

# 2010 SESSION

## HOUSE SUBSTITUTE

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### HOUSE BILL NO. 376

#### AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on January 27, 2010)

(Patron Prior to Substitute—Delegate Lewis)

*A BILL to amend and reenact § 8.01-316 of the Code of Virginia, relating to service by publication.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 8.01-316 of the Code of Virginia is amended and reenacted as follows:**

§ 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 § 26-59; 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 (i) a pleading 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 ~~section~~ *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 January 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.

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