§ 8-38, 8-157, 8-158; 1950, p. 78; 1954, c. 660; 1956, c. 432; 1956, Ex. Sess., c. 11; 1960, c. 569; 1964, c. 502; 1968, c. 386; 1977, c. 617; 1979, c. 662; 1982, c. 601; 1991, c. 530; 2007, c. 105.

§ 8.01-266. Costs

In any action which is transferred or retained for trial pursuant to this chapter, the court in which the action is initially brought may award an amount necessary to compensate a party for such inconvenience, expense, and delay as he may have been caused by the commencement of the suit in a forum to which an objection, pursuant to § 8.01-264, is sustained or by the bringing of a frivolous motion to transfer. In addition, the court may award those attorney's fees deemed just and reasonable which are occasioned by such commencement of a suit or by such motion to transfer. The awarding of such costs by the transferor court shall not preclude the assessment of costs by the clerk of the transferee court.

1977, c. 617; 1994, c. 32.

§ 8.01-267. Discretion of judge

Both the decision of the court transferring or refusing to transfer an action under § 8.01-265 and the decision of the court as to amount of costs awarded under § 8.01-266 shall be within the

sound discretion of the trial judge. However, nothing herein shall affect the right to assign as error a court's decision concerning venue.

1977, c. 617.

Chapter 5.1 - MULTIPLE CLAIMANT LITIGATION ACT

§ 8.01-267.1. Standards governing consolidation, etc., and transfer

On motion of any party, a circuit court may enter an order joining, coordinating, consolidating or transferring civil actions as provided in this chapter upon finding that:

1. Separate civil actions brought by six or more plaintiffs involve common questions of law or fact and arise out of the same transaction, occurrence or series of transactions or occurrences;

2. The common questions of law or fact predominate and are significant to the actions; and

3. The order (i) will promote the ends of justice and the just and efficient conduct and disposition of the actions, and (ii) is consistent with each party's right to due process of law, and (iii) does not prejudice each individual party's right to a fair and impartial resolution of each action.

Factors to be considered by the court include, but are not limited to, (i) the nature of the common questions of law or fact; (ii) the convenience of the parties, witnesses and counsel; (iii) the relative stages of the actions and the work of counsel; (iv) the efficient utilization of judicial facilities and personnel; (v) the calendar of the courts; (vi) the likelihood and disadvantages of duplicative and inconsistent rulings, orders or judgments; (vii) the likelihood of prompt settlement of the actions without the entry of the order; and (viii) as to joint trials by jury, the likelihood of prejudice or confusion.

The court may organize and manage the combined litigation and enter further orders consistent with the right of each party to a fair trial as may be appropriate to avoid unnecessary costs, duplicative litigation or delay and to assure fair and efficient conduct and resolution of the litigation, including but not limited to orders which organize the parties into groups with like interest; appoint counsel to have lead responsibility for certain matters; allocate costs and fees to separate issues into common questions that require treatment on a consolidated basis and individual cases that do not; and to stay discovery on the issues that are not consolidated.

1995, c. 555.

§ 8.01-267.2. When actions pending in same court

For purposes of this chapter, actions shall be considered pending in the same circuit court when they have been (i) filed in that court, regardless of whether the defendant has been served with process, or (ii) properly transferred to that court.

1995, c. 555.

§ 8.01-267.3. Consolidation and other combined proceedings

On motion of any party, a circuit court in which separate civil actions are pending which were brought by six or more plaintiffs may enter an order coordinating, consolidating or joining any or all of the proceedings in the actions upon making the findings required by § 8.01-267.1. The order may provide for any or all of the following:

1. Coordinated or consolidated pretrial proceedings;

2. A joint hearing or, if requested by any party, trial by jury with respect to any or all common questions at issue in the actions; or

3. Consolidation of the actions.

1995, c. 555.

§ 8.01-267.4. Transfer

A. Whenever there are pending in different circuit courts of the Commonwealth civil actions brought by six or more plaintiffs which involve common issues of law or fact and arise out of the same transaction, occurrence or the same series of transactions or occurrences, any party may apply to a panel of circuit court judges designated by the Supreme Court for an order of transfer. Upon such application and upon making the findings required by § 8.01-267.1, the panel may order some or all of the actions transferred to a circuit court in which one or more of the actions are pending for purposes of coordinated or consolidated pretrial proceedings. The circuit court to which actions are transferred may enter further orders as provided in § 8.01-267.3. Any subsequent application for further transfer shall be made to the circuit court to which the actions were transferred. Upon completion of pretrial proceedings and any joint hearings or trials, the circuit court may remand the actions to the circuit courts in which they were originally filed or may retain them for final disposition.

B. Any party who files an application for transfer shall at the same time give notice of such application to all parties and to the clerk of each circuit court in which an action that is the subject of the application is pending. Upon receipt of the notice, a circuit court shall not enter any further orders under § 8.01-267.3 until after the panel has entered an order granting or denying an application for transfer pursuant to subsection A.

1995, c. 555.

§ 8.01-267.5. Joinder and severance

Six or more parties may be joined initially as plaintiffs in a single action if their claims involve common issues of fact and arise out of the same transaction or occurrence or the same series of transactions or occurrences. On motion of a defendant, the actions so joined shall be severed unless the court finds that the claims of the plaintiffs were ones which, if they had been filed separately, would have met the standards of § 8.01-267.1 and would have been consolidated under § 8.01-267.3. If the court orders severance, the claims may proceed separately upon payment of any appropriate filing fees due in the separate circuit courts within sixty days of entry of the order. The

date of the original filing shall be the date of filing for each of the severed actions for purposes of applying the statutes of limitations.

1995, c. 555.

§ 8.01-267.6. Separate trials; special interrogatories

In any combined action under this chapter, the court, on motion of any party, may order separate or bifurcated trials of any one or more claims, cross-claims, counterclaims, third-party claims, or separate issues, always preserving the right of trial by jury.

Additionally, the court may submit special interrogatories to the jury to resolve specific issues of fact.

1995, c. 555.

§ 8.01-267.7. Later-filed actions

Later-filed actions may be joined with ongoing litigation in accordance with the procedures of § 8.01-267.3 or § 8.01-267.4 and the standards of § 8.01-267.1. Parties in later-filed actions joined with on-going multiple claimant litigation may, in the discretion of the court, be bound to prior proceedings but only to the extent permitted by law and only to the extent that the court finds that the interests of such parties were adequately and fairly represented. Consistent with the language of this section and the standards of § 8.01-267.1, the parties may utilize all prior discovery taken by any party in on-going multiple party litigation as if the parties in the later-filed actions had been parties at the time the discovery was taken. On motion of any party or by the person from whom discovery is sought, the court may limit or prohibit discovery by parties in later-filed actions if the court finds that the matters on which the discovery is sought have been covered adequately by prior discovery.

1995, c. 555.

§ 8.01-267.8. Interlocutory appeal

A. The Supreme Court or the Court of Appeals, in its discretion, may permit an appeal to be taken from an order of a circuit court although the order is not a final order where the circuit court has ordered a consolidated trial of claims joined or consolidated pursuant to this chapter.

B. The Supreme Court or the Court of Appeals, in its discretion, may permit an appeal to be taken from any other order of a circuit court in an action combined pursuant to this chapter although the order is not a final order provided the written order of the circuit court states that the order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

C. Application for an appeal pursuant to this section shall be made within ten days after the entry of the order and shall not stay proceedings in the circuit court unless the circuit court or the appellate court shall so order.

1995, c. 555.

§ 8.01-267.9. Effect on other law

The procedures set out in this chapter are in addition to procedures otherwise available by statute, rule or common law and do not limit in any way the availability of such procedures, but shall not apply to any action against a manufacturer or supplier of asbestos or product for industrial use that contains asbestos to which the provisions of § 8.01-374.1 may apply.

1995, c. 555.

Chapter 6 - NOTICE OF LIS PENDENS OR ATTACHMENT

§ 8.01-268. When and how docketed and indexed

A. No lis pendens or attachment shall bind or affect a subsequent bona fide purchaser of real or personal estate for valuable consideration and without actual notice of such lis pendens or attachment, until and except from the time a memorandum setting forth the title of the cause or attachment, the general object thereof, the court wherein it is pending, the amount of the claim asserted by the plaintiff, a description of the property, the name of the person whose estate is intended to be affected thereby, and in an action to enforce a zoning ordinance a description of the alleged violation, shall be admitted to record in the clerk's office of the circuit court of the county or the city wherein the property is located; or if it be in that part of the City of Richmond lying north of the south bank of the James River and including the islands in such river, in the clerk's office of the Circuit Court, Division I, of such city, or if it be in the part of the City of Richmond lying south of the south bank of the James River, in the clerk's office of the Circuit Court, Division II, of such city. Clerks of circuit courts are authorized and directed to admit to record memoranda of lis pendens or attachment for actions pending in any court of this Commonwealth, or in any other state, federal, or territorial court. The provisions of this section shall not be construed to mean that any such memoranda heretofore recorded are not properly of record. Such memorandum shall not be deemed to have been recorded unless and until indexed as required by law. A memorandum of lis pendens admitted to record in an action to enforce a zoning ordinance shall expire after 180 days.

B. No memorandum of lis pendens shall be filed unless the action on which the lis pendens is based seeks to establish an interest by the filing party in the real property described in the memorandum, or unless the action on which the lis pendens is based seeks to enforce a zoning ordinance.

Code 1950, § 8-142; 1973, c. 544; 1976, c. 178; 1977, c. 617; 1988, c. 503; 2008, cc. 60, 204.

§ 8.01-269. Dismissal or satisfaction of same

If such attachment or lis pendens is quashed or dismissed or such cause is dismissed, or judgment or final decree in such attachment or cause is for the defendant or defendants, the court shall direct in its order (i) that the names of all interested parties thereto, as found in the recorded attachment or lis pendens be listed for the clerk, and (ii) that the attachment or lis pendens be released and, the court may, in an appropriate case, impose sanctions as provided in § 8.01-271.1. It shall

then become the duty of the clerk in whose office such attachment or lis pendens is recorded to record the order in the order book together with a separate instrument or order releasing such lien and referencing the deed book and page where the original lien is recorded. However, in any case in which an appeal or writ of error from such judgment or decree or dismissal would lie, the clerk shall not record the order or make the entry until after the expiration of the time in which such appeal or writ of error may be applied for, or if applied for after refusal thereof, or if granted, after final judgment or decree is entered by the appellate court.

In any case in which the debt for which such attachment is issued, or suit is brought and notice of lis pendens recorded is satisfied by payment, it shall be the duty of the creditor, within 10 days after payment of same, to provide the clerk with a separate instrument or order for recordation releasing such lis pendens and referencing the order book and page where the original lis pendens is recorded.

Code 1950, § 8-143; 1962, c. 589; 1977, c. 617; 1985, c. 310; 1986, c. 278; 1989, c. 450; 2014, c. 330.

Chapter 7 - CIVIL ACTIONS; COMMENCEMENT, PLEADINGS, AND MOTIONS

Article 1 - CIVIL ACTIONS GENERALLY

§ 8.01-270. Repealed

Repealed by Acts 2005, c. 681, cl. 2, effective January 1, 2006.

Article 2 - PLEADINGS GENERALLY

§ 8.01-271. Compliance with Rules of Supreme Court

Subject to the provisions of this title, pleadings shall be in accordance with Rules of the Supreme Court.

1977, c. 617.

§ 8.01-271.01. Electronic filings in civil actions in circuit court

Electronic filings in civil actions and proceedings in the circuit court shall be governed by Article 4.1 (§ 17.1-258.2 et. seq.) of Chapter 2 of Title 17.1 and applicable Rules of the Supreme Court of Virginia.

2010, cc. 717, 760.

§ 8.01-271.1. Signing of pleadings, motions, and other papers; oral motions; sanctions

Except as otherwise provided in §§ 16.1-260 and 63.2-1901, every pleading, written motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, and the attorney's address shall be stated on the first pleading filed by that attorney in the action. A party who is not represented by an attorney, including a person confined in a state or local correctional facility proceeding pro se, shall sign his pleading, motion, or other paper and state his address.

The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, written motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

An oral motion made by an attorney or party in any court of the Commonwealth constitutes a representation by him that (i) to the best of his knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (ii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If a pleading, motion, or other paper is signed or made in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including a reasonable attorney's fee.

1987, cc. 259, 682; 1998, c. 596; 2008, cc. 136, 845.

§ 8.01-272. Pleading several matters; joining tort and contract claims; separate trial in discretion of court; counterclaims

In any civil action, a party may plead as many matters, whether of law or fact, as he shall think necessary. A party may join a claim in tort with one in contract provided that all claims so joined arise out of the same transaction or occurrence. The court, in its discretion, may order a separate trial for any claim. Any counterclaim shall be governed by the Rules of the Supreme Court of Virginia.

Code 1950, § 8-134; 1954, c. 333; 1977, c. 617; 1979, c. 367; 2005, c. 681.

§ 8.01-273. Demurrer; form; grounds to be stated; amendment

A. In any suit in equity or action at law, the contention that a pleading does not state a cause of action or that such pleading fails to state facts upon which the relief demanded can be granted may be made by demurrer. All demurrers shall be in writing and shall state specifically the grounds on which the demurrant concludes that the pleading is insufficient at law. No grounds other than those stated specifically in the demurrer shall be considered by the court. A demurrer may be amended as other pleadings are amended.

B. Wherever a demurrer to any pleading has been sustained, and as a result thereof the demurree has amended his pleading, he shall not be deemed to have waived his right to stand upon his pleading before the amendment, provided the order of the court shows that he objected to the ruling of the court sustaining the demurrer. On any appeal of such a case the demurree may insist upon his original pleading, and if the same be held to be good, he shall not be prejudiced by having made the amendment.

Code 1950, §§ 8-99, 8-120; 1954, c. 333; 1977, c. 617.

§ 8.01-273.1. Motion for judgment; motion to refer; Virginia Birth-Related Neurological Injury Compensation Act

A. In any civil action, where a party, who is a participating hospital or physician as defined in § 38.2-5001, moves to refer a cause of action to the Workers' Compensation Commission for the purposes of determining whether the cause of action satisfies the requirements of the Virginia Birth-Related Neurological Injury Compensation Act (§ 38.2-5000 et seq.), the court shall forward the motion to refer together with a copy of the motion for judgment to the Commission and stay all proceedings on the cause of action pending an award and notification by the Commission of its disposition; provided, however, that the motion to refer the cause of action to the Workers' Compensation Commission shall be filed no later than 120 days after the date of filing a grounds of defense by the party seeking the referral.

B. Upon entry of the order of referral by the court, the clerk of the circuit court shall file with the Workers' Compensation Commission within thirty days a copy of the motion for judgment and the responsive pleadings of all the parties to the action. The clerk shall copy all counsel of record in the civil action on the transmittal letter accompanying the materials being filed with the Workers' Compensation Commission. All parties to the civil action shall be entitled to participate before the Commission upon filing a notice of appearance with the Clerk of the Commission within twenty-one days after receipt of the transmittal letter to the clerk of the circuit court. Notwithstanding the provisions of § 32.1-127.1:03, the moving party shall provide the Commission with an original and five copies of the following: appropriate assessments, evaluations, and prognoses and such other records obtained during discovery and are reasonably necessary for the determination of whether the infant has suffered a birth-related neurological injury. The medical records and the pleadings referenced in this subsection shall constitute a petition as referenced in § 38.2-5004. The moving party shall be reimbursed for all copying costs upon entry of an award of benefits as referenced in § 38.2-5009.

1999, c. 822; 2000, c. 207.

§ 8.01-274. Motion to strike defensive pleading in equity and at law; exceptions abolished

Exceptions to answers for insufficiency are abolished. The test of the sufficiency of any defensive pleading in any suit in equity or action at law shall be made by a motion to strike; if found insufficient, but amendable, the court may allow amendment on terms. If a second pleading is

adjudged insufficient, the court may enter such judgment or decree or take such other action that it deems appropriate.

Code 1950, § 8-122; 1954, c. 605; 1977, c. 617; 1978, c. 336.

§ 8.01-275. When action or suit not to abate for want of form; what defects not to be regarded

No action or suit shall abate for want of form where the motion for judgment or bill of complaint sets forth sufficient matter of substance for the court to proceed upon the merits of the cause. The court shall not regard any defect or imperfection in the pleading, whether it has been heretofore deemed mispleading or insufficient pleading or not, unless there be omitted something so essential to the action or defense that judgment, according to law and the very right of the cause, cannot be given.

Code 1950, §§ 8-102, 8-109; 1954, c. 333; 1977, c. 617.

§ 8.01-275.1. When service of process is timely

Service of process in an action or suit within twelve months of commencement of the action or suit against a defendant shall be timely as to that defendant. Service of process on a defendant more than twelve months after the suit or action was commenced shall be timely upon a finding by the court that the plaintiff exercised due diligence to have timely service made on the defendant.

1994, c. 519.

§ 8.01-276. Demurrer to evidence and plea in abatement abolished; motion to strike evidence and written motion, respectively, to be used in lieu thereof

Demurrers to the evidence and pleas in abatement are hereby abolished.

Any matter that heretofore could be reached by a demurrer to the evidence may hereafter be subject to a motion to strike the evidence.

Any defense heretofore required or permitted to be made by plea in abatement may be made by written motion stating specifically the relief demanded and the grounds therefor. Except when the ground of such motion is the lack of the court's jurisdiction over the person of an indispensable party, or of the subject matter of the litigation, such motion shall be made within the time prescribed by Rules of the Supreme Court.

If the motion challenges the venue of the action, the movant shall state therein why venue is improperly laid and what place or places within the Commonwealth would constitute proper venue for the action.

1977, c. 617.

§ 8.01-277. Defective process; motion to quash; untimely service; motion to dismiss

A. A person, upon whom process to answer any action has been served, may take advantage of any defect in the issuance, service or return thereof by a motion to quash filed prior to or

simultaneously with the filing of any pleading to the merits. Upon sustaining the motion, the court may strike the proof of service or permit amendment of the process or its return as may seem just.

B. A person, upon whom process has not been served within one year of commencement of the action against him, may make a special appearance, which does not constitute a general appearance, to file a motion to dismiss. Upon finding that the plaintiff did not exercise due diligence to have timely service and sustaining the motion to dismiss, the court shall dismiss the action with prejudice. Upon finding that the plaintiff did exercise due diligence to have timely service and denying the motion to dismiss, the court shall require the person filing such motion to file a responsive pleading within 21 days of such ruling. Nothing herein shall prevent the plaintiff from filing a nonsuit under § 8.01-380 before the entry of an order granting a motion to dismiss pursuant to the provisions of this section. Nothing in this subsection shall pertain to cases involving asbestos.

Code 1950, § 8-118; 1954, c. 333; 1977, c. 617; 1994, c. 37; 2006, c. 151.

§ 8.01-277.1. Objections to personal jurisdiction or defective process; what constitutes waiver

A. Except as provided in § 8.01-277, a person waives any objection to personal jurisdiction or defective process if he engages in conduct related to adjudicating the merits of the case, including, but not limited to:

1. Filing a demurrer, plea in bar, answer, counterclaim, cross-claim, or third-party claim;

2. Conducting discovery, except as provided in subsection B;

3. Seeking a ruling on the merits of the case; or

4. Actively participating in proceedings related to determining the merits of the case.

B. A person does not waive any objection to personal jurisdiction or defective process if he engages in conduct unrelated to adjudicating the merits of the case, including, but not limited to:

1. Requesting or agreeing to an extension of time;

2. Agreeing to a scheduling order;

3. Conducting discovery authorized by the court related to adjudicating the objection;

4. Observing or attending proceedings in the case;

5. Filing a motion to transfer venue pursuant to § 8.01-264 when such motion is filed contemporaneously with the objection; or

6. Removing the case to federal court.

2011, c. 710.

§ 8.01-278. When plea of infancy not allowed; liability of infants for debts as traders; liability of infants on loans to defray expenses of education

A. If any minor now transacting business or who may hereafter transact business as a trader fails to disclose (i) by a sign in letters easy to be read, kept conspicuously posted at the place wherein such business is transacted and (ii) also by a notice published for two weeks in a newspaper meeting the requirements of § 8.01-324, the fact that he is a minor, all property, stock, and choses in action acquired or used in such business shall as to the creditors of any such person be liable for the debts of such person, and no plea of infancy shall be allowed.

B. If any minor shall procure a loan upon the representation in writing that the proceeds thereof are to be expended by such minor to defray any or all expenses incurred by reason of attendance at an institution of higher education, which has been approved by any regional accrediting association which is approved by the United States Office of Education, or by reason of attendance at any school eligible for the guarantee of the State Education Assistance Authority, such minor shall be liable for the repayment thereof as though he were an adult, and no plea of infancy shall be allowed.

Code 1950, §§ 8-135, 8-135.1; 1960, c. 78; 1970, c. 7; 1977, c. 617.

§ 8.01-279. When proof is unnecessary unless affidavit filed; handwriting; ownership; partnership or incorporation

A. Except as otherwise provided by § 8.3A-308, when any pleading alleges that any person made, endorsed, assigned, or accepted any writing, no proof of the handwriting shall be required, unless it be denied by an affidavit accompanying the plea putting it in issue.

B. When any pleading alleges that any person, partnership, corporation, or unincorporated association at a stated time, owned, operated, or controlled any property or instrumentality, no proof of the fact alleged shall be required unless an affidavit be filed with the pleading putting it in issue, denying specifically and with particularity that such property or instrumentality was, at the time alleged, so owned, operated, or controlled.

C. When parties sue or are sued as partners, and their names are set forth in the pleading, or when parties sue or are sued as a corporation, it shall not be necessary to prove the fact of the partnership or incorporation unless with the pleading which puts the matter in issue there be filed an affidavit denying such partnership or incorporation.

Code 1950, §§ 8-114 to 8-116; 1954, c. 333; 1958, c. 66; 1964, c. 219; 1977, c. 617.

§ 8.01-280. Pleadings may be sworn to before clerk; affidavit of belief sufficient

Any pleading to be filed in any court may be sworn to before the clerk or any officer authorized to administer oath thereof; and when an affidavit is required in support of any pleading or as a prerequisite to the issuance thereof, it shall be sufficient if the affiant swear that he believes it to be true.

Code 1950, § 8-131; 1977, c. 617.

§ 8.01-281. Pleading in alternative; separate trial on motion of party

A. A party asserting either a claim, counterclaim, cross-claim, or third-party claim or a defense may plead alternative facts and theories of recovery against alternative parties, provided that such claims, defenses, or demands for relief so joined arise out of the same transaction or occurrence. Such claim, counterclaim, cross-claim, or third-party claim may be for contribution, indemnity, subrogation, or contract, express or implied; it may be based on future potential liability, and it shall be no defense thereto that the party asserting such claim, counterclaim, cross-claim, or third-party claim has made no payment or otherwise discharged any claim as to him arising out of the transaction or occurrence.

B. The court may, upon motion of any party, order a separate trial of any claim, counterclaim, cross-claim, or third-party claim, and of any separate issue or of any number of such claims; however, in any action wherein a defendant files a third-party motion for judgment alleging that damages to the person or property of the plaintiff were caused by the negligence of the third-party defendant in the operation of a motor vehicle, the court shall, upon motion of the plaintiff made at least five days in advance of trial, order a separate trial of such third-party claim.

Code 1950, § 8-96.1; 1974, c. 355; 1977, c. 617; 1981, c. 426; 1983, c. 183.

Article 3 - PARTICULAR EQUITY PROVISIONS

§ 8.01-282. Motion to strike evidence

When a defendant moves the court to strike out all of the evidence, upon any grounds, and such motion is overruled by the court, such defendant shall not thereafter be precluded from introducing evidence in his behalf.

Code 1950, § 8-122.1; 1954, c. 605; 1977, c. 617; 2005, c. 681.

§ 8.01-283. Answer in equity proceeding

There shall be no requirement that a sworn answer in a proceeding on an equitable claim be rebutted by the testimony of two witnesses.

Code 1950, § 8-123; 1977, c. 617; 2005, c. 681.

§ 8.01-284. Repealed

Repealed by Acts 2005, c. 681, cl. 2, effective January 1, 2006.

Chapter 8 - PROCESS

Article 1 - IN GENERAL

§ 8.01-285. Definition of certain terms for purposes of this chapter; process, return, statutory agent

For the purposes of this chapter:

1. The term "process" shall be deemed to include notice;

2. The term "return" shall be deemed to include the term "proof of service";

3. The term "statutory agent" means the Commissioner of the Department of Motor Vehicles and the Secretary of the Commonwealth, and the successors of either, when appointed pursuant to law for the purpose of service of process on the nonresident defined in subdivision 2 of § 8.01-307; and

4. The term "person" includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association or any other legal or commercial entity, whether or not a citizen or domiciliary of the Commonwealth and whether or not organized under the laws of the Commonwealth.

1977, c. 617; 1991, c. 672; 2005, c. 866.

§ 8.01-286. Forms of writs

Subject to the provisions of § 8.01-3, the Supreme Court may prescribe the forms of writs, and where no such prescription is made, the forms of writs shall be the same as heretofore used.

Code 1950, § 8-43; 1977, c. 617.

§ 8.01-286.1. Service of process; waiver, duty to save costs, request to waive, how served

A. In an action pending in general district court or circuit court, the plaintiff may notify a defendant of the commencement of the action and request that the defendant waive service of process as provided in subsection B. Any person subject to service as set forth in § 8.01-296, 8.01-299, §§ 8.01-301 through 8.01-306 or § 8.01-320, with the exception of the Secretary of the Commonwealth and the Clerk of the State Corporation Commission, who receives actual notice of an action in the manner provided in this section, has a duty to avoid any unnecessary costs of serving process.

B. The notice and request shall incorporate the request for waiver and shall:

1. Be in writing and shall be addressed directly to the defendant, if an individual, or else to an officer, director or registered agent authorized by appointment or law to receive service of process of a defendant subject to service under § 8.01-299, §§ 8.01-301 through 8.01-306 or § 8.01-320;

2. Be dispatched through first-class mail or other reliable means;

3. Be accompanied by a copy of the motion for judgment, bill of complaint or other such initial pleading and identify the court in which it has been filed;

4. Inform the defendant, by means of a form provided by Executive Secretary of the Supreme Court, of the consequences of compliance and failure to comply with the request;

5. Set forth the date on which the request is sent;

6. Allow the defendant a reasonable time to return the waiver, which shall be no more than 30 days from the date on which the request is sent, or 60 days from that date if the defendant's address is outside the Commonwealth; and

7. Provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing.

If a defendant fails to comply with a request for waiver made by a plaintiff, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown.

C. A defendant that, before being served with process, timely returns a waiver so requested is not required to serve a grounds of defense or other responsive pleading to the motion for judgment or other initial pleading until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant's address was outside the Commonwealth.

D. When the plaintiff files a waiver of service with the court, the action shall proceed as if a notice and motion for judgment or other initial pleading had been served at the time of filing the waiver, and no proof of service shall be required.

E. The costs to be imposed on a defendant for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under § 8.01-299, §§ 8.01-301 through 8.01-306 or § 8.01-320, together with the costs, including reasonable attorneys' fees, of any motion required to collect the costs of service. This provision does not apply to the Commissioner of the Department of Motor Vehicles, the Secretary of the Commonwealth or the Clerk of the State Corporation Commission.

F. A defendant who waives service of process pursuant to this section does not thereby waive any objection to the venue or to the jurisdiction of the court over the person of that defendant, or to any other defense or objection other than objections based on inadequacy of process or service of process.

2005, c. 866; 2011, c. 766.

§ 8.01-287. How process to be served

Upon commencement of an action, process shall be served in the manner set forth in this chapter and by the Rules of the Supreme Court.

Code 1950, § 8-56; 1952, c. 77; 1954, c. 543; 1977, c. 617.

§ 8.01-288. Process received in time good though neither served nor accepted

Except for process commencing actions for divorce or annulment of marriage or other actions wherein service of process is specifically prescribed by statute, process which has reached the person to whom it is directed within the time prescribed by law, if any, shall be sufficient although not served or accepted as provided in this chapter.

Code 1950, § 8-53; 1977, c. 617; 1987, c. 594; 1988, c. 583.

§ 8.01-289. No service of process on Sunday; exceptions

No civil process shall be served on Sunday, except in cases of persons escaping out of custody, or where it is otherwise expressly provided by law.

Code 1950, § 8-4.2; 1977, c. 617.

Article 2 - HOW PROCESS IS ISSUED

§ 8.01-290. Plaintiffs required to furnish full name and last known address of defendants, etc

Upon the commencement of every action, the plaintiff shall furnish in writing to the clerk or other issuing officer the full name and last known address of each defendant and if unable to furnish such name and address, he shall furnish such salient facts as are calculated to identify with reasonable certainty such defendant. The clerk or other official whose function it is to issue any such process shall note in the record or in the papers the address or other identifying facts furnished. Failure to comply with the requirements of this section shall not affect the validity of any judgment.

Code 1950, § 8-46.1; 1962, c. 10; 1977, c. 617.

§ 8.01-291. Copies to be made

The clerk issuing any such process unless otherwise directed shall deliver or transmit therewith as many copies thereof as there are persons named therein on whom it is to be served.

Code 1950, § 8-57; 1977, c. 617.

§ 8.01-292. To whom process directed and where executed

Process from any court, whether original, mesne, or final, may be directed to the sheriff of, and may be executed in, any county, city, or town in the Commonwealth.

Code 1950, § 8-44; 1954, c. 333; 1977, c. 617.

Article 3 - WHO AND WHERE TO SERVE PROCESS

§ 8.01-293. Authorization to serve process, capias or show cause order; execute writ of possession and levy upon property

A. The following persons are authorized to serve process:

1. The sheriff within such territorial bounds as described in § 8.01-295;

2. Any person of age 18 years or older and who is not a party or otherwise interested in the subject matter in controversy. However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, if such summons is served on school property, it shall be served only by a sheriff or his deputy; or

3. A private process server. For purposes of this section, "private process server" means any person 18 years of age or older and who is not a party or otherwise interested in the subject matter in controversy, and who charges a fee for service of process.

Whenever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return or do any other act relating to service of process, such term shall be deemed to refer to any person authorized by this section to serve process.

B. Notwithstanding any other provision of law (i) only a sheriff or high constable may execute an order or writ of possession for personal, real or mixed property, including an order or writ of possession arising out of an action in unlawful entry and detainer or ejectment; (ii) any sheriff, high constable or law-enforcement officer as defined in § 9.1-101 of the Code of Virginia may serve any capias or show cause order; and (iii) only a sheriff, the high constable for the City of Norfolk or Virginia Beach or a treasurer may levy upon property.

Code 1950, §§ 8-52, 8-54; 1954, c. 543; 1960, c. 16; 1968, c. 484; 1977, c. 617; 1981, c. 110; 1986, c. 275; 1996, cc. 501, 608; 1997, c. 820; 2002, c. 342; 2004, cc. 210, 588; 2011, c. 766.

§ 8.01-294. Sheriff to get from clerk's office process and other papers; return of papers; effect of late return

Every sheriff who attends a court shall, every day when the clerk's office is open for business, go to such office and receive all process, and other papers to be served by him, and give receipts therefor, unless he has received notice from a regular employee of the clerk's office that there are no such papers requiring service and shall return all papers within 72 hours of service, except when such returns would be due on a Saturday, Sunday, or legal holiday. In such case, the return is due on the next day following such Saturday, Sunday, or legal holiday.

Failure to make return of service of process by anyone authorized to serve process under § 8.01-293 within the time specified in this section shall not invalidate any service of process or any judgment based thereon. In the event a late return prejudices a party or interferes with the court's administration of a case, the court may, in its discretion, continue the case, require additional or substitute service of process, or take such other action or enter such order as the court deems appropriate under the circumstances.

Code 1950, § 8-49; 1954, c. 545; 1977, c. 617; 1978, c. 831; 2002, c. 65; 2004, c. 627.

§ 8.01-295. Territorial limits within which sheriff may serve process in his official capacity; process appearing to be duly served

The sheriff may execute such process throughout the political subdivision in which he serves and in any contiguous county or city. If the process appears to be duly served, and is good in other respects, it shall be deemed valid although not directed to an officer, or if directed to any officer, though executed by some other person. This section shall not be construed to require the sheriff to serve such process in any jurisdiction other than in his own.

Code 1950, § 8-50; 1977, c. 617; 1982, c. 674.

Article 4 - WHO TO BE SERVED

§ 8.01-296. Manner of serving process upon natural persons

Subject to the provisions of § 8.01-286.1, in any action at law or in equity or any other civil proceeding in any court, process, for which no particular mode of service is prescribed, may be served upon natural persons as follows:

1. By delivering a copy thereof in writing to the party in person; or

2. By substituted service in the following manner:

a. If the party to be served is not found at his usual place of abode, by delivering a copy of such process and giving information of its purport to any person found there, who is a member of his family, other than a temporary sojourner or guest, and who is of the age of 16 years or older; or

b. If such service cannot be effected under subdivision 2 a, then by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such place of abode, provided that not less than 10 days before judgment by default may be entered, the party causing service or his attorney or agent mails to the party served a copy of such process and thereafter files in the office of the clerk of the court a certificate of such mailing. In any civil action brought in a general district court, the mailing of the application for a warrant in debt or affidavit for summons in unlawful detainer or other civil pleading or a copy of such pleading, whether yet issued by the court or not, which contains the date, time and place of the return, prior to or after filing such pleading in the general district court, shall satisfy the mailing requirements of this section. In any civil action brought in a circuit court, the mailing of a copy of the pleadings with a notice that the proceedings are pending in the court indicated and that upon the expiration of 10 days after the giving of the notice and the expiration of the statutory period within which to respond, without further notice, the entry of a judgment by default as prayed for in the pleadings may be requested, shall satisfy the mailing requirements of this section and any notice requirement of the Rules of Court. Any judgment by default entered after July 1, 1989, upon posted service in which proceedings a copy of the pleadings was mailed as provided for in this section prior to July 1, 1989, is validated.

c. The person executing such service shall note the manner and the date of such service on the original and the copy of the process so delivered or posted under this subdivision and shall effect the return of process as provided in §§ 8.01-294 and 8.01-325.

3. If service cannot be effected under subdivisions 1 and 2, then by order of publication in appropriate cases under the provisions of §§ 8.01-316 through 8.01-320.

4. The landlord or his duly authorized agent or representative may serve notices required by the rental agreement or by law upon the tenant or occupant under a rental agreement that is within the purview of Chapter 13 (§ 55-217 et seq.) of Title 55.

Code 1950, § 8-51; 1954, c. 333; 1977, c. 617; 1989, cc. 518, 524; 1990, cc. 729, 767; 1996, c. 538; 2005, c. 866; 2008, c. 489.

§ 8.01-297. Process on convict defendant

In all actions against one who has been convicted of a felony and is confined in a local or regional jail or State correctional institution, process shall be served on such convict and, subject to § 8.01-9, a guardian ad litem shall be appointed for him. Such service may be effected by delivery to the officer in charge of such jail or institution whose duty it shall be to deliver forthwith such process to the convict.

Code 1950, § 8-55; 1954, c. 543; 1977, c. 617.

§ 8.01-298. How summons for witness or juror served

In addition to the manner of service on natural persons prescribed in § 8.01-296, a summons for a witness or for a juror may be served:

1. At his or her usual place of business or employment during business hours, by delivering a copy thereof and giving information of its purport to the person found there in charge of such business or place of employment; or

2. In the case of a juror, by mailing a summons to the person being served, at least seven days prior to the day he is summoned to appear.

Code 1950, § 8-58; 1954, c. 366; 1973, c. 439; 1977, c. 617; 1979, c. 444.

§ 8.01-299. How process served on domestic corporations generally

Except as prescribed in § 8.01-300 as to municipal and quasi-governmental corporations, and subject to § 8.01-286.1, process may be served on a corporation created by the laws of the Commonwealth as follows:

1. By personal service on any officer, director, or registered agent of such corporation;

2. By substituted service on stock corporations in accordance with § 13.1-637 and on nonstock corporations in accordance with § 13.1-836; or

3. If the registered address of the corporation is a single-family residential dwelling, by substituted service on the registered agent of the corporation in the manner of subdivision 2 of § 8.01-296.

Code 1950, § 8-59; 1954, c. 23; 1956, c. 432; 1958, c. 13; 1976, c. 395; 1977, c. 617; 1991, c. 672; 2005, c. 866; 2016, c. 270.

§ 8.01-300. How process served on municipal and county governments and on quasi-governmental entities

Notwithstanding the provisions of § 8.01-299 for service of process on other domestic corporations, process shall be served on municipal and county governments and quasi-governmental bodies or agencies in the following manner:

1. If the case be against a city or a town, on its city or town attorney in those cities or towns which have created such a position, otherwise on its mayor, manager or trustee of such town or city; and

2. If the case be against a county, on its county attorney in those counties which have created such a position, otherwise on its attorney for the Commonwealth; and

3. If the case be against any political subdivision, or any other public governmental entity created by the laws of the Commonwealth and subject to suit as an entity separate from the Commonwealth, then on the director, commissioner, chief administrative officer, attorney, or any member of the governing body of such entity; and

4. If the case be against a supervisor, county officer, employee or agent of the county board, arising out of official actions of such supervisor, officer, employee or agent, then, in addition to the person named defendant in the case, on each supervisor and the county attorney, if the county has a county attorney, and if there be no county attorney, on the clerk of the county board.

Service under this section may be made by leaving a copy with the person in charge of the office of any officer designated in subdivisions 1 through 4.

Code 1950, § 8-59; 1954, c. 23; 1956, c. 432; 1958, c. 13; 1976, c. 395; 1977, c. 617; 1980, c. 732; 1985, c. 416.

§ 8.01-301. How process served on foreign corporations generally

Subject to § 8.01-286.1, service of process on a foreign corporation may be effected in the following manner:

1. By personal service on any officer, director or on the registered agent of a foreign corporation which is authorized to do business in the Commonwealth, and by personal service on any agent of a foreign corporation transacting business in the Commonwealth without such authorization, wherever any such officer, director, or agents be found within the Commonwealth;

2. By substituted service on a foreign corporation in accordance with §§ 13.1-766 and 13.1-928, if such corporation is authorized to transact business or affairs within the Commonwealth;

3. By substituted service on a foreign corporation in accordance with § 8.01-329 or by service in accordance with § 8.01-320, where jurisdiction is authorized under § 8.01-328.1, regardless of whether such foreign corporation is authorized to transact business within the Commonwealth; or

4. By order of publication in accordance with §§ 8.01-316 and 8.01-317 where jurisdiction in rem or quasi in rem is authorized, regardless of whether the foreign corporation so served is authorized to transact business within the Commonwealth.

This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

Code 1950, § 8-60; 1977, c. 617; 1991, c. 672; 2005, c. 866; 2013, c. 113.

§ 8.01-302. Repealed

Repealed by Acts 2002, c. 702.

§ 8.01-303. On whom process served when corporation operated by trustee or receiver

Subject to § 8.01-286.1, when any corporation is operated by a trustee or by a receiver appointed by any court, in any action against such corporation, process may be served on its trustee or receiver; and if there is more than one such trustee or receiver, then service may be on any one of them. In the event that no service of process may be had on any such trustee or receiver, then process may be served by any other mode of service upon corporations authorized by this chapter.

Code 1950, § 8-64; 1977, c. 617; 2005, c. 866.

§ 8.01-304. How process served on copartner or partnership

Subject to § 8.01-286.1, process against a copartner or partnership may be served upon a general partner, and it shall be deemed service upon the partnership and upon each partner individually named in the action, provided the person served is not a plaintiff in the suit and provided the matter in suit is a partnership matter.

Provided further that process may be served upon a limited partner in any proceeding to enforce a limited partner's liability to the partnership.

Code 1950, § 8-59.1; 1950, p. 455; 1977, c. 617; 2005, c. 866.

§ 8.01-305. Process against unincorporated associations or orders, or unincorporated common carriers

Subject to § 8.01-286.1, process against an unincorporated (i) association, (ii) order, or (iii) common carrier, may be served on any officer, trustee, director, staff member or other agent.

Code 1950, §§ 8-66, 8-67; 1962, c. 250; 1977, c. 617; 2005, c. 866.

§ 8.01-306. Process against unincorporated associations or orders, or unincorporated common carriers; principal office outside Virginia and business transactions in Virginia

Subject to § 8.01-286.1, if an unincorporated (i) association, (ii) order, or (iii) common carrier has its principal office outside Virginia and transacts business or affairs in the Commonwealth, process may be served on any officer, trustee, director, staff member, or agent of such association, order, or carrier in the city or county in which he may be found or on the clerk of the State Corporation Commission, who shall be deemed by virtue of such transaction of business or affairs in the Commonwealth to have been appointed statutory agent of such association, order, or carrier upon whom may be made service of process in accordance with § 12.1-19.1. Service, when duly made, shall constitute sufficient foundation for a personal judgment against such association, order or carrier. If service may not be had as aforesaid, then on affidavit of that fact an order of publication may be awarded as provided by §§ 8.01-316 and 8.01-317.

Code 1950, § 8-66.1; 1962, c. 250; 1977, c. 617; 1991, c. 672; 2005, c. 866.

§ 8.01-307. Definition of terms "motor vehicle" and "nonresident" in motor vehicle and aircraft accident cases

For the purpose of §§ 8.01-308 through 8.01-313 :

1. The term "motor vehicle" shall mean every vehicle which is self-propelled or designed for self-propulsion and every vehicle drawn by or designed to be drawn by a motor vehicle and includes every device in, upon, or by which any person or property is or can be transported or drawn upon a highway, except devices moved by human or animal power and devices used exclusively upon stationary rails or tracks.

2. The term "nonresident" includes any person who, though a resident of the Commonwealth when the accident or collision specified in § 8.01-308 or § 8.01-309 occurred, has been continuously outside the Commonwealth for at least sixty days next preceding the date when process is left with the Commissioner of the Department of Motor Vehicles or the Secretary of the Commonwealth and includes any person against whom an order of publication may be issued under the provisions of § 8.01-316.

Code 1950, § 8-67.1; 1950, p. 620; 1952, c. 681; 1956, c. 64; 1966, c. 518; 1977, c. 617.

§ 8.01-308. Service on Commissioner of the Department of Motor Vehicles as agent for nonresident motor vehicle operator

Any operation in the Commonwealth of a motor vehicle by a nonresident, including those nonresidents defined in subdivision 2 of § 8.01-307, either in person or by an agent or employee, shall be deemed equivalent to an appointment by such nonresident of the Commissioner of the Department of Motor Vehicles, and his successors in office, to be the attorney or statutory agent of such nonresident for the purpose of service of process in any action against him growing out of any accident or collision in which such nonresident, his agent, or his employee may be involved while operating motor vehicles in this Commonwealth. Acceptance by a nonresident of the rights and privileges conferred by Article 5 (§ 46.2-655 et seq.) of Chapter 6 of Title 46.2 shall have the same effect under this section as the operation of such motor vehicle, by such nonresident, his agent, or his employee.

Code 1950, § 8-67.1; 1950, p. 620; 1952, c. 681; 1956, c. 64; 1966, c. 518; 1977, c. 617.

§ 8.01-309. Service on Secretary of Commonwealth as agent of nonresident operator or owner of aircraft

Any nonresident owner or operator of any aircraft that is operated over and above the land and waters of the Commonwealth or uses aviation facilities within the Commonwealth, shall by such operation and use appoint the Secretary of the Commonwealth as his statutory agent for the service of process in any action against him growing out of any accident or collision occurring within or above the Commonwealth in which such aircraft is involved.

Code 1950, § 8-67.4; 1952, c. 384; 1954, c. 333; 1977, c. 617.

§ 8.01-310. How service made on Commissioner and Secretary; appointment binding

A. Service of process on either the Commissioner of the Department of Motor Vehicles as authorized under § 8.01-308 or on the Secretary of the Commonwealth as authorized under § 8.01-309 shall be made by the plaintiff or his agent or the sheriff leaving a copy of such process together

with the fee for service of process on parties, in the amount prescribed in § 2.2-409, for each party to be thus served, in the hands, or in the office, of the Commissioner or the Secretary, and such service shall be sufficient upon the nonresident and shall be effective on the date when service is made on the Commissioner or the Secretary. All fees collected by the Commissioner pursuant to the provisions of this section shall be paid into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department of Motor Vehicles.

B. Appointment of the Commissioner or Secretary as attorney or agent for the service of process on a nonresident under § 8.01-308 or 8.01-309 shall be irrevocable and binding upon the executor or other personal representative of such nonresident:

1. Where a nonresident has died before the commencement of an action against him regarding an accident or collision under § 8.01-308 or 8.01-309 shall be irrevocable and binding upon the executor or other personal representative of such nonresident; or

2. Where a nonresident dies after the commencement of an action against him regarding an accident or collision under § 8.01-308 or 8.01-309, the action shall continue and shall be irrevocable and binding upon his executor, administrator, or other personal representative with such additional notice of the pendency of the action as the court deems proper.

Code 1950, §§ 8-67.2, 8-67.4; 1952, c. 384; 1954, c. 333; 1970, c. 680; 1972, c. 408; 1976, c. 26; 1977, c. 617; 1987, c. 696; 1992, c. 459; 2000, c. 579; 2013, c. 113.

§ 8.01-311. Continuance of action where service made on Commissioner or Secretary

The court, in which an action is pending against a nonresident growing out of an accident or collision as specified in §§ 8.01-308 and 8.01-309, may order such continuances as necessary to afford such nonresident reasonable opportunity to defend the action.

Code 1950, § 8-67.3; 1954, c. 547; 1977, c. 617.

§ 8.01-312. Effect of service on statutory agent; duties of such agent

A. Service of process on the statutory agent shall have the same legal force and validity as if served within the Commonwealth personally upon the person for whom it is intended. It shall be the duty of the statutory agent to:

1. Provide a receipt to a party seeking service who serves process on the statutory agent by hand delivery or any other method that does not provide a return of service or other means showing the date on which service on the statutory agent was accomplished. The party seeking service shall be responsible for filing such receipt in the office of the clerk of court in which the action is pending;

2. Forthwith send by registered or certified mail, with return receipt requested, a copy of the process to the person named therein and for whom the statutory agent is receiving the process; and

3. File an affidavit of compliance with this section with the papers in the action; this filing shall be made in the office of the clerk of the court in which the action is pending.

B. Unless otherwise provided by § 8.01-313 and subject to the provisions of § 8.01-316, the address for the mailing of the process required by this section shall be that as provided by the party seeking service.

C. The time for a nonresident to respond to process sent by the statutory agent shall run from the date when the affidavit of compliance is filed in the office of the clerk of the court in which the action is pending.

Code 1950, § 8-67.2; 1954, c. 333; 1970, c. 680; 1972, c. 408; 1976, c. 26; 1977, c. 617; 2013, c. 113.

§ 8.01-313. Specific addresses for mailing by statutory agent

A. For the statutory agent appointed pursuant to §§ 8.01-308 and 8.01-309, the address for the mailing of the process as required by § 8.01-312 shall be the last known address of the nonresident or, where appropriate under subdivision 1 or 2 of § 8.01-310 B, of the executor, administrator, or other personal representative of the nonresident. However, upon the filing of an affidavit by the plaintiff that he does not know and is unable with due diligence to ascertain any post-office address of such nonresident, service of process on the statutory agent shall be sufficient without the mailing otherwise required by this section. Provided further that:

1. In the case of a nonresident defendant licensed by the Commonwealth to operate a motor vehicle, the last address reported by such defendant to the Department of Motor Vehicles as his address on an application for or renewal of a driver's license shall be deemed to be the address of the defendant for the purpose of the mailing required by this section if no other address is known, and, in any case in which the affidavit provided for in § 8.01-316 of this chapter is filed, such a defendant, by so notifying the Department of such an address, and by failing to notify the Department of any change therein, shall be deemed to have appointed the Commissioner of the Department of Motor Vehicles his statutory agent for service of process in an action arising out of operation of a motor vehicle by him in the Commonwealth, and to have accepted as valid service such mailing to such address; or

2. In the case of a nonresident defendant not licensed by the Commonwealth to operate a motor vehicle, the address shown on the copy of the report of accident required by § 46.2-372 filed by or for him with the Department, and on file at the office of the Department, or the address reported by such a defendant to any state or local police officer, or sheriff investigating the accident sued on, if no other address is known, shall be conclusively presumed to be a valid address of such defendant for the purpose of the mailing provided for in this section, and his so reporting of an incorrect address, or his moving from the address so reported without making provision for forwarding to him of mail directed thereto, shall be deemed to be a waiver of notice and a consent to and acceptance of service of process served upon the Commissioner of the Department of Motor Vehicles as provided in this section.

B. For the statutory agent appointed pursuant to § 64.2-1426, the address for the mailing of process as required by § 8.01-312 shall be the address of the fiduciary's statutory agent as contained in the written consent most recently filed with the clerk of the circuit court wherein the qualification of such fiduciary was had or, in the event of the death, removal, resignation or absence from the Commonwealth of such statutory agent, or in the event that such statutory agent cannot with due diligence be found at such address, the address of the clerk of such circuit court.

Code 1950, § 8-67.2; 1954, c. 333; 1970, c. 680; 1972, c. 408; 1976, c. 26; 1977, c. 617; 1983, c. 467; 1984, c. 780; 1991, c. 672 .

§ 8.01-314. Service on attorney after entry of general appearance by such attorney

When an attorney authorized to practice law in this Commonwealth has entered a general appearance for any party, any process, order or other legal papers to be used in the proceeding may be served on such attorney of record. Such service shall have the same effect as if service had been made upon such party personally; provided, however, that in any proceeding in which a final decree or order has been entered, service on an attorney as provided herein shall not be sufficient to constitute personal jurisdiction over a party in any proceeding citing that party for contempt, either civil or criminal, unless personal service is also made on the party.

Provided, further, that if such attorney objects by motion within five days after such legal paper has been so served upon him, the court shall enter an order in the proceeding directing the manner of service of such legal paper.

Code 1950, § 8-69; 1977, c. 617; 1981, c. 495.

§ 8.01-315. Notice to be mailed defendant when service accepted by another

No judgment shall be rendered upon, or by virtue of, any instrument in writing authorizing the acceptance of service of process by another on behalf of any person who is obligated upon such instrument, when such service is accepted as therein authorized, unless the person accepting service shall have made and filed with the court an affidavit showing that he mailed or caused to be mailed to the defendant at his last known post-office address at least ten days before such judgment is to be rendered a notice stating the time when and place where the entry of such judgment would be requested.

Code 1950, § 8-70; 1977, c. 617.

§ 8.01-316. Service by publication; when available

A. Except in condemnation actions, an order of publication may be entered against a defendant in the following manner:

1. An affidavit by a party seeking service stating one or more of the following grounds:

a. That the party to be served is (i) a foreign corporation, (ii) a foreign unincorporated association, order, or a foreign unincorporated common carrier, or (iii) a nonresident individual, other than a nonresident individual fiduciary who has appointed a statutory agent under § 64.2-1426; or

b. That diligence has been used without effect to ascertain the location of the party to be served; or

c. That the last known residence of the party to be served was in the county or city in which service is sought and that a return has been filed by the sheriff that the process has been in his hands for twenty-one days and that he has been unable to make service; or

2. In any action, when a pleading (i) states that there are or may be persons, whose names are unknown, interested in the subject to be divided or disposed of; (ii) briefly describes the nature of such interest; and (iii) makes such persons defendants by the general description of "parties unknown"; or

3. In any action, when (i) the number of defendants upon whom process has been served exceeds ten and (ii) it appears by a pleading, or exhibit filed, that such defendants represent like interests with the parties not served with process.

Under subdivisions 1 and 2 of this subsection, the order of publication may be entered by the clerk of the court. Under this subdivision such order may be entered only by the court. However, any orders not properly entered, but processed by a clerk prior to July 1, 2010, shall be deemed to have been properly entered.

Every affidavit for an order of publication shall state the last known post office address of the party against whom publication is asked, or if such address is unknown, the affidavit shall state that fact.

B. The cost of such publication shall be paid initially by the party seeking service; however, such costs ultimately may be recoverable pursuant to § 17.1-601.

Code 1950, § 8-71; 1952, c. 522; 1977, c. 617; 1982, c. 384; 1983, c. 467; 1996, c. 352; 1999, c. 353; 2010, c. 827.

§ 8.01-317. What order of publication to state; how published; when publication in newspaper dispensed with

Except in condemnation actions, every order of publication shall give the abbreviated style of the suit, state briefly its object, and require the defendants, or unknown parties, against whom it is entered to appear and protect their interests on or before the date stated in the order which shall be no sooner than fifty days after entry of the order of publication. Such order of publication shall be published once each week for four successive weeks in such newspaper as the court may prescribe, or, if none be so prescribed, as the clerk may direct, and shall be posted at the front door of the courthouse wherein the court is held; also a copy of such order of publication shall be mailed to each of the defendants at the post office address given in the affidavit required by § 8.01-316. The clerk shall cause copies of the order to be so posted, mailed, and transmitted to the designated newspaper within twenty days after the entry of the order of publication. Upon completion of such publication, the clerk shall file a certificate in the papers of the case that the

requirements of this section have been complied with. Provided, the court may, in any case where deemed proper, dispense with such publication in a newspaper. The cost of such publication shall be paid by the petitioner or applicant.

Code 1950, § 8-72; 1977, c. 617; 1982, c. 384; 1996, cc. 352, 710.

§ 8.01-318. Within what time after publication case tried or heard; no subsequent publication required

If after an order of publication has been executed, the defendants or unknown parties against whom it is entered shall not appear on or before the date specified in such order, the case may be tried or heard as to them. When the provisions of § 8.01-317, or, if applicable, the provisions of § 8.01-321, have been complied with, no other publication or notice shall thereafter be required in any proceeding in court, or before a commissioner, or for the purpose of taking depositions, unless specifically ordered by the court as to such defendants or unknown parties.

Code 1950, § 8-73; 1968, c. 456; 1977, c. 617.

§ 8.01-319. Publication of interim notice

A. In any case in which a nonresident party or party originally served by publication has been served as provided by law, and notice of further proceedings in the case is required but no method of service thereof is prescribed either by statute or by order or rule of court, such notice may be served by publication thereof once each week for two successive weeks in a newspaper published or circulated in the city or county in which the original proceedings are pending. If the original proceedings were instituted by order of publication, then the publication of such notice of additional or further proceedings shall be made in the same newspaper. A party, who appears pro se in an action, shall file with the clerk of the court in which the action is pending a written statement of his place of residence and mailing address, and shall inform the clerk in writing of any changes of residence and mailing address during the pendency of the action. The clerk and all parties to the action may rely on the last written statement filed as aforesaid. The court in which the action is pending may dispense with such notice for failure of the party to file the statement herein provided for or may require notice to be given in such manner as the court may determine.

B. Notwithstanding any provision to the contrary in paragraph A hereof, depositions may be taken, testimony heard and orders and decrees entered without an order of publication, when the defendant has been legally served with or has accepted service of process to commence a suit for divorce or for annulling or affirming a marriage, and he or she or the plaintiff:

1. Shall thereafter become a nonresident; or

2. Shall remove from the county or city in which the suit is pending, if a resident thereof, or in which he or she resided at the time of the institution of the suit, or was served with process, without having filed with the clerk of the court where the suit is pending a written statement of his or her intended future place of residence, and a like statement of subsequent changes of residence; or

3. When after such written statement has been filed with the clerk, notice shall have been served upon him or her at the last place of residence given in the written statement as provided by law; or

4. Could not be found by the sheriff of the county or city for the service of the notice, and the party sending the service makes affidavit that he has used due diligence to find the adverse party without success. If such absent party has an attorney of record in such suit, notice shall be served on such attorney, as provided by § 8.01-314.

C. This section shall not apply to orders of publication in condemnation actions.

Code 1950, § 8-76; 1950, p. 68; 1954, c. 333; 1960, c. 16; 1970, cc. 241, 279; 1977, c. 617; 1978, c. 676; 1979, c. 464; 1982, c. 384.

§ 8.01-320. Personal service outside of Virginia

A. Subject to § 8.01-286.1, service of a process on a nonresident person outside the Commonwealth may be made by: (i) any person authorized to serve process in the jurisdiction where the party to be served is located; or (ii) any person 18 years of age or older who is not a party or otherwise interested in the subject matter of the controversy and notwithstanding any other provision of law to the contrary, such person need not be authorized by the circuit court to serve process which commences divorce or annulment actions. When the court can exercise jurisdiction over the nonresident pursuant to § 8.01-328.1, such service shall have the same effect as personal service on the nonresident within Virginia. Such service when no jurisdiction can be exercised pursuant to § 8.01-328.1, or service in accordance with the provisions of subdivision 2 a of § 8.01-296 shall have the same effect, and no other, as an order of publication duly executed, or the publication of a copy of process under this chapter, as the case may be; however, depositions may be taken at any time after 21 days' notice of the taking of the depositions has been personally served. The person so served shall be in default upon his failure to file a pleading in response to original process within 21 days after such service. If no responsive pleading is filed within the time allowed by law, the case may proceed without service of any additional pleadings, including the notice of the taking of depositions.

B. Any personal service of process outside of this Commonwealth executed in such manner as is provided for in this section prior or subsequent to October 1, 1977, in a divorce or annulment action is hereby validated. Personal service of process outside this Commonwealth in a divorce or annulment action may be executed as provided in this section.

Code 1950, § 8-74; 1954, c. 333; 1970, c. 552; 1977, c. 617; 1978, c. 90; 1981, c. 6; 1983, c. 402; 1984, c. 18; 1985, c. 177; 1986, c. 263; 1987, c. 594; 1997, c. 754; 2005, c. 866.

§ 8.01-321. Orders of publication in proceedings to enforce liens for taxes assessed upon real estate

Whenever an order of publication is entered in any proceeding brought by any county, city or town to enforce a lien for taxes assessed upon real estate, such order need not be published more

than once a week for two successive weeks. The party served by publication shall be required to appear and protect his interest by the date stated in the order of publication which shall be not less than twenty-four days after entry of such order. The publication shall in other respects conform to § 8.01-317, and when such publication so conforms, the provisions of § 8.01-318 shall apply.

Code 1950, § 8-77; 1977, c. 617.

§ 8.01-322. Within what time case reheard on petition of party served by publication, and any injustice corrected

If a party against whom service by publication is had under this chapter did not appear before the date of judgment against him, then such party or his representative may petition to have the case reheard, may plead or answer, and may have any injustice in the proceeding corrected within the following time and not after:

1. Within two years after the rendition of such judgment, decree or order; but

2. If the party has been served with a copy of such judgment, decree, or order more than a year before the end of such two-year period, then within one year of such service.

For the purpose of subdivision 2 of this section, service may be made in any manner provided in this chapter except by order of publication, but including personal or substituted service on the party to be served, and personal service out of the Commonwealth by any person of eighteen years or older and who is not a party or otherwise interested in the subject matter in controversy.

Code 1950, § 8-78; 1977, c. 617.

§ 8.01-323. In what counties city newspapers deemed published for purpose of legal advertisements

Any newspaper published in a city adjoining or wholly or partly within the geographical limits of any county shall be deemed to be published in such county or counties as well as in such city, for the purpose of legal advertisements.

Code 1950, § 8-80; 1977, c. 617.

§ 8.01-324. Newspapers which may be used for legal notices and publications

A. Whenever any ordinance, resolution, notice, or advertisement is required by law to be published in a newspaper, such newspaper, in addition to any qualifications otherwise required by law, shall:

1. Have a bona fide list of paying subscribers;

2. Have been published and circulated at least once a week for twenty-four consecutive weeks without interruption for the dissemination of news of a general or legal character;

3. Have a general circulation in the area in which the notice is required to be published;

4. Be printed in the English language; and

5. Have a second-class mailing permit issued by the United States Postal Service.

B. However, a newspaper which does not have a second-class mailing permit may petition the circuit court for the jurisdiction in which the newspaper is located for authority to publish ordinances, resolutions, notices or advertisements. Prior to filing the petition, the newspaper shall publish a notice of intention to file a petition pursuant to this section in a newspaper published or having general circulation in the jurisdiction in which the petition will be filed. The court shall grant the authority for a period of one year upon finding that the newspaper (i) meets the requirements of subdivisions A 2, A 3, and A 4; (ii) has been continually published for at least one year, employs a full-time news staff, reports local current events and governmental meetings, has an editorial page, accepts letters to the editor and is, in general, a news forum for the community in which it is circulated; (iii) has a circulation within the community to which the publication is directed and maintains permanent records of the fact and substance of the publication; and (iv) has an audit of circulation certified by an independent auditing firm or a business recognized in the newspaper industry as a circulation auditor. The authority shall be continued for successive one-year periods upon the filing of an affidavit certifying that the newspaper continues to meet the requirements of this subsection.

C. If a county with a population of less than 15,000 had regularly advertised its ordinances, resolutions, notices in a newspaper published in the county which had a general circulation in the county, a bona fide list of paying subscribers, a second class mailing permit and the newspaper continued to be published in the county and continued to have a general circulation in the county but failed to maintain its bona fide list of paying subscribers and its second class mailing permit, any advertisement of ordinances, resolutions, notices in the newspaper by the county shall be deemed to have been in compliance with this section.

Code 1950, § 8-81; 1977, c. 617; 1983, c. 297; 1989, c. 611; 1992, cc. 392, 537, 719; 2007, cc. 183, 603.

§ 8.01-325. Return by person serving process

Unless otherwise directed by the court, the person serving process shall make return thereof to the clerk's office within seventy-two hours of service, except when such return would be due on a Saturday, Sunday, or legal holiday. In such case, the return is due on the next day following such Saturday, Sunday, or legal holiday. The process shall state thereon the date and manner of service and the name of the party served.

Proof of service shall be in the following manner:

1. If service by sheriff, the form of the return of such sheriff as provided by the Rules of the Supreme Court; or

2. If service by any other person qualified under § 8.01-293, whether service made in or out of the Commonwealth, his affidavit of such qualifications; the date and manner of service and the name

of the party served; and stamped, typed, or printed on the return of process, an annotation that the service was by a private server, and the name, address, and telephone number of the server; or

3. In case of service by publication, the affidavit of the publisher or his agent giving the dates of publication and an accompanying copy of the published order.

Code 1950, §§ 8-52, 8-329; 1977, c. 617; 1996, c. 538.

§ 8.01-326. Return as proof of service

No return shall be conclusive proof as to service of process. The return of a sheriff shall be prima facie evidence of the facts therein stated, and the return of a qualified individual under subdivision 2 of § 8.01-293 shall be evidence of the facts stated therein.

1977, c. 627.

§ 8.01-326.1. Service of process or notice on statutory agent; copy to be sent to defendant and certificate filed with court; effective date of service

Any statutory agent who has been served with process or notice shall forthwith mail a copy of such process or notice to the person or persons to be served at the last known post office address of such person and file a certificate of compliance with the papers in the action. Service of process or notice on a statutory agent shall be effective as of the date the certificate of compliance is filed with the clerk of the court in which the action or suit is pending.

1990, c. 741 .

§ 8.01-327. Acceptance of service of process

Service of process may be accepted by the person for whom it is intended by signing the proof of service and indicating the jurisdiction and state in which it was accepted. However, service of process in divorce or annulment actions may be accepted only as provided in § 20-99.1:1.

1977, c. 617; 1987, c. 594; 1988, cc. 583, 642.

Article 5 - PRIVILEGE FROM CIVIL ARREST

§ 8.01-327.1. Definition of "arrest under civil process."

The terms "arrest under civil process" and "civil arrest" shall be synonymous and shall be the apprehending and detaining of a person pursuant to specific provisions of this title to achieve the following:

1. A full and proper answer or response to interrogatories under § 8.01-506;

2. His obedience to the orders, judgments, and decrees of any court.

1977, c. 617; 1984, c. 93.

§ 8.01-327.2. Who are privileged from arrest under civil process

In addition to the exemptions made by §§ 30-4, 30-6, 30-7, 30-8, 19.2-280, and 44-97, the following persons shall not be arrested, apprehended, or detained under any civil process during the

times respectively herein set forth, but shall not otherwise be privileged from service of civil process by this section:

1. The President of the United States, and the Governor of the Commonwealth at all times during their terms of office;

2. The Lieutenant Governor of the Commonwealth during attendance at sessions of the General Assembly and while going to and from such sessions;

3. Members of either house of the Congress of the United States during the session of Congress and for fifteen days next before the beginning and after the ending of any session, and during any time that they are serving on any committee or performing any other service under an order or request of either house of Congress;

4. A judge, grand juror or witness, required by lawful authority to attend any court or place, during such attendance and while going to and from such court or place;

5. Members of the National Guard while going to, attending at, or returning from, any muster or court-martial;

6. Ministers of the gospel while engaged in performing religious services in a place where a congregation is assembled and while going to and returning from such place; and

7. Voters going to, attending at, or returning from an election. Such privilege shall only be on the days of such attendance.

1977, c. 617; 2015, c. 221.

Chapter 9 - PERSONAL JURISDICTION IN CERTAIN ACTIONS

§ 8.01-328. Person defined

As used in this chapter, "person" includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association or any other legal or commercial entity, whether or not a citizen or domiciliary of this Commonwealth and whether or not organized under the laws of this Commonwealth.

Code 1950, § 8-81.1; 1964, c. 331; 1977, c. 617.

§ 8.01-328.1. When personal jurisdiction over person may be exercised

A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:

1. Transacting any business in this Commonwealth;

2. Contracting to supply services or things in this Commonwealth;

3. Causing tortious injury by an act or omission in this Commonwealth;

4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of

conduct, or derives substantial revenue from goods used or consumed or services rendered, in this Commonwealth;

5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in the sale of goods outside this Commonwealth when he might reasonably have expected such person to use, consume, or be affected by the goods in this Commonwealth, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;

6. Having an interest in, using, or possessing real property in this Commonwealth;

7. Contracting to insure any person, property, or risk located within this Commonwealth at the time of contracting;

8. Having (i) executed an agreement in this Commonwealth which obligates the person to pay spousal support or child support to a domiciliary of this Commonwealth, or to a person who has satisfied the residency requirements in suits for annulments or divorce for members of the armed forces or foreign service officers of the United States pursuant to § 20-97 provided proof of service of process on a nonresident party is made by a law-enforcement officer or other person authorized to serve process in the jurisdiction where the nonresident party is located, (ii) been ordered to pay spousal support or child support pursuant to an order entered by any court of competent jurisdiction in this Commonwealth having in personam jurisdiction over such person, or (iii) shown by personal conduct in this Commonwealth, as alleged by affidavit, that the person conceived or fathered a child in this Commonwealth;

9. Having maintained within this Commonwealth a matrimonial domicile at the time of separation of the parties upon which grounds for divorce or separate maintenance is based, or at the time a cause of action arose for divorce or separate maintenance or at the time of commencement of such suit, if the other party to the matrimonial relationship resides herein; or

10. Having incurred a liability for taxes, fines, penalties, interest, or other charges to any political subdivision of the Commonwealth.

Jurisdiction in subdivision 9 is valid only upon proof of service of process pursuant to § 8.01-296 on the nonresident party by a person authorized under the provisions of § 8.01-320. Jurisdiction under subdivision 8 (iii) of this subsection is valid only upon proof of personal service on a nonresident pursuant to § 8.01-320.

B. Using a computer or computer network located in the Commonwealth shall constitute an act in the Commonwealth. For purposes of this subsection, "use" and "computer network" shall have the same meanings as those contained in § 18.2-152.2.

C. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him; however, nothing contained in

this chapter shall limit, restrict or otherwise affect the jurisdiction of any court of this Commonwealth over foreign corporations which are subject to service of process pursuant to the provisions of any other statute.

Code 1950, § 8-81.2; 1964, c. 331; 1977, c. 617; 1978, c. 132; 1981, c. 6; 1982, c. 313; 1983, c. 428; 1984, c. 609; 1986, c. 275; 1987, c. 594; 1988, cc. 866, 878; 1992, c. 571; 1999, cc. 886, 904, 905; 2001, c. 221; 2007, c. 533; 2009, c. 582.

§ 8.01-329. Service of process or notice; service on Secretary of Commonwealth

A. When the exercise of personal jurisdiction is authorized by this chapter, service of process or notice may be made in the same manner as is provided for in Chapter 8 (§ 8.01-285 et seq.) in any other case in which personal jurisdiction is exercised over such a party, or process or notice may be served on any agent of such person in the county or city in the Commonwealth in which that agent resides or on the Secretary of the Commonwealth of Virginia, hereinafter referred to in this section as the "Secretary," who, for this purpose, shall be deemed to be the statutory agent of such person.

B. When service is to be made on the Secretary, the party or his agent or attorney seeking service shall file an affidavit with the court, stating either (i) that the person to be served is a nonresident or (ii) that, after exercising due diligence, the party seeking service has been unable to locate the person to be served. In either case, such affidavit shall set forth the last known address of the person to be served. For the mailing, by the clerk to the party or his agent or attorney, in accordance with subsection C, of verification of the effective date of service of process, the person filing an affidavit may leave a self-addressed, stamped envelope with the clerk.

When the person to be served is a resident, the signature of an attorney, party or agent of the person seeking service on such affidavit shall constitute a certificate by him that process has been delivered to the sheriff or to a disinterested person as permitted by § 8.01-293 for execution and, if the sheriff or disinterested person was unable to execute such service, that the person seeking service has made a bona fide attempt to determine the actual place of abode or location of the person to be served.

C. Service of such process or notice on the Secretary shall be made by the plaintiff's, his agent's or the sheriff's leaving a copy of the process or notice, together with a copy of the affidavit called for in subsection B and the fee prescribed in § 2.2-409 in the office of the Secretary in the City of Richmond, Virginia. Service of process or notice on the Secretary may be made by mail if such service otherwise meets the requirements of this section. Such service shall be sufficient upon the person to be served and shall be effective on the date when service is made on the Secretary. It shall be the duty of the Secretary to:

1. Provide a receipt to a party seeking service who serves process on the Secretary by hand delivery or any other method that does not provide a return of service or other means showing the date on

which service on the Secretary was accomplished. The party seeking service shall be responsible for filing such receipt in the office of the clerk of the court in which the action is pending;

2. Forthwith send by certified mail, return receipt requested, to the person or persons to be served at the last known post-office address of such person notice of such service, a copy of the process or notice, and a copy of the affidavit; and

3. Forthwith file with the papers in the action a certificate of compliance herewith by the Secretary or someone designated by him for that purpose and having knowledge of such compliance.

Upon receipt of the certificate of compliance, the clerk of the court shall mail verification of the date the certificate of compliance was filed with the court to the person who filed the affidavit required by subsection B, in the self-addressed, stamped envelope, if any, provided to the clerk at the time of filing of the affidavit. The clerk shall not be required to mail verification unless the self-addressed, stamped envelope has been provided. The time for the person to be served to respond to process sent by the Secretary shall run from the date when the certificate of compliance is filed in the office of the clerk of the court in which the action is pending.

D. Service of process in actions brought on a warrant or motion for judgment pursuant to § 16.1-79 or 16.1-81 shall be void and of no effect when such service of process is received by the Secretary within ten days of any return day set by the warrant. In such cases, the Secretary shall return the process or notice, the copy of the affidavit, and the prescribed fee to the plaintiff or his agent. A copy of the notice of the rejection shall be sent to the clerk of the court in which the action was filed.

E. The Secretary shall maintain a record of each notice of service sent to a person for a period of two years. The record maintained by the Secretary shall include the name of the plaintiff or the person seeking service, the name of the person to be served, the date service was received by the Secretary, the date notice of service was forwarded to the person to be served, and the date the certificate of compliance was sent by the Secretary to the appropriate court. The Secretary shall not be required to maintain any other records pursuant to this section.

Code 1950, § 8-813; 1977, c. 617; 1979, c. 31; 1986, c. 388; 1987, cc. 449, 450, 459; 1990, c. 741; 1998, c. 259; 2001, c. 29; 2013, c. 113.

§ 8.01-330. Jurisdiction on any other basis authorized

A court of this State may exercise jurisdiction on any other basis authorized by law.

Code 1950, § 8-81.5; 1964, c. 331; 1977, c. 617.

Chapter 10 - DOCKETS

§ 8.01-331. Entry of cases on current dockets

When any civil action is commenced in a circuit court, or any such action is removed to such court and the required writ tax and fees thereon paid, the clerk shall enter the same in the civil docket. These dockets may be either (i) a substantial, well-bound loose-leaf book, (ii) a visible card index

or (iii) automated data processing media. Each case shall be entered on the civil docket, on which shall be entered:

1. The short style of the suit or action,

2. The names of the attorneys,

3. The nature of the suit or action, and

4. The date filed and case file number.

In addition the docket may contain the following information applicable in an individual case as deemed appropriate:

1. The names of the parties,

2. The date of the issuance of process,

3. A memorandum of the service of process,

4. A memorandum of the orders and proceedings in the case, and

5. The hearing date(s) and type(s) of hearing(s) conducted on such date(s).

The clerk may enter the clerk's fees in the case on such docket instead of in the fee book.

Cases appealed from the juvenile and domestic relations district courts shall be docketed as provided in this section and, to the extent inconsistent with this section, § 16.1-302.

Code 1950, §§ 8-160, 8-165; 1954, c. 333; 1956, c. 307; 1977, c. 617; 1983, c. 293; 1990, c. 258; 2005, c. 681.

§ 8.01-332. Calling current docket

The current docket may be called for the purpose of fixing cases for trial, on such days or at such intervals as may be directed by order of court.

Code 1950, §§ 8-162, 8-167; 1977, c. 617.

§ 8.01-333. Reserved

Reserved.

§ 8.01-334. Repealed

Repealed by Acts 1983, c. 293.

§ 8.01-335. Certain cases struck from dockets after certain period; reinstatement

A. Except as provided in subsection C, any court in which is pending an action, wherein for more than two years there has been no order or proceeding, except to continue it, may, in its discretion, order it to be struck from its docket and the action shall thereby be discontinued. However, no case shall be discontinued if either party requests that it be continued. The court shall thereafter enter a pretrial order pursuant to Rule 4:13 controlling the subsequent course of the case to ensure a timely resolution of that case. If the court thereafter finds that the case has

not been timely prosecuted pursuant to its pretrial order, it may strike the case from its docket. The clerk of the court shall notify the parties in interest if known, or their counsel of record at his last known address, at least fifteen days before the entry of such order of discontinuance so that all parties may have an opportunity to be heard on it. Any case discontinued under the provisions of this subsection may be reinstated, on motion, after notice to the parties in interest if known or their counsel of record, within one year from the date of such order but not after.

B. Any court in which is pending a case wherein for more than three years there has been no order or proceeding, except to continue it, may, in its discretion, order it to be struck from its docket and the action shall thereby be discontinued. The court may dismiss cases under this subsection without any notice to the parties. The clerk shall provide the parties with a copy of the final order discontinuing or dismissing the case. Any case discontinued or dismissed under the provisions of this subsection may be reinstated, on motion, after notice to the parties in interest, if known, or their counsel of record within one year from the date of such order but not after.

C. If a civil action is pending in a circuit court on appeal from a general district court and (i) an appeal bond has been furnished by or on behalf of any party against whom judgment has been rendered for money or property and (ii) for more than one year there has been no order or proceeding, except to continue the matter, the action may, upon notice to the parties in accordance with subsection A, be dismissed and struck from the docket of the court. Upon dismissal pursuant to this subsection, the judgment of the general district court shall stand and the appeal bond shall be forfeited after application of any funds needed to satisfy the judgment.

D. Any court in which is pending a case wherein process has not been served within one year of the commencement of the case may, in its discretion, order it to be struck from the docket, and the action shall thereby be discontinued. The clerk of the court shall notify the plaintiff or his counsel of record at his last known address at least 30 days before the entry of an order of discontinuance so that the plaintiff may have an opportunity to show that service has been timely effected on the defendant or that due diligence has been exercised to have service timely effected on the defendant. Upon finding that service has been timely effected or that due diligence has been exercised to have service timely effected, the court shall maintain the action on the docket and, if service has not been timely effected but due diligence to effect service has been exercised, shall require the plaintiff to attempt service in any manner permitted under Chapter 8 (§ 8.01-285 et seq.) of this title. Nothing herein shall prevent the plaintiff from filing a nonsuit under § 8.01-380 before the entry of a discontinuance order pursuant to the provisions of this subsection. Nothing in this subsection shall apply to asbestos litigation.

Code 1950, § 8-154; 1954, c. 621; 1977, c. 617; 1990, c. 730; 1992, cc. 532, 792, 803, 835; 1994, c. 517; 1997, c. 680; 1999, c. 652; 2007, c. 498.

Chapter 11 - JURIES

Article 1 - WHEN JURY TRIAL MAY BE HAD

§ 8.01-336. Jury trial of right; waiver of jury trial; court-ordered jury trial; trial by jury of plea in equity; equitable claim

A. The right of trial by jury as declared in Article I, Section 11 of the Constitution of Virginia and by statutes thereof shall be preserved inviolate to the parties. Unless waived, any demand for a trial by jury in a civil case made in compliance with the Rules of Supreme Court of Virginia shall be sufficient, with no further notice, hearing, or order, to proceed thereon.

B. Waiver of jury trial. -- In any action at law in which the recovery sought is greater than $20, exclusive of interest, unless one of the parties demands that the case or any issue thereof be tried by a jury, or in a criminal action in which trial by jury is dispensed with as provided by law, the whole matter of law and fact may be heard and judgment given by the court.

C. Court-ordered jury trial. -- Notwithstanding any provision in this Code to the contrary, in any action asserting a claim at law in which there has been no demand for trial by jury by any party, a circuit court may on its own motion direct one or more issues, including an issue of damages, to be tried by a jury.

D. Trial by jury of plea in equity. -- In any action in which a plea has been filed to an equitable claim, and the allegations of such plea are denied by the plaintiff, either party may have the issue tried by jury.

E. Suit on equitable claim. -- In any suit on an equitable claim, the court may, of its own motion or upon motion of any party, supported by such party's affidavit that the case will be rendered doubtful by conflicting evidence of another party, direct an issue to be tried before an advisory jury.

Code 1950, §§ 8-208.21, 8-211, 8-212, 8-213, 8-214; 1954, c. 333; 1973, c. 439; 1974, c. 611; 1975, c. 578; 1977, c. 617; 2005, c. 681; 2014, c. 172.

Article 2 - JURORS

§ 8.01-337. Who liable to serve as jurors

All citizens over 18 years of age who have been residents of the Commonwealth one year, and of the county, city, or town in which they reside six months next preceding their being summoned to serve as such, and competent in other respects, except as hereinafter provided, shall be liable to serve as jurors. No person shall be deemed incompetent to serve on any jury because of blindness or partial blindness. Military personnel of the United States Army, Air Force, Marine Corps, Coast Guard, or Navy shall not be considered residents of this Commonwealth by reason of their being stationed herein.

Code 1950, § 8-208.2; 1973, c. 439; 1977, c. 617; 1987, c. 189; 2014, c. 595.

§ 8.01-338. Who disqualified

The following persons shall be disqualified from serving as jurors:

1. Persons adjudicated incapacitated;

2. Persons convicted of treason or a felony; or

3. Any other person under a disability as defined in § 8.01-2 and not included in subdivisions 1 or 2 above.

Code 1950, § 8-208.3; 1973, c. 439; 1977, c. 617; 1997, c. 801.

§ 8.01-339. No person eligible for whom request is made

No person shall be eligible to serve on any jury when he, or any person for him, solicits or requests a jury commissioner to place his name in a jury box or in any way designate such person as a juror.

Code 1950, § 8-208.4; 1973, c. 439; 1977, c. 617.

§ 8.01-340. No person to serve who has case at that term

No person shall be admitted to serve as a juror at a term of a court during which he has any matter of controversy which has been or is expected to be tried by a jury during the same term.

Code 1950, § 8-208.5; 1973, c. 439; 1977, c. 617.

§ 8.01-341. Who are exempt from jury service

The following shall be exempt from serving on juries in civil and criminal cases:

1. The President and Vice President of the United States,

2. The Governor, Lieutenant Governor and Attorney General of the Commonwealth,

3. The members of both houses of Congress,

4. The members of the General Assembly, while in session or during a period when the member would be entitled to a legislative continuance as a matter of right under § 30-5,

5. Licensed practicing attorneys,

6. The judge of any court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, and magistrates,

7. Sheriffs, deputy sheriffs, state police, and police in counties, cities and towns,

8. The superintendent of the penitentiary and his assistants and the persons composing the guard,

9. Superintendents and jail officers, as defined in § 53.1-1, of regional jails.

Code 1950, § 8-208.6; 1973, c. 439; 1977, cc. 458, 617; 1978, cc. 176, 340; 1980, c. 535; 1982, c. 315; 1987, c. 256; 1990, c. 758; 1993, c. 572; 1998, c. 83.

§ 8.01-341.1. Exemptions from jury service upon request

Any of the following persons may serve on juries in civil and criminal cases but shall be exempt from jury service upon his request:

1. through 3. [Repealed.]

4. A mariner actually employed in maritime service;

5. through 7. [Repealed.]

8. A person who has legal custody of and is necessarily and personally responsible for a child or children 16 years of age or younger requiring continuous care by him during normal court hours, or any mother who is breast-feeding a child;

9. A person who is necessarily and personally responsible for a person having a physical or mental impairment requiring continuous care by him during normal court hours;

10. Any person over 70 years of age;

11. Any person whose spouse is summoned to serve on the same jury panel;

12. Any person who is the only person performing services for a business, commercial or agricultural enterprise and whose services are so essential to the operations of the business, commercial or agricultural enterprise that such enterprise must close or cease to function if such person is required to perform jury duty;

13. Any person who is the only person performing services for a political subdivision as a firefighter, as defined in § 65.2-102, and whose services are so essential to the operations of the political subdivision that such political subdivision will suffer an undue hardship in carrying out such services if such person is required to perform jury duty;

14. Any person employed by the Office of the Clerk of the House of Delegates, the Office of the Clerk of the Senate, the Division of Legislative Services, and the Division of Legislative Automated Systems; however, this exemption shall apply only to jury service starting (i) during the period beginning 60 days prior to the day any regular session commences and ending 30 days after the day of adjournment of such session and (ii) during the period beginning seven days prior to the day any reconvened or special session commences and ending seven days after the day of adjournment of such session;

15. Any general registrar, member of a local electoral board, or person appointed or employed by either the general registrar or the local electoral board, except officers of election appointed pursuant to Article 5 (§ 24.2-115 et seq.) of Chapter 1 of Title 24.2; however, this exemption shall apply only to jury service starting (i) during the period beginning 90 days prior to any election and continuing through election day, (ii) during the period to ascertain the results of the election and continuing for 10 days after the local electoral board certifies the results of the election under § 24.2-671 or the State Board of Elections certifies the results of the election under § 24.2-679, or (iii) during the period of an election recount or contested election pursuant to Chapter 8 (§ 24.2-

800 et seq.) of Title 24.2. Any officer of election shall be exempt from jury service only on election day and during the periods set forth in clauses (ii) and (iii); and

16. Any member of the armed services of the United States or the diplomatic service of the United States appointed under the Foreign Service Act (22 U.S.C. § 3901 et seq.) who will be serving outside of the United States at the time of such jury service.

Code 1970, § 8-208.6:1; 1977, c. 458; 1987, c. 256; 1997, c. 693; 1999, c. 153; 2004, c. 106; 2005, c. 195; 2011, cc. 389, 708; 2012, c. 98.

§ 8.01-341.2. Deferral or limitation of jury service for particular occupational inconvenience
The court, on its own motion, may exempt any person from jury service for a particular term of court, or limit that person's service to particular dates of that term, if serving on a jury during that term or certain dates of that term of court would cause such person a particular occupational inconvenience. Any such person who is selected for jury service, and who is exempted under the provisions of this section, shall not be discharged from his obligation to serve on a jury, but such obligation shall only be deferred until the term of court next after such particular occupational inconvenience shall end.

1981, c. 108; 1987, c. 155.

§ 8.01-342. Restrictions on amount of jury service permitted
A. The jury commissioners shall not include on the jury list provided for in § 8.01-345 the name of any person who has been called and reported to any state court for jury duty at any time during the period of three years next preceding the date of completion of such jury list.

B. If such person has been called and reported for jury duty in the trial of any case, either civil or criminal, at any one term of a court, he shall not be permitted to serve as a juror in any civil or criminal case, at any other term of that court during the three-year period set forth in subsection A of this section, unless all the persons whose names are in the jury box have been drawn to serve during such three-year period; however, such person shall be permitted to serve on any special jury ordered pursuant to § 8.01-362 and on any grand jury.

Code 1950, §§ 8-208.7, 8-208.10; 1973, c. 439; 1974, c. 369; 1977, cc. 451, 617; 1984, c. 165; 1992, c. 312; 1994, c. 27.

Article 3 - SELECTION OF JURORS

§ 8.01-343. Appointment of jury commissioners
The judge of each circuit court in which juries are impaneled shall, prior to the first day of July in each year, appoint for the next ensuing year ending on the following first day of July not less than two nor more than 15 persons as jury commissioners, who shall be competent to serve as jurors under the provisions of this chapter, and shall be citizens of intelligence, morality, and integrity. The judge of the circuit court of a county having the urban county executive form of government may appoint jury commissioners at any time prior to the first day of November in each year. Any

one judge of the judicial circuit may make such appointment under this section. No practicing attorney-at-law, however, shall be appointed as a jury commissioner. Such appointment shall be certified by the judge to the clerk of the court for which the appointment is made, who shall enter the same on the civil order book of such court. A jury commissioner shall be eligible for reappointment. For the purpose of this section, the two divisions of the Circuit Court of the City of Richmond shall be deemed to be separate courts.

Code 1950, § 8-208.8; 1973, c. 439; 1977, c. 617; 1979, c. 269; 1996, c. 332; 1999, c. 221; 2000, c. 251; 2006, c. 306; 2009, c. 790; 2016, c. 177.

§ 8.01-344. Notification of jury commissioners; their oath

Such commissioners shall be immediately notified of their appointment by the clerk, and before entering upon the discharge of their duties shall take and subscribe an oath or affirmation before the clerk of such court in the following form: "I do solemnly swear (or affirm) that I will honestly, without favor or prejudice, perform the duties of jury commissioner during the year; that in selecting persons to be drawn as jurors, I will not select any person I believe to be disqualified or exempt from serving as a juror; that I will select none whom I have been requested to select; and that in all my selections I will endeavor to promote only the impartial administration of justice."

Code 1950, § 8-208.9; 1973, c. 439; 1977, c. 617.

§ 8.01-345. Lists of qualified persons to be prepared by jury commissioners; random selection process

The commissioners shall, not later than December 1 following their appointment, submit a list showing the names, addresses, freeholder status and, if available, the occupations of such of the inhabitants of their respective counties or cities as are well qualified under § 8.01-337 to serve as jurors and are not excluded or exempt by §§ 8.01-338 to 8.01-341 and 8.01-342. Such master jury list shall be used in selecting jurors for a twelve-month period beginning on the first day of the first term of court in the calendar year next succeeding December 1. The number of persons selected for each court shall be as specified in the order appointing the commissioners.

The jury commissioners shall utilize random selection techniques, either manual, mechanical or electronic, using a current voter registration list and, where feasible, a list of persons issued a driver's license as defined in § 46.2-100 from the Department of Motor Vehicles, city or county directories, telephone books, personal property tax rolls, and other such lists as may be designated and approved by the chief judge of the circuit, to select the jurors representative of the broad community interests, to be placed on the master jury list. The commissioners shall make reasonable effort to exclude the names of deceased persons and unqualified persons from the master jury list. After such random selection, the commissioners shall apply such statutory exceptions and exemptions as may be applicable to the names so selected. The chief judge shall promulgate such procedural rules as are necessary to ensure the integrity of the random selection process and to ensure compliance with other provisions of law with respect to jury selection and service.

Where a city and county adjoin, in whole or in part, the names of the inhabitants of a city shall not be placed upon the county list, nor those of a county upon the city list except in those cases in which the circuit court of the county and the circuit court of the city have concurrent jurisdiction of both civil and criminal cases arising within the territorial limits of such county or city. However, in the case of the City of Franklin and the County of Southampton, the number of jurors selected from Southampton County shall be proportionate to the number of jurors selected from the City of Franklin based upon the respective populations of the county and city.

Code 1950, § 8-208.10; 1973, c. 439; 1974, c. 369; 1977, cc. 451, 617; 1978, c. 209; 1979, c. 665; 1983, c. 107; 1984, c. 50; 1989, cc. 616, 632; 1990, c. 758; 2000, c. 828; 2007, cc. 450, 720.

§ 8.01-346. Lists to be delivered to clerk and safely kept by him; addition and removal of names

The list so prepared shall be delivered to the clerk of the court to be safely kept by him. The list shall include a notation indicating those persons who are freeholders. The judge may from time to time order the commissioners to add to the list such additional number of jurors as the court shall direct and to strike therefrom any who have become disqualified or exempt.

Code 1950, § 8-208.11; 1973, c. 439; 1977, c. 617; 2007, cc. 450, 720.

§ 8.01-347. How names put in jury box

When such list is made out, the commissioners shall cause all the names thereon to be fairly written, each on a separate paper or ballot, and shall so fold or roll up the ballots that they will resemble each other as nearly as may be and the names written thereon will not be visible on the outside, and shall deposit the ballots with the list in a secure box prepared for that purpose. Such box shall be locked and safely kept by the clerk of such court and opened only by the direction of the judge thereof.

Code 1950, § 8-208.12; 1973, c. 439; 1977, c. 617.

§ 8.01-348. How names of jurors drawn from box

Prior to or during any term of court at which a jury may be necessary, the clerk or deputy clerk, in the presence of the judge or, in his absence, a commissioner in chancery appointed for the purpose by the judge, shall, after thoroughly mixing the ballots in the box, openly draw therefrom such number of ballots as are necessary for the trial of all cases during the term or as the judge shall direct. However, a commissioner shall not be eligible to witness the drawing of a jury to be used in the trial of any case in which he will be interested as attorney or otherwise.

Code 1950, § 8-208.13; 1973, c. 439; 1977, c. 617; 1983, c. 425.

§ 8.01-349. Notations on ballots drawn; return to box; when such ballots may be drawn again

If any ballot drawn from the box shall bear the name of a person known by the clerk or other person attending the drawing to be deceased, exempt or disqualified by law, not a resident of the county or city, or physically or mentally incapacitated for jury service, an appropriate notation on

the ballot, as well as opposite the name of such person on the jury list, shall be made and the ballot shall be placed by the clerk in an envelope kept for that purpose. The other ballots, marked "drawn," shall be placed in a separate envelope and a notation of the date of the drawing shall be made on the jury list opposite the name of each juror drawn. The envelope shall be kept in the box. After all ballots have been drawn from the box, the ballots marked "drawn" may be again drawn subject to the provisions hereof applying to the original drawing.

Code 1950, § 8-208.14; 1973, c. 439; 1977, c. 617.

§ 8.01-350. Repealed

Repealed by Acts 1977, c. 451.

§ 8.01-350.1. Selection of jurors by mechanical or electronic techniques for the term of court

Notwithstanding the provisions of §§ 8.01-347 through 8.01-349, the chief judge may order that selection of the list of jurors necessary for the trial of all cases during any term of court for that year be made by the use of random selection techniques, either mechanically or electronically, from the list submitted pursuant to § 8.01-345.

1978, c. 400.

§ 8.01-351. Preparation and disposition of list of jurors drawn

The clerk shall make and sign a list of the names on the ballots in alphabetical order showing the name, age, address, occupation and employer of each juror, and shall deliver an attested copy of the list to the sheriff. The list shall be signed also by the judge or the commissioner in chancery appointed by the judge. The list shall be available in the clerk's office for inspection by counsel in any case to be tried by a jury during the term.

Code 1950, § 8-208.15; 1973, c. 439; 1977, c. 617; 1988, c. 818.

§ 8.01-352. Objections to irregularities in jury lists or for legal disability; effect thereof

A. Prior to the jury being sworn, the following objections may be made without leave of court: (i) an objection specifically pointing out the irregularity in any list or lists of jurors made by the clerk from names drawn from the jury box, or in the drawing, summoning, returning or impaneling of jurors or in copying or signing or failing to sign the list, and (ii) an objection to any juror on account of any legal disability; after the jury is sworn such objection shall be made only with leave of court.

B. Unless objection to such irregularity or disability is made pursuant to subsection A herein and unless it appears that the irregularity was intentional or that the irregularity or disability be such as to probably cause injustice in a criminal case to the Commonwealth or to the accused and in a civil case to the party making the objection, then such irregularity or disability shall not be cause for summoning a new panel or juror or for setting aside a verdict or granting a new trial.

Code 1950, §§ 8-208.7, 8-208.27, 8-208.29; 1973, c. 439; 1977, c. 617.

Article 4 - JURY SERVICE

§ 8.01-353. Notice to jurors; making copy of jury panel available to counsel; objection to notice

A. The sheriff shall notify the jurors on the list, or such number of them as the judge may direct to appear in court on such day as the court may direct. Such notice shall be given a juror as provided by § 8.01-298. Verbal direction given by the judge, or at his direction, to a juror who has been given notice as hereinbefore provided that he appear at a later specified date, shall be a sufficient notice. Any notice given as provided herein shall have the effect of an order of court. No particular time in advance of the required appearance date shall be necessary for verbal notice hereunder, but the court may, in its discretion, excuse from service a juror who claims lack of sufficient notice. Upon request, the clerk or sheriff or other officer responsible for notifying jurors to appear in court for the trial of a case shall make available to all counsel of record in that case, a copy of the jury panel to be used for the trial of the case at least three full business days before the trial. Such copy of the jury panel shall show the name, age, address, occupation and employer of each person on the panel. Any error in the information shown on such copy of the jury panel shall not be grounds for a mistrial or assignable as error on appeal, and the parties in the case shall be responsible for verifying the accuracy of such information.

B. No judgment shall be arrested or reversed for the failure of the record to show that there was service upon a juror of notice to appear in court unless made a ground of exception in the trial before the jury is sworn.

Code 1950, § 8-208.16; 1973, c. 439; 1974, c. 243; 1976, c. 261; 1977, c. 617; 1980, c. 452; 1981, c. 150; 1988, c. 350; 2010, c. 799.

§ 8.01-353.1. Jurors to provide identification

At the time of assembly for the purpose of juror selection, the identity of each member of the jury venire shall be verified as provided in this section. Prior to being selected from the jury venire, a potential juror shall verify his identity by presenting to the person taking jury attendance any of the following forms of identification: his Commonwealth of Virginia voter registration card; his social security card; his valid Virginia driver's license or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the juror and issued by an employer of the juror in the ordinary course of the employer's business. If the juror is unable to present one of these forms of identification, he shall sign a statement affirming, under penalty of perjury, that he is the named juror.

2010, c. 765; 2011, c. 470.

§ 8.01-354. "Writ of venire facias" defined

The term "writ of venire facias" for the purpose of this chapter shall be construed as referring to the list or lists of jurors made by the clerk from names drawn from the jury box and notice to

appear in court served or mailed as provided herein shall be equivalent to summoning such juror in execution of a writ of venire facias.

Code 1950, § 8-208.24; 1973, c. 439; 1976, c. 617.

§ 8.01-355. Jurors on list to be used for trial of cases during term; discharge or dispensing with attendance of jurors; drawing additional jurors

Jurors whose names appear in the list provided for under §§ 8.01-348 and 8.01-351 shall be used for the trial of cases, civil and criminal, to be tried during the term. The judge shall direct the selection of as many jurors as may be necessary to appear for the trial of any case. Any court shall have power to discharge persons summoned as jurors therein, or to dispense with their attendance on any day of its sitting. When by reason of challenge or otherwise a sufficient number of jurors summoned cannot be obtained for the trial of any case, the judge may select from the names on the jury list provided for by § 8.01-345 the names of as many persons as he deems necessary and cause them to be summoned to appear forthwith for the trial.

Code 1950, § 8-208.17; 1973, c. 439; 1975, c. 359; 1977, c. 617.

§ 8.01-356. Failure of juror to appear

If any juror who has been given due notice to appear in court shall fail to do so without sufficient excuse, he shall be fined not less than $50 nor more than $200.

Code 1950, § 8-208.18; 1973, c. 439; 1977, c. 617; 2004, c. 116.

§ 8.01-357. Selection of jury panel

On the day on which jurors have been notified to appear, jurors not excused by the court shall be called in such manner as the judge may direct to be sworn on their voir dire until a panel free from exceptions shall be obtained. The jurors shall be selected randomly. The remaining jurors may be discharged or excused subject to such orders as the court shall make.

Code 1950, § 8-208.19; 1973, c. 439; 1977, c. 617; 1999, c. 3.

§ 8.01-358. Voir dire examination of persons called as jurors

The court and counsel for either party shall have the right to examine under oath any person who is called as a juror therein and shall have the right to ask such person or juror directly any relevant question to ascertain whether he is related to either party, or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein; and the party objecting to any juror may introduce any competent evidence in support of the objection; and if it shall appear to the court that the juror does not stand indifferent in the cause, another shall be drawn or called and placed in his stead for the trial of that case.

A juror, knowing anything relative to a fact in issue, shall disclose the same in open court.

Code 1950, §§ 8-208.28, 8-215; 1973, c. 439; 1977, c. 617; 1981, c. 280.

§ 8.01-359. Trial; numbers of jurors in civil cases; how jurors selected from panel

A. Five persons from a panel of not less than 11 shall constitute a jury in a civil case when the amount involved exclusive of interest and costs does not exceed the maximum jurisdictional limits as provided in § 16.1-77 (1) . Seven persons from a panel of not less than 13 shall constitute a jury in all other civil cases except that when a special jury is allowed, 12 persons from a panel of not less than 20 shall constitute the jury.

B. The parties or their counsel, beginning with the plaintiff, shall alternately strike off one name from the panel until the number remaining shall be reduced to the number required for a jury. Where there are more than two parties, all plaintiffs shall share three strikes between them and all defendants and third-party defendants shall share three strikes between them.

C. In any case in which there are two or more parties on the same side, if counsel or the parties are unable to agree on the full number to be stricken, or, if for any other reason a party or his counsel fails or refuses to strike off the full number of jurors allowed such party, the clerk shall place in a box ballots bearing the names of the jurors whose names have not been stricken and shall cause to be drawn from the box such number of ballots as may be necessary to complete the number of strikes allowed the party or parties failing or refusing to strike. Thereafter, if the opposing side is entitled to further strikes, they shall be made in the usual manner.

D. In any civil case in which the consent of the plaintiff and defendant shall be entered of record, it shall be lawful for the plaintiff to select one person who is eligible as a juror and for the defendant to select another, and for the two so selected to select a third of like qualifications, and the three so selected shall constitute a jury in the case. They shall take the oath required of jurors, and hear and determine the issue, and any two concurring shall render a verdict in like manner and with like effect as a jury of seven.

Code 1950, § 8-208.21; 1973, c. 439; 1974, c. 611; 1975, c. 578; 1977, c. 617; 1985, c. 188; 2005, c. 356.

§ 8.01-360. Additional jurors when trial likely to be protracted

Whenever in the opinion of the court the trial of any criminal or civil case is likely to be a protracted one, the court may direct the selection of additional jurors who shall be drawn from the same source, in the same manner and at the same time as the regular jurors. These additional jurors shall have the same qualifications, and be considered and treated in every respect as regular jurors and be subject to examination and challenge as such jurors. When one additional juror is desired, there shall be drawn three veniremen, and the plaintiff and defendant in a civil case or the Commonwealth and accused in a criminal case shall each be allowed one peremptory challenge. When two or more additional jurors are desired there shall be drawn twice as many venireman as the number of additional jurors desired. The plaintiff and defendant in a civil case or the Commonwealth and accused in a criminal case shall each be allowed one additional peremptory challenge for every two additional jurors. The court shall select, by lot, those jurors to be designated additional jurors. The plaintiff and defendant in a civil case or the Commonwealth and

accused in a criminal case shall be advised by the court which jurors are additional jurors at the time the jury is impaneled; however, in no event, shall any juror be made aware of his status as a regular or additional juror until he is excused as a juror. Before final submission of the case, the court shall excuse any additional jurors in order to reduce the number of jurors to that required by §§ 8.01-359 and 19.2-262.

Code 1950, § 8-208.22; 1973, c. 439; 1977, c. 617; 1992, c. 536; 1998, c. 279.

§ 8.01-361. New juror may be sworn in place of one disabled; when court may discharge jury

If a juror, after he is sworn, be unable from any cause to perform his duty, the court may, in its discretion, cause another qualified juror to be sworn in his place, and in any case, the court may discharge the jury when it appears that they cannot agree on a verdict or that there is a manifest necessity for such discharge.

Code 1950, § 8-208.23; 1973, c. 439; 1977, c. 617.

§ 8.01-362. Special juries

Any court in a civil case in which a jury is required may allow a special jury, in which event the court shall order such jurors to be summoned as it shall designate, and from those summoned, a jury shall be made in accordance with the provisions of § 8.01-359 A. The court may, in its discretion, cause the entire cost of such jury to be taxed as a part of the cost in such action, and to be paid by the plaintiff or defendant as the court shall direct.

Code 1950, § 8-208.25; 1973, c. 439; 1977, c. 617.

§ 8.01-363. When impartial jury cannot be obtained locally

In any case in which qualified jurors who are not exempt from serving and who the judge is satisfied can render a fair and impartial trial cannot be conveniently found in the county or city in which the trial is to be, the court may cause so many jurors as may be necessary to be summoned from any other county or city by the sheriff thereof, or by its own officer, from a list prepared pursuant to Article 3 (§ 8.01-343 et seq.) of this chapter and furnished by the circuit court of the county or city from which the jurors are to be summoned.

Code 1950, § 8-208.26; 1973, c. 439; 1977, c. 617.

Chapter 12 - INTERPLEADER; CLAIMS OF THIRD PARTIES TO PROPERTY DISTRAINED OR LEVIED ON, ETC

Article 1 - INTERPLEADER

§ 8.01-364. Interpleader

A. Whenever any person is or may be exposed to multiple liability through the existence of claims by others to the same property or fund held by him or on his behalf, such person may file a pleading and require such parties to interplead their claims. It is not ground for objection to the joinder

that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant in an action who is exposed to similar liability may likewise obtain such interpleader. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in § 8.01-5.

B. The remedy herein provided is in addition to and in no way supersedes or limits the remedy provided by any other section of this Code.

C. In any action of interpleader, the court may enter its order restraining all claimants from instituting or prosecuting any proceeding in any court of the Commonwealth affecting the property involved in the interpleader action until further order of the court.

Such court shall hear and determine the case and may discharge the appropriate party from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

D. A person interpleading may voluntarily pay or tender into court the property claimed, or may be ordered to do so by the court; and the court may thereupon order such party discharged from all or part of any liability as between the claimants of such property.

Code 1950, § 8-226; 1977, c. 617; 1978, c. 415.

Article 2 - CLAIMS OF THIRD PARTIES TO PROPERTY DISTRAINED OR LEVIED ON

§ 8.01-365. How claim of third party tried

When a writ of fieri facias issued from a circuit court, or a warrant of distress, is levied on property, or when a lien is acquired on money or other personal estate by virtue of § 8.01-501, and when some other person than the one against whom the process issued claims the property, money, other personal estate, or some part or the proceeds thereof, then either (i) the claimant, if such suspending bond as is hereinafter mentioned has been given, (ii) the officer having such process, if no indemnifying bond has been given, or (iii) the party who had the process issued, may apply to try the claim, by motion to the adverse party, to the circuit court of the county or city wherein the property, money, or other personal estate is located.

Code 1950, § 8-227; 1962, c. 10; 1977, c. 617.

§ 8.01-366. Sale of property when no forthcoming bond is given

In such case as is mentioned in § 8.01-365, when no bond is given for the forthcoming of the property, the court may, before a decision of the rights of the parties, make an order for the sale of the property, or any part thereof, on such terms as the court may deem advisable, and for the proper application of the proceeds. The court may make such orders and enter such judgment as to costs and all other matters as may be just and proper.

Code 1950, § 8-228; 1977, c. 617.

§ 8.01-367. Indemnifying bond to officer

A. If any officer levies or is required to levy a fieri facias, an attachment, or a warrant of distress on property, and the officer doubts whether such property is liable to such levy, he may give the plaintiff, his agent or attorney-at-law, notice that an indemnifying bond is required in the case; bond may thereupon be given by any person, with good security, payable to the officer in a penalty equal to the value of the property in the case of a fieri facias or a warrant of distress on property and equal to double the value of the property in case of an attachment, with condition to indemnify him against all damage which he may sustain in consequence of the seizure or sale of such property and to pay to any claimant of such property all damage which he may sustain in consequence of such seizure or sale, and also to warrant and defend to any purchaser of the property such estate or interest therein as is sold. If the officer has performed more than one levy for a single plaintiff, the officer may permit the plaintiff to give a single indemnifying bond for such levies, provided that any such bond shall be in a penalty amount not less than the aggregate sum of the penalty amounts of the bonds required had the levies been bonded individually.

Provided, however, that when the property claimed to be liable by virtue of the process aforesaid is in the possession of any of the parties against whom such process was issued but is claimed by any other person or is claimed to belong to any other person, the officer having such process in his hands to be executed shall proceed to execute the same notwithstanding such claim unless the claimant of the property or someone for him shall give a suspending bond as provided by § 8.01-370 and shall within 30 days after such bond is given proceed to have the title to the property settled in accordance with the provisions of this chapter. And in case such claimant or someone for him fails to give such suspending bond, or having given such bond fails to have such proceedings instituted to settle the title thereto, the claimant shall be barred from asserting such claim to the property and the officer shall proceed to execute the process, and the officer who executes such process shall not be liable to any such claimant for any damages resulting from the proper execution of such process as is required by this section. If an indemnifying bond is not given within a reasonable time after such notice, the officer may refuse to levy on such property, or may restore it to the person from whose possession it was taken. If such bond is given, the officer shall proceed to levy (i) if he has not already done so, or (ii) if necessary to restore a levy previously released.

B. The Commonwealth shall not be required to give an indemnifying bond under the provisions of this section.

Code 1950, § 8-229; 1968, c. 490; 1972, c. 327; 1977, c. 617; 2005, c. 690; 2012, c. 206.

§ 8.01-368. Return of such bond to clerk's office

Any indemnifying bond taken by an officer under the preceding section shall be returned by him within twenty-one days to the clerk's office of the circuit court of the county or city wherein the property levied on, or to be levied on, is located.

Code 1950, § 8-230; 1977, c. 617.

§ 8.01-369. Effect of such bond

The claimant or purchaser of such property shall, after such bond is so returned, be barred from any action against the officer levying thereon, provided the security therein be good at the time of taking it.

Code 1950, § 8-231; 1977, c. 617.

§ 8.01-370. Claimant may give suspending bond; proceedings to have title settled; action on indemnifying or suspending bond

The sale of any property levied on under a fieri facias or distress warrant shall be suspended at the instance of any claimant thereof who will deliver to the officer a suspending bond, with good security, in a penalty equal to double the value thereof, payable to such officer, with condition to pay to all persons who may be injured by suspending the sale thereof, until the claim thereto is adjudicated or otherwise adjusted, such damage as they may sustain by such suspension. If the property claimed to be liable by virtue of such process is in the possession of any of the parties against whom such process was issued, but is claimed by any other person, or is claimed to belong to any other person, the officer having such process in his hands to be executed shall, whether an indemnifying bond has been given or not, after notice to the claimant, or his agent, proceed to execute the same notwithstanding such claim, unless the claimant of such property or someone for him shall give the suspending bond aforesaid, and shall within thirty days after such bond is given proceed to have the title to such property settled in accordance with the provisions of this chapter. And in case such claimant or someone for him fails to give a suspending bond, or having given such bond fails to have such proceedings instituted to settle the title thereto, the claimant shall be barred from asserting such claim to the property and the sale of the property shall proceed. For the purpose of this section, a person making a claim of ownership of property on behalf of another shall be deemed to be the latter's agent, and the notice required by this section may be verbal or in writing. Upon any such indemnifying or suspending bond as is mentioned in this section or § 8.01-369 an action may be prosecuted in the name of the officer for the benefit of the claimant, creditor, purchaser, or other person injured, and such damages recovered in such action as a jury may assess. The action may be prosecuted and a writ of fieri facias had in the name of such officer when he is dead in like manner as if he were alive.

Code 1950, § 8-232; 1977, c. 617.

§ 8.01-371. How forthcoming bond taken of claimant of property the sale whereof has been suspended

The sheriff or other officer levying a writ of fieri facias or distress warrant on property, the sale of which is suspended under this chapter at the instance of a claimant thereof, may, if such claimant desires the property to remain in such possession as it was immediately before the levy, and if the case be one in which a bond for the forthcoming of the property is not prohibited from being taken from the debtor by § 8.01-531, take from the claimant a bond, with sufficient surety, in a penalty equal to double the value of the property, payable to the creditor, with such recital as is

required in a forthcoming bond taken from the debtor, and with condition that the property shall be forthcoming at such day and place of sale as may be thereafter lawfully appointed. Such property may then be permitted to remain, at the risk of such claimant, in such possession as it was immediately before the levy; and §§ 8.01-527, 8.01-528, 8.01-530, 8.01-531 and 55-232 shall apply to such forthcoming bond in like manner as to a forthcoming bond taken from the debtor.

Code 1950, § 8-233; 1977, c. 617.

§ 8.01-372. Sale despite bond when property perishable, etc

In such case as is mentioned in § 8.01-371 and whether a forthcoming bond is given or not, if the property be expensive to keep or perishable, the court in which proceedings in the case under § 8.01-365 are pending or may be had, may, before a decision of the rights of the parties under such proceedings, on the application of such claimant or of the surety in such suspending or forthcoming bond, after reasonable notice of the intended application has been given by such claimant or the surety to the other parties in the case, order a sale of the property, or any part thereof, on such terms as the court may deem advisable. The court shall apply the proceeds according to the rights of the parties when determined.

Code 1950, § 8-234; 1977, c. 617.

§ 8.01-373. When property sells for more than claim, how surplus paid

When property, the sale of which is indemnified, sells for more than enough to satisfy the execution, attachment, or distress warrant under which it is taken, the surplus shall be paid by the officer into the court where the indemnifying bond is required to be returned, or as such court may direct. The court wherein the surplus is held may make such order for the disposition thereof, either temporarily until the question as to the title of the property sold is determined, or absolutely, as in respect to the rights of those interested may seem to it proper.

Code 1950, § 8-235; 1977, c. 617.

Chapter 13 - CERTAIN INCIDENTS OF TRIAL

§ 8.01-374. Procedure when original papers in cause are lost

If in any case the original papers therein, or any of them, or the record for or in an appellate court, or any paper filed or connected with such record, be lost or destroyed, any party to such case may present to the court wherein the case is, or in which it would or ought to be, but for such loss or destruction, a petition verified by affidavit stating such loss or destruction, and praying that such case be heard and determined or tried on the reproduction of such record or papers, or satisfactory proof of their contents. Upon such petition and an authenticated copy of what is lost or destroyed, the court may hear and determine the case, or proceed to a trial thereof, if before a jury. The court may also hear and determine the case, or proceed to the trial thereof, if before a jury, upon proof, after reasonable notice to the parties interested, of the contents of such record or papers, or so much thereof, as may be necessary for a decision by the court, or by a jury, and may make such order or decree as if the papers or any of them had not been lost or destroyed.

The court may in its discretion, require new pleadings to be made up in whole or in part.

A plaintiff instead of proceeding under this section may commence and prosecute a new suit for the same matter; and no certified copy of any deed, will, account, or other original paper required by law to be recorded shall be used by any party as evidence for him, in any case when the original deed, will, account, or other original paper or record thereof has been destroyed, until such copy has been properly admitted to record, according to law. This section shall not apply to criminal cases.

Code 1950, § 8-209; 1977, c. 617.

§ 8.01-374.1. Consolidation or bifurcation of issues or claims in certain cases; appeal

A. In any circuit court in which there are pending more than forty civil actions against manufacturers or suppliers of asbestos or products for industrial use that contain asbestos in which recovery is sought for personal injury or wrongful death alleged to have been caused by exposure to asbestos or products for industrial use that contain asbestos, the court may order a joint hearing or trial by jury of any or all common questions of law or fact which are at issue in those actions. The court may order any or all the actions consolidated, unless the court finds consolidation would adversely affect the rights of the parties to a fair trial. The court may submit special interrogatories to the jury to resolve specific issues of fact, and may make such orders concerning proceedings therein consistent with the right of each of the parties to a fair trial as may be appropriate to avoid unnecessary costs, duplicative litigation or delay.

B. To further convenience or avoid prejudice in such consolidated hearings, when separate or bifurcated trials will be conducive to judicial economy, the court may order a separate or bifurcated trial of any claim, or any number of claims, cross-claims, counterclaims, third-party claims, or separate issues, always preserving the right of trial by jury. However, in any such bifurcated proceeding, the entitlement of an individual plaintiff to an award of punitive damages against any defendant shall not be determined unless compensatory damages have been awarded to that individual.

C. Any order entered pursuant to this section shall, for purposes of appeal, be an interlocutory order. Any findings of the court or jury in any bifurcated trial shall not be appealable until a final order adjudicating all issues on a specific claim or consolidated group of claims has been entered.

D. This section shall not apply to actions arising under Article 6 (§ 8.01-57 et seq.) of Chapter 3 of this title or the Federal Employers Liability Act (45 U.S.C. § 51 et seq.). In addition, this section shall not apply to any party defendant unless that defendant was a manufacturer of, or a supplier of, asbestos or products for industrial use that contain asbestos, at any of the times alleged in the motion for judgment.

1992, c. 615 .

§ 8.01-375. Exclusion of witnesses in civil cases (Subsection (a) of Supreme Court Rule 2:615 derived in part from this section and subsection (b) of Supreme Court Rule 2:615 derived from this section)

The court trying any civil case may upon its own motion, and shall upon the motion of any party, require the exclusion of every witness. However, the following shall be exempt from the rule of this section as a matter of right: (i) each named party who is an individual, (ii) one officer or agent of each party that is a corporation or association, (iii) an attorney alleged in a habeas corpus proceeding to have acted ineffectively, and (iv) in an unlawful detainer action filed in general district court, a managing agent as defined in § 55-248.4.

Where expert witnesses are to testify in the case, the court may, at the request of all parties, allow one expert witness for each party to remain in the courtroom; however, in cases pertaining to the distribution of marital property pursuant to § 20-107.3 or the determination of child or spousal support pursuant to § 20-108.1, the court may, upon motion of any party, allow one expert witness for each party to remain in the courtroom throughout the hearing.

Code 1950, § 8-211.1; 1966, c. 268; 1975, c. 652; 1977, c. 617; 1986, c. 36; 1987, c. 70; 2001, c. 348; 2006, c. 757; 2016, c. 281.

§ 8.01-376. Views by juries

The jury may, in any civil case, at the request of either party, be taken to view the premises or place in question, or any property, matter or thing relating to the controversy between the parties, when it shall appear to the court that such view is necessary to a just decision; provided that the expenses of the jury and the officers who attend them in taking the view shall be afterwards taxed like other legal costs.

Code 1950, § 8-216; 1977, c. 617; 1978, c. 367.

§ 8.01-377. Remedy when variance appears between evidence and allegations

If, at the trial of any action, there appears to be a variance between the evidence and the allegations or recitals, the court, if it consider that substantial justice will be promoted and that the opposite party cannot be prejudiced thereby, may allow the pleadings to be amended, on such terms as to the payment of costs or postponement of the trial, or both, as it may deem reasonable. Or, instead of the pleadings being amended, the court may direct the jury to find the facts, and, after such finding, if it consider the variance such as could not have prejudiced the opposite party, shall give judgment according to the right of the case.

Code 1950, § 8-217; 1977, c. 617.

§ 8.01-377.1. Summary judgment

In any action at law or equity at the close of all the evidence, any party may move for a summary judgment upon the entire case or upon any severable issue including the issue of liability alone although there is a genuine issue as to damages.

1990, c. 628 .

§ 8.01-378. Trial judge not to direct verdicts

In no action tried before a jury shall the trial judge give to the jury a peremptory instruction directing what verdict the jury shall render. If the trial judge has granted a motion to strike the evidence of the plaintiff or the defendant, the judge shall enter summary judgment or partial summary judgment in conformity with his ruling on the motion to strike.

Code 1950, § 8-218; 1958, c. 208; 1977, c. 617; 1985, c. 214; 1986, c. 253.

§ 8.01-379. Argument before jury

Counsel's right to argument before a jury is preserved.

1977, c. 617.

§ 8.01-379.1. Informing jury of amounts sued for

Notwithstanding any other provision of law, any party in any civil action may inform the jury of the amount of damages sought by the plaintiff in the opening statement or closing argument, or both. The plaintiff may request an amount which is less than the ad damnum in the motion for judgment.

1988, c. 321; 1993, c. 615 .

§ 8.01-379.2. Jury instructions

A proposed jury instruction submitted by a party, which constitutes an accurate statement of the law applicable to the case, shall not be withheld from the jury solely for its nonconformance with the model jury instructions.

1992, c. 522 .

§ 8.01-379.3. General verdict accompanied by answer to interrogatories

Except in actions for negligence resulting in injury to person or death by wrongful act, in civil actions when the court determines that the complexity of the issues warrant, the court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. In actions for negligence resulting in injury to person or death by wrongful act, the court shall submit to the jury a general verdict form only, provided that the court may submit interrogatories to the jury if otherwise specifically authorized by law, if under substantive law governing the case comparative negligence applies, or if all parties to the action agree that interrogatories may be submitted to the jury. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are consistent, the appropriate judgment upon the verdict and answers shall be entered by the court. When the answers are consistent with each other but one or more is inconsistent with the general verdict, or when the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, judgment shall not be entered and the court shall either order the jury to further consider its answers and verdict or order a new trial.

2005, c. 499.

§ 8.01-380. Dismissal of action by nonsuit; fees and costs

A. A party shall not be allowed to suffer a nonsuit as to any cause of action or claim, or any other party to the proceeding, unless he does so before a motion to strike the evidence has been sustained or before the jury retires from the bar or before the action has been submitted to the court for decision. After a nonsuit no new proceeding on the same cause of action or against the same party shall be had in any court other than that in which the nonsuit was taken, unless that court is without jurisdiction, or not a proper venue, or other good cause is shown for proceeding in another court, or when such new proceeding is instituted in a federal court. If after a nonsuit an improper venue is chosen, the court shall not dismiss the matter but shall transfer it to the proper venue upon motion of any party.

B. Only one nonsuit may be taken to a cause of action or against the same party to the proceeding, as a matter of right, although the court may allow additional nonsuits upon reasonable notice to counsel of record for all defendants and upon a reasonable attempt to notify any party not represented by counsel, or counsel may stipulate to additional nonsuits. The court, in the event additional nonsuits are allowed, may assess costs and reasonable attorney fees against the nonsuiting party. When suffering a nonsuit, a party shall inform the court if the cause of action has been previously nonsuited. Any order effecting a subsequent nonsuit shall reflect all prior nonsuits and shall include language that reflects the date of any previous nonsuit together with the court in which any previous nonsuit was taken.

C. If notice to take a nonsuit of right is given to the opposing party within seven days of trial or during trial, the court in its discretion may assess against the nonsuiting party reasonable witness fees and travel costs of expert witnesses scheduled to appear at trial, which are actually incurred by the opposing party, solely by reason of the failure to give notice at least seven days prior to trial. The court shall have the authority to determine the reasonableness of expert witness fees and travel costs. Invoices, receipts, or confirmation of payment shall be admissible to prove reasonableness without the need to offer testimony to support the authenticity or reasonableness of such documents, and may, in the court's discretion, satisfy the reasonableness requirement under this subsection. Nothing herein shall preclude any party from offering additional evidence or testimony to support or rebut the reasonableness requirement.

D. A party shall not be allowed to nonsuit a cause of action, without the consent of the adverse party who has filed a counterclaim, cross claim or third-party claim which arises out of the same transaction or occurrence as the claim of the party desiring to nonsuit unless the counterclaim, cross claim or third-party claim can remain pending for independent adjudication by the court.

E. A voluntary nonsuit taken pursuant to this section is subject to the tolling provisions of subdivision E 3 of § 8.01-229.

Code 1950, §§ 8-220, 8-244; 1954, cc. 333, 611; 1977, c. 617; 1983, c. 404; 1991, c. 19; 2001, c. 825; 2004, c. 362; 2007, cc. 179, 367; 2013, cc. 274, 366; 2014, c. 86.

§ 8.01-381. What jury may carry out

No pleadings may be carried from the bar by the jury. Exhibits may, by leave of court, be so carried by the jury. Upon request of any party, the court shall instruct the jury that they may request exhibits for use during deliberations. Exhibits requested by the jury shall be sent to the jury room or may otherwise be made available to the jury.

Code 1950, § 8-221; 1977, c. 617; 1992, c. 495 .

§ 8.01-382. Verdict, judgment or decree to fix period at which interest begins; final order; judgment or decree for interest

In any Administrative Process Act (§ 2.2-4000 et seq.) action or action at law or suit in equity, the final order, verdict of the jury, or if no jury the judgment or decree of the court, may provide for interest on any principal sum awarded, or any part thereof, and fix the period at which the interest shall commence. The final order, judgment or decree entered shall provide for such interest until such principal sum be paid. If a final order, judgment or decree be rendered which does not provide for interest, the final order, judgment or decree awarded or jury verdict shall bear interest at the judgment rate of interest as provided for in § 6.2-302 from its date of entry or from the date that the jury verdict was rendered. Notwithstanding the provisions of this section, any judgment entered for a sum due under a negotiable instrument, as defined by § 8.3A-104, shall provide for interest on the principal sum in accordance with § 8.3A-112 at the rate specified in the instrument. If no such rate is specified, interest on the principal sum shall be at the judgment rate provided in § 6.2-302. Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the agency head or his designee.

Code 1950, § 8-223; 1964, c. 219; 1974, c. 172; 1975, c. 448; 1977, c. 617; 1979, c. 501; 1997, c. 551; 2004, c. 646; 2008, c. 219; 2009, c. 797.

§ 8.01-383. Power to grant new trial; how often

In any civil case or proceeding, the court before which a trial by jury is had, may grant a new trial, unless it be otherwise specially provided. A new trial may be granted as well where the damages awarded are too small as where they are excessive. Not more than two new trials shall be granted to the same party in the same cause on the ground that the verdict is contrary to the evidence, either by the trial court or the appellate court, or both.

Code 1950, § 8-224; 1977, c. 617.

§ 8.01-383.1. Appeal when verdict reduced and accepted under protest; new trial for inadequate damages

A. In any action at law in which the trial court shall require a plaintiff to remit a part of his recovery, as ascertained by the verdict of a jury, or else submit to a new trial, such plaintiff may remit and accept judgment of the court thereon for the reduced sum under protest, but, notwithstanding

such remittitur and acceptance, if under protest, the judgment of the court in requiring him to remit may be reviewed by the Supreme Court upon an appeal awarded the plaintiff as in other actions at law; and in any such case in which an appeal is awarded the defendant, the judgment of the court in requiring such remittitur may be the subject of review by the Supreme Court, regardless of the amount.

B. In any action at law when the court finds as a matter of law that the damages awarded by the jury are inadequate, the trial court may (i) award a new trial or (ii) require the defendant to pay an amount in excess of the recovery of the plaintiff found in the verdict. If either the plaintiff or the defendant declines to accept such additional award, the trial court shall award a new trial.

If additur pursuant to this subsection is accepted by either party under protest, it may be reviewed on appeal.

Code 1950, § 8-350; 1977, c. 617; 1994, c. 807; 1998, c. 861.

§ 8.01-384. Formal exceptions to rulings or orders of court unnecessary; motion for new trial unnecessary in certain cases

A. Formal exceptions to rulings or orders of the court shall be unnecessary; but for all purposes for which an exception has heretofore been necessary, it shall be sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take or his objections to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection shall not thereafter prejudice him on motion for a new trial or on appeal. No party, after having made an objection or motion known to the court, shall be required to make such objection or motion again in order to preserve his right to appeal, challenge, or move for reconsideration of, a ruling, order, or action of the court. No party shall be deemed to have agreed to, or acquiesced in, any written order of a trial court so as to forfeit his right to contest such order on appeal except by express written agreement in his endorsement of the order. Arguments made at trial via written pleading, memorandum, recital of objections in a final order, oral argument reduced to transcript, or agreed written statements of facts shall, unless expressly withdrawn or waived, be deemed preserved therein for assertion on appeal.

B. The failure to make a motion for a new trial in any case in which an appeal, writ of error, or supersedeas lies to or from a higher court shall not be deemed a waiver of any objection made during the trial if such objection be properly made a part of the record.

Code 1950, §§ 8-225, 8-225.1; 1970, c. 558; 1977, c. 617; 1992, c. 564 .

§ 8.01-384.1. Interpreters for deaf in civil proceedings

In any civil proceeding in which a speech-impaired or hearing-impaired person is a party or witness, the court may appoint a qualified interpreter to assist such person in the proceeding. The court shall appoint an interpreter for any speech-impaired or hearing-impaired person who requests this assistance.

Interpreters for the deaf in these proceedings shall be procured through the Department for the Deaf and Hard-of-Hearing.

Any person who is eligible for an interpreter pursuant to this section may waive the use of an interpreter appointed by the court for all or a portion of the proceedings. A person who waives his right to an interpreter may provide his own interpreter at his own expense without regard to whether the interpreter is qualified under this section.

The compensation of interpreters appointed pursuant to this section shall be fixed by the court and paid from the general fund of the state treasury or may, in the discretion of the court, be assessed as a part of the cost of the proceedings.

The provisions of this section shall apply in both circuit courts and district courts.

1982, c. 444.

§ 8.01-384.1:1. Interpreters for non-English-speaking persons in civil cases

A. In any trial, hearing or other proceeding before a judge in a civil case in which a non-English-speaking person is a party or witness, an interpreter for the non-English-speaking person may be appointed by the court. A qualified English-speaking person fluent in the language of the non-English-speaking person may be appointed by the judge of the court in which the case is to be heard unless the non-English-speaking person shall obtain a qualified interpreter of his own choosing who is approved by the court as being competent.

B. To the extent of available appropriations, the compensation of such interpreter shall be fixed by the court in accordance with guidelines set by the Judicial Council of Virginia and shall be paid from the general fund of the state treasury as part of the expense of trial. The amount allowed by the court to the interpreter may, in the discretion of the court, be assessed against either party as a part of the cost of the case and, if collected, the same shall be paid to the Commonwealth.

C. Whenever a person communicates through an interpreter to any person under such circumstances that the communications would be privileged, and such persons could not be compelled to testify as to the communications, this privilege shall also apply to the interpreter. The provisions of this section shall apply in circuit courts and district courts.

1996, c. 559; 2003, c. 1011.

§ 8.01-384.2. Waiver of discovery time limitations by parties

Parties involved in any civil litigation may, without court order and upon agreement of all of them or their counsel, waive any time limitations established by the Rules of the Virginia Supreme Court relating to any response to a motion or request for discovery or the scheduling of any discovery proceedings. The court shall allow any such waiver unless an order establishing discovery or filing deadlines has been entered previously by the court in the action.

1991, c. 75 .

Chapter 14 - EVIDENCE

Article 1 - JUDICIAL NOTICE

§ 8.01-385. Definitions

As used in this chapter:

1. The term "United States" shall be deemed to refer to the United States of America and to include any of its territories, commonwealths, insular possessions, the District of Columbia, and any of its other political subdivisions other than states.

2. The term "court" shall be deemed to include the courts of this Commonwealth, any other person or body appointed by it or acting under its process or authority in a judicial or quasi-judicial capacity, and any other judicial, quasi-judicial, or fact-finding body acting pursuant to the laws of the Commonwealth, including without limitation, the State Corporation Commission and the Virginia Workers' Compensation Commission.

3. The term "political subdivision" shall: (i) as applied to the United States, include any other political subdivision other than states and including without limitation the District of Columbia and the Commonwealth of Puerto Rico; (ii) as applied to other countries, include without limitation states, counties, cities, towns, boroughs, and any division thereof recognized and vested with the authority to enact or promulgate ordinances, rules, and regulations having the force or effect of law; (iii) as applied to this Commonwealth and other states of the United States, include without limitation counties, cities, towns, boroughs, and any other division thereof recognized and vested with the authority to enact or promulgate ordinances, rules, and regulations having the force or effect of law.

4. The term "agency" shall be deemed to include without limitation any department, division, commission, association, board, or other administrative body established pursuant to the laws of a jurisdiction.

5. The term "official publication" includes any registry or listing of licenses, permits, or registrations posted on the official website of an agency or political subdivision.

6. The term "publish" includes posting by an agency or political subdivision on its official website.

7. The term "required to be published pursuant to the laws thereof" includes being subject to disclosure under § 54.1-108.

1977, c. 617; 2011, c. 81.

§ 8.01-386. Judicial notice of laws (Supreme Court Rule 2:202 derived in part from this section)

A. Whenever, in any civil action it becomes necessary to ascertain what the law, statutory or otherwise, of this Commonwealth, of another state, of the United States, of another country, or of

any political subdivision or agency of the same is, or was, at any time, the court shall take judicial notice thereof whether specially pleaded or not.

B. The court, in taking such notice, may consult any book, record, register, journal, or other official document or publication purporting to contain, state, or explain such law, and may consider any evidence or other information or argument that is offered on the subject.

Code 1950, §§ 8-264, 8-270, 8-273; 1960, c. 504; 1977, c. 617.

§ 8.01-387. Notice by courts and officers of signatures of judges and Governor

All courts and officers shall take notice of the signature of any of the judges, or of the Governor of this Commonwealth, to any judicial or official document.

Code 1950, § 8-274; 1977, c. 617.

§ 8.01-388. Judicial notice of official publications (Supreme Court Rule 2:203 derived from this section)

The court shall take judicial notice of the contents of all official publications of this Commonwealth and its political subdivisions and agencies required to be published pursuant to the laws thereof, and of all such official publications of other states, of the United States, of other countries, and of the political subdivisions and agencies of each published within those jurisdictions pursuant to the laws thereof.

1977, c. 617.

Article 2 - LAWS, PUBLIC RECORDS, AND COPIES OF ORIGINAL RECORDS AS EVIDENCE

§ 8.01-389. Judicial records as evidence; full faith and credit; recitals in deeds, deeds of trust, and mortgages; "records" defined; certification

A. The records of any judicial proceeding and any other official records of any court of this Commonwealth shall be received as prima facie evidence provided that such records are certified by the clerk of the court where preserved to be a true record. For the purposes of this section, judicial proceeding shall include the review of a petition and issuance of a temporary detention order under § 16.1-340.1 or 37.2-809.

A1. The records of any judicial proceeding and any other official record of any court of another state or country, or of the United States, shall be received as prima facie evidence provided that such records are certified by the clerk of the court where preserved to be a true record.

B. Every court of this Commonwealth shall give such records of courts not of this Commonwealth the full faith and credit given to them in the courts of the jurisdiction from whence they come.

B1. In any instance in which a court not of this Commonwealth shall have entered an order of injunction limiting or preventing access by any person to the courts of this Commonwealth without that person having had notice and an opportunity for a hearing prior to the entry of such

foreign order, that foreign order is not required to be given full faith and credit in any Virginia court. The Virginia court may, in its discretion, hold a hearing to determine the adequacy of notice and opportunity for hearing in the foreign court.

C. Specifically, recitals of any fact in a deed or deed of trust of record conveying any interest in real property shall be prima facie evidence of that fact.

D. "Records" as used in this article, shall be deemed to include any memorandum, report, paper, data compilation, or other record in any form, or any combination thereof.

E. The use of the term "copy teste," "true copy," or "certified copy" or a substantially similar term on a certification affixed or annexed to a copy of an official record maintained by a clerk of court that bears the signature of the clerk or any deputy clerk, and that has the name of the court where such record is preserved on the document or on the certification, shall be prima facie proof that such record is certified by such clerk to be a true copy of the official record kept in the office of the clerk. Nothing herein shall be construed to require or prevent a clerk from using an official seal or prevent a clerk from using any other acceptable method of certification for a court record.

F. The certification of any record pursuant to this section shall automatically authenticate such record for the purpose of its admission into evidence in any trial, hearing, or proceeding.

Code 1950, §§ 8-271, 8-275, 8-276, 8-276.1; 1977, c. 617; 1980, c. 453; 1995, c. 594; 1996, c. 417; 2008, c. 786; 2010, cc. 778, 825; 2013, c. 263.

§ 8.01-390. Nonjudicial records as evidence (Subdivision (10)(a) of Supreme Court Rule 2:803 derived from subsection C of this section)

A. Copies of records of this Commonwealth, of another state, of the United States, of another country, or of any political subdivision or agency of the same, other than those located in a clerk's office of a court, shall be received as prima facie evidence provided that such copies are authenticated to be true copies either by the custodian thereof or by the person to whom the custodian reports, if they are different.

B. Records and recordings of 911 emergency service calls shall be deemed authentic transcriptions or recordings of the original statements if they are accompanied by a certificate that meets the provisions of subsection A and the certificate contains the date and time of the incoming call and the incoming phone number, if available, associated with the call.

C. An affidavit signed by an officer deemed to have custody of such an official record, or by his deputy, stating that after a diligent search, no record or entry of such record is found to exist among the records in his office is admissible as evidence that his office has no such record or entry.

1977, c. 617; 1996, c. 668; 2000, c. 334; 2014, c. 353.

§ 8.01-390.1. School records as evidence

In a proceeding where a minor's school records are material and otherwise admissible, copies of such school records shall be received as evidence in any matter, provided that such copies are authenticated to be true and accurate copies by the custodian thereof, or by the person to whom the custodian reports if they are different. An affidavit signed by the custodian of such records, or by the person to whom the custodian reports if they are different, stating that such records are true and accurate copies of such records shall be valid authentication for the purposes of this section. Except for copies of report cards and letters previously sent to parents, subjective information, including observations, comments or opinions shall be redacted, by the court, from any records prior to admittance of the records into evidence pursuant to this section. Any party seeking to introduce records authenticated by affidavit under this section shall deliver notice and a copy of such records to the other parties so that they are received not less than seven days prior to the introduction of such records.

2000, c. 558; 2009, c. 212; 2012, c. 499.

§ 8.01-390.2. Reports by Chief Medical Examiner received as evidence

Reports of investigations made by the Chief Medical Examiner, his assistants or medical examiners, and the records and certified reports of autopsies made under the authority of Title 32.1, shall be received as evidence in any court or other proceeding, and copies of photographs, laboratory findings and reports in the office of the Chief Medical Examiner or any medical examiner, when duly attested by the Chief Medical Examiner or an Assistant Chief Medical Examiner, shall be received as evidence in any court or other proceeding for any purpose for which the original could be received without proof of the official character or the person whose name is signed thereto.

2003, c. 459.

§ 8.01-390.3. Business records as evidence

A. In any civil proceeding where a business record is material and otherwise admissible, authentication of the record and the foundation required by subdivision (6) of Rule 2:803 of the Rules of Supreme Court of Virginia may be laid by (i) witness testimony, (ii) a certification of the authenticity of and foundation for the record made by the custodian of such record or other qualified witness either by affidavit or by declaration pursuant to § 8.01-4.3, or (iii) a combination of witness testimony and a certification.

B. The proponent of a business record shall (i) give written notice to all other parties if a certification under this section will be relied upon in whole or in part in authenticating and laying the foundation for admission of such record and (ii) provide a copy of the record and the certification to all other parties, so that all parties have a fair opportunity to challenge the record and certification. The notice and copy of the record and certification shall be provided no later than 15 days in advance of the trial or hearing, unless an order of the court specifies a different time. Objections shall be made within five days thereafter, unless an order of the court specifies a different time. If any party timely objects to reliance upon the certification, the authentication and

foundation required by subdivision (6) of Rule 2:803 of the Rules of Supreme Court of Virginia shall be made by witness testimony unless the objection is withdrawn.

C. A certified business record that satisfies the requirements of this section shall be self-authenticating and requires no extrinsic evidence of authenticity.

D. A copy of a business record may be offered in lieu of an original upon satisfaction of the requirements of subsection D of § 8.01-391 by witness testimony, a certification, or a combination of testimony and a certification.

2014, c. 398.

§ 8.01-391. Copies of originals as evidence (Supreme Court Rule 2:1005 derived from this section)

A. Whenever the original of any official publication or other record has been filed in an action or introduced as evidence, the court may order the original to be returned to its custodian, retaining in its stead a copy thereof. The court may make any order to prevent the improper use of the original.

B. If any department, division, institution, agency, board, or commission of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of the same, acting pursuant to the law of the respective jurisdiction or other proper authority, has copied any record made in the performance of its official duties, such copy shall be as admissible into evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy either by the custodian of said record or by the person to whom said custodian reports, if they are different, and is accompanied by a certificate that such person does in fact have the custody.

C. If any court or clerk's office of a court of this Commonwealth, of another state or country, or of the United States, or of any political subdivision or agency of the same, has copied any record made in the performance of its official duties, such copy shall be admissible into evidence as the original, whether the original is in existence or not, provided that such copy is authenticated as a true copy by a clerk or deputy clerk of such court.

D. If any business or member of a profession or calling in the regular course of business or activity has made any record or received or transmitted any document, and again in the regular course of business has caused any or all of such record or document to be copied, the copy shall be as admissible in evidence as the original, whether the original exists or not, provided that such copy is satisfactorily identified and authenticated as a true copy by a custodian of such record or by the person to whom said custodian reports, if they be different, and is accompanied by a certificate that said person does in fact have the custody. Such identification and authentication may be made through witness testimony or a certificate by affidavit or by declaration pursuant to § 8.01-4.3, or a combination of witness testimony and a certificate. Copies in the regular course of business shall be deemed to include reproduction at a later time, if done in good faith and without

intent to defraud. Copies in the regular course of business shall include items such as checks which are regularly copied before transmission to another person or bank, or records which are acted upon without receipt of the original when the original is retained by another party.

E. The original of which a copy has been made may be destroyed unless its preservation is required by law or its validity has been questioned.

F. The introduction in an action of a copy under this section precludes neither the introduction or admission of the original nor the introduction of a copy or the original in another action.

G. Copy, as used in this section, shall include photographs, microphotographs, photostats, microfilm, microcard, printouts or other reproductions of electronically stored data, or copies from optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a process which forms a durable medium for its recording, storing, and reproducing.

Code 1950, §§ 8-266, 8-267, 8-268, 8-278, 8-279, 8-279.1, 8-279.2; 1950, pp. 604, 640; 1954, c. 333; 1968, c. 723; 1972, cc. 441, 549, 645, 786; 1973, c. 177; 1977, cc. 532, 617; 1978, c. 75; 1979, c. 447; 1989, c. 212; 1990, c. 355; 1991, c. 145; 1992, c. 393; 2000, c. 334; 2012, c. 802; 2014, c. 398.

Article 2.1 - CHECK CLEARING FOR THE 21ST CENTURY EVIDENCE ACT

§ 8.01-391.1. Substitute checks as evidence (Supreme Court Rule 2:1003 derived from subsections A and B of this section)

A. A substitute check created pursuant to the federal Check Clearing for the 21st Century Evidence Act (Check 21 Act), 12 U.S.C. § 5001 et seq., shall be admissible in evidence in any legal proceeding, civil or criminal, to the same extent the original check would be.

B. A document received from a banking institution that is designated as a "substitute check" and that bears the legend "This is a legal copy of your check. You can use it the same way you would use the original check" shall be presumed to be a substitute check created pursuant to the Check 21 Act.

C. Any person who shall forge a substitute check or utter or attempt to employ as true any forged substitute check shall be punished as provided in § 18.2-172.

2006, c. 127.

Article 3 - ESTABLISHING LOST RECORDS, ETC

§ 8.01-392. When court order book or equivalent is lost or illegible, what matters may be reentered

When any book, microfilm record, or record in other form containing judgments, decrees, orders or proceedings of a court is lost, destroyed, or illegible, and there can be again entered correctly, by means of any writing, any matters which were in such book, such court may cause its clerk to have such matters reentered, and such reentries shall have the same effect as the original entries.

Code 1950, § 8-280; 1977, c. 617.

§ 8.01-393. When book or paper or equivalent in clerk's office lost, destroyed, or illegible to be again recorded

When any such book, or any book, microfilm record, or record in other form containing the record of wills, deeds, or other papers, or any other paper filed in a clerk's office, is lost, destroyed, or is illegible, the clerk in whose office such book or paper was, upon the production to him of any original paper which was recorded in such book, or of an attested copy of the record thereof, or of anything else in such book, or of any paper so filed, shall, on application, record the same anew. The record shall show whether it is made from an original or a copy, and how the paper from which it was made was authenticated or attested. Such record shall have, as far as may be, the same effect that the record or paper for which it is substituted would have had.

Code 1950, § 8-281; 1977, c. 617.

§ 8.01-394. How contents of any such lost record, etc., proved

A. Any person desirous of proving the contents of any such book, record, or other paper as is mentioned in either § 8.01-392 or § 8.01-393, may file before the circuit court of the county or city in which such record, book, or other paper was a petition in writing, stating the nature of the record, book, or paper, the contents of which he desires to prove, and what persons may be affected by such proof. Thereupon the court shall appoint a time and place for proceeding on such petition, of which reasonable notice shall be given by him to all parties named in such petition, or interested in the proceedings, and to any others who shall be known to the court, or who shall claim to be so interested. If any party interested other than the petitioner, or who may be affected by the proof, be a person under a disability, the court shall appoint a guardian ad litem to represent his interest in the proceeding.

B. The evidence upon said petition shall be in writing and filed, and the court shall make such order in respect to such record, book, or other paper, or anything therein, as may be necessary to secure the benefits thereof to the parties interested, or such other order as may be proper in the case.

Before such court shall make such order, the petitioner shall cause to be served on the persons interested a notice in writing that he will apply for such order, in the manner provided by § 8.01-296, at least ten days before such order is to be made; but if such persons, or any of them, do not reside in this Commonwealth, or after due diligence cannot be found therein, an order of publication may be issued as provided by §§ 8.01-316 and 8.01-317.

Code 1950, §§ 8-282, 8-283; 1977, c. 617.

§ 8.01-395. Validating certain proceedings under § 8.01-394

All proceedings had in any case, under the provisions of § 8.01-394, wherein a final judgment or decree has stood unimpeached for more than twenty years are declared to be valid and binding in all respects.

Code 1950, § 8-284; 1977, c. 617.

Article 4 - WITNESSES GENERALLY

§ 8.01-396. No person incompetent to testify by reason of interest, or because a party
No person shall be incompetent to testify because of interest, or because of his being a party to any civil action; but he shall, if otherwise competent to testify, and subject to the rules of evidence and practice applicable to other witnesses, be competent to give evidence in his own behalf and be competent and compellable to attend and give evidence on behalf of any other party to such action; but, in any case, the court, for good cause shown, may require any such person to attend and testify ore tenus and, upon his failure to so attend and testify, may exclude his deposition.

Code 1950, § 8-285; 1977, c. 617.

§ 8.01-396.1. Competency of witness
No child shall be deemed incompetent to testify solely because of age.

1993, cc. 441, 605 .

§ 8.01-397. Corroboration required and evidence receivable when one party incapable of testifying (subdivision (b)(5) of Supreme Court Rule 2:804 derived from this section)
In an action by or against a person who, from any cause, is incapable of testifying, or by or against the committee, trustee, executor, administrator, heir, or other representative of the person so incapable of testifying, no judgment or decree shall be rendered in favor of an adverse or interested party founded on his uncorroborated testimony. In any such action, whether such adverse party testifies or not, all entries, memoranda, and declarations by the party so incapable of testifying made while he was capable, relevant to the matter in issue, may be received as evidence in all proceedings including without limitation those to which a person under a disability is a party. The phrase "from any cause" as used in this section shall not include situations in which the party who is incapable of testifying has rendered himself unable to testify by an intentional self-inflicted injury.

For the purposes of this section, and in addition to corroboration by any other competent evidence, an entry authored by an adverse or interested party contained in a business record may be competent evidence for corroboration of the testimony of an adverse or interested party. If authentication of the business record is not admitted in a request for admission, such business record shall be authenticated by a person other than the author of the entry who is not an adverse or interested party whose conduct is at issue in the allegations of the complaint.

Code 1950, § 8-286; 1977, c. 617; 1988, c. 426; 2013, cc. 61, 637.

§ 8.01-397.1. Evidence of habit or routine practice; defined (Supreme Court Rule 2:406 derived from this section)

A. Admissibility. Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eye witnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice. Evidence of prior conduct may be relevant to rebut evidence of habit or routine practice.

B. Habit and routine practice defined. A "habit" is a person's regular response to repeated specific situations. A "routine practice" is a regular course of conduct of a group of persons or an organization in response to repeated specific situations.

C. The provisions of this section are applicable only in civil proceedings.

2000, c. 1026.

§ 8.01-398. Privileged marital communications (Subsection (a) of Supreme Court Rule 2:504 derived from this section)

Husband and wife shall be competent witnesses to testify for or against each other in all civil actions.

In any civil proceeding, a person has a privilege to refuse to disclose, and to prevent anyone else from disclosing, any confidential communication between his spouse and him during their marriage, regardless of whether he is married to that spouse at the time he objects to disclosure. This privilege may not be asserted in any proceeding in which the spouses are adverse parties, or in which either spouse is charged with a crime or tort against the person or property of the other or against the minor child of either spouse. For the purposes of this section, "confidential communication" means a communication made privately by a person to his spouse that is not intended for disclosure to any other person.

Code 1950, §§ 8-287, 8-289; 1977, c. 617; 2005, c. 809.

§ 8.01-399. Communications between physicians and patients (Supreme Court Rule 2:505 derived from this section)

A. Except at the request or with the consent of the patient, or as provided in this section, no duly licensed practitioner of any branch of the healing arts shall be permitted to testify in any civil action, respecting any information that he may have acquired in attending, examining or treating the patient in a professional capacity.

B. If the physical or mental condition of the patient is at issue in a civil action, the diagnoses, signs and symptoms, observations, evaluations, histories, or treatment plan of the practitioner, obtained or formulated as contemporaneously documented during the course of the practitioner's treatment, together with the facts communicated to, or otherwise learned by, such practitioner in connection with such attendance, examination or treatment shall be disclosed but only in discovery pursuant to the Rules of Court or through testimony at the trial of the action. In addition, disclosure may be ordered when a court, in the exercise of sound discretion, deems it necessary to the proper administration of justice. However, no order shall be entered compelling a party to sign

a release for medical records from a health care provider unless the health care provider is not located in the Commonwealth or is a federal facility. If an order is issued pursuant to this section, it shall be restricted to the medical records that relate to the physical or mental conditions at issue in the case. No disclosure of diagnosis or treatment plan facts communicated to, or otherwise learned by, such practitioner shall occur if the court determines, upon the request of the patient, that such facts are not relevant to the subject matter involved in the pending action or do not appear to be reasonably calculated to lead to the discovery of admissible evidence. Only diagnosis offered to a reasonable degree of medical probability shall be admissible at trial.

C. This section shall not (i) be construed to repeal or otherwise affect the provisions of § 65.2-607 relating to privileged communications between physicians and surgeons and employees under the Workers' Compensation Act; (ii) apply to information communicated to any such practitioner in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug; or (iii) prohibit a duly licensed practitioner of the healing arts, or his agents, from disclosing information as required by state or federal law.

D. Neither a lawyer nor anyone acting on the lawyer's behalf shall obtain, in connection with pending or threatened litigation, information concerning a patient from a practitioner of any branch of the healing arts without the consent of the patient, except through discovery pursuant to the Rules of Supreme Court as herein provided. However, the prohibition of this subsection shall not apply to:

1. Communication between a lawyer retained to represent a practitioner of the healing arts, or that lawyer's agent, and that practitioner's employers, partners, agents, servants, employees, co-employees or others for whom, at law, the practitioner is or may be liable or who, at law, are or may be liable for the practitioner's acts or omissions;

2. Information about a patient provided to a lawyer or his agent by a practitioner of the healing arts employed by that lawyer to examine or evaluate the patient in accordance with Rule 4:10 of the Rules of Supreme Court; or

3. Contact between a lawyer or his agent and a nonphysician employee or agent of a practitioner of healing arts for any of the following purposes: (i) scheduling appearances, (ii) requesting a written recitation by the practitioner of handwritten records obtained by the lawyer or his agent from the practitioner, provided the request is made in writing and, if litigation is pending, a copy of the request and the practitioner's response is provided simultaneously to the patient or his attorney, (iii) obtaining information necessary to obtain service upon the practitioner in pending litigation, (iv) determining when records summoned will be provided by the practitioner or his agent, (v) determining what patient records the practitioner possesses in order to summons records in pending litigation, (vi) explaining any summons that the lawyer or his agent caused to be issued and served on the practitioner, (vii) verifying dates the practitioner treated the patient, provided that if litigation is pending the information obtained by the lawyer or his agent is promptly given,

in writing, to the patient or his attorney, (viii) determining charges by the practitioner for appearance at a deposition or to testify before any tribunal or administrative body, or (ix) providing to or obtaining from the practitioner directions to a place to which he is or will be summoned to give testimony.

E. A clinical psychologist duly licensed under the provisions of Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 shall be considered a practitioner of a branch of the healing arts within the meaning of this section.

F. Nothing herein shall prevent a duly licensed practitioner of the healing arts, or his agents, from disclosing any information that he may have acquired in attending, examining or treating a patient in a professional capacity where such disclosure is necessary in connection with the care of the patient, the protection or enforcement of a practitioner's legal rights including such rights with respect to medical malpractice actions, or the operations of a health care facility or health maintenance organization or in order to comply with state or federal law.

Code 1950, § 8-289.1; 1956, c. 446; 1966, c. 673; 1977, c. 617; 1993, c. 556; 1996, cc. 937, 980; 1998, c. 314; 2002, cc. 308, 723; 2005, cc. 649, 692; 2009, c. 714.

§ 8.01-400. Communications between ministers of religion and persons they counsel or advise (Supreme Court Rule 2:503 derived in part from this section)

No regular minister, priest, rabbi, or accredited practitioner over the age of eighteen years, of any religious organization or denomination usually referred to as a church, shall be required to give testimony as a witness or to relinquish notes, records or any written documentation made by such person, or disclose the contents of any such notes, records or written documentation, in discovery proceedings in any civil action which would disclose any information communicated to him in a confidential manner, properly entrusted to him in his professional capacity and necessary to enable him to discharge the functions of his office according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking spiritual counsel and advice relative to and growing out of the information so imparted.

Code 1950, § 8-289.2; 1962, c. 466; 1977, c. 617; 1979, c. 3; 1994, c. 198.

§ 8.01-400.1. Privileged communications by interpreters for the deaf (Supreme Court Rule 2:507 derived in part from this section)

Whenever a deaf person communicates through an interpreter to any person under such circumstances that the communication would be privileged, and such person could not be compelled to testify as to the communications, this privilege shall also apply to the interpreter.

1978, c. 601.

§ 8.01-400.2. Communications between certain mental health professionals and clients (Supreme Court Rule 2:506 derived from this section)

Except at the request of or with the consent of the client, no licensed professional counselor, as defined in § 54.1-3500; licensed clinical social worker, as defined in § 54.1-3700; licensed

psychologist, as defined in § 54.1-3600; or licensed marriage and family therapist, as defined in § 54.1-3500, shall be required in giving testimony as a witness in any civil action to disclose any information communicated to him in a confidential manner, properly entrusted to him in his professional capacity and necessary to enable him to discharge his professional or occupational services according to the usual course of his practice or discipline, wherein such person so communicating such information about himself or another is seeking professional counseling or treatment and advice relative to and growing out of the information so imparted; provided, however, that when the physical or mental condition of the client is at issue in such action, or when a court, in the exercise of sound discretion, deems such disclosure necessary to the proper administration of justice, no fact communicated to, or otherwise learned by, such practitioner in connection with such counseling, treatment or advice shall be privileged, and disclosure may be required. The privileges conferred by this section shall not extend to testimony in matters relating to child abuse and neglect nor serve to relieve any person from the reporting requirements set forth in § 63.2-1509.

1982, c. 537; 2005, c. 110.

§ 8.01-401. How adverse party may be examined; effect of refusal to testify (subsection (b) of Supreme Court Rule 2:607 and subsection (c) of Supreme Court Rule 2:611 derived from subsection A of this section)

A. A party called to testify for another, having an adverse interest, may be examined by such other party according to the rules applicable to cross-examination.

B. If any party, required by another to testify on his behalf, refuses to testify, the court, officer, or person before whom the proceeding is pending, may, in addition to punishing said party as for contempt, dismiss the action, or other proceeding of the party so refusing, as to the whole or any part thereof, or may strike out and disregard the plea, answer, or other defense of such party, or any part thereof, as justice may require.

Code 1950, §§ 8-290, 8-291; 1977, c. 617.

§ 8.01-401.1. Opinion testimony by experts; hearsay exception (subsection (a) of Supreme Court Rule 2:703, subsection (a) of Supreme Court Rule 2:705, and subsection (a) of Supreme Court Rule 2:706 derived from this section)

In any civil action any expert witness may give testimony and render an opinion or draw inferences from facts, circumstances or data made known to or perceived by such witness at or before the hearing or trial during which he is called upon to testify. The facts, circumstances or data relied upon by such witness in forming an opinion or drawing inferences, if of a type normally relied upon by others in the particular field of expertise in forming opinions and drawing inferences, need not be admissible in evidence.

The expert may testify in terms of opinion or inference and give his reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals or pamphlets on a subject of history, medicine or other science or art, established as a reliable authority by testimony or by stipulation, shall not be excluded as hearsay. If admitted, the statements may be read into evidence but may not be received as exhibits. If the statements are to be introduced through an expert witness upon direct examination, copies of the specific statements shall be designated as literature to be introduced during direct examination and provided to opposing parties 30 days prior to trial unless otherwise ordered by the court.

If a statement has been designated by a party in accordance with and satisfies the requirements of this section, the expert witness called by that party need not have relied on the statement at the time of forming his opinion in order to read the statement into evidence during direct examination at trial.

1982, c. 392; 1994, c. 328; 2013, c. 379.

§ 8.01-401.2. Chiropractor, nurse practitioner, or physician assistant as expert witness

A. A doctor of chiropractic, when properly qualified, may testify as an expert witness in a court of law as to etiology, diagnosis, prognosis, treatment, treatment plan, and disability, including anatomical, physiological, and pathological considerations within the scope of the practice of chiropractic as defined in § 54.1-2900.

B. A physician assistant or nurse practitioner, when properly qualified, may testify as an expert witness in a court of law as to etiology, diagnosis, prognosis, treatment, treatment plan, and disability, including anatomical, physiological, and pathological considerations within the scope of his activities as authorized pursuant to § 54.1-2952. However, no physician assistant or nurse practitioner shall be permitted to testify as an expert witness for or against (i) a defendant doctor of medicine or osteopathic medicine in a medical malpractice action regarding the standard of care of a doctor of medicine or osteopathic medicine or (ii) a defendant health care provider in a medical malpractice action regarding causation.

1984, c. 569; 2014, cc. 361, 391; 2015, cc. 295, 306.

§ 8.01-401.2:1. Podiatrist as an expert witness

A podiatrist shall not be permitted to testify as an expert witness against a doctor of medicine or osteopathic medicine in connection with a medical malpractice civil court proceeding or a medical malpractice review panel in any case where the doctor or osteopath is a defendant in such proceeding.

2010, cc. 715, 725.

§ 8.01-401.3. Opinion testimony and conclusions as to facts critical to civil case resolution (Supreme Court Rule 2:701 derived from subsection B of this section, subdivision (a)(i) of Supreme Court Rule 2:702 derived from subsection A of this section, and subsection (a) of Supreme Court Rule 2:704 derived from subsections B and C of this section)

A. In a civil proceeding, if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

B. No expert or lay witness while testifying in a civil proceeding shall be prohibited from expressing an otherwise admissible opinion or conclusion as to any matter of fact solely because that fact is the ultimate issue or critical to the resolution of the case. However, in no event shall such witness be permitted to express any opinion which constitutes a conclusion of law.

C. Except as provided by the provisions of this section, the exceptions to the "ultimate fact in issue" rule recognized in the Commonwealth prior to enactment of this section shall remain in full force.

1993, c. 909 .

§ 8.01-402. Members of Department of Motor Vehicles' Crash Investigation Team not to be required to give evidence in certain cases

No member of the Department of Motor Vehicles' Crash Investigation Team shall be required to give evidence concerning any statements made to him in the course of such investigation before any court or grand jury in any case involving a motor vehicle crash on the highways of the Commonwealth in which any member or members of such Crash Investigation Team made or took part in any investigation pursuant to a directive from the Commissioner of the Department of Motor Vehicles for purposes of research and evaluation of the Commonwealth's highway safety program.

Code 1950, § 8-296.1; 1974, c. 390; 1977, c. 617; 1992, c. 108 .

§ 8.01-403. Witness proving adverse; contradiction; prior inconsistent statement (Subsection (c) of Supreme Court Rule 2:607 and subdivision (a)(i) of Supreme Court Rule 2:613 derived from this section)

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall in the opinion of the court prove adverse, by leave of the court, prove that he has made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement. In every such case the court, if requested by either party, shall instruct the jury not to consider the evidence of such inconsistent statements, except for the purpose of contradicting the witness.

Code 1950, § 8-292; 1977, c. 617.

§ 8.01-404. Contradiction by prior inconsistent writing (Subdivision (b)(i) of Supreme Court Rule 2:613 derived in part from this section and subdivision (b)(ii) of Supreme Court Rule 2:613 derived from this section)

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, relative to the subject matter of the civil action, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to the particular occasion on which the writing is supposed to have been made, and he may be asked if he did not make a writing of the purport of the one to be offered to contradict him, and if he denies making it, or does not admit its execution, it shall then be shown to him, and if he admits its genuineness, he shall be allowed to make his own explanation of it; but it shall be competent for the court at any time during the trial to require the production of the writing for its inspection, and the court may thereupon make such use of it for the purpose of the trial as it may think best. This section is subject to the qualification, that in an action to recover for a personal injury or death by wrongful act or neglect, no ex parte affidavit or statement in writing other than a deposition, after due notice, of a witness and no extrajudicial recording made at any time other than simultaneously with the wrongful act or negligence at issue of the voice of such witness, or reproduction or transcript thereof, as to the facts or circumstances attending the wrongful act or neglect complained of, shall be used to contradict him as a witness in the case. Nothing in this section shall be construed to prohibit the use of any such ex parte affidavit or statement in an action on an insurance policy based upon a judgment recovered in a personal injury or death by wrongful act case.

Code 1950, § 8-293; 1958, c. 380; 1960, c. 114; 1964, c. 356; 1977, c. 617; 2007, c. 598.

§ 8.01-405. Who may administer oath to witness

Any person before whom a witness is to be examined may administer an oath to such witness. In addition, a clerk or deputy clerk may administer an oath to a witness in the presence and at the direction of a judge before whom the witness is to be examined.

Code 1950, § 8-294; 1977, c. 617; 1984, c. 536.

§ 8.01-406. Interpreters; recording testimony of deaf witness (Supreme Court Rule 2:604 derived from this section)

Interpreters shall be sworn truly so to do. In any judicial proceeding, the judge on his own motion or on the motion of a party to the proceeding may order all of the testimony of a deaf individual and the interpretation thereof to be visually electronically recorded for use in verification of the official transcript of the proceedings.

Code 1950, § 8-295; 1977, c. 617; 1978, c. 601.

Article 5 - COMPELLING ATTENDANCE OF WITNESSES, ETC.

§ 8.01-407. How summons for witness issued, and to whom directed; prior permission of court to summon certain officials and judges; attendance before commissioner of other

state; attorney-issued summons

A. A summons may be issued, directed as prescribed in § 8.01-292, commanding the officer to summon any person to attend on the day and at the place that such attendance is desired, to give evidence before a court, grand jury, arbitrators, magistrate, notary, or any commissioner or other person appointed by a court or acting under its process or authority in a judicial or quasi-judicial capacity. The summons may be issued by the clerk of the court if the attendance is desired at a court or in a proceeding pending in a court. The clerk shall not impose any time restrictions limiting the right to properly request a summons up to and including the date of the proceeding:

If attendance is desired before a commissioner in chancery or other commissioner of a court, the summons may be issued by the clerk of the court in which the matter is pending, or by such commissioner in chancery or other commissioner;

If attendance is desired before a notary or other officer taking a deposition, the summons may be issued by such notary or other officer at the instance of the attorney desiring the attendance of the person sought;

If attendance is sought before a grand jury, the summons may be issued by the attorney for the Commonwealth, or the clerk of the court, at the instance of the attorney for the Commonwealth.

Except as otherwise provided in this subsection, if attendance is desired in a civil proceeding pending in a court or at a deposition in connection with such proceeding, including medical malpractice review panels, and a claim before the Workers' Compensation Commission, a summons may be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. An attorney-issued summons shall be on a form approved by the Supreme Court, signed by the attorney and shall include the attorney's address. The summons and any transmittal sheet shall be deemed to be a pleading to which the provisions of § 8.01-271.1 shall apply. A copy of the summons and, if served by a sheriff, all service of process fees, shall be mailed or delivered to the clerk's office of the court in which the case is pending or the Workers' Compensation Commission, as applicable, on the day of issuance by the attorney. The law governing summonses issued by a clerk shall apply mutatis mutandis. When an attorney-at-law who is an active member of the Virginia State Bar transmits one or more attorney-issued subpoenas to a sheriff to be served in his jurisdiction, such subpoenas shall be accompanied by a transmittal sheet. The transmittal sheet, which may be in the form of a letter, shall contain for each subpoena (i) the person to be served, (ii) the name of the city or county in which the subpoena is to be served, in parentheses, (iii) the style of the case in which the subpoena was issued, (iv) the court in which the case is pending, and (v) the amount of fees tendered or paid to each clerk in whose court the case is pending together with a photocopy of either (a) the payment instrument and a photocopy of the letter sent to the clerk's office that accompanied such payment instrument or (b) the clerk's receipt. If copies of the same transmittal sheet are used to send subpoenas to more than one sheriff for service of process, then subpoenas shall be grouped by the jurisdiction in which they are to be served. For each person to be served, an original subpoena and copy

thereof shall be included. If the attorney desires a return copy of the transmittal sheet as proof of receipt, he shall also enclose an additional copy of the transmittal sheet together with an envelope addressed to the attorney with sufficient first class postage affixed. Upon receipt of such transmittal, the transmittal sheet shall be date-stamped and, if the extra copy and above-described envelope are provided, the copy shall also be date-stamped and returned to the attorney-at-law in the above-described envelope.

However, when such transmittal does not comply with the provisions of this section, the sheriff may promptly return such transmittal if accompanied by a short description of such non-compliance. An attorney may not issue a summons in any of the following civil proceedings: (a) habeas corpus under Article 3 (§ 8.01-654 et seq.) of Chapter 25 of this title, (b) delinquency or abuse and neglect proceedings under Article 3 (§ 16.1-241 et seq.) of Chapter 11 of Title 16.1, (c) civil forfeiture proceedings, (d) habitual offender proceedings under Article 9 (§ 46.2-351 et seq.) of Chapter 3 of Title 46.2, (e) administrative license suspension pursuant to § 46.2-391.2, and (f) petition for writs of mandamus or prohibition in connection with criminal proceedings. A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date that attendance is desired.

In other cases, if attendance is desired, the summons may be issued by the clerk of the circuit court of the county or city in which the attendance is desired.

A summons shall express on whose behalf, and in what case or about what matter, the witness is to attend. Failure to respond to any such summons shall be punishable by the court in which the proceeding is pending as for contempt. When any subpoena is served less than five calendar days before appearance is required, the court may, after considering all of the circumstances, refuse to enforce the subpoena for lack of adequate notice. If any subpoena is served less than five calendar days before appearance is required upon any judicial officer generally incompetent to testify pursuant to § 19.2-271, such subpoena shall be without legal force or effect unless the subpoena has been issued by a judge.

B. No subpoena shall, without permission of the court first obtained, issue for the attendance of the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, a judge of any court thereof; the President or Vice President of the United States; any member of the President's Cabinet; any ambassador or consul; or any military officer on active duty holding the rank of admiral or general.

C. This section shall be deemed to authorize a summons to compel attendance of a citizen of the Commonwealth before commissioners or other persons appointed by authority of another state when the summons requires the attendance of such witness at a place not out of his county or city.

Code 1950, §§ 8-296, 8-297; 1952, c. 122; 1977, c. 617; 1992, c. 506; 2000, c. 813; 2002, c. 463; 2004, c. 335; 2007, c. 199; 2010, cc. 302, 486; 2016, c. 173.

§ 8.01-407.1. Identity of persons communicating anonymously over the Internet

A. In civil proceedings where it is alleged that an anonymous individual has engaged in Internet communications that are tortious, any subpoena seeking information held by a nongovernmental person or entity that would identify the tortfeasor shall be governed by the following procedure unless more expedited scheduling directions have been ordered by the court upon consideration of the interests of each person affected thereby:

1. At least thirty days prior to the date on which disclosure is sought, a party seeking information identifying an anonymous communicator shall file with the appropriate circuit court a complete copy of the subpoena and all items annexed or incorporated therein, along with supporting material showing:

a. That one or more communications that are or may be tortious or illegal have been made by the anonymous communicator, or that the party requesting the subpoena has a legitimate, good faith basis to contend that such party is the victim of conduct actionable in the jurisdiction where the suit was filed. A copy of the communications that are the subject of the action or subpoena shall be submitted.

b. That other reasonable efforts to identify the anonymous communicator have proven fruitless.

c. That the identity of the anonymous communicator is important, is centrally needed to advance the claim, relates to a core claim or defense, or is directly and materially relevant to that claim or defense.

d. That no motion to dismiss, motion for judgment on the pleadings, or judgment as a matter of law, demurrer or summary judgment-type motion challenging the viability of the lawsuit of the underlying plaintiff is pending. The pendency of such a motion may be considered by the court in determining whether to enforce, suspend or strike the proposed disclosure obligation under the subpoena.

e. That the individuals or entities to whom the subpoena is addressed are likely to have responsive information.

f. If the subpoena sought relates to an action pending in another jurisdiction, the application shall contain a copy of the pleadings in such action, along with the mandate, writ or commission of the court where the action is pending that authorizes the discovery of the information sought in the Commonwealth.

2. Two copies of the subpoena and supporting materials set forth in subdivision A. 1. a. through f. shall be served upon the person to whom it is addressed along with payment sufficient to cover postage for mailing one copy of the application within the United States by registered mail, return receipt requested.

3. Except where the anonymous communicator has consented to disclosure in advance, within five business days after receipt of a subpoena and supporting materials calling for disclosure of

identifying information concerning an anonymous communicator, the individual or entity to whom the subpoena is addressed shall (i) send an electronic mail notification to the anonymous communicator reporting that the subpoena has been received if an e-mail address is available and (ii) dispatch one copy thereof, by registered mail or commercial delivery service, return receipt requested, to the anonymous communicator at his last known address, if any is on file with the person to whom the subpoena is addressed.

4. At least seven business days prior to the date on which disclosure is sought under the subpoena, any interested person may file a detailed written objection, motion to quash, or motion for protective order. Any such papers filed by the anonymous communicator shall be served on or before the date of filing upon the party seeking the subpoena and the party to whom the subpoena is addressed. Any such papers filed by the party to whom the subpoena is addressed shall be served on or before the date of filing upon the party seeking the subpoena and the anonymous communicator whose identifying information is sought. Service is effective when it has been mailed, dispatched by commercial delivery service, transmitted by facsimile, or delivered to counsel of record and to parties having no counsel.

5. Any written objection, motion to quash, or motion for protective order shall set forth all grounds relied upon for denying the disclosure sought in the subpoena and shall also address to the extent feasible (i) whether the identity of the anonymous communicator has been disclosed in any way beyond its recordation in the account records of the party to whom the subpoena is addressed, (ii) whether the subpoena fails to allow a reasonable time for compliance, (iii) whether it requires disclosure of privileged or other protected matter and no exception or waiver applies, or (iv) whether it subjects a person to undue burden.

6. The party to whom the subpoena is addressed shall not comply with the subpoena earlier than three business days before the date on which disclosure is due, to allow the anonymous communicator the opportunity to object. If any person files a written objection, motion to quash, or motion for protective order, compliance with the subpoena shall be deferred until the appropriate court rules on the obligation to comply. If an objection or motion is made, the party serving the subpoena shall not be entitled to inspect or copy the materials except pursuant to an order of the court on behalf of which the subpoena was issued. If an objection or motion has been filed, any interested person may notice the matter for a hearing. Two copies of any such notice shall be served upon the subpoenaed party, who shall mail one copy thereof, by registered mail or commercial delivery service, return receipt requested, to the anonymous communicator whose identifying information is the subject of the subpoena at that person's last known address.

B. The party requesting or issuing a subpoena for information identifying an anonymous Internet communicator shall serve along with each copy of such subpoena notices in boldface capital letters in substantially this form:

NOTICE TO INTERNET SERVICE PROVIDER

WITHIN FIVE BUSINESS DAYS AFTER RECEIPT OF THIS SUBPOENA CALLING FOR IDENTIFYING INFORMATION CONCERNING YOUR CLIENT, SUBSCRIBER OR CUSTOMER, EXCEPT WHERE CONSENT TO DISCLOSURE HAS BEEN GIVEN IN ADVANCE, YOU ARE REQUIRED BY § 8.01-407.1 OF THE CODE OF VIRGINIA TO MAIL ONE COPY THEREOF, BY REGISTERED MAIL OR COMMERCIAL DELIVERY SERVICE, RETURN RECEIPT REQUESTED, TO THE CLIENT, SUBSCRIBER OR CUSTOMER WHOSE IDENTIFYING INFORMATION IS THE SUBJECT OF THE SUBPOENA. AT LEAST SEVEN BUSINESS DAYS PRIOR TO THE DATE ON WHICH DISCLOSURE IS SOUGHT YOU MAY, BUT ARE NOT REQUIRED TO, FILE A DETAILED WRITTEN OBJECTION, MOTION TO QUASH OR MOTION FOR PROTECTIVE ORDER. ANY SUCH OBJECTION OR MOTION SHALL BE SERVED UPON THE PARTY INITIATING THE SUBPOENA AND UPON THE CLIENT, SUBSCRIBER OR CUSTOMER WHOSE IDENTIFYING INFORMATION IS SOUGHT.

IF YOU CHOOSE NOT TO OBJECT TO THE SUBPOENA, YOU MUST ALLOW TIME FOR YOUR CLIENT, SUBSCRIBER OR CUSTOMER TO FILE HIS OWN OBJECTION, THEREFORE YOU MUST NOT RESPOND TO THE SUBPOENA ANY EARLIER THAN THREE BUSINESS DAYS BEFORE THE DISCLOSURE IS DUE.

IF YOU RECEIVE NOTICE THAT YOUR CLIENT, SUBSCRIBER OR CUSTOMER HAS FILED A WRITTEN OBJECTION, MOTION TO QUASH OR MOTION FOR PROTECTIVE ORDER REGARDING THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, NO DISCLOSURE PURSUANT TO THE SUBPOENA SHALL BE MADE EXCEPT PURSUANT TO AN ORDER OF THE COURT ON BEHALF OF WHICH THE SUBPOENA WAS ISSUED.

NOTICE TO INTERNET USER

THE ATTACHED PAPERS MEAN THAT _____ (INSERT NAME OF PARTY REQUESTING OR CAUSING ISSUANCE OF THE SUBPOENA) HAS EITHER ASKED THE COURT TO ISSUE A SUBPOENA, OR A SUBPOENA HAS BEEN ISSUED, TO YOUR INTERNET SERVICE PROVIDER _____ (INSERT NAME OF INTERNET SERVICE PROVIDER) REQUIRING PRODUCTION OF INFORMATION REGARDING YOUR IDENTITY. UNLESS A DETAILED WRITTEN OBJECTION IS FILED WITH THE COURT, THE SERVICE PROVIDER WILL BE REQUIRED BY LAW TO RESPOND BY PROVIDING THE REQUIRED INFORMATION. IF YOU BELIEVE YOUR IDENTIFYING INFORMATION SHOULD NOT BE DISCLOSED AND OBJECT TO SUCH DISCLOSURE, YOU HAVE THE RIGHT TO FILE WITH THE CLERK OF COURT A DETAILED WRITTEN OBJECTION, MOTION TO QUASH THE SUBPOENA OR MOTION TO OBTAIN A PROTECTIVE ORDER. YOU MAY ELECT TO CONTACT AN ATTORNEY TO REPRESENT YOUR INTERESTS. IF YOU ELECT TO FILE A WRITTEN OBJECTION, MOTION TO QUASH, OR MOTION FOR PROTECTIVE ORDER, IT SHOULD BE FILED AS SOON AS POSSIBLE, AND MUST IN ALL INSTANCES BE FILED NO LESS THAN SEVEN BUSINESS DAYS BEFORE THE DATE ON WHICH DISCLOSURE IS DUE (LISTED IN THE SUBPOENA). IF YOU ELECT TO FILE A WRITTEN OBJECTION OR MOTION AGAINST THIS SUBPOENA, YOU MUST AT THE SAME TIME SEND A

COPY OF THAT OBJECTION OR MOTION TO BOTH YOUR INTERNET SERVICE PROVIDER AND THE PARTY WHO REQUESTED THE SUBPOENA. IF YOU WISH TO OPPOSE THE ATTACHED SUBPOENA, IN WHOLE OR IN PART, YOU OR YOUR ATTORNEY MAY FILE A WRITTEN OBJECTION, A MOTION TO QUASH THE SUBPOENA, OR A MOTION FOR A PROTECTIVE ORDER OR YOU MAY USE THE FORM BELOW, WHICH MUST BE FILED WITH THE COURT AND SERVED UPON THE PARTY REQUESTING THE SUBPOENA AND THE INTERNET SERVICE PROVIDER BY MAILING AT LEAST SEVEN BUSINESS DAYS PRIOR TO THE DATE SET IN THE SUBPOENA FOR DISCLOSURE:

_____
Name of Court Listed on Subpoena

_____
Name of Party Seeking Information

Case No. _____

OBJECTION TO SUBPOENA DUCES TECUM

I object to the Subpoena Duces Tecum addressed to _____ for the following reasons:

[Name of Internet Service Provider to Whom the Subpoena is Addressed]

(Please PRINT. Set forth, in detail, all reasons why the subpoena should not be complied with, and in addition, state (i) whether the identity of the anonymous communicator has been disclosed in any fashion, (ii) whether the subpoena fails to allow a reasonable time for compliance, (iii) whether it requires disclosure of privileged or other protected matter and no exception or waiver applies, or (iv) whether it subjects a person to undue burden.)

_____

_____

_____

_____

_____

_____

_____

_____

(attach additional sheets if needed)

Respectfully Submitted,

_____
John Doe

_____
Enter e-mail nickname or other alias used in communicating via the Internet service provider to whom the subpoena is addressed.

CERTIFICATE

I hereby certify that a true copy of the above Objection to Subpoena Duces Tecum was mailed this _____ day of _____, (month, year), to

_____
(Name and address of party seeking information) and

_____
(Name and address of Internet Service Provider)

_____
John Doe

_____
Enter e-mail nickname or other alias used in communicating via the Internet service provider to whom the subpoena is addressed.

2002, c. 875.

§ 8.01-408. Recognizance taken upon continuance of case

Upon the continuance of any civil case in a court, the court shall at the request of any party litigant require such party's witnesses then present to enter into recognizance in such penalty as the court may deem proper, either with or without security, for their appearance to give evidence in such case on such day as may then be fixed for the trial thereof, such recognizance to be taken, conditioned, and entered of record in the same manner provided in §§ 19.2-135 to 19.2-137, for taking recognizance.

Code 1950, § 8-298; 1977, c. 617.

§ 8.01-409. When court may have process for witness executed by its own officer in another county or city

Whenever on the calling or during the trial of a civil case in any court it appears to the court that it is necessary to have a witness from a county or city other than that of trial, the summons, rule, or attachment issued for such witness from the trial court may, when the court so orders, be executed by its officers in any county or city of the Commonwealth, for which services the officer shall be allowed a reasonable compensation by the court.

Code 1950, § 8-299; 1977, c. 617.

§ 8.01-410. Inmates as witnesses in civil actions

Whenever any party in a civil action in any circuit court in this Commonwealth requires as a witness in his behalf, an inmate in a state or local correctional facility as defined in § 53.1-1, the

court, on the application of such party or his attorney may, in its discretion and upon consideration of the importance of the personal appearance of the witness and the nature of the offense for which he is imprisoned, issue an order to the Director of the Department of Corrections to deliver such witness to the sheriff of the jurisdiction of the court issuing the order. If authorized by the court, the clerk of the circuit court or a deputy clerk may issue these orders on behalf of the court. The sheriff shall transport the inmate to the court to testify as such witness, and after he has testified and been released as such witness, the sheriff shall return the witness to the custody of the Department.

If necessary the sheriff may confine the inmate for the night in any convenient local correctional facility.

Under such rules and regulations as the superintendent of such an institution may prescribe, any party to a civil action in any circuit court in this Commonwealth may take the deposition of an inmate in the facility, which deposition, when taken, may be admissible in evidence as other depositions in civil actions.

The party seeking the testimony of such inmate shall advance a sum sufficient to defray the expenses and compensation of the correctional officers and sheriff, which the court shall tax as other costs.

For the purposes of this section, "correctional officers" shall have the same meaning as provided in § 53.1-1.

Code 1950, § 8-300.1; 1952, c. 487; 1966, c. 227; 1974, cc. 44, 45; 1977, c. 617; 1998, c. 596; 2001, c. 513; 2002, cc. 515, 544.

Article 6 - UNIFORM FOREIGN DEPOSITIONS ACT

§§ 8.01-411 through 8.01-412.1. Repealed

Repealed by Acts 2009, c. 701, cl. 2.

Article 6.1 - UNIFORM AUDIO-VISUAL DEPOSITION ACT

§ 8.01-412.2. Authorization of audio-visual deposition; official record; uses

Any deposition may be recorded by audio-visual means without a stenographic record. Any party may make, at his own expense, a simultaneous stenographic or audio record of the deposition. Upon request and at his own expense, any party is entitled to an audio or audio-visual copy of the audio-visual recording.

The audio-visual recording is an official record of the deposition. A transcript prepared by a court reporter shall also be deemed an official record of the deposition. An audio-visual deposition may be used for any purpose and under any circumstances in which a stenographic deposition may be used.

For purposes of this article, "audio-visual" shall include video conferencing and teleconferencing.

1983, c. 305; 2000, c. 821.

§ 8.01-412.3. Notice of audio-visual deposition

The notice for taking an audio-visual deposition and the subpoena for attendance at that deposition shall state that the deposition will be recorded by audio-visual means.

1983, c. 305.

§ 8.01-412.4. Procedure

The taking of audio-visual depositions shall be in accordance with the rules of the Supreme Court generally applicable to depositions. However, the following procedure shall be observed in recording an audio-visual deposition:

The deposition must begin with an oral or written statement on camera which includes (i) each operator's name and business address or, if applicable, the identity of the video conferencing or teleconferencing proprietor and locations participating in the video conference or teleconference; (ii) the name and business address of the operator's employer; (iii) the date, time and place of the deposition; (iv) the caption of the case; (v) the name of the witness; (vi) the party on whose behalf the deposition is being taken; (vii) with respect to video conferencing or teleconferencing, the identities of persons present at the deposition and the location of each such person; and (viii) any stipulations by the parties.

In addition, all counsel present on behalf of any party or witness shall identify themselves on camera. The oath for witnesses shall be administered on camera. If the length of a deposition requires the use of more than one recording unit, the end of each unit and the beginning of each succeeding unit shall be announced on camera. At the conclusion of a deposition, a statement shall be made on camera that the deposition is concluded. A statement may be made on camera setting forth any stipulations made by counsel concerning the custody of the audio-visual recording and exhibits or other pertinent matters.

All objections must be made as in the case of stenographic depositions. In any case where the court orders the audio-visual recording to be edited prior to its use, the original recording shall not be altered but shall be maintained as is.

Unless otherwise stipulated by the parties, the original audio-visual recording of a deposition, any copy edited pursuant to an order of the court, and exhibits shall be filed with the clerk of the court in accordance with the rules of the Supreme Court.

1983, c. 305; 1993, c. 208; 2000, c. 821.

§ 8.01-412.5. Costs

In any case where a deposition taken pursuant to this article does not conform to the requirements for use of such deposition as provided in the rules of the Supreme Court, the expense of conforming the recording shall be borne by the proponent of the deposition.

1983, c. 305; 1984, c. 95.

§ 8.01-412.6. Promulgation of rules for standards and guidelines
The Supreme Court may promulgate rules establishing standards for audio-visual equipment and guidelines for taking and using audio-visual depositions.

1983, c. 305.

§ 8.01-412.7. Short title
This article may be cited as the "Uniform Audio-Visual Deposition Act."

1983, c. 305.

Article 6.2 - UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

§ 8.01-412.8. Short title
This article may be cited as the Uniform Interstate Depositions and Discovery Act.

2009, c. 701.

§ 8.01-412.9. Definitions
For purposes of this article, unless the context requires otherwise:

"Foreign jurisdiction" means a state other than the Commonwealth.

"Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Subpoena" means a document, however denominated, issued under the authority of a court of record requiring a person to:

1. Attend and give testimony at a deposition;

2. Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

3. Permit inspection of premises under the control of the person.

2009, c. 701.

§ 8.01-412.10. Issuance of subpoena
A. To request the issuance of a subpoena under this article, a party shall submit to the clerk of court in the circuit in which discovery is sought to be conducted in the Commonwealth (i) a

foreign subpoena and (ii) a written statement that the law of the foreign jurisdiction grants reciprocal privileges to citizens of the Commonwealth for taking discovery in the jurisdiction that issued the foreign subpoena.

B. When a party submits a foreign subpoena to a clerk of court in the Commonwealth, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

C. A subpoena under subsection B shall:

1. Incorporate the terms used in the foreign subpoena; and

2. Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

D. A request for the issuance of a subpoena under this article does not constitute an appearance in the courts of the Commonwealth, and no civil action need be filed in the circuit court of the Commonwealth.

E. The provisions of this article shall be in addition to other procedures authorized in the Code of Virginia and the rules of court for obtaining discovery.

2009, c. 701.

§ 8.01-412.11. Service of subpoena

A subpoena issued by a clerk of court under this article shall be served in compliance with the applicable statutes of the Commonwealth for service of a subpoena.

2009, c. 701.

§ 8.01-412.12. Deposition, production, and inspection

Statutes and rules applicable in actions pending in the circuit courts of the Commonwealth with respect to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises, shall apply to subpoenas issued under § 8.01-412.10.

2009, c. 701.

§ 8.01-412.13. Application to court

An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under § 8.01-412.10 shall comply with the statutes and rules of court of the Commonwealth and be submitted to the court in the circuit in which discovery is to be conducted. A separate civil action need not be filed.

2009, c. 701.

§ 8.01-412.14. Uniformity of application and construction; reciprocal privileges

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. The privilege extended to persons in other states for discovery under this article shall only apply if the jurisdiction where the action is pending has extended a similar privilege to persons in the Commonwealth, by that jurisdiction's enactment of the Uniform Interstate Depositions and Discovery Act, a predecessor uniform act, or another comparable law or rule of court providing substantially similar mechanisms for use by out-of-state parties.

2009, c. 701.

§ 8.01-412.15. Application to pending actions

This article applies to requests for discovery submitted on or after July 1, 2009.

2009, c. 701.

Article 7 - MEDICAL EVIDENCE

§ 8.01-413. Certain copies of health care provider's records or papers of patient admissible; right of patient, his attorney and authorized insurer to copies of such records or papers; subpoena; damages, costs and attorneys' fees

A. In any case where the hospital, nursing facility, physician's, or other health care provider's original records or papers of any patient in a hospital or institution for the treatment of physical or mental illness are admissible or would be admissible as evidence, any typewritten copy, photograph, photostatted copy, or microphotograph or printout or other hard copy generated from computerized or other electronic storage, microfilm, or other photographic, mechanical, electronic or chemical storage process thereof shall be admissible as evidence in any court of this Commonwealth in like manner as the original, if the printout or hard copy or microphotograph or photograph is properly authenticated by the employees having authority to release or produce the original records.

Any hospital, nursing facility, physician, or other health care provider whose records or papers relating to any such patient are subpoenaed for production as provided by law may comply with the subpoena by a timely mailing to the clerk issuing the subpoena or in whose court the action is pending properly authenticated copies, photographs or microphotographs in lieu of the originals. The court whose clerk issued the subpoena or, in the case of an attorney-issued subpoena, in which the action is pending, may, after notice to such hospital, nursing facility, physician, or other health care provider, enter an order requiring production of the originals, if available, of any stored records or papers whose copies, photographs or microphotographs are not sufficiently legible.

Except as provided in subsection G, the party requesting the subpoena duces tecum or on whose behalf an attorney-issued subpoena duces tecum was issued shall be liable for the reasonable charges of the hospital, nursing facility, physician, or other health care provider for the service of maintaining, retrieving, reviewing, preparing, copying and mailing the items produced. Except for

copies of X-ray photographs, however, such charges shall not exceed $0.50 for each page up to 50 pages and $0.25 a page thereafter for copies from paper or other hard copy generated from computerized or other electronic storage, or other photographic, mechanical, electronic, imaging or chemical storage process and $1 per page for copies from microfilm or other micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed $10.

Upon request, a patient's account balance or itemized listing of charges maintained by a health care provider shall be supplied at no cost up to three times every twelve months to either the patient or the patient's attorney.

B. Copies of hospital, nursing facility, physician's, or other health care provider's records or papers shall be furnished within 15 days of receipt of such request to the patient, his attorney, his executor or administrator, or an authorized insurer upon such patient's, attorney's, executor's, administrator's, or authorized insurer's written request, which request shall comply with the requirements of subsection E of § 32.1-127.1:03.

However, copies of a patient's records shall not be furnished to such patient when the patient's treating physician or clinical psychologist, in the exercise of professional judgment, has made a part of the patient's records a written statement that in his opinion the furnishing to or review by the patient of such records would be reasonably likely to endanger the life or physical safety of the patient or another person, or that such health records make reference to a person, other than a health care provider, and the access requested would be reasonably likely to cause substantial harm to such referenced person. In any such case, if requested by the patient or his attorney or authorized insurer, such records shall be furnished within 15 days of the date of such request to the patient's attorney or authorized insurer, rather than to the patient.

If the records are not provided to the patient in accordance with this section, then, if requested by the patient, the hospital, nursing facility, physician, or other health care provider denying the request shall comply with the patient's request to either (i) provide a copy of the records to a physician or clinical psychologist of the patient's choice whose licensure, training, and experience, relative to the patient's condition, are at least equivalent to that of the treating physician or clinical psychologist upon whose opinion the denial is based, who shall, at the patient's expense, make a judgment as to whether to make the records available to the patient or (ii) designate a physician or clinical psychologist, whose licensure, training, and experience, relative to the patient's condition, are at least equivalent to that of the treating physician or clinical psychologist upon whose opinion the denial is based and who did not participate in the original decision to deny the patient's request for his records, who shall, at the expense of the provider denying access to the patient, review the records and make a judgment as to whether to make the records available to the patient. In either such event, the hospital, nursing facility, physician, or other health care provider denying the request shall comply with the judgment of the reviewing physician or clinical psychologist.

Except as provided in subsection G, a reasonable charge may be made by the hospital, nursing facility, physician or other health care provider maintaining the records for the cost of the services relating to the maintenance, retrieval, review, and preparation of the copies of the records. Except for copies of X-ray photographs, however, such charges shall not exceed $0.50 per page for up to 50 pages and $0.25 a page thereafter for copies from paper or other hard copy generated from computerized or other electronic storage, or other photographic, mechanical, electronic, imaging or chemical storage process and $1 per page for copies from microfilm or other micrographic process, a fee for search and handling, not to exceed $10, and all postage and shipping costs. Any hospital, nursing facility, physician, or other health care provider receiving such a request from a patient's attorney or authorized insurer shall require a writing signed by the patient confirming the attorney's or authorized insurer's authority to make the request and shall accept a photocopy, facsimile, or other copy of the original signed by the patient as if it were an original.

Upon request, a patient's account balance or itemized listing of charges maintained by a health care provider shall be supplied at no cost up to three times every twelve months to either the patient or the patient's attorney.

C. Upon the failure of any hospital, nursing facility, physician, or other health care provider to comply with any written request made in accordance with subsection B within the period of time specified in that subsection and within the manner specified in subsections E and F of § 32.1-127.1:03, the patient, his attorney, his executor or administrator, or authorized insurer may cause a subpoena duces tecum to be issued. The subpoena may be issued (i) upon filing a request therefor with the clerk of the circuit court wherein any eventual suit would be required to be filed, and upon payment of the fees required by subdivision A 18 of § 17.1-275, and fees for service or (ii) by the patient's attorney in a pending civil case in accordance with § 8.01-407 without payment of the fees established in subdivision A 23 of § 17.1-275. A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date production of the record is desired. The subpoena shall be returnable within 20 days of proper service, directing the hospital, nursing facility, physician, or other health care provider to produce and furnish copies of the reports and papers to the clerk who shall then make the same available to the patient, his attorney or authorized insurer. If the court finds that a hospital, nursing facility, physician, or other health care provider willfully refused to comply with a written request made in accordance with subsection B, either by willfully or arbitrarily refusing or by imposing a charge in excess of the reasonable expense of making the copies and processing the request for records, the court may award damages for all expenses incurred by the patient or authorized insurer to obtain such copies, including court costs and reasonable attorney's fees.

D. The provisions of subsections A, B, and C hereof shall apply to any health care provider whose office is located within or without the Commonwealth if the records pertain to any patient who is a party to a cause of action in any court in the Commonwealth of Virginia, and shall apply only to

requests made by the patient, his attorney, his executor or administrator, or any authorized insurer, in anticipation of litigation or in the course of litigation.

E. Health care provider, as used in this section, shall have the same meaning as provided in § 32.1-127.1:03 and shall also include an independent medical copy retrieval service contracted to provide the service of retrieving, reviewing, and preparing such copies for distribution.

F. Notwithstanding the authorization to admit as evidence patient records in the form of micro-photographs, prescription dispensing records maintained in or on behalf of any pharmacy registered or permitted in Virginia shall only be stored in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412.

G. The provisions of this section governing fees that may be charged by a health care provider whose records are subpoenaed or requested pursuant to this section shall not apply in the case of any request by a patient for his own records, which shall be governed by subsection J of § 32.1-127.1:03. This subsection shall not be construed to affect other provisions of state or federal statute, regulation or any case decision relating to charges by health care providers for copies of records requested by any person other than a patient when requesting his own records pursuant to subsection J of § 32.1-127.1:03.

Code 1950, § 8-277.1; 1954, c. 329; 1976, c. 50; 1977, cc. 208, 617; 1981, c. 457; 1982, c. 378; 1990, cc. 99, 320; 1992, c. 696; 1994, cc. 390, 572; 1995, c. 586; 1997, c. 682; 1998, c. 470; 2000, cc. 813, 923; 2001, c. 567; 2002, cc. 463, 654; 2004, cc. 65, 335, 742, 1014; 2005, cc. 642, 697; 2009, c. 270.

§ 8.01-413.01. Authenticity and reasonableness of medical bills; presumption

A. In any action for personal injuries, wrongful death, or for medical expense benefits payable under a motor vehicle insurance policy issued pursuant to § 38.2-124 or § 38.2-2201, the authenticity of bills for medical services provided and the reasonableness of the charges of the health care provider shall be rebuttably presumed upon identification by the plaintiff of the original bill or a duly authenticated copy and the plaintiff's testimony (i) identifying the health care provider, (ii) explaining the circumstances surrounding his receipt of the bill, (iii) describing the services rendered, and (iv) stating that the services were rendered in connection with treatment for the injuries received in the event giving rise to the action. If the court finds the plaintiff is unable to provide such testimony, the plaintiff's guardian, agent under an advance directive, or agent under a power of attorney may identify the bill or an authenticated copy and provide testimony in lieu of the plaintiff. The presumption herein shall not apply unless the opposing party or his attorney has been furnished such medical records at least 30 days prior to the trial.

B. Where no medical bill is rendered or specific charge made by a health care provider to the insured, an insurer, or any other person, the usual and customary fee charged for the service rendered may be established by the testimony or the affidavit of an expert having knowledge of the usual and customary fees charged for the services rendered. If the fee is to be established by

affidavit, the affidavit shall be submitted to the opposing party or his attorney at least 30 days prior to trial. The testimony or the affidavit is subject to rebuttal and may be admitted in the same manner as an original bill or authenticated copy described in subsection A.

1993, c. 610; 1996, c. 516; 1997, c. 503; 2016, c. 243.

§ 8.01-413.02. Admissibility of written reports or records of blood alcohol tests conducted in the regular course of providing emergency medical treatment

A. Notwithstanding any other provision of law, the written reports or records of blood alcohol tests conducted upon persons receiving medical treatment in a hospital or emergency room are admissible in evidence as a business records exception to the hearsay rule in any civil proceeding.

B. The provisions of law pertaining to confidentiality of medical records and medical treatment shall not be applicable to reports or records of blood alcohol tests sought or admitted as evidence under the provisions of this section. Owners or custodians of such reports or records may disclose them, in accordance with regulations concerning patient privacy promulgated by the U.S. Department of Health and Human Services, without obtaining consent or authorization for such disclosure. No person who is involved in taking blood or conducting blood alcohol tests shall be liable for civil damages for breach of confidentiality or unauthorized release of medical records because of the evidentiary use of blood alcohol test results under this section, or as a result of that person's testimony given pursuant to this section.

2005, c. 801.

Article 7.1 - EMPLOYMENT EVIDENCE

§ 8.01-413.1. Certain copies of employment records or papers admissible; right of employee or his attorney to copies of such records or papers; subpoena; damages, costs and attorney's fees

In any case where the original wage or salary records or papers of any employee are admissible or would be admissible as evidence, any typewritten copy, photograph, photostatic copy, or microphotograph thereof shall be admissible as evidence in any court of this Commonwealth in like manner as the original, provided the typewritten copy, photograph, photostatic copy or microphotograph is properly authenticated by the individual who would have authority to release or produce in court the original records. Any employer whose records or papers relating to any such employee are subpoenaed for production may comply with the subpoena by a timely mailing to the clerk issuing the subpoena properly authenticated copies, photographs or microphotographs in lieu of the originals. The court whose clerk issued the subpoena may, after notice to such employer, enter an order requiring production of the originals, if available, of any records or papers whose copies, photographs or microphotographs are not sufficiently legible. The party requesting the subpoena shall be liable for the reasonable charges of the employer for copying and mailing the items produced.

1987, c. 503.

Article 8 - CERTAIN AFFIDAVITS

§ 8.01-414. Affidavit prima facie evidence of nonresidence

In any action, an affidavit that a witness or party resides out of this Commonwealth, or is out of it, shall be prima facie evidence of the fact, although such affidavit be made by a party, and without previous notice.

Code 1950, § 8-328; 1977, c. 617.

§ 8.01-415. Affidavit evidence of publication

When anything is authorized or required by law to be published in a newspaper, the certificate of the editor, publisher, business manager or assistant business manager, or the affidavit of any other person, shall be admitted as evidence of what is stated herein as to the publication.

Code 1950, § 8-329; 1977, c. 617.

§ 8.01-416. Affidavit re damages to motor vehicle

A. In a civil action in any court, whether sounding in contract or tort, to recover for damages to a motor vehicle in excess of $2,500, evidence as to such damages may be presented by an itemized estimate or appraisal sworn to by a person who also makes oath (i) that he is a motor vehicle repairman, estimator or appraiser qualified to determine the amount of such damage or diminution in value; (ii) as to the approximate length of time that he has engaged in such work; and (iii) as to the trade name and address of his business and employer. Such estimate shall not be admitted unless by consent of the adverse party or his counsel, or unless a true copy thereof is mailed or delivered to the adverse party or his counsel not less than seven days prior to the date fixed for trial.

B. In a civil action in any court, whether sounding in contract or tort, to recover for damages to a motor vehicle of $2,500 or less, evidence as to such damages may be presented by an itemized estimate or appraisal sworn to by a person who also makes oath (i) that he is a motor vehicle repairman, estimator or appraiser qualified to determine the amount of such damage or diminution in value; (ii) as to the approximate length of time that he has engaged in such work; and (iii) as to the trade name and address of his business and employer.

1977, c. 617; 1980, c. 183; 1990, c. 724; 2010, c. 343.

Article 9 - MISCELLANEOUS PROVISIONS

§ 8.01-417. Copies of written statements or transcriptions of verbal statements by injured person to be delivered to him; copies of subpoenaed documents to be provided to other party; disclosure of insurance policy limits

A. Any person who takes from a person who has sustained a personal injury a signed written statement or voice recording of any statement relative to such injury shall deliver to such injured person a copy of such written statement forthwith or a verified typed transcription of such recording within 30 days from the date such statement was given or recording made, when and if the

statement or recording is transcribed or in all cases when requested by the injured person or his attorney.

B. Unless otherwise ordered for good cause shown, when one party to a civil proceeding subpoenas documents, the subpoenaing party, upon receipt of the subpoenaed documents, shall, if requested in writing, provide true and full copies of the same to any other party or to the attorney for any other party, provided the other party or attorney for the other party pays the reasonable cost of copying or reproducing the subpoenaed documents. This provision does not apply where the subpoenaed documents are returnable to and maintained by the clerk of court in which the action is pending.

C. After he gives written notice that he represents an injured person, an attorney, or an individual injured in a motor vehicle accident if he is not represented by counsel, may, prior to the filing of a civil action for personal injuries sustained as a result of a motor vehicle accident, request in writing that the insurer disclose (i) the limits of liability of any motor vehicle liability or any personal injury liability insurance policy that may be applicable to the claim and (ii) the physical address, if known, of the alleged tortfeasor who is insured by the insurer, if not previously reported to the requesting party. The requesting party shall provide the insurer with the date of the motor vehicle accident, the name and last known address of the alleged tortfeasor if it has been reported to the requesting party, a copy of the accident report, if any, and the claim number, if available. The insurer shall provide the alleged tortfeasor's physical address within 30 days of the receipt of the request. When requesting the limits of liability, the requesting party shall also submit to the insurer the injured person's medical records, medical bills, and wage-loss documentation, if applicable, pertaining to the claimed injury. If the total of the medical bills and wage losses submitted equals or exceeds $12,500, the insurer shall respond in writing within 30 days of receipt of the request and shall disclose the limits of liability at the time of the accident of all such policies, regardless of whether the insurer contests the applicability of the policy to the injured person's claim, and the insured's address. Disclosure of the policy limits under this section shall not constitute an admission that the alleged injury or damage is subject to the policy. Information concerning the insurance policy is not by reason of disclosure pursuant to this subsection admissible as evidence at trial.

D. After he gives written notice that he represents the personal representative of the estate of a decedent who died as a result of a motor vehicle accident, an attorney, or the personal representative of the estate of the decedent who died as a result of a motor vehicle accident if he is not represented by counsel, may, prior to the filing of a civil action for wrongful death as a result of a motor vehicle accident, request in writing that the insurer disclose (i) the limits of liability of any motor vehicle liability insurance policy or any personal injury liability insurance policy that may be applicable to the claim and (ii) the physical address, if known, of the alleged tortfeasor who is insured by the insurer, if not previously reported to the requesting party. The requesting party shall provide the insurer with the date of the motor vehicle accident, the name and last

known address of the alleged tortfeasor if it has been reported to the requesting party, a copy of the accident report, if any, and the claim number, if available. The insurer shall provide the alleged tortfeasor's physical address within 30 days of the receipt of the request. When requesting the limits of liability, the requesting party shall submit to the insurer the death certificate of the decedent; the certificate of qualification of the personal representative of the decedent's estate; the names and relationships of the statutory beneficiaries of the decedent; medical bills, if any, supporting a claim for damages under subdivision 3 of § 8.01-52; and, if at the time the request is made a claim for damages under clause (i) of subdivision 2 of § 8.01-52 is anticipated, a description of the source, amount, and payment history of the claimed income loss for each beneficiary. The insurer shall respond in writing within 30 days of receipt of the request and shall disclose the limits of liability at the time of the accident of all such policies, regardless of whether the insurer contests the applicability of the policy to the personal representative's claim, and the insured's address. Disclosure of the policy limits under this section shall not constitute an admission that the alleged death or other damage is subject to the policy. Information concerning the insurance policy is not by reason of disclosure pursuant to this subsection admissible as evidence at trial.

E. For purposes of subsections C and D, if the alleged tortfeasor has insurance coverage from a self-insured locality for a motor vehicle accident, as described in this section, and the locality is authorized by the alleged tortfeasor to accept service of process on behalf of the alleged tortfeasor and agrees to do so, the locality, in its discretion and instead of disclosing the alleged tortfeasor's home address, may disclose the insured's work address and the name and address of the person who shall accept service of process on behalf of the alleged tortfeasor. If the locality makes such a disclosure, the locality shall not be required to disclose the alleged tortfeasor's home address.

F. As used in subsections C and D, "insurer" does not include the insurance agency or the insurance agent representing the alleged tortfeasor as the authorized representative or agent with respect to the alleged tortfeasor's motor vehicle insurance policy.

Code 1950, § 8-628.2; 1954, c. 390; 1977, c. 617; 2004, c. 345; 2005, c. 211; 2008, c. 819; 2010, cc. 354, 435; 2015, c. 711; 2016, cc. 241, 267.

§ 8.01-417.1. Use of portions of documents in evidence (Subsection (b) of Supreme Court Rule 2:106 derived from this section)

To expedite trial proceedings in civil cases, upon appropriate and timely motion by counsel, the court may permit the reading to the jury, or the introduction into evidence, of relevant portions of lengthy and complex documents without the necessity of having the jury read or receive the entire document. The court, in its discretion, may permit the entire document to be received by the jury, or may order the parties to edit from any such document admitted into evidence information that is irrelevant to the proceedings.

1992, c. 720 .

§ 8.01-418. When plea of guilty or nolo contendere or forfeiture in criminal prosecution or traffic case admissible in civil action; proof of such plea

Whenever, in any civil action, it is contended that any party thereto pled guilty or nolo contendere or suffered a forfeiture in a prosecution for a criminal offense or traffic infraction which arose out of the same occurrence upon which the civil action is based, evidence of said plea or forfeiture as shown by the records of the criminal court shall be admissible. Where the records of the court in which such prosecution was had are silent or ambiguous as to whether or not such plea was made or forfeiture occurred the court hearing the civil case shall admit such evidence on the question of such plea or forfeiture as may be relevant, and the question of whether such plea was made or forfeiture suffered shall be a question for the court to determine.

Code 1950, § 8-267.1; 1970, c. 354; 1977, c. 617; 1986, c. 46.

§ 8.01-418.1. Evidence of subsequent measures taken not admissible to prove negligence (Supreme Court Rule 2:407 derived from this section)

When, after the occurrence of an event, measures are taken which, if taken prior to the event would have made the event less likely to occur, evidence of such subsequently taken measures is not admissible to prove negligence or culpable conduct as a cause of the occurrence of the event; provided, that evidence of subsequent measures taken shall not be required to be excluded when offered for another purpose for which it may be admissible, including, but not limited to, proof of ownership, control, feasibility of precautionary measures if controverted, or for impeachment.

1978, c. 165.

§ 8.01-418.2. Evidence of polygraph examination inadmissible in any proceeding

The analysis of any polygraph test charts produced during any polygraph examination administered to a party or witness shall not be admissible in any proceeding conducted pursuant to § 2.2-1202.1 or conducted by any county, city or town over the objection of any party except as to disciplinary or other actions taken against a polygrapher.

1993, c. 570; 1995, cc. 770, 818; 2012, cc. 803, 835.

§ 8.01-418.3. Repealed

Repealed by Acts 2007, c. 250, cl. 2.

§ 8.01-419. Table of life expectancy

Whenever, in any case not otherwise specifically provided for, it is necessary to establish the expectancy of continued life of any person from any period of such person's life, whether he be living at the time or not, the following table shall be received in all courts and by all persons having power to determine litigation as evidence, with other evidence as to the health, constitution and habits of such person, of such expectancy represented by the figures in the following columns:

0	77.4	74.7	80
1	77	74.3	79.5
2	76	73.3	78.5
3	75	72.4	77.6

4	74	71.4	76.6
5	73.1	70.4	75.6
6	72.1	69.4	74.6
7	71.1	68.4	73.6
8	70.1	67.4	72.6
9	69.1	66.5	71.6
10	68.1	65.5	70.6
11	67.1	64.5	69.6
12	66.1	63.5	68.7
13	65.1	62.5	67.7
14	64.2	61.5	66.7
15	63.2	60.5	65.7
16	62.2	59.6	64.7
17	61.2	58.6	63.7
18	60.3	57.7	62.8
19	59.3	56.7	61.8
20	58.4	55.8	60.8
21	57.4	54.9	59.8
22	56.5	54	58.9
23	55.5	53	57.9
24	54.6	52.1	56.9
25	53.6	51.2	56
26	52.7	50.3	55
27	51.7	49.3	54
28	50.8	48.4	53
29	49.8	47.4	52.1
30	48.9	46.5	51.1
31	47.9	45.6	50.1
32	47	44.6	49.2
33	46	43.7	48.2
34	45.1	42.8	47.2
35	44.1	41.8	46.3
36	43.2	40.9	45.3
37	42.3	40	44.4
38	41.3	39.1	43.4
39	40.4	38.1	42.5
40	39.5	37.2	41.5

41	38.6	36.3	40.6
42	37.6	35.4	39.7
43	36.7	34.5	38.7
44	35.8	33.6	37.8
45	34.9	32.8	36.9
46	34	31.9	36
47	33.1	31	35.1
48	32.3	30.2	34.1
49	31.4	29.3	33.2
50	30.5	28.5	32.3
51	29.6	27.6	31.4
52	28.8	26.8	30.6
53	27.9	26	29.7
54	27.1	25.1	28.8
55	26.2	24.3	27.9
56	25.4	23.5	27
57	24.6	22.7	26.2
58	23.8	21.9	25.3
59	23	21.2	24.5
60	22.2	20.4	23.7
61	21.4	19.6	22.8
62	20.6	18.9	22
63	19.8	18.2	21.2
64	19.1	17.5	20.4
65	18.4	16.8	19.7
66	17.6	16.1	18.9
67	16.9	15.4	18.1
68	16.2	14.7	17.4
69	15.5	14.1	16.7
70	14.8	13.4	15.9
71	14.2	12.8	15.2
72	13.5	12.2	14.5
73	12.9	11.6	13.8
74	12.3	11	13.2
75	11.7	10.5	12.5
76	11.1	9.9	11.9
77	10.5	9.4	11.3

78	10	8.9	10.7
79	9.4	8.4	10.1
80	8.9	7.9	9.5
81	8.4	7.5	9
82	7.9	7	8.4
83	7.5	6.6	7.9
84	7	6.3	7.4
85	6.6	5.9	7
86	6.2	5.5	6.6
87	5.8	5.2	6.1
88	5.5	4.9	5.7
89	5.1	4.6	5.4
90	4.8	4.3	5
91	4.5	4	4.7
92	4.2	3.8	4.4
93	4	3.5	4.1
94	3.7	3.3	3.8
95	3.5	3.1	3.5
96	3.2	2.9	3.3
97	3	2.7	3.1
98	2.8	2.5	2.9
99	2.6	2.4	2.7
100+	2.5	2.2	2.5

Code 1950, § 8-263.1; 1966, c. 472; 1977, c. 617; 1986, c. 317; 1996, c. 394; 2009, c. 454.

§ 8.01-419.1. Motor vehicle value

Whenever in any case not otherwise specifically provided for the value of an automobile is in issue, either civilly or criminally, the tabulated retail values set forth in the National Automobile Dealers' Association (NADA) "yellow" or "black" books or any vehicle valuation service regularly used and recognized in the automobile industry that is in effect on the relevant date, shall be admissible as evidence of fair market value on the relevant date.

The determination of value shall be subject to such other creditable evidence as any party may offer to demonstrate that the value as set forth in the NADA publication or any vehicle valuation service utilized by another party fails to reflect the actual condition of the vehicle and that therefore the value may be greater or less than that shown by the NADA publication or any vehicle valuation service.

1993, c. 759; 2006, c. 402.

§ 8.01-420. Depositions as basis for motion for summary judgment or to strike evidence

A. Except as provided in subsection B, no motion for summary judgment or to strike the evidence shall be sustained when based in whole or in part upon any discovery depositions under Rule 4:5, unless all parties to the suit or action shall agree that such deposition may be so used. Notwithstanding the foregoing, requests for admissions for which the responses are submitted in support of a motion for summary judgment may be based in whole or in part upon any discovery depositions under Rule 4:5 and may include admitted facts learned or referenced in such a deposition, provided that any such request for admission shall not reference the deposition or require the party to admit that the deponent gave specific testimony.

B. Notwithstanding the provisions of subsection A, a motion for summary judgment seeking dismissal of any claim or demand for punitive damages may be sustained, as to the punitive damages claim or demand only, when based in whole or in part upon any discovery depositions under Rule 4:5. However, such a motion may not be based upon discovery depositions under Rule 4:5 with respect to any claim or demand for punitive damages based on the operation of a motor vehicle by a person while under the influence of alcohol, any narcotic drug, or any other self-administered intoxicant or drug.

Code 1950, § 8-315.1; 1973, c. 483; 1977, c. 617; 1978, c. 417; 2013, c. 76.

§ 8.01-420.01. Limiting further disclosure of discoverable materials and information; protective order

A. A protective order issued to prevent disclosure of materials or information related to a personal injury action or action for wrongful death produced in discovery in any cause shall not prohibit an attorney from voluntarily sharing such materials or information with an attorney involved in a similar or related matter, with the permission of the court, after notice and an opportunity to be heard to any party or person protected by the protective order, and provided the attorney who receives the material or information agrees, in writing, to be bound by the terms of the protective order.

B. The provisions of this section shall apply only to protective orders issued on or after July 1, 1989.

1989, c. 702 .

§ 8.01-420.1. Abolition of common-law perpetuation of testimony

The common-law proceeding to perpetuate testimony is abolished.

1977, c. 617.

§ 8.01-420.2. Limitation on use of recorded conversations as evidence

No mechanical recording, electronic or otherwise, of a telephone conversation shall be admitted into evidence in any civil proceeding unless (i) all parties to the conversation were aware the conversation was being recorded or (ii) the portion of the recording to be admitted contains admissions that, if true, would constitute criminal conduct which is the basis for the civil action, and one of the parties was aware of the recording and the proceeding is not one for divorce, separate

maintenance or annulment of a marriage. The parties' knowledge of the recording pursuant to clause (i) shall be demonstrated by a declaration at the beginning of the recorded portion of the conversation to be admitted into evidence that the conversation is being recorded. This section shall not apply to emergency reporting systems operated by police and fire departments and by emergency medical services agencies, nor to any communications common carrier utilizing service observing or random monitoring pursuant to § 19.2-62.

1983, c. 503; 1992, c. 567; 2015, cc. 502, 503.

§ 8.01-420.3. Court reporters to provide transcripts; when recording may be stopped; use of transcript as evidence

Upon the request of any counsel of record, or of any party not represented by counsel, and upon payment of the reasonable cost thereof, the court reporter covering any proceeding shall provide the requesting party with a copy of the transcript of such proceeding or any requested portion thereof.

The court shall not direct the court reporter to cease recording any portion of the proceeding without the consent of all parties or of their counsel of record.

Whenever a party seeks to introduce the transcript or record of the testimony of a witness at an earlier trial, hearing or deposition, it shall not be necessary for the reporter to be present to prove the transcript or record, provided the reporter duly certifies, in writing, the accuracy of the transcript or record.

1983, c. 505; 1990, c. 77 .

§ 8.01-420.4. Taking of depositions

A. Party Depositions. -- A deposition of a party, or any witness designated under Rule 4:5(b)(6) to testify on behalf of a party, shall be taken in the county or city in which suit is pending, in an adjacent county or city, at a place upon which the parties agree, or at a place that the court may, for good cause, designate. Good cause may include the expense or inconvenience of a non-resident party defendant appearing in one of the locations specified in this subsection. The restrictions as to parties set forth in this subsection shall not apply where no responsive pleading has been filed or an appearance otherwise made.

B. Non-party Witness Depositions. -- Unless otherwise provided by the law of the jurisdiction where a non-party witness resides, a deposition of a non-party witness shall be taken in the county or city where the non-party witness resides, is employed, or has his principal place of business; at a place upon which the witness and the parties to the litigation agree; or at a place that the court may, for good cause, designate.

1989, c. 209; 1991, c. 81; 1993, cc. 428, 940; 2005, c. 597.

§ 8.01-420.5. Estoppel effect of judicial determination of employment status

A final, unappealed order entered by a circuit court of this Commonwealth that a person is or is not an employee of another for the purpose of obtaining jurisdiction shall estop either of said parties from asserting otherwise in any subsequent action between such parties upon the same claim or cause of action before a court of this Commonwealth or the Virginia Workers' Compensation Commission.

1997, c. 333.

§ 8.01-420.6. Number of witnesses whose depositions may be taken

Notwithstanding any other provision of law or rule of court, there shall be no limit on the number of witnesses whose depositions may be taken by a party except by order of the court for good cause shown.

2001, c. 595.

§ 8.01-420.7. Attorney-client privilege and work product protection; limitations on waiver

A. When disclosure of a communication or information covered by the attorney-client privilege or work product protection made in a proceeding or to any public body as defined in § 2.2-3701 operates as a waiver of the privilege or protection, the waiver extends to an undisclosed communication or information only if:

1. The waiver is intentional;

2. The disclosed and undisclosed communications or information concern the same subject matter; and

3. The disclosed and undisclosed communications or information ought in fairness be considered together.

B. Disclosure of a communication or information covered by the attorney-client privilege or work product protection made in a proceeding or to any public body as defined in § 2.2-3701 does not operate as a waiver of the privilege or protection if:

1. The disclosure is inadvertent;

2. The holder of the privilege or protection took reasonable steps to prevent disclosure; and

3. The holder promptly took reasonable steps to rectify the error, including, if applicable, complying with the provisions of subdivision (b) (6) (ii) of Rule 4:1 of the Rules of the Supreme Court.

C. A court may order that the privilege or protection is not waived by the disclosure connected with the litigation pending before the court, in which case the disclosure does not operate as a waiver in any other proceeding.

D. An agreement on the effect of the disclosure in a proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

E. This section shall not limit any otherwise applicable waiver of attorney-client privilege or work product protection by an inmate who files an action challenging his conviction or sentence.

2010, c. 350.

§ 8.01-420.8. Protection of confidential information in court files

A. Whenever a party files, or causes to be filed, with the court a motion, pleading, subpoena, exhibit, or other document containing a social security number or other identification number appearing on a driver's license, credit card, debit card, bank account, or other electronic billing and payment system, the party shall make reasonable efforts to redact all but the last four digits of the identification number.

B. The provisions of subsection A apply to all civil actions in circuit and district court, unless there is a specific statute to the contrary that applies to the particular type of proceeding in which the party is involved.

C. Nothing in this section shall create a private cause of action against the party or lawyer who filed the document or any court personnel, the clerk, or any employees of the clerk's office who received it for filing.

2014, c. 427.

Chapter 15 - PAYMENT AND SETOFF

§ 8.01-421. Payment may be pleaded; payment into court of part of claim; procedure upon such payment

A. In any action for recovery of a debt the defendant may plead payment of the debt or any part thereof prior to the commencement of the action.

B. In any personal action, the defendant may pay into court a sum of money on account of what is claimed, or by way of compensation or amends, and plead that he is not indebted to the plaintiff, or that the plaintiff has not sustained damages, to a greater amount than such sum. The plaintiff may accept such sum either in full satisfaction, and then have judgment for his costs, or in part satisfaction, and reply to the allegations of the defendant's pleadings, and, if issue thereon be found for the defendant, judgment shall be given for the defendant, and he shall recover his costs. The payment of such sum into court shall not be admissible in evidence.

Code 1950, §§ 8-236, 8-237, 8-238; 1954, c. 333; 1977, c. 617; 1978, c. 416.

§ 8.01-422. Pleading equitable defenses

In any action on a contract, the defendant may file a pleading, alleging any matter which would entitle him to relief in equity, in whole or in part, against the obligation of the contract; or, if the contract be by deed, alleging any such matter arising under the contract, existing before its execution, or any such mistake therein, or in the execution thereof, or any such other matter as would entitle him to such relief in equity; and in either case alleging the amount to which he is entitled by reason of the matters contained in the pleading. If the amount claimed by the defendant exceed the amount of the plaintiff's claim the court may, in a proper case, give judgment in favor of the defendant for such excess.

Code 1950, § 8-241; 1954, c. 617; 1977, c. 617.

§ 8.01-423. When plaintiff claims as assignee or transferee

If the plaintiff claims as assignee or transferee under a person with whom the contract sued on was originally made, and the defendant's claim exceeds the plaintiff's demand, the defendant:

1. In his counterclaim, may waive the benefit of his claim as to any excess beyond the plaintiff's claim, whereupon, the further proceedings shall be upon the plaintiff's claim and the defendant's counterclaim as a defense thereto; or

2. Instead of such waiver such defendant may, by rule issued by the court, to which rule shall be attached a copy of the counterclaim and served on the person, under whom plaintiff claims as aforesaid, make such person a party to the action; and, on the trial of the case, the jury shall ascertain and apply, the amount and interest to which the defendant is entitled; and, for any excess beyond the plaintiff's demand for which such person under whom the plaintiff claims as aforesaid is liable, with such interest as the court or jury allows, judgment shall be rendered for the defendant against such person.

Code 1950, § 8-246; 1954, c. 619; 1977, c. 617.

Chapter 16 - COMPROMISES

§ 8.01-424. Approval of compromises on behalf of persons under a disability in suits or actions to which they are parties

A. In any action or suit wherein a person under a disability is a party, the court in which the matter is pending shall have the power to approve and confirm a compromise of the matters in controversy on behalf of such party, including claims under the provisions of any liability insurance policy, if such compromise is deemed to be to the interest of the party. Any order or decree approving and confirming the compromise shall be binding upon such party, except that the same may be set aside for fraud.

B. In case of damage to the person or property of a person under a disability, caused by the wrongful act, neglect or default of any person, when death did not ensue therefrom, any person or insurer interested in compromise of any claim for such damages, including any claim under the provisions of any liability insurance policy, may, upon motion to the court in which the action is pending for the recovery of damages on account of such injury, or if no such action is pending, then to any circuit court, move the court to approve the compromise. The court shall require the movant to give reasonable notice of such motion to all parties and to any person found by the court to be interested in the compromise.

C. A compromise action involving a claim for wrongful death shall be in accordance with the applicable provisions of § 8.01-55. Nothing in this section shall be construed to affect the provisions of § 8.01-76.

D. In any compromise action the court shall direct the payment of the proceeds of the compromise agreement, when approved, as follows:

1. Payment of the sum into court as provided by § 8.01-600 or to the general receiver of such court;

2. To a duly qualified fiduciary of the person under a disability, after due inquiry as to the adequacy of the bond of such fiduciary;

3. As provided in § 8.01-606; or

4. Where the agreement of settlement provides for payments to be made over a period of time in the future, whether such payments are lump sum, periodic, or a combination of both, the court shall approve the settlement only if it finds that all payments which are due to be made are (i) secured by a bond issued by an insurance company authorized to write such bonds in this Commonwealth or (ii) to be made or irrevocably guaranteed by an insurance company or companies authorized to do business in this Commonwealth and rated "A plus" (A+) or better by Best's Insurance Reports. Payments made under this subdivision totaling not more than $4,000 in any calendar year may be paid in accordance with § 8.01-606. Payments made under this subdivision, totaling more than $4,000 in any calendar year while the recipient is under a disability, shall be paid to a duly qualified fiduciary after due inquiry as to adequacy of the bond of such fiduciary.

E. Payments made under this section, in the case of damage to the person or property of a minor, may be made payable in the discretion of the court to the parent or guardian of the minor to be held in trust for the benefit of the minor. Any such trust shall be subject to court approval and the court may provide for the termination of such trust at any time following attainment of majority which the court deems to be in the best interest of the minor. In an order authorizing the trust or additions to an existing trust the court may order that the trustee thereof be subject to the same duty to qualify in the clerk's office and to file an inventory and annual accountings with the commissioner of accounts as would apply to a testamentary trustee.

Code 1950, §§ 8-169, 8-170; 1956, c. 575; 1960, cc. 301, 302; 1964, c. 500; 1970, c. 10; 1977, c. 617; 1985, c. 499; 1988, c. 409; 1991, cc. 97, 257; 1993, c. 945; 1994, c. 39; 1998, cc. 584, 607, 610; 2009, c. 688.

§ 8.01-424.1. Settlement of third-party action; deemed consent by employer

In any action or claim for damages by an employee, his personal representative, or other person against any person other than the employer, in which the employer has an interest pursuant to § 65.2-309, where the employer fails to consent to an offer of settlement acceptable to the employee, his personal representative or other person, such person may petition the court where the action is pending for approval of the settlement. Where no action is pending, or such action is pending in a state other than Virginia, the petition may be filed in any circuit court in which venue will lie as to the employee pursuant to § 8.01-262. The petition shall state the compromise, its terms, and the reason therefor. The court in which such petition is filed shall require the

convening of the parties in interest in person or by an authorized representative. The parties in interest shall be deemed convened if twenty-one days notice of the hearing and proposed compromise was served pursuant to §§ 8.01-296, 8.01-299, 8.01-300, 8.01-301, or Rule 1:12 of the Rules of the Supreme Court of Virginia, as applicable. In the case of an insured employer, service shall also be made on the workers compensation insurer's registered agent or counsel. During the twenty-one day notice period, the person making the settlement offer to the employee shall make himself reasonably available to answer questions under oath by the employee, employer, or employer's workers compensation insurer concerning matters relating to such person's financial condition that are known or reasonably available to such person.

If the court determines that the settlement is fair and just to the parties in interest, it shall approve such settlement. In no event shall the court have jurisdiction to reduce or otherwise compromise the subrogation interest created pursuant to § 65.2-309. The employer, if aggrieved by the court's decision, may appeal. Should the employer's appeal be denied or decided adversely to the employer, the employer shall pay interest at the judgment rate on the full settlement amount until the date of the denial of the appeal or date the final adverse decision is rendered against the employer. Should the settlement include periodic payments into the future, the value of the settlement amount, discounted to present value, shall be determined in calculating interest due from the employer. Once the decision is final and all appeals, if any, have been exhausted, and because the employer's subrogation interest has not been compromised, the decision approving the settlement shall be deemed consent to the settlement by the employer.

2002, c. 751.

§ 8.01-425. How fiduciaries may compromise liabilities due to or from them

Any fiduciary may compromise any liability due to or from him, provided that such compromise be ratified and approved by a court of competent jurisdiction, all parties in interest being before such court by proper process. When such compromise shall have been so ratified and approved, it shall be binding on all parties in interest before such court. Nothing contained in this section shall affect the right of indemnity or of contribution among the parties.

Code 1950, §§ 8-171, 8-173; 1977, c. 617.

§ 8.01-425.1. Release of liability; right of rescission

When a claimant or plaintiff executes a release of liability as a condition of settlement in a claim or action for personal injury within thirty days of the incident giving rise to such claim, such claimant or plaintiff shall have a right of rescission until midnight of the third business day after the day on which the release was executed, provided that he was not represented by counsel when the release was executed, the rescission was made in writing to the person or persons being released, their representative or insurance carrier, and the claimant returns to the person or persons being released any check or settlement proceeds received by the claimant prior to the rescission. A release of liability executed within thirty days of the incident giving rise to the claim for

personal injury by a person who is not represented by counsel shall contain a notice of the claimant's or the plaintiff's right to rescind conspicuously and separately stated on the release.

1999, c. 326; 2000, c. 839.

Chapter 17 - JUDGMENTS AND DECREES GENERALLY

Article 1 - IN GENERAL

§ 8.01-426. "Judgment" includes decree

A decree for land or specific personal property, and a decree or order requiring the payment of money, shall have the effect of a judgment for such land, property, or money, and be embraced by the word "judgment," where used in this chapter or in Chapters 18, 19 or 20 of this title or in Title 43; but a party may proceed to carry into execution a decree or order other than for the payment of money, as he might have done if this and the following section had not been enacted.

Code 1950, § 8-343; 1977, c. 617; 2005, c. 681.

§ 8.01-427. Persons entitled under decree deemed judgment creditors; execution on decree

The persons entitled to the benefit of any decree or order requiring the payment of money shall be deemed judgment creditors, although the money be required to be paid into a court, or a bank, or other place of deposit. In such case, an execution on the decree or order shall make such recital thereof, and of the parties to it, as may be necessary to identify the case; and if a time be specified in the decree or order within which the payment is to be made, the execution shall not issue until the expiration of that time.

Code 1950, § 8-344; 1977, c. 617.

§ 8.01-427.1. Repealed

Repealed by Acts 1978, c. 426, effective March 31, 1978.

§ 8.01-428. Setting aside default judgments; clerical mistakes; independent actions to relieve party from judgment or proceedings; grounds and time limitations

A. Default judgments and decrees pro confesso; summary procedure. Upon motion of the plaintiff or judgment debtor and after reasonable notice to the opposite party, his attorney of record or other agent, the court may set aside a judgment by default or a decree pro confesso upon the following grounds: (i) fraud on the court, (ii) a void judgment, (iii) on proof of an accord and satisfaction, or (iv) on proof that the defendant was, at the time of service of process or entry of judgment, a servicemember as defined in 50 U.S.C. § 3911. Such motion on the ground of fraud on the court shall be made within two years from the date of the judgment or decree.

B. Clerical mistakes. Clerical mistakes in all judgments or other parts of the record and errors therein arising from oversight or from an inadvertent omission may be corrected by the court at any time on its own initiative or upon the motion of any party and after such notice, as the court may order. During the pendency of an appeal, such mistakes may be corrected before the appeal is

docketed in the appellate court, and thereafter while the appeal is pending such mistakes may be corrected with leave of the appellate court.

C. Failure to notify party or counsel of final order. If counsel, or a party not represented by counsel, who is not in default in a circuit court is not notified by any means of the entry of a final order and the circuit court is satisfied that such lack of notice (i) did not result from a failure to exercise due diligence on the part of that party and (ii) denied that party an opportunity to pursue post-trial relief in the circuit court or to file an appeal therefrom, the circuit court may, within 60 days of the entry of such order, modify, vacate, or suspend the order or grant the party leave to appeal. Where the circuit court grants the party leave to appeal, the computation of time for noting and perfecting an appeal shall run from the entry of such order, and such order shall have no other effect.

D. Other judgments or proceedings. This section does not limit the power of the court to entertain at any time an independent action to relieve a party from any judgment or proceeding, or to grant relief to a defendant not served with process as provided in § 8.01-322, or to set aside a judgment or decree for fraud upon the court.

E. Nothing in this section shall constitute grounds to set aside an otherwise valid default judgment against a defendant who was not, at the time of service of process or entry of judgment, a servicemember as defined in 50 U.S.C. § 3911.

1977, c. 617; 1991, c. 39; 1993, c. 951; 2005, cc. 333, 909.

§ 8.01-429. Action of appellate court when there might be redress under § 8.01-428

No appeal shall be allowed by the Court of Appeals or the Supreme Court or any judge or justice thereof for any matter for which a judgment or decree is liable to be reversed or amended, on motion as aforesaid, by the court which rendered it, or the judge thereof, until such motion is made and overruled in whole or in part. And when the Court of Appeals or the Supreme Court hears a case on appeal, if it appears that, either before or since the appeal, the judgment or decree has been so amended, the Court of Appeals or the Supreme Court shall affirm the judgment or decree, unless there is other error. If it appears that the amendment ought to be, and has not been made, the Court of Appeals or the Supreme Court may make such amendment, and affirm in like manner the judgment or decree, unless there is other error.

Code 1950, § 8-349; 1977, c. 617; 1984, c. 703.

§ 8.01-430. When final judgment to be entered after verdict set aside

When the verdict of a jury in a civil action is set aside by a trial court upon the ground that it is contrary to the evidence, or without evidence to support it, a new trial shall not be granted if there is sufficient evidence before the court to enable it to decide the case upon its merits, but such final judgment shall be entered as to the court shall seem right and proper. If necessary to assess damages which have not been assessed, the court may empanel a jury at its bar to make such assessment, and then enter such final judgment.

Nothing in this section contained shall be construed to give to trial courts any greater power over verdicts than they now have under existing rules of procedure, nor to impair the right to move for a new trial on the ground of after-discovered evidence.

Code 1950, § 8-352; 1977, c. 617.

Article 2 - JUDGMENTS BY CONFESSION

§ 8.01-431. Judgment or decree by confession in pending suit

In any suit a defendant may, whether the suit is on the court docket or not, confess a judgment in the clerk's office for so much principal and interest as the plaintiff may be willing to accept a judgment or decree for. The same shall be entered of record by the clerk in the order book and be as final and as valid as if entered in court on the day of such confession. The clerk shall record such judgment or decree and the date and time of the day at which the same was confessed. The lien of such judgment or decree shall run from the time such judgment is recorded on the judgment lien docket of the clerk's office of the county or city in which land of the defendant lies.

Code 1955, § 8-355; 1962, c. 388; 1977, c. 617; 2012, c. 802; 2014, c. 330.

§ 8.01-432. Confession of judgment irrespective of suit pending

Any person being indebted to another person, or any attorney-in-fact pursuant to a power of attorney, may at any time confess judgment in the clerk's office of any circuit court in this Commonwealth, whether a suit, motion or action be pending therefor or not, for only such principal and interest as his creditor may be willing to accept a judgment for, which judgment, when so confessed, shall be forthwith entered of record by the clerk in whose office it is confessed, in the proper order book of his court. Such judgment shall be as final and as binding as though confessed in open court or rendered by the court, subject to the control of the court in the clerk's office of which the same shall have been confessed.

Code 1950, § 8-356; 1977, c. 617.

§ 8.01-433. Setting aside judgments confessed under § 8.01-432

Any judgment confessed under the provisions of § 8.01-432 may be set aside or reduced upon motion of the judgment debtor made within twenty-one days following notice to him that such judgment has been entered against him, and after twenty-one days notice to the judgment creditor or creditors for whom the judgment was confessed, on any ground which would have been an adequate defense or setoff in an action at law instituted upon the judgment creditor's note, bond or other evidence of debt upon which such judgment was confessed. Whenever any such judgment is set aside or modified the case shall be placed on the trial docket of the court, and the proceedings thereon shall thereafter be the same as if an action at law had been instituted upon the bond, note or other evidence of debt upon which judgment was confessed. After such case is so docketed the court shall make such order as to the pleadings, future proceedings and costs as to the court may seem just.

Code 1950, § 8-357; 1977, c. 617.

§ 8.01-433.1. Notice of confession of judgment provision

No judgment shall be confessed upon a note, bond, or other evidence of debt pursuant to a confession of judgment provision contained therein which does not contain a statement typed in boldface print of not less than eight point type on its face:

IMPORTANT NOTICE

THIS INSTRUMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS THE CREDITOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.

This section shall only apply to notes, bonds, or other evidences of debt containing confession of judgment provisions entered into after January 1, 1993.

1992, c. 396 .

§ 8.01-434. Lien of such judgments

The clerk shall record in the proper book any judgment confessed under the provisions of § 8.01-432 and the day and hour when the same was confessed, and the lien thereof shall attach and be binding from the time such judgment is recorded on the judgment lien docket of the clerk's office of the county or city in which land of the defendant lies. If the credit was extended for personal, family or household purposes, the judgment shall not be a lien against the real estate of the obligor or the basis of obtaining execution against his personal property until the expiration of the 21-day period allowed the judgment debtor as set forth in § 8.01-433. In the event the judgment debtor files a motion or other pleading within such 21-day period, the judgment shall not be a lien against such real estate or its basis of execution against personal property until an order to that effect is entered by the court. It will be presumed that the obligation is for personal, family or household purposes if the debtor is a natural person, unless the plaintiff or someone on his behalf makes oath or makes out and files an affidavit that the obligation was not for such purposes, or the obligation for which judgment is confessed recites that it is for other purposes.

Code 1950, § 8-358; 1962, c. 388; 1970, c. 395; 1977, c. 617; 1986, c. 523; 2014, c. 330.

§ 8.01-435. Who may confess judgment

Confession of judgment under the provisions of § 8.01-432 may be made either by the debtor himself or by his duly constituted attorney-in-fact, acting under and by virtue of a power of attorney duly executed and acknowledged by him as deeds are required to be acknowledged, before any officer or person authorized to take acknowledgments of writings to be recorded in this Commonwealth, provided, however, that any power of attorney incorporated in, and made part of, any note or bond authorizing the confession of judgment thereon against the makers and endorsers in the event of default in the payment thereof at maturity need not be acknowledged, but shall specifically name therein the attorney or attorneys or other person or persons authorized to confess such judgment and the clerk's office in which the judgment is to be confessed.

The payee, obligee, or person otherwise entitled to payment under any note or bond may appoint a substitute for any attorney-in-fact authorized to confess judgment that is specifically named in such note or bond, by specifically naming the substitute attorney-in-fact in an instrument appointing the substitute attorney-in-fact. Such instrument shall be recorded and indexed according to law in the clerk's office where judgment is to be confessed by the terms of such note or bond, and a clerk's fee for such recording shall be paid as set out in § 17.1-275. If such note or bond does not contain a notice informing the debtor that a substitute attorney-in-fact may be appointed by the payee, obligee, or person otherwise entitled to payment under the note or bond, then within 10 days after the instrument appointing the substitute attorney-in-fact is recorded, the person appointing the substitute attorney-in-fact shall send notice of the appointment by certified mail to the debtor's last known address as it appears in the records of the person appointing the substitute attorney-in-fact.

Code 1950, § 8-359; 1977, c. 617; 2012, cc. 31, 118.

§ 8.01-436. Form of confession of judgment

On the presentation of any such power of attorney as is mentioned in § 8.01-435 by any of the persons therein named as attorney-in-fact, or on the personal appearance of the debtor and the expression by him of his desire to confess such judgment, the clerk of the court mentioned in such power of attorney, or before whom such debtor shall so appear, shall draw and require the attorney-in-fact so appearing, or the debtor, as the case may be, to sign a confession of judgment, which shall be in form substantially as follows:

"Virginia: In the clerk's office of the _____ court of the _____ of _____, I, (or we) A.B., (or A.B. and C.D., etc.) hereby acknowledged myself (or ourselves) to be justly indebted to, and do hereby confess judgment in favor of (name of creditor) in the sum of _____ dollars ($____) with interest thereon from the _____ day of _____, two thousand _____, until paid, and the cost of this proceeding (including the attorney's fees and collection fees provided for in the instrument on which the proceeding is based) hereby waiving the benefit of my (or our) homestead exemptions as to the same, provided the instrument on which the proceeding is based carries such homestead waiver.

Given under my (or our) hand, this _____ day of _____, two thousand and _____

(Signatures)

or, if by an attorney-in-fact, signatures and seals of debtors,

By _____

his (or their) attorney-in-fact."

Code 1950, § 8-360; 1977, c. 617.

§ 8.01-437. Endorsement of clerk thereon

When a judgment is so confessed, the clerk shall endorse upon such confession, or attach thereto, his certificate in manner and form substantially as follows:

"Virginia: In the clerk's office of the _____ court of the _____ of _____.

The foregoing (or attached) judgment was duly confessed before me in my said office on the _____ ___ day of _____, two thousand and _____, at _____ o'clock _____ a.m., p.m. and has been duly entered of record in common-law order book number _____, page _____.

Teste:

_____ clerk."

Code 1950, § 8-361; 1977, c. 617.

§ 8.01-438. When judgment confessed by attorney-in-fact copy to be served on judgment debtor

If a judgment is confessed by an attorney-in-fact, it shall be the duty of the clerk within ten days from the entry thereof to cause to be served upon the judgment debtor a certified copy of the order so entered in the common-law order book, to which order shall be appended a notice setting forth the provisions of § 8.01-433. The officer who serves the order shall make return thereof within ten days after service to the clerk. The clerk shall promptly file the order with the papers in the case. The failure to serve a copy of the order within sixty days from the date of entry thereof shall render the judgment void as to any debtor not so served.

Service of a copy of the order on a nonresident judgment debtor by an officer of the county or city of his residence, authorized by law to serve processes therein, or by the clerk of the court sending a copy of the order by registered or certified mail to such nonresident judgment debtor at his last known post-office address and the filing of a certificate with the papers in the case showing that such has been done or of a receipt showing the receipt of such letter by such nonresident judgment debtor, shall be deemed sufficient service thereof for the purposes of this section.

Code 1950, § 8-362; 1972, c. 611; 1976, c. 617; 1988, c. 420.

§ 8.01-439. Filing of records by clerk

Such confession and clerk's certificate, together with the power of attorney if the confession be by an attorney-in-fact, and the note, bond or other obligation, if there be such, on which the judgment is based, shall be securely attached together by the clerk and filed by him among the records in his office.

Code 1950, § 8-363; 1977, c. 617.

§ 8.01-440. Docketing and execution

The clerk shall forthwith docket such judgment in the current judgment lien docket in his office and shall issue execution thereon as he may be directed by the creditor therein named, or his assigns, in the manner prescribed by law.

Code 1950, § 8-364; 1977, c. 617.

§ 8.01-441. When judgment confessed by virtue of power of attorney invalid

No judgment confessed in the office of the clerk of any circuit court in this Commonwealth, by virtue of a power of attorney, shall be valid, unless such power of attorney be in conformity with the provisions of this article.

Code 1950, § 8-366; 1977, c. 617.

Article 3 - WHEN THERE ARE SEVERAL DEFENDANTS

§ 8.01-442. In joint actions on contract plaintiff, though barred as to some, may have judgment against others

In an action or motion, founded on contract, against two or more defendants, although the plaintiff may be barred as to one or more of them, yet he may have judgment against any other or others of the defendants, against whom he is not so barred.

Code 1950, § 8-367; 1977, c. 617.

§ 8.01-443. Joint wrongdoers; effect of judgment against one

A judgment against one of several joint wrongdoers shall not bar the prosecution of an action against any or all the others, but the injured party may bring separate actions against the wrongdoers and proceed to judgment in each, or, if sued jointly, he may proceed to judgment against them successively until judgment has been rendered against, or the cause has been otherwise disposed of as to, all of the defendants, and no bar shall arise as to any of them by reason of a judgment against another, or others, until the judgment has been satisfied. If there be a judgment against one or more joint wrongdoers, the full satisfaction of such judgment accepted as such by the plaintiff shall be a discharge of all joint wrongdoers, except as to the costs; provided, however, this section shall have no effect on the right of contribution between joint wrongdoers as set out in § 8.01-34.

Code 1950, § 8-368; 1977, c. 617.

§ 8.01-444. Where new parties added; if some not liable, how judgment entered

If it shall appear at the trial that all the original defendants are liable, but that one or more of the other persons added under the provisions of § 8.01-5 are not liable, the plaintiff shall be entitled to judgment, or to verdict and judgment, as the case may be, against the defendants who appear liable, and such as are not liable shall have judgment and recover costs as against the plaintiff, who shall be allowed the same as costs against the defendants who cause them to be made parties.

Code 1950, § 8-369; 1977, c. 617.

Article 4 - DISTINCTION BETWEEN TERM AND VACATION ABOLISHED

§ 8.01-445. Distinction between term and vacation abolished; effect of time

The distinction of what a court may do in term as opposed to vacation is hereby abolished. The period of time provided for the doing of any act or the taking of any proceeding is not affected or

limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

1977, c. 617.

Article 5 - KEEPING OF DOCKET BOOKS; EXECUTION THEREON; DISPOSAL OF EXHIBITS

§ 8.01-446. Clerks to keep judgment dockets; what judgments to be docketed therein

The clerk of each court of every circuit shall keep in his office, in a well-bound book, or by microphotographic or electronic process allowed by § 17.1-240, a judgment docket, in which he shall docket, without delay, any judgment for a specific amount of money rendered in his court, and shall likewise docket without delay any judgment for a specific amount of money rendered in this Commonwealth by any other court of this Commonwealth or federal court, when he shall be required so to do by any person interested, on such person delivering to him an authenticated legible abstract of it and also upon the request of any person interested therein, any such judgment rendered by a district court judge whose book has been filed in his office under the provisions of Title 16.1 or of which a legible abstract is delivered to him certified by the district court judge who rendered it; provided, that judgments docketed in the clerk's office of the Circuit Court of the City of Williamsburg and the County of James City shall be docketed and indexed in one book. A specific judgment for money shall state that it is a judgment for money in a specific amount in favor of a named party, against a named party, with that party's address, if known, and it shall further state the time from which the judgment bears interest. An order of restitution docketed pursuant to § 19.2-305.2 shall have the same force and effect as a specific judgment for money and shall state that it is an order of restitution in a specific amount in favor of a named party, against a named party, with that party's address, if known, and it shall further state the time from which the judgment bears interest. If the clerk determines that an abstract is not legible, the clerk shall refuse to record it and shall return it to the person who tendered the abstract for recording. No judgment for assessments described in subsection A of § 17.1-275.5 or for the fees provided for by § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, 17.1-275.9, 17.1-275.10, 17.1-275.11, 17.1-275.11:1, or 17.1-275.12 or for all other fines and costs shall be recorded as a judgment in favor of the Commonwealth if such fees, assessments, fines, or costs have been fully paid by the defendant by the date of sentencing by the court.

Code 1950, § 8-373; 1952, c. 438; 1962, c. 568; 1973, c. 544; 1975, cc. 182, 575; 1977, c. 617; 1993, c. 412; 1994, c. 538; 1995, c. 434; 1997, c. 579; 2008, cc. 823, 833; 2013, c. 263; 2015, c. 641.

§ 8.01-446.1. Keeping of docket books by clerk of court using micrographic process; form

Whenever judgments are docketed in the judgment lien book in the office of the clerk of the circuit court and are recorded by a procedural micrographic process as provided in § 17.1-240, or by any

other method or process which renders impractical or impossible the subsequent entry of notations upon the docketed judgment, an appropriate certificate of assignment, release, partial release, certified copy of any order, or other separate instrument setting forth the necessary information as provided in this section shall be recorded and indexed according to law. Such instrument shall conform substantially with the following form:

ORIGINAL BOOK # _____ PAGE _____ (or instrument no)

ORIGINAL DATE DOCKETED: _____

TYPE OF FILING (Check One)

( ) Assignment

( ) Release

( ) Partial Release

( ) Credit(s)

( ) Additional Debtor(s)

( ) New Name of Debtor

Date of Judgment: _____

Amount of Judgment: _____

Plaintiff(s): _____

Defendant(s): _____

Assignee (If assignment): _____

Payments (If credits): AMOUNT _____ DATE PAID _____

(Complete below if additional debtor or change of name of debtor)

Debtor: _____

Social Security Number of Debtor (Last Four Digits) (If known): _____

Given under my hand this _____ day of _____, _____

_____
(Plaintiff) (Attorney for Plaintiff)
(Authorized Agent for Plaintiff)

Any judgment creditor who knowingly gives false information upon such certificate made under this section shall be guilty of a Class 1 misdemeanor.

1985, c. 48; 2008, cc. 823, 833.

§ 8.01-447. Docketing of judgments and decrees of United States courts

Judgments and decrees rendered in the circuit court of appeals or a district court of the United States within this Commonwealth may be docketed and indexed in the clerks' offices of courts of this Commonwealth in the same manner and under the same rules and requirements of law as judgments and decrees of courts in this Commonwealth.

Code 1950, § 8-375; 1977, c. 617.

§ 8.01-448. Attorney General, etc., to have judgments in favor of Commonwealth docketed

Whenever a judgment is recovered in favor of the Commonwealth, it shall be the duty of the Attorney General or other attorney representing the Commonwealth, to cause such judgment to be docketed in all counties and cities wherein there is any real estate owned by any person against whom the judgment is recovered.

Code 1950, § 8-376; 1977, c. 617.

§ 8.01-449. How judgments are docketed

A. The judgment docket required by § 8.01-446 may be kept in a well-bound book, or any other media permitted by § 17.1-240. The date and time of docketing shall be recorded with each judgment docketed. The clerk of the circuit court of any county using card files on July 1, 1975, may continue to use the card file system. The docketing may be done by copying the wording of the judgment order verbatim or by abstracting the information therefrom into a book or into fixed fields of an electronic data storage system. Where a procedural microphotographic system is used, the docketing may be done by recording and storing a retrievable image of the judgment order, judgment abstract, or other source document such as a certificate of assignment or release. Where an electronic imaging system is used, the document image shall be stored in a data format which permits recall of the image. Any judgment docketed pursuant to this subsection shall contain the information required by subsection B.

B. Where a well-bound book is used for the judgment docket there shall be stated in separate columns (i) the date and amount of the judgment, (ii) the time from which it bears interest, (iii) the costs, (iv) the full names of all the parties thereto, including the address, date of birth and the last four digits of the social security number, if known, of each party against whom judgment is rendered, (v) the alternative value of any specific property recovered by it, (vi) the date and the time of docketing it, (vii) the amount and date of any credits thereon, (viii) the court by which it was rendered and the case number, and (ix) when paid off or discharged in whole or in part, the time of payment or discharge and by whom made when there is more than one defendant. And in case of a judgment or decree by confession, the clerk shall also enter in such docket the time of day at which the same was confessed, or at which the same was received in his office to be entered of record. There shall also be shown on such book the name of the plaintiff's attorney, if any.

C. Error or omission in the entry of the address or addresses or the social security number or numbers of each party against whom judgment is rendered shall in no way affect the validity, finality or priority of the judgment docketed.

D. Beginning July 1, 2012, any judgment made available to subscribers via secure remote access pursuant to § 17.1-294 shall contain only the last four digits of the social security number of any party. However, the information otherwise required in the judgment docket pursuant to this section shall be provided.

E. The attorney or party who prepares or submits the judgment for recordation has the responsibility for ensuring that only the last four digits of the social security number are included in the judgment prior to the instrument's being submitted for recordation. The clerk has the authority to reject any judgment that does not comply with the provisions of this section.

Code 1950, § 8-377; 1973, c. 544; 1977, c. 617; 1982, c. 405; 1985, c. 171; 1988, c. 420; 1996, c. 427; 1997, c. 579; 2007, cc. 548, 626; 2008, cc. 823, 833; 2010, c. 430.

§ 8.01-450. How indexed

Every judgment shall, as soon as it is docketed, be indexed by the clerk in the name of each defendant, as required by § 17.1-249, and shall not be regarded as docketed as to any defendant in whose name it is not so indexed. The clerk may maintain such index on computer, word processor, microfilm, microfiche, or other micrographic process.

Code 1950, § 8-378; 1977, c. 617; 1985, c. 171.

§ 8.01-451. Judgments to be docketed and indexed in new names of judgment debtors; how execution may thereafter issue

Whenever there is a judgment docketed and indexed, as required by § 17.1-249, and thereafter a judgment debtor whose name is so recorded changes his name, whether by marriage, court order, by a voluntary assumption of a new name or otherwise, the clerk of the court in which the judgment was obtained, upon satisfactory proof that the judgment debtor has acquired a new name, shall docket and index the judgment in the new name. Execution may thereafter issue against the judgment debtor in the prior name, the new name, or both. The clerk may require the submission by any party interested in the judgment or by his duly authorized attorney or agent of a form similar to that set out in § 8.01-446.1 indicating that the judgment debtor has acquired a new name, and stating the new name. Such form shall constitute satisfactory proof of the new name. This section shall apply to all judgments obtained prior or subsequent to the enactment hereof.

Code 1950, § 8-378.1; 1950, p. 440; 1977, c. 617; 1998, c. 639.

§ 8.01-452. Entry of assignment of judgment on judgment lien docket

Whenever there shall be an assignment of a judgment, such assignment must be in writing, showing the date thereof, the name of the assignor and assignee, the amount of the judgment, and when and by what court granted, and either acknowledged as are deeds for recordation in the clerks' offices of circuit courts in the Commonwealth, or signed by the assignor, attested by two witnesses. Such assignment shall be recorded in a separate instrument referencing the page of the book where same is docketed, by the judgment creditor or his attorney of record. When such

assignment is docketed as herein provided, further executions shall be issued in the name of the assignee as the plaintiff in the case.

Code 1950, § 8-379; 1977, c. 617; 2014, c. 330.

§ 8.01-452.1. Disposal of exhibits in civil cases

A clerk of court, after sixty days have elapsed from the entry of judgment in a civil case or, if the civil case is appealed or notice of appeal is pending or the case is being reheard, when the appeal or rehearing is concluded, may dispose of or donate any exhibits filed in the case and in his possession after notifying the owner or his attorney by first-class mail and after twenty-one days from the mailing of the notice to the owner or attorney unless the owner or attorney requests the return of the exhibits.

1981, c. 312; 1992, c. 57; 1995, c. 13; 1997, c. 135; 1998, c. 886.

Article 6 - SATISFACTION

§ 8.01-453. When and how payment or discharge entered on judgment docket

The fact of satisfaction of any judgment so docketed, and if there is more than one defendant, by which defendant it was satisfied, shall be entered by the clerk in whose office the judgment is docketed whenever it appears from a certificate of the clerk of the court in which the judgment was rendered that the judgment has been satisfied or upon the direction, in writing, of the judgment creditor or his duly authorized attorney or other agent. However, the judgment creditor may record an instrument, upon payment of the fees for recordation of each instrument pursuant to § 17.1-275, releasing the lien of any judgment so docketed as against one or more parcels of real property, even when full satisfaction of the judgment has not been made and entered by the clerk.

Code 1950, § 8-380; 1977, c. 617; 1979, c. 192; 1986, c. 276; 1988, c. 420; 2015, c. 631; 2016, c. 482.

§ 8.01-454. Judgment, when satisfied, to be so noted by creditor

In all cases in which satisfaction of any judgment so docketed is made, which is not required to be certified to the clerk under § 8.01-455, it shall be the duty of the judgment creditor, himself, or by his agent or attorney, to cause such satisfaction by the defendant, and if there is more than one defendant, by which defendant it was satisfied, to be entered within 30 days after the same is made, on such judgment docket. If the judgment has not been docketed, then the entry shall be made on the execution book in the office of the clerk from which the execution issued. For any failure to do so within 90 days, or after 10 days' notice to do so by the judgment debtor or his agent or attorney, the judgment creditor shall be liable to a fine of $100 and shall pay the filing cost of the release. The entry of satisfaction shall be signed by the creditor or his duly authorized attorney or other agent and be attested by the clerk in whose office the judgment is docketed, or when not docketed, by the clerk from whose office the execution issued; however, the cost of the release shall be paid by the judgment debtor. For any money judgment marked as satisfied pursuant to

this section, nothing herein shall satisfy an unexecuted order of possession entered pursuant to § 8.01-126.

Code 1950, § 8-382; 1977, c. 617; 1988, c. 420; 2014, c. 274; 2015, cc. 547, 553, 631.

§ 8.01-455. Court, on motion of defendant, etc., may have payment of judgment entered

A. A defendant in any judgment, his heirs or personal representatives, may, on motion, after ten days' notice thereof to the plaintiff in such judgment, or his assignee, or if he be dead, to his personal representative, or if he be a nonresident, to his attorney, if he have one, apply to the court in which the judgment was rendered, to have the same marked satisfied, and upon proof that the judgment has been paid off or discharged, such court shall order such satisfaction to be recorded in the judgment docket book together with a separate instrument or order discharging the judgment and referencing the judgment docket book and page where the original judgment was entered, and a certificate of such order to be made to the clerk of the court in which such judgment is required by § 8.01-446 to be docketed, and the clerk of such court shall immediately, upon the receipt of such certificate, enter the same in the judgment docket book where such judgment is docketed. If the plaintiff be a nonresident and have no attorney of record residing in this Commonwealth, the notice may be published and posted as an order of publication is required to be published and posted under §§ 8.01-316 and 8.01-317. Upon a like motion and similar proceeding, the court may order that a separate instrument or order be recorded to reflect that a judgment has been "discharged in bankruptcy " for any judgment that may be shown to have been so discharged.

B. The cost of such proceedings, including reasonable attorney fees, may be ordered to be paid by the plaintiff.

Code 1950, § 8-383; 1977, c. 617; 2014, c. 330.

§ 8.01-456. Satisfaction of judgment when judgment creditor cannot be located

Whenever a judgment debtor or anyone for him or any party liable on the judgment wishes to pay off and discharge a judgment, of record in any clerk's office in this Commonwealth, when the judgment creditor cannot be located, he may do so by paying into the court having jurisdiction over such judgment an amount sufficient to pay the principal, interest, and all costs due thereupon, together with the cost of entering necessary orders, and other service attendant upon the proceeding herein provided for, and satisfaction upon such judgment. Upon such payment, the court, by an order entered of record shall direct the clerk to deposit the same at interest in any bank which is a member of the Federal Deposit Insurance Corporation and is designated in such order; to file evidence of such deposit in the office of the clerk in an appropriate file and shall be payable to the court entering the order for the benefit of the judgment creditor; and to enter upon the judgment docket, where the judgment is docketed, the date of such deposit, the date of the entry of the order of the court receiving same, referring to the number and page of the order book in which it is entered.

The judgment creditor or his attorney may have the money, so paid, to which he is entitled, upon application to the court therefor whenever it may appear to the court that it should be paid to him.

From and after the time of such payment, into the court, as aforesaid, the property of the defendant shall be free and clear of any lien created by any such judgment, or any execution issued thereupon.

Code 1950, § 8-384; 1977, c. 617.

§ 8.01-457. Marking satisfied judgments for Commonwealth; payment by third parties releasing recognizances

It shall be the duty of the clerks of the circuit courts of this Commonwealth, upon the payment of any judgment in favor of the Commonwealth by any person or upon the release of any recognizance by court order, to mark the same satisfied upon the judgment lien docket at every place such judgment or recognizance, as the case may be, shall have been recorded upon such lien docket. In marking such recognizance satisfied it shall be the duty of such clerk to refer by marginal reference to the court order, if any, releasing or discharging such recognizance.

Code 1950, § 8-385; 1977, c. 617; 1986, c. 132.

Article 7 - LIEN AND ENFORCEMENT THEREOF

§ 8.01-458. From what time judgment to be a lien on real estate; docketing revived judgment

Every judgment for money rendered in this Commonwealth by any state or federal court or by confession of judgment, as provided by law, shall be a lien on all the real estate of or to which the defendant in the judgment is or becomes possessed or entitled, from the time such judgment is recorded on the judgment lien docket of the clerk's office of the county or city where such land is situated; provided, however, when a judgment is revived under the provisions of § 8.01-251, that such revived judgment shall not be a lien as prescribed in this section unless and until such judgment is again docketed as provided herein. In such event the lien shall be effective from the date of the original docketing. Any judgment or decree properly docketed under the provisions of this section shall, if the real estate subject to the lien of such judgment has been annexed to or merged with an adjoining city subsequent to such docketing, be deemed to have been docketed in the proper clerk's office of such city.

Code 1950, § 8-386; 1954, c. 333; 1960, c. 466; 1964, c. 309; 1977, c. 617.

§ 8.01-459. Priority of judgments

Judgments against the same person shall, as among themselves, attach to his real estate, and be payable thereout in the order of the priority of the lien of such judgments, respectively.

Code 1950, § 8-387; 1977, c. 617.

§ 8.01-460. Decree for support and maintenance of spouse or infant children of parties as lien on real estate

A decree, order or judgment for support and maintenance of a spouse or of infant children of the parties payable in future installments or a monetary award for future installments as provided for in § 20-107.3, shall be a lien upon such real estate of the obligor as the court shall, from time to time, designate by order or decree. An order after reasonable notice to the obligor adjudicating that the obligor is delinquent, shall be a lien on the obligor's real estate. Liens under this section shall arise when duly docketed in the manner prescribed for the docketing of other judgments for money; however, no such decree, order or judgment for support and maintenance or for a monetary award in accordance with § 20-107.3 shall be docketed unless so ordered by the court in such decree, order or judgment. On petition by any interested person and after reasonable notice to the obligee, the court in which the obligor was adjudicated delinquent may order the release or other modification of such lien.

The lien may also be released upon agreement of all persons for whom support and maintenance is ordered under the decree, order or judgment, provided all such persons are sui juris. The clerk shall note the release on the record upon receipt of an affidavit from all the obligees stating that (i) all the obligees are sui juris and (ii) they agreed to the release of the lien on specified real property. Any lien created pursuant to this section shall expire upon the support obligation being paid in full by the obligor. The clerk may release such liens upon receipt of an affidavit of all the obligees that such support obligation has been paid in full, or upon an order or decree of a court of competent jurisdiction.

Code 1950, § 8-388; 1977, c. 617; 1979, c. 496; 1985, c. 529; 1989, c. 8 .

§ 8.01-461. Abstracts of judgments

An abstract of any judgment shall, upon request to the clerk of the court wherein the judgment is rendered, be granted to any person interested immediately upon its rendition, subject to the future action of the court rendering the same.

Code 1950, § 8-389; 1977, c. 617; 1982, c. 105.

§ 8.01-462. Jurisdiction of equity to enforce lien of judgment; when it may decree sale

Jurisdiction to enforce the lien of a judgment shall be in equity. If it appear to the court that the rents and profits of all real estate subject to the lien will not satisfy the judgment in five years, the court may decree such real estate, or any part thereof, to be sold, and the proceeds applied to the discharge of the judgment.

Code 1950, § 8-391; 1977, c. 617.

§ 8.01-463. Enforcement of lien when judgment does not exceed twenty dollars

If the amount of the judgment does not exceed twenty dollars, exclusive of interest and costs, no bill to enforce the lien thereof shall be entertained, unless it appear that thirty days before the institution of the suit, the judgment debtor or his personal representative, and the owner of the real estate on which the judgment is a lien, or, in case of a nonresident, his agent or attorney, if

he had one in this Commonwealth, had notice that the suit would be instituted, if the judgment was not paid within that time.

Code 1950, § 8-392; 1977, c. 617.

§ 8.01-464. Order of liability between alienees of different parts of estate

When the real estate liable to the lien of a judgment is more than sufficient to satisfy the same, and it, or any part of it, has been aliened, as among the alienees for value, that which was aliened last, shall, in equity, be first liable, and so on with other successive alienations, until the whole judgment is satisfied. And as among alienees who are volunteers under such judgment debtor, the same rule as to the order of liability shall prevail; but as among alienees for value and volunteers, the lands aliened to the latter shall be subjected before the lands aliened to the former are resorted to; and, in either case, any part of such real estate retained by the debtor shall be first liable to the satisfaction of the judgment. An alienee for value, however, from a volunteer shall occupy the same position that he would have occupied had he purchased from the debtor at the time he purchased from the voluntary donee.

Code 1950, § 8-395; 1977, c. 617.

§ 8.01-465. Chapter embraces recognizances and bonds having force of judgment

The foregoing sections of this chapter, so far as they relate to the docketing of judgments, the entering of satisfaction thereof, and the liens of judgments and enforcement of such liens, shall be construed as embracing recognizances, and bonds having the force of a judgment.

Code 1950, § 8-398; 1977, c. 617.

Chapter 17.1 - UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

§ 8.01-465.1. Application of chapter

As used in this chapter "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

1988, c. 539.

§ 8.01-465.2. Filing and status of foreign judgments

A copy of any foreign judgment authenticated in accordance with the act of Congress or the statutes of this Commonwealth may be filed in the office of the clerk of any circuit court of any city or county of this Commonwealth upon payment of the fee prescribed in subdivision A 17 of § 17.1-275. The clerk shall treat the foreign judgment in the same manner as a judgment of the circuit court of any city or county of this Commonwealth. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a circuit court of any city or county of this Commonwealth and may be enforced or satisfied in like manner.

1988, c. 539; 1990, c. 738 .

§ 8.01-465.3. Notice of filing

At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor.

Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in the Commonwealth. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

1988, c. 539.

§ 8.01-465.4. Stay of enforcement

If the judgment debtor shows the circuit court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

If the judgment debtor shows the circuit court any ground upon which enforcement of a judgment of any court of this Commonwealth would be stayed, including the ground that an appeal from the foreign judgment is pending or will be taken, or that the time for taking such an appeal has not expired, the court shall stay enforcement of the foreign judgment for an appropriate period until all available appeals are concluded or the time for taking all appeals has expired, upon requiring the same security for satisfaction of the judgment which is required in this Commonwealth, subject to the provisions of subsections J and K of § 8.01-676.1.

1988, c. 539; 2000, c. 100.

§ 8.01-465.5. Optional procedure

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this chapter remains unimpaired.

1988, c. 539.

Chapter 17.2 - UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

§§ 8.01-465.6 through 8.01-465.13. Repealed

Repealed by Acts 2014, c. 462, cl. 2.

§ 8.01-465.13:1. Definitions

As used in this chapter:

"Foreign country" means a government other than any of the following: the United States; a state, district, commonwealth, territory, or insular possession of the United States; or a government with regard to which the decision in the Commonwealth as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

"Foreign-country judgment" means a judgment of a court of a foreign country.

2014, c. 462.

§ 8.01-465.13:2. Applicability

A. Except as otherwise provided in subsection B, this chapter applies to a foreign-country judgment to the extent that the judgment:

1. Grants or denies recovery of a sum of money; and

2. Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

B. This chapter does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

1. A judgment for taxes;

2. A fine or other penalty; or

3. A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

C. A party seeking recognition of a foreign-country judgment has the burden of establishing that this chapter applies to the foreign-country judgment.

2014, c. 462.

§ 8.01-465.13:3. Standards for recognition of foreign-country judgment

A. Except as otherwise provided in subsections B and C, a court of the Commonwealth shall recognize a foreign-country judgment to which this chapter applies.

B. A court of the Commonwealth shall not recognize a foreign-country judgment if:

1. The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

2. The foreign court did not have personal jurisdiction over the defendant; or

3. The foreign court did not have jurisdiction over the subject matter.

C. A court of the Commonwealth need not recognize a foreign-country judgment if:

1. The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

2. The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

3. The judgment or the cause of action on which the judgment is based is repugnant to the public policy of the Commonwealth or of the United States;

4. The judgment conflicts with another final and conclusive judgment;

5. The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

6. In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

7. The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

8. The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

D. A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection B or C exists.

2014, c. 462.

§ 8.01-465.13:4. Personal jurisdiction

A. A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

1. The defendant was served with process personally in the foreign country;

2. The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

3. The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

4. The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

5. The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

6. The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

B. The list of bases for personal jurisdiction in subsection A is not exclusive. The courts of the Commonwealth may recognize bases of personal jurisdiction other than those listed in subsection A as sufficient to support a foreign-country judgment.

2014, c. 462.

§ 8.01-465.13:5. Procedure for recognition of foreign-country judgment

A. If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

B. If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

2014, c. 462.

§ 8.01-465.13:6. Effect of recognition of foreign-country judgment

If the court in a proceeding under § 8.01-465.13:5 finds that the foreign-country judgment is entitled to recognition under this chapter then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

1. Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in the Commonwealth would be conclusive; and

2. Enforceable in the same manner and to the same extent as a judgment rendered in the Commonwealth.

2014, c. 462.

§ 8.01-465.13:7. Stay of proceedings pending appeal of foreign-country judgment

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

2014, c. 462.

§ 8.01-465.13:8. Statute of limitations

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country.

2014, c. 462.

§ 8.01-465.13:9. Uniformity of interpretation

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

2014, c. 462.

§ 8.01-465.13:10. Saving clause

This chapter does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this chapter.

2014, c. 462.

§ 8.01-465.13:11. Effective date

This chapter applies to all actions commenced on or after July 1, 2014, in which the issue of recognition of a foreign-country judgment is raised.

2014, c. 462.

Chapter 17.3 - UNIFORM FOREIGN-MONEY CLAIMS ACT

§ 8.01-465.14. Definitions

As used in this chapter:

"Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

"Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

"Conversion date" means the banking day next preceding the date on which money, in accordance with this chapter, is (i) paid to a claimant in an action or distribution proceeding; (ii) paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or (iii) used to recoup, set off, or counterclaim in different moneys in an action or distribution proceeding.

"Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims are asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

"Foreign money" means money other than money of the United States of America.

"Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in or measured by a foreign money.

"Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

"Money of the claim" means the money determined as proper pursuant to § 8.01-465.17.

"Person" means an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

"Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of

transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

"Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding two days.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

1991, c. 24 .

§ 8.01-465.15. Scope

This chapter applies only to a foreign-money claim in an action or distribution proceeding and applies to foreign-money issues even if other law under the conflict-of-laws rules of the Commonwealth applies to other issues in the action or distribution proceeding.

1991, c. 24 .

§ 8.01-465.16. Variation by agreement

The effect of this chapter may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

1991, c. 24 .

§ 8.01-465.17. Determining money of the claim

The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment. If the parties to a transaction have not otherwise agreed, the proper money of the claim is the money (i) regularly used between the parties as a matter of usage or course of dealing; (ii) used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or (iii) in which the loss was ultimately felt or will be incurred by the party claimant.

1991, c. 24 .

§ 8.01-465.18. Determining amount of the money of certain contract claims

A. If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

B. If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding thirty days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

C. A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a special amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

1991, c. 24 .

§ 8.01-465.19. Asserting and defending foreign-money claim

A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

An opposing party may allege and shall prove that all or part of a claim is in a different money than that asserted by the claimant. A person may assert a defense, setoff, recoupment, or counterclaim in any money without regard to the money of other claims.

The determination of the proper money of the claim is a question of law.

1991, c. 24 .

§ 8.01-465.20. Judgments and awards on foreign-money claims; times of money conversion; form of judgment

A. A judgment or award on a foreign-money claim must be stated in an amount of the money of the claim. However, assessed costs must be entered in United States dollars. A judgment in substantially the following form complies with this subsection: [IT IS ADJUDGED AND ORDERED, that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate -- see § 8.01-465.22) percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.]

B. A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at

a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

C. A judgment or award made in an action or distribution proceeding on both a defense, setoff, recoupment, or counterclaim and the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and shall specify the rates of exchange used.

D. If a contract claim is of the type covered by § 8.01-465.18 A or B, the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

E. A judgment shall be docketed and indexed in foreign money in the same manner, and has the same effect as a lien, as other judgments. It may be discharged by payment.

1991, c. 24 .

§ 8.01-465.21. Conversions of foreign money in distribution proceeding

The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

1991, c. 24 .

§ 8.01-465.22. Prejudgment and judgment interest

With respect to a foreign-money claim, recovery of prejudgment or preaward interest and the rate of interest to be applied in the action or distribution proceeding are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of the Commonwealth.

However, the court or arbitrator shall increase or decrease the amount of prejudgment or preaward interest otherwise payable in a judgment or award in foreign money to the extent required by the law of the Commonwealth.

A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of the Commonwealth.

1991, c. 24 .

§ 8.01-465.23. Enforcement of foreign judgments

If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is enforceable in the Commonwealth, the enforcing judgment must be entered as provided in § 8.01-465.20, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

A foreign judgment may be filed in accordance with Chapter 17.1 (§ 8.01-465.1 et seq.) or Chapter 17.2 (§ 8.01-465.13:1 et seq.).

A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in the Commonwealth.

A judgment entered on a foreign-money claim only in United States dollars in another state shall be enforced in United States dollars only.

1991, c. 24; 2014, c. 462.

§ 8.01-465.24. Determining United States dollar value of foreign-money claims for limited purposes

For the limited purpose of facilitating the enforcement of provisional remedies in an action, (i) the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, (ii) the amount of United States dollars at issue for assessing costs, or (iii) the amount of United States dollars involved for a surety bond or other court-required undertaking shall be ascertained by a party seeking the process, costs, bond or other undertaking as follows:

1. The amount of the foreign money claimed shall be computed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of (i) a request or application for the issuance of process or for the determination of costs, or (ii) an application for a bond or other court-required undertaking.

2. An affidavit or certificate executed in good faith by the party's counsel or a bank officer shall be filed with each request or application, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

1991, c. 24 .

§ 8.01-465.25. Effect of substitution of currency by issuing authority

If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money. If such substitution occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

1991, c. 24 .

Chapter 18 - EXECUTIONS AND OTHER MEANS OF RECOVERY

Article 1 - ISSUE AND FORM; MOTION TO QUASH

§ 8.01-466. Clerk to issue fieri facias on judgment for money

On a judgment for money, it shall be the duty of the clerk of the court in which such judgment was rendered, upon request of the judgment creditor, his assignee or his attorney, to issue a writ of fieri facias at the expiration of twenty-one days from the date of the entry of the judgment and place the same in the hands of a proper person to be executed and take his receipt therefor. The writ shall be issued together with the form for requesting a hearing on a claim of exemption from levy as provided in § 8.01-546.1. For good cause the court may order an execution to issue on judgments and decrees at an earlier period.

Code 1950, § 8-399; 1954, c. 620; 1976, c. 354; 1977, c. 617; 1986, c. 341; 1996, cc. 501, 608.

§ 8.01-467. What writs may not issue

No writ of levari facias, writ of extendi facias, writ of elegit, writ of capias ad satisfaciendum, or writ of distringas shall be issued hereafter.

Code 1950, § 8-400; 1977, c. 617; 1984, c. 94.

§ 8.01-468. Executions against corporations

Such executions as may issue against a natural person may issue against a corporation.

Code 1950, § 8-401; 1977, c. 617.

§ 8.01-469. Executions on joint judgments

When a judgment is against several persons jointly, executions thereon may be joint against all of them.

Code 1950, § 8-401; 1977, c. 617.

§ 8.01-470. Writs on judgments for specific property

On a judgment for the recovery of specific property, real or personal, a writ of possession may issue for the specific property, which shall conform to the judgment as to the description of the property and the estate, title and interest recovered, and there may also be issued a writ of fieri facias for the damages or profits and costs. In cases of unlawful entry and detainer and of ejectment, the officer to whom a writ of possession has been delivered to be executed shall, at least 72 hours before execution, serve notice of intent to execute, including the date and time of execution, as well as the rights afforded to tenants in §§ 55-237.1 and 55-248.38:2, together with a copy of the writ attached, on the defendant in person or, if the party to be served is not found at the specific property for which a writ of possession has been issued, then service shall be effected by posting a copy of such process at the front door or at such other door as appears to be the main entrance of such property. The execution of the writ of possession by the sheriff should occur

within 15 calendar days from the date the writ of possession is received by the sheriff, or as soon as practicable thereafter, but in no event later than 30 days from the date the writ of possession is issued. In cases of unlawful entry and detainer and of ejectment, whenever the officer to whom a writ of possession has been delivered to be executed finds the premises locked, he may, after declaring at the door the cause of his coming and demanding to have the door opened, employ reasonable and necessary force to break and enter the door and put the plaintiff in possession. The execution of the writ of possession shall be effective against the tenants named in the writ of possession and their authorized occupants, guests or invitees, and any trespassers in the premises. And an officer having a writ of possession for specific personal property, if he finds locked or fastened the building or place wherein he has reasonable cause to believe the property specified in the writ is located, may in the daytime, after notice to the defendant, his agent or bailee, break and enter such building or place for the purpose of executing such writ.

Code 1950, § 8-402; 1977, c. 617; 1991, c. 503; 2000, c. 640; 2001, c. 222; 2003, c. 259; 2007, c. 128.

§ 8.01-471. Time period for issuing writs of possession in unlawful entry and detainer; when returnable

Writs of possession, in case of unlawful entry and detainer, shall be issued within one year from the date of judgment for possession and shall be made returnable within 30 days from the date of issuing the writ. No writ shall issue, however, in cases under the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.) if, following the entry of judgment, the landlord has accepted rent payments without reservation, as described in § 55-248.34:1. A writ of possession may be requested by the plaintiff or the plaintiff's attorney or agent.

Code 1950, § 8-403; 1977, c. 617; 1999, c. 683; 2003, c. 427; 2006, c. 667; 2013, c. 63.

§ 8.01-472. Writs on judgments for personal property

When the judgment is for personal property, the plaintiff may, at his option, have a fieri facias for the alternative value, instead of a writ of possession, and the damages and costs.

Code 1950, § 8-404; 1977, c. 617.

§ 8.01-473. Judgment for benefit of other person than plaintiff; remedies of such person

When an execution issues on a judgment, for the benefit, in whole or in part, of any person other than the plaintiff, if the fact appears by the record, the clerk shall, in the execution, or by an endorsement thereon, state the extent of the interest therein of such person; and such person, either in his own name or that of the plaintiff, may, as a party injured, prosecute a suit or motion against the officer.

Code 1950, § 8-405; 1977, c. 617.

§ 8.01-474. What writ of fieri facias to command

By a writ of fieri facias, the officer shall be commanded to make the money therein mentioned out of the goods and chattels of the person against whom the judgment is.

Code 1950, § 8-406; 1977, c. 617.

§ 8.01-475. Subsequent executions

Subject to the limitations prescribed by Chapter 17 (§ 8.01-426 et seq.) of this title, a party obtaining an execution may sue out other executions at his own costs, though the return day of a former execution has not arrived; and may sue out other executions at the defendant's costs, when on a former execution there is a return by which it appears that the writ has not been executed, or that it or any part of the amount thereof is not levied, or that property levied on has been discharged by legal process which does not prevent a new execution on the judgment. In no case shall there be more than one satisfaction for the same money or thing.

And the fact that a judgment creditor may have availed himself of the benefit of any other remedies under this chapter, shall not prevent him from issuing, from time to time, without impairing his lien under it, other executions upon his judgment until the same is satisfied.

Code 1950, § 8-407; 1977, c. 617.

§ 8.01-476. New execution after loss of property sold under indemnifying bond

When property sold under an execution, or its value, is recovered from an obligor on an indemnifying bond given before such sale, or from a purchaser having a right of action on such bond, the person having such execution, or his personal representative, may, by motion, after reasonable notice to the person, or the personal representative of the person, against whom the execution was, obtain a new execution against him, without credit for the amount for which the property was sold under the former execution. Such motion shall be made within the period of time prescribed by § 8.01-255.2.

Code 1950, § 8-408; 1977, c. 617.

§ 8.01-477. When executions may be quashed; how proceedings thereon stayed

A motion to quash an execution may, after reasonable notice to the adverse party, be heard and decided by the court which issued the execution. Such court, on the application of the plaintiff in the motion, may make an order staying the proceedings on the execution until the motion be heard and determined, the order not to be effectual until bond be given in such penalty and with such condition, and either with or without surety, as the court may prescribe. The clerk from whose office the execution issued, shall take the bond and make as many copies of the order as may be necessary and endorse thereon that the bond required has been given; and a copy shall be served on the plaintiff in the execution and on the officer in whose hands the execution is placed.

Code 1950, § 8-410; 1977, c. 617.

§ 8.01-477.1. Claims of exemption from execution

The procedures specified in § 8.01-546.2 shall govern further proceedings regarding claims of exemption from levy.

1986, c. 341.

Article 2 - LIEN IN GENERAL

§ 8.01-478. On what property writ of fieri facias levied; when lien commences

The writ of fieri facias may be levied as well on the current money and bank notes, as on the goods and chattels of the judgment debtor, except such as are exempt from levy under Title 34, and shall bind what is capable of being levied on only from the time it is actually levied by the officer to whom it has been delivered to be executed.

Code 1950, § 8-411; 1977, c. 617.

§ 8.01-479. Time for enforcement

Property levied on, on or before the return day, may be advertised and sold within a reasonable time thereafter, and the lien given by this section may also be enforced after the return day of the writ by proceedings under § 8.01-506 and following of this chapter, if such proceedings be commenced before that day.

Code 1950, § 8-412; 1977, c. 617; 1984, c. 557.

§ 8.01-480. Prior security interest on property levied on

Tangible personal property subject to a prior security interest, or in which the execution debtor has only an equitable interest, may nevertheless be levied on for the satisfaction of a fieri facias. If the prior security interest is due and payable, the officer levying the fieri facias may sell the property free of such security interest, and apply the proceeds first to the payment of such security interest, and the residue, so far as necessary, to the satisfaction of the fieri facias. In the event the property is to be sold free of such prior security interest, the judgment creditor shall give written notice by certified mail to each secured party of record as hereafter specified, as his name and address shall appear on record, of the proposed sale, or to any secured party of whom the judgment creditor shall have actual knowledge. Such notice shall be given to each secured party who is of record at the State Corporation Commission, at the Department of Motor Vehicles, at the Department of Game and Inland Fisheries, or in the clerk's office in the city or county in Virginia, where the debtor has resided to the knowledge of the judgment creditor at any time during a one-year period prior to the sale. Certification of such notice shall be delivered to the sheriff or other officer conducting the sale pursuant to execution of the judgment, who shall announce that except as to such person so notified, the sale is subject to any prior security interest of record, other than one of record at a place where the debtor may have resided more than one year previously. If such prior security interest is not due and payable at the time of sale, such officer shall sell the property levied on subject to such security interest.

Code 1950, § 8-413; 1977, c. 617; 1979, c. 491; 1990, c. 553 .

§ 8.01-481. Territorial extent of lien

The lien given by this chapter on personal property by levy shall, as to property capable of being levied on, be restricted to the bailiwick of the officer into whose hands the execution is placed to

be executed, but as to property not capable of being levied on the lien shall extend throughout the limits of the Commonwealth.

Code 1950, § 8-414; 1977, c. 617.

§ 8.01-482. If levy be on coin or currency, how accounted for

If the levy be on coin or currency (including notes) made a legal tender for the payment of debts, the same shall be accounted for at its par value as so much money made under the execution. If it be upon coin or currency (including notes) not a legal tender for the payment of debts, and the creditor will not take them at their nominal value, they shall be sold and accounted for as any other property taken under execution.

Code 1950, § 8-415; 1977, c. 617.

Article 3 - RETURN AND VENDITIONI EXPONAS

§ 8.01-483. Return of officer on fieri facias; statement filed therewith

Upon a writ of fieri facias, the officer shall return whether the money therein mentioned has been or cannot be made. If there is only part thereof which is or cannot be made, he shall return the amount of such part. With every execution under which money is recovered, he shall return a statement of the amount received, including his fees and other charges, and shall pay such amount, except such fees and charges, to the person entitled. In his return upon every execution, the officer shall also state in what manner a copy of the writ was served in accordance with § 8.01-487.1, whether or not he made a levy of the same, the date and time of such levy, the date when he received such payment or obtained such satisfaction upon such execution and, if there is more than one defendant, from which defendant he received the same.

Code 1950, § 8-416; 1977, c. 617; 1986, c. 341.

§ 8.01-484. When writ may be destroyed

A writ of fieri facias returned by the officer to the clerk's office with a notation that the money cannot be made may be destroyed after two years from the date of the return.

Code 1950, § 8-417; 1962, c. 110; 1977, c. 617; 1988, c. 420.

§ 8.01-485. When venditioni exponas may issue; proceedings thereon

When it appears by the return on an execution that property taken to satisfy it remains unsold, a writ of venditioni exponas may issue, whereupon the like proceedings shall be had as might have been had on the first execution; except, that if it issue upon a return of no sale for want of bidders, or of a sufficient bid, the advertisement shall state the fact, and that the sale will be made peremptorily.

Code 1950, § 8-418; 1977, c. 617.

§ 8.01-486. Procedure when officer taking property under execution dies before sale

If an officer taking property under execution die before the sale thereof, and there be no deputies of such officer acting in the case, upon a suggestion of the fact a writ of venditioni exponas may be directed to the sheriff or other officer of the county or city wherein the property was taken. Whereupon the officer to whom the writ is directed shall take possession of the property previously levied upon, whether the same be in possession of the representatives of the deceased officer or the execution debtor, and proceed to advertise and sell it and account for the proceeds thereof in like manner as if the levy had been made by himself.

Code 1950, § 8-419; 1977, c. 617.

Article 4 - ENFORCEMENT GENERALLY

§ 8.01-487. Officer to endorse on fieri facias time of receiving it

Every officer shall endorse on each writ of fieri facias the date and time he receives the same and also when he levies upon tangible personal property of the debtor.

Code 1950, § 8-420; 1977, c. 617; 2009, c. 443.

§ 8.01-487.1. Officer to leave copy of writ where levy made

An officer into whose hands a writ of fieri facias is placed to be levied, when making a levy shall serve a copy of the writ and any attachments thereto on the judgment debtor or other responsible person at the premises where the levy is made. If no such person is present, a copy of the writ and any attachments thereto shall be posted on the front door of such premises.

1986, c. 341.

§ 8.01-488. When several writs of fieri facias, how satisfied

Of writs of fieri facias, that which was first delivered to the officer, though two or more be delivered on the same day, shall be first levied and satisfied, and when several such executions are delivered to the officer at the same time they shall be satisfied ratably. But if an indemnifying bond be required by the officer as a prerequisite to a sale, and the same to be given by some of the creditors and not by others, and the officer sells under the protection of such bond, the proceeds of the sale shall be paid to the creditors giving the bond in the order in which their liens attached.

Code 1950, § 8-421; 1977, c. 617.

§ 8.01-489. Growing crops, not severed, not liable to distress or levy

No growing crop of any kind, not severed, shall be liable to distress or levy.

Code 1950, § 8-421.1; 1977, c. 617.

§ 8.01-490. No unreasonable distress or levy; sustenance provided for livestock; removal of property

Officers shall in no case make an unreasonable distress or levy. For horses, or any livestock distrained or levied on, the officer shall provide sufficient sustenance while they remain in his pos-

session. Nothing distrained or levied on shall be removed by him out of his county or city, unless when it is otherwise specially provided.

Code 1950, § 8-421.2; 1977, c. 617.

§ 8.01-491. Officer may break open dwelling house and levy on property in personal possession of debtor

An officer into whose hands an execution is placed to be levied, may, if need be, break open the outer doors of a dwelling house in the daytime, after having first demanded admittance of the occupant, in order to make a levy, and may also levy on property in the personal possession of the debtor if the same be open to observation.

Code 1950, § 8-422; 1977, c. 617.

§ 8.01-492. Sale of property

In any case of goods and chattels which an officer shall distrain or levy on, otherwise than under an attachment, or which he may be directed to sell by an order of a court, unless such order prescribe a different course, the officer shall fix upon a time and place for the sale thereof and post notice of the same at least ten days before the day of sale at some place near the residence of the owner if he reside in the county or city and at two or more public places in the officer's county or city. If the goods and chattels be expensive to keep or perishable, the court from whose clerk's office the writ of fieri facias or the distress warrant was issued under which the seizure is made, or if the distress warrant was issued by a clerk, the court of which he is a clerk, may order a sale of the property seized under fieri facias or distress warrant to be made upon such notice less than ten days as to such court may seem proper. At the time and place so appointed, such officer shall sell to the highest bidder, for cash, such goods and chattels, or so much thereof as may be necessary.

Code 1950, § 8-422.1; 1962, c. 10; 1977, c. 617.

§ 8.01-493. Adjournment of sale

When there is not time, on the day appointed for any such sale, to complete the same, the sale may be adjourned from day to day until completed.

Code 1950, § 8-422.2; 1977, c. 617.

§ 8.01-494. Resale of property if purchaser fails to comply; remedy against such purchaser

If, at any sale by an officer, the purchaser does not comply with the terms of sale, the officer may sell the property, either forthwith or under a new advertisement, or return that the property was not sold for want of bidders. If, on a resale, the property be sold for less than it sold for before, the first purchaser shall be liable for the difference to the creditor, so far as is required to satisfy him, and to the debtor for the balance. This section shall not prevent the creditor from proceeding as he might have done if it had not been enacted.

Code 1950, § 8-423; 1977, c. 617.

§ 8.01-495. When money received by officer under execution to be repaid to debtor

When an officer has received money under execution, if any surplus remain in his hands after satisfying the execution, such surplus shall be repaid to the debtor; and if the debtor, or his personal representative, obtain an injunction or supersedeas to an execution, in whole or in part, before money received under it, or any part of it, is paid over to the creditor, the officer shall repay such debtor the money so received and not so paid over, or so much thereof as the injunction or supersedeas may extend to, unless such process otherwise direct.

Code 1950, § 8-424; 1977, c. 617.

§ 8.01-496. Officer not required to go out of his jurisdiction to pay over money

No officer receiving money under execution, when the person to whom it is payable resides in a different county or city from that in which the officer resides, shall be liable to have any judgment rendered against him or his sureties for the nonpayment thereof, until a demand of payment be made of such officer in his county or city, by such creditor or his attorney-at-law, or some person having a written order from the creditor.

Code 1950, § 8-425; 1977, c. 617.

§ 8.01-497. Suit by officer to recover estate on which fieri facias is lien

For the recovery of any estate on which a writ of fieri facias is a lien under this chapter, or on which the judgment on which such writ issues is a lien under Chapter 17 (§ 8.01-426 et seq.) of this title, or for the enforcement of any liability in respect to any such estate, a suit may be maintained, at law or in equity, as the case may require, in the name of the officer to whom such writ was delivered, or in the name of any other officer who may be designated for the purpose by an order of the court in which the judgment is entered. No officer shall be bound to bring such suit unless bond, with sufficient surety, be given him to indemnify him against all expenses and costs which he may incur or become liable for by reason thereof. But any person interested may bring such suit at his own costs in the officer's name.

Code 1950, § 8-426; 1977, c. 617.

§ 8.01-498. Selling officers and employees not to bid or to purchase

No officer of any city, town, county or constitutional officer or employee of any such city, town, county or constitutional office shall, directly or indirectly, bid on or purchase effects sold under a writ by such officer. Anyone violating this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 8-427; 1975, c. 84; 1977, c. 617; 1988, c. 674.

§ 8.01-499. Officer receiving money to make return thereof and pay net proceeds; commission, etc

An officer receiving money under this chapter shall make return thereof forthwith to the court or the clerk's office of the court in which the judgment is entered. For failing to do so, the officer shall be liable as if he had acted under an order of such court. After deducting from such money a commission of 10 percent and his necessary expenses and costs, including reasonable fees to

sheriff's counsel, he shall pay the net proceeds, and he and his sureties and their representatives shall be liable therefor, in like manner as if the same had been made under a writ of fieri facias on the judgment.

Code 1950, § 8-429; 1977, c. 617; 2004, cc. 198, 211.

§ 8.01-500. Officer receiving money to notify person entitled to receive it

Every officer collecting or receiving money to be applied on any execution or other legal process, or on any claim, whether judgment has been rendered thereon or not, shall notify in writing by mail or otherwise, within thirty days after such money is received, the person entitled to receive such money, if known. Any officer failing without good cause to comply with this section within the time prescribed shall be fined not less than twenty dollars nor more than fifty dollars for each offense.

Code 1950, § 8-430; 1977, c. 617.

Article 5 - LIEN ON PROPERTY NOT CAPABLE OF BEING LEVIED ON

§ 8.01-501. Lien of fieri facias on estate of debtor not capable of being levied on

Every writ of fieri facias shall, in addition to the lien it has under §§ 8.01-478 and 8.01-479 on what is capable of being levied on under those sections, be a lien from the time it is delivered to a sheriff or other officer, or any person authorized to serve process pursuant to § 8.01-293, to be executed, on all the personal estate of or to which the judgment debtor is, or may afterwards and on or before the return day of such writ or before the return day of any wage garnishment to enforce the same, become, possessed or entitled, in which, from its nature is not capable of being levied on under such sections, except such as is exempt under the provisions of Title 34, and except that, as against an assignee of any such estate for valuable consideration, the lien by virtue of this section shall not affect him unless he had notice thereof at the time of the assignment.

Code 1950, § 8-431; 1977, c. 617; 1996, c. 1002; 2006, c. 575.

§ 8.01-502. Person paying debtor not affected by lien unless notice given

As against a person making a payment to the judgment debtor, the lien referred to in § 8.01-501 shall not affect him, unless and until he be given written notice thereof setting forth (i) the name of the person against whom obtained, (ii) by whom obtained, (iii) the amount and costs of the judgment, (iv) the date recovered, (v) the date of the issuance or renewal of execution thereon, (vi) the return day of execution, and (vii) the date of placing of the execution in the hands of the officer or other person authorized to serve process pursuant to § 8.01-293, and unless such notice shall be personally signed by the plaintiff or his attorney and shall have been duly served upon the person making payment and the judgment debtor by an officer authorized to serve civil process.

Code 1950, § 8-432; 1954, c. 615; 1977, c. 617; 1996, c. 1002.

§ 8.01-502.1. Serving notice of lien on financial institution

A. No judgment creditor or attorney for a judgment creditor shall have a notice of lien served on a financial institution under § 8.01-502 unless such judgment creditor or attorney has a reasonable basis for believing that the judgment debtor is entitled to a payment from such institution. The fact that a financial institution is doing business in a geographic area where the judgment debtor resides, works or has a place of business is not, by itself, a reasonable basis for believing that the judgment debtor is entitled to a payment from a financial institution. Any person violating this section shall be liable to a financial institution for the sum of $100 for each notice of lien wrongfully served on such institution. In any action at law to recover an amount due hereunder, the judgment creditor or attorney for the judgment creditor causing the notice of lien to be served on the financial institution shall have the burden of showing a reasonable basis for believing that the judgment debtor was entitled to a payment from such institution.

B. Any judgment creditor serving a notice of lien on a financial institution shall, within five business days of such service, mail to the judgment debtor at his last known address a copy of the notice of lien along with a notice of exemptions and claim for exemption form in accordance with § 8.01-512.4. The judgment creditor or attorney for the judgment creditor shall file a certification with the court affirming that he has mailed the judgment debtor these notices. In the event that the judgment creditor fails to comply with the requirements of this subsection, he shall be liable to the judgment debtor for no more than $100 in damages, unless he proves by a preponderance of the evidence that the failure was not willful.

C. A financial institution served with a valid notice of lien shall provide a written response to the judgment creditor or attorney for the judgment creditor within twenty-one days after being served with such notice of lien indicating the amount of money held by the financial institution pursuant to the notice of lien.

1997, c. 750; 1999, c. 48; 2010, c. 673.

§ 8.01-503. Withholding of wages or salary not required by preceding sections unless garnishment process served

Nothing contained in §§ 8.01-501 and 8.01-502 shall have the effect of requiring any employer paying wages or salary to an employee to withhold any part of such wages or salary unless and until such employer is duly served with process in garnishment.

Code 1950, § 8-432.1; 1954, c. 379; 1977, c. 617.

§ 8.01-504. Penalty for service of notice of lien when no judgment exists

Whoever causes to be served a notice of lien of a writ of fieri facias without there being a judgment against the defendant named therein, shall pay to him the sum of $350, and whoever serves a notice of lien of a writ of fieri facias before the issuance of a writ of fieri facias, or after the return day thereof, or serves or in any way gives a notice of a lien of fieri facias by means other than by service by an officer authorized to serve civil process, shall pay to the named defendant

the sum of $350, to be recoverable as damages in an action at law, in addition to whatever damages may be alleged and proven.

Code 1950, § 8-433; 1977, c. 617; 2010, c. 343.

§ 8.01-505. When lien acquired on intangibles under § 8.01-501 ceases

The lien acquired under § 8.01-501 on intangibles shall cease whenever the right of the judgment creditor to enforce the judgment by execution or by action, or to extend the right by motion, ceases or is suspended by a forthcoming bond being given and forfeited or by other legal process. Furthermore, as to all such intangibles the lien shall cease upon the expiration of the following periods whichever is the longer: (i) one year from the return day of the execution pursuant to which the lien arose, or (ii) if the intangible is a debt due from, or a claim upon, a third person in favor of the judgment debtor or the estate of such third person, one year from the final determination of the amount owed to the judgment debtor.

Code 1950, § 8-434; 1977, c. 617.

Article 6 - INTERROGATORIES

§ 8.01-506. Proceedings by interrogatories to ascertain estate of debtor; summons; proviso; objections by judgment debtor

A. To ascertain the personal estate of a judgment debtor, and to ascertain any real estate, in or out of this Commonwealth, to which the debtor named in a judgment and fieri facias is entitled, upon the application of the execution creditor, the clerk of the court from which such fieri facias issued shall issue a summons against (i) the execution debtor, (ii) any officer of the corporation if such execution debtor is a corporation having an office in this Commonwealth, (iii) any employee of a corporation if such execution debtor is a corporation having an office but no officers in the Commonwealth provided that a copy of the summons shall also be served upon the registered agent of the corporation, or (iv) any debtor to, or bailee of, the execution debtor.

B. The summons shall require him to appear before the court from which the fieri facias issued or a commissioner of the county or city in which such court is located, or a like court or a commissioner of a county or city contiguous thereto, or upon request of the execution creditor, before a like court or a commissioner of the county or city in which the execution debtor resides, or of a county or city contiguous thereto, to answer such interrogatories as may be propounded to him by the execution creditor or his attorney, or the court, or the commissioner, as the case may be. If the execution creditor requests that the summons require the execution debtor to appear before a like court of the county or city in which the execution debtor resides, or of a county or city contiguous thereto, the case may be filed or docketed in accordance with the requirements of § 8.01-506.2 prior to issuance of the summons.

C. Provided, however, that as a condition precedent to proceeding under this section, the execution creditor has furnished to the court a certificate setting forth that he has not proceeded against the execution debtor under this section within the six months last preceding the date of

such certificate. Except that for good cause shown, the court may, on motion of the execution creditor, issue an order allowing further proceedings before a commissioner by interrogatories during the six-month period. Any judgment creditor who knowingly gives false information upon any such certificate made under this article shall be guilty of a Class 1 misdemeanor. The issuance of a summons that is not served shall not constitute the act of proceeding against an execution debtor for purposes of making the certificate required by this subsection.

D. The debtor or other person served with such summons shall appear at the time and place mentioned and make answer to such interrogatories. The commissioner shall, at the request of either of the parties, enter in his proceedings and report to the court mentioned in § 8.01-507.1, any and all objections taken by such debtor against answering such interrogatories, or any or either of them, and if the court afterwards sustains any one or more of such objections, the answers given to such interrogatories as to which objections are sustained shall be held for naught in that or any other case.

E. Notwithstanding the foregoing provisions of this section, the court from which a writ of fieri facias issued, upon motion by the execution debtor and for good cause shown, shall transfer debtor interrogatory proceedings to a forum more convenient to the execution debtor.

Code 1950, § 8-435; 1952, c. 699; 1968, c. 599; 1977, c. 617; 1978, c. 66; 1979, c. 225; 1985, c. 433; 1987, c. 182; 1991, c. 463; 2005, c. 726; 2009, c. 622.

§ 8.01-506.1. Production of book accounts or other writing compelled

In any proceeding under the provisions of § 8.01-506, a subpoena duces tecum may be issued for a book of accounts or other writing containing material evidence pursuant to Rule 4:9A of the Rules of the Supreme Court. However, notwithstanding the provisions of Rule 4:9A, a subpoena duces tecum issued pursuant to this section may (i) be directed to a party to the case and (ii) be issued by a commissioner and may direct that evidence and any custodians subpoenaed be produced before the commissioner. If the subpoena duces tecum is against a party who is not a resident of the Commonwealth, but who has appeared in the case or been served with process in this Commonwealth, the service may be on his attorney of record.

The provisions of Rule 4:1(c) of the Supreme Court as to protective orders shall be applicable to proceedings under this section.

1978, c. 339; 1986, c. 249; 1993, c. 267 .

§ 8.01-506.2. Proceedings in court of county or city where execution debtor resides

When pursuant to subsection B of § 8.01-506, a summons requires the execution debtor to appear before a court of the county or city in which the execution debtor resides, or of a county or city contiguous thereto, the execution creditor may have the case filed or docketed in that court as follows:

1. The execution creditor shall file with that court an abstract of the judgment rendered.

2. The execution creditor shall pay a fee to that court in accordance with the provisions of § 16.1-69.48:2 or subdivision 17 of § 17.1-275.

3. After docketing or filing the abstract of judgment and payment of any fees, the court shall issue the summons and any subsequent executions on the filed or docketed judgment, including a subpoena duces tecum pursuant to § 8.01-506.1, and shall conduct such hearings and enter such orders pursuant to §§ 8.01-507, 8.01-507.1, 8.01-508, 8.01-509, and 8.01-510 as may be required.

4. The execution creditor shall file in both courts any releases or satisfactions of judgment.

2005, c. 726.

§ 8.01-507. Conveyance or delivery of property disclosed by interrogatories

Any real estate out of this Commonwealth to which it may appear by such answer that the debtor is entitled shall, upon order of the court or commissioner, be forthwith conveyed by him to the officer to whom was delivered such fieri facias, and any money, bank notes, securities, evidences of debt, or other personal estate, tangible or intangible, which it may appear by such answers are in possession of or under the control of the debtor or his debtor or bailee, shall be delivered by him or them, as far as practicable, to such officer, or to some other, or in such manner as may be ordered by the commissioner or court.

Code 1950, § 8-436; 1977, c. 617.

§ 8.01-507.1. Interrogatories, answers, etc., to be returned to court

The commissioner shall, at the request of either of the parties, return the interrogatories and answers filed with him, and a report of the proceedings under §§ 8.01-506 and 8.01-507, to the court in which the judgment is rendered.

Code 1950, § 8-437; 1954, c. 624; 1977, c. 617.

§ 8.01-508. How debtor may be arrested and held to answer

If any person summoned under § 8.01-506 fails to appear and answer, or makes any answers which are deemed by the commissioner or court to be evasive, or if, having answered, fails to make such conveyance and delivery as is required by § 8.01-507, the commissioner or court shall issue (i) a capias directed to any sheriff requiring such sheriff to take the person in default and deliver him to the commissioner or court so that he may be compelled to make proper answers, or such conveyance or delivery, as the case may be or (ii) a rule to show cause why the person summoned should not appear and make proper answer or make conveyance and delivery. If the person in default fails to answer or convey and deliver he may be incarcerated until he makes such answers or conveyance and delivery. Where a capias is issued, the person in default shall be admitted to bail as provided in Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2 if he cannot be brought promptly before the commissioner or court in the county or city to which the capias is returnable. Upon making such answers, or such conveyance and delivery, he shall be discharged by the commissioner or the court. He may also be discharged by the court from whose clerk's office the capias issued in any case where the court is of the opinion that he was improperly committed

or is improperly or unlawfully detained in custody. If the person in default appeals the decision of the commissioner or court, he shall be admitted to bail as provided in Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2.

If the person held for failure to appear and answer interrogatories is detained in a jurisdiction other than that where the summons is issued, the sheriff in the requesting jurisdiction shall have the duty to transport such person to the place where interrogatories are to be taken.

Code 1950, § 8-438; 1977, c. 617; 1983, c. 278; 1985, c. 290; 1986, c. 326; 1999, cc. 829, 846.

§ 8.01-509. Order for sale and application of debtor's estate

The court to which the commissioner returns his report may make any order it may deem right, as to the sale and proper application of the estate conveyed and delivered under §§ 8.01-506 and 8.01-507.

Code 1950, § 8-439; 1977, c. 617.

§ 8.01-510. Sale, collection and disposition of debtor's estate by officer

Real estate, conveyed to an officer under this chapter, shall, unless the court otherwise direct, be sold as other property levied on is required to be sold under § 8.01-492 and be conveyed to the purchaser by the officer. An officer to whom there is delivery under this chapter, when the delivery is of money, bank notes, or any goods or chattels, shall dispose of the same as if levied on by him under a fieri facias; and when the delivery is of evidences of debts, other than such bank notes, may receive payment of such debts within sixty days after such delivery. Any evidence of debt or other security, remaining in his hands at the end of such sixty days, shall be returned by him to the clerk's office of such court, and collection thereof may be enforced as prescribed by § 8.01-497. For a failure to make such return, he may be proceeded against as if an express order of the court for such return had been disobeyed.

Code 1950, § 8-440; 1977, c. 617.

Article 7 - GARNISHMENT

§ 8.01-511. Institution of garnishment proceedings

A. On a suggestion by the judgment creditor that, by reason of the lien of his writ of fieri facias, there is a liability on any person other than the judgment debtor or that there is in the hands of some person in his capacity as personal representative of some decedent a sum of money to which a judgment debtor is or may be entitled as creditor or distributee of such decedent, upon which sum when determined such writ of fieri facias is a lien, a summons in the form prescribed by § 8.01-512.3 may (i) be sued out of the clerk's office of the court from which an execution on the judgment is issued so long as the judgment shall remain enforceable as provided in § 8.01-251, (ii) be sued out of the clerk's office to which an execution issued thereon has been returned as provided in § 16.1-99 against such person, or (iii) be sued out of the clerk's office from which an execution issued as provided in § 16.1-278.18. If the judgment debtor does not reside in the city

or county where the judgment was entered, the judgment creditor may have the case filed or docketed in the court of the city or county where the judgment debtor resides and such court may issue an execution on the judgment, provided that the judgment creditor (a) files with the court an abstract of the judgment rendered, (b) pays fees to the court in accordance with § 16.1-69.48:2 or subdivision 17 of § 17.1-275, and (c) files in both courts any release or satisfaction of judgment. The summons and the notice and claim for exemption form required pursuant to § 8.01-512.4 shall be served on the garnishee, and shall be served on the judgment debtor promptly after service on the garnishee. Service on the judgment debtor and the garnishee shall be made pursuant to subdivision 1 or 2 of § 8.01-296. When making an application for garnishment, the judgment creditor shall set forth on the suggestion for summons in garnishment the last known address of the judgment debtor, and shall furnish the clerk, if service is to be made by the sheriff, or shall furnish any other person making service with an envelope, with first-class postage attached, addressed to such address. A copy of the summons and the notice and claim for exemptions form required under § 8.01-512.4 shall be sent by the clerk to the sheriff or provided by the judgment creditor to the person making service, with the process to be served. Promptly after service on the garnishee, the person making service shall mail such envelope by first-class mail to the judgment debtor at his last known address. If the person making service is unable to serve the judgment debtor pursuant to subdivision 1 of § 8.01-296, such mailing shall satisfy the mailing requirements of subdivision 2 b of § 8.01-296. The person making service shall note on his return the date of such mailing which, with the notation "copy mailed to judgment debtor," shall be sufficient proof of the mailing of such envelope with the required copy of the summons and the notice and claim for exemption form with no examination of such contents being required nor separate certification by the clerk or judgment creditor that the appropriate documents have been so inserted. If the person making service is unable to serve the judgment debtor pursuant to subdivision 1 or 2 of § 8.01-296, such mailing shall constitute service of process on the judgment debtor. The judgment creditor shall furnish the social security number of the judgment debtor to the clerk, except as hereinafter provided.

B. The judgment creditor may require the judgment debtor to furnish his correct social security number by the use of interrogatories. However, use of such interrogatories shall not be a required condition of a judgment creditor's diligent good faith effort to secure the judgment debtor's social security number. Such remedy shall be in addition to all other lawful remedies available to the judgment creditor. Upon a representation by the judgment creditor, or his agent or attorney, that he has made a diligent good faith effort to secure the social security number of the judgment debtor and has been unable to do so, the garnishment shall be issued without the necessity for such number.

C. Except as provided herein, no summons shall be issued pursuant to this section for the garnishment of wages, salaries, commissions, or other earnings unless it: (i) is in the form prescribed by § 8.01-512.3; (ii) is directed to only one garnishee for the garnishment of only one judgment

debtor; (iii) contains both the "TOTAL BALANCE DUE" and the social security number of the judgment debtor in the proper places as provided on the summons; and (iv) specifies that it is a garnishment against (a) the judgment debtor's wages, salary, or other compensation or (b) some other debt due or property of the judgment debtor. The garnishee shall not be liable to the judgment creditor for any property not specified in the summons as provided in (iv) above. Upon receipt of a summons not in compliance with this provision, the garnishee shall file a written answer to that effect and shall have no liability to the judgment creditor, such summons being void upon transmission of the answer.

D. The judgment creditor shall, in the suggestion, specify the amount of interest, if any, that is claimed to be due upon the judgment, calculated to the return day of the summons. He shall also set out such credits as may have been made upon the judgment.

All costs incurred by the judgment creditor after entry of the judgment, in aid of execution of the judgment and paid to a clerk of court, sheriff, or process server are chargeable against the judgment debtor, unless such costs are chargeable against the judgment creditor pursuant to § 8.01-475. Regardless of the actual amount of the fee paid by the judgment creditor, the fee for a process server chargeable against the judgment debtor shall not exceed the fee authorized for service by the sheriff. All such previous costs chargeable against the judgment debtor may be included by the judgment creditor as judgment costs in the garnishment summons form prescribed in § 8.01-512.3. This paragraph shall not be construed to limit any cost assessed by a court as part of the judgment.

E. In addition, the suggestion shall contain an allegation that:

1. The summons is based upon a judgment upon which a prior summons has been issued but not fully satisfied; or

2. No summons has been issued upon his suggestion against the same judgment debtor within a period of 18 months, other than under the provisions of subdivision 1; or

3. The summons is based upon a judgment granted against a debtor upon a debt due or made for necessary food, rent or shelter, public utilities including telephone service, drugs, or medical care supplied the debtor by the judgment creditor or to one of his lawful dependents, and that it was not for luxuries or nonessentials; or

4. The summons is based upon a judgment for a debt due the judgment creditor to refinance a lawful loan made by an authorized lending institution; or

5. The summons is based upon a judgment on an obligation incurred as an endorser or comaker upon a lawful note; or

6. The summons is based upon a judgment for a debt or debts reaffirmed after bankruptcy.

F. Any judgment creditor who knowingly gives false information upon any such suggestion or certificate made under this chapter shall be guilty of a Class 1 misdemeanor.

Code 1950, § 8-441; 1960, c. 502; 1966, c. 212; 1972, c. 104; 1976, c. 659; 1977, cc. 454, 617; 1978, cc. 321, 506; 1979, cc. 242, 345; 1980, c. 537; 1983, cc. 399, 468; 1984, c. 1; 1985, c. 524; 1991, c. 534; 1996, cc. 501, 608; 2006, c. 55; 2012, cc. 127, 129, 251, 409.

§ 8.01-511.1. Garnishee inability to determine whether it holds property of judgment debtor
If a summons for the garnishment of property other than wages, salaries, commissions or other earnings does not contain sufficient or accurate information to enable the garnishee to reasonably identify the judgment debtor, the garnishee shall have no liability to the judgment creditor for failing to deliver the judgment debtor's property in response to the summons. If the summons contains either the social security number or taxpayer identification number of the judgment debtor as it appears in the records of the garnishee, or the name and address of the judgment debtor as they appear in the records of the garnishee, the summons shall be deemed to contain information sufficient to enable the garnishee to reasonably identify the judgment debtor.

If the summons contains sufficient or accurate information to enable the garnishee to reasonably identify the judgment debtor, the garnishee shall (i) answer to the summoning court and further state what the garnishee's records show as the last known address for the judgment debtor and any other information the garnishee deems relevant and (ii) send to the judgment debtor at the last known address a copy of its answer to the court.

No garnishee or creditor who proceeds under the terms of this statute in good faith shall be liable to any person therefor.

2002, c. 688.

§§ 8.01-512, 8.01-512.1. Repealed
Repealed by Acts 1983, c. 399.

§ 8.01-512.2. Fee for garnishee-employers
Garnishee-employers may charge and collect a fee of up to ten dollars from a judgment-debtor employee on account of such employers' expense in processing each garnishment summons served on such employers on account of the judgment-debtor employee.

1980, c. 537; 1994, c. 664.

§ 8.01-512.3. Form of garnishment summons
Any garnishment issued pursuant to § 8.01-511 shall be in the following form:

(a) Front side of summons:

GARNISHMENT SUMMONS

(Court Name)

(Name, address and telephone number of judgment creditor except that when the judgment creditor's attorney's name, address and telephone number appear on the summons, only the creditor's name shall be used.)

(Name, address and telephone number of judgment creditor's attorney)

(Name, street address and social security number of judgment debtor)

(Name and street address of garnishee)

_____ Hearing Date and Time

This is a garnishment against (check only one of the designations below):

[ ] wages, salary, or other compensation.

[ ] some other debt due or property of the judgment debtor.

MAXIMUM PORTION OF DISPOSABLE EARNINGS SUBJECT TO GARNISHMENT

[ ] Support

[ ] 50% [ ] 55% [ ] 60% [ ] 65%

(if not specified, then 50%)

[ ] state taxes, 100%

If none of the above is checked, then § 34-29 (a) applies.

STATEMENT

Judgment Principal	$_____
Credits	$_____
Interest	$_____
Judgment Costs	$_____
Attorney's Fees	$_____
Garnishment Costs	$_____
TOTAL BALANCE DUE	$_____

The garnishee shall rely on this amount.

_____
Date of Judgment

TO ANY AUTHORIZED OFFICER: You are hereby commanded to serve this summons on the judgment debtor and the garnishee.

TO THE GARNISHEE: You are hereby commanded to

(1) File a written answer with this court, or

(2) Deliver payment to this court, or

(3) Appear before this court on the return date and time shown on this summons to answer the Suggestion for Summons in Garnishment of the judgment creditor that, by reason of the lien of writ of fieri facias, there is a liability as shown in the statement upon the garnishee.

As garnishee, you shall withhold from the judgment debtor any sums of money to which the judgment debtor is or may be entitled from you during the period between the date of service of this summons on you and the date for your appearance in court, subject to the following limitations:

(1) The maximum amount which may be garnished is the "TOTAL BALANCE DUE" as shown on this summons.

(2) If the sums of money being garnished are earnings of the judgment debtor, then the provision of "MAXIMUM PORTION OF DISPOSABLE EARNINGS SUBJECT TO GARNISHMENT" shall apply.

If a garnishment summons is served on an employer having 1,000 or more employees, then money to which the judgment debtor is or may be entitled from his or her employer shall be considered those wages, salaries, commissions, or other earnings which, following service on the garnishee-employer, are determined and are payable to the judgment debtor under the garnishee-employer's normal payroll procedure with a reasonable time allowance for making a timely return by mail to this court.

_____ _____

Date of Issuance of Summons Clerk

_____

Date of delivery of writ of fieri facias to sheriff if different from date of issuance of this summons.

(b) A plain language interpretation of § 34-29 shall appear on the reverse side of the summons as follows:

"The following statement is not the law but is an interpretation of the law which is intended to assist those who must respond to this garnishment. You may rely on this only for general guidance because the law itself is the final word. (Read the law, § 34-29 of the Code of Virginia, for a full explanation. A copy of § 34-29 is available at the clerk's office. If you do not understand the law, call a lawyer for help.)

An employer may take as much as 25 percent of an employee's disposable earnings to satisfy this garnishment. But if an employee makes the minimum wage or less for his week's earnings, the employee will ordinarily get to keep 30 times the minimum hourly wage."

But an employer may withhold a different amount of money from that above if:

(1) The employee must pay child support or spousal support and was ordered to do so by a court procedure or other legal procedure. No more than 65 percent of an employee's earnings may be withheld for support;

(2) Money is withheld by order of a bankruptcy court; or

(3) Money is withheld for a tax debt.

"Disposable earnings" means the money an employee makes after taxes and after other amounts required by law to be withheld are satisfied. Earnings can be salary, hourly wages, commissions,

bonuses, or otherwise, whether paid directly to the employee or not. After those earnings are in the bank for 30 days, they are not considered earnings any more.

If an employee tries to transfer, assign, or in any way give his earnings to another person to avoid the garnishment, it will not be legal; earnings are still earnings.

An employee cannot be fired because he is garnished for one debt.

Financial institutions that receive an employee's paycheck by direct deposit do not have to determine what part of a person's earnings can be garnished.

1983, c. 399; 1994, c. 40; 1995, c. 379; 1996, c. 1051; 2006, c. 55.

§ 8.01-512.4. Notice of exemptions from garnishment and lien

No summons in garnishment shall be issued or served, nor shall any notice of lien be served on a financial institution pursuant to § 8.01-502.1, unless a notice of exemptions and claim for exemption form are attached. The notice shall contain the following statement:

NOTICE TO JUDGMENT DEBTOR

HOW TO CLAIM EXEMPTIONS FROM GARNISHMENT AND LIEN

The attached Summons in Garnishment or Notice of Lien has been issued on request of a creditor who holds a judgment against you. The Summons may cause your property or wages to be held or taken to pay the judgment.

The law provides that certain property and wages cannot be taken in garnishment. Such property is said to be exempted. A summary of some of the major exemptions is set forth in the request for hearing form. There is no exemption solely because you are having difficulty paying your debts.

If you claim an exemption, you should (i) fill out the claim for exemption form and (ii) deliver or mail the form to the clerk's office of this court. You have a right to a hearing within seven business days from the date you file your claim with the court. If the creditor is asking that your wages be withheld, the method of computing the amount of wages which are exempt from garnishment by law is indicated on the Summons in Garnishment attached. You do not need to file a claim for exemption to receive this exemption, but if you believe the wrong amount is being withheld you may file a claim for exemption.

On the day of the hearing you should come to court ready to explain why your property is exempted, and you should bring any documents which may help you prove your case. If you do not come to court at the designated time and prove that your property is exempt, you may lose some of your rights.

It may be helpful to you to seek the advice of an attorney in this matter.

REQUEST FOR HEARING-GARNISHMENT/LIEN EXEMPTION CLAIM

I claim that the exemption(s) from garnishment or lien which are checked below apply in this case:

MAJOR EXEMPTIONS UNDER FEDERAL AND STATE LAW

. . . . 1. Social Security benefits and Supplemental Security Income (SSI) (42 U.S.C. § 407).

. . . . 2. Veterans' benefits (38 U.S.C. § 5301).

. . . . 3. Federal civil service retirement benefits (5 U.S.C. § 8346).

. . . . 4. Annuities to survivors of federal judges (28 U.S.C. § 376(n)).

. . . . 5. Longshore and Harbor Workers' Compensation Act (33 U.S.C. § 916).

. . . . 6. Black lung benefits.

Exemptions listed under 1 through 6 above may not be applicable in child support and alimony cases (42 U.S.C. § 659).

. . . . 7. Seaman's, master's or fisherman's wages, except for child support or spousal support and maintenance (46 U.S.C. § 11109).

. . . . 8. Unemployment compensation benefits (§ 60.2-600, Code of Virginia). This exemption may not be applicable in child support cases (§ 60.2-608, Code of Virginia).

. . . . 9. Portions or amounts of wages subject to garnishment (§ 34-29, Code of Virginia).

. . . . 10. Public assistance payments (§ 63.2-506, Code of Virginia).

. . . . 11. Homestead exemption of $5,000, or $10,000 if the debtor is 65 years of age or older, in cash (§ 34-4, Code of Virginia). This exemption may not be claimed in certain cases, such as payment of spousal or child support (§ 34-5, Code of Virginia).

. . . . 12. Property of disabled veterans -- additional $10,000 cash (§ 34-4.1, Code of Virginia).

. . . . 13. Workers' Compensation benefits (§ 65.2-531, Code of Virginia).

. . . . 14. Growing crops (§ 8.01-489, Code of Virginia).

. . . . 15. Benefits from group life insurance policies (§ 38.2-3339, Code of Virginia).

. . . . 16. Proceeds from industrial sick benefits insurance (§ 38.2-3549, Code of Virginia).

. . . . 17. Assignments of certain salary and wages (§ 55-165, Code of Virginia).

. . . . 18. Benefits for victims of crime (§ 19.2-368.12, Code of Virginia).

. . . . 19. Preneed funeral trusts (§ 54.1-2823, Code of Virginia).

. . . . 20. Certain retirement benefits (§ 34-34, Code of Virginia).

. . . . 21. Child support payments (§ 20-108.1, Code of Virginia).

. . . . 22. Support for dependent minor children (§ 34-4.2, Code of Virginia). To claim this exemption, the debtor shall attach to the claim for exemption form an affidavit that complies with the requirements of subsection B of § 34-4.2 and two items of proof showing that the debtor is entitled to this exemption.

. . . . 23. Other (describe exemption): $_____

I request a court hearing to decide the validity of my claim. Notice of the hearing should be given me at:

_____ _____
(address) (telephone no.)
The statements made in this request are true to the best of my knowledge and belief.

_____ _____
(date) (signature of judgment debtor)
1984, c. 1; 1986, c. 489; 1989, c. 684; 1994, c. 40; 2007, c. 872; 2009, cc. 332, 387, 388; 2010, c. 673; 2012, cc. 23, 79.

§ 8.01-512.5. Hearing on claim of exemption from garnishment
A judgment debtor shall have the right to a hearing on his claim of exemption from garnishment no later than seven business days from the date that the claim is filed with the court.

The clerk shall notify the parties of the date, time and place of the hearing and the exemption being claimed. The garnishee shall comply with the garnishment summons unless and until ordered otherwise in writing by the court. The order shall take effect upon receipt by the garnishee. The clerk is required to provide a copy of the order or other hearing disposition to the garnishee only if the garnishment summons is dismissed or is modified by the judge.

1984, c. 1.

§ 8.01-513. Service upon corporation or limited liability company
A. If the person upon whom there is a suggestion of liability as provided in § 8.01-511 is a corporation, the summons shall be served upon an officer, an employee designated by the corporation other than an officer of the corporation, or, if there is no designated employee or the designated employee cannot be found, upon a managing employee of the corporation other than an officer of the corporation. If the judgment creditor or his attorney files with the court a certificate that he has used due diligence and that (i) no such officer or employee or other person authorized to accept such service can be found within the Commonwealth or (ii) such designated or managing employee found is also the judgment debtor, then such summons shall be served on the registered agent of the corporation or upon the clerk of the State Corporation Commission as provided in §§ 13.1-637, 13.1-766, 13.1-836 and 13.1-928. However, service on the corporation shall not be made upon a designated or managing employee who is also the judgment debtor. If the corporation intends to designate an employee for service, the corporation shall file a designation with the State Corporation Commission.

B. If the person upon whom there is a suggestion of liability as provided in § 8.01-511 is a limited liability company, the summons shall be served upon a member, manager, or employee designated by the limited liability company for the purpose of such service or, if there is no designated member, manager, or employee, or the designated member, manager, or employee cannot be found, upon a managing employee of the limited liability company. If the judgment creditor or his

attorney files with the court a certificate that he has used due diligence and that (i) no such member, manager, or employee or other person authorized to accept such service can be found within the Commonwealth or (ii) such designated member, manager, employee, or managing employee found is also the judgment debtor, then such summons shall be served on the registered agent of the limited liability company or upon the clerk of the State Corporation Commission as provided in § 13.1-1018. However, service on the limited liability company shall not be made upon a designated member, manager, employee, or managing employee who is also the judgment debtor. If the limited liability company intends to designate a member, manager, or employee for service, the limited liability company shall file a designation with the State Corporation Commission.

C. For the purposes of this section, "managing employee" means an employee charged by the corporation or the limited liability company, as applicable, with the control of operations and supervision of employees at the business location of such corporation or limited liability company where process is sought to be served.

Code 1950, § 8-441.2; 1974, c. 561; 1977, c. 617; 1980, c. 514; 1997, c. 395; 1998, cc. 723, 737; 2004, c. 231; 2006, c. 912.

§ 8.01-514. When garnishment summons returnable

The summons in garnishment, whether issued by a circuit court or a district court, may be directed to a sheriff of any county or city wherein the judgment debtor resides or where the garnishment defendant resides or where either may be found and shall be made returnable to the court that issued it within 90 days from the writ's issuance, except that, in the case of a wage garnishment, the summons shall be returnable not more than 180 days after such issuance.

Code 1950, § 8-442; 1976, c. 659; 1977, cc. 454, 617; 1979, c. 36; 2003, c. 234; 2006, c. 575.

§ 8.01-515. How garnishee examined; determining exemption from employee's withholding certificate; amount due pursuant to exemptions in § 34-29 (a)

A person so summoned shall appear in person and be examined on oath or he may file a statement. A corporation so summoned shall appear by an authorized agent who shall be examined on oath or may file a statement, not under seal of such authorized agent. Such statement shall show the amount the garnishee is indebted to the judgment debtor, if any, or what property or effects, if any, the garnishee has or holds which belongs to the judgment debtor, or in which he has an interest. Payment to the court of any amount by the garnishee shall have the same force and effect as a statement which contains the information required by this section. If the judgment debtor or judgment creditor disputes the verity or accuracy of such statement or amount and so desires, then summons shall issue requiring the appearance of such person or authorized agent for examination on oath, and requiring him to produce such books and papers as may be necessary to determine the fact.

In determining the exemption to which the employee is entitled, the employer may until otherwise ordered by the court rely upon the information contained in the employee's withholding

exemption certificate filed by the employee for federal income tax purposes, and any person showing more than one exemption thereon shall be considered by him to be a householder or head of a family.

The employer may apply the exemptions provided in § 34-29 (a) unless otherwise specified on the summons, or unless otherwise ordered by the court.

Code 1950, § 8-443; 1954, c. 379; 1977, c. 617; 1979, c. 242; 1983, c. 399.

§ 8.01-516. Repealed

Repealed by Acts 1983, c. 399.

§ 8.01-516.1. Garnishment dispositions

A. If the amount of liability is not disputed and the garnishee admits liability to the court either by (i) examination on the return date of the summons, or (ii) written statement as provided by § 8.01-515 on or before the return date of the summons, the court shall order the delivery of such estate or payment of the value of such estate into court without entering judgment against the garnishee. Should a garnishee fail to comply with the order within thirty days after service of such order on the garnishee, then judgment may be entered against the garnishee.

B. Upon certification by the judgment creditor, its bona fide employee, or its attorney that its claim has been satisfied or that it desires its action against the garnishee to be dismissed for any other reason, the court, or clerk thereof, where the action has been filed, shall, by written order, which may be served by the sheriff, notify the garnishee to cease withholding assets of the judgment debtor, and to treat any funds previously withheld as if the original garnishment action had not been filed. The court in which the garnishment action was filed shall then dismiss the action on or before the return date.

1983, c. 399; 1993, c. 385 .

§ 8.01-517. Exemption of portion of wages; payment of excess into court

Notwithstanding the provisions of §§ 8.01-515 and 8.01-516.1, any employer against whom any garnishment is served in connection with an action or judgment against an employee may pay to such employee when due wages or salary not exceeding the amount exempted by § 34-29 unless such exemptions shall have been specifically disallowed by the court and shall answer such garnishment summons by a written statement verified by affidavit, showing the amount of wages or salary due on the return date of the garnishment summons and the amount of wages or salary so exempted, and if there shall be an excess of wages or salary so due over the amount of the exemptions, the employer may pay the amount of such excess into the court where the garnishment summons is returnable, which payment when determined by the court to be correct will constitute a discharge of any liability of the employer to the employee for the wages or salary so withheld.

Code 1950, § 8-445; 1952, c. 377; 1954, c. 379; 1977, c. 617.

§ 8.01-518. When garnishee is personal representative of decedent

If the person so summoned be the personal representative of a decedent, he shall answer in writing whether or not there is in his hands in his fiduciary capacity, any sum of money owing to the judgment debtor, and if so, the amount thereof, if the same has been definitely determined, and when it will be payable by him; and if such amount has not been definitely ascertained, the court shall continue the case, with direction to him to thereafter, and as soon as such amount has been definitely determined, report the same to the court, and say when it will be payable by him. In either event, and when the amount so owing to the judgment debtor has been definitely fixed and determined, the court shall direct the disposition of such fund to the creditor of such other person or persons according as their rights may be determined.

Code 1950, § 8-446; 1977, c. 617.

§ 8.01-519. Proceedings where garnishee fails to appear or answer, or to disclose his liability

If the garnishee, after being served with the summons, fail to appear or answer personally, or if it be suggested that he has not fully disclosed his liability, the proceedings shall be according to §§ 8.01-564 and 8.01-565, mutatis mutandis, except that when the summons is before a general district court, the court shall proceed without a jury.

Code 1950, § 8-447; 1977, c. 617.

§ 8.01-520. Payment, etc., by garnishee before return of summons

Any person, summoned under § 8.01-511, before the return day of the summons, may pay what he is liable for to the clerk of the court issuing the summons and such clerk shall give a receipt, upon request, for what is so paid.

Code 1950, § 8-448; 1977, c. 617; 1983, c. 399.

§ 8.01-521. Judgments as to costs

Unless the garnishee appear to be liable for more than is so delivered and paid, there shall be no judgment against him for costs. In other cases, judgment under §§ 8.01-516.1 and 8.01-519 may be for such costs, and against such party, as the court may deem just.

Code 1950, § 8-449; 1977, c. 617.

§ 8.01-522. Wages and salaries of State employees

Unless otherwise exempted, the wages and salaries of all employees of this Commonwealth, other than State officers, shall be subject to garnishment or execution upon any judgment rendered against them. Whenever the salary or wages of such employees as above mentioned shall be garnished under this section, the process shall be such as is usual in other cases of garnishment and shall be served on the judgment debtor and on the officer or supervisor who is head of the department, agency, or institution where the employee is employed, or other officer through whom the judgment debtor's salary or wages is paid, provided that process shall not be served upon the State Treasurer or the State Comptroller except as to employees of their respective departments, and upon such service the officer or supervisor shall, on or before the return day of process, transmit to the clerk of the court issuing the process a certificate showing the amount due from the

Commonwealth to such judgment debtor, up to the return day of the process, which amount the officer or supervisor shall hold subject to order of the court issuing the process. Such certificate shall be evidence of all facts therein stated, unless the court direct that the deposition of the officer or supervisor, or such other officer through whom the judgment debtor's salary or wages be paid, be taken, in which event the deposition of the officer or supervisor shall be taken in his office and returned to the clerk of the court in which the garnishment is, just as other depositions are returned, and in no such case shall the officer or supervisor be required to leave his office to testify. In all proceedings under this section, if the judgment be for the plaintiff, the amount found to be due the judgment debtor by the Commonwealth shall be paid as directed by the court.

Code 1950, § 8-449.1; 1958, c. 430; 1973, c. 236; 1977, c. 617.

§ 8.01-523. Service upon federal government

A. If the suggestion of liability as provided in § 8.01-511 is against the United States of America, the summons shall be served upon the managing employee of the agency of the federal government which is alleged to be liable, or, if the judgment debtor is a member of the armed forces of the United States, upon the chief fiscal officer of the military post to which the judgment debtor was last assigned.

B. If service on the agents identified in subsection A for service of process on the United States cannot be made, then service may be made on a United States attorney or other agent in the manner set forth in Rule 4 (d) (4) of the Federal Rules of Civil Procedure, as from time to time amended.

Code 1950, § 8-441.3; 1976, c. 659; 1977, c. 617.

§ 8.01-524. Wages and salaries of city, town and county officials, clerks and employees

Unless otherwise exempt, the wages and salaries of all officials, clerks and employees of any city, town or county shall be subject to garnishment or execution upon any judgment rendered against them.

Code 1950, § 8-449.2; 1977, c. 617.

§ 8.01-525. Who are officers and employees of cities, towns and counties

All officers, clerks and employees who hold their office by virtue of authority from the General Assembly or by virtue of city, town or county authority whether by election or appointment and who receive compensation for their services from the moneys of such city, town or county shall, for the purposes of garnishment, be deemed to be, and are, officers, clerks or employees of such city, town or county.

Code 1950, § 8-449.3; 1977, c. 617.

Chapter 19 - FORTHCOMING BONDS

§ 8.01-526. When forthcoming bond taken; property remains in debtor's possession

The sheriff or other officer levying a writ of fieri facias, or distress warrant, may take from the debtor a bond, with sufficient surety, payable to the creditor, reciting the service of such writ or warrant, and the amount due thereon, including the officer's fee for taking the bond, commissions, and other lawful charges, if any, with condition that the property shall be forthcoming at the day and place of sale; whereupon, such property may be permitted to remain in the possession and at the risk of the debtor.

Code 1950, § 8-450; 1977, c. 617.

§ 8.01-527. If bond forfeited, where returned; its effect; clerk to endorse time of return

If the condition of such forthcoming bond be not performed, the officer, unless payment be made of the amount due on the execution or warrant, including his fee, commission, and charges as aforesaid, shall, after the bond is forfeited, return it forthwith, with the execution or warrant, to such court, or the clerk's office of such court as is prescribed by § 15.1-80. The clerk shall endorse on the bond the date of its return; and against such of the obligors therein as may be alive when it is forfeited and so returned, it shall have the force of a judgment. But no execution shall issue thereon under this section.

Code 1950, § 8-451; 1977, c. 617.

§ 8.01-528. Liability of obligors; how recovery on bond is had

The obligors in such forfeited bond shall be liable for the money therein mentioned, with interest thereon from the date of the bond till paid, and the costs. The obligee or his personal representative shall be entitled to recover the same by action or motion.

Code 1950, § 8-452; 1977, c. 617.

§ 8.01-529. When bond returned, how endorsed and recorded by clerk; lien

Upon the return of a forthcoming bond to the clerk's office in the manner prescribed by § 8.01-527, it shall be the duty of the clerk to endorse thereon the date of such return, and his fee as provided by law for recordation of items specified herein, and to record in a book to be kept by him for the purpose, the date of such bond and of the return endorsed thereon, the amount of the penalty thereof, the amount, the payment whereof will discharge such penalty, and the names of the obligee and obligor to such bond. Such bond, when so returned to the clerk's office aforesaid, shall constitute a lien on the real estate of the obligor.

Code 1950, § 8-458; 1977, c. 617.

§ 8.01-530. Remedy of creditor if bond quashed

If any forthcoming bond be at any time quashed, the obligee, besides his remedy against the officer, may have such execution on his judgment, or issue such distress warrant, as would have been lawful if such bond had not been taken.

Code 1950, § 8-454; 1977, c. 617.

§ 8.01-531. In what cases forthcoming bond not to be taken

No bond for the forthcoming of property shall be taken:

1. On an execution on a forthcoming bond;

2. On an execution on a judgment against (i) a treasurer, sheriff, or a deputy of either of them, or a surety or personal representative of either such officer or deputy, for money received by any such officer or deputy, by virtue of his office, (ii) any such officer or his personal representative, in favor of a surety of such officer for money paid or a judgment rendered for a default in office, or (iii) a deputy of any such officer, or his surety or personal representative, in favor of his principal or the personal representative of such principal, for money paid or a judgment rendered for a default in office; or

3. On any other execution on which the clerk is required by law or by order of court to endorse that "no security is to be taken."

Code 1950, § 8-455; 1954, c. 333; 1977, c. 617.

§ 8.01-532. How bond withdrawn from clerk's office

The obligee in a forthcoming bond, or his agent, may, at any time after the record of such bond is made by the clerk, required by § 8.01-529, withdraw the same from the clerk's office, leaving a copy thereof attested by the clerk.

Code 1950, § 8-459; 1977, c. 617.

Chapter 20 - ATTACHMENTS AND BAIL IN CIVIL CASES

Article 1 - ATTACHMENTS GENERALLY

§ 8.01-533. Who may sue out attachment

If any person has a claim, legal or equitable, to (i) any specific personal property, (ii) any debt, including rent, whether the debt is due and payable or not, (iii) damages for breach of any contract, express or implied, or (iv) damages for a wrong, or for a judgment for which no supersedeas or other appeal bond has been posted, he may sue out an attachment therefor on any one or more of the grounds stated in § 8.01-534. However, if the claim is for a debt not due and payable, no attachment shall be sued out when the only ground for the attachment is that the defendant or one of the defendants is a foreign corporation, or is not a resident of this Commonwealth, and has estate or debts owing to him within this Commonwealth.

Code 1950, § 8-519; 1954, c. 333; 1977, c. 617; 1986, c. 341; 1993, c. 841 .

§ 8.01-534. Grounds of action for pretrial levy or seizure of attachment

A. It shall be sufficient ground for an action for pretrial levy or seizure or an attachment that the principal defendant or one of the principal defendants:

1. Is a foreign corporation, or is not a resident of this Commonwealth, and has estate or has debts owing to such defendant within the county or city in which the attachment is, or that such defendant being a nonresident of this Commonwealth, is entitled to the benefit of any lien, legal or

equitable, on property, real or personal, within the county or city in which the attachment is. The word "estate," as herein used, includes all rights or interests of a pecuniary nature which can be protected, enforced, or proceeded against in courts of law or equity;

2. Is removing or is about to remove himself out of this Commonwealth with intent to change his domicile;

3. Intends to remove, or is removing, or has removed the specific property sued for, or his own estate, or the proceeds of the sale of his property, or a material part of such estate or proceeds, out of this Commonwealth so that there will probably not be therein effects of such debtor sufficient to satisfy the claim when judgment is obtained therefor should only the ordinary process of law be used to obtain the judgment;

4. Is converting, is about to convert or has converted his property of whatever kind, or some part thereof, into money, securities or evidences of debt with intent to hinder, delay, or defraud his creditors;

5. Has assigned or disposed of or is about to assign or dispose of his estate, or some part thereof, with intent to hinder, delay or defraud his creditors;

6. Has absconded or is about to abscond or has concealed or is about to conceal himself or his property to the injury of his creditors, or is a fugitive from justice.

The intent mentioned in subdivisions 4 and 5 above may be stated either in the alternative or conjunctive.

B. It shall be sufficient ground for an action for pretrial levy or seizure or an attachment if the specific personal property sought to be levied or seized:

1. Will be sold, removed, secreted or otherwise disposed of by the defendant, in violation of an obligation to the plaintiff, so as not to be forthcoming to answer the final judgment of the court respecting the same; or

2. Will be destroyed, or materially damaged or injured if permitted to remain in the possession of the principal defendant or one of the principal defendants or other person or persons claiming under them.

C. In an action for rent, it also shall be a sufficient ground if there is an immediate danger that the property subject to the landlord's lien for rent will be destroyed or concealed.

Code 1950, § 8-520; 1954, c. 333; 1977, c. 617; 1993, c. 841 .

§ 8.01-535. Jurisdiction of attachments; trial or hearing of issues

Except as provided in § 16.1-77 the jurisdiction of attachments under this chapter shall be in the circuit courts. The trial or hearing of the issues, except as otherwise provided, shall be the same, as near as may be, as in actions in personam.

Code 1950, § 8-521; 1954, c. 333; 1977, c. 617.

§ 8.01-536. Pleadings in attachment

No pleading on behalf of the plaintiff shall be necessary except the petition mentioned in § 8.01-537. The principal defendant, and any other defendant who seeks to defeat the petitioner's attachment, may demur to the petition, issue on which demurrer shall be deemed to be joined; but if such demurrer be overruled, such defendant shall answer the petition in writing. No replication shall be necessary to such answer. The answer shall be sworn to by such defendant, or his agent. Any other defendant may answer the petition, under oath, and the cause shall be deemed at issue as to him, if he denies any of the allegations of the petition, without any replication. Answers under this section shall not have the effect of evidence for the defendant.

Code 1950, § 8-523; 1977, c. 617.

§ 8.01-537. Petition for attachment; costs, fees and taxes

A. Every attachment shall be commenced by a petition filed before a clerk of a circuit or general district court of, or magistrate serving, the county or city in which venue is given by subdivision 11 of § 8.01-261. If it is sought to recover specific personal property, the petition shall state (i) the kind, quantity, and estimated fair market value thereof, (ii) the character of estate therein claimed by the plaintiff, (iii) the plaintiff's claim with such certainty as will give the adverse party reasonable notice of the true nature of the claim and the particulars thereof and (iv) what sum, if any, the plaintiff claims an entitlement to recover for its detention. If it is sought to recover a debt or damages for a breach of contract, express or implied, or damages for a wrong, the petition shall set forth (i) the plaintiff's claim with such certainty as will give the adverse party reasonable notice of the true nature of the claim and the particulars thereof, (ii) a sum certain which, at the least, the plaintiff is entitled to, or ought to recover, and (iii) if based on a contract and if the claim is for a debt not then due and payable, at what time or times the same will become due and payable. The petition shall also allege the existence of one or more of the grounds mentioned in § 8.01-534, and shall set forth specific facts in support of the allegation. The petition shall ask for an attachment against the specific personal property mentioned in the petition, or against the estate, real and personal, of one or more of the principal defendants, or against the estate, real and personal, of one or more of the principal defendants, or against both the specific personal property and the estate of such defendants, real or personal. The petition shall state whether the officer is requested to take possession of the attached tangible personal property. The petition shall be sworn to by the plaintiff or the plaintiff's agent, or some other person cognizant of the facts therein stated.

B. The plaintiff praying for an attachment shall, at the time the petition is filed, pay to the magistrate or clerk of the court to which the return is made the proper costs, fees and taxes, and in the event the plaintiff fails to do so, the attachment shall not be issued.

Code 1950, §§ 8-524, 8-528; 1954, cc. 333, 622; 1973, c. 545; 1977, c. 617; 1978, c. 418; 1984, c. 646; 1993, c. 841; 2008, cc. 551, 691; 2015, c. 639.

§ 8.01-537.1. Plaintiff to file bond

A. The plaintiff or someone for him shall, at the time of suing out an attachment or other pretrial levy or seizure, give bond. The fact that bond has been given shall be endorsed on the process, or certified by the clerk to the serving officer. If certified by the clerk, the serving officer shall return the certificate with the process. The bond shall be a bond with approved surety, a cash bond or a property bond.

B. If the plaintiff seeks only pretrial levy on property and a bond with approved surety or cash bond is posted, the amount of the bond shall be at least the estimated fair market value of the property to be levied. If a property bond is posted, the amount of the bond shall be at least double the estimated fair market value of the property to be levied.

C. If the plaintiff seeks pretrial seizure of property, the amount of the bond shall be at least double the estimated fair market value of the property to be seized.

D. The bond shall contain a condition to pay all costs and damages which may be awarded against the plaintiff, or sustained by any person, by reason of a wrongful levy or seizure.

1984, c. 646; 1993, c. 841 .

§ 8.01-538. Attachment of ships, boats and other vessels of more than twenty tons

No attachment against any ship, boat, or other vessel of more than twenty tons, shall issue unless the plaintiff or someone in his behalf, shall first establish, to the satisfaction of the court in which he files his petition for attachment that he has a reasonable expectation of recovering an amount exclusive of all costs, equal to at least one-half the damages demanded in the petition for attachment. Reasonable notice of appearance before the court shall be given the owner, agent or master of said vessel, and at the time of the appearance the court shall determine the amount of such reasonable expectation of recovery and the amount of bond necessary to secure the release of the vessel if and when a writ be levied in accordance with this section.

No attachment issued in violation of the provisions of this section shall create a valid lien upon the property sought to be attached, and no levy made under authority thereof shall be of any effect.

Code 1950, § 8-524.1; 1954, c. 254; 1977, c. 617.

§ 8.01-539. Who made defendants

A person against whom the plaintiff is asserting the claim shall be made a defendant to the petition, and shall be known as a principal defendant. There shall also be made a defendant any person indebted to or having in his possession property, real or personal, belonging to a principal defendant, which is sought to be attached. There may also be made a defendant any person claiming title to, and interest in, or a lien upon the property sought to be attached. A defendant, other than a principal defendant, shall be known as a codefendant.

Code 1950, § 8-525; 1977, c. 617.

§ 8.01-540. Issuance of attachment; against what attachment to issue

A judge of, or a magistrate serving, the court in which a petition for attachment is filed shall make an ex parte review of the petition. The judge or magistrate shall issue an attachment in accordance with the prayer of the petition only upon a determination that (i) there is reasonable cause to believe that grounds for attachment may exist and (ii) the petition complies with §§ 8.01-534, 8.01-537, and 8.01-538. The judge or magistrate may receive evidence only in the form of a sworn petition which shall be filed in the office of the clerk of the court. If the plaintiff seeks the recovery of specific personal property, the attachment may be (i) against such property and against the principal defendant's estate for so much as is sufficient to satisfy the probable damages for its detention or (ii) at the option of the plaintiff, against the principal defendant's estate for the value of the specific property and the damages for its detention. If the plaintiff seeks to recover a debt or damages for the breach of a contract, express or implied, or damages for a wrong, the attachment shall be against the principal defendant's estate for the amount specified in the petition as that which the plaintiff at the least is entitled to or ought to recover.

If the attachment is issued by a magistrate, it shall be returnable as prescribed by § 8.01-541. The magistrate shall promptly return to the clerk's office of the court to which the attachment is returnable the petition and the bond, if any, filed before him. The proceedings thereafter shall be the same as if the attachment had been issued by a judge.

Code 1950, § 8.526; 1954, c. 254; 1977, c. 617; 1984, c. 646; 1993, c. 841; 2008, cc. 551, 691.

§ 8.01-541. To whom attachments directed; when and where returned

Any attachment issued under this chapter may be directed to the sheriff of any county or city. Except when otherwise provided, it shall be returnable to the office of the clerk of court wherein the petition has been filed not more than thirty days from its date of issuance.

Code 1950, § 8-527; 1954, c. 333; 1977, c. 617; 1993, c. 841 .

§ 8.01-542. Issue and execution of attachment on any day

Such attachment may be issued or executed on any day, including a Sunday or holiday.

Code 1950, § 8-529; 1977, c. 617.

§ 8.01-543. Issue of other attachments on original petition

Upon the written application of the plaintiff, his agent or attorney, other attachments founded on the original petition may be issued from time to time by the clerk of the court in which the original attachment is pending, and the same may be directed, executed, and returned in like manner as an original attachment. However, the clerk shall not issue an attachment where new or additional grounds of attachment are relied upon or where any ship, boat or vessel of more than twenty tons is sought to be attached.

If new or additional grounds of attachment are relied on, the plaintiff may amend his petition in accordance with Rule of Court 1:8 according to the facts and swear to the same. Except as otherwise provided in this section, an additional attachment as prayed for shall be issued by a judge or magistrate only upon his determination that (i) there is reasonable cause to believe that the

grounds for attachment may exist and (ii) that the amended petition complies with §§ 8.01-534 and 8.01-537. Where any ship, boat, or other vessel of more than twenty tons is sought to be attached, a judge or magistrate shall issue the additional attachment only on his determination that § 8.01-538 has been complied with. The cause shall proceed, under the provisions of this chapter, upon the petition as amended.

The court shall adjudge the costs of such attachments as it deems proper.

The following, or its equivalent, shall be a sufficient form of application for an additional attachment:

To A.B., clerk of the ..... court of .....county (or city): In the case

of ..... v. ....., on an attachment, an additional attachment and

summons is requested to be issued against .....X.Y. (or X.Y. by H.,

attorney or agent, as the case may be).

Code 1950, § 8-530; 1977, c. 617; 1984, c. 646.

§ 8.01-544. When attachment not served other attachments may issue; order of publication

When an attachment is returned not served on a principal defendant, whether levied on property or not, further attachments and summonses may be issued until service is obtained on him, if he be a resident of the Commonwealth. If for any cause service cannot be had in the Commonwealth, upon affidavit of that fact, an order of publication shall be made against him.

Code 1950, § 8-531; 1977, c. 617.

§ 8.01-545. Amendments; formal defects

Such amendments shall be allowed of the petition, answer and of any of the other proceedings in the attachment as shall be conducive to the attainment of the ends of substantial justice, and upon such terms as to continuance and costs as may seem proper. An amendment when made shall as against the principal defendant and as to claims against him existing at the time the attachment was issued relate back to the time of the levy of the attachment, unless otherwise directed. No attachment shall be quashed or dismissed for mere formal defects.

Code 1950, § 8-532; 1977, c. 617.

Article 2 - SUMMONS; LEVY; LIEN; BONDS, ETC

§ 8.01-546. What attachment to command; summons

Every attachment sued out against specific personal property shall command the sheriff or other officer to whom it may be directed to attach the specific property claimed in the petition, and so much more of the real and personal property of the principal defendant as shall be necessary to cover the damages for the detention of the specific property sued for and the costs of the attachment. Every other attachment shall command the sheriff or other officer to whom it may be directed to attach the property mentioned and sought to be attached in the petition, if any, and so

much of the lands, tenements, goods, chattels, moneys and effects of the principal defendant not exempt from execution as will be sufficient to satisfy the plaintiff's demand, and, in case of tangible personal property, taken possession of under § 8.01-551, to keep the same safely in his possession to satisfy any judgment that may be recovered by the plaintiff in such attachment.

Every attachment sued out under this section shall also command the sheriff or other officer to summon the defendant or defendants, if he or they are found within his county or city, or any county or city wherein he may have seized property under and by virtue of such writ, to appear and answer the petition for the attachment.

Each copy of the summons shall be issued together with a form for requesting a hearing on a claim of exemption from levy or seizure as provided in § 8.01-546.1. Both documents shall be served on each defendant.

Code 1950, § 8-533; 1977, c. 617; 1986, c. 341.

§ 8.01-546.1. Exemption claims form

The form for requesting a hearing or a claim for exemption from levy or seizure shall be designed by the Supreme Court and provided to all courts which may issue attachments and to all magistrates.

1986, c. 341.

§ 8.01-546.2. Hearing on claim of exemption from levy or seizure

A judgment debtor shall have the right to a hearing on his claim of exemption from levy or seizure. If a defendant files a request for a hearing, the clerk shall (i) schedule a hearing no later than ten business days from the date that the request is filed with the court, and (ii) notify the parties of the date, time and place of hearing and the exemption being claimed. This hearing may be combined with a hearing pursuant to § 8.01-119 or § 8.01-568 or with a trial on the merits if held within the ten-business day limitation.

The clerk shall notify the parties and the sheriff of the date, time and place of hearing and the exemption being claimed. The court may stay the sale pending this hearing by interlocutory order. The sheriff shall comply with the writ unless and until ordered otherwise in writing by the court. The order shall take effect upon receipt by the sheriff. The clerk is required to provide a copy of the order or the hearing disposition to the sheriff only if the writ or levy is dismissed or is modified by the judge. The court shall release all exempt property from the judgment creditor's lien and order the sheriff to return such exempt property to the judgment debtor.

1986, c. 341.

§ 8.01-547. Attachment against remainders

If the attachment be against a principal defendant who is a nonresident or an absconding debtor, the attachment may also direct the sheriff or other officer to levy the same on any remainder, vested or contingent, of the principal defendant, or so much thereof as may be sufficient to pay the

amount for which it issues. But no such remainder shall be sold until it becomes vested. A judgment, however, ascertaining the amount due the plaintiff may be docketed as other judgments are docketed, but unless it be a personal judgment, it shall be a lien only on the property levied on.

Code 1950, § 8-534; 1977, c. 617.

§ 8.01-548. Who may levy attachment and on what

An attachment may be levied upon any estate of the defendant, whether the same be in the county or city in which the attachment issued, or in any other, either by the officer of the county or city wherein the attachment issued, or by the officer of the county or city where the estate is.

Code 1950, § 8-535; 1977, c. 617.

§ 8.01-549. Restraining order or receiver

The court may interpose by a restraining order, or the appointment of a receiver, or otherwise, to secure the forthcoming of the specific property sued for, and so much other estate as will probably be required to satisfy any further order that may be made in the proceedings.

Code 1950, § 8-536; 1977, c. 617.

§ 8.01-550. How attachment levied

An attachment may be levied as follows:

On tangible personal property in possession of a principal defendant, whether such possession be actual or constructive, it may be levied as at common law or by delivering a copy of the attachment to such principal defendant or, if possession is requested in the petition, then by taking possession of such personal property;

On choses in action or on tangible personal property in possession of any defendant other than the principal defendant, it may be levied by delivering a copy of the attachment to the person indebted to the principal defendant or having possession of the property belonging to him; and

On real estate, it may be levied by such estate being mentioned and described in an endorsement on the attachment by the officer to whom it is delivered for service to the following effect:

"Levied on the following real estate of the defendant A. (or defendants A.
and B.), to-wit: (here describe the real estate) this the .....
day of ..... at ..... o'clock. E.F., sheriff
(or other officer),"

and by service of the attachment on the person, if any, in possession of such real estate.

Wherever a copy of an attachment is required or allowed to be served on any person, natural or artificial, it may be served as a notice is served under §§ 8.01-296, 8.01-299, 8.01-300 or 8.01-301, as the case may be.

Code 1950, § 8-537; 1977, c. 617; 1984, c. 646.

§ 8.01-551. When officer to take possession of property

If so requested by the plaintiff in his petition, the officer to whom the attachment is directed shall take possession of the property specified in the attachment, or when no such property is specified, of any estate or effects of the defendant, or so much thereof as is sufficient to pay the plaintiff's claim. But the officer levying the attachment shall, before taking possession of any property as aforesaid, make his certificate of the estimated fair market value of the property on which the attachment is levied, and he shall not take possession of the same unless and until bond in conformance with § 8.01-537.1 based on the estimated fair market value of the property as so stated in his certificate is posted. The certificate shall be filed in the clerk's office of the court to which the attachment is returnable and the value so certified shall be subject to review by the court to which the attachment is returnable.

Code 1950, § 8-538; 1973, c. 545; 1977, c. 617; 1984, c. 646; 1993, c. 841 .

§ 8.01-552. Repealed

Repealed by Acts 1984, c. 646.

§ 8.01-553. Bonds for retention of property or release of attachment; revising bonds mentioned in this and § 8.01-551

Any property levied on or seized as aforesaid, under any attachment, may be retained by or returned to the defendant or other person in whose possession it was on his giving bond, with condition to have the same forthcoming at such time and place as the court may require. In the alternative, the principal defendant may, by giving bond with condition to perform the judgment of the court, release from any attachment the whole of any estate attached. The bond in either case shall be taken by the officer serving the attachment, with surety, payable to the plaintiff, and in a penalty in the latter case either double the amount or value for which the attachment issued or double the value of the property on which the attachment was levied, at the option of the person giving it, and in the former, either double the amount of value for which the attachment issued or double the value of the property retained or returned, at the option of the person giving it. However, in the event the court shall consider that the amount of any bond required by this section or § 8.01-551 is excessive or inadequate, such court may, upon motion of any party in interest after reasonable notice to the opposite party if he can be found in the jurisdiction of the court or to his attorney of record, if any, fix the amount of such bond to conform to the equities of the case.

Code 1950, § 8-540; 1977, c. 617; 1984, c. 646.

§ 8.01-554. Where bond returned and filed; exceptions to bond

Every such bond shall be returned by the officer to and filed by the clerk of the court in which the attachment is pending, or to which the attachment is returnable, and the plaintiff may, within thirty days after the return thereof, file exceptions to the same, or to the sufficiency of the surety therein. If such exception be sustained, the court shall order the officer to file a good bond, with sufficient surety, to be approved by it, on or before a certain day to be fixed by the court. If he fail to do so, he and his sureties in his official bond shall be liable to the plaintiff as for a breach of

such bond; but the officer shall have the same rights and remedies against the parties to any bonds so adjudged bad as if he were a surety for them.

Code 1950, § 8-541; 1977, c. 617.

§ 8.01-555. When appeal bond given property to be delivered to owner

When judgment in favor of the plaintiff is rendered by a general district court in any case in which an attachment is issued and on appeal therefrom to a circuit court an appeal bond is given, with condition to prosecute the appeal with effect or pay the debt, interest, costs and damages, as well as the costs of the appeal, the officer, in whose custody any attached property is, shall deliver the same to the owner thereof. When an appeal is from a circuit court to the Supreme Court and an appeal bond is given pursuant to § 8.01-676.1, the officer having custody shall proceed in like manner.

Code 1950, § 8-543; 1977, c. 617.

§ 8.01-556. Bonds may be given by any person

Any bond authorized or required by any section of this chapter may be given either by the party himself or by any other person.

Code 1950, § 8-544; 1977, c. 617.

§ 8.01-557. Lien of attachment; priority of holder in due course

The plaintiff shall have a lien from the time of the levying of such attachment, or serving a copy thereof as aforesaid, upon the personal property of the principal defendant, when the same is in his possession, actual or constructive, and upon the personal property, choses in action, and other securities of such defendant in the hands of, or owing by a codefendant on whom it is so served; and on any real estate mentioned in such an endorsement by the officer on the attachment or summons as is prescribed by § 8.01-550, from the time of levy and service pursuant to such section. But a holder in due course of negotiable paper shall have priority over an attachment levied thereon.

Code 1950, § 8-545; 1977, c. 617.

§ 8.01-558. Attachment lien on effects already in hands of officer

When an officer has in his possession or custody money or effects of the defendant held under an attachment executed, or other legal process, a delivery to such officer of an attachment under this chapter shall be deemed a levy thereof as to such money or effects, and constitute a lien thereon from the time of such delivery.

Code 1950, § 8-546; 1977, c. 617.

§ 8.01-559. Return by officer

The officer levying the attachment shall show in his return the time, date and manner of the service, or execution thereof, on each person and parcel of property, and also give a list and description of the property, if any, levied on under the attachment.

Code 1950, § 8-547; 1954, c. 333; 1977, c. 617.

Article 3 - SUBSEQUENT PROCEEDINGS GENERALLY

§ 8.01-560. How interest and profits of property applied in certain cases

When any attachment is sued out, although the property or estate attached be not seized, the interest and profits thereof pending the attachment and before judgment may be paid to the defendant, if the court deem it proper.

Code 1950, § 8-548; 1977, c. 617.

§ 8.01-561. How property to be kept; how sold, when expensive to keep or perishable

Any property seized under any attachment and not sold before judgment shall be kept in the same manner as similar property taken under execution. But such as is expensive to keep or perishable may be sold by order of the court upon such terms as the court may direct. If the court directs that the sale may be made on credit, the court may order the sheriff to take a bond with sufficient surety, payable to the sheriff, for the benefit of the party entitled. Such bond shall be returned forthwith by the officer to the court.

Code 1950, § 8-549; 1977, c. 617.

§ 8.01-562. Examination on oath of codefendant; order and bond

A defendant who at the time of service of the attachment was alleged to be indebted to a principal defendant, or had in his possession personal property belonging to such principal defendant, shall appear in person and submit to an examination on oath touching such debt or personal property, or he may, with the consent of the court, after reasonable notice to the plaintiff, file an answer in writing under oath, stating whether or not he was so indebted, and if so, the amount thereof and the time of maturity, or whether he had in his possession any personal property belonging to such principal defendant and, if so, the nature and value thereof. If it appear on such examination or by his answer that at the time of the service of the attachment, he was indebted to the principal defendant, or had in his possession or control any goods, chattels, money, securities or other effects belonging to such defendant, the court may order him to pay the amount so owing by him, or to deliver such effects to the sheriff, or other person designated by the court to receive the same; or such defendant may, with the leave of the court, give bond with sufficient security, payable to such person and in such penalty as the court shall prescribe, with condition to pay the amount owing by him, and have such effects forthcoming, at such time and place as the court may thereafter require. An answer under oath under this section shall be deemed prima facie to be true.

Code 1950, § 8-550; 1977, c. 617.

§ 8.01-563. Principal defendant may claim exemption

The principal defendant, if a householder or head of a family, may claim that the amount so found owing from his codefendant, or the personal property in his possession, shall be exempt from liability for the plaintiff's claim; and if it shall appear that the principal defendant is entitled to such

exemption, then the court shall render a judgment against the defendant only for the excess, if any, beyond the exemption to which the principal defendant is entitled.

Code 1950, § 8-551; 1977, c. 617.

§ 8.01-564. Procedure when codefendant fails to appear

If the attachment be served on a defendant who the petition alleges is indebted to, or has in his possession effects of, the principal defendant, and he fail to appear, the court may either compel him to appear, or hear proof of any debt owing by him, or of effects in his hands belonging to a principal defendant in such attachment, and make such orders in relation thereto as if what is so proved had appeared on his examination.

Code 1950, § 8-552; 1977, c. 617.

§ 8.01-565. Suggestion that codefendant has not made full disclosure

When it is suggested by the plaintiff in any attachment that a codefendant has not fully disclosed the debts owing by him, or effects in his hands belonging to the principal defendant in such attachment, the court, without any formal pleading, shall inquire as to such debts and effects, or, if either party demand, it shall cause a jury to be impaneled for that purpose, and proceed in respect to any such debts or effects found by the court or the jury in the same manner as if they had been confessed by such codefendant. If the judgment of the court or verdict of the jury be in favor of such codefendant, he shall have judgment for his costs against the plaintiff.

Code 1950, § 8-553; 1977, c. 617.

§ 8.01-566. Who may make defense to attachment

Any of the defendants in any such attachment, or any party to any forthcoming bond given as aforesaid, or the officer who may be liable to the plaintiff by reason of such bond being adjudged bad, or any person authorized by § 8.01-573 to file a petition, may make defense to such attachment, but the attachment shall not thereby be discharged, or the property levied on released.

Code 1950, § 8-554; 1973, c. 545; 1977, c. 617.

§ 8.01-567. What defense may be made to attachments

Any party in interest may show that the court is without jurisdiction to hear and determine the controversy.

The principal defendant, if not served with process, may appear specially and show that the attachment was issued on false suggestion or without sufficient cause, in which event the attachment shall be quashed.

Any person claiming title to, an interest in, or a lien upon the property attached, or any part thereof, after being admitted as a party defendant, if not already a defendant, and the principal defendant, may contest the liability of the principal defendant for the plaintiff's claim, in whole or in part, by proof of any manner which would constitute a good defense by the principal defendant to an action at law on such claim, and may also show that the attachment was not issued on any

of the grounds set forth in § 8.01-534, or that the plaintiff is not likely to succeed on the merits of his underlying claim. The principal defendant may also file counterclaims or defenses available under § 8.01-422 as in an action at law.

Other defendants shall be limited to defenses personal to themselves, or which may prevent a liability upon them or their property.

Code 1950, § 8-555; 1977, c. 617.

§ 8.01-568. Quashing attachment or rendering judgment for defendant

The court in which an attachment is pending shall, on motion of the principal defendant, or any defendant claiming title to, an interest in, or a lien upon the property attached, or any part thereof, after reasonable notice to the plaintiff, hear testimony and quash the attachment, if of opinion that (i) the attachment is invalid on its face, (ii) none of the grounds for attachment in § 8.01-534 exist, or (iii) the plaintiff is not likely to succeed on the merits of his underlying claim. The hearing shall be held not later than ten business days following the defendant's motion. When the attachment is properly sued out, and the case is heard upon its merits, if the court is of opinion that the claim of the plaintiff is not established, final judgment shall be given for the defendant. In either case, he shall recover his costs, and damages for loss of the use of his property, and there shall be an order for the restoration of the attached effects. The plaintiff shall have the burden of proof in proceedings pursuant to this section.

Code 1950, § 8-556; 1977, c. 617; 1984, c. 646.

§ 8.01-569. When petition dismissed; when retained and cause tried

If the principal defendant has not appeared generally, nor been served with process, and the sole ground of jurisdiction of the court is the right to sue out the attachment, and this right be decided against the plaintiff, the petition shall be dismissed at the cost of the plaintiff; but if the plaintiff's claim be due at the hearing, and the court would otherwise have jurisdiction of an action against such defendant for the cause set forth in the petition, and such defendant has appeared generally, or been served with process, it shall retain the cause and proceed to final judgment as in other actions at law.

Code 1950, § 8-557; 1977, c. 617.

§ 8.01-570. Judgment, etc., of court when claim of plaintiff established

If the claim of the plaintiff be established, judgment shall be rendered for him, and the court shall dispose of the specific property levied on, as may be right, and order the sale of any other effects or real estate which shall not have been previously released or sold under this chapter, and direct the proceeds of sale, and whatever else is subject to the attachment, including what is embraced by such forthcoming bond, to be applied in satisfaction of the judgment.

Code 1950, § 8-558; 1977, c. 617.

§ 8.01-571. When defendant not served fails to appear plaintiff required to give bond

If the principal defendant has not appeared or been served with a copy of the attachment ten days before the judgment therein mentioned, the plaintiff shall not have the benefit of § 8.01-570 unless and until he shall have given bond with sufficient surety in such penalty as the court shall approve, with condition to perform such future order as may be made upon the appearance of such defendant and his making defense. If the plaintiff fail to give such bond in a reasonable time, the court shall dispose of the estate attached, or the proceeds thereof, as to it shall seem just.

Code 1950, § 8-542; 1977, c. 617.

§ 8.01-572. Sale of real estate attached

No real estate shall be sold until all other property and money subject to the attachment have been exhausted, and then only so much thereof as is necessary to pay the judgment. Upon a sale of real estate, under an attachment the court shall have the same powers and jurisdiction, and like proceedings thereon may be had, as if it were a sale of real estate by a court of equity exercising general equity powers.

Code 1950, § 8-559; 1977, c. 617.

§ 8.01-573. How and when claims of other persons to property tried

Any person may file his petition at any time before the property attached as the estate of a defendant is sold or the proceeds of sale paid to the plaintiff under the judgment, disputing the validity of the plaintiff's attachment thereon, or stating a claim thereto, or an interest in or lien on the same, under any other attachment or otherwise, and its nature, and upon giving security for cost, the court, without any other pleading, shall inquire into such claim, or, if either party demand it, impanel a jury for that purpose. If it be found that the petitioner has title to, or a lien on, or any interest in, such property, or its proceeds, the court shall make such order as may be necessary to protect his rights. The costs of such inquiry shall be paid by either party, at the discretion of the court.

Code 1950, § 8-560; 1977, c. 617.

§ 8.01-574. Attachments in connection with pending suits or actions

If an attachment be desired in connection with a pending suit or action, a petition for an attachment may be filed in the same court in which such suit or action is pending, and the procedure thereon shall be the same as if no suit or action were pending; but the attachment may be heard along with any suit in equity relating to the same subject so far as may be necessary for the convenient administration of justice. The suing out of an attachment in connection with a pending suit or action shall not be deemed the prosecution of a second action for the same cause.

Code 1950, § 8-561; 1977, c. 617.

§ 8.01-575. Rehearing permitted when judgment rendered on publication

If a defendant, against whom, on publication, judgment is rendered under any attachment, or his personal representative, shall return to or appear openly in this Commonwealth, he may, within one year after a copy of such judgment shall be served on him at the instance of the plaintiff, or

within two years from the date of the judgment, if he be not so served, petition to have the proceedings reheard. On giving security for costs he shall be admitted to make defense against such judgment, as if he had appeared in the case before the same was rendered, except that the title of any bona fide purchaser to any property, real or personal, sold under such attachment, shall not be brought in question or impeached. But this section shall not apply to any case in which the petitioner, or his decedent, was served with a copy of the attachment more than ten days before the date of the judgment, or to any case in which he appeared and made defense.

Code 1950, § 8-562; 1977, c. 617.

§ 8.01-576. Order of court on rehearing or new trial; restitution to defendant

On any rehearing or new trial had under § 8.01-575, the court may order the plaintiff in the original attachment to restore any money paid to him under such judgment to such defendant if living, or if dead to the heir or personal representative of such defendant, as the same may be, the proceeds of real or personal estate, and enter a judgment therefor against him; or it may confirm the former judgment. In either case it shall adjudge the costs of the prevailing party.

Code 1950, § 8-563; 1977, c. 617.

Chapter 20.1 - SUMMARY JURY TRIAL

§ 8.01-576.1. Election by parties; order of court

In any civil action pending before a circuit court, the parties may, by agreement in writing submitted to the court at any time prior to trial, elect to have a summary jury trial of the issues in the case in accordance with this chapter. However, where the court determines that the election is made for the purpose of delaying a trial on the merits, a summary jury trial shall not be had.

1988, c. 759.

§ 8.01-576.2. Summary jury trial; selection of jury; fees

Upon election of the parties, the court shall schedule a summary jury trial to be held as soon as convenient. Notice shall be given to the parties by means adequate to ensure their presence at the time and place of the trial. Seven jurors shall be randomly selected in accordance with the procedures specified in Chapter 11 (§ 8.01-336 et seq.). Fees shall be allowed to jurors selected for a summary jury trial as provided in § 17.1-618.

1988, c. 759.

§ 8.01-576.3. Procedures; verdict not binding unless otherwise agreed

A judge of the court having jurisdiction over the case shall preside over a summary jury trial. Counsel for the parties or, if a party is not represented by counsel, a party shall verbally present a summary of the issues in the case and the evidence on behalf of each party. Evidence for the plaintiff shall be presented first. Each party shall be given the opportunity to rebut the evidence of another party upon request. The testimony of witnesses and the submission of documentary evidence shall not be allowed except as stipulated or agreed to by the parties.

Upon conclusion of the presentations of the summary evidence, the court shall instruct the jury on the law applicable to the cause. The jury shall advise the court of its verdict upon conclusion of the deliberations.

Unless otherwise agreed by the parties in writing submitted to the court prior to a jury being impanelled pursuant to this chapter, the verdict of a summary jury shall not be binding on either party and shall not be admissible on any subsequent trial of the case. If the parties have agreed to be bound by the verdict, judgment shall be entered by the court in accordance with the verdict.

1988, c. 759.

Chapter 20.2 - COURT-REFERRED DISPUTE RESOLUTION PROCEEDINGS

§ 8.01-576.4. Scope and definitions

The provisions of this chapter apply only to court-referred dispute resolution services.

As used in this chapter:

"Conciliation" means a process in which a neutral facilitates settlement by clarifying issues and serving as an intermediary for negotiations in a manner which is generally more informal and less structured than mediation.

"Court" means any juvenile and domestic relations district court, general district court, circuit court, or appellate court, and includes the judges and any intake specialist to whom the judge has delegated specific authority under this chapter.

"Dispute resolution proceeding" means any structured process in which a neutral assists disputants in reaching a voluntary settlement by means of dispute resolution techniques such as mediation, conciliation, early neutral evaluation, nonjudicial settlement conferences or any other proceeding leading to a voluntary settlement conducted consistent with the requirements of this chapter. The term includes the orientation session.

"Dispute resolution program" means a program that offers dispute resolution services to the public, which is run by the Commonwealth or any private for-profit or not-for-profit organization, political subdivision, or public corporation, or a combination of these.

"Dispute resolution services" includes screening and intake of disputants, conducting dispute resolution proceedings, drafting agreements and providing information or referral services.

"Intake specialist" means an individual who is trained in analyzing and screening cases to assist in determining whether a case is appropriate for referral to a dispute resolution proceeding.

"Mediation" means a process in which a neutral facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.

"Neutral" means an individual who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services.

"Orientation session" means a preliminary meeting during which the dispute resolution proceeding is explained to the parties and the parties and the neutral assess the case and decide whether to continue with a dispute resolution proceeding or adjudication.

1993, c. 905; 2002, c. 718.

§ 8.01-576.5. Referral of disputes to dispute resolution proceedings

While protecting the right to trial by jury, a court, on its own motion or on motion of one of the parties, may refer any contested civil matter, or selected issues in a civil matter, to an orientation session in order to encourage the early resolution of disputes through the use of procedures that facilitate (i) open communication between the parties about the issues in the dispute, (ii) full exploration of the range of options to resolve the dispute, (iii) improvement in the relationship between the parties, and (iv) control by the parties over the outcome of the dispute. The neutral or intake specialist conducting the orientation session shall provide information regarding dispute resolution options available to the parties, screen for factors that would make the case inappropriate for a dispute resolution proceeding, and assist the parties in determining whether their case is suitable for a dispute resolution process such as mediation. The court shall set a date for the parties to return to court in accordance with its regular docket and procedure, irrespective of the referral to an orientation session. The parties shall notify the court, in writing, if the dispute is resolved prior to the return date.

Upon such referral, the parties shall attend one orientation session unless excused pursuant to § 8.01-576.6. Further participation in a dispute resolution proceeding shall be by consent of all parties. Attorneys for any party may participate in a dispute resolution proceeding.

1993, c. 905; 2002, c. 718.

§ 8.01-576.6. Notice and opportunity to object

When a court has determined that referral to an orientation session is appropriate, an order of referral to a neutral or to a dispute resolution program shall be entered and the parties shall be so notified as expeditiously as possible. The court shall excuse the parties from participation in an orientation session if, within fourteen days after entry of the order, a written statement signed by any party is filed with the court, stating that the dispute resolution process has been explained to the party and he objects to the referral.

1993, c. 905; 2002, c. 718.

§ 8.01-576.7. Costs

The orientation session shall be conducted at no cost to the parties. Unless otherwise provided by law, the cost of any subsequent dispute resolution proceeding shall be as agreed to by the parties and the neutral.

1993, c. 905; 2002, c. 718.

§ 8.01-576.8. Qualifications of neutrals; referral

A neutral who provides dispute resolution services other than mediation pursuant to this chapter shall provide the court with a written statement of qualifications, describing the neutral's background and relevant training and experience in the field. A dispute resolution program may satisfy the requirements of this section on behalf of its neutrals by providing the court with a written statement of the background, training, experience, and certification, as appropriate, of any neutral who participates in its program. A neutral who desires to provide mediation and receive referrals from the court shall be certified pursuant to guidelines promulgated by the Judicial Council of Virginia. The court shall maintain a list of mediators certified pursuant to guidelines promulgated by the Judicial Council and may maintain a list of neutrals and dispute resolution programs which have met the requirements of this section. The list may be divided among the areas of specialization or expertise of the neutrals.

At the conclusion of the orientation session, or no later than ten days thereafter, parties electing to continue with the dispute resolution proceeding may: (i) continue with the neutral who conducted the orientation session, (ii) select any neutral or dispute resolution program from the list maintained by the court to conduct such proceedings, or (iii) pursue any other alternative for voluntarily resolving the dispute to which the parties agree. If the parties choose to proceed with the dispute resolution proceeding but are unable to agree on a neutral or dispute resolution program during that period, the court shall refer the case to a neutral or dispute resolution program who accepts such referrals, on the list maintained by the court on the basis of a fair and equitable rotation, taking into account the subject matter of the dispute and the expertise of the neutral, as appropriate. If one or more of the parties is indigent or no agreement as to payment is reached between the parties and a neutral, the court shall set a reasonable fee for the service of any neutral who accepts such referral pursuant to this paragraph.

1993, c. 905; 2002, c. 718.

§ 8.01-576.9. Standards and duties of neutrals; confidentiality; liability

A neutral selected to conduct a dispute resolution proceeding under this chapter may encourage and assist the parties in reaching a resolution of their dispute, but may not compel or coerce the parties into entering into a settlement agreement. A neutral has an obligation to remain impartial and free from conflict of interests in each case, and to decline to participate further in a case should such partiality or conflict arise. Unless expressly authorized by the disclosing party, the neutral may not disclose to either party information relating to the subject matter of the dispute resolution proceeding provided to him in confidence by the other. In reporting on the outcome of the dispute resolution proceeding to the referring court, the neutral shall indicate whether an agreement was reached, the terms of the agreement if authorized by the parties, the fact that no agreement was reached, or the fact that the orientation session or mediation did not occur. The neutral shall not disclose information exchanged or observations regarding the conduct and

demeanor of the parties and their counsel during the dispute resolution proceeding, unless the parties otherwise agree.

However, where the dispute involves the support of minor children of the parties, the parties shall disclose to each other and to the neutral the information to be used in completing the child support guidelines worksheet required by § 20-108.2. The guidelines computations and any reasons for deviation shall be incorporated in any written agreement between the parties.

With respect to liability, when mediation is provided by a mediator who is certified pursuant to guidelines promulgated by the Judicial Council of Virginia, then the mediator, mediation program for which the certified mediator is providing services, and a mediator co-mediating with a certified mediator shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in efforts to assist or conduct a mediation, unless the act or omission was made or done in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another. This language is not intended to abrogate any other immunity that may be applicable to a mediator.

1993, c. 905; 1994, c. 687; 2002, c. 718.

§ 8.01-576.10. Confidentiality of dispute resolution proceeding

All memoranda, work products and other materials contained in the case files of a neutral or dispute resolution program are confidential. Any communication made in or in connection with the dispute resolution proceeding that relates to the controversy, including screening, intake and scheduling a dispute resolution proceeding, whether made to the neutral or dispute resolution program staff or to a party, or to any other person, is confidential. However, a written settlement agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except (i) where all parties to the dispute resolution proceeding agree, in writing, to waive the confidentiality, (ii) in a subsequent action between the neutral or dispute resolution program and a party to the dispute resolution proceeding for damages arising out of the dispute resolution proceeding, (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, that were not prepared specifically for use in and actually used in the dispute resolution proceeding, (iv) where a threat to inflict bodily injury is made, (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime, (vi) where an ethics complaint is made against the neutral by a party to the dispute resolution proceeding to the extent necessary for the complainant to prove misconduct and the neutral to defend against such complaint, (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation, (viii) where communications are sought or offered to prove or disprove any of the grounds

listed in § 8.01-576.12 in a proceeding to vacate a mediated agreement, or (ix) as provided by law or rule. The use of attorney work product in a dispute resolution proceeding shall not result in a waiver of the attorney work product privilege.

1993, c. 905; 1994, c. 687; 2002, c. 718; 2013, cc. 283, 383.

§ 8.01-576.11. Effect of written settlement agreement

If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. Upon request of all parties and consistent with law and public policy, the court shall incorporate the written agreement into the terms of its final decree disposing of a case. In cases in which the dispute involves support for the minor children of the parties, an order incorporating a written agreement shall also include the child support guidelines worksheet and, if applicable, the written reasons for any deviation from the guidelines. The child support guidelines worksheet shall be attached to the order.

1993, c. 905; 1994, c. 687.

§ 8.01-576.12. Vacating orders and agreements

Upon the filing of an independent action by a party, the court shall vacate a mediated agreement reached in a dispute resolution proceeding pursuant to this chapter, or vacate an order incorporating or resulting from such agreement, where:

1. The agreement was procured by fraud or duress, or is unconscionable;

2. If property or financial matters in domestic relations cases involving divorce, property, support or the welfare of a child are in dispute, the parties failed to provide substantial full disclosure of all relevant property and financial information; or

3. There was evident partiality or misconduct by the neutral, prejudicing the rights of any party.

For purposes of this section, "misconduct" includes failure of the neutral to inform the parties in writing at the commencement of the mediation process that: (i) the neutral does not provide legal advice, (ii) any mediated agreement may affect the legal rights of the parties, (iii) each party to the mediation has the opportunity to consult with independent legal counsel at any time and is encouraged to do so, and (iv) each party to the mediation should have any draft agreement reviewed by independent counsel prior to signing the agreement.

The fact that any provisions of a mediated agreement were such that they could not or would not be granted by a court of law or equity is not, in and of itself, grounds for vacating an agreement.

A motion to vacate under this section shall be made within two years after the mediated agreement is entered into, except that, if predicated upon fraud, it shall be made within two years after these grounds are discovered or reasonably should have been discovered.

1993, c. 905; 2002, c. 718.

Chapter 21 - ARBITRATION AND AWARD

Article 1 - GENERAL PROVISIONS

§ 8.01-577. Submission of controversy; agreement to arbitrate; condition precedent to action

A. Persons desiring to end any controversy, whether there is a suit pending therefor or not, may submit the same to arbitration, and agree that such submission may be entered of record in any circuit court or entered by order of any general district court. Upon proof of such agreement out of court, or by consent of the parties given in court in person or by counsel, it shall be entered in the proceedings of such court. Thereupon a rule shall be made that the parties shall submit to the award which shall be made in accordance with such agreement and the provisions of this chapter.

B. Neither party shall have the right to revoke an agreement to arbitrate except on a ground which would be good for revoking or annulling other agreements. Submission of any claim or controversy to arbitration pursuant to such agreement shall be a condition precedent to institution of suit or action thereon, and the agreement to arbitrate shall be enforceable, unless the agreement also provides that submission to arbitration shall not be a condition precedent to suit or action.

Code 1950, § 8-503; 1968, c. 244; 1977, c. 617; 1983, c. 485; 1986, c. 614; 2016, c. 181.

§§ 8.01-578 through 8.01-580. Repealed

Repealed by Acts 1986, c. 614.

§ 8.01-581. Fiduciary may submit to arbitration

Any personal representative of a decedent, fiduciary of a person under a disability, or other fiduciary may submit to arbitration any suit or matter of controversy touching the estate or property of such decedent, or person under a disability or in respect to which he is trustee. And any submission so made in good faith, and the award made thereupon, shall be binding and entered as the judgment of a court, if so required by the agreement, in the same manner as other submissions and awards. No such fiduciary shall be responsible for any loss sustained by an award adverse to the interests of the person under a disability or beneficiary under any such trust, unless it was caused by his fault or neglect.

Code 1950, § 8-507; 1977, c. 617.

Article 2 - UNIFORM ARBITRATION ACT

§ 8.01-581.01. Validity of arbitration agreement

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, except upon such grounds as exist at law or in equity for the revocation of any contract. This article also applies to arbitration agreements between employers and employees or between their respective representatives unless otherwise provided in the

agreement; provided, however, that nothing in this chapter shall be construed to create any right to arbitration with respect to any controversy regarding the employment or terms and conditions of employment of any officer or employee of the Commonwealth.

1986, c. 614.

§ 8.01-581.02. Proceedings to compel or stay arbitration

A. On application of a party showing an agreement described in § 8.01-581.01, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration. However, if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue of the existence of an agreement and shall order arbitration only if found for the moving party.

B. On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

C. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subsection A of this section, the application shall be made therein. Otherwise, subject to § 8.01-581.015, the application may be made in any court of competent jurisdiction.

D. Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section. However, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include the stay.

E. An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

1986, c. 614.

§ 8.01-581.03. Appointment of arbitrators by court; powers of arbitrators

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

The powers of the arbitrators may be exercised by a majority, unless otherwise provided by the agreement or by this article.

1986, c. 614.

§ 8.01-581.04. Hearing

Unless otherwise provided by the agreement:

1. The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

2. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

3. The hearing shall be conducted by all the arbitrators, but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

1986, c. 614.

§ 8.01-581.05. Representation by attorney

A party has the right to be represented by an attorney at any proceeding or hearing under this article. A waiver thereof prior to the proceeding or hearing is ineffective.

1986, c. 614.

§ 8.01-581.06. Witnesses, subpoenas, depositions

The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action. All provisions of law compelling a person under subpoena to testify are applicable.

On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken of a witness who cannot be subpoenaed or is unable to attend the hearing, in the manner and upon the terms designated by the arbitrators.

Fees for attendance as a witness shall be the same as for a witness in the circuit court.

1986, c. 614.

§ 8.01-581.07. Award; fees and expenses to be fixed

The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees incurred in the conduct of the arbitration, and all other expenses, not including counsel fees, shall be paid as provided in the award.

1986, c. 614.

§ 8.01-581.08. Change of award by arbitrators

On application of a party or, if an application to the court is pending under §§ 8.01-581.09, 8.01-581.010 or § 8.01-581.011, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in subdivisions 1 and 3 of § 8.01-581.011, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that he must serve his objections thereto, if any, within ten days from the notice. The award as modified or corrected is subject to the provisions of §§ 8.01-581.09, 8.01-581.010 or § 8.01-581.011.

1986, c. 614.

§ 8.01-581.09. Confirmation of an award

Upon application of a party any time after an award is made, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 8.01-581.010 and 8.01-581.011.

1986, c. 614; 1998, c. 303.

§ 8.01-581.010. Vacating an award

Upon application of a party, the court shall vacate an award where:

1. The award was procured by corruption, fraud or other undue means;

2. There was evident partiality by an arbitrator appointed as a neutral, corruption in any of the arbitrators, or misconduct prejudicing the rights of any party;

3. The arbitrators exceeded their powers;

4. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 8.01-581.04, in such a way as to substantially prejudice the rights of a party; or

5. There was no arbitration agreement and the issue was not adversely determined in proceedings under § 8.01-581.02 and the party did not participate in the arbitration hearing without raising the objection.

The fact that the relief was such that it could not or would not be granted by a court of law or equity is not grounds for vacating or refusing to confirm the award.

An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or reasonably should have been known. An application shall be made by filing a petition with the appropriate court within the prescribed time limits of this section, or by raising reasons supporting vacation in response to another party's petition to confirm the award, provided that such response is filed within the prescribed time limits of this section.

In vacating the award on grounds other than that stated in subdivision 5, the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with § 8.01-581.03. If the award is vacated on grounds set forth in subdivisions 3 and 4 the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 8.01-581.03. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

1986, c. 614; 1998, c. 303.

§ 8.01-581.011. Modification or correction of award

Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

1. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

2. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

3. The award is imperfect in a matter of form, not affecting the merits of the controversy.

If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

1986, c. 614.

§ 8.01-581.012. Judgment or decree on award

Upon granting an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity therewith and be docketed and enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

1986, c. 614.

§ 8.01-581.013. Applications to court

An application to the court under this article shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

1986, c. 614.

§ 8.01-581.014. Court; jurisdiction

The term "court" means a circuit court or general district court of the Commonwealth having jurisdiction over the subject matter of the controversy.

1986, c. 614; 1995, c. 342; 2016, c. 181.

§ 8.01-581.015. Venue

Except as provided in subsection B of § 8.01-262.1, an initial application shall be made to the court of the county or city in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county or city in which it was held. Otherwise, venue of the application shall be as provided in Chapter 5 (§ 8.01-257 et seq.) of this title. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

1986, c. 614; 1991, c. 489 .

§ 8.01-581.016. Appeals

An appeal may be taken from:

1. An order denying an application to compel arbitration made under § 8.01-581.02;

2. An order by a general district court granting an application to compel arbitration;

3. An order granting an application to stay arbitration made under subsection B of § 8.01-581.02;

4. An order confirming or denying an award;

5. An order modifying or correcting an award;

6. An order vacating an award without directing a rehearing; or

7. A judgment or decree entered pursuant to the provisions of this article.

The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

1986, c. 614; 2016, c. 181.

Chapter 21.1 - MEDICAL MALPRACTICE

Article 1 - MEDICAL MALPRACTICE REVIEW PANELS; ARBITRATION OF MALPRACTICE CLAIMS

§ 8.01-581.1. Definitions

As used in this chapter:

"Health care" means any act, professional services in nursing homes, or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical diagnosis, care, treatment or confinement.

"Health care provider" means (i) a person, corporation, facility or institution licensed by this Commonwealth to provide health care or professional services as a physician or hospital, dentist, pharmacist, registered nurse or licensed practical nurse or a person who holds a multistate privilege to practice such nursing under the Nurse Licensure Compact, nurse practitioner, optometrist, podiatrist, physician assistant, chiropractor, physical therapist, physical therapy assistant, clinical psychologist, clinical social worker, professional counselor, licensed marriage and family therapist, licensed dental hygienist, health maintenance organization, or emergency medical care attendant or technician who provides services on a fee basis; (ii) a professional corporation, all of whose shareholders or members are so licensed; (iii) a partnership, all of whose partners are so licensed; (iv) a nursing home as defined in § 54.1-3100 except those nursing institutions conducted by and for those who rely upon treatment by spiritual means alone through prayer in accordance with a recognized church or religious denomination; (v) a professional limited liability company comprised of members as described in subdivision A 2 of § 13.1-1102; (vi) a corporation, partnership, limited liability company or any other entity, except a state-operated facility, which employs or engages a licensed health care provider and which primarily renders health care services; or (vii) a director, officer, employee, independent contractor, or agent of the persons or entities referenced herein, acting within the course and scope of his employment or engagement as related to health care or professional services.

"Health maintenance organization" means any person licensed pursuant to Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2 who undertakes to provide or arrange for one or more health care plans.

"Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

"Impartial attorney" means an attorney who has not represented (i) the claimant, his family, his partners, co-proprietors or his other business interests; or (ii) the health care provider, his family, his partners, co-proprietors or his other business interests.

"Impartial health care provider" means a health care provider who (i) has not examined, treated or been consulted regarding the claimant or his family; (ii) does not anticipate examining, treating, or being consulted regarding the claimant or his family; or (iii) has not been an employee, partner or co-proprietor of the health care provider against whom the claim is asserted.

"Malpractice" means any tort action or breach of contract action for personal injuries or wrongful death, based on health care or professional services rendered, or which should have been rendered, by a health care provider, to a patient.

"Patient" means any natural person who receives or should have received health care from a licensed health care provider except those persons who are given health care in an emergency situation which exempts the health care provider from liability for his emergency services in accordance with § 8.01-225 or 44-146.23.

"Physician" means a person licensed to practice medicine or osteopathy in this Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

"Professional services in nursing homes" means services provided in a nursing home, as that term is defined in clause (iv) of the definition of health care provider in this section, by a health care provider related to health care, staffing to provide patient care, psycho-social services, personal hygiene, hydration, nutrition, fall assessments or interventions, patient monitoring, prevention and treatment of medical conditions, diagnosis or therapy.

Code 1950, § 8-911; 1976, c. 611; 1977, c. 617; 1981, c. 305; 1986, cc. 227, 511; 1989, cc. 146, 730; 1991, cc. 455, 464; 1993, c. 268; 1994, cc. 114, 616, 651; 2001, c. 98; 2003, cc. 487, 492; 2005, cc. 482, 649, 692; 2006, c. 638; 2008, cc. 121, 157, 169, 205; 2014, c. 89; 2015, cc. 295, 306.

§ 8.01-581.2. Request for review by medical malpractice review panel; rescission of request; determination on request

A. At any time within thirty days from the filing of the responsive pleading in any action brought for malpractice against a health care provider, the plaintiff or defendant may request a review by a medical malpractice review panel established as provided in § 8.01-581.3. The request shall be forwarded by the party making the request to the Clerk of the Supreme Court of Virginia with a copy of the Motion for Judgment and a copy of all responsive pleadings. A copy of the request shall be filed with the clerk of the circuit court, and a copy shall be sent to all counsel of record. The request shall include the name of the judge to whom the case is assigned, if any. Upon receipt of such request, the Supreme Court shall select the panel members as provided in § 8.01-581.3:1 and shall designate a panel within sixty days after receipt of the request. If a panel is requested, proceedings on the action based on the alleged malpractice shall be stayed during the period of

review by the medical review panel, except that the judge may rule on any motions, demurrers, or pleas that can be disposed of as a matter of law, set the trial date after the panel has been designated and, prior to the designation of the panel, shall rule on any motions to transfer venue.

B. After the selection of the members of the review panel, the requesting party may rescind a request for review by the panel only with the consent of all parties or with leave of the judge presiding over the panel.

C. Any health care provider named as a defendant shall have the right to request a panel and, in that event, shall give notice of its request to the other health care providers named in the motion for judgment as well as to the plaintiff and his counsel of record. When a request for a medical review panel is made by any party, a single panel shall be designated and all health care providers against whom a claim is asserted shall be subject to the jurisdiction of such panel. The provisions of this subsection shall not prohibit the addition of parties pursuant to § 8.01-581.2:1.

Code 1950, § 8-912; 1976, c. 611; 1977, c. 617; 1982, c. 151; 1984, cc. 443, 777; 1986, c. 227; 1989, c. 561; 1993, c. 928; 1994, c. 38; 1995, c. 367; 2000, c. 213; 2001, c. 252.

§ 8.01-581.2:1. Additional parties

The judge of the circuit court hearing the case may grant leave to amend the request for a review panel to add additional parties or causes of action in furtherance of the ends of justice except where (i) the request for leave to amend is made less than ten days before the date set for the review panel to convene or for the hearing or (ii) the judge finds that the request for leave to amend is without merit. If leave to amend is granted, the judge may, upon motion of either party, stay the review panel proceedings or continue the trial, extend the time for completion of discovery, filing of pleadings and other procedural limitations periods, or enter such other orders as are appropriate to avoid prejudice to the parties and to avoid unnecessary delay and duplication in the proceedings.

The statute of limitations as to any party added shall be tolled from the date of the request until completion of the panel proceedings. Leave to add additional parties to the review panel proceeding shall not be granted if the judge finds that the applicable statute of limitations has expired with respect to the new or additional parties or causes of action.

1986, c. 227; 1993, c. 928 .

§ 8.01-581.3. Composition, selection, etc., of panel

The medical review panel shall consist of (i) two impartial attorneys and two impartial health care providers, licensed and actively practicing their professions in the Commonwealth and (ii) the judge of a circuit court in which the action was filed, who shall preside over the panel. The judge shall have no vote and need not attend or participate in the deliberations. The medical review panel shall be selected by the Supreme Court from a list of health care providers submitted by the Board of Medicine and a list of attorneys submitted by the Virginia State Bar. In the selection of

the health care provider members, the Court shall give due regard to the nature of the claim and the nature of the practice of the health care provider.

Code 1950, § 8-913; 1976, c. 611; 1977, cc. 202, 617; 1983, c. 208; 1984, c. 777; 1986, c. 227; 1993, c. 928; 1994, c. 384.

§ 8.01-581.3:1. Completion of discovery; hearing date; notification to parties and panel members; oath of panel members

At the time that the panel is designated, the Supreme Court shall advise the clerk of the circuit court in which the matter was filed of the names of the panel members.

Except for good cause shown, the date for completion of discovery shall not be set beyond 120 days from the date on which the panel was requested. Within the period set for the taking of discovery and upon consultation with the panel members, the judge shall notify the parties of the date set for a hearing by the review panel, if any, or the date on which the panel will convene. Such date shall not be set sooner than ten days after the date for completion of discovery. Upon completion of discovery, the clerk of the circuit court shall notify the parties of the name, address and professional practice of each panel member and shall also notify the panel members, in writing, of their appointment.

The written notification to the panel members shall include the definitions of "impartial attorney" and "impartial health care provider" as contained in § 8.01-581.1 and a copy of the oath to which the panel members will be required to subscribe when the panel convenes. The oath shall be as follows:

"I do solemnly swear (or affirm) that I have no past or present relationship with the parties nor am I aware of anything that would prevent me from being impartial in my deliberations. I further swear (or affirm) that I will render an opinion faithfully and fairly on the basis of the evidence presented, applying any professional expertise I may have, giving due regard to the nature of the claim and the nature of the practice of the health care provider." A panel member who, for any reason, could not take the oath of impartiality shall promptly notify the judge presiding over the panel, in writing, of such inability. The judge shall notify the Supreme Court, which shall then select and notify another panel member in place of and practicing the same profession as the disqualified member.

1986, c. 227; 1993, c. 928 .

§ 8.01-581.4. Submission of evidence to panel; depositions and discovery; duties of chairman; access to material

The evidence to be considered by the medical review panel shall be promptly submitted by the respective parties, upon appointment of the panel, to each member of the panel in written form. Either party, upon request, shall be granted a hearing before the panel. The evidence may consist of medical charts, X-rays, laboratory tests, excerpts of treatises, and depositions of witnesses, including parties, and, when a hearing is held, oral testimony before the panel. The parties shall

submit to the panel members only those portions of deposition transcripts, medical records, treatises and other documents which are relevant to the claim. However, upon request of the judge, a party shall produce all or part of any such document submitted. At the discretion of the judge, additional depositions of parties and witnesses may be taken, or other additional discovery may be had, at any time prior to hearing by any party. The judge shall rule on the admissibility of all or any part of a deposition offered as evidence at the hearing. Either party may have discovery pursuant to procedures set out in Part Four of the Rules of the Supreme Court of Virginia prior to appointment of the panel or thereafter in the discretion of the judge.

Process shall be returnable to the office of the clerk where the action was filed and shall issue under the style of the case as filed. Process for discovery shall issue upon application to the clerk. Any such discovery and any depositions taken for purposes of discovery or otherwise, under this section, may be used in the action filed for any purpose otherwise proper under Part Four of the Rules of Court. The judge of the panel shall advise the panel relative to any legal question involved in the review proceeding and shall prepare the opinion of the panel as provided in § 8.01-581.7. All parties shall have full access to any material submitted to the panel.

Code 1950, § 8-914; 1976, c. 611; 1977, c. 617; 1979, c. 261; 1984, c. 777; 1986, c. 227; 1993, c. 928 .

§ 8.01-581.4:1. Assembly of record

Upon conclusion of deliberations and rendering of an opinion by the panel, all documentary evidence submitted to the panel, a transcript of the ore tenus hearing, if any, and a copy of the written opinion of the panel shall be filed in the office of the clerk. The record shall be maintained until the action is completed in the circuit court. Upon completion of the action, the clerk of the trial court shall include a copy of the panel record along with the record of the case.

1986, c. 227; 1993, c. 928 .

§ 8.01-581.4:2. Removal of record for inspection and copying; notice

Any party may, upon notice to all other parties or their counsel, remove any book, record or document which has been filed with the clerk or has become a part of the permanent record filed with the Executive Secretary for purposes of inspection and copying. The party removing the documents shall give an appropriate receipt to the clerk or Executive Secretary and shall be responsible for the return of the materials within ten days.

1986, c. 227.

§ 8.01-581.5. When hearing to be held; notice to parties

The plaintiff or defendant may request the medical review panel to hold a hearing on any claim referred to the medical review panel, in which case the medical review panel shall conduct a hearing thereon in accordance with § 8.01-581.6 after notice to the parties by means adequate to ensure their presence at the time and place of the hearing.

Code 1950, § 8-915; 1976, c. 611; 1977, c. 617; 1979, c. 261; 1984, c. 777; 1993, c. 928 .

§ 8.01-581.6. Conduct of proceedings

In the conduct of its proceedings:

1. The testimony of the witnesses shall be given under oath. Members of the medical review panel, once sworn, shall have the power to administer oaths.

2. In the event a hearing is held, the parties are entitled to be heard, to present relevant evidence, and to cross-examine witnesses to the extent necessary to enable the panel to render an opinion as specified in § 8.01-581.7. The rules of evidence need not be observed. The medical review panel may proceed with the hearing and shall render an opinion upon the evidence produced, notwithstanding the failure of a party duly notified to appear.

3. The medical review panel may issue or cause to be issued, on its own motion or on application of any party, subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence. Subpoenas so issued shall be served and, upon application by a party or the panel to a court of proper venue having jurisdiction over a motion for judgment based on such claim, enforced in the manner provided for the service and enforcement of subpoenas in a civil action. All provisions of law compelling a person under subpoena to testify are applicable.

4. [Repealed.]

5. The hearing shall be conducted by all members of the medical review panel unless the parties otherwise agree. A majority of the members present may determine any question and may render an opinion.

6. The medical review panel members may apply their expertise in evaluating the evidence giving due regard to the nature of the claim and the nature of the practice of the health care provider, whether expert medical opinions are presented by the parties or not.

Code 1950, § 8-916; 1976, c. 611; 1977, c. 617; 1979, c. 261; 1984, c. 777; 1986, c. 227.

§ 8.01-581.7. Opinion of panel

A. Within thirty days, after receiving all the evidence, the panel shall have the duty, after joint deliberation, to render one or more of the following opinions:

1. The evidence does not support a conclusion that the health care provider failed to comply with the appropriate standard of care;

2. The evidence supports a conclusion that the health care provider failed to comply with the appropriate standard of care and that such failure is a proximate cause in the alleged damages;

3. The evidence supports a conclusion that the health care provider failed to comply with the appropriate standard of care and that such failure is not a proximate cause in the alleged damages; or

4. The evidence indicates that there is a material issue of fact, not requiring an expert opinion, bearing on liability for consideration by a court or jury.

B. If the review panel's finding is that set forth in subdivision 2 of subsection A of this section, the panel may determine whether the plaintiff suffered any disability or impairment and the degree and extent thereof.

C. The opinion shall be in writing and shall be signed by all panelists who agree therewith. Any member of the panel may note his dissent. All such opinions shall be filed with the clerk of the court in which the action is pending and mailed to the plaintiff and the defendant within five days of the date of their rendering. However, this subsection shall not be construed to preclude the panel from announcing the opinion in the presence of the parties or their counsel, provided a signed written opinion is subsequently mailed as provided in this subsection.

Code 1950, § 8-917; 1976, c. 611; 1977, c. 617; 1986, c. 227; 1993, c. 928 .

§ 8.01-581.7:1. Limitation on panel opinion

Unless the parties otherwise agree, any opinion of the panel shall be rendered no later than six months from the designation of the panel unless the judge shall extend the period one time, not to exceed ninety days, upon a showing of extraordinary circumstances. If the opinion of the panel is not rendered within the time provided, any panel opinion rendered subsequently shall be inadmissible as evidence unless the failure of the panel to render a decision within the time provided was caused by delay on the plaintiff's part.

1981, c. 327; 1993, c. 928 .

§ 8.01-581.8. Admissibility of opinion as evidence; appearance of panel members as witnesses; immunity from civil liability

An opinion of the medical review panel shall be admissible as evidence in the action brought by the plaintiff, but shall not be conclusive. Either party shall have the right to call, at his cost, any member of the panel, except the judge, as a witness. If called, each witness shall be required to appear and testify. The panelist shall have absolute immunity from civil liability for all communications, findings, opinions and conclusions made in the course and scope of duties prescribed by this chapter.

Code 1950, § 8-918; 1976, c. 611; 1977, c. 617; 1978, c. 406; 1993, c. 928 .

§ 8.01-581.9. Repealed

Repealed by Acts 1993, c. 928 .

§ 8.01-581.10. Per diem and expenses of panel

Each member of the medical review panel shall be reimbursed for his actual and necessary expenses and shall be paid at a rate of fifty dollars per diem for work performed as a member of the panel exclusive of time involved if called as a witness to testify in court. Per diem and expenses of the panel shall be borne by the parties in such proportions as may be determined by the chairman in his discretion.

Code 1950, § 8-920; 1976, c. 611; 1977, c. 617; 1984, c. 777.

§ 8.01-581.11. Rules and regulations

The Chief Justice of the Supreme Court of Virginia shall promulgate all necessary rules and regulations to carry out the provisions of this chapter.

Code 1950, § 8-921; 1976, c. 611; 1977, c. 617.

§ 8.01-581.11:1. Objections not waived by participation

Participation in any medical malpractice review panel proceeding pursuant to this article shall not constitute a waiver by a party to the proceedings of any objections to the review panel procedure.

1986, c. 227.

§ 8.01-581.12. Arbitration of medical malpractice claims

A. Persons desiring to enter into an agreement to arbitrate medical malpractice claims which have then arisen or may thereafter arise may submit such matters to arbitration under the provisions of Chapter 21 (§ 8.01-577 et seq.) of this title and an agreement to submit such matters shall be binding upon the parties if the patient or claimant or his guardian, conservator, committee or personal representative is allowed by the terms of the agreement to withdraw therefrom, and to decline to submit any matter then or thereafter in controversy, within a period of at least sixty days after the termination of health care or, if the patient is under disability by reason of age and at the time of termination without a guardian who could take such action for him, or if he is incapacitated and without a guardian or conservator who could take such action for him, or if such termination is by death or if death occurs within sixty days after termination, then within a period of at least sixty days after the appointment and qualification of the guardian, conservator or committee or personal representative.

B. Proof of agreement to arbitrate and submission of a medical malpractice claim pursuant thereto shall be in accordance with Chapter 21 of this title, and a medical malpractice panel appointed under this article may be designated to arbitrate the matter, either by the arbitration agreement or by the parties to the agreement.

C. An insurer of a health care provider shall be bound by the award of an arbitration panel or arbitrators acting pursuant to a good faith submission hereunder to the extent to which it would have been obligated by a judgment entered in an action at law with respect to the matter submitted; provided, that such insurer has agreed prior to the submission to be bound by the award of such arbitration panel or arbitrators.

Code 1950, § 8-922; 1976, c. 611; 1977, c. 617; 1997, c. 801.

§ 8.01-581.12:1. Repealed

Repealed by Acts 1979, c. 325.

§ 8.01-581.12:2. Article not applicable to actions arising prior to July 1, 1976

(a) The provisions of this article shall not apply to any cause of action which arose prior to July 1, 1976, and as to which the statute of limitations had not run prior to that date, regardless of the

date any suit brought thereon is filed. Notwithstanding the foregoing, in actions which accrued prior to July 1, 1976, if a claimant has filed notice under § 8.01-581.2 of this article, his cause of action and any defense thereto shall be governed by this article.

(b) The term "has filed," as used in this section, is deemed to include the filing of notice under § 8.01-581.2 (or under repealed § 8-912) of this article where such filing occurred prior to the expiration of any applicable statute of limitation when the cause of action arose prior to July 1, 1976. This subsection (b) shall be applied retroactively to such causes of action.

Code 1950, § 8-924; 1977, c. 422; 1978, c. 262.

Article 2 - MISCELLANEOUS PROVISIONS

§ 8.01-581.13. Civil immunity for certain health professionals and health profession students serving as members of certain entities

A. For the purposes of this subsection, "health professional" means any clinical psychologist, applied psychologist, school psychologist, dentist, certified emergency medical services provider, licensed professional counselor, licensed substance abuse treatment practitioner, certified substance abuse counselor, certified substance abuse counseling assistant, licensed marriage and family therapist, nurse, optometrist, pharmacist, physician, chiropractor, podiatrist, or veterinarian who is actively engaged in the practice of his profession or any member of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

Unless such act, decision, or omission resulted from such health professional's bad faith or malicious intent, any health professional, as defined in this subsection, shall be immune from civil liability for any act, decision or omission resulting from his duties as a member or agent of any entity which functions primarily (i) to investigate any complaint that a physical or mental impairment, including alcoholism or drug addiction, has impaired the ability of any such health professional to practice his profession and (ii) to encourage, recommend and arrange for a course of treatment or intervention, if deemed appropriate, or (iii) to review or monitor the duration of patient stays in health facilities, delivery of professional services, or the quality of care delivered in the statewide emergency medical services system for the purpose of promoting the most efficient use of available health facilities and services, the adequacy and quality of professional services, or the reasonableness or appropriateness of charges made by or on behalf of such health professionals. Such entity shall have been established pursuant to a federal or state law, or by one or more public or licensed private hospitals, or a relevant health professional society, academy or association affiliated with the American Medical Association, the American Dental Association, the American Pharmaceutical Association, the American Psychological Association, the American Podiatric Medical Association, the American Society of Hospitals and Pharmacies, the American Veterinary Medical Association, the American Association for Counseling and Development, the American Optometric Association, International Chiropractic Association, the American

Chiropractic Association, the NAADAC: the Association for Addiction Professionals, the American Association for Marriage and Family Therapy or a governmental agency.

B. For the purposes of this subsection, "health profession student" means a student in good standing who is enrolled in an accredited school, program, or curriculum in clinical psychology, counseling, dentistry, medicine, nursing, pharmacy, chiropractic, marriage and family therapy, substance abuse treatment, or veterinary medicine and has received training relating to substance abuse.

Unless such act, decision, or omission resulted from such health profession student's bad faith or malicious intent, any health profession student, as defined in this subsection, shall be immune from civil liability for any act, decision, or omission resulting from his duties as a member of an entity established by the institution of higher education in which he is enrolled or a professional student's organization affiliated with such institution which functions primarily (i) to investigate any complaint of a physical or mental impairment, including alcoholism or drug addiction, of any health profession student and (ii) to encourage, recommend, and arrange for a course of treatment, if deemed appropriate.

C. The immunity provided hereunder shall not extend to any person with respect to actions, decisions or omissions, liability for which is limited under the provisions of the federal Social Security Act or amendments thereto.

Code 1950, § 8-654.6; 1975, c. 418; 1977, c. 617; 1983, c. 567; 1984, c. 494; 1987, c. 713; 1989, c. 729; 1992, c. 590; 1993, c. 702; 1995, c. 636; 1996, cc. 937, 980; 1997, cc. 439, 901; 2001, c. 460; 2006, cc. 412, 638; 2009, c. 472; 2015, cc. 502, 503.

§ 8.01-581.14. Repealed

Repealed by Acts 2003, c. 397.

§ 8.01-581.15. Limitation on recovery in certain medical malpractice actions

In any verdict returned against a health care provider in an action for malpractice where the act or acts of malpractice occurred on or after August 1, 1999, which is tried by a jury or in any judgment entered against a health care provider in such an action which is tried without a jury, the total amount recoverable for any injury to, or death of, a patient shall not exceed the following, corresponding amount:

August 1, 1999, through June 30, 2000	$1.50 million
July 1, 2000, through June 30, 2001	$1.55 million
July 1, 2001, through June 30, 2002	$1.60 million
July 1, 2002, through June 30, 2003	$1.65 million
July 1, 2003, through June 30, 2004	$1.70 million
July 1, 2004, through June 30, 2005	$1.75 million
July 1, 2005, through June 30, 2006	$1.80 million

July 1, 2006, through June 30, 2007	$1.85 million
July 1, 2007, through June 30, 2008	$1.925 million
July 1, 2008, through June 30, 2012	$2.00 million
July 1, 2012, through June 30, 2013	$2.05 million
July 1, 2013, through June 30, 2014	$2.10 million
July 1, 2014, through June 30, 2015	$2.15 million
July 1, 2015, through June 30, 2016	$2.20 million
July 1, 2016, through June 30, 2017	$2.25 million
July 1, 2017, through June 30, 2018	$2.30 million
July 1, 2018, through June 30, 2019	$2.35 million
July 1, 2019, through June 30, 2020	$2.40 million
July 1, 2020, through June 30, 2021	$2.45 million
July 1, 2021, through June 30, 2022	$2.50 million
July 1, 2022, through June 30, 2023	$2.55 million
July 1, 2023, through June 30, 2024	$2.60 million
July 1, 2024, through June 30, 2025	$2.65 million
July 1, 2025, through June 30, 2026	$2.70 million
July 1, 2026, through June 30, 2027	$2.75 million
July 1, 2027, through June 30, 2028	$2.80 million
July 1, 2028, through June 30, 2029	$2.85 million
July 1, 2029, through June 30, 2030	$2.90 million
July 1, 2030, through June 30, 2031	$2.95 million

In any verdict returned against a health care provider in an action for malpractice where the act or acts of malpractice occurred on or after July 1, 2031, which is tried by a jury or in any judgment entered against a health care provider in such an action which is tried without a jury, the total amount recoverable for any injury to, or death of, a patient shall not exceed $3 million. Each annual increase shall apply to the act or acts of malpractice occurring on or after the effective date of the increase.

Where the act or acts of malpractice occurred prior to August 1, 1999, the total amount recoverable for any injury to, or death of, a patient shall not exceed the limitation on recovery set forth in this statute as it was in effect when the act or acts of malpractice occurred.

In interpreting this section, the definitions found in § 8.01-581.1 shall be applicable.

Code 1950, §§ 8-654.8; 1976, c. 611; 1977, c. 617; 1983, c. 496; 1999, c. 711; 2001, c. 211; 2011, cc. 758, 759.

§ 8.01-581.16. Civil immunity for members of or consultants to certain boards or committees

Every member of, or health care professional consultant to, any committee, board, group, commission or other entity shall be immune from civil liability for any act, decision, omission, or utterance done or made in performance of his duties while serving as a member of or consultant to such committee, board, group, commission or other entity, which functions primarily to review, evaluate, or make recommendations on (i) the duration of patient stays in health care facilities, (ii) the professional services furnished with respect to the medical, dental, psychological, podiatric, chiropractic, veterinary or optometric necessity for such services, (iii) the purpose of promoting the most efficient use or monitoring the quality of care of available health care facilities and services, or of emergency medical services agencies and services, (iv) the adequacy or quality of professional services, (v) the competency and qualifications for professional staff privileges, (vi) the reasonableness or appropriateness of charges made by or on behalf of health care facilities or (vii) patient safety, including entering into contracts with patient safety organizations, provided that such committee, board, group, commission or other entity has been established pursuant to federal or state law or regulation, the requirements of a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb), or guidelines approved or adopted by a statewide or local association representing health care providers licensed in the Commonwealth pursuant to clause (iii)(f) of subsection B of § 8.01-581.17, or established and duly constituted by one or more public or licensed private hospitals, health systems, community services boards, or behavioral health authorities, or with a governmental agency and provided further that such act, decision, omission, or utterance is not done or made in bad faith or with malicious intent.

Code 1950, § 8-654.9; 1976, c. 611; 1977, c. 617; 1981, c. 174; 1987, c. 713; 1989, c. 729; 1993, c. 702; 2001, c. 381; 2002, c. 675; 2006, c. 412; 2014, cc. 17, 320, 363.

§ 8.01-581.17. Privileged communications of certain committees and entities

A. For the purposes of this section:

"Centralized credentialing service" means (i) gathering information relating to applications for professional staff privileges at any public or licensed private hospital or for participation as a provider in any health maintenance organization, preferred provider organization or any similar organization and (ii) providing such information to those hospitals and organizations that utilize the service.

"Patient safety data" means reports made to patient safety organizations together with all health care data, interviews, memoranda, analyses, root cause analyses, products of quality assurance or quality improvement processes, corrective action plans or information collected or created by a health care provider as a result of an occurrence related to the provision of health care services.

"Patient safety organization" means any organization, group, or other entity that collects and analyzes patient safety data for the purpose of improving patient safety and health care outcomes and that is independent and not under the control of the entity that reports patient safety data.

B. The proceedings, minutes, records, and reports of any (i) medical staff committee, utilization review committee, or other committee, board, group, commission or other entity as specified in § 8.01-581.16; (ii) nonprofit entity that provides a centralized credentialing service; or (iii) quality assurance, quality of care, or peer review committee established pursuant to guidelines approved or adopted by (a) a national or state physician peer review entity, (b) a national or state physician accreditation entity, (c) a national professional association of health care providers or Virginia chapter of a national professional association of health care providers, (d) a licensee of a managed care health insurance plan (MCHIP) as defined in § 38.2-5800, (e) the Office of Emergency Medical Services or any regional emergency medical services council, or (f) a statewide or local association representing health care providers licensed in the Commonwealth, together with all communications, both oral and written, originating in or provided to such committees or entities, are privileged communications which may not be disclosed or obtained by legal discovery proceedings unless a circuit court, after a hearing and for good cause arising from extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports, or communications. Additionally, for the purposes of this section, accreditation and peer review records of the American College of Radiology and the Medical Society of Virginia are considered privileged communications. Oral communications regarding a specific medical incident involving patient care, made to a quality assurance, quality of care, or peer review committee established pursuant to clause (iii), shall be privileged only to the extent made more than 24 hours after the occurrence of the medical incident. Nothing in this section shall be construed as providing any privilege to any health care provider, emergency medical services agency, community services board, or behavioral health authority with respect to any factual information regarding specific patient health care or treatment, including patient health care incidents, whether oral, electronic, or written. However, the analysis, findings, conclusions, recommendations, and the deliberative process of any medical staff committee, utilization review committee, or other committee, board, group, commission, or other entity specified in § 8.01-581.16, as well as the proceedings, minutes, records, and reports, including the opinions and reports of experts, of such entities shall be privileged in their entirety under this section. Information known by a witness with knowledge of the facts or treating health care provider is not privileged or protected from discovery merely because it is provided to a committee, board, group, commission, or other entity specified in § 8.01-581.16, and may be discovered by deposition or otherwise in the course of discovery. A person involved in the work of the entities referenced in this subsection shall not be made a witness with knowledge of the facts by virtue of his involvement in the quality assurance, peer review, or credentialing process.

C. Nothing in this section shall be construed as providing any privilege to health care provider, emergency medical services agency, community services board, or behavioral health authority medical records kept with respect to a patient, whose treatment is at issue, in the ordinary course of business of operating a hospital, emergency medical services agency, community services board, or behavioral health authority nor to any facts or information contained in medical records, nor shall this section preclude or affect discovery of or production of evidence relating to hospitalization or treatment of such patient in the ordinary course of the patient's hospitalization or treatment. However, the proceedings, minutes, records, reports, analysis, findings, conclusions, recommendations, and the deliberative process, including opinions and reports of experts, of any medical staff committee, utilization review committee, or other committee, board, group, commission, or other entity specified in § 8.01-581.16 shall not constitute medical records, are privileged in their entirety, and are not discoverable.

D. Notwithstanding any other provision of this section, reports or patient safety data in possession of a patient safety organization, together with the identity of the reporter and all related correspondence, documentation, analysis, results or recommendations, shall be privileged and confidential and shall not be subject to a civil, criminal, or administrative subpoena or admitted as evidence in any civil, criminal, or administrative proceeding. Nothing in this subsection shall affect the discoverability or admissibility of facts, information or records referenced in subsection C as related to patient care from a source other than a patient safety organization.

E. Any patient safety organization shall promptly remove all patient-identifying information after receipt of a complete patient safety data report unless such organization is otherwise permitted by state or federal law to maintain such information. Patient safety organizations shall maintain the confidentiality of all patient-identifying information and shall not disseminate such information except as permitted by state or federal law.

F. Exchange of (i) patient safety data among health care providers or patient safety organizations that does not identify any patient or (ii) information privileged pursuant to subsection B between committees, boards, groups, commissions, or other entities specified in § 8.01-581.16 shall not constitute a waiver of any privilege established in this section.

G. Reports of patient safety data to patient safety organizations shall not abrogate obligations to make reports to health regulatory boards or other agencies as required by state or federal law.

H. No employer shall take retaliatory action against an employee who in good faith makes a report of patient safety data to a patient safety organization.

I. Reports produced solely for purposes of self-assessment of compliance with requirements or standards of a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to ensure compliance with Medicare conditions of participation pursuant to § 1865 of Title XVIII of the Social Security Act (42 U.S.C. § 1395bb) shall be privileged and confidential and shall not be subject to subpoena or admitted as evidence in a civil or administrative

proceeding. Nothing in this subsection shall affect the discoverability or admissibility of facts, information, or records referenced in subsection C as related to patient care from a source other than such accreditation body. A health care provider's release of such reports to such accreditation body shall not constitute a waiver of any privilege provided under this section.

Code 1950, § 8-654.10; 1976, c. 611; 1977, c. 617; 1995, c. 500; 1997, c. 292; 2001, c. 381; 2002, c. 675; 2004, c. 250; 2006, cc. 412, 678; 2007, c. 530; 2010, c. 196; 2011, cc. 15, 753; 2014, c. 320.

§ 8.01-581.18. Delivery of results of laboratory tests and other examinations not authorized by physician

A. Whenever a laboratory test or other examination of the physical or mental condition of any person is conducted by or under the supervision of a person other than a physician and not at the request or with the authorization of a physician, any report of the results of such test or examination shall be provided by the person conducting such test or examination to the person who was the subject of such test or examination. Such report shall state in bold type that it is the responsibility of the person so examined or tested to arrange with his physician for consultation and interpretation of the results of such test or examination. The provisions of this subsection shall not apply to any test or examination conducted under the auspices of the State Department of Health.

B. As used in this section and § 8.01-581.18:1, "physician" means a person licensed to practice medicine, podiatry, chiropractic or osteopathy in this Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1.

Code 1950, § 8-654.11; 1977, c. 527; 1993, c. 702; 2006, cc. 684, 877.

§ 8.01-581.18:1. Immunity of physicians for laboratory results and examinations

A. No physician shall be liable for the failure to review or act on the results of laboratory tests or examinations of the physical or mental condition of any patient, which tests or examinations the physician neither requested nor authorized, unless (i) the report of such results is provided directly to the physician by the patient so examined or tested with a request for consultation; (ii) the physician assumes responsibility to review or act on the results; or (iii) the physician has reason to know that in order to manage the specific mental or physical condition of the patient, review of or action on the pending results is needed. However, no physician shall be immune under this section unless the physician establishes that (a) no physician-patient relationship existed when the results were received or accessed; or (b) the physician received or accessed the results without a request for consultation and without responsibility for management of the specific mental or physical condition of the patient relating to the results or (c) the physician consulted on a specific mental or physical condition, the results were not part of that physician's management of the patient and the physician had no reason to know that he was to inform the patient of the results or refer the patient to another physician; or (d) the physician received or accessed results, the inter-

pretation of which would exceed the physician's scope of practice and the physician had no reason to know that he was to inform the patient of the results or refer the patient to another physician.

B. As used in this section, "physician" means a person licensed to practice medicine, chiropractic, or osteopathy in the Commonwealth pursuant to Chapter 29 (§ 54.1-2900 et. seq.) of Title 54.1.

2006, c. 684.

§ 8.01-581.19. Civil immunity for physicians, psychologists, podiatrists, optometrists, veterinarians, nursing home administrators, and certified emergency medical services providers while members of certain committees

A. Any physician, chiropractor, psychologist, podiatrist, veterinarian, or optometrist licensed to practice in the Commonwealth shall be immune from civil liability for any communication, finding, opinion, or conclusion made in performance of his duties while serving as a member of any committee, board, group, commission, or other entity that is responsible for resolving questions concerning the admission of any physician, psychologist, podiatrist, veterinarian, or optometrist to, or the taking of disciplinary action against any member of, any medical society, academy, or association affiliated with the American Medical Association, the Virginia Academy of Clinical Psychologists, the American Psychological Association, the Virginia Applied Psychology Academy, the Virginia Academy of School Psychologists, the American Podiatric Medical Association, the American Veterinary Medical Association, the International Chiropractic Association, the American Chiropractic Association, the Virginia Chiropractic Association, or the American Optometric Association, provided that such communication, finding, opinion, or conclusion is not made in bad faith or with malicious intent.

B. Any nursing home administrator licensed under the laws of the Commonwealth shall be immune from civil liability for any communication, finding, opinion, decision, or conclusion made in performance of his duties while serving as a member of any committee, board, group, commission, or other entity that is responsible for resolving questions concerning the admission of any health care facility to, or the taking of disciplinary action against any member of, the Virginia Health Care Association, provided that such communication, finding, opinion, decision, or conclusion is not made in bad faith or with malicious intent.

C. Any emergency medical services provider who holds a valid certificate issued by the Commissioner of Health shall be immune from civil liability for any communication, finding, opinion, decision, or conclusion made in performance of his duties while serving as a member of any regional council, committee, board, group, commission, or other entity that is responsible for resolving questions concerning the quality of care, including triage, interfacility transfer, and other components of emergency medical services care, unless such communication, finding, opinion, decision, or conclusion is made in bad faith or with malicious intent.

1978, c. 541; 1987, c. 713; 1989, c. 729; 1993, c. 702; 1996, cc. 937, 980; 2006, c. 412; 2015, cc. 502, 503.

§ 8.01-581.19:1. Civil immunity for persons providing information to certain committees

Any person who provides information to any committee, board, group, commission, or other entity which is authorized to investigate any complaint of physical or mental impairment, that may show that any practitioner of medicine, osteopathy, optometry, chiropractic, podiatry, clinical psychology, physical therapy, veterinary medicine or any physical therapist assistant is unable to practice his profession with reasonable skill and safety, by reason of the use of alcohol, drugs, or other substances, or as a result of any mental or physical condition, shall be immune from civil liability for any act done for, or any utterance or communication made to, such entity in the course of providing such information. However, this section shall not apply if the act, utterance, or communication is done or made in bad faith or with malicious intent or if such disclosure is prohibited by federal law or regulations promulgated thereunder.

The provisions of this section shall apply only to such entities described in this section as are (i) established pursuant to a federal or state law, (ii) established and duly constituted by one or more public or licensed private hospitals, (iii) a medical or chiropractic society that is operating its health care provider impairment program in cooperation with the Board of Medicine, or another governmental agency, (iv) an optometric society or association that is operating its optometric impairment program in cooperation with the Virginia Board of Optometry, (v) a veterinary medical association that is operating its veterinarian impairment program in cooperation with the Virginia Board of Veterinary Medicine, or (vi) a clinical psychology academy that is operating its clinical psychology impairment program in cooperation with the Board of Psychology.

1986, c. 604; 1987, c. 713; 1989, c. 729; 1993, c. 702; 1996, cc. 937, 980.

§ 8.01-581.20. Standard of care in proceeding before medical malpractice review panel; expert testimony; determination of standard in action for damages

A. In any proceeding before a medical malpractice review panel or in any action against a physician, clinical psychologist, podiatrist, dentist, nurse, hospital or other health care provider to recover damages alleged to have been caused by medical malpractice where the acts or omissions so complained of are alleged to have occurred in this Commonwealth, the standard of care by which the acts or omissions are to be judged shall be that degree of skill and diligence practiced by a reasonably prudent practitioner in the field of practice or specialty in this Commonwealth and the testimony of an expert witness, otherwise qualified, as to such standard of care, shall be admitted; provided, however, that the standard of care in the locality or in similar localities in which the alleged act or omission occurred shall be applied if any party shall prove by a preponderance of the evidence that the health care services and health care facilities available in the locality and the customary practices in such locality or similar localities give rise to a standard of care which is more appropriate than a statewide standard. Any health care provider who is licensed to practice in Virginia shall be presumed to know the statewide standard of care in the specialty or field of practice in which he is qualified and certified. This presumption shall also apply to any person who, but for the lack of a Virginia license, would be defined as a health care provider under this

chapter, provided that such person is licensed in some other state of the United States and meets the educational and examination requirements for licensure in Virginia. An expert witness who is familiar with the statewide standard of care shall not have his testimony excluded on the ground that he does not practice in this Commonwealth. A witness shall be qualified to testify as an expert on the standard of care if he demonstrates expert knowledge of the standards of the defendant's specialty and of what conduct conforms or fails to conform to those standards and if he has had active clinical practice in either the defendant's specialty or a related field of medicine within one year of the date of the alleged act or omission forming the basis of the action.

The provisions of this section shall apply to expert witnesses testifying on the standard of care as it relates to professional services in nursing homes.

B. In any action for damages resulting from medical malpractice, any issue as to the standard of care to be applied shall be determined by the jury, or the court trying the case without a jury.

C. In any action described in this section, each party may designate, identify or call to testify at trial no more than two expert witnesses per medical discipline on any issue presented. The court may permit a party, for good cause shown, to designate, identify, or call to testify at trial additional expert witnesses. The number of treating health care providers who may serve as expert witnesses pursuant to § 8.01-399 shall not be limited pursuant to this subsection, except for good cause shown. If the court permits a party to designate, identify, or call additional experts, the court may order that party to pay all costs incurred in the discovery of such additional experts. For good cause shown, pursuant to the Rules of Supreme Court of Virginia, the court may limit the number of expert witnesses other than those identified in this subsection whom a party may designate, identify, or call to testify at trial.

1979, c. 325; 1980, c. 164; 1989, cc. 146, 729; 1992, c. 240; 2003, c. 251; 2008, cc. 125, 169, 205; 2015, cc. 310, 361.

§ 8.01-581.20:1. Admissibility of expressions of sympathy

In any civil action brought by an alleged victim of an unanticipated outcome of health care, or in any arbitration or medical malpractice review panel proceeding related to such civil action, the portion of statements, writings, affirmations, benevolent conduct, or benevolent gestures expressing sympathy, commiseration, condolence, compassion, or a general sense of benevolence, together with apologies that are made by a health care provider or an agent of a health care provider to the patient, a relative of the patient, or a representative of the patient, shall be inadmissible as evidence of an admission of liability or as evidence of an admission against interest. A statement of fault that is part of or in addition to any of the above shall not be made inadmissible by this section.

For purposes of this section, unless the context otherwise requires:

"Health care" has the same definition as provided in § 8.01-581.1.

"Health care provider" has the same definition as provided in § 8.01-581.1.

"Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister, or spouse's parents. In addition, "relative" includes any person who has a family-type relationship with the patient.

"Representative" means a legal guardian, attorney, person designated to make decisions on behalf of a patient under a medical power of attorney, or any person recognized in law or custom as a patient's agent.

"Unanticipated outcome" means the outcome of the delivery of health care that differs from an expected result.

2005, cc. 649, 692; 2009, c. 414.

Chapter 21.2 - MEDIATION

§ 8.01-581.21. Definitions

As used in this chapter:

"Mediation" means a process in which a mediator facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and to reach a mutually agreeable resolution to their dispute.

"Mediation program" means a program through which mediators or mediation is made available and includes the director, agents and employees of the program.

"Mediator" means an impartial third party selected by agreement of the parties to a controversy to assist them in mediation.

1988, cc. 623, 857; 2002, c. 718.

§ 8.01-581.22. Confidentiality; exceptions

All memoranda, work products and other materials contained in the case files of a mediator or mediation program are confidential. Any communication made in or in connection with the mediation, which relates to the controversy being mediated, including screening, intake, and scheduling a mediation, whether made to the mediator, mediation program staff, to a party, or to any other person, is confidential. However, a written mediated agreement signed by the parties shall not be confidential, unless the parties otherwise agree in writing.

Confidential materials and communications are not subject to disclosure in discovery or in any judicial or administrative proceeding except (i) where all parties to the mediation agree, in writing, to waive the confidentiality, (ii) in a subsequent action between the mediator or mediation program and a party to the mediation for damages arising out of the mediation, (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation, (iv) where a threat to inflict bodily injury is made, (v) where communications are intentionally used to plan, attempt to commit, or commit a crime or conceal an ongoing crime, (vi) where an ethics complaint is made

against the mediator by a party to the mediation to the extent necessary for the complainant to prove misconduct and the mediator to defend against such complaint, (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party's legal representative based on conduct occurring during a mediation, (viii) where communications are sought or offered to prove or disprove any of the grounds listed in § 8.01-581.26 in a proceeding to vacate a mediated agreement, or (ix) as provided by law or rule. The use of attorney work product in a mediation shall not result in a waiver of the attorney work product privilege.

1988, cc. 623, 857; 2002, c. 718; 2013, cc. 283, 383.

§ 8.01-581.23. Civil immunity

When a mediation is provided by a mediator who is certified pursuant to guidelines promulgated by the Judicial Council of Virginia, or who is trained and serves as a mediator through the statewide mediation program established pursuant to § 2.2-1202.1, then that mediator, mediation programs for which that mediator is providing services, and a mediator co-mediating with that mediator shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in efforts to assist or conduct a mediation, unless the act or omission was made or done in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another. This language is not intended to abrogate any other immunity that may be applicable to a mediator.

1988, cc. 623, 857; 2002, c. 718; 2012, cc. 803, 835.

§ 8.01-581.24. Standards and duties of mediators; confidentiality; liability

A mediator selected to conduct a mediation under this chapter may encourage and assist the parties in reaching a resolution of their dispute, but may not compel or coerce the parties into entering into a settlement agreement. A mediator has an obligation to remain impartial and free from conflicts of interest in each case, and to decline to participate further in a case should such partiality or conflict arise. Unless expressly authorized by the disclosing party, the mediator may not disclose to either party information relating to the subject matter of the mediation provided to him in confidence by the other. A mediator shall not disclose information exchanged or observations regarding the conduct and demeanor of the parties and their counsel during the mediation, unless the parties otherwise agree.

However, where the dispute involves the support of minor children of the parties, the parties shall disclose to each other and to the mediator the information to be used in completing the child support guidelines worksheet required by § 20-108.2. The guidelines computations and any reasons for deviation shall be incorporated in any written agreement by the parties.

2002, c. 718.

§ 8.01-581.25. Effect of written settlement agreement

If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. If the mediation involves a case that is filed in court, upon request of all parties and consistent with law and public policy, the court shall incorporate the written agreement into the terms of its final decree disposing of a case. In cases in which the dispute involves support for the minor children of the parties, an order incorporating a written agreement shall also include the child support guidelines worksheet and, if applicable, the written reasons for any deviation from the guidelines. The child support guidelines worksheet shall be attached to the order.

2002, c. 718.

§ 8.01-581.26. Vacating orders and agreements

Upon the filing of an independent action by a party, the court shall vacate a mediated agreement reached in a mediation pursuant to this chapter, or vacate an order incorporating or resulting from such agreement, where:

1. The agreement was procured by fraud or duress, or is unconscionable;

2. If property or financial matters in domestic relations cases involving divorce, property, support or the welfare of a child are in dispute, the parties failed to provide substantial full disclosure of all relevant property and financial information; or

3. There was evident partiality or misconduct by the mediator, prejudicing the rights of any party.

For purposes of this section, "misconduct" includes failure of the mediator to inform the parties at the commencement of the mediation process that: (i) the mediator does not provide legal advice, (ii) any mediated agreement may affect the legal rights of the parties, (iii) each party to the mediation has the opportunity to consult with independent legal counsel at any time and is encouraged to do so, and (iv) each party to the mediation should have any draft agreement reviewed by independent counsel prior to signing the agreement.

2002, c. 718.

Chapter 22 - RECEIVERS, GENERAL AND SPECIAL

Article 1 - GENERAL RECEIVERS

§ 8.01-582. Appointment of general receivers; their duties; audit of funds

Any circuit court may appoint a general receiver of the court, who may be the clerk of the court, and who shall hold his office at its pleasure. The general receiver's duty shall be, unless it is otherwise specially ordered, to receive, take charge of and hold all moneys paid under any judgment, order or decree of the court, and also to pay out or dispose of same as the court orders or decrees. Moneys held pursuant to this section shall be deemed public deposits as set forth in Chapter 44 (§ 2.2-4400 et seq.) of Title 2.2 and shall be invested in certificates of deposit or time deposits, and in accordance with the provisions of Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2, as ordered by the

court. Prior to or at the time of entry of any judgment, order or decree placing moneys under the control of the general receiver for the benefit of any specifically identified beneficiary, the general receiver shall file an affidavit with the court providing the beneficiary's name, date of birth, and social security number, as well as the proposed dates of final and periodic disbursements. Such affidavit shall be maintained under seal by the clerk unless otherwise ordered by the court, and the information therein shall be used solely for the purposes of financial management and reporting. Orders creating funds pursuant to this section shall include information necessary to make prudent investment and disbursement decisions but shall not include the personal identifying information set forth in the general receiver's affidavit.

Unless otherwise ordered by the court, the provisions of this section shall not apply to:

1. Cash or other money received in lieu of surety on any bond posted in any civil or criminal case, including but not limited to, bail bonds, appeal bonds in appeals from a district court or circuit court, bonds posted in connection with the filing of an attachment, detinue seizure or distress, suspending bonds, and performance bonds;

2. Cash or other money paid or deposited in the clerk's office prior to final disposition of the case, including but not limited to interpleaders or eminent domain; or

3. Cash or other money deposits in lieu of surety on any bond posted in the clerk's office which is not posted in connection with any civil or criminal case, including bonds posted by executors or administrators.

To this end, the general receiver is authorized to verify, receive, and give acquittances for all such moneys, as the court may direct. Any interest which accrues on the funds, minus allowable fees and bond costs, shall be credited and payable to the person or persons entitled to receive such funds.

All moneys received under this section are subject to audit by the Auditor of Public Accounts. The Auditor of Public Accounts shall prescribe mandatory record keeping and accounting standards for general receivers.

Code 1950, § 8-725; 1973, c. 354; 1977, c. 617; 1979, c. 498; 1988, c. 553; 1990, c. 414; 1991, c. 635; 1999, c. 198; 2003, c. 97.

§ 8.01-583. How securities taken and kept; power of receivers over same

The securities in which under the orders of the court such investments may be made shall be taken in the name of the general receiver and be kept by him, unless otherwise specially ordered. He shall have power to sell, transfer or collect the same, only upon order of the court; and in case of his death, resignation or removal his successor, or any person specially appointed by the court for that purpose, shall have like power.

Notwithstanding the foregoing paragraph, when a general receiver places funds in a security or investment which is insured by the Federal Deposit Insurance Corporation or other federal

insurance agency, the general receiver shall to the extent practicable invest these funds so that insurance coverage is provided by the Federal Deposit Insurance Corporation or other federal insurance agency.

Code 1950, § 8-726; 1977, c. 617; 1988, c. 553; 1990, c. 3 .

§ 8.01-584. How dividends and interest collected and invested

The general receiver shall collect the dividends and interest on all the securities in which investments have been or may be made, under the orders or decrees of his court, or under the provisions of § 8.01-582, when and as often as the same may become due and payable thereon, and shall invest the same in like securities, unless the court has ordered or decreed some other investment or disposition to be made thereof; and in such case he shall invest or dispose of the same as the court shall have ordered or decreed.

Code 1950, § 8-727; 1977, c. 617.

§ 8.01-585. How accounts kept by receivers

Each such general receiver shall keep an accurate and particular account of all moneys received, invested and paid out by him, showing the respective amounts to the credit of each case in the court and designating in the items the judgments, orders or decrees of court under which the respective sums have been received, invested or paid out. No later than October 1 of each year, he shall make a report to his court showing the balance to the credit of each case in the court in which money has been received by him, the manner of each case in the court in which money has been received by him, the manner in which it is invested, the amounts received, invested or paid out during the year ending June 30 of the current year, the approximate date on which the moneys held for the beneficiaries will become payable, and the whole amount then invested and subject to the future order of the court. A copy of the annual report shall be recorded in the trust fund order book. He shall, at any time when required by the court or the Auditor of Public Accounts so to do, furnish a statement of the amount subject to the order of the court in any case pending therein and any other information required by the court or the Auditor of Public Accounts as to any money or other property under his control. He shall annually make formal settlement of his accounts before the court or before the commissioner mentioned in § 8.01-617 which settlement shall be recorded as provided in § 8.01-619.

Code 1950, § 8-728; 1977, c. 617; 1988, c. 553; 1989, c. 69 .

§ 8.01-586. Inquiry as to unknown owners of funds

When funds are held because of inability to find the person to whom payable, such receiver may be ordered by the court to make inquiry and due diligence to ascertain such person in order that payment may be made; and for this purpose, and to secure any other relevant information, he shall have power to summon witnesses and take evidence; and he shall report specifically to the court in each annual report, and at any other time when so ordered by the court, the details and results of his efforts.

Code 1950, § 8-729; 1977, c. 617; 1988, c. 553.

§ 8.01-587. Liability of general receivers

Except as otherwise ordered by the court, for good cause shown, a general receiver shall be liable for any loss of income which results from his (i) failure to invest any money held by him pursuant to §§ 8.01-582 through 8.01-586 within sixty days of his receipt of the funds or (ii) failure to pay out any money so ordered by the court within sixty days of the court order. He shall be charged with interest from the date of the court order until such investment or payment is made.

Code 1950, § 8-730; 1977, c. 617; 1988, c. 841.

§ 8.01-588. Bonds generally

A general receiver shall annually give before the court a bond with surety to be approved by it, in such penalty as the court directs, sufficient at least to cover the probable amount under his control in any one year.

This section shall apply to the clerk if the clerk is appointed such receiver, and his official bond as clerk shall not cover money or property under his control as general receiver.

Code 1950, § 8-731; 1977, c. 617; 1988, c. 841.

§ 8.01-588.1. Bonds apportioned to funds under control; annual reports

The general receiver shall obtain bond through the Department of the Treasury's Division of Risk Management. No later than October 1 of each year, he shall report to the Division the amount of moneys under his control pursuant to § 8.01-582 as of June 30 of the current year and shall report the amount he expects to come under his control for the year ending on June 30 of the following year. He shall also report any other information reasonably required by the Division concerning bond coverage of moneys under his control. The cost of the bond shall be apportioned among the funds under his control as of the billing date based on the amount of each owner's or beneficiary's moneys. This section shall not apply to any financial institution fulfilling the requirements set out in § 6.2-1003 or § 6.2-1085.

1988, c. 841; 2000, cc. 618, 632.

§ 8.01-589. Compensation and fees; when none allowed

A. A general receiver may retain from moneys received and held pursuant to § 8.01-582, compensation for his services in such amount as the court deems reasonable, but not exceeding:

1. Ten dollars at receipt of the originating court order to receive funds, deposit funds, and establish files and accounting records with respect to those funds;

2. Ten dollars when all funds held for a beneficiary or beneficiaries are disbursed;

3. Ten dollars per draft or check for periodic and final disbursements;

4. Five percent of the interest income earned;

5. Ten dollars for remitting funds to the State Treasurer and up to ten dollars per draft for remitting those funds; and

6. Fifty dollars for conducting a hearing to ascertain the identity or location of trust fund beneficiaries pursuant to § 8.01-586 as the court directs and $50 per hour for an appearance in court.

B. When direct out-of-pocket expenses are necessary to carry out an order of the court, a general receiver may receive reimbursement for such expenses as the court deems reasonable.

C. Notwithstanding the foregoing subsections, general receivers shall not deduct fees or otherwise be compensated for services with respect to those funds which should have been reported and then remitted to the State Treasurer in accordance with § 8.01-602 or 55-210.9:1.

A general receiver shall promptly report to the court the execution of the bond or bonds required in § 8.01-588 and make the reports and perform the duties required of him. No compensation shall be allowed him until he has performed the duties aforesaid.

If such receiver is the clerk of court and if compensation is allowed, it shall be fee and commission income to the office of such clerk in accordance with § 17.1-287.

Code 1950, § 8-732; 1977, c. 617; 1979, c. 498; 1988, c. 841; 2014, c. 65.

§ 8.01-590. Penalty for failure of duty

If a general receiver fail to keep the account, or to make out and return the statements required by § 8.01-585, he shall be subject to a fine of not less than $100 nor more than $1,000 to be imposed by the court at its discretion; and the condition of his official bond shall be taken to embrace the liability of himself and his sureties for any such fine.

Code 1950, § 8-733; 1977, c. 617.

Article 2 - SPECIAL RECEIVERS

§ 8.01-591. Notice required prior to appointment of receiver

Whenever the pleadings in any suit make out a proper case for the appointment of a receiver and application is made therefor to any court, such court shall designate the time and place for hearing such application, and shall require reasonable notice thereof to be given to the defendant and to all other parties having a substantial interest, either as owners of or lienors of record and lienors known to the plaintiff, in the subject matter. The court to whom such application is made shall inquire particularly of the applicant as to the parties so substantially interested in the subject matter, and such applicant, for any intentional or wilful failure to disclose fully all material information relating to such inquiry, may be adjudged in contempt of court.

Code 1950, § 8-735; 1977, c. 617.

§ 8.01-592. Notice not required in emergencies

Section 8.01-591 shall not apply to those cases in which an emergency exists and it is necessary that a receiver be immediately appointed to preserve the subject matter. In such emergency cases a

receiver may be appointed and the order of appointment shall state the emergency and necessity for immediate action, and shall require bond in proper amount of the applicant or someone for him with sufficient surety conditioned to protect and save harmless the owners, lienors and creditors, lien or general, in the subject matter taken over by the receiver, from all damages and injury properly and naturally flowing from such emergency appointment of a receiver.

Code 1950, § 8-736; 1977, c. 617.

§ 8.01-593. Subsequent proceedings after emergency appointment

Such emergency appointment shall be limited to a period of not longer than thirty days, during which period notice shall be given by the applicant to all parties having a substantial interest, either as owner of or lienor in the subject matter, of any motion to extend such receivership; and upon the hearing on such motion, the court shall hear the matter de novo, and shall discharge such receiver, or shall appoint the same receiver, or other receivers to act with him, or new receivers as to the court may seem right. Unless such receivership shall be so extended, all the rights and powers of such emergency receiver over the subject matter, at the end of such period for which he shall have been appointed, shall cease and determine, and such receiver shall forthwith file with such court an account of his dealing with such estate. The notices required to be given under this section and §§ 8.01-591 and 8.01-592 shall be served, as to residents of this Commonwealth, in any of the modes prescribed by § 8.01-296, and as to nonresidents of this Commonwealth, or persons unknown, or in any case in which the number of persons to be given notice exceeds thirty, in the manner prescribed by § 8.01-319.

Code 1950, § 8-737; 1977, c. 617.

§ 8.01-594. Notice not required to parties served with process

In any suit matured and docketed in which the bill or petition prays for the appointment of a receiver, no notice shall be required under this article to be given to any defendant upon whom process to answer such bill or petition shall have been served.

Code 1950, § 8-738; 1977, c. 617.

§ 8.01-595. Preparation of list of creditors; notice to them

When a receiver has been appointed he shall immediately prepare or cause to be prepared a list of all creditors, lien and general, of the person, firm, corporation or of any other legal or commercial entity for which he is a receiver; and the court may by proper order compel any defendant for whom a receiver is appointed, or any officer of the corporation or of any other legal or commercial entity for whom the receiver is appointed, to furnish or deliver to the receiver a list, duly sworn to, of all creditors, lien or general, together with their addresses if known. The receiver shall then promptly notify by mail each creditor whose name and address has been ascertained of the appointment of the receiver.

When a permanent receiver is appointed he shall not be required to make a new list of creditors if a temporary receiver or a prior receiver appointed in the same proceedings has already prepared

one which is adequate, nor shall he be required to mail other notices to creditors if the prior receiver has given proper notice to the parties entitled thereto.

Code 1950, § 8-739; 1977, c. 617.

§ 8.01-596. No sale prior to such notification; exceptions

No court shall order the sale of any assets of the receivership until a receiver has reported to the court in writing that he has mailed such notices to such creditors at least five days prior to the filing of such report, except that the court may at any time permit the sale of perishable or seasonable goods when necessary to preserve the estate, or may permit the receiver to conduct the business for which he is a receiver as a going business and to sell in the usual course of such business.

Code 1950, § 8-740; 1977, c. 617.

§ 8.01-597. Suits against receivers in certain cases

Any receiver of any property appointed by the courts of this Commonwealth may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver was appointed; but the institution or pendency of such suit shall not interfere with or delay a sale by trustees under a deed of trust or a decree of sale for foreclosure of any mortgage upon such property.

Code 1950, § 8-741; 1977, c. 617.

§ 8.01-598. Effect of judgment against receiver

A judgment against a receiver under § 8.01-597 shall not be a lien on the property or funds under the control of the court, nor shall any execution issue thereon, but upon filing a certified copy of such judgment in the cause in which the receiver was appointed, the court shall direct payment of such judgment in the same manner as if the claim upon which the judgment is based had been proved and allowed in such cause.

Code 1950, § 8-742; 1977, c. 617.

§ 8.01-599. Warrant or motion for judgment against receiver in general district court, when to be tried

A warrant or motion for judgment before a general district court under §§ 8.01-597 and 8.01-598 may be tried not less than ten days after service of process.

Code 1950, § 8-743; 1977, c. 617.

Article 3 - GENERAL PROVISIONS FOR MONEYS UNDER CONTROL OF COURT

§ 8.01-600. How money under control of court deposited; record kept; liability of clerk

A. This section pertains only to money held by the clerk of the circuit court, when the court orders moneys to be held by the clerk pursuant to this section. Where judgment is taken in the circuit court, upon motion of a party for good cause shown, the court may enter an order directing the

clerk to hold moneys pursuant to this section. The clerk shall have the duty, unless it is otherwise specially ordered, to receive, take charge of, hold or invest in such manner as the court orders and also to pay out or dispose of these moneys as the court orders or decrees. To this end, the clerk is authorized to verify, receive, and give acquittances for all such moneys as the court may direct.

B. Orders creating funds pursuant to this section or § 8.01-582 shall include information necessary to make prudent investment and disbursement decisions. The orders shall include, except when it is unreasonable, the proposed dates of periodic and final disbursements. Prior to the entry of the order, the beneficiary or his representative shall file an affidavit with the court providing the beneficiary's name, date of birth, address and social security number. The affidavit shall be maintained under seal by the clerk unless otherwise ordered by the court, and the information therein shall be used solely for the purposes of financial management and reporting.

Unless otherwise ordered by the court, the provisions of this section shall not apply to:

1. Cash or other money received in lieu of surety on any bond posted in any civil or criminal case, including but not limited to bail bonds, appeal bonds in appeals from a district court or circuit court, bonds posted in connection with the filing of an attachment, detinue seizure or distress, suspending bonds, and performance bonds;

2. Cash or other money paid or deposited in the clerk's office prior to final disposition of the case, including but not limited to interpleaders or eminent domain; or

3. Cash or other money deposited in lieu of surety on any bond posted in the clerk's office which is not posted in connection with any civil or criminal case, including bonds posted by executors or administrators.

C. All deposits under this section shall be secured in accordance with the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.).

D. Moneys held pursuant to this section shall be invested in certificates of deposit and time deposits, and in accordance with the provisions of Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2 as ordered by the court.

E. Any interest which accrues on the funds, minus allowable fees and bond costs, shall be credited and payable to the person or persons entitled to receive such funds. The court may order the clerk to consolidate for investment purposes money received under this section, with income received hereunder to be apportioned among the several accounts.

F. Except as otherwise ordered by the court, for good cause shown, the clerk shall be liable for any loss of income which results from his (i) failure to invest the money within sixty days of the court order creating the fund or (ii) failure to pay out any money so ordered by the court within sixty days of the court order. He shall be charged with interest from the date of the court order until such investment or payment is made.

G. The clerk shall keep an accurate and particular account of all moneys received, invested, and paid out by him, showing the respective amounts to the credit of each case in the court and designating in the items the judgments, orders or decrees of court under which the respective sums have been received, invested or paid out. At least annually and no later than October 1 of each year, the clerk shall make a report to the court showing the balance to the credit of each case in the court in which money has been received by him, the manner in which money has been received by him, the manner in which it is invested, the amounts received, invested or paid out during the year ending June 30 of the current year, the approximate date on which the moneys held for the beneficiaries will become payable, and the whole amount then invested and subject to the future order of the court. A copy of this report shall be recorded in the trust fund order book. The clerk shall, at any time when required by the court or the Auditor of Public Accounts to do so, furnish a statement of the amount subject to the order of the court in any case pending therein and any other information required by the court or the Auditor of Public Accounts as to any money or other property under his control before the court. When the clerk receives funds under this section, he shall be entitled to receive fees in accordance with § 17.1-287 in the amounts as specified for general receivers in § 8.01-589.

H. All moneys received under this section are subject to audit by the Auditor of Public Accounts.

Code 1950, § 8-744; 1977, c. 617; 1986, c. 644; 1988, c. 841; 1990, cc. 3, 414; 1991, c. 635; 2002, c. 832; 2015, c. 633.

§ 8.01-600.1. Repealed

Repealed by Acts 1993, c. 939 .

§ 8.01-601. Deposit with general receiver of certain funds under supervision of fiduciary and belonging to person under disability

Whenever it appears to any fiduciary as defined in § 8.01-2 that a person under a disability as defined in § 8.01-2 is not represented by a fiduciary as defined above and is entitled to funds not exceeding $3,000 under the supervision and control of the fiduciary in charge of such funds, he may report such fact to the commissioner of accounts of the court in which he was admitted to qualify. With the approval of such commissioner of accounts, the fiduciary in charge of such funds may deposit such funds with the general receiver of the court in which he was admitted to qualify. The general receiver shall issue a receipt to such fiduciary which shall show the source of such fund, the amount and to whom it belongs and shall enter the amount and such facts in his accounts.

Code 1950, § 8-744.1; 1970, c. 352; 1977, c. 617.

§ 8.01-602. Proceedings when owner of money under control of court unknown

Whenever any money has remained payable or distributable for one year in the custody or under the control of any court of this Commonwealth without anyone known to the court claiming the same, except funds deposited as compensation and damages in condemnation proceedings

pursuant to § 25.1-237 pending a final order or pursuant to § 33.2-1019, the court shall cause such money to be reported and then remitted to the State Treasurer pursuant to §§ 55-210.9:1, 55-210.12 and 55-210.14.

The general receiver, if one has been appointed, and the clerk of the circuit court shall be responsible for identifying such money held by them in their respective control pursuant to §§ 8.01-582 and 8.01-600 and for petitioning the court to remit as provided in this section.

Code 1950, § 8-746; 1966, c. 210; 1977, c. 617; 1982, c. 155; 1984, c. 121; 1987, c. 708; 1988, c. 841.

§ 8.01-603. Repealed

Repealed by Acts 1982, c. 155.

§ 8.01-604. How State Treasurer to keep account of such money

The State Treasurer shall keep an account of all money thus paid to him, showing the amount thereof, when, by whom, and under what order it was paid, and the name of the court, and, as far as practicable, a description of the suit or proceeding in which the order was made, and, as far as known, the names of the parties thereto.

Code 1950, § 8-748; 1977, c. 617; 1981, c. 514; 1982, c. 155.

§ 8.01-605. How person entitled to money paid into state treasury may recover it

Money paid into the state treasury under the provisions of this article shall be accounted for and disbursed under the procedures provided for in Article 4 of Chapter 11.1 of Title 55 (§ 55-210.12 et seq.).

Code 1950, § 8-749; 1962, c. 607; 1977, c. 617; 1981, c. 514; 1982, c. 155.

§ 8.01-606. Payment of small amounts to certain persons through court without intervention of fiduciary; authority of commissioners of accounts; certain fiduciaries exempt from accountings

A. Whenever there is due to any person, any sum of money from any source, not exceeding $25,000, the fund may be paid into the circuit court of the county or city in which the fund became due or such person resides. The court may, by an order entered of record, (i) pay the fund to the person to whom it is due, if the person is considered by the court competent to expend and use the same in his behalf, or (ii) pay the fund to some other person who is considered competent to administer it, for the benefit of the person entitled to the fund, without the intervention of a fiduciary, whether the other person resides within or without this Commonwealth. The clerk of the court shall take a receipt from the person to whom the money is paid, which shall show the source from which it was derived, the amount, to whom it belongs, and when and to whom it was paid. The receipt shall be signed and acknowledged by the person receiving the money, and entered of record in the book in the clerk's office in which the current fiduciary accounts are entered and indexed. Upon the payment into court the person owing the money shall be discharged of such obligation. No bond shall be required of the party to whom the money is paid by the court.

B. Whenever (i) it appears to the court having control of a fund, tangible personal property or intangible personal property or supervision of its administration, whether a suit is pending therefor or not, that a person under a disability who has no fiduciary, is entitled to a fund arising from the sale of lands for a division or otherwise, or a fund, tangible personal property or intangible personal property as distributee of any estate, or from any other source, (ii) a judgment, decree, or order for the payment of a sum of money or for delivery of tangible personal property or intangible personal property to a person under a disability who has no fiduciary is rendered by any court, and the amount to which such person is entitled or the value of the tangible personal property or intangible personal property is not more than $25,000, or (iii) a person under a disability is entitled to receive payments of income, tangible personal property or intangible personal property and the amount of the income payments is not more than $25,000 in any one year, or the value of the tangible personal property is not more than $25,000, or the current market value of the intangible personal property is not more than $25,000, the court may, without the intervention of a fiduciary, cause such fund, property or income to be paid or delivered to any person deemed by the court capable of properly handling it, to be used solely for the education, maintenance and support of the person under a disability. In any case in which an infant is entitled to such fund, property or income, the court may, upon its being made to appear that the infant is of sufficient age and discretion to use the fund, property or income judiciously, cause the fund to be paid or delivered directly to the infant.

C. Where judgment is taken in the general district court, upon motion of a party for good cause shown, the general district court judge may enter an order directing the clerk of the general district court to hold such funds in escrow for a period not to exceed 180 days to enable such party to file a petition pursuant to § 8.01-600 requesting that such funds be received and held by the clerk of the circuit court upon payment of fees in accordance with § 17.1-275. The party petitioning the circuit court shall provide the clerk of the general district court a certified copy of any order entered by the circuit court directing that such funds held by the clerk of the general district court be transferred to the clerk of the circuit court. If no such order is received by the clerk of the general district court within the 180-day period, the clerk of the general district court shall give notice to the parties that such funds shall be disbursed to the plaintiff for which judgment was entered in the general district court within 30 days after such notice.

D. Whenever a person is entitled to a fund or such property distributable by a fiduciary settling his accounts before the commissioner of accounts of the court in which the fiduciary qualified, and the amount or value of the fund or property, or the value of any combination thereof, is not more than $25,000, the commissioner of accounts may approve distribution thereof in the same manner and to the extent of the authority herein conferred upon a court including exemption from filing further accounts where the value of the fund being administered is less than $25,000.

E. Whenever an incapacitated person or infant is entitled to a fund or such property distributable by a fiduciary settling accounts before the commissioner of accounts of the court in which the

fiduciary qualified and the will or trust instrument under which the fiduciary serves, authorizes the fiduciary to distribute the property or fund to the incapacitated person or infant without the intervention of a guardian, conservator or committee, and the amount or value of such fund or property, or the value of any combination thereof, is not more than $25,000, the commissioner of accounts may approve distribution thereof in the same manner and to the extent of the authority hereinabove conferred upon a court or judge thereof.

F. Whenever a fiduciary is administering funds not exceeding $25,000, the circuit court of the county or city in which the fund is being administered by order entered of record may authorize the fiduciary, when considered competent to administer the funds, to continue to administer the funds for the benefit of the person entitled to the fund without the necessity of filing any further accounts, whether such person resides within or without this Commonwealth. The clerk of the court shall take a receipt from the fiduciary, which shall show the amount of the fund remaining, to whom it belongs, and the date the court entered the order exempting the filing of further accounts. The receipt shall be signed and acknowledged by the fiduciary, and entered of record in the book in the clerk's office in which the current fiduciary accounts are entered and indexed. No surety shall be required on the bond of a fiduciary granted an exemption from filing any further accounts.

G. Whenever a fiduciary qualifies pursuant to § 64.2-454 for the sole purpose of prosecuting or defending an action, the court in which the fiduciary qualifies or the commissioner of accounts for such court may exempt the fiduciary from filing further accounts where the fiduciary is not administering any funds and has no power of sale over any real estate the decedent owned.

Code 1950, §§ 8-750, 8-751; 1952, c. 103; 1954, cc. 238, 526; 1962, c. 465; 1966, cc. 332, 339; 1970, c. 566; 1977, cc. 462, 617; 1978, c. 525; 1980, c. 544; 1985, c. 216; 1987, c. 378; 1995, c. 405; 1997, c. 801; 2003, c. 195; 2012, c. 43; 2015, cc. 129, 130, 633.

Chapter 23 - COMMISSIONERS IN CHANCERY

§ 8.01-607. Appointment and removal

A. Each circuit court may, from time to time, appoint such commissioners in chancery as may be deemed necessary for the convenient dispatch of the business of such court. Such commissioners shall be removable at pleasure.

B. Commissioners in chancery may be appointed in cases in circuit court, including uncontested divorce cases, only when:

1. There is agreement by the parties with the concurrence of the court; or

2. Upon (i) motion of a party, or (ii) upon motion of the court, sua sponte. The court shall make a finding of good cause shown in each individual case.

Code 1950, § 8-248; 1977, c. 617; 2005, c. 885.

§ 8.01-608. How accounts referred

Accounts to be taken in any case shall be referred to a commissioner appointed pursuant to § 8.01-607, unless the parties interested agree, or the court shall deem it proper, that they be referred to some other person.

Code 1950, § 8-249; 1977, c. 617.

§ 8.01-609. Duties; procedure generally

Every commissioner shall examine, and report upon, any matters as may be referred to him by any court. The proceedings before a commissioner in chancery shall be conducted as set forth in this chapter and the Rules of Court.

Code 1950, § 8-249; 1977, c. 617; 1981, c. 613; 1992, c. 297 .

§ 8.01-609.1. Commissioners in chancery

A commissioner in chancery may, for services rendered by virtue of his office, charge the following fees, to wit:

For services which might be performed by notaries, the fees for such services and for any other service such fees as the court by which the commissioner is appointed may from time to time prescribe.

A commissioner shall not be compelled to make out or return a report until his fees therefor are paid or security given him to pay so much as may be adjudged appropriate by the court to which the report is to be returned or by the judge thereof in vacation, unless the court finds cause to order it to be made out and returned without such payment or security.

Code 1950, § 14-142; 1964, c. 386, § 14.1-133; 1998, c. 872.

§ 8.01-610. Weight to be given commissioner's report

The report of a commissioner in chancery shall not have the weight given to the verdict of a jury on conflicting evidence, but the court shall confirm or reject such report in whole or in part, according to the view which it entertains of the law and the evidence.

Code 1950, § 8-250; 1977, c. 617.

§ 8.01-611. Notice of time and place of taking account

The court, ordering an account to be taken, may direct that notice of the time and place of taking it be published once a week for two successive weeks in a newspaper meeting the requirements of § 8.01-324, and may also require notice to be served on the parties in the manner set forth in the Rules of Court for the taking of depositions.

Code 1950, § 8-251; 1977, c. 617.

§ 8.01-612. Commissioner may summons witnesses

A commissioner in chancery, to whom has been referred any matter, may compel the attendance of all needed witnesses by summons. A summonsed witness who fails to attend shall be reported to the court for appropriate contempt proceedings.

Code 1950, § 8-252; 1977, c. 617.

§ 8.01-613. Commissioner may ask instructions of court

A commissioner, who has doubts as to any point which arises before him, may, in writing, submit the point to the court, who may instruct him thereon.

Code 1950, § 8-253; 1977, c. 617.

§ 8.01-614. His power to adjourn his proceedings

A commissioner in chancery may adjourn his proceedings from time to time, after the day to which notice was given, without any new notice, until his report is completed; and, when it is completed, it may be filed in the clerk's office at any time thereafter. The commissioner may, if it shall appear to him necessary, adjourn such proceedings, to any place within the Commonwealth, and there continue such proceedings and take depositions and other evidence in like manner and with like force and effect as if the same were done in the place where he was appointed, and the commissioner shall have the power to compel the attendance of witnesses before him in the manner prescribed by § 8.01-612.

Code 1950, §§ 8-254, 8-255; 1977, c. 617.

§ 8.01-615. When cause heard on report; time for filing exceptions

A cause may be heard by the court upon a commissioner's report. Subject to the Rules of Court regarding dispensing with notice of taking proofs and other proceedings, reasonable notice of such hearing shall be given to counsel of record and to parties not represented by counsel. Exceptions to the commissioner's report shall be filed within ten days after the report has been filed with the court, or for good cause shown, at a later time specified by the court.

This section shall not apply to the report of a commissioner appointed to sell property; in such cases the report of such commissioner, when filed in the clerk's office, shall be either confirmed, modified, or rejected forthwith.

Code 1950, § 8-257; 1958, c. 67; 1977, c. 617; 1978, c. 237; 1981, c. 500; 1982, c. 339.

§ 8.01-616. Delivery of original papers of suit by clerk to commissioner

The clerk of a court shall, upon the request of any commissioner in chancery who has before him for execution an order made in such action, deliver to him the original papers thereof; and it shall not be necessary for the clerk to copy such papers, nor shall he charge any fee for copies of any of them, unless the same be specially ordered. The commissioner to whom such papers may be delivered, shall give his receipt therefor, and return the papers as speedily as possible to the office of the clerk of the court.

Code 1950, § 8-258; 1977, c. 617.

§ 8.01-617. Settlement of accounts of special receivers and special commissioners

Every circuit court, by an order entered of record, shall appoint one of its commissioners in chancery, who shall hold office at its pleasure, to state and settle the accounts of all special receivers

and of all special commissioners holding funds or evidences of debt subject to the order of the court.

All special receivers and special commissioners shall, unless their accounts have been previously verified and approved by the court, and ordered to be recorded, with reasonable promptness, and not longer than four months after any money in their hands should be distributed or at other intervals specified by the court, present to such commissioner in chancery an accurate statement of all receipts and disbursements, duly signed and supported by proper vouchers; and the commissioner in chancery shall examine and verify the same, and attach his certificate thereto approving it, if it is correct, or stating any errors or inaccuracies therein, and file same in the cause in which the special receiver or special commissioner was appointed, and present the same to the court.

The court may at any time appoint any of its other commissioners in chancery to perform the duties herein required in any case in which the regular commissioner in chancery appointed hereunder is himself the special receiver or special commissioner whose accounts are to be settled.

For his services performed hereunder the commissioner in chancery shall receive such compensation as the court allows, to be paid out of the fund in the hands of the special receiver or special commissioner.

If any special receiver or special commissioner fails to make settlement as herein required within the time herein provided, he shall forfeit his compensation, or so much thereof as the court orders.

The court may order its general receiver also to state and settle his accounts in the manner herein provided. When a general receiver settles his accounts before a commissioner of accounts or commissioner in chancery, fees charged by the commissioner are to be reasonable but may not exceed $100 per general receiver settlement or $1 per disbursement made by the general receiver as reflected in the settlement, whichever is greater.

Code 1950, § 8-259; 1977, c. 617; 1988, c. 553.

§ 8.01-618. Reports of such settlements; when new bond required

The court shall examine the reports required by § 8.01-617, when the same are made to it; and, if satisfied of the correctness thereof, shall order them to be recorded. If it appears from the report of the commissioner that any bond of a receiver, or any bond or other security given by any person to whom money has been loaned under its order, is insufficient, the court shall order additional security to be given, or a new bond to be executed before it, in such penalty as may seem right, and with sufficient sureties. But the execution of such new bond shall not discharge the sureties in any prior bond for their liability for acts of the principal obligor done previous to the execution of such new bond.

Code 1950, § 8-260; 1977, c. 617.

§ 8.01-618.1. Fees of special receivers and commissioners for reports

Special receivers and commissioners may charge, for the reports made under § 8.01-617, the same fees allowed by law to commissioners in chancery for other reports, to be paid out of the fund in court, and charged to the respective cases therein, in such proportions as the court deems appropriate.

Code 1950, § 8-262; 1977, c. 624, § 14.1-133.1; 1998, c. 872.

§ 8.01-619. Recordation of reports of such settlements

The circuit court clerk shall record reports of receivers and commissioners when approved by the court, in a fiduciary book and properly index same to show the name of the receiver or commissioner and also the style of the suit in which the report is made; and such book shall be kept as a public record in the office of the clerk.

Code 1950, § 8-261; 1977, c. 617.

Chapter 24 - INJUNCTIONS

§ 8.01-620. General jurisdiction of circuit court to award injunctions

Every circuit court shall have jurisdiction to award injunctions, including cases involving violations of the Uniform Statewide Building Code, whether the judgment or proceeding enjoined be in or out of the circuit, or the party against whose proceedings the injunction be asked resides in or out of the circuit.

Code 1950, § 8-610; 1977, c. 617; 1995, c. 310.

§ 8.01-621. Repealed

Repealed by Acts 1987, c. 567.

§ 8.01-622. Injunction to protect plaintiff in suit for specific property

An injunction may be awarded to protect any plaintiff in a suit for specific property, pending either at law or in equity, against injury from the sale, removal, or concealment of such property.

Code 1950, § 8-612; 1977, c. 617.

§ 8.01-622.1. Injunction against assisted suicide; damages; professional sanctions

A. Any person who knowingly and intentionally, with the purpose of assisting another person to commit or attempt to commit suicide, (i) provides the physical means by which another person commits or attempts to commit suicide or (ii) participates in a physical act by which another person commits or attempts to commit suicide shall be liable for damages as provided in this section and may be enjoined from such acts.

B. A cause of action for injunctive relief against any person who is reasonably expected to assist or attempt to assist a suicide may be maintained by any person who is the spouse, parent, child, sibling or guardian of, or a current or former licensed health care provider of, the person who would commit suicide; by an attorney for the Commonwealth with appropriate jurisdiction; or by the

Attorney General. The injunction shall prevent the person from assisting any suicide in the Commonwealth.

C. A spouse, parent, child or sibling of a person who commits or attempts to commit suicide may recover compensatory and punitive damages in a civil action from any person who provided the physical means for the suicide or attempted suicide or who participated in a physical act by which the other person committed or attempted to commit suicide.

D. A licensed health care provider who assists or attempts to assist a suicide shall be considered to have engaged in unprofessional conduct for which his certificate or license to provide health care services in the Commonwealth shall be suspended or revoked by the licensing authority.

E. Nothing in this section shall be construed to limit or conflict with § 54.1-2971.01 or the Health Care Decisions Act (§ 54.1-2981 et seq.). This section shall not apply to a licensed health care provider who (i) administers, prescribes or dispenses medications or procedures to relieve another person's pain or discomfort and without intent to cause death, even if the medication or procedure may hasten or increase the risk of death, or (ii) withholds or withdraws life-prolonging procedures as defined in § 54.1-2982. This section shall not apply to any person who properly administers a legally prescribed medication without intent to cause death, even if the medication may hasten or increase the risk of death.

F. For purposes of this section:

"Licensed health care provider" means a physician, surgeon, podiatrist, osteopath, osteopathic physician and surgeon, physician assistant, nurse, dentist or pharmacist licensed under the laws of this Commonwealth.

"Suicide" means the act or instance of taking one's own life voluntarily and intentionally.

1998, c. 624; 2015, c. 710.

§ 8.01-623. Injunction against decree subject to bill of review; limitations to bill of review

A court allowing a bill of review may award an injunction to the decree to be reviewed. But no bill of review shall be allowed to a final decree, unless it be exhibited within six months next after such decree, except that a person under a disability as defined in § 8.01-2 may exhibit the same within six months after the removal of his or her disability. In no case shall such a bill be filed without the leave of court first obtained, unless it be for error of law apparent upon the face of the record.

Code 1950, § 8-613; 1977, c. 617.

§ 8.01-624. Duration of temporary injunctions to be fixed therein

When any court authorized to award injunctions shall grant a temporary injunction, either with or without notice to the adverse party, such court shall prescribe in the injunction order the time during which such injunction shall be effective and at the expiration of that time such injunction shall stand dissolved unless, before the expiration thereof, it be enlarged. Such injunction may be

enlarged or a further injunction granted by the court in which the cause is pending or by the court to whom the bill is addressed in the event the cause be not matured, after reasonable notice to the adverse party, or to his attorney of record of the time and place of moving for the same.

Code 1950, § 8-614; 1977, c. 617.

§ 8.01-625. Dissolution of injunctions

Any court wherein an injunction has been awarded may at any time when such injunction is in force dissolve the same after reasonable notice to the adverse party, or to his attorney of record, in which notice shall be set forth the grounds upon which such dissolution will be asked, unless such grounds be set forth in an answer previously filed in the case by the party giving such notice.

Code 1950, § 8-615; 1977, c. 617.

§ 8.01-626. When court grants or refuses injunction, justice of Supreme Court or judge of Court of Appeals may review it

Wherein a circuit court (i) grants an injunction or (ii) refuses an injunction or (iii) having granted an injunction, dissolves or refuses to enlarge it, an aggrieved party may, within 15 days of the court's order, present a petition for review to a justice of the Supreme Court; however, if the issue concerning the injunction arose in a case over which the Court of Appeals would have appellate jurisdiction under § 17.1-405 or 17.1-406, the petition for review shall be initially presented to a judge of the Court of Appeals within 15 days of the court's order. The aggrieved party shall serve a copy of the petition for review on the counsel for the opposing party, which may file a response within seven days from the date of service unless the court determines a shorter time frame. The petition for review shall be accompanied by a copy of the proceedings, including the original papers and the court's order respecting the injunction. The justice or judge may take such action thereon as he considers appropriate under the circumstances of the case.

When a judge of the Court of Appeals has initially acted upon a petition for review of an order of a circuit court respecting an injunction, a party aggrieved by such action of the judge of the Court of Appeals may, within 15 days of the order of the judge of the Court of Appeals, present a petition for review of such order to a justice of the Supreme Court if the case would otherwise be appealable to the Supreme Court in accordance with § 17.1-410. The aggrieved party shall serve a copy of the petition for review on the counsel for the opposing party, which may file a response within seven days from the date of service unless the court determines a shorter time frame. The petition for review shall be accompanied by a copy of the proceedings before the circuit court, including the original papers and the circuit court's order respecting the injunction, and a copy of the order of the judge of the Court of Appeals from which review is sought. The justice may take such action thereon as he considers appropriate under the circumstances of the case.

Code 1950, § 8-618; 1977, c. 617; 1984, c. 703; 2014, c. 526.

§ 8.01-627. To what clerk order for injunction directed

Every order, awarding an injunction made under § 8.01-620 or § 8.01-626, shall be directed to the clerk of the court which has venue under § 8.01-261 and the proceedings thereupon shall be as if the order has been made by such court.

Code 1950, § 8-619; 1977, c. 617.

§ 8.01-628. Equity of prayer for temporary injunction to be shown by affidavit or otherwise

No temporary injunction shall be awarded unless the court shall be satisfied of the plaintiff's equity. An application for a temporary injunction may be supported or opposed by an affidavit or verified pleading.

Code 1950, § 8-620; 1977, c. 617; 2015, c. 125.

§ 8.01-629. Notice required

Any court may require that reasonable notice be given to the adverse party, or to his attorney of record, of the time and place of moving for it, before the injunction is granted, if, in the opinion of the court, it be proper that such notice be given.

Code 1950, § 8-621; 1977, c. 617.

§ 8.01-630. Forthcoming bond in connection with injunction against removal of property

A court awarding a temporary injunction to restrain the removal of property out of this Commonwealth may require bond with security to be given before such officer and in such penalty as the court may direct, with condition to have the property forthcoming to abide the future order or decree of the court and, unless such bond be given, may order the officer serving its process to take possession of the property and keep it until the bond be given or until further order of the court.

Code 1950, § 8-622; 1977, c. 617; 2012, cc. 8, 77.

§ 8.01-631. Injunction bond

A. Except in the case of a fiduciary or any other person from whom in the opinion of the court awarding an injunction it may be improper or unnecessary to require bond, no temporary injunction shall take effect until the movant gives bond with security in an amount that the trial court considers proper to pay the costs and damages sustained by any party found to have been incorrectly enjoined, with such conditions as the trial court may prescribe.

B. When an appeal is taken from an interlocutory order or final judgment granting, dissolving, or denying a permanent injunction, and while the appeal is pending, the trial court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

C. The bond shall be given before the clerk of the court in which the injunction is awarded.

D. An order by the trial court under subsection A or B may be modified or vacated by the appellate court having jurisdiction over the appeal in accordance with § 8.01-676.1.

E. For any temporary or permanent injunction sought by, or awarded to, the Commonwealth, or any of its officers or agencies, no bond shall be required.

Code 1950, § 8-623; 1976, c. 238; 1977, c. 617; 2012, cc. 8, 77.

§ 8.01-631.1. Environmental injunction; financial capacity

A court awarding a temporary or permanent injunction to the Commonwealth, or any of its officers or agencies, requiring any party to (i) abate, control, prevent, remove, or contain any substantial or imminent threat to public health or the environment, or (ii) develop a closure plan to address any substantial or imminent threat to public health or the environment that may result when a business ceases operation, shall require the defendant to demonstrate its financial capability to comply with the injunction. Financial capability may be demonstrated, at the court's discretion, by the establishment of an escrow account, the creation of a trust fund, the submission of a bond, or such other instruments as the court may deem appropriate.

For the purposes of this section "ceases operation" means to cease conducting the normal operation of a business in the Commonwealth where it would be reasonable to expect that such operation will not be resumed by the owner. The term shall not include the ordinary sale or transfer of a business.

1991, c. 236 .

§ 8.01-632. How surety in forthcoming bond may obtain additional security

Any surety in the forthcoming bond described in §§ 8.01-630 and 8.01-631, or his personal representative, may move for and obtain an order for other or additional security, in the same manner as the defendant in an injunction.

Code 1950, § 8-624; 1977, c. 617.

§ 8.01-633. Damages on dissolution

When an injunction to stay proceedings on a judgment or decree for money is dissolved wholly or in part there shall be paid to the party having such judgment or decree damages at the rate of ten per centum per annum from the time the injunction took effect until the dissolution, on such sum as appears to be due, including the costs; but the court wherein the injunction is may direct that no such damages be paid, or that there be paid only such portion thereof as it may deem just. In a case wherein a forthcoming bond was forfeited, and no execution was had thereon before the injunction took effect, a court awarding such execution shall include in its judgment or decree damages as aforesaid. In other cases damages may be included in the execution on the judgment or decree to which the injunction was awarded.

Code 1950, § 8-625; 1977, c. 617.

§ 8.01-634. Dismissal of injunction bill

When an injunction is wholly dissolved the bill shall stand dismissed with costs, unless sufficient cause be shown against such dismissal.

Code 1950, § 8-626; 1977, c. 617.

Chapter 25 - EXTRAORDINARY WRITS

Article 1 - WRIT OF QUO WARRANTO

§ 8.01-635. Common-law writ of quo warranto and information in the nature of writ of quo warranto abolished; statutory writ of quo warranto established

The common-law writ of quo warranto and information in the nature of writ of quo warranto is hereby abolished and superseded by the statutory writ of quo warranto.

1977, c. 617.

§ 8.01-636. In what cases writ issued

A writ of quo warranto may be issued and prosecuted in the name of the Commonwealth in any of the following cases:

1. Against a domestic corporation, other than a municipal corporation, for the misuse or nonuse of its corporate privileges and franchises, or for the exercise of a privilege or franchise not conferred upon it by law, or when a charter of incorporation has been obtained by it for a fraudulent purpose, or for a purpose not authorized by law;

2. Against a person for the misuse or nonuse of any privilege conferred upon him by law;

2a. Against a person engaged in the practice of any profession without being duly authorized or licensed to do so;

3. Against any person or persons acting as a corporation, other than a municipal corporation, without authority of law; and

4. Against any person who intrudes into or usurps any public office. But no writ shall be issued or prosecuted against any person now in office for any cause which would have been available in support of a proceeding to contest his election.

Provided that nothing herein shall be construed to give jurisdiction to any court to judge the election, qualifications, or returns of the members of either house of the General Assembly.

Code 1950, § 8-857; 1977, c. 617; 1980, c. 705.

§ 8.01-637. By whom filed; when leave granted and writ issued

A. The Attorney General or attorney for the Commonwealth of any county or city of which the circuit court has jurisdiction of the proceeding, at his own instance or at the relation of any interested person, or any interested person, may apply to such court by petition verified by oath for a writ of quo warranto. In case of an application under § 8.01-636 2a the term "any interested person" shall include any attorney licensed to practice law in this Commonwealth and qualified to practice before the Supreme Court of Virginia, or the circuit court in which the petition is filed.

B. If, in the opinion of the court, the matters stated in the petition are sufficient in law to authorize the issuance of such writ, a writ shall issue thereon, commanding the sheriff to summon the defendant to appear at a date set forth in the writ.

C. If the petition is filed on the relation of any person or by any person at his own instance, before the clerk shall issue the writ the court shall require the relator or person to give bond with sufficient surety, to be approved by the clerk, to indemnify the Commonwealth against all costs and expenses of the proceedings, in case the same shall not be recovered from and paid by the defendant.

Code 1950, §§ 8-858, 8-859, 8-860; 1977, c. 617; 1980, c. 705.

§ 8.01-638. Repealed

Repealed by Acts 1987, c. 567.

§ 8.01-639. How summons directed and served

The writ and a copy of the petition attached thereto may be directed to the sheriff of any county or city and shall be served as in other actions.

Code 1950, § 8-861; 1977, c. 617.

§ 8.01-640. Judgment when defendant fails to appear

If the defendant fails to appear in accordance with the writ, the court may hear proof of the allegations of the petition, and if the allegations are sustained, shall give judgment accordingly.

Code 1950, § 8-862; 1977, c. 617.

§ 8.01-641. Reopening same when made on service by publication

But if service is made by publication, the defendant against whom the judgment is rendered may file a motion within thirty days from the rendition of judgment to have such judgment set aside, upon giving bond with good security as prescribed by the court, with condition to pay all such costs as shall be awarded in the cause against the defendant. The defendant may then make such defense to the petition as he might have made, and in the same manner, before the judgment was rendered.

Code 1950, § 8-863; 1977, c. 617.

§ 8.01-642. Pleading when defendant appears

The defendant against whom the writ was issued may plead, demur or answer the petition within the time set forth in the writ for his appearance.

Code 1950, § 8-864; 1977, c. 617.

§ 8.01-643. Trial; verdict; judgment; costs; attorney's fee

Unless the defendant shall ask for a trial by jury, the court shall hear the same. If the case is tried by jury and the defendant is found guilty as to only a part of the charges, the verdict shall be

guilty as to such part and shall particularly specify the same. As to the residue of such charges, the verdict shall be not guilty.

If the defendant appears and is found guilty the court shall give such judgment as is appropriate and authorized by law and for costs incurred in the prosecution of the information, including a reasonable attorney's fee to be prescribed by the court.

Code 1950, § 8-865; 1977, c. 617.

Article 2 - MANDAMUS AND PROHIBITION

§ 8.01-644. Application for mandamus or prohibition

Except as provided in § 2.2-3713, application for a writ of mandamus or a writ of prohibition shall be on petition verified by oath, after the party against whom the writ is prayed has been served with a copy of the petition and notice of the intended application a reasonable time before such application is made.

Code 1950, § 8-704; 1977, c. 617; 2009, c. 634.

§ 8.01-644.1. Limitations of actions for petition for mandamus

A petition for extraordinary writ of mandamus, filed by or on behalf of a person confined in a state correctional facility, shall be brought within one year after the cause of action accrues.

1998, c. 596.

§ 8.01-645. What petition to state; where presented

The petition shall state plainly and concisely the grounds of the application, concluding with a prayer for the writ, and shall be presented to the court having jurisdiction, unless the application is to the Court of Appeals or the Supreme Court.

Code 1950, § 8-705; 1977, c. 617; 1984, c. 703.

§ 8.01-646. When writ awarded if no defense made

When the application is made, on proof of notice and service of the copy of the petition as aforesaid, if the defendant fails to appear, or appearing fails to make defense, and the petition states a proper case for the writ, a peremptory writ shall be awarded with costs.

Code 1950, § 8-706; 1977, c. 617.

§ 8.01-647. Defense; how made

The defendant may file a demurrer or answer on oath to the petition, or both. The court may permit amendments of the pleadings as in other cases.

Code 1950, § 8-707; 1977, c. 617.

§ 8.01-648. What judgment to be rendered

The court shall award or deny the writ according to the law and facts of the case, with or without costs.

Code 1950, § 8-709; 1977, c. 617.

§ 8.01-649. Proceedings when application is to Supreme Court or Court of Appeals

If the application is to the Court of Appeals or the Supreme Court, the procedure shall be in accordance with the provisions of Rules of Court.

Code 1950, § 8-710; 1977, c. 617; 1984, c. 703.

§ 8.01-650. Suspension of proceedings, where prohibition applied for

On petition for a writ of prohibition, the court may, at any time before or after the application for the writ is made, make an order, a copy of which shall be served on the defendant, suspending the proceedings sought to be prohibited until the final decision of the cause.

Code 1950, § 8-711; 1977, c. 617.

§ 8.01-651. Suspension of proceedings by justice of Supreme Court or judge of Court of Appeals

Whenever a court having jurisdiction refuses to suspend proceedings as provided in § 8.01-650 of this chapter, a copy of the proceedings in court, with any orders entered in the proceedings, may be presented to a judge of the Court of Appeals, if an application for a writ of prohibition is pending in that court, or to a justice of the Supreme Court if the application for a writ is pending there. Such judge or justice may thereupon award a suspension of the proceedings sought to be prohibited until the final decision of the cause.

Code 1950, § 8-711.1; 1972, c. 673; 1977, c. 617; 1984, c. 703.

§ 8.01-652. Service of writ; how obedience enforced

Service of a copy of the order awarding the writ shall be equivalent to service of the writ, and obedience to the writ or order may be enforced by process of contempt.

Code 1950, § 8-713; 1977, c. 617.

§ 8.01-653. Mandamus to secure construction of act directing payment out of treasury of the Commonwealth

Whenever the Comptroller or the Treasurer of the Commonwealth shall notify the Attorney General, in writing, that they, or either of them, entertain such doubt respecting the proper construction or interpretation of any act of the General Assembly which appropriates or directs the payment of money out of the treasury of the Commonwealth, or respecting the constitutionality of any such act, that they, or either of them, do not feel that it would be proper or safe to pay such money until there has been a final adjudication by the Supreme Court determining any and all such questions, and that, for such reason, they will not make payments pursuant to such act until such adjudication has been made, the Attorney General may file in such court a petition for a writ of mandamus directing or requiring the Comptroller or Treasurer of the Commonwealth, or both, to pay such money as provided by any such act at such time in the future as may be proper. In order to avoid delays in payments after the time for making them has arrived, any such petition

may be filed at any time after the passage of any such act although the time for making such payments has not arrived and no demand for such payments has been made. In any such proceeding the court shall consider and determine all questions raised by the Attorney General's petition pertaining to the constitutionality or interpretation of any such act, even though some of such questions may not be necessary to the decision of the question of the duty of such Comptroller and Treasurer of the Commonwealth to make payment of the moneys appropriated or directed to be paid.

The Comptroller and the Treasurer of the Commonwealth, or either of them, as the case may be, shall be made a party or parties defendant to any such petition and the court may, in its discretion, cause such other officers or persons to be made parties defendant as it may deem proper, and may make such order respecting the employment of an attorney or attorneys for any officer of the Commonwealth who is a party defendant as may be appropriate. The compensation of any such attorney shall be fixed by such court and upon its order paid out of the appropriation to the office or department of any such public officer represented by any such attorney in such proceeding.

Code 1950, § 8-714; 1977, c. 617.

§ 8.01-653.1. Mandamus to secure construction of act granting power to incur certain obligations for transportation needs

Whenever the Comptroller notifies the Attorney General in writing that he entertains doubt respecting the constitutionality of any act of the General Assembly granting an agency of the Commonwealth or other governmental board or entity of the Commonwealth general powers to incur obligations for transportation needs where such obligations are subject to authorization by the General Assembly, the Attorney General shall file in the Supreme Court a petition for a writ of mandamus directing or requiring the Comptroller to pay the money as provided by any such act at such time in the future as may be proper. In order to expedite long-term planning by such an agency of the Commonwealth or other governmental board or entity of the Commonwealth and expedite its advice to the Governor and the General Assembly on possible alternative means of financing Virginia's transportation needs, the petition may be filed after the enactment date of any such act, although (i) the General Assembly may not have enacted legislation specifically authorizing such an agency of the Commonwealth or other governmental board or entity of the Commonwealth to enter into specific obligations under its general authority or (ii) if such specific obligations have been authorized, the time for making payments has not arrived and no demand for payment has been made. The court shall consider and determine all questions raised by the Attorney General's petition pertaining to the constitutionality or interpretation of any such act, even though some of the questions may not be necessary to the decision regarding the duty of the Comptroller to make payment of the moneys appropriated or directed to be paid.

The Comptroller shall be made a party defendant to the petition. The court may, in its discretion, cause other officers or persons to be made parties defendant as it may deem proper, and may

make such order respecting the employment of an attorney or attorneys for any officer of the Commonwealth who is a party defendant as may be appropriate. The compensation of any attorney so employed shall be fixed by the court and upon its order paid out of the appropriation to the office or department of the public officer represented by the attorney in the proceeding.

1986, Sp. Sess., cc. 14, 16.

Article 3 - HABEAS CORPUS

§ 8.01-654. When and by whom writ granted; what petition to contain

A. 1. The writ of habeas corpus ad subjiciendum shall be granted forthwith by the Supreme Court or any circuit court, to any person who shall apply for the same by petition, showing by affidavits or other evidence probable cause to believe that he is detained without lawful authority.

2. A petition for writ of habeas corpus ad subjiciendum, other than a petition challenging a criminal conviction or sentence, shall be brought within one year after the cause of action accrues. A habeas corpus petition attacking a criminal conviction or sentence, except as provided in § 8.01-654.1 for cases in which a death sentence has been imposed, shall be filed within two years from the date of final judgment in the trial court or within one year from either final disposition of the direct appeal in state court or the time for filing such appeal has expired, whichever is later.

B. 1. With respect to any such petition filed by a petitioner held under criminal process, and subject to the provisions of subsection C of this section and of § 17.1-310, only the circuit court which entered the original judgment order of conviction or convictions complained of in the petition shall have authority to issue writs of habeas corpus. If a district court entered the original judgment order of conviction or convictions complained of in the petition, only the circuit court for the city or county wherein the district court sits shall have authority to issue writs of habeas corpus. Hearings on such petition, where granted in the circuit court, may be held at any circuit court within the same circuit as the circuit court in which the petition was filed, as designated by the judge thereof.

2. Such petition shall contain all allegations the facts of which are known to petitioner at the time of filing and such petition shall enumerate all previous applications and their disposition. No writ shall be granted on the basis of any allegation the facts of which petitioner had knowledge at the time of filing any previous petition. The provisions of this section shall not apply to a petitioner's first petition for a writ of habeas corpus when the sole allegation of such petition is that the petitioner was deprived of the right to pursue an appeal from a final judgment of conviction or probation revocation, except that such petition shall contain all facts pertinent to the denial of appeal that are known to the petitioner at the time of the filing, and such petition shall certify that the petitioner has filed no prior habeas corpus petitions attacking the conviction or probation revocation.

3. Such petition may allege detention without lawful authority through challenge to a conviction, although the sentence imposed for such conviction is suspended or is to be served subsequently to the sentence currently being served by petitioner.

4. In the event the allegations of illegality of the petitioner's detention can be fully determined on the basis of recorded matters, the court may make its determination whether such writ should issue on the basis of the record.

5. The court shall give findings of fact and conclusions of law following a determination on the record or after hearing, to be made a part of the record and transcribed.

6. If petitioner alleges as a ground for illegality of his detention the inadequacy of counsel, he shall be deemed to waive his privilege with respect to communications between such counsel and himself to the extent necessary to permit a full and fair hearing for the alleged ground.

C. 1. With respect to any such petition filed by a petitioner held under the sentence of death, and subject to the provisions of this subsection, the Supreme Court shall have exclusive jurisdiction to consider and award writs of habeas corpus. The circuit court which entered the judgment order setting the sentence of death shall have authority to conduct an evidentiary hearing on such a petition only if directed to do so by order of the Supreme Court.

2. Hearings conducted in a circuit court pursuant to an order issued under the provisions of subdivision 1 of this subsection shall be limited in subject matter to the issues enumerated in the order.

3. The circuit court shall conduct such a hearing within 90 days after the order of the Supreme Court has been received and shall report its findings of fact and recommend conclusions of law to the Supreme Court within 60 days after the conclusion of the hearing. Any objection to the report of the circuit court must be filed in the Supreme Court within 30 days after the report is filed.

Code 1950, § 8-596; 1958, c. 215; 1968, c. 487; 1977, c. 617; 1978, c. 124; 1995, c. 503; 1998, c. 577; 2005, c. 836.

§ 8.01-654.1. Limitation on consideration of petition filed by prisoner sentenced to death

No petition for a writ of habeas corpus filed by a prisoner held under a sentence of death shall be considered unless it is filed within sixty days after the earliest of: (i) denial by the United States Supreme Court of a petition for a writ of certiorari to the judgment of the Supreme Court of Virginia on direct appeal, (ii) a decision by the United States Supreme Court affirming imposition of the sentence of death when such decision is in a case resulting from a granted writ of certiorari to the judgment of the Supreme Court of Virginia on direct appeal, or (iii) the expiration of the period for filing a timely petition for certiorari without a petition being filed.

However, notwithstanding the time restrictions otherwise applicable to the filing of a petition for a writ of habeas corpus, an indigent prisoner may file such a petition within 120 days following appointment, made under § 19.2-163.7, of counsel to represent him.

1995, c. 503; 1998, c. 199.

§ 8.01-654.2. Presentation of claim of mental retardation by person sentenced to death before April 29, 2003

Notwithstanding any other provision of law, any person under sentence of death whose sentence became final in the circuit court before April 29, 2003, and who desires to have a claim of his mental retardation presented to the Supreme Court, shall do so by one of the following methods: (i) if the person has not commenced a direct appeal, he shall present his claim of mental retardation by assignment of error and in his brief in that appeal, or if his direct appeal is pending in the Supreme Court, he shall file a supplemental assignment of error and brief containing his claim of mental retardation, or (ii) if the person has not filed a petition for a writ of habeas corpus under subsection C of § 8.01-654, he shall present his claim of mental retardation in a petition for a writ of habeas corpus under such subsection, or if such a petition is pending in the Supreme Court, he shall file an amended petition containing his claim of mental retardation. A person proceeding under this section shall allege the factual basis for his claim of mental retardation. The Supreme Court shall consider a claim raised under this section and if it determines that the claim is not frivolous, it shall remand the claim to the circuit court for a determination of mental retardation; otherwise the Supreme Court shall dismiss the petition. The provisions of §§ 19.2-264.3:1.1 and 19.2-264.3:1.2 shall govern a determination of mental retardation made pursuant to this section. If the claim is before the Supreme Court on direct appeal and is remanded to the circuit court and the case wherein the sentence of death was imposed was tried by a jury, the circuit court shall empanel a new jury for the sole purpose of making a determination of mental retardation.

If the person has completed both a direct appeal and a habeas corpus proceeding under subsection C of § 8.01-654, he shall not be entitled to file any further habeas petitions in the Supreme Court and his sole remedy shall lie in federal court.

2003, cc. 1031, 1040.

§ 8.01-655. Form and contents of petition filed by prisoner

A. Every petition filed by a prisoner seeking a writ of habeas corpus must be filed on the form set forth in subsection B. The failure to use such form and to comply substantially with such form shall entitle the court to which such petition is directed to return such petition to the prisoner pending the use of and substantial compliance with such form. The petitioner shall be responsible for all statements contained in the petition and any false statement contained therein, if the same be knowingly or wilfully made, shall be a ground for prosecution and conviction of perjury as provided for in § 18.2-434.

B. Every petition filed by a prisoner seeking a writ of habeas corpus shall be filed on a form to be approved and provided by the office of the Attorney General, the contents of which shall be substantially as follows:

IN THE..... COURT

.....

Full name and prisonerCase No.....

number (if any) of(To be supplied by

Petitionerthe Clerk of the

-vs-Court)

.....

.....

Name and Title of Respondent

PETITION FOR WRIT OF HABEAS CORPUS

Instructions--Read Carefully

In order for this petition to receive consideration by the Court, it must be legibly handwritten or typewritten, signed by the petitioner and verified before a notary or other officer authorized to administer oaths. It must set forth in concise form the answers to each applicable question. If necessary, petitioner may finish his answer to a particular question on an additional page. Petitioner must make it clear to which question any such continued answer refers. The petitioner may also submit exhibits.

Since every petition for habeas corpus must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury under § 18.2-434 . Petitioners should, therefore, exercise care to assure that all answers are true and correct.

When the petition is completed, the original and two copies (total of

three) should be mailed to the clerk of the court. The petitioner shall keep one copy.

NOTICE

The granting of a writ of habeas corpus does not entitle the petitioner to dismissal of the charges for conviction of which he is being detained, but may gain him no more than a new trial.

.....

Place of detention:.....

A. Criminal Trial

1. Name and location of court which imposed the sentence from which you seek relief:

.....
.....

2. The offense or offenses for which sentence was imposed (include indictment number or numbers if known):

a.....
b.....
c.....

3. The date upon which sentence was imposed and the terms of the sentence:

a.....
b.....
c.....

4. Check which plea you made and whether trial by jury: Plea of guilty: .....; Plea of not guilty: .....; Trial by jury: .....; Trial by judge without jury: .....

5. The name and address of each attorney, if any, who represented you at your criminal trial:

.....
.....

6. Did you appeal the conviction?.....

7. If you answered "yes" to 6, state: the result and the date in your appeal or petition for certiorari:

a.....
b.....

citations of the appellate court opinions or orders:

a.....
b.....

8. List the name and address of each attorney, if any, who represented you on your appeal:

.....
.....

B. Habeas Corpus

9. Before this petition did you file with respect to this conviction any other petition for habeas corpus in either a State or federal court?.....

10. If you answered "yes" to 9, list with respect to each petition: the name and location of the court in which each was filed:

a.....
b.....

the disposition and the date:

a.....
b.....
the name and address of each attorney, if any, who represented you on your habeas corpus:
a.....
b.....

11. Did you appeal from the disposition of your petition for habeas corpus?
12. If you answered "yes" to 11, state: the result and the date of each petition:
a.....
b.....
citations of court opinions or orders on your habeas corpus petition:
a.....
b.....
the name and address of each attorney, if any, who represented you on appeal of your habeas corpus:
a.....
b.....

C. Other Petitions, Motions or Applications

13. List all other petitions, motions or applications filed with any court following a final order of conviction and not set out in A or B. Include the nature of the motion, the name and location of the court, the result, the date, and citations to opinions or orders. Give the name and address of each attorney, if any, who represented you.
a.....
b.....
c.....

D. Present Petition

14. State the grounds which make your detention unlawful, including the facts on which you intend to rely:
a.....
b.....
c.....
15. List each ground set forth in 14, which has been presented in any other proceeding:
a.....
b.....
c.....

List the proceedings in which each ground was raised:

a.....

b.....

c.....

16. If any ground set forth in 14 has not been presented to a court, list each ground and the reason why it was not:

a.....

b.....

c.....

.....

Signature of Petitioner

.....

Address of Petitioner

STATE OF VIRGINIA

CITY/COUNTY OF .....

The petitioner being first duly sworn, says:

1. He signed the foregoing petition;

2. The facts stated in the petition are true to the best of his information and belief.

.....

Signature of Petitioner

Subscribed and sworn to before me

this ..... day of ....., 20.....

.....

Notary Public

My commission expires: .....

The petition will not be filed without payment of court costs unless the petitioner is entitled to proceed in forma pauperis and has executed the affidavit in forma pauperis.

The petitioner who proceeds in forma pauperis shall be furnished, without cost, certified copies of the arrest warrants, indictment and order of his conviction at his criminal trial in order to comply with the instructions of this petition.

AFFIDAVIT IN FORMA PAUPERIS

STATE OF VIRGINIA

CITY/COUNTY OF .....

The petitioner being duly sworn, says:

1. He is unable to pay the costs of this action or give security therefor;
2. His assets amount to a total of $.....

.....

Signature of Petitioner

Subscribed and sworn to before me

this ..... day of ....., 20 .....

.....
Notary Public

My commission expires: .....

Code 1950, § 8-596.1; 1968, c. 359; 1977, c. 617.

§ 8.01-656. Bond may be required of petitioner

Before granting the writ, the court may require the petitioner to give bond with surety in a reasonable amount for the payment of such costs and charges as may be awarded against him.

Such bond shall be made payable to the person to whom the writ is directed, with condition that the petitioner will not escape, and shall be filed with the other proceedings on the writ, and may be sued on for the benefit of any person injured by the breach of its condition.

Code 1950, § 8-597; 1977, c. 617.

§ 8.01-657. How directed and returnable

The writ shall be directed to the person in whose custody the petitioner is detained and shall be made returnable as soon as may be before the court ordering the same, or any other of such courts.

Provided that in the event the allegations of illegality of the petitioner's detention present a case for the determination of unrecorded matters of fact relating to any previous judicial proceeding, such writ shall be made returnable before the court in which such judicial proceeding occurred.

Code 1950, § 8-598; 1958, c. 215; 1977, c. 617.

§ 8.01-658. How writ served; dismissal of habeas petition without prejudice

A. The writ shall be served on the person to whom it is directed or, in his absence from the place where the petitioner is confined, on the person having the immediate or potential custody of him.

1. If the petitioner is in jail, prison, or other actual physical restraint due to the conviction or sentence he is attacking, the named respondent shall be (i) the Director of the Department of Corrections or the warden or superintendent of the state correctional facility where the petitioner is detained if the sentence is one year or more or (ii) the sheriff or superintendent of a local or regional jail facility if the sentence is less than one year.

2. If the petitioner is on probation or parole due to the conviction or sentence he is attacking, the named respondent shall be the probation or parole officer responsible for supervising the applicant or the official in charge of the parole or probation agency.

3. If a petitioner has a suspended sentence and is not under supervision by a probation or parole officer, the respondent shall be (i) the local sheriff if the judgment of conviction the petitioner challenges has a suspended sentence of less than one year or (ii) the Director of the Department of Corrections if the judgment of conviction the petitioner challenges has a suspended sentence of one year or more.

B. The petitioner shall name a proper party respondent, and if he fails to do so, the court shall allow amendment of the petition. If the petitioner fails to amend the petition by naming a proper party respondent in the time provided by the court, the court in which the petition is filed shall dismiss the habeas petition without prejudice.

Code 1950, § 8-599; 1977, c. 617; 2015, c. 554.

§ 8.01-659. Penalty for disobeying it

If the person on whom such writ is served shall, in disobedience to the writ, fail to bring the petitioner, with a return of the cause of his detention, before a court before which the writ is returnable, he shall forfeit to the petitioner $300.

Code 1950, § 8-600; 1977, c. 617.

§ 8.01-660. When affidavits may be read

In the discretion of the court or judge before whom the petitioner is brought, the affidavits of witnesses taken by either party, on reasonable notice to the other, may be read as evidence.

Code 1950, § 8-601; 1977, c. 617.

§ 8.01-661. Facts proved may be made part of record

All the material facts proved shall, when it is required by either party, be made a part of the proceedings and entered by the clerk among the records of the court.

Code 1950, § 8-602; 1977, c. 617.

§ 8.01-662. Judgment of court or judge trying it; payment of costs and expenses when petition denied

After hearing the matter both upon the return and any other evidence, the court before whom the petitioner is brought shall either discharge or remand him, or admit him to bail and adjudge the cost of the proceeding, including the charge for transporting the prisoner.

Provided, however, that if the petition is denied, the costs and expenses of the proceeding and the attorney's fees of any attorney appointed to represent the petitioner shall be assessed against the petitioner. If such cost, expenses and fees are collected, they shall be paid to the Commonwealth.

Code 1950, § 8-603; 1968, c. 482; 1977, c. 617.

§ 8.01-663. Judgment conclusive

Any such judgment entered of record shall be conclusive, unless the same be reversed, except that the petitioner shall not be precluded from bringing the same matter in question in an action for false imprisonment.

Code 1950, § 8-605; 1977, c. 617.

§ 8.01-664. How and when Supreme Court summoned to try appeal therefrom

If, during the recess of the Supreme Court, the Governor or the Chief Justice of the Court should think the immediate revision of any such judgment to be proper, he may summon the Court for that purpose, to meet on any day to be fixed by him.

Code 1950, § 8-606; 1977, c. 617.

§ 8.01-665. When execution of judgment suspended; when prisoner admitted to bail

When the prisoner is remanded, the execution of the judgment shall not be suspended by a petition for appeal or by a writ of error, or for the purpose of applying for such writ. When he is ordered to be discharged, and the execution of the judgment is suspended for the purpose of petitioning for appeal to the Court of Appeals or applying for a writ of error from the Supreme Court, the court making such suspending order may admit the prisoner to bail until the expiration of the time allowed for filing a petition for appeal or applying for the writ of error, or, in case the petition for appeal is filed or the writ of error is allowed, until the decision of the Court of Appeals or the Supreme Court thereon is duly certified.

Code 1950, § 8-607; 1977, c. 617; 1984, c. 703.

§ 8.01-666. When and by whom writs of habeas corpus ad testificandum granted

Writs of habeas corpus ad testificandum may be granted by any circuit court in the same manner and under the same conditions and provisions as are prescribed by this chapter as to granting the writ of habeas corpus ad subjiciendum so far as the same are applicable.

Code 1950, § 8-608; 1977, c. 617.

§ 8.01-667. Transmission of records to federal court

Whenever any habeas corpus case is pending in a federal court, upon written request of the Attorney General or any assistant attorney general, a court of this Commonwealth shall transmit to such federal court such records as may be requested.

Code 1950, § 8-608.1; 1975, c. 389; 1977, c. 617.

§ 8.01-668. Writ de homine abolished

The writ de homine replegiando is abolished.

Code 1950, § 8-609; 1977, c. 617.

Chapter 26 - APPEALS TO THE SUPREME COURT

Article 1 - DEFINITIONS

§ 8.01-669. Definitions

As used in Chapters 26, 26.1 and 26.2, unless the context otherwise requires, the term:

"Judgment" includes a decree, order, finding, or award.

"Petitioner" means a party who petitions to the Court of Appeals or the Supreme Court for an appeal.

"Appellant" means any aggrieved party who has an appeal of right or who has been granted an appeal by the Court of Appeals or the Supreme Court.

"Appellate court" means either the Court of Appeals or the Supreme Court, or both as the context may indicate.

1977, c. 617; 1984, c. 703.

Article 2 - WHEN GRANTED

§ 8.01-670. In what cases awarded

A. Except as provided by § 17.1-405, any person may present a petition for an appeal to the Supreme Court if he believes himself aggrieved:

1. By any judgment in a controversy concerning:

a. The title to or boundaries of land,

b. The condemnation of property,

c. The probate of a will,

d. The appointment or qualification of a personal representative, guardian, conservator, committee, or curator,

e. A mill, roadway, ferry, wharf, or landing,

f. The right of the Commonwealth, or a county, or municipal corporation to levy tolls or taxes, or

g. The construction of any statute, ordinance, or county proceeding imposing taxes; or

2. By the order of a court refusing a writ of quo warranto or by the final judgment on any such writ; or

3. By a final judgment in any other civil case.

B. Except as provided by § 17.1-405, any party may present a petition for an appeal to the Supreme Court in any case on an equitable claim wherein there is an interlocutory decree or order:

1. Granting, dissolving or denying an injunction; or

2. Requiring money to be paid or the possession or title of property to be changed; or

3. Adjudicating the principles of a cause.

C. Except in cases where appeal from a final judgment lies in the Court of Appeals, as provided in § 17.1-405, any party may present a petition pursuant to § 8.01-670.1 for appeal to the Supreme Court.

Code 1950, § 8-462; 1977, c. 617; 1984, c. 703; 1997, c. 801; 2002, c. 107; 2005, c. 681.

§ 8.01-670.1. Appeal of interlocutory orders and decrees by permission

When, prior to the commencement of trial, the circuit court has entered in any pending civil action, except any matters appealable to the Court of Appeals pursuant to § 17.1-405, an order or decree that is not otherwise appealable, any party may file in the circuit court a statement of the reasons why an immediate interlocutory appeal should be permitted.

The statement shall include a concise analysis of the statutes, rules or cases believed to be determinative of the issues and request that the court certify in writing that the order or decree involves a question of law as to which (i) there is substantial ground for difference of opinion, (ii) there is no clear, controlling precedent on point in the decisions of the Supreme Court of Virginia or the Court of Appeals of Virginia, (iii) determination of the issues will be dispositive of a material aspect of the proceeding currently pending before the court, and (iv) the court and the parties agree it is in the parties' best interest to seek an interlocutory appeal.

Within ten days of such certification by the circuit court, a petition for appeal may be filed with the appellate court that would have jurisdiction in an appeal from a final judgment in the proceeding. If the appellate court determines that the certification by the circuit court has sufficient merit, it may, in its discretion, permit an appeal to be taken from the interlocutory order or decree and shall notify the certifying circuit court and counsel for the parties of its decision. No petitions or appeals under this section shall stay proceedings in the circuit court unless the circuit court or appellate court so orders.

The consideration of any petition and appeal by the appellate court shall be in accordance with the applicable provisions of the Rules of the Supreme Court and shall not take precedence on the docket unless the court so orders.

2002, c. 107.

§ 8.01-671. Time within which petition must be presented

A. In cases where an appeal is permitted from the trial court to the Supreme Court, no petition shall be presented for an appeal to the Supreme Court from any final judgment whether the

Commonwealth be a party or not, (i) which shall have been rendered more than three months before the petition is presented, provided, that in criminal cases, a thirty-day extension may be granted, in the discretion of the court, in order to attain the ends of justice, or (ii) if it be an appeal from a final decree refusing a bill of review to a decree rendered more than four months prior thereto, unless the petition is presented within three months from the date of such decree.

B. When an appeal from an interlocutory decree or order is permitted, the petition for appeal shall be presented within the appropriate time limitation set forth in subsection A hereof.

C. No appeal to the Supreme Court from a decision of the Court of Appeals shall be granted unless a petition for appeal is filed within thirty days after the date of the decision appealed from.

Code 1950, § 8-463; 1977, cc. 2, 617; 1984, c. 703.

§ 8.01-672. Jurisdictional amount

No petition shall be presented for an appeal from any judgment of a circuit court except in cases in which the controversy is for a matter of $500 or more in value or amount, and except in cases in which it is otherwise expressly provided; nor to a judgment of any circuit court when the controversy is for a matter less in value or amount than $500, exclusive of costs, unless there be drawn in question a freehold or franchise or the title or bounds of land, or some other matter not merely pecuniary.

Code 1950, § 8-464; 1977, c. 617.

Article 3 - THE RECORD

§ 8.01-673. Inspection and return of records; certiorari when part of record is omitted; binding or retention of records

A. The Supreme Court may, when a case has before been in an appellate court, inspect the record upon the former appeal; and the court may, in any case, after reasonable notice to counsel in the appellate court, award a writ of certiorari to the clerk of the court below, and have brought before it, when part of a record is omitted, the whole or any part of such record.

B. When an appeal is refused or after it has been allowed and decided, the Clerk of the Supreme Court shall return the record to the clerk of the circuit court or other tribunal. The clerk of such court or tribunal shall return the record upon the request of the Clerk of the Supreme Court. As soon as a case is decided, the Clerk of the Supreme Court shall cause the appendix and the briefs of counsel to be recorded and preserved in any manner which meets archival standards as recommended by the Archives and Records Division of The Library of Virginia.

The manuscript of the record in a case in which an opinion was delivered prior to 1950 by the Supreme Court upon refusal of an appeal shall not be destroyed and shall be retained by the clerk of such court in his files.

Code 1950, §§ 8-473, 8-501; 1974, c. 532; 1977, cc. 449, 617; 1984, c. 703; 1988, c. 324; 1994, c. 64.

Article 4 - THE PETITION

§ 8.01-674. With whom filed; endorsement thereon; reference to justice or justices; when deemed to be filed

The petition for appeal to the Supreme Court shall be filed with the Clerk of the Supreme Court. The Clerk shall endorse thereon the day and year he received it and shall refer it to one or more justices of the Supreme Court as the Court shall direct. A petition shall, for the purposes of § 8.01-671, be deemed to be timely filed if it is mailed postage prepaid to the Clerk by registered or certified mail and if the official postal receipt therefor is exhibited upon the demand of the Clerk or any party and it shows mailing within the prescribed time limits.

Code 1950, § 8-475; 1976, c. 615; 1977, c. 617; 1984, c. 703.

§ 8.01-675. Repealed

Repealed by Acts 1984, c. 703, effective Oct. 1, 1984.

§ 8.01-675.1. When dismissal final; when reinstated

After the dismissal of an appeal by the Supreme Court, no other appeal shall be allowed to or from the same judgment. When an appeal is dismissed by reason of the nonpayment of the writ tax within the time required by law, the Court at its first session after such dismissal may on motion of any party for good cause shown and upon payment of such tax set aside the dismissal; and thereupon the appeal may be perfected as though no such dismissal had taken place. A motion under this section shall be made only after reasonable notice to the adverse party or his counsel.

1984, c. 703.

§ 8.01-675.2. Rehearing

The Supreme Court, on the petition of a party, shall rehear and review any case decided by such court if one of the justices who decides the case adversely to the petitioner certifies that in his opinion there is good cause for such rehearing. However, a notice of a petition for rehearing shall be filed as provided by the Rules of Court and the petition for rehearing shall be filed within thirty days after the entry of the judgment with the clerk, who shall note the date of such filing on the order book. The judgment resulting from any such rehearing shall be entered forthwith by the clerk who shall transmit a certified copy thereof to the clerk of the court below, to be entered by him as provided by § 8.01-685.

1984, c. 703.

Chapter 26.1 - APPEALS TO THE COURT OF APPEALS

§ 8.01-675.3. Time within which appeal must be taken; notice

Except as provided in § 19.2-400 for pretrial appeals by the Commonwealth in criminal cases and in § 19.2-401 for cross appeals by the defendant in such pretrial appeals a notice of appeal to the Court of Appeals in any case within the jurisdiction of the court shall be filed within 30 days from the date of any final judgment order, decree or conviction. When an appeal from an interlocutory

decree or order is permitted, the appeal shall be filed within 30 days from the date of such decree or order, except for pretrial appeals pursuant to § 19.2-398.

For purposes of this section, § 17.1-408, and an appeal pursuant to § 19.2-398, a petition for appeal in a criminal case or a notice of appeal to the Court of Appeals, shall be deemed to be timely filed if (i) it is mailed postage prepaid by registered or certified mail and (ii) the official postal receipt, showing mailing within the prescribed time limits, is exhibited upon demand of the clerk or any party.

1984, c. 703; 1987, c. 710; 2003, c. 109.

§ 8.01-675.4. Inspection and return of records; certiorari when part of record is omitted; retention of records

When a case has previously been in an appellate court, the Court of Appeals may inspect the record of the former appeal. The court may, in any case, after reasonable notice to counsel in the appellate court, award a writ of certiorari to the clerk of the trial court and have brought before it, when part of a record is omitted, the whole or any part of such record. As soon as a case is decided, the clerk of the Court of Appeals shall cause the appendix, if any, and briefs of counsel to be recorded and preserved in any manner which meets archival standards as recommended by the Archives and Records Division of The Library of Virginia.

1984, c. 703; 1988, c. 197; 1994, c. 64.

Chapter 26.2 - APPEALS GENERALLY

Article 1 - APPEAL BOND

§ 8.01-676. Repealed

Repealed by Acts 1984, c. 703.

§ 8.01-676.1. Security for appeal

A. Security for costs of appeal of right to Court of Appeals. A party filing a notice of an appeal of right to the Court of Appeals shall simultaneously file an appeal bond or irrevocable letter of credit in the penalty of $500, or such sum as the trial court may require, subject to subsection E, conditioned upon paying all costs and fees incurred in the Court of Appeals and the Supreme Court if it takes cognizance of the claim. If the appellant wishes suspension of execution, the security shall also be conditioned and shall be in such sum as the trial court may require as provided in subsection C.

B. Security for costs on petition for appeal to Court of Appeals or Supreme Court. An appellant whose petition for appeal is granted by the Court of Appeals or the Supreme Court shall (if he has not done so) within 15 days from the date of the Certificate of Appeal file an appeal bond or irrevocable letter of credit in the same penalty as provided in subsection A, conditioned on the payment of all damages, costs, and fees incurred in the Court of Appeals and in the Supreme Court.

C. Security for suspension of execution. An appellant who wishes execution of the judgment or award from which an appeal is sought to be suspended during the appeal shall, subject to the provisions of subsection J, file a suspending bond or irrevocable letter of credit conditioned upon the performance or satisfaction of the judgment and payment of all damages incurred in consequence of such suspension, and except as provided in subsection D, execution shall be suspended upon the filing of such security and the timely prosecution of such appeal. Such security shall be continuing and additional security shall not be necessary except as to any additional amount which may be added or to any additional requirement which may be imposed by the courts.

D. Suspension of execution in decrees for support and custody; injunctions. The court from which an appeal is sought may refuse to suspend the execution of decrees for support and custody, and may also refuse suspension when a judgment refuses, grants, modifies, or dissolves an injunction.

E. Increase or decrease in penalty or other modification of security. 1. The trial court or commission may, upon the motion of any party (i) for good cause shown, modify the terms of the security for the appeal or of the security for the suspension of execution of a judgment and (ii) resolve any objection to the form or issuer of a bond or letter of credit at any time until the Court of Appeals or the Supreme Court acts upon any similar motion. Any party aggrieved by the decision of the trial court or commission may request a review of such decision by the appellate court before which the case is pending.

2. The Court of Appeals or the Supreme Court may order that the penalty or any other terms or requirements of the security for the appeal or of the security for the suspension of execution of a judgment be modified for good cause shown (i) upon the motion of any party or (ii) if such request is made in the brief of any party filed in the Court of Appeals, or in the Petition for Appeal or the appellee's Brief in Opposition filed in the Supreme Court or the Court of Appeals.

3. Affidavits and counter-affidavits may be filed by the parties containing facts pertinent to such request. Any increase or decrease in the amount of or other modification of the security so ordered shall be effected in the clerk's office of the trial court within 15 days of the order of the trial court, the Court of Appeals, or the Supreme Court.

4. If an increase so ordered is not effected within 15 days, the appeal shall be dismissed, in the case of the security required under subsection A or B, or the suspension of execution of a judgment shall be discontinued, in the case of the security required under subsection C.

F. By whom executed. Each bond filed shall be executed by a party or another on his behalf, and by surety approved by the clerk of the court from which appeal is sought, or by the clerk of the Supreme Court or the clerk of the Court of Appeals if the bond is ordered by such Court. Any letter of credit posted as security for an appeal shall be in a form acceptable to the clerk of the court from which appeal is sought, or by the clerk of the Supreme Court or the Court of Appeals if the security is ordered by such court. The letter of credit shall be from a bank incorporated or authorized to conduct banking business under the laws of this Commonwealth or authorized to do

business in this Commonwealth under the banking laws of the United States, or a federally insured savings institution located in this Commonwealth.

G. Appeal from State Corporation Commission; security for costs. When an appeal of right is entered from the State Corporation Commission to the Supreme Court, and no suspension of the order, judgment, or decree appealed from is requested, such appeal bond or letter of credit shall be filed when and in the amount required by the clerk of the Supreme Court, whose action shall be subject to review by the Supreme Court.

H. Appeal from State Corporation Commission; suspension. Any judgment, order, or decree of the State Corporation Commission subject to appeal to the Supreme Court may be suspended by the Commission or by the Supreme Court pending decision of the appeal if the Commission or the Supreme Court deems such suspension necessary for the proper administration of justice but only upon the written application of an appellant after reasonable notice to all other parties in interest and the filing of a suspending bond or irrevocable letter of credit with such conditions, in such penalty, and with such surety thereon as the Commission or the Supreme Court may deem sufficient. But no surety shall be required if the appellant is any county, city or town of this Commonwealth, or the Commonwealth.

I. Forms of bonds; letters of credit; where filed. The Clerk of the Supreme Court shall prescribe separate forms for bonds, one for costs alone, one for suspension of execution, and one for both and a form for irrevocable letters of credit, to which the bond or bonds or irrevocable letters of credit given shall substantially conform. The forms for each bond and the letter of credit shall be published in the Rules of Court. It shall be sufficient if the bond or letter of credit, when executed as required, is filed with the trial court, clerk of the Virginia Workers' Compensation Commission, or the clerk of the State Corporation Commission, whichever is applicable, and no personal appearance in the trial court, Virginia Workers' Compensation Commission, or State Corporation Commission by the principal, the surety on the bond or the bank issuing the letter of credit shall be required as a condition precedent to its filing.

J. In any civil litigation under any legal theory, the amount of the suspending bond or irrevocable letter of credit to be furnished during the pendency of all appeals or discretionary reviews of any judgment granting legal, equitable, or any other form of relief in order to stay the execution thereon during the entire course of appellate review by any courts shall be set in accordance with applicable laws or court rules, and the amount of the suspending bond or irrevocable letter of credit shall include an amount equivalent to one year's interest calculated from the date of the notice of appeal in accordance with § 8.01-682. However, the total suspending bond or irrevocable letter of credit that is required of an appellant and all of its affiliates shall not exceed $25 million, regardless of the value of the judgment.

K. Dissipation of assets. If the appellee proves by a preponderance of the evidence that a party bringing an appeal, for whom the suspending bond or irrevocable letter of credit requirement has

been limited or waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts for the purpose of evading the judgment, the limitation or waiver shall be rescinded and a court may require the appellant to post a suspending bond or irrevocable letter of credit in an amount up to the full amount of the judgment. Dissipation of assets shall not include those ongoing expenditures made from assets of the kind that the appellant made in the regular course of business prior to the judgment being appealed, such as the payment of stock dividends and other financial incentives to the shareholders of publicly owned companies, continued participation in charitable and civic activities, and other expenditures consistent with the exercise of good business judgment.

L. For good cause shown, a court may otherwise waive the filing of a suspending bond or irrevocable letter of credit as to the damages in excess of, or other than, the compensatory damages. Subject to the provisions of subsection K, the parties may agree to waive the requirement of a suspending bond or irrevocable letter of credit or agree to a suspending bond or irrevocable letter of credit in an amount less than the compensatory damages.

M. Exemption. When an appeal is proper to protect the estate of a decedent or person under disability, or to protect the interest of the Commonwealth or any county, city, or town of this Commonwealth, no security for appeal shall be required.

N. Indigents. No person who is an indigent shall be required to post security for an appeal bond.

O. Virginia Workers' Compensation Commission. No claimant who files an appeal from a final decision of the Virginia Workers' Compensation Commission with the Court of Appeals shall be required to post security for costs as provided in subsection A or B if such claimant has not returned to his employment or by reason of his disability is unemployed. Such claimant shall file an affidavit describing his disability and employment status with the Court of Appeals together with a motion to waive the filing of the security under subsection A or B.

P. Time for filing security for appeal. The appeal bond or letter of credit prescribed in subsections A and B is not jurisdictional and the time for filing such security in cases before the Court of Appeals or the Supreme Court may be extended by a judge or justice of the court before which the case is pending on motion for good cause shown and to attain the ends of justice. The effect of failing to perfect an appeal bond shall be governed by the Rules of Supreme Court of Virginia.

Q. Consideration of appeal bond, suspending bond, or letter of credit by Court of Appeals or Supreme Court. A determination on an issue affecting an appeal bond, suspending bond, or letter of credit in a case before the Court of Appeals or the Supreme Court may be considered by an individual judge of such court rather than by a panel of judges.

R. This section applies to injunction bonds required pursuant to § 8.01-631.

S. In accordance with § 1-205, if the party required to post an appeal or suspending bond tenders such bond together with cash in the full amount required by this section to the clerk specified in this section, no surety shall be required.

1984, c. 703; 1986, c. 89; 1987, cc. 460, 684; 1988, c. 883; 1996, c. 77; 2000, c. 100; 2004, cc. 328, 356; 2010, c. 494; 2012, cc. 8, 77; 2016, c. 178.

Article 2 - ERRORS INSUFFICIENT IN THE APPELLATE COURT

§ 8.01-677. Errors corrected on motion instead of writ of error coram vobis

For any clerical error or error in fact for which a judgment may be reversed or corrected on writ of error coram vobis, the same may be reversed or corrected on motion, after reasonable notice, by the court.

Code 1950, § 8-485; 1977, c. 617.

§ 8.01-677.1. Appeals filed in inappropriate appellate court

Notwithstanding any other provisions of this Code, no appeal which was otherwise properly and timely filed shall be dismissed for want of jurisdiction solely because it was filed in either the Supreme Court or the Court of Appeals and the appellate court in which it was filed thereafter rules that it should have been filed in the other court. In such event, the appellate court so ruling shall transfer the appeal to the appellate court having appropriate jurisdiction for further proceedings in accordance with the rules of the latter court. The parties shall be allowed a reasonable time to file such additional or amended pleadings as may be appropriate to proceed with the appeal in the appellate court to which the appeal is transferred.

1988, c. 382.

§ 8.01-678. For what a judgment not to be reversed

When it plainly appears from the record and the evidence given at the trial that the parties have had a fair trial on the merits and substantial justice has been reached, no judgment shall be arrested or reversed:

1. For the appearance of either party, being under the age of eighteen years, by attorney, if the verdict, where there is one, or the judgment be for him and not to his prejudice; or

2. For any other defect, imperfection, or omission in the record, or for any error committed on the trial.

Code 1950, § 8-487; 1954, c. 333; 1977, c. 617.

Article 3 - LIMITATIONS; HEARING AND DECISION

§ 8.01-679. Failure of trial court clerk to deliver record to appellate court

Notwithstanding any provision of law to the contrary, no appeal shall be refused or dismissed for failure to deliver the record within the required time if it shall appear from evidence satisfactory to

the appellate court that the clerk of the court below failed to deliver to the clerk of the appellate court the record on appeal within the required time.

Code 1950, § 8-489; 1964, c. 7; 1976, c. 615; 1977, c. 617; 1984, c. 703.

§ 8.01-679.1. Arguments made on brief not waived by oral argument

It shall not be necessary for any party to expressly reserve in oral argument any argument made on brief before an appellate court and failure to raise any such argument on oral argument shall not constitute a waiver.

1986, c. 268.

§ 8.01-680. When judgment of trial court not to be set aside unless plainly wrong, etc

When a case, civil or criminal, is tried by a jury and a party objects to the judgment or action of the court in granting or refusing to grant a new trial on a motion to set aside the verdict of a jury on the ground that it is contrary to the evidence, or when a case is decided by a court without the intervention of a jury and a party objects to the decision on the ground that it is contrary to the evidence, the judgment of the trial court shall not be set aside unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it.

Code 1950, § 8-491; 1977, c. 617.

§ 8.01-681. Decision of appellate court

The appellate court shall affirm the judgment if there is no error therein, and reverse the same, in whole or in part, if erroneous, and enter such judgment as to the court shall seem right and proper and shall render final judgment upon the merits whenever, in the opinion of the court, the facts before it are such as to enable the court to attain the ends of justice. A civil case shall not be remanded for a trial de novo except when the ends of justice require it, but the appellate court shall, in the order remanding the case, if it be remanded, designate upon what questions or points a new trial is to be had.

Code 1950, § 8-493; 1977, c. 617; 1984, c. 703.

§ 8.01-682. What damages awarded appellee

When any judgment is affirmed, damages shall be awarded to the appellee. When the judgment is for the payment of money, the damages shall be the interest to which the party is legally entitled, as provided in § 6.2-302 or any other provision of law, from the date of filing the notice of appeal until the date the appellate court issues its mandate. Such interest shall be computed upon the whole amount of the recovery, including interest and costs, and such damages shall be in satisfaction of all interest during such period of time. When the judgment is not for the payment of any money, except costs, the damages shall be such specific sum as the appellate court may deem reasonable, not being more than $2,500 nor less than $150.

Code 1950, § 8-495; 1977, c. 617; 1984, c. 703; 2010, c. 343; 2012, c. 58; 2016, c. 178.

§ 8.01-683. When Clerk of Supreme Court to transmit its decisions

When any term of the Supreme Court is ended, or sooner if the court so direct, the Clerk thereof shall certify and transmit its decision to the clerk of the court or tribunal below, as the case may be, except that it shall not be his duty to certify or transmit a copy of a judgment of affirmance unless the appellee shall have paid all fees due from him in the case, or shall endorse on such copy so much of the judgment, for the benefit of the clerk, as the unpaid fees shall amount to. If any clerk fail to comply with this section for twenty days, except as aforesaid, he shall forfeit fifty dollars to any person aggrieved thereby.

Code 1950, § 8-496; 1977, c. 617.

§ 8.01-684. Copies of Court's opinions to be furnished to counsel

When a case is decided by an appellate court the clerk shall furnish a copy of the opinion rendered by the court thereon to each counsel of record without making any charge therefor.

Code 1950, § 8-497.1; 1977, c. 617; 1984, c. 703.

§ 8.01-685. Entry of decision in lower court; issue of execution thereon

The court or other tribunal from which any case may have come to an appellate court shall enter the decision of the appellate court as its own, and execution or other appropriate process may issue thereon accordingly. When that decision is received by the clerk or secretary of the court or tribunal below, he shall enter it of record in his order book, and thereupon such execution may issue and such proceedings be had in the case as would have been proper if the decision had been entered in court or by such tribunal.

If the judgment of the lower court or tribunal is affirmed, in whole or in part, by the decision of an appellate court, execution or other appropriate process may issue thereon against the principal and surety on any appeal bond which may have been given, for the amount of such judgment, including the interest and cost and the damages awarded by the appellate court, not exceeding, however, the penalty of such bond.

Code 1950, § 8-498; 1977, c. 617; 1984, c. 703.

§§ 8.01-686, 8.01-687. Repealed

Repealed by Acts 1984, c. 703.

Article 4 - MISCELLANEOUS PROVISIONS

§ 8.01-688. Order books, etc., of former district courts in custody of Clerk of Supreme Court, etc

The order books, dockets and other office books formerly belonging to the several former district courts shall remain in the custody of the Clerk of the Supreme Court. Said Clerk shall furnish transcripts of the records and proceedings of such district courts when required, and perform all other duties in respect to records and proceedings of such district courts as might have been performed by the clerks of such district courts if such courts had continued to exist. All printed and manuscript orders, and other papers pertaining to cases decided in such district courts, shall remain in

the custody of the clerks of the circuit courts at the several places where such district courts held their sessions, who shall be charged with the same duties in respect to such records and papers as might have been performed by the clerks of such district courts respectively, if such courts had continued to exist, and who shall receive for any such service fees similar to those charged by the clerks of district courts for such services.

Code 1950, § 8-502; 1977, c. 617.

Chapter 27 - VIRGINIA PRISONER LITIGATION REFORM ACT

§ 8.01-689. Short title

This chapter shall be known and may be cited as the "Virginia Prisoner Litigation Reform Act."

2002, c. 871.

§ 8.01-690. Applicability provisions

The provisions of this chapter shall apply to all pro se civil actions for money damages brought under the laws of this Commonwealth, or for injunctive, declaratory or mandamus relief, brought by prisoners incarcerated in any state or local correctional facility, or operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.).

2002, c. 871.

§ 8.01-691. Payment of filing fees and costs by prisoners; when in forma pauperis status granted

A prisoner seeking in forma pauperis status shall provide the court with a certified copy of his inmate trust account for the preceding twelve months. Any prisoner granted leave to proceed in forma pauperis shall nonetheless make payments, in equal installments as the court directs, towards satisfaction of the filing fee and costs. If the court determines the prisoner has had no deposits in his inmate trust account for the preceding six months, the court shall permit the prisoner to proceed without paying the filing fee and costs. However, the filing fee and costs shall be taxed as costs at the end of the case. Any prisoner failing to make any payment when due shall have his case dismissed without prejudice.

2002, c. 871.

§ 8.01-692. When in forma pauperis status denied

The court shall deny in forma pauperis status to any prisoner who has had three or more cases or appeals dismissed by any federal or state court for being frivolous, malicious, or for failure to state a claim, unless the prisoner shows that he is in imminent danger of serious physical injury at the time of filing his motion for judgment or the court determines that it would be manifest injustice to deny in forma pauperis status.

2002, c. 871.

§ 8.01-693. Venue of prisoner actions

Notwithstanding any other provision of law, no prisoner action shall be filed except in the city or county in which the prison is located where the prisoner was housed when his cause of action arose. When an action is filed in an improper venue, upon motion of the defendant or the court sua sponte, the court shall transfer the case to the proper venue.

2002, c. 871.

§ 8.01-694. Service of process; time for response

In any action in which any defendant is the Commonwealth or one of its officers, employees, or agents, upon the grant of in forma pauperis status or receipt of the filing fee and costs, the court shall serve the Office of the Attorney General with a copy of the motion for judgment and all necessary supporting papers. The Office of the Attorney General shall have no fewer than thirty days from receipt in which to file responsive pleadings. The prisoner's failure to state his claims in a written motion for judgment plainly stating facts sufficient to support his cause of action, accompanied by all necessary supporting documentation, may be grounds for dismissal of the action.

2002, c. 871; 2009, c. 372.

§ 8.01-695. When argument held; when discovery permitted

Oral argument on any motion in any prisoner civil action shall be heard orally only at the request of the court; whenever possible, the court shall rule upon the record before it. No prisoner shall be permitted to request subpoenas for witnesses or documents, or file discovery requests, until the court has ruled upon any demurrer, plea or motion to dismiss. Where a case proceeds past the initial dispositive motions, the court shall require the prisoner seeking discovery to demonstrate that his requests are relevant and material to the issues in the case. No subpoena for witnesses or documents shall issue unless a judge of the court has reviewed the subpoena request and specifically authorized a subpoena to issue. The court shall exercise its discretion in determining the scope of the subpoena and may condition its issuance on such terms as the court finds appropriate. The court shall take into account the burden placed upon the object of the subpoena in relation to the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation.

2002, c. 871; 2006, c. 435.

§ 8.01-696. Summary judgment; pro se prisoner civil action

Notwithstanding the provisions of § 8.01-420, any time after commencement of a pro se prisoner civil action, a party may move for summary judgment on all issues based upon the pleadings, any admissions, and supporting affidavits. The adverse party may serve supporting affidavits within 10 days after service of the motion. The judgment sought shall be rendered forthwith if the pleadings, admissions, and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law.

2006, c. 435.

§ 8.01-697. Access to Department of Corrections records

All records maintained by the Department of Corrections in the name of individual prisoners, including prisoner medical records, shall be the property of the Department. Notwithstanding the provisions of § 32.1-127.1:03, in any civil suit subject to this chapter, where the Commonwealth, an agency of the Commonwealth, an employee of the Commonwealth, or a private contractor providing services to the Department of Corrections is named as a defendant, the Director of the Department may share any records maintained by the Department in the name of the prisoner filing suit with counsel representing the above-named defendants.

2006, c. 435.