

17100201D

SENATE BILL NO. 823

Offered January 11, 2017

Prefiled November 9, 2016

A BILL to amend and reenact §§ 8.01-296, 8.01-299, 8.01-320, 8.01-511, 16.1-264, 20-61.3, 20-99, and 46.2-416 of the Code of Virginia, relating to service of process; multifamily residential real estate and common interest communities.

Patrons—Wexton; Delegate: Kory

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-296, 8.01-299, 8.01-320, 8.01-511, 16.1-264, 20-61.3, 20-99, and 46.2-416 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-296. Manner of serving process upon natural persons.

A. 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; or

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 B. A 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.

C. An employee or agent of an owner of multifamily residential real estate or a common interest community, as defined in § 55-528, exercising physical control over common entry points to restrict access to the multifamily residential real estate or the common interest community shall grant entry to a person attempting to execute service on a party who resides in, occupies, or is known to be present in the multifamily residential real estate or the common interest community, provided that the person attempting to execute service (i) is authorized to serve process as set forth in § 8.01-293 and (ii) presents to the owner, or its employee or agent, a valid identification and evidence of the process to be served.

§ 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:

INTRODUCED

SB823

- 59 1. By personal service on any officer, director, or registered agent of such corporation;
60 2. By substituted service on stock corporations in accordance with § 13.1-637 and on nonstock
61 corporations in accordance with § 13.1-836; or
62 3. If the registered address of the corporation is a single-family residential dwelling, by substituted
63 service on the registered agent of the corporation in the manner of subdivision A 2 of § 8.01-296.

64 **§ 8.01-320. Personal service outside of Virginia.**

65 A. Subject to § 8.01-286.1, service of a process on a nonresident person outside the Commonwealth
66 may be made by: (i) any person authorized to serve process in the jurisdiction where the party to be
67 served is located; or (ii) any person 18 years of age or older who is not a party or otherwise interested
68 in the subject matter of the controversy and notwithstanding any other provision of law to the contrary,
69 such person need not be authorized by the circuit court to serve process which commences divorce or
70 annulment actions. When the court can exercise jurisdiction over the nonresident pursuant to
71 § 8.01-328.1, such service shall have the same effect as personal service on the nonresident within
72 Virginia. Such service when no jurisdiction can be exercised pursuant to § 8.01-328.1, or service in
73 accordance with the provisions of subdivision A 2 a of § 8.01-296 shall have the same effect, and no
74 other, as an order of publication duly executed, or the publication of a copy of process under this
75 chapter, as the case may be; however, depositions may be taken at any time after 21 days' notice of the
76 taking of the depositions has been personally served. The person so served shall be in default upon his
77 failure to file a pleading in response to original process within 21 days after such service. If no
78 responsive pleading is filed within the time allowed by law, the case may proceed without service of
79 any additional pleadings, including the notice of the taking of depositions.

80 B. Any personal service of process outside of this Commonwealth executed in such manner as is
81 provided for in this section prior or subsequent to October 1, 1977, in a divorce or annulment action is
82 hereby validated. Personal service of process outside this Commonwealth in a divorce or annulment
83 action may be executed as provided in this section.

84 **§ 8.01-511. Institution of garnishment proceedings.**

85 A. On a suggestion by the judgment creditor that, by reason of the lien of his writ of fieri facias,
86 there is a liability on any person other than the judgment debtor or that there is in the hands of some
87 person in his capacity as personal representative of some decedent a sum of money to which a judgment
88 debtor is or may be entitled as creditor or distributee of such decedent, upon which sum when
89 determined such writ of fieri facias is a lien, a summons in the form prescribed by § 8.01-512.3 may (i)
90 be sued out of the clerk's office of the court from which an execution on the judgment is issued so long
91 as the judgment shall remain enforceable as provided in § 8.01-251, (ii) be sued out of the clerk's office
92 to which an execution issued thereon has been returned as provided in § 16.1-99 against such person, or
93 (iii) be sued out of the clerk's office from which an execution issued as provided in § 16.1-278.18. If
94 the judgment debtor does not reside in the city or county where the judgment was entered, the judgment
95 creditor may have the case filed or docketed in the court of the city or county where the judgment
96 debtor resides and such court may issue an execution on the judgment, provided that the judgment
97 creditor (a) files with the court an abstract of the judgment rendered, (b) pays fees to the court in
98 accordance with § 16.1-69.48:2 or subdivision 17 of § 17.1-275, and (c) files in both courts any release
99 or satisfaction of judgment. The summons and the notice and claim for exemption form required
100 pursuant to § 8.01-512.4 shall be served on the garnishee, and shall be served on the judgment debtor
101 promptly after service on the garnishee. Service on the judgment debtor and the garnishee shall be made
102 pursuant to subdivision A 1 or 2 of § 8.01-296. When making an application for garnishment, the
103 judgment creditor shall set forth on the suggestion for summons in garnishment the last known address
104 of the judgment debtor, and shall furnish the clerk, if service is to be made by the sheriff, or shall
105 furnish any other person making service with an envelope, with first-class postage attached, addressed to
106 such address. A copy of the summons and the notice and claim for exemptions form required under
107 § 8.01-512.4 shall be sent by the clerk to the sheriff or provided by the judgment creditor to the person
108 making service, with the process to be served. Promptly after service on the garnishee, the person
109 making service shall mail such envelope by first-class mail to the judgment debtor at his last known
110 address. If the person making service is unable to serve the judgment debtor pursuant to subdivision A 1
111 of § 8.01-296, such mailing shall satisfy the mailing requirements of subdivision A 2 b of § 8.01-296.
112 The person making service shall note on his return the date of such mailing which, with the notation
113 "copy mailed to judgment debtor," shall be sufficient proof of the mailing of such envelope with the
114 required copy of the summons and the notice and claim for exemption form with no examination of
115 such contents being required nor separate certification by the clerk or judgment creditor that the
116 appropriate documents have been so inserted. If the person making service is unable to serve the
117 judgment debtor pursuant to subdivision A 1 or 2 of § 8.01-296, such mailing shall constitute service of
118 process on the judgment debtor. The judgment creditor shall furnish the social security number of the
119 judgment debtor to the clerk, except as hereinafter provided.

120 B. The judgment creditor may require the judgment debtor to furnish his correct social security

121 number by the use of interrogatories. However, use of such interrogatories shall not be a required
122 condition of a judgment creditor's diligent good faith effort to secure the judgment debtor's social
123 security number. Such remedy shall be in addition to all other lawful remedies available to the judgment
124 creditor. Upon a representation by the judgment creditor, or his agent or attorney, that he has made a
125 diligent good faith effort to secure the social security number of the judgment debtor and has been
126 unable to do so, the garnishment shall be issued without the necessity for such number.

127 C. Except as provided herein, no summons shall be issued pursuant to this section for the
128 garnishment of wages, salaries, commissions, or other earnings unless it: (i) is in the form prescribed by
129 § 8.01-512.3; (ii) is directed to only one garnishee for the garnishment of only one judgment debtor; (iii)
130 contains both the "TOTAL BALANCE DUE" and the social security number of the judgment debtor in
131 the proper places as provided on the summons; and (iv) specifies that it is a garnishment against (a) the
132 judgment debtor's wages, salary, or other compensation or (b) some other debt due or property of the
133 judgment debtor. The garnishee shall not be liable to the judgment creditor for any property not
134 specified in the summons as provided in (iv) above. Upon receipt of a summons not in compliance with
135 this provision, the garnishee shall file a written answer to that effect and shall have no liability to the
136 judgment creditor, such summons being void upon transmission of the answer.

137 D. The judgment creditor shall, in the suggestion, specify the amount of interest, if any, that is
138 claimed to be due upon the judgment, calculated to the return day of the summons. He shall also set out
139 such credits as may have been made upon the judgment.

140 All costs incurred by the judgment creditor after entry of the judgment, in aid of execution of the
141 judgment and paid to a clerk of court, sheriff, or process server are chargeable against the judgment
142 debtor, unless such costs are chargeable against the judgment creditor pursuant to § 8.01-475. Regardless
143 of the actual amount of the fee paid by the judgment creditor, the fee for a process server chargeable
144 against the judgment debtor shall not exceed the fee authorized for service by the sheriff. All such
145 previous costs chargeable against the judgment debtor may be included by the judgment creditor as
146 judgment costs in the garnishment summons form prescribed in § 8.01-512.3. This paragraph shall not
147 be construed to limit any cost assessed by a court as part of the judgment.

148 E. In addition, the suggestion shall contain an allegation that:

149 1. The summons is based upon a judgment upon which a prior summons has been issued but not
150 fully satisfied; or

151 2. No summons has been issued upon his suggestion against the same judgment debtor within a
152 period of 18 months, other than under the provisions of subdivision 1; or

153 3. The summons is based upon a judgment granted against a debtor upon a debt due or made for
154 necessary food, rent or shelter, public utilities including telephone service, drugs, or medical care
155 supplied the debtor by the judgment creditor or to one of his lawful dependents, and that it was not for
156 luxuries or nonessentials; or

157 4. The summons is based upon a judgment for a debt due the judgment creditor to refinance a lawful
158 loan made by an authorized lending institution; or

159 5. The summons is based upon a judgment on an obligation incurred as an endorser or comaker upon
160 a lawful note; or

161 6. The summons is based upon a judgment for a debt or debts reaffirmed after bankruptcy.

162 F. Any judgment creditor who knowingly gives false information upon any such suggestion or
163 certificate made under this chapter shall be guilty of a Class 1 misdemeanor.

164 **§ 16.1-264. Service of summons; proof of service; penalty.**

165 A. If a party designated in subsection A of § 16.1-263 to be served with a summons can be found
166 within the Commonwealth, the summons shall be served upon him in person or by substituted service as
167 prescribed in subdivision A 2 of § 8.01-296.

168 If a party designated to be served in § 16.1-263 is without the Commonwealth but can be found or
169 his address is known, or can with reasonable diligence be ascertained, service of summons may be made
170 either by delivering a copy thereof to him personally or by mailing a copy thereof to him by certified
171 mail return receipt requested.

172 If after reasonable effort a party other than the person who is the subject of the petition cannot be
173 found or his post-office address cannot be ascertained, whether he is within or without the
174 Commonwealth, the court may order service of the summons upon him by publication in accordance
175 with the provisions of §§ 8.01-316 and 8.01-317.

176 A1. Any person who is subject to an emergency protective order issued pursuant to § 16.1-253.4 or
177 19.2-152.8 shall have been personally served with the protective order if a law-enforcement officer, as
178 defined in § 9.1-101, personally provides to such person a notification of the issuance of the order,
179 which shall be on a form approved by the Executive Secretary of the Supreme Court of Virginia,
180 provided that all of the information and individual requirements of the order are included on the form.
181 The officer making service shall enter or cause to be entered the date and time of service and other

182 appropriate information required by the Department of State Police into the Virginia Criminal
183 Information Network and make due return to the court.

184 B. Service of summons may be made under the direction of the court by sheriffs, their deputies and
185 police officers in counties and cities or by any other suitable person designated by the court. However,
186 in any case in which custody or visitation of a minor child or children is at issue and a summons is
187 issued for the attendance and testimony of a teacher or other school personnel who is not a party to the
188 proceeding, if such summons is served on school property, it shall be served only by a sheriff or his
189 deputy.

190 C. Proof of service may be made by the affidavit of the person other than an officer designated in
191 subsection B hereof who delivers a copy of the summons to the person summoned, but if served by a
192 state, county or municipal officer his return shall be sufficient without oath.

193 D. The summons shall be considered a mandate of the court and willful failure to obey its
194 requirements shall subject any person guilty thereof to liability for punishment as for contempt.

195 **§ 20-61.3. Consequences of a putative father failing to appear.**

196 If a putative father fails to appear after having been personally served with notice, in accordance
197 with the provisions of subdivision A 1 of § 8.01-296 or § 8.01-320, alleging that he is the father of a
198 minor child, the court shall proceed in hearing the evidence in the case as provided in Chapter 3.1 (§
199 20-49.1 et seq.) of Title 20 as if the putative father were present. The order of the court in any such
200 proceedings shall be served upon the father in accordance with the provisions of Chapter 8 (§ 8.01-285
201 et seq.) or Chapter 9 (§ 8.01-328 et seq.) of Title 8.01.

202 **§ 20-99. How such suits instituted and conducted; costs.**

203 Such suit shall be instituted and conducted as other suits in equity, except as otherwise provided in
204 this section:

205 1. No divorce, annulment, or affirmation of a marriage shall be granted on the uncorroborated
206 testimony of the parties or either of them.

207 2. Whether the defendant answers or not, the cause shall be heard independently of the admissions of
208 either party in the pleadings or otherwise.

209 3. Process or notice in such proceedings shall be served in the Commonwealth by any of the
210 methods prescribed in § 8.01-296 by any person authorized to serve process under § 8.01-293. Service
211 may be made on a nonresident by any of the methods prescribed in § 8.01-296 by any person authorized
212 to serve process under § 8.01-320.

213 4. In cases where such suits have been commenced and an appearance has been made on behalf of
214 the defendant by counsel, then notices to take depositions and of hearings, motions, and other
215 proceedings except contempt proceedings, may be served by delivering or mailing a copy to counsel for
216 opposing party, the foot of such notices bearing either acceptance of service or a certificate of counsel
217 in compliance with the Rules of Supreme Court of Virginia. "Counsel for opposing party" shall include
218 a pro se party who (i) has entered a general appearance in person or by filing a pleading or endorsing
219 an order of withdrawal of that party's counsel or (ii) has signed a pleading in the case or who has
220 notified the other parties and the clerk that he appears in the case.

221 5. In cases where such suits have been commenced, the defendant has been served pursuant to the
222 provisions of subdivision A 1 of § 8.01-296, and the defendant has failed to file an answer to the suit or
223 otherwise appear within the time allowed by law, no further notice to take depositions or conduct an ore
224 tenus hearing is required to be served on the defendant and the court may enter any order or final
225 decree without further notice to the defendant.

226 6. Costs may be awarded to either party as equity and justice may require.

227 **§ 46.2-416. Notice of suspension or revocation of license.**

228 A. Whenever it is provided in this title that a driver's license may or shall be suspended or revoked
229 either by the Commissioner or by a court, notice of the suspension or revocation or any certified copy
230 of the decision or order of the Commissioner may be sent by the Department by certified mail to the
231 driver at the most recent address of the driver on file at the Department. If the driver has previously
232 been notified by mail or in person of the suspension or revocation or of an impending suspension for
233 failure to pay fines and costs pursuant to § 46.2-395, whether notice is given by the court or
234 law-enforcement officials as provided by law, and the Department has been notified by the court that
235 notice was so given and the fines and costs were not paid within 30 days, no notice of suspension shall
236 be sent by the Department to the driver. If the certificate of the Commissioner or someone designated
237 by him for that purpose shows that the notice or copy has been so sent or provided, it shall be deemed
238 prima facie evidence that the notice or copy has been sent and delivered or otherwise provided to the
239 driver for all purposes involving the application of the provisions of this title. In the discretion of the
240 Commissioner, service may be made as provided in § 8.01-296, which service on the driver shall be
241 made by delivery in writing to the driver in person in accordance with subdivision A 1 of § 8.01-296 by
242 a sheriff or deputy sheriff in the county or city in which the address is located, who shall, as directed by
243 the Commissioner, take possession of any suspended or revoked license, registration card, or set of

244 license plates or decals and return them to the office of the Commissioner. No such service shall be
245 made if, prior to service, the driver has complied with the requirement which caused the issuance of the
246 decision or order. In any such case, return shall be made to the Commissioner.

247 B. In lieu of making a direct payment to sheriffs as a fee for delivery of the Department's processes,
248 the Commissioner shall effect a transfer of funds, on a monthly basis, to the Compensation Board to be
249 used to provide additional support to sheriffs' departments. The amount of funds so transferred shall be
250 as provided in the general appropriation act.

251 C. The Department may contract with the United States Postal Service or an authorized agent to use
252 the National Change of Address System for the purpose of obtaining current address information for a
253 person whose name appears in customer records maintained by the Department. If the Department
254 receives information from the National Change of Address System indicating that a person whose name
255 appears in a Department record has submitted a permanent change of address to the Postal Service, the
256 Department may then update its records with the mailing address obtained from the National Change of
257 Address System.