

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 333

An Act to amend and reenact § 8.01-428 of the Code of Virginia, relating to notification of final orders.

[S 790]

Approved March 21, 2005

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-428 of the Code of Virginia is amended and reenacted as follows:

§ 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. 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 ~~sixty~~ 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.