

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 866

An Act to amend and reenact §§ 8.01-285, 8.01-296, 8.01-299, 8.01-301, 8.01-303 through 8.01-306 and 8.01-320 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 8.01-286.1, relating to service of process.

[S 1123]

Approved March 28, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-285, 8.01-296, 8.01-299, 8.01-301, 8.01-303 through 8.01-306 and 8.01-320 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 8.01-286.1 as follows:

§ 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.*

§ 8.01-286.1. *Service of process; waiver, duty to save costs, request to waive, how served.*

A. *In an action pending in 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.

§ 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 ~~sixteen~~ 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 ~~ten~~ 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 ~~ten~~ 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 2 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 ~~of this section~~, then by order of publication in appropriate cases under the provisions of §§ 8.01-316 through 8.01-320.

§ 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 ~~this State~~ *the Commonwealth* as follows:

1. By personal service on any officer, director, or registered agent of such corporation; or
2. By substituted service on stock corporations in accordance with § 13.1-637 and on nonstock corporations in accordance with § 13.1-836.

§ 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 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.

§ 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 ~~be~~ 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.

§ 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.

§ 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.

§ 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.

§ 8.01-320. Personal service outside of Virginia.

A. ~~Personal~~ *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 ~~eighteen~~ 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 ~~twenty-one~~ 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 ~~twenty-one~~ 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.