

2012 BOYD-GRAVES CONFERENCE

COMMITTEE REPORT

Long-arm Service on Foreign Business Entities and on Statutory Agents; Va. Code §§ 8.01-301, 310, 312 and 329

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The Committee to study this issue consisted of Peter DePaolis, Curtis Hairston, John Keith, Judge McWeeny, Monica Monday, Pierce Rucker and Mary Lynn Tate. The committee met by conference call and by electronic mail.

Background. This study had two components that related to the inner workings of the process sections of Title 8.01. The statutes governing service of process are dense and difficult to parse. The consensus of the committee was that a few modifications to several of these statutes could make several aspects of the mechanics of long-arm service clearer.

Issue Number One – Long-arm service on foreign corporations and other business entities. Long-arm service on out of state persons (including business entities) is governed by §8.01-329, which provides for service of process either on an agent of the out of state person who resides in Virginia, or on the Secretary of the Commonwealth.

Section 8.01-320 allows for personal service outside of Virginia on a nonresident person who is subject to long-arm jurisdiction.

“Person” is defined in §8.01-285 as including “an individual...or a corporation, partnership, association or any other legal or commercial entity, whether or not...organized under the laws of the Commonwealth.”

So while the salutary provisions of §8.01-320 would appear to apply to all out of state business entities, there are also specific statutes which address how service shall be made on, for example, foreign corporations (§8.01-301 and §13.1-766); limited liability companies (§13.1-1018); partnerships (§8.01-304); and limited partnerships (§50-73.7). None of these statutes refers to §8.01-320, and while all but one of these statutes (§8.01-304 re: partnerships) makes mention of substituted service on either the Secretary of the Commonwealth or the Clerk of the State Corporation Commission, none makes any mention of personal service outside of Virginia.¹

Since personal service is always preferable to substituted service, we looked at these statutes regarding service of process on business entities to see if it would be helpful for these statutes either to refer to §8.01-320, or, at least, make it clear that the methods authorized are not the exclusive methods by which service of process on the specified business entities can be accomplished.

¹ There are over 60 statutes that specify when the Clerk of the State Corporation Commission is deemed to be the statutory agent for various business entities. These provisions deal primarily with entities that have ceased doing business in Virginia or are doing business in Virginia without authority. A list provided by the SCC is attached hereto as Exhibit A.

The statutes relating to limited liability companies (§13.1-1018), limited partnerships (§50-73.7), and foreign corporations (§13.1-766), are all similar in that they refer to substituted service on the Clerk of the State Corporation Commission if a foreign entity has no registered agent or the registered agent cannot be located with reasonable diligence. They are also similar in spelling out that the method of service described is not the exclusive method of serving the foreign business entity. Section 8.01-304 re: service on partnerships makes no mention of foreign partnerships. The Committee feels that the foregoing statutes need no modification and are fine as is. In Contrast, §8.01-301 refers only to foreign corporations and in subsection 3, specifically prescribes that substituted service can be made on the Secretary of the Commonwealth under §8.01-329 where long-arm jurisdiction exists. The section does not have the statement found in the other statutes to the effect that service under this section is not the exclusive way to accomplish service on a foreign corporation. So the instruction found in §8.01-301.3 can be read to require service on the Secretary, which would be inconsistent with §8.01-320.

The Committee feels that this apparent inconsistency can and should be eliminated by adding a reference to §8.01-320 and also by adding another paragraph stating that the section does not prescribe the exclusive methods of service. The Committee's suggested revisions are as follows:

8.01-301. How process served on foreign corporations generally.

Subject to § 8.01-286.1, service of process on a foreign corporation may be effected in the following manner:

1. By personal service on any officer, director or on the registered agent of a foreign corporation which is authorized to do business in the Commonwealth, and by personal service on any agent of a foreign corporation transacting business in the Commonwealth without such authorization, wherever any such officer, director, or agents be found within the Commonwealth;
2. By substituted service on a foreign corporation in accordance with §§ 13.1-766 and 13.1-928, if such corporation is authorized to transact business or affairs within the Commonwealth;
3. By substituted service on a foreign corporation in accordance with § 8.01-329, *or by service in accordance with §8.01-320*, where jurisdiction is authorized under § 8.01-328.1, regardless of whether such foreign corporation is authorized to transact business within the Commonwealth; or
4. By order of publication in accordance with §§ 8.01-316 and 8.01-317 where jurisdiction in rem or quasi in rem is authorized, regardless of whether the foreign corporation so served is authorized to transact business within the Commonwealth.
5. *This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.*

Issue Number Two – Long-arm Service on Statutory Agents. On one hand, the Committee studied Chapter 8 of Title 8.01 is entitled “Process” and Article 4 of Chapter 8, entitled “Who to Be Served.” On the other hand, we compared the provisions of Chapter 9 of Title 8.01, entitled “Personal Jurisdiction in Certain Actions” which contains our long-arm jurisdiction statutes. It was the consensus of the Committee that these two areas dealing with service on statutory agents could be harmonized and clarified in such a way as to be more logical and useful.

Within Article 4, in addition to the sections mentioned above, and others, there are statutes providing that the Commissioner of the Department of Motor Vehicles (the “Commissioner”) is to be statutory agent for service of process on any nonresident who operates a motor vehicle in the Commonwealth (§8.01-308); and that the Secretary of the Commonwealth (the “Secretary”) is to be statutory agent for service of process on any nonresident who owns or operates an aircraft that flies over or uses facilities within the Commonwealth (§8.01-309). How service is to be made on these statutory agents is governed by §8.01-310 and the effect of service on these statutory agents is governed by §8.01-312.

So these provisions, §§8.01-308, 309, 310 and 312, provide the nucleus of rules for substituted service on nonresidents who drive through or fly over Virginia.

But in most, if not all instances, a nonresident who is subject to service by dint of his deemed appointment of the Commissioner or the Secretary is also subject to service because his conduct brings him within the long-arm jurisdiction set forth in Chapter 9. The procedures for service under Chapter 8 on the Commissioner or the Secretary are similar in many respects to the Chapter 9 provisions for service on the Secretary, but they are different in at least one significant respect – when service is “effective.” The Committee felt that this inconsistency should be eliminated. The Committee also felt that several improvements to both sets of rules would be helpful.

The suggested changes are summarized below and shown in blackline in Exhibit B.

1. Service Effective When Statutory Agent Served. Currently, Chapter 8 provides that service on the statutory agent is “sufficient” upon the nonresident when process is delivered to the statutory agent. §8.01-310 A. Chapter 9, however, says that service is “sufficient” upon the person to be served when “the plaintiff, his agent, or the sheriff” leaves a copy of the process with the Secretary (§8.01-329 C), BUT also says that service is “effective” when the certificate of compliance is filed with the court in which the action is pending.

The Committee found the Chapter 9 scheme clearer, but less desirable, because the date on which service is effective is out of the hands of the party to the litigation and there can be an indeterminate delay between service on the Secretary and filing of the certificate of compliance.

The Committee favors changing both procedures so that service is effective when the statutory agent is served. We also suggest that the language specifying how service can be accomplished should be the same in both places.

2. Eliminate Provisional Sufficiency of Service. Under both Chapter 8 and Chapter 9, service is sufficient when it gets to the statutory agent, but both then go on to say that it is only sufficient “provided that” the statutory agent does what it is supposed to do, i.e., mail the process off to the person to be served and file an affidavit or certificate of compliance in the Circuit Court. See §§8.01-310 and 329 C.

The Committee saw no need for the sufficiency of service to be provisional on whether or not the statutory agent did its job. Instead, the Committee would prefer that both statutes simply impose the duty to mail and the duty to file on the statutory agents.

3. Require Statutory Agent to Provide a Receipt. As it now stands under Chapter 8, service on the statutory agent is sufficient when a copy of the process and the requisite fee are “left” with the agent. There is no provision for any proof of service unless the process is served by a sheriff or private process server. If the Chapter 9 routine were to be changed as suggested, it would have the same deficit.

The Committee recommends adding to the duties of the statutory agents a duty to provide a receipt to the party seeking service for filing by that party.

4. Time to Respond Runs from Filing of Certificate/Affidavit of Compliance. When service is made on the statutory agent under Chapter 8, the nonresident’s time to respond runs from the date when service is sufficient (i.e., when the statutory agent gets the papers), although the statutory agent’s in house process and mailing eats in to that time. Consequently, when the out of state defendant gets process in the mail, she may have two weeks or less to file responsive pleadings. By contrast when the Secretary is served under the long-arm statute, service is “sufficient” when the Secretary is served, but not “effective” until the certificate of compliance is served; so the defendant’s time to respond runs from the date on which the certificate of compliance is filed in circuit court.

The Committee feels that the procedure under both chapters should be uniform and recommends that the time to respond should run from the date on which the affidavit or certificate is filed in circuit court.

EXHIBIT A



SOP-19.1
(03/12)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

SERVICE OF PROCESS, NOTICE, ORDER OR DEMAND
ON THE CLERK OF THE STATE CORPORATION COMMISSION
AS STATUTORY AGENT

1. The service being made relates to the following proceeding:

Style of Proceeding: _____
(e.g. name of the plaintiff vs. name of the defendant, or In the matter of..., etc.)

Case/File/Matter No.: _____

Proceeding Pending in: _____
(Jurisdiction) (Name of Court or Tribunal)

Court's Mailing Address: _____

2. Service is being made on the Clerk of the State Corporation Commission pursuant to Virginia Code §§ 12.1-19.1 and (mark the appropriate box): [See the Instructions for more information.]

- | | | | |
|-------------------------------------|--|--|--|
| <input type="checkbox"/> 13.1-637 B | <input type="checkbox"/> 13.1-920 E | <input type="checkbox"/> 13.1-1056.1 C | <input type="checkbox"/> 50-73.58 A 3 |
| <input type="checkbox"/> 13.1-758 F | <input type="checkbox"/> 13.1-928 B | <input type="checkbox"/> 13.1-1057 E | <input type="checkbox"/> 50-73.59 E |
| <input type="checkbox"/> 13.1-766 B | <input type="checkbox"/> 13.1-929 E | <input type="checkbox"/> 38.2-801 | <input type="checkbox"/> 50-73.135 G |
| <input type="checkbox"/> 13.1-767 E | <input type="checkbox"/> 13.1-930 D | <input type="checkbox"/> 38.2-809 | <input type="checkbox"/> 50-73.139 A 3 |
| <input type="checkbox"/> 13.1-768 D | <input type="checkbox"/> 13.1-1018 B | <input type="checkbox"/> 38.2-1216 | <input type="checkbox"/> 50-73.140 |
| <input type="checkbox"/> 13.1-836 B | <input type="checkbox"/> 13.1-1056 A 3 | <input type="checkbox"/> 50-73.7 B | |

Other Virginia Code Section or statutory authority (Specify): _____

3. Pursuant to the foregoing legal authority, the Clerk of the State Corporation Commission is being served as statutory agent of _____
(name of business entity)

The mailing address of the defendant (business entity) being served (one address per form) is

(number/street, P.O. Box, Rural Route, etc.) (city or town) (state) (zip code)

4. Send the Commission's receipt for the payment of the fee for service on the Clerk to:

Name: _____

Attn: _____

Address: _____
(number/street, P.O. Box, Rural Route, etc.) (city or town) (state) (zip code)

Telephone No: _____
(optional)

**AN ORIGINAL AND TWO COPIES OF THIS FORM MUST BE SUBMITTED
ALONG WITH TWO COPIES OF THE PAPERS TO BE SERVED**

SEE INSTRUCTIONS ATTACHED

INSTRUCTIONS TO FORM SOP-19.1

Whenever by statute the Clerk of the State Corporation Commission is appointed or deemed to have been appointed the agent of any individual, corporation, limited partnership or other entity ("defendant") for the purpose of service of any process, notice, order or demand ("process"), service on the Clerk shall be made by leaving two copies of the process for each defendant at each address, together with payment for the requisite fee(s), in the Office of the Clerk of the Commission. The party seeking service shall recite the statute or other authority pursuant to which process is being served and shall include the mailing address of each defendant. A fee of \$30.00 for service on each defendant at each address must accompany the papers to be served. See § 12.1-19.1 of the Code of Virginia.

You can download this form from our website at www.scc.virginia.gov/clk/svcproc.aspx.

Section 1: If the requested service relates to a pending proceeding, indicate the style of the proceeding (i.e. plaintiff(s) versus defendant(s)) or the short style of the proceeding (i.e. first plaintiff, et al. vs. first defendant, et al.); the case or matter number; the name of the court or tribunal including its geographical designation (i.e., jurisdiction); and the mailing address of the court or tribunal. If the requested service does not relate to a proceeding, set forth the name and address of the person to whom the Clerk of the Commission should mail the certificate of compliance.

Section 2: Mark the applicable Virginia Code section under which service is being made on the Clerk of the Commission. Only mark one box. If the applicable statutory authority is not listed, mark the "Other Virginia Code Section or Statutory Authority" box and specify the applicable statute. See Schedule A for a list of Virginia Code sections that are frequently and less frequently cited when service is made on the Clerk of the Commission.

Section 3: Provide the name of the defendant who is being served through the Clerk of the Commission. If two or more defendants are being so served, use a separate form for each defendant. Set forth the address where the Commission is to mail the process to the named defendant. **If a copy of the process is to be mailed to a defendant at two or more addresses, use a separate form (and provide a separate fee, with requisite copies) for each address.**

The following addresses are to be used (pursuant to § 12.1-19.1 of the Code of Virginia):

Domestic corporations: the principal office address, or if no such address is on record with the Commission, the address of any officer or director of the corporation.

Foreign corporations authorized to transact business in Virginia: the principal office address, or if no such address is on record with the Commission, the address of any officer or director of the corporation, or, in case of withdrawal from this Commonwealth, the address shown in the application for withdrawal or any change thereto.

Domestic and foreign limited partnerships on record with the Commission: the principal office address or, if no such address is on record with the Commission, the address of any general partner or the address listed in a foreign limited partnership's certificate of cancellation or any change thereto.

Individuals and other entities (including limited liability companies) on record with the Commission: the address set forth in any document on record with the Commission which is required or permitted to be filed by or on behalf of the defendant.

NOTE: When the current address of the defendant differs from that on record with the Commission, provide the last known address of the defendant, but not both.

Section 4: Set forth the name and address to which the Commission is to mail its receipt for the fee received. (Note: The Clerk of the Commission will send a certificate of compliance directly to the court or tribunal listed in Section 1.)

Send an **original and two copies of this form and two copies of the process** (i.e., the papers to be served) to the Clerk of the State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218-1197, (Street address: 1300 East Main Street, Tyler Building, 1st floor, Richmond, Virginia 23219), along with a check in the amount of **\$30.00** made payable to the State Corporation Commission. **DO NOT SEND CASH.** If you have any questions, please call (804) 371-9733 or toll-free in Virginia, (866) 722-2551.

Schedule A

The following tables identify the sections of the Code of Virginia that specify when the Clerk of the Commission is deemed to be the statutory agent of the business entities or business groups described below. This list is not exhaustive. The Code of Virginia may be accessed online at <http://leg1.state.va.us/000/src.htm>.

Most frequently cited: (Mark the applicable box in Section 2 of Form SOP-19.1.)

Entity Type or Business Sector	Circumstance or Business Group	Section
Virginia Stock Corporation	Registered agent cannot be found	13.1-637 B
Foreign Stock Corporation	Registered agent cannot be found	13.1-766 B
	Transacting business in Virginia without a certificate of authority	13.1-758 F
	Authority to transact business in Virginia was voluntarily withdrawn	13.1-767 E
	Authority to transact business in Virginia was automatically revoked	13.1-768 D
Virginia Nonstock Corporation	Registered agent cannot be found	13.1-836 B
Foreign Nonstock Corporation	Registered agent cannot be found	13.1-928 B
	Transacting business in Virginia without a certificate of authority	13.1-920 E
	Authority to transact business in Virginia was voluntarily withdrawn	13.1-929 E
	Authority to transact business in Virginia was automatically revoked	13.1-930 D
Virginia Limited Liability Company	Registered agent cannot be found	13.1-1018 B
Foreign Limited Liability Company	Registered agent cannot be found	13.1-1018 B
	Transacting business in Virginia without a certificate of registration	13.1-1057 E
	Registration to transact business in Virginia was voluntarily canceled	13.1-1056 A 3
	Registration to transact business in Va. was automatically canceled	13.1-1056.1 C
Virginia Limited Partnership	Registered agent cannot be found	50-73.7 B
Foreign Limited Partnership	Registered agent cannot be found	50-73.7 B
	Transacting business in Virginia without a certificate of registration	50-73.59 E
	Registration to transact business in Virginia was voluntarily canceled	50-73.58 A 3
Virginia Registered Limited Liability Partnership	Registered agent cannot be found	50-73.135 G
Foreign Registered Limited Liability Partnership	Registered agent cannot be found	50-73.135 G
	Transacting business in Virginia without a certificate of registration	50-73.140
	Registration to transact business in Virginia was voluntarily canceled	50-73.139 A 3
Insurance	Unlicensed Insurers, including Surplus Lines Insurers	38.2-801
	Unlicensed Nonresident Insurance Brokers and Agents	38.2-809
	Reciprocal Insurers, if a power of attorney is filed with the Commission	38.2-1216

NOTE: The Clerk of the State Corporation Commission is not an agent for service of process on a Virginia limited partnership formed prior to January 1, 1987, unless it has filed an amended and restated certificate of limited partnership with the Commission pursuant to § 50-73.77 C of the Code of Virginia. See § 50-73.77 E of the Code of Virginia.

Schedule A is continued on the next page.

Schedule A (Continued)

Less frequently cited: (Mark the "Other Virginia Code Section" box and provide the applicable Code section.)

Entity Type or Business Sector	Circumstance or Business Group	Section
Foreign Stock Corporation	Authority to transact business in Virginia was involuntarily revoked	13.1-769 E
	Survivor of a merger with a Virginia Stock Corporation	13.1-721 C 1
	Survivor of a merger with a Virginia Nonstock Corporation	13.1-897 B
	Formerly incorporated as a Virginia Stock Corporation	13.1-722.5 A 6
Foreign Nonstock Corporation	Authority to transact business in Virginia was involuntarily revoked	13.1-931 E
	Survivor of a merger with a Virginia Stock Corporation	13.1-721 C 1
	Survivor of a merger with a Virginia Nonstock Corporation	13.1-897 B
	Formerly incorporated as a Virginia Nonstock Corporation	13.1-898.5 A 7
Foreign Limited Liability Company	Registration to transact business in Va. was involuntarily canceled	13.1-1056.2 D
	Survivor of a merger with a Virginia Stock Corporation	13.1-721 C 1
	Survivor of a merger with a Virginia Nonstock Corporation	13.1-897 B
	Formerly organized as a Virginia Limited Liability Company	13.1-1078 A 6
Foreign Limited Partnership	Registration to transact business in Va. was involuntarily canceled	50-73.58:2 D
	Survivor of a merger with a Virginia Stock Corporation	13.1-721 C 1
	Survivor of a merger with a Virginia Nonstock Corporation	13.1-897 B
Virginia Business Trust	Registered agent cannot be found	13.1-1223 B
Foreign Business Trust	Registered agent cannot be found	13.1-1223 B
	Transacting business in Virginia without a certificate of registration	13.1-1247 E
	Registration to transact business in Virginia was voluntarily canceled	13.1-1246 A 3
	Registration to transact business in Va. was involuntarily canceled	13.1-1246.2 D
	Survivor of a merger with a Virginia Stock Corporation	13.1-721 C 1
	Survivor of a merger with a Virginia Nonstock Corporation	13.1-897 B
Unincorporated Association	Principal office outside of Virginia and transacts business in Virginia	8.01-306
Insurance	Reinsurers pursuant to 14 VAC 5-300-50	38.2-1316.2
	Reinsurance intermediary brokers	38.2-1348
	Managing general agents	38.2-1359
	Insurance agents	38.2-1819
	Insurance consultants	38.2-1838
	Surplus lines brokers	38.2-1857.2
	Viatical settlement brokers	38.2-1865.1
	Risk retention groups not chartered in Virginia	38.2-5103
	Nonresident risk retention groups	38.2-5103
	Purchasing groups	38.2-5108
	Nonresident viatical settlement providers	38.2-5701
Securities	Nonresidents registered as a broker-dealer, investment advisor, or investment advisor representative or agent	13.1-517
	Nonresident issuers of a security registered in Virginia who sell such security in Virginia	13.1-517
Labor	Labor unions and organizations, if the Clerk of the Commission is appointed as an agent by a power of attorney that has been filed with the Department of Labor and Industry and the Commission	40.1-68

EXHIBIT B

8.01-310. How service made on Commissioner and Secretary; appointment binding.

A. Service of process on either the Commissioner of the Department of Motor Vehicles as authorized under § 8.01-308 or on the Secretary of the Commonwealth as authorized under § 8.01-309, shall be made by the plaintiff's, his agent's or the sheriff's -leaving a copy of such process together with the fee for service of process on parties, in the amount prescribed in § 2.2-409, for each party to be thus served, in the hands, or in the office, of such Commissioner or such Secretary and such service shall be sufficient upon the nonresident and shall be effective on the date when service is made on such Commissioner or such Secretary. All fees collected by the Commissioner pursuant to the provisions of this section shall be paid into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department of Motor Vehicles.

B. Appointment of the Commissioner or Secretary as attorney or agent for the service of process on a nonresident under § 8.01-308 or § 8.01-309 shall be irrevocable and binding upon the executor or other personal representative of such nonresident:

1. Where a nonresident has died before the commencement of an action against him regarding an accident or collision under § 8.01-308 or § 8.01-309 shall be irrevocable and binding upon the executor or other personal representative of such nonresident; or

2. Where a nonresident dies after the commencement of an action against him regarding an accident or collision under § 8.01-308 or § 8.01-309, the action shall continue and shall be irrevocable and binding upon his executor, administrator, or other personal representative with such additional notice of the pendency of the action as the court deems proper.

(Code 1950, §§ 8-67.2, 8-67.4; 1952, c. 384; 1954, c. 333; 1970, c. 680; 1972, c. 408; 1976, c. 26; 1977, c. 617; 1987, c. 696; 1992, c. 459; 2000, c. 579.)

8.01-312. Effect of service on statutory agent; duties of such agent.

A. Service of process on the statutory agent shall have the same legal force and validity as if served within the Commonwealth personally upon the person for whom it is intended.

It shall be the duty of the statutory agent to:

1. Provide a receipt to a party seeking service who serves process on the statutory agent by hand delivery or any other method which does not provide a return of service or other means showing the date on which service on the statutory agent was accomplished. The party seeking service shall be responsible for filing such receipt in the office of the clerk of court in which the action is pending.

~~Provided that such agent shall~~2. F-forthwith send by registered or certified mail, with return receipt requested, a copy of the process to the person named therein and for whom the statutory agent is receiving the process.

~~Provided further that the statutory agent shall~~3. F-file an affidavit of compliance with this section with the papers in the action; this filing shall be made in the office of the clerk of the court in which the action is pending.

B. Unless otherwise provided by § 8.01-313 and subject to the provisions of § 8.01-316, the address for the mailing of the process required by this section shall be that as provided by the party seeking service.

C. The time for the nonresident to respond to process sent by the statutory agent shall run from the date when the affidavit of compliance is filed in the office of the clerk of the court in which the action is pending.

(Code 1950, § 8-67.2; 1954, c. 333; 1970, c. 680; 1972, c. 408; 1976, c. 26; 1977, c. 617.)

§ 8.01-329. Service of process or notice; service on Secretary of Commonwealth.

A. When the exercise of personal jurisdiction is authorized by this chapter, service of process or notice may be made in the same manner as is provided for in Chapter 8 (§ 8.01-285 et seq.) of this title in any other case in which personal jurisdiction is exercised over such a party, or process or notice may be served on any agent of such person in the county or city in this Commonwealth in which that agent resides or on the Secretary of the Commonwealth of Virginia, hereinafter referred to in this section as the "Secretary," who, for this purpose, shall be deemed to be the statutory agent of such person.

B. When service is to be made on the Secretary, the party or his agent or attorney seeking service shall file an affidavit with the court, stating either (i) that the person to be served is a nonresident or (ii) that, after exercising due diligence, the party seeking service has been unable to locate the person to be served. In either case, such affidavit shall set forth the last known address of the person to be served. For the mailing, by the clerk to the party or his agent or attorney, in accordance with subsection C, of verification of the effective date of service of process, the person filing an affidavit may leave a self-addressed, stamped envelope with the clerk.

When the person to be served is a resident, the signature of an attorney, party or agent of the person seeking service on such affidavit shall constitute a certificate by him that process has been delivered to the sheriff or to a disinterested person as permitted by § 8.01-293 for execution and, if the sheriff or disinterested person was unable to execute such service, that the person seeking service has made a bona fide attempt to determine the actual place of abode or location of the person to be served.

C. Service of such process or notice on the Secretary shall be made by the plaintiff's, his agent's or the sheriff's leaving a copy of the process or notice, together with a copy of the affidavit called for in subsection B hereof and the fee prescribed in § 2.2-409 in the office of the Secretary in the City of Richmond, Virginia. Service of process or notice on the Secretary may be made by mail if such service otherwise meets the requirements of this section. Such service shall be sufficient upon the person to be served, and shall be effective on the date when service is made on the Secretary. It shall be the duty of the Secretary to:

1. Provide a receipt to a party seeking service who serves process on the Secretary by hand delivery or any other method which does not provide a return of service or other means showing the date on which service on the Secretary was accomplished. The party seeking service shall be responsible for filing such receipt in the office of the clerk of court in which the action is pending.

2. Forthwith send by certified mail, return receipt requested, to the person or persons to be served at the last known post-office address of such person, notice of such service, a copy of the process or notice, and a copy of the affidavit.

3. Forthwith file with the papers in the action a certificate of compliance herewith by the Secretary or someone designated by him for that purpose and having knowledge of such compliance

~~provided that notice of such service, a copy of the process or notice, and a copy of the affidavit are forthwith mailed by certified mail, return receipt requested, by the Secretary to the person or persons to be served at the last known post-office address of such person, and a certificate of compliance herewith by the Secretary or someone designated by him for that purpose and having knowledge of such compliance, shall be forthwith filed with the papers in the action. Service of process or notice on the Secretary shall be effective on the date the certificate of compliance is filed with the court in which the action is pending. Upon receipt of the certificate of compliance, the clerk of the court shall mail verification of the date the certificate of compliance was filed with the court to the person who filed the affidavit required by subsection B hereof, in the self-addressed, stamped envelope, if any, provided to the clerk at the time of filing of the affidavit. The clerk shall not be required to mail verification unless the self-addressed, stamped envelope has been provided. The time for the person to be served to respond to process sent by the Secretary shall run from the date when the certificate of compliance is filed in the office of the clerk of the court in which the action is pending.~~

D. Service of process in actions brought on a warrant or motion for judgment pursuant to § 16.1-79 or § 16.1-81 shall be void and of no effect when such service of process is received by the Secretary within ten days of any return day set by the warrant. In such cases, the Secretary shall return the process or notice, the copy of the affidavit, and the prescribed fee to the plaintiff or his agent. A copy of the notice of the rejection shall be sent to the clerk of the court in which the action was filed.

E. The Secretary shall maintain a record of each notice of service sent to a person for a period of two years. The record maintained by the Secretary shall include the name of the plaintiff or the person seeking service, the name of the person to be served, the date service was received by the Secretary, the date notice of service was forwarded to the person to be served, and the date the certificate of compliance was sent by the Secretary to the appropriate court. The Secretary shall not be required to maintain any other records pursuant to this section.

(Code 1950, § 8-813; 1977, c. 617; 1979, c. 31; 1986, c. 388; 1987, cc. 449, 450, 459; 1990, c. 741; 1998, c. 259; 2001, c. 29.)

