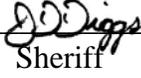


<b>YORK-POQUOSON SHERIFF'S OFFICE</b>	<b>GENERAL ORDERS</b>
<b>SUBJECT: Civil Process</b>	<b>NUMBER: GO 2-38</b>
<b>EFFECTIVE DATE: May 15, 2019</b>	<b>REVIEW DATE: February 28, 2019</b>
<b>AMENDS/SUPERSEDES: GO 2-38, October 1, 2005</b>	<b>APPROVED:</b>  Sheriff
<b>VLEPSC: OPR .12.01, OPR.12.02, OPR.12.03</b>	

1 **INDEX WORDS**

2  
3 Civil Process  
4 Capias  
5 Evictions  
6 Garnishments  
7 Levies  
8 Lien  
9 Show Cause Summons  
10 Order  
11 Writ of Fiera Facias  
12

13 **POLICY**

14  
15 It is the policy of the York-Poquoson Sheriff's Office to serve all civil process, legal documents,  
16 and court papers as soon as practicably possible and to follow all legal guidelines, rules and  
17 procedures set forth by the Code of Virginia.  
18

19 **PURPOSE**

20  
21 The purpose of this General Order is to provide deputy sheriffs who serve legal process and  
22 execute court orders with the essential information to perform those functions, ensuring that all  
23 legal requirements are properly performed. This policy is designed to familiarize deputies with  
24 the types of legal process most frequently used in York County, keeping legal background to a  
25 minimum. Emphasis is directed toward the practical requirements, with specific instructions on  
26 the proper service of each type of process or execution covered. Complete and specific legal  
27 information can be found in the Code of Virginia and the Virginia Sheriff's Association  
28 Handbook of Civil Process and Related Sheriff's Office Functions.  
29

30 **PROCEDURES**

- 31  
32 • Service and Return of Legal Process - General:  
33 ○ The purpose of the service of process is to obtain jurisdiction over a defendant in a  
34 suit by notifying the defendant of the case in which they are a party and thereby bring  
35 the defendant into court.  
36 ○ The primary purpose of the return is to give the Court evidence of the jurisdictional  
37 fact of service.

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- The return, by its content, must show that the legal requirements have been met and is therefore valid.
    - The validity of the service is dependent upon the mode of service used and upon the return made by the deputy.
      - Civil process may legally be served Monday through Saturday and on holidays.
      - Civil processes may not be served on Sunday, except:
        - ❖ In cases where the person to be served is attempting to, or it believed the person will leave jurisdiction in order to avoid service.
        - ❖ Otherwise expressly permitted by law.
      - Writs of attachment may, distress warrants and detinue seizure orders may be issued and executed on any day including Sunday, when there is a sworn oath that the defendant is actually moving goods on that day or is about to leave the state in order to change domicile and avoid service.
    - The deputy making the service is required to make a true return upon the process.
      - The return must include:
        - ❖ The date,
        - ❖ Type of service,
        - ❖ Name of the serving officer, and
        - ❖ The Sheriff's name, since the deputy is acting under his authority; otherwise, the return can be quashed by the trial court.
    - The return is evidence only of the performance of acts within the official duty and power of the Sheriff and, therefore, the return should include only such acts as are required by law.
  - Types of Service
    - There are three kinds of service to someone at a residence:
      - Personal;
        - ❖ The actual handing of the process paper to the person named on the paper.
      - Substitute Service
        - ❖ Delivery to a member of the person's family who is:
          - The spouse, parent, child brother or sister, and
          - Is at least 16 years of age or older, or
          - Is a regular family member of the household, and
          - Is not a visitor or sojourner,
        - ❖ Posting.
          - Attaching the process to the door that appears to be the normal means of entry.



- 127           ▪ Type of process:
- 128            ❖ Criminal, or
- 129            ❖ Civil.
- 130
- 131           ▪ Nature of document,
- 132           ▪ Source of document,
- 133           ▪ Name of:
- 134            ❖ Plaintiff,
- 135            ❖ Complainant,
- 136            ❖ Defendant, or
- 137            ❖ Respondent.
- 138
- 139           ▪ Deputy assigned for service,
- 140           ▪ Date of assignment,
- 141           ▪ Method of service,
- 142           ▪ Date of service and/or return,
- 143           ▪ Location of service or attempted service, or
- 144           ▪ Reason for non-service.
- 145
- 146           ○ A tracking sheet, generated in RMS, shall be attached to every paper assigned for
- 147            service that require personal service only.
- 148            ▪ All attempts at service shall be recorded on the tracking sheet.
- 149            ▪ If personal service is made and personal identifiers such as Date of Birth and
- 150            Social Security Number are not listed on the paper to be served the serving deputy
- 151            shall make every to obtain the identifying information for the person being serve
- 152            and add such to the tracking sheet.
- 153            ❖ If additional or updated personal identify information or new address is
- 154            obtained, either the deputy or the Civil Process Division secretary shall update
- 155            the name record in RMS with the updated information.
- 156
- 157           ● Processes Requiring Personal Service:
- 158            ○ Out-of-State Process
- 159            ▪ These papers frequently consist of divorce actions, but may apply to any type of
- 160            lawsuit.
- 161            ▪ They should be served in person to the individual named unless another form of
- 162            service is specifically stated by the out-of-state service.
- 163
- 164            ○ Capias
- 165            ▪ Meaning "that you take" is the general name of several types of writs.
- 166            ▪ The common characteristic is that they require the deputy to take the body of the
- 167            defendant into custody.
- 168            ❖ These are writs of attachment of arrest.
- 169
- 170            ○ Show Cause Order
- 171            ▪ All issued criminal show cause orders/rules shall be served in person.

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- Substitute service may be used in specific instances, such as show cause (civil) when authorized by the court's instructions.
  - Restraining Orders
    - An order, which is issued upon the filing of an application for an injunction forbidding the defendant to do the threatened act until a hearing on the application is heard.
    - Although a restraining order and injunction are sometimes used synonymously, a restraining order is distinguished from an injunction in that it is intended only as a restraint upon the defendant until the propriety of granting an injunction, either temporarily or permanently, can be determined.
      - ❖ In addition to personal service restraining orders shall be read by the deputy to the respondent.
  - Bench Warrant
    - A process issued by the court itself, or "from the bench" for the attachment or arrest of a person, either in cases of contempt or where an indictment has been found, or to bring in a witness who did not obey a subpoena.
      - ❖ Typically issued in the form of a *capias* and distinguished from a warrant issued by a Magistrate.
      - ❖ In the case of a bench warrant, the judge signing the order forwards it to the Sheriff for execution.
      - ❖ One copy is given to the defendant at the time of the arrest and the other is executed and returned to court.
  - Injunctions
    - A prohibitive writ issued by a court of equity forbidding a defendant in an action to do some act which the defendant is threatening or attempting to do; and, ~~which~~ if committed would be unjust or injurious to the plaintiff and which cannot as such be adequately redressed by an action at law.
      - ❖ In addition to personal service, injunctions shall be read by the deputy to the defendant.
  - Additionally, the following types of process require personal service:
    - Attachment summons on co-defendant (business).
    - Garnishment summons on co-defendant (business).
    - Process for any person who is a party to the suit being served at a place of business/employment when addressed to the place of business.
    - Officers or management personnel of corporations when the corporation is the defendant.
    - The registered agent of a corporation.
    - Partner, when the action is against the partnership.
    - Orders summoning commissioners.
      - Condemnation suits are required to be served at least ten (10) days prior to the court date in accordance with Section [3.2-5414](#), Code of Virginia.

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- Officers and agents of unincorporated orders, associations, and common carriers.
  - Personal service should be attempted, but is not legally necessary on:
    - Levies,
    - Distress Warrants, and
    - Detinue Seizure Warrants.
      - ❖ These actions will be covered in more detail under their respective headings elsewhere in this policy.
  - Garnishments and Attachments on Co-Defendants, Garnishees
    - The garnishee is the individual or corporation in possession of funds due or owing to the defendant, judgement debtor.
    - The service to the co-defendant should be served in person to an officer of the corporation or the individual who pays the defendant or controls payment of the defendant.
      - ❖ This is usually the payroll, comptroller, or the treasurer, but service to any officer or manager employee of the business or corporation is valid.
    - The co-defendant named should always be served regardless of information offered that the defendant is not employed by the co-defendant or that no monies are due.
      - ❖ It is up to the co-defendant to include such information in the notarized statement as is required to make to the court by the trial date.
      - ❖ On garnishments there are certain wages and property which are exempt.
        - These exemptions are set forth in a schedule, which is attached to the process being served upon the co-defendant.
      - ❖ An attachment, however, is applicable to all the wages, funds, or personal property of the defendant which are under the control of the co-defendant at the time of service.
    - Always serve the co-defendant first.
    - Once having served the co-defendant in a garnishment or attachment action, the defendant, if within the Sheriff's jurisdiction, can be served in person or by substituted service at the defendants' usual place of abode.
    - There may be situations where the defendant can be found easily at his or her place of employment and served in person, but such service should be the exception rather than the rule.
      - ❖ It also should be noted that service may be accomplished anywhere the defendant is found in the county.
  - Corporations, Companies, Partnerships, and Registered Agent.
    - A corporation is an artificial entity created by the state.
      - ❖ It cannot be served with a process in any other way than by making an actual service on a natural person who is an officer or agent of the corporation.

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- Service on the spouse, as such, of an agent or officer of the corporation is not valid unless the spouse is an officer of the corporation.
- The persons upon whom service may be made in order to serve a corporation or partnership are set forth below:
  - ❖ Municipal Corporations
    - Cities, Towns, Counties and Quasi-Governmental Entities
      - ✓ Service shall be made in accordance with Section [8.01-300](#), Code of Virginia
  - ❖ Domestic Corporations and Limited Liability Companies
    - Service shall be made in accordance with Section [8.01-299](#), Code of Virginia.
  - ❖ Foreign Corporations
    - Foreign corporations which are authorized to do business in the Commonwealth.
      - ✓ Service shall be made in accordance with Section [8.01-301](#), Code of Virginia.
  - ❖ Corporations Operated by a Trustee or Receiver
    - Service shall be made in accordance with Section [8.01-303](#), Code of Virginia.
  - ❖ Copartner or Partnerships
    - Service shall be made in accordance with Section [8.01-304](#), Code of Virginia.
  - ❖ Unincorporated Associations, Orders, or Common Carriers
    - Service shall be made in accordance with Section [8.01-305](#), Code of Virginia.
  - ❖ Unincorporated Associations, Orders, or Common Carriers transacting business in Virginia with offices outside of Virginia
    - Service shall be made in accordance with Section [8.01-306](#), Code of Virginia.
- Protective Orders
  - Protective orders are served by personal service upon:
    - ❖ The Petitioner (Complainant),
    - ❖ The Respondent (Alleged abusing Person).
      - Protective orders may be rescinded or modified at any time by the court.
  - There are three types of protective orders:
    - ❖ Emergency protective orders,

- 307 ❖ Preliminary protective orders, and  
308 ❖ Protective orders (Permanent).
- 309
- 310 ■ See [GO 2-32, Domestic Violence](#), for additional information regarding Protective  
311 Orders.
- 312
- 313 ■ Service of Protective Orders by deputies.
- 314 ❖ The personal service of the protective orders shall receive priority attention by  
315 deputies.
- 316 ❖ Whenever possible, every attempt at personal service shall be made on the  
317 same date the protective order is received.
- 318 ➤ The deputy serving the protective order shall serve it on the respondent  
319 personally.
- 320 ➤ Arrest paperwork, if present, may also be served in along with the  
321 protective order.
- 322 ➤ The deputy shall show the execution of the protective order by signing it in  
323 the appropriate place.
- 324 ➤ The deputy shall also indicate the date and time the order was executed.
- 325 ✓ Deputies shall write legibly as the execution of service information is  
326 very important.
- 327
- 328 ❖ Deputies shall provide the respondent with a copy of the protective order.
- 329 ❖ Deputies shall read and explain the protective order to the respondent.
- 330 ❖ The original protective order shall be returned to either the Warrants secretary  
331 or Civil Process Division secretary where the date and time of service, etc.,  
332 shall be entered into the Sheriff's RMS.
- 333 ➤ The original protective order shall then be returned to the Juvenile and  
334 Domestic Relations Court where the return of service will be certified and  
335 a copy sent to the law enforcement agency.
- 336 ➤ A copy of the served protective order shall be forwarded to the 911  
337 Emergency Communications Center for entry in NCIC/VCIN.
- 338
- 339 ❖ When attempting to serve a protective order at a residence shared by the  
340 petitioner and respondent, no fewer than two (2) deputies should attempt  
341 service.
- 342
- 343 ■ Service of protective orders, which grant possession of the residence to the  
344 petitioner.
- 345 ❖ When deputies serve a protective order at the residence shared by the  
346 petitioner and respondent and the order requires the respondent to grant the  
347 petitioner possession of the residence, the deputies shall escort the respondent  
348 off the residential property.
- 349 ❖ Deputies may, at their discretion and if there is no immediate threat of  
350 violence, allow the respondent to gather personal belongings prior to being  
351 escorted off the resident property.

- 352 ❖ In no case shall the respondent be allowed to remain at the residential property  
 353 after service of the protective order.  
 354 ➤ When deputies leave, the respondent shall also be required to leave.  
 355
- 356 ❖ Deputies shall use caution when serving Protective Orders.  
 357 ➤ Particular caution is emphasized in those cases where deputies allow the  
 358 respondent an opportunity to gather personal belongings.  
 359
- 360 • Summonses
    - 361 ○ By definition, a summons is a writ, which calls a defendant into court. If, however,  
 362 the writ calls a witness into court, it is technically a subpoena rather than a summons.
    - 363 ○ Proper service of a summons brings the defendant under the jurisdiction of the court.
    - 364 ○ It notifies the person that an action has been commenced against him or her and that  
 365 he or she is required to appear at a specific date and time to answer the complaint in  
 366 such action.
      - 367 ▪ A subpoena, even though labeled a summons, is a writ or mandate to bring a  
 368 witness into court to give testimony and/or produce records.
    - 369
    - 370 ○ Failure to obey a summons can cause a defendant to lose a case by default.
      - 371 ▪ Failure to obey a subpoena usually constitutes contempt of court with attendant  
 372 penalties, either as provided by law or as imposed by the judge.
    - 373
    - 374 ○ Jury Summons
      - 375 ▪ Summonses to individuals for jury service fall in a special category since the  
 376 individual called is neither a defendant nor a witness.
      - 377 ▪ Failure to comply with this summons, however, is treated in a manner similar to a  
 378 subpoena in that a fine can be assessed.
    - 379
    - 380 ▪ Jury and Witness Summonses
      - 381 ❖ Shall be served in accordance with Section [8.01-298](#), Code of Virginia.
    - 382
    - 383 ○ Juvenile and Domestic Relations Summons
      - 384 ▪ There are normally six (6) kinds of summonses used in the York County Juvenile  
 385 and Domestic Relations Court. They are:
        - 386 ❖ The juvenile summons type,  
 387 ➤ A printed blue form and which summonses the juvenile involved and the  
 388 parents or guardians of the juvenile.
        - 389
        - 390 ❖ The non-support type,  
 391 ➤ Summonses the defendant, who allegedly has failed to provide the support  
 392 required.
        - 393
        - 394 ❖ The out-of-state or foreign process,  
 395 ➤ For non-support and which is to be heard in the York County Juvenile and  
 396 Domestic Relations Court.

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- ❖ A "Show Cause Rule" signed by a judge,
  - Summonses the defendant to appear before the judge to show cause or explain why he or she failed to appear in court in answer to a previous summons or otherwise failed to comply with a court order.
  
- ❖ Witness summons/subpoena,
  - Usually issued by the Commonwealth Attorney's or clerk of the court for a witness to appear in the designated Court.
  
- Civil Court Summons
  - At the general district court level, civil actions may be commenced by warrant or motion for judgement.
  - Process to commence an action is ordinarily an order directing the Sheriff to summons the defendant to answer the complaint of the plaintiff at the time and place stated.
  - The warrant must be served not less than five (5) calendar days before the return date (date of court trial), and the defendant is required to appear before the court on a day not exceeding sixty (60) days from the date of issuance of the warrant.
    - ❖ Courts at the district court level are referred to as "courts not of record."
      - Circuit Courts and Appellate Courts are "courts of record."
  
- Interrogatory Summons
  - The interrogatory summons, as the name implies, is a summons issued to bring a defendant (debtor) into court for the purpose of finding out from the defendant under oath, what property or estate he or she owns, and which presumably can be levied upon and sold to satisfy a money judgment previously obtained against the defendant.
  - The interrogatory summons form used in York County is useable and returnable to either General District Court or to the Circuit Court.
  - The interrogatory summons is used only after a judgment has been granted the plaintiff in a previous court action.
    - ❖ It is one of the means used to execute a judgment and is part of the fieri facias process.
      - A fieri facias is a writ of execution in which the Sheriff is commanded to levy and make the amount of judgment from the goods and chattels of the judgment debtor.
  - The Interrogatory Summons, therefore, is a means which can be used to determine officially what goods and chattels are in existence upon which a levy can be made.
  - The interrogatory summons can be used to expedite the levying process.
  
- Garnishment Summons
  - The garnishment summons is also a means, as part of the fieri facias process, whereby a creditor can reach the property of a debtor.

- 442 ❖ Both serve as the basis for making levies and sales.  
443 ❖ Further details of attachments are covered in subsequent paragraphs.  
444
- 445 ■ The garnishment summons, as received in the Sheriff's Office from the Clerk of  
446 Court, consists of the original copy, accompanied by:
    - 447 ❖ A fieri facias form, and
    - 448 ❖ A copy of the summons for the Garnishee to which is attached a schedule of  
449 exempt wages, and
    - 450 ❖ A copy of the summons for service on the Judgement Debtor.
      - 451
      - 452 ➤ The attachment of the fieri facias form to the garnishment summons is  
453 required by the Code of Virginia, but no action is taken on the fieri facias  
454 form except to attach it to the original copy of the garnishment summons.
      - 455 ➤ When served on a financial institution, the fieri facias can be stamped "No  
456 Levy Required" at this time with the service information.  
457
  - 458 ■ This fieri facias form can be used, however, if the judge so desires, as authority to  
459 make a levy against the defendant when he or she appears in court in answer to the  
460 summons and is used later by the sheriff's office as a single piece of paper and has  
461 a notation of "Levy" or "Actual Levy" on it.  
462
  - 463 ○ Detinue Summons/Warrant
    - 464 ■ By definition, detinue is a form of action which seeks the receivers of specific  
465 personal property from one who has acquired the property legally, but who retains  
466 it without right.
    - 467 ■ In actual usage, it is no longer considered important as to how the property was  
468 acquired since the purpose of the action is to return the property to the owner.
      - 469 ❖ This kind of action is often taken by a company to recover specific property  
470 items from the purchaser who has defaulted on his or her installment payment
      - 471 ❖ It may also be taken by a finance company holding title to an automobile or  
472 other item of personal property to recover the same.  
473
    - 474 ■ It is an action taken by the plaintiff before the merits of the case have been heard  
475 in court and for that reason, the process must be initiated and accomplished with  
476 strict adherence to the statutory requirements.
    - 477 ■ To initiate the action, the plaintiff certifies under oath that the defendant will sell,  
478 remove, secrete, or otherwise dispose of the property before the judgment of the  
479 court can be rendered or that the property will be materially damaged or injured if  
480 permitted to remain longer in possession of the defendant, etc.
      - 481 ❖ The warrant to seize property in detinue is not issued by the Clerk of Court  
482 unless a bond of at least double the estimated value of the property has been  
483 executed payable to the court.  
484
    - 485 ■ Accompanying the seizure warrant as a separate piece of paper is the summons to  
486 the defendant to appear in court on a certain day.

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- ❖ At that time, the judge will listen to all the evidence and decide if seizure of the property by the plaintiff was warranted.
  - ❖ The judge could order the plaintiff to return the property to the defendant or, alternatively, to pay the defendant in money.
  - Sometimes only the summons will be issued and the case tried without actual seizure and return of the property to the plaintiff, but usually both the summons and the seizure warrant are to be executed together.
  - Attachment Summons/Order
    - An attachment summons or order is a procedure taken before the matter has come to court.
      - ❖ It is, therefore, referred to as an attachment before judgment.
    - It is a means or basis for making a levy, seizing property and/or acquiring a contingent lien on assets of a defendant subject to a court decision, it is as effective as a levy or garnishment action taken after a judgment has been obtained.
    - Three distinctions should be noted:
      - ❖ An attachment served on a co-defendant is effective only against property which the co-defendant is holding for or owes the defendant at the time service is made and would not, for example, be effective as an attachment on wages earned by the defendant and held by the co-defendant after the time of service, whereas a garnishment is effective against the wages earned up to the date of the court appearance.
      - ❖ The attachment order can be effective against either personal property or real estate, whereas a garnishment is against bank accounts, wages or salaries.
      - ❖ An attachment order can be used both as an attachment, to or as seizure of personal property.
        - When personal property is seized under an attachment order, its possession is normally taken over by the Sheriff and held pending its disposition as ordered by the court.
    - Since the proceeding is statutory and could be used oppressively, its application must be carefully executed and carried out only as prescribed in the statutes which require one of the six circumstances as set forth below:
      - ❖ Is a foreign corporation, or is not a resident of this state, and has estate or debts owing to said defendant within the County of York, or
      - ❖ That said defendant, being a nonresident of this state, is entitled to the benefit of a lien, legal or equitable, on property, real or personal, within the County of York;
      - ❖ Is removing, or is about to remove, out of this state, with intent to change his or her domicile;
      - ❖ Intends to remove, or is removing, or has removed the specific property sued for, or his or her own estate, or the proceeds of the sale of his or her own property, or a material part of such estate or proceeds, out of this state so that

532                   there will probably not be therein effects of the said defendant sufficient to  
533                   satisfy the claim when judgment is obtained should only the ordinary process  
534                   of law be used to obtain the judgment;

- 535           ❖ Is converting, or is about to convert or has converted his or her property of  
536           whatever kind, or some part thereof, into money securities, or evidence of  
537           debt, with intent to hinder, delay or defraud his or her creditor;
- 538           ❖ Has assigned or disposed of, or is about to assign or dispose of, his or her  
539           estate, or some parts thereof, with intent to hinder, delay, or defraud his or her  
540           creditors;
- 541           ❖ Has absconded, or is about to abscond, from this state, or has concealed  
542           himself or herself therein to the injury of his or her creditors, or is a fugitive  
543           from justice.

- 544
- 545           ▪ The attachment order is issued on the basis of a written petition filed by the  
546           plaintiff or his or her attorney with the Clerk of Court where the case will be  
547           heard.
- 548           ▪ When an attachment is returned not served on the principal defendant(s), whether  
549           levied on property or not, further attachments and summonses may be issued  
550           based on the original petition until service is obtained on him or her, if he or she is  
551           a resident of this state.
  - 552           ❖ If service cannot be had in this state, upon an affidavit of that fact, an order of  
553           publication shall be made against him or her.
  - 554           ❖ In other words, jurisdiction of the court over the defendant’s property cannot  
555           be achieved solely by virtue of service on the co-defendant or by seizure of his  
556           or her property.
- 557
- 558           ▪ In view of the circumstances which prescribe the issuance of an attachment order,  
559           it is permissible and legal to issue and execute the attachment and summons on a  
560           Sunday provided on oath is made by the plaintiff that the defendant is actually  
561           removing the effects on that day, or is about to move out of the state with intent of  
562           changing his or her domicile.
- 563           ▪ The attachment order contains three main actions:
  - 564           ❖ A command that specific property be attached;
  - 565           ❖ That upon execution of a bond, possession be taken of the tangible personal  
566           property; and
  - 567           ❖ That the principal defendant and co-defendant be summoned into court.
    - 568           ➤ As a matter of practice in York County, a bond is required by the Clerk of  
569           Court before the attachment order/summons is issued and an endorsement  
570           to the effect that a bond has been executed and is in the hands of the court.
- 571
- 572           ○ Subpoena Duces Tecum
  - 573           ▪ In many court cases, documentary evidence is needed as well as the testimony of  
574           an individual witness regarding the documentary evidence.

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- When such evidence is needed, a subpoena is issued to summons the person holding the documents, records, or books into court to present the documents for court examination and to testify with respect thereto.
  - This type of summons is called a "Subpoena Duces Tecum."
    - ❖ It is served in accordance with the rules which apply to service to a witness and, since it is usually served at a place of business, it is served there either to the individual named or his or her supervisor.
  - Unlawful Detainer Summons
    - See, Rent Actions below.
  - Circuit Court Actions
    - The Circuit Courts of Virginia are established under the Constitution of Virginia.
    - The Commonwealth presently has thirty-one Judicial Circuit Courts authorized.
      - Each of these courts of record has jurisdiction in one or more counties or cities of the state.
      - The Ninth Circuit Court of Virginia has jurisdiction in the County of York and City of Poquoson.
    - The types of cases heard in Circuit Court fall into three principal categories:
      - Law,
      - Chancery, and
      - Criminal.
    - All three can be cases, which either originate in Circuit Court or have been appealed in a county or city General District or Juvenile and Domestic Relations court.
      - Law cases are:
        - ❖ Motions for judgment,
        - ❖ Negligence suits, and
        - ❖ Money suits.
      - Chancery cases are:
        - ❖ Adoptions,
        - ❖ Divorces,
        - ❖ Separations,
        - ❖ Specific performance suits, and
        - ❖ Mechanic's liens on real property and personal property.
      - Criminal actions consist of:
        - ❖ Cases referred by the Grand Jury from county or city General District or Juvenile and Domestic Relations court preliminary hearings,
        - ❖ Indictments presented to the Grand Jury by the Commonwealth's Attorney, and
        - ❖ Other criminal cases, either misdemeanors or felonies where the defendant has appealed the county court decision or requests a trial by jury.

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- All jury cases, whether law or criminal, are heard in Circuit Court.
- Chancery cases are decided by a judge, never a jury, unless a specific issue or performance is involved.
- The essential difference between law and chancery cases is that in a law case, the court has no equitable powers.
  - In law cases the court will administer justice according to the rules of common law,
  - Under chancery the court applies the principles of chancery law and follows the procedures of equity.
    - ❖ The option to file a suit in one or the other rests with the plaintiff or his or her attorney and, once initiated, cannot be changed unless the selection is obviously wrong, in which event, the judge can make the change.
- The two most commonly used processes for Circuit Court actions are:
  - Notice of Motion for Judgment; and
  - Subpoena in Chancery
- The first will have a law case number and the second will have a chancery number.
  - Affixed to each action, as a separate piece of paper, will be a "Proof of Service" form on which the return is made by the deputy making the service.
  - The "Notice of Motion for Judgment" will have attached to it a statement or affidavit which sets forth the specifics of the motion for judgment by the plaintiff.
  - The "Subpoena in Chancery" will have attached to it a "Bill of Complaint" which contains the details of the complaint, usually an action involving a pendente lite, divorce, or separation being made by the complainant.
    - ❖ A "Subpoena in Chancery" is in the nature of a summons to a defendant rather than a witness summons.
    - ❖ It requires the person named to appear before the court to answer the complaint of the petitioner or to show cause why he or she should not be required to give the relief demanded.
    - ❖ Divorce actions are heard before Commissioners in Chancery appointed by the court.
  - The commissioners hear the arguments in the matter and make recommendations to the court as to final disposition of the cases.
    - ❖ The court itself, however, handles all matters of temporary support, alimony, and temporary custody of children as well as any exceptions taken to the commissioner's recommendations.
- Petitions
  - A Petition is an application in writing to the court stating the circumstances upon which it is founded, and requesting an order of the court or such other relief as is desired by the petitioner.
  - Petitions are cases in chancery and often involve adoptions.

- 665                   ▪ "Petitions" are actions taken under chancery as distinguished from "motions"  
666                   which usually refer to actions taken under law.  
667
- 668     • Confession of Judgment
  - 669         ○ This is an action where the defendant or debtor acknowledges in writing before the  
670             Clerk of Court, or any other person authorized to do so, that he or she is indebted to a  
671             certain creditor and confesses a judgment for so much principal and interest as the  
672             plaintiff is willing to accept.
    - 673                 ▪ Upon such confession, the Clerk of Court enters the date and time of day of the  
674                 confession where such judgment is entered in the records.
    - 675                 ▪ A judgment by confession has almost all the weight of a judgment granted by the  
676                 court itself and saves considerable time of the court and the parties involved.
  - 677
  - 678         ○ A defendant confessing judgment is esteemed generally prohibited, in the absence of  
679             fraud, to question its validity on account of irregularities to which he or she did not  
680             object, or to dispute any facts set forth in the confession and, if after entry of the  
681             judgment, he or she ratifies it or accepts it, he or she is further stopped from denying  
682             the authority on which it was confessed.
    - 683                 ▪ It can be seen, therefore, that service on a copy of the confession of judgment to  
684                 the defendant serves the purpose of accomplishing the ratification or acceptance,  
685                 which makes the confession of judgment more binding.
  - 686
  - 687     • Mechanics Lien
  - 688         ○ This is a statutory lien of a contractor, subcontractor, laborer, or material man who  
689             has performed labor or furnished material of the value of \$50.00 or more for  
690             construction, repair, improvement, or removal of any building or structure affixed to  
691             real property with the consent of, or at the request of, the owner.
    - 692                 ▪ The lien attaches to the building upon which the labor or material was provided.
  - 693
  - 694         ○ A mechanic's lien can also apply to repairs performed on personal property, such as a  
695             vehicle or appliance.
  - 696         ○ In order to be effective, a mechanic's lien on real property has to be recorded before  
697             the expiration of sixty (60) days from the time the structure is completed or the work  
698             thereon terminated;
  - 699         ○ Suit to enforce this lien must be brought before the expiration of six (6) months from  
700             the time the lien was recorded.
    - 701                 ▪ Petitions may be made to the appropriate court for sale of the property and, if on  
702                 hearing the case, the court is satisfied that property should be sold to pay the debt,  
703                 a court order is issued authorizing the Sheriff to sell the property and dispose of  
704                 the proceeds in the same manner as if the sale were made under a writ of fieri  
705                 facias.
  - 706
  - 707         ○ Before making the sale, petitioner shall advertise the time, place, and terms thereof  
708             and give the owner notice by service as prescribed by the Code of Virginia, if the  
709             owner is a nonresident, or if owners address is unknown, it may be served by posting

710 a copy of the sale notice in three public places in the county wherein the property is  
711 located.

712     ▪ If such property is a motor vehicle registered in Virginia, the Commissioner of the  
713 Department of Motor Vehicles should be requested to advise if there are any liens  
714 thereon; if so, the lienholder must be notified by certified mail at the address given  
715 in the title certificate of the time and place of the property sale ten (10) days prior  
716 to the sale.

717

718     • Rent Actions

719         ○ Eviction,

720         ○ Five-Day or Thirty-Day Notice,

721         ○ Summons for Unlawful Detainer,

722         ○ Writ of Possession.

723             ▪ A large percentage of the papers served by the deputy in urban and suburban areas  
724 involve legal actions stemming from lease and rental situations usually due to  
725 default in rental payments, but sometimes based on the tenant being destructive,  
726 obnoxious or otherwise in violation of the terms of the lease or rental agreement,  
727 or simply that the owner desires the property for his or her own use.

728

729         ○ Five And Thirty Day Notices

730             ▪ The first action in the process is the serving of a Five-Day Notice to the tenant, if  
731 tenant is in arrears in rent, or a Thirty-Day Notice if tenant rents on a monthly  
732 basis and the landlord desires to evict the tenant for reasons other than  
733 delinquency.

734             ▪ The Five or Thirty-Day Notice is received directly in the Sheriff's Office from the  
735 property owner or owner's agent or attorney.

736             ▪ It does not go through the Clerk of Court, it is a legal requirement that the five or  
737 thirty day notice be served before the next step leading to eviction can be taken.

738                 ❖ The Five-Day Notice consists of a statement to the effect that if the rent is not  
739 paid within five days from the date of service, action will be taken for  
740 possession of the apartment or residence occupied by the tenant.

741                 ❖ The Thirty-Day Notice consist of a statement to the effect that the owner  
742 intends to take possession of the leased property due to either:

743                     ➤ A breach of contract, or

744                     ➤ In the case of a month to month lease, the owner is not renewing the lease  
745 and the tenant has thirty (30) days to vacate the premises in accordance  
746 with Section [55-248.37](#), Code of Virginia.

747

748         ○ Unlawful Detainer

749             ▪ The next step which is taken after an elapse of the five or thirty day notice time is  
750 the securing of a Summons for Unlawful Detainer by the plaintiff.

751                 ❖ This detainer is obtained by the plaintiff from the Clerk of Court upon filing of  
752 an affidavit and presentation of the proof of service of the five or thirty day  
753 notice.

- 754                   ➤ The summons for unlawful detainer is then sent to the Sheriff for service  
755                   to the defendant.  
756
- 757           ▪ This paper summons the defendant to appear in General District Court on a  
758           certain date to answer the complaint that said defendant (tenant) is, in effect, in  
759           unlawful possession of the specified premises and detains the owner from  
760           possession thereof.
  - 761           ▪ At the bottom of the unlawful detainer is appropriate wording for the judgment  
762           action, which grants the plaintiff authority to recover possession of the premises  
763           involved and may also include a money judgment.
    - 764           ❖ Usually the defendant does not appear in court to contest the action and the  
765           judgment is granted the plaintiff by default.  
766
- 767   ○ Eviction
- 768           ▪ Judgment in favor of the plaintiff leads to the third and final step, the eviction.
  - 769           ▪ This is brought about by a Writ of Possession secured by the plaintiff from the  
770           Clerk of Court ten (10) days after judgment of the unlawful detainer.
    - 771           ❖ The court holds these papers in order to give the defendant ten (10) days in  
772           which to perfect an appeal.
      - 773           ➤ In the event the Court grants the plaintiff immediate possession of the  
774           property, the paper is sent to the Sheriff's Office to set up the eviction date  
775           upon the expiration of the ten (10) day appeal timeframe.  
776
- 777   ○ Writ of Possession
- 778           ▪ When the writ is received in the Sheriff's Office, the original is retained by the  
779           deputy as authority for the action and upon which to make a return when the  
780           eviction is completed.
    - 781           ❖ Service of the writ, along with the sheriff's office eviction form is served to  
782           the defendant in person, or by substituted service or by posting.
    - 783           ❖ This notice is made out by the deputy to show the name and address of the  
784           defendant, the docket number and the date and time the premises must be  
785           vacated which is a minimum of seventy-two (72) hours as required by law.
      - 786           ➤ In cases where the Court grants immediate possession to the plaintiff, the  
787           deputy may schedule the eviction to take place on the day following the  
788           ten (10) day appeal timeframe.
        - 789           ✓ The seventy-two (72) hour notice requirement still applies.  
790
  - 791           ❖ The deputy's action on the Writ of Possession is as follows:
    - 792           ➤ Fill out the eviction notice to the tenant after coordinating with owner or  
793           manager of premises.
    - 794           ➤ Make sure owner/manager understands it is their responsibility, and not  
795           that of the Sheriff, to move the defendant's furniture and personal property  
796           out of and off the premises if the defendant has not done so voluntarily by  
797           the time set for eviction.

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- The furniture and personal property of the defendant shall be moved to the nearest public right-of-way.
    - ✓ The landlord, at their discretion, may:
      - ✧ Place the property in a storage area,
      - ✧ Place the property in a storage unit,
      - ✧ Allow the property to remain at location the eviction took place.
        - ⊛ This is referred to as “A Lock Out.”
    - ✓ In the event the landlord chooses to utilize any of the above options, they must allow the tenant reasonable access to their property for twenty-four (24) hours following the eviction.
  - If the plaintiff has not made sufficient arrangements to move the defendant’s property in a timely manner coinciding with the eviction date, the deputy conducting the eviction may cancel and reschedule the eviction.
  - The defendant will be given a minimum of seventy-two (72) hours prior notice to the eviction in order to make arrangements to move voluntarily.
    - ❖ If the defendants move out before being physically evicted, the eviction action is considered completed and the Writ of Possession noted accordingly.
    - ❖ In the event of inclement weather at the scheduled time for the eviction.
      - It is the practice of the York-Poquoson Sheriff’s Office to postpone the eviction until such time as the eviction can be carried out, unless the eviction involves a lock out.
  - No less than two deputy sheriffs shall be assigned to eviction actions.
    - ❖ A deputy will be assigned to each of the following locations:
      - Eviction location, and
      - The location of the nearest right-of-way, where the defendant’s property is being placed.
  - Deputy Sheriff’s participating in an eviction action shall notify 911 Emergency Communications Center of their location and the reason for being there.
  - If forced entry must be made to the owner’s property, a supervisor shall be notified prior to entry being attempted.
    - ❖ Attempts to locate keys to property shall be made.
    - ❖ If no keys are available, deputies shall contact a locksmith or gain access by means creating the minimum amount of damage.
  - Any weapons, jewelry, money or other valuables will be retained by the deputy conducting the eviction if the defendant is not present.
    - ❖ All valuables mentioned in this section will be stored in the property and evidence room in accordance with [GO 2-15, Evidence Procedures](#), and shall be:
      - Returned to the defendant at a later date, or

- 843                   ➤ Disposed of in accordance with [GO 1-17, Disposal of Non-Evidentiary](#)  
844                   Property.
- 845
- 846                   ▪ Deputies shall not risk themselves moving or transporting any chemical or  
847                   hazardous material.
- 848                   ❖ Any situation involving chemicals or hazardous materials shall be  
849                   immediately reported to a supervisor.
- 850                   ❖ Supervisors shall contact county fire and rescue or Department of Emergency  
851                   Management hazardous materials specialists for guidance.
- 852                   ➤ The County of York nor the York-Poquoson Sheriff's Office shall assume  
853                   liability for receiving, transporting, or disposing of chemicals or hazardous  
854                   materials.
- 855
- 856                   ▪ No chemical or hazardous material shall be left at the nearest right-of-way  
857                   location.
- 858                   ❖ The exclusive responsibility to remove any chemicals or hazardous materials  
859                   shall rest with the plaintiff.
- 860
- 861                   ○ Mobile Home Evictions
- 862                   ▪ Upon receipt of a court-ordered Writ of Possession involving a mobile home, the  
863                   deputy shall:
- 864                   ❖ Serve a copy of the Writ of Possession and give written notice of eviction, not  
865                   less than seventy-two (72) hours, to the mobile home occupants using the  
866                   eviction form.
- 867                   ❖ Notify the landlord/lot owner of the date and time of the scheduled eviction.
- 868                   ❖ Notify the lienholder, if known, of the impending eviction status.
- 869                   ❖ Notify the landlord/lot owner of available options:
- 870                   ➤ The mobile home can be stored on the mobile home property and then  
871                   disposed of according to law.
- 872                   ➤ The homeowner can move the mobile home at his expense unless the  
873                   landlord has a lien on the mobile home.
- 874
- 875                   ▪ Eviction Execution
- 876                   ❖ If the mobile home has been removed or is in the process of being removed by  
877                   the owner, the deputy may extend the allotted time necessary to complete the  
878                   removal and then give possession of the lot to the lot owner.
- 879                   ➤ The executed Writ of Possession is then returned to court.
- 880
- 881                   ❖ If the mobile home has not been removed by its owner at the end of seventy-  
882                   two (72) hours, the deputy shall:
- 883                   ➤ Evict any occupant(s) and
- 884                   ➤ Possession of the lot is then given to the landlord/lot owner.
- 885                   ✓ The executed Writ of Possession is returned to the court.
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- 887                   ○ Warrant of Distress

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- In addition to the Writ of Possession, eviction, action, the plaintiff has another remedy when rent is past due by obtaining a Warrant of Distress.
  - This kind of warrant provides authority for the Sheriff to levy on the goods and chattels of the delinquent tenant and subsequently to sell the property levied upon in an effort to make the amount of money, plus costs, set forth in the warrant.
  - It is an action which is taken only when rent is past due under a contract and is in the nature of an attachment (before judgment) on the personal property of the lessee, his or her assignee, or subtenant, found on the premises under lease, or any other location if the property has not been removed from the said premises more than thirty (30) days.
    - ❖ The first part of the warrant is the affidavit, which establishes the basis for the action to be taken by the Sheriff.
    - ❖ The language used requires the Sheriff to distrain.
      - Distrain, by definition, means to "levy a distress," and distress means to "seize or detain."
    - ❖ The action is initiated, under statutory authority, at the District Court level but is returnable in the Circuit Court.
  - The plaintiff cannot ask for a sale of the goods levied upon until ten (10) days after the levy is made during which period the defendant or debtor can contest the action in the court where the property is located.
    - ❖ Also, prior to the sale taking the place, the plaintiff has to post a surety bond in an amount equal to the value of the property or double the value in the case of an attachment; such bond must to be provided to the Sheriff.
  - The distress levy is usually uncontested but does serve to pressure the defendant into paying the back rent, thereby making a sale unnecessary.
    - ❖ If a sale is directed, it is made under a Writ of Venditioni Exponas (expose to sale) and, as indicated, must be accompanied by the indemnifying bond.
  - After the Writ of Venditioni Exponas is issued by the Clerk of the Circuit Court and the sale notice is posted, then ten (10) days must elapse before a sale can be held.
- Levies, Seizures and Sales
    - There are two basic kinds of levies/seizures and sales that are customarily acted upon by the sheriff's office.
    - One kind of levy and sale has been covered above under rent actions; namely, the action taken under a distress warrant and the venditioni exponas type of sale made as a result of the distress levy.
    - Both the distress warrant levy and a levy made as directed in an attachment before judgment are actions taken initially without a judge hearing a case.
      - A seizure of the property, however, made under a distress levy is effected only after the prescribed, ten (10) day, time of appeal of the distress levy has elapsed.

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- The other main category of levy, seizure, and sale is that which results from judgment and which is referred to generally as an execution.
  - An execution is the judicial process, which enforces or carries out a judgment or decree.
  - The two main types of executions are:
    - ❖ A Writ of Fieri Facias, which is the means to enforce a money judgment by levy and sale of the property of the defendant, and
    - ❖ The writ of possession, which enables the plaintiff to obtain possession of specific property, such as an apartment or residence, by evicting the occupant thereof, or a
    - ❖ Writ of Possession action, Detinue, taken after judgment under a conditional sales contract to recover specific articles of personal property in possession of the judgment debtor.
      - In this case, the defendant has the option of retaining the specific property or paying the amount of the judgment.
    - ❖ The type of levy, seizure, and sale covered in the balance of this section will be restricted to executions carried out under a Fieri Facias.
- Writ of Fiera Facias
  - In considering the relationship between a fieri facias and a levy carried out under a fieri facias, the following points are relevant:
    - A lien on the personal estate of the judgment debtor is established dating from the exact time that the writ of fieri facias is received in the sheriff's office for execution and is endorsed with year, month, day, and time of day the writ is received.
      - ❖ This procedure is followed so that the sheriff's office can control the priority on levies when more than one is received for execution against the same individual.
    - This lien covers leviable property as well as non-leviable property, such as bonds, notes, stocks, etc., which the judgment debtor has or may acquire "on or before the return date of such writ," except such property as is exempt under provisions of Title 34.
      - ❖ The lien extends only to non-leviable property located within the Commonwealth and leviable property within the Sheriff's bailiwick.
  - In Virginia, the fieri facias is returnable within ninety (90) days after its issuance to the court from which it was issued.
    - A lien on tangible property automatically ceases if an actual levy has not been made on or before the return date.
  - The lien acquired by placing a writ of fieri facias in the hands of the Sheriff is so imperfect in nature and unspecific as to the goods of the debtor that establishment of a

- 978 solid lien and security for the debt is unknown until exemption requirements are met  
979 and a levy can be effected.
- 980     ▪ The levy, in effect, specifies the goods and chattels levied upon and is necessary  
981         as a basis for advertising the property and selling it within six (6) months after  
982         execution.
- 983
- 984     ○ A levy can be made only upon specific tangible property.
    - 985         ▪ Actual seizure of the property recovered is not necessary if the deputy has the  
986             property in his/her view and power to seize it if he/she so chooses, and notes on  
987             his/her writ the facts of the levy.
- 988
- 989     ○ Specific points to keep in mind in effecting a levy under a fieri facias are as follows:
    - 990         ▪ After receipt and endorsement of the fieri facias in the sheriff's office, the actual  
991             levy is the next step necessary before a sale can be made.
    - 992         ▪ Although the fieri facias authorizes seizure of property, the practice in Virginia  
993             has been to permit it to remain on the premises of the debtor until the day of sale  
994             in order to save expenses.
    - 995         ▪ A valid levy can be made on household goods in the owner's absence; no formal  
996             notice is necessary.
      - 997                 ❖ It is the practice of the York-Poquoson Sheriff's Office to leave a copy of the  
998                     levy sheet with or on (one of) the items levied upon.
- 999
- 1000     ▪ In making a levy, the Sheriff is acting as agent for the plaintiff.
    - 1001         ❖ The plaintiff or his/her attorney has authority to control the execution and to  
1002             say whether the levy should be modified or canceled.
      - 1003                 ➤ The plaintiff retains the right to sue out a new execution.
- 1004
- 1005     ▪ A deputy making the levy may, if need be, break open, or cause to be opened by a  
1006         locksmith, the outer doors of a dwelling house in the daytime, after first having  
1007         demanded admittance of the occupant, to make a levy.
  - 1008     ▪ The deputy may also levy on personal property in the possession of the judgement  
1009         debtor when such property is in open view.
    - 1010             ❖ It shall be the practice of the York-Poquoson Sheriff's Office to first check to  
1011                 insure that the defendant does live at the address.
    - 1012             ❖ Deputies will leave notice on the door that access to the premises is needed to  
1013                 execute the writ.
    - 1014             ❖ If the deputy has not received response by the next day, he/she should then  
1015                 check with neighbors, mail carrier, paper carrier, etc., to determine whether  
1016                 the defendant is out of the area.
      - 1017                     ➤ Only as a last resort should entry be forced to complete a levy, and then  
1018                     only after the deputy's supervisor has been notified and has approved the  
1019                     entry.
- 1020
- 1021     ▪ Levy on any personal property in the possession of the defendant, regardless of  
1022         his/her claim that it does not belong to him/her, etc.

- 1023 ❖ The claimant or third party involved has a right to claim ownership by filing  
1024 the necessary affidavit with the Clerk of Court in accordance with Section  
1025 [8.01-227](#), Code of Virginia.  
1026
- 1027 ■ When listing property, deputies shall identify it using:  
1028 ❖ Make,  
1029 ❖ Model,  
1030 ❖ Serial number, etc.  
1031
- 1032 ■ If none of these are available, some definite description, such as a sheriff's office  
1033 identifying number, should be used so that, if necessary, it can be identified at a  
1034 later date.
- 1035 ■ Levy on property that would be equal in value to the amount claimed in the  
1036 warrant.  
1037 ❖ Place a fair market value on items and bear in mind not to over-levy, unless  
1038 circumstances alter the above, such as property that has been abandoned, and  
1039 it is necessary to attach all property in order to dispose of it.  
1040
- 1041 ■ If the plaintiff requests seizure of the property prior to sale which is sometimes  
1042 desirable in the case of mobile vehicles, a bond is provided to the Sheriff by the  
1043 plaintiff for an amount double the value of the vehicle.  
1044 ❖ Identification, including license number and registration information, is also  
1045 furnished by the plaintiff.  
1046 ❖ The vehicle or property is moved at the plaintiff's expense to an area of safe  
1047 storage pending the sale.  
1048
- 1049 ■ When the execution is in favor of the Commonwealth, a levy can be made on  
1050 realty, but normally a levy is made only on personal property.  
1051 ❖ It is still necessary, however, to attempt to satisfy the debt out of the personal  
1052 property before selling the realty.  
1053
- 1054 ■ Property and articles exempt from a levy made under a fieri-facias are set forth in  
1055 Section [34-26](#), Code of Virginia and Section [34-27](#), Code of Virginia.  
1056 ❖ The articles most commonly found and which are exempt include the  
1057 following:  
1058 ➤ Necessary wearing apparel of the debtor and his/her family;  
1059 ➤ Sufficient beds,  
1060 ➤ Bedding,  
1061 ➤ Tables, and chairs needed for the size of the family; plus  
1062 ➤ A refrigerator,  
1063 ➤ Washing machine,  
1064 ➤ Cooking utensils,  
1065 ➤ One sewing machine and,  
1066 ➤ In the case of a mechanic, tools of his/her trade.  
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- A detailed list, as set forth in Section [34-26](#), Code of Virginia and Section [34-27](#), Code of Virginia shall be provided to each deputy making levies.
    - ❖ In addition, each householder has a basic exemption of property, either realty or personality, not exceeding five thousand dollars as provided in Section [34-4](#), Code of Virginia.
      - This householder’s exemption is usually waived at the time the debtor signs or executes a promissory note or other obligation of indebtedness.
  - A levy cannot be made on intangible personal property, but a lien attaches to it and it may be sold by court order within a year after the return date of the execution.
    - ❖ The lien in this case continues as long as judgment can be enforced and it does not matter whether the return date of the writ has passed or not.
  - Personal property belonging to a wife may not be levied upon under an execution for the debt of her husband.
    - ❖ For example, if ownership of an automobile is registered in both husband and wife names, a levy based on a judgment against the husband cannot be made on the wife’s interest in the automobile.
      - It can be made against the husband’s interest, however, and at the sale advertised specifically as applying to the husband’s interest only.
        - ✓ Such a sale would not appeal to the average buyer, but the plaintiff may wish to buy the husband’s interest at the time of sale or the wife may wish to purchase her husband’s interest and thereby obtain full title to the vehicle.
          - ✱ If the plaintiff buys the husband’s interest, the plaintiff would need to take the case to court for a determination of the respective interests and obtain a court filing for settlement of the suit in accordance with Section [55-35](#), Code of Virginia.
  - At the time the levy is made the deputy making the levy shall estimate the value of the property levied upon and make a notation on the levy sheet on the amount of the indemnifying bond required.
    - ❖ The amount of the bond is set at the estimated value of the property in the case of a fieri facias (or a warrant of distress).
      - In York County this bond is usually not required unless the property is to be seized and sold.
  - One exception to be noted to the general rule that a levy can only be made on specific tangible property is that a levy on shares of stock is valid provided the shares are actually seized by the deputy executing the writ and are surrendered to the corporation, or their transfer by the debtor is enjoined.
  - Real estate cannot be levied upon and sold under an execution; however, if the judgment on which the execution *issues* is a lien on real estate, the lien can be enforced after all property of the debtor has been exhausted.

- 1113 ❖ Jurisdiction to enforce the lien of a judgment shall be in equity.
- 1114 ❖ The chancery court can order the amount of the judgment unless such rents
- 1115 and profits will not satisfy the judgment within five (5) years, in which case
- 1116 the court may direct the property sold.
- 1117 ➤ See Section [8.01-462](#), Code of Virginia.
- 1118
- 1119 ■ A levy cannot be made on the contents of a locked safe deposit box since the
- 1120 contents are not within view or power of a seizure unless the renter opens it
- 1121 voluntarily; however, in any case where a bank or trust company having for rent
- 1122 safe deposit boxes, is served with a notice of a lien of fieri facias or a summons in
- 1123 garnishment in which a renter or lessee of a safe deposit box is named defendant
- 1124 or judgment debtor, it shall be the duty of such bank or trust company to deny
- 1125 such renter or lessee access to the safe deposit box rented or leased in the name of
- 1126 the defendant or judgment debtor, unless otherwise directed by a court of
- 1127 competent jurisdiction or by the judgment creditor, in accordance with Section
- 1128 [6.1-333](#), Code of Virginia.
- 1129
- 1130 ● Bankruptcy
- 1131 ○ Bankruptcy is a proceeding under Federal law in which a person or a business
- 1132 declares themselves unable to meet their existing obligations and,
- 1133 ■ Chapter 7 Bankruptcy
- 1134 ❖ Petitions the bankruptcy court to take what assets they have, if any, and
- 1135 distribute them, as far as they will go, among the creditors, and then legally
- 1136 cancel any unsatisfied portion of those obligations.
- 1137
- 1138 ■ Chapter 11 and 13 Bankruptcy
- 1139 ❖ Petitions the bankruptcy court to grant them time to reorganize themselves in
- 1140 the prospect of being able to meet their obligations in a reasonable period, but
- 1141 be basically excused from making payments on those obligations during the
- 1142 reorganization time frame.
- 1143
- 1144 ○ Since bankruptcy is a Federal action, it takes precedence over most civil claims
- 1145 against the debtor, even those which have been brought to a judgment in the state
- 1146 courts.
- 1147 ■ Generally speaking, about the only debts, which are not affected by bankruptcy
- 1148 are:
- 1149 ❖ Fines or awards assessed against the debtor for some criminal action.
- 1150 ❖ Alimony payments.
- 1151 ❖ Maintenance or support payments, usually for children,
- 1152 ❖ Student Loans,
- 1153 ❖ Debts not listed in the bankruptcy.
- 1154
- 1155 ○ Since bankruptcy generally supersedes civil claims against a debtor, the Sheriff is
- 1156 placed in a difficult position when he goes to serve a civil process, or take action such

- 1157 as a levy toward execution of a state court judgement, and is confronted by a claim by  
 1158 the debtor defendant that has been filed.
- 1159     ▪ It must be noted that merely filing for bankruptcy is not an automatic guarantee  
 1160         that the debtor’s petition will be accepted by the bankruptcy court.
  - 1161     ▪ There are conditions which the debtor must meet, and documentation which the  
 1162         debtor will be furnished if the bankruptcy court does accept his petition.
- 1163
- 1164     ○ When the Sheriff is faced with a debtor’s claim of having filed bankruptcy, the Sheriff  
 1165         should require appropriate documentation from the debtor before making his return  
 1166         on the process of the state court.  
 1167         In the event the debtor is unable to furnish appropriate documentation, the Sheriff  
 1168         should:
    - 1169             ▪ Seek immediate legal counsel with the Commonwealth Attorney, or county  
 1170                 attorney as to how to proceed, or
    - 1171             ▪ Serve the process or make the levy so as to protect the plaintiff’s interest in the  
 1172                 state civil action, and then seek immediate legal counsel.
      - 1173                     ❖ The service or the levy could always be canceled if it is later determined that  
 1174                         the debtor’s claim of bankruptcy is valid.
        - 1175                             ➤ For additional information see, Chapter Nine, Virginia Sheriff’s  
 1176                                 Association Handbook, Service of Civil Process and Related Sheriff’s  
 1177                                 Office Functions.
- 1178
- 1179     ● Disposition of Property from Acquisition
    - 1180         ○ Sales
      - 1181             ▪ The sale is the final action taken under a writ of fieri facias.
      - 1182             ▪ The following considerations apply to such actions:
        - 1183                     ❖ Only property subject to levy and which has been levied upon can be sold.
        - 1184                     ❖ It is required that notices of the time and place of the sale be posted at least ten  
 1185                         (10) days prior to the day of the sale.
        - 1186                     ❖ The notice of sale is posted at some place near the residence of the owner, if  
 1187                         he or she resides in the county, and at two other public places in the county.
        - 1188                     ❖ The Sheriff may, at his discretion, advertise the sale and items to be sold in  
 1189                         local newspaper.
          - 1190                             ➤ If the property is expensive to keep or perishable, the court or authority  
 1191                                 issuing the fieri facias can order that the sale be made without waiting for  
 1192                                 the ten-day period to elapse.
    - 1193             ▪ The property shall be sold, at the time and place so established, to the highest  
 1194                 bidder, for cash, as may be necessary to make the amount of the fieri facias.
      - 1195                     ❖ When property remains unsold because of no bidders or because of an  
 1196                         insufficient bid, the sale may be postponed and the property again advertised,  
 1197                         stating the fact that no bidders or an insufficient bid, and that the property will  
 1198                         be sold peremptory under a writ of venditioni exponas in accordance with  
 1199                         Section [8.01-485](#), Code of Virginia.
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- No Sheriff, Sergeant, City or Town Constable or High Constable, or any deputy of such office, or county employee shall directly or indirectly may purchase effects sold under a writ by such officer or deputy.
  - No officer of the county or employee of the county, shall directly or indirectly, bid on or purchase, property sold under a writ by an officer in accordance with Section [8.01-498](#), Code of Virginia.
  - The deputy must collect for each item sold even if the plaintiff buys it and wants to pay only costs.
  - As each item is sold, the deputy shall list:
    - ❖ The buyer,
    - ❖ Amount, and
    - ❖ Item number on the copy of sale notice.
  - If the number of items for sale is extensive, it is advisable for the deputy making the sale to have clerical assistance in marking the items for identification, keeping track of the cash and giving receipts for same to the buyers.
  - The day before the sale, it is recommended to contact the plaintiff to make sure there has been no settlement and that the plaintiff or his or her attorney will be present at the sale.
  - It is the practice of the York-Poquoson Sheriff's Office, that prior to the sale, the plaintiff or his or her attorney take the following actions:
    - ❖ Obtain a Sheriff's Indemnifying Bond, unless sale is ordered by the court.
    - ❖ Provide the Sheriff with a written statement advising whether or not liens exist on items to be sold, and
    - ❖ A letter or teletype from the Department of Motor Vehicles regarding any liens on the vehicles.
    - ❖ The plaintiff also submits an itemized list of court costs, bond premium, and total amount required to settle the claim.
  - When there is insufficient time on the appointed date for the sale to be completed, the sale may be adjourned from day to day until completed.
  - Each sale is made on an "as is" basis with no warranties implied as to the quality or soundness of the goods sold.
    - ❖ If an item has a lien on it, however, it is sold subject to the lien as advised by the auctioneer based on information supplied by plaintiff.
      - If the sale price is not in excess of the lien, plus costs, no sale should be made.
  - At each sale scheduled, a sale folder is prepared in which background papers are kept.
  - A sale checklist is maintained in this folder to insure that the required steps are taken prior to the sale.
  - In addition, copies of the levy and the sale notice are filed in the folder.
    - ❖ The procedure as described above is performed at the actual sale.

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- The sale is started by reading the sale notice which, subsequent to the levy, will have been adjusted or noted, if necessary, to reflect liens or other information supplied by the plaintiff.
- If property which has been levied upon is also to be seized preceding the sale, the owner may retain possession of such property until the date of sale provided he or she gives the Sheriff a forthcoming bond with sufficient surety payable to the Plaintiff, which states the property shall be forthcoming at the day and place of sale.
  - ❖ The forthcoming bond would specifically state the amount due, including the officer's fee for taking the bond, commissions, and other lawful charges, if any, and that service of the writ has been made.
    - The law relating to forthcoming bonds was passed for the benefit of the owner of the goods taken, to enable him or her at his or her own risk to retain possession and use of the goods and to avoid the expense of their safekeeping until the day of sale. See Section [8.01-526](#), Code of Virginia.
- The Sheriff may charge a recovery fee from the party for whom the sale was performed of the expenses incurred for advertisement of the proposed sale and property in accordance with Section [15.2-1609.3](#), Code of Virginia.