

**Draft Constitutional Process Document
Notices, Affidavits, and Writs**

1. Notices and Affidavits -

Step 1. Notices: print, sign, and mail via certified mail with a receipt to your local state representatives. (If no response see Step 2)

Step 2. Affidavits: print, sign with a notary, mail via certified mail with a receipt to your local state representatives. (If no response see step 3)

Step3. 2nd Affidavit (Serves as a notice of ...) must be delivered in person. (If no response refer to Step 4).

Step 4. Arbitration

**Note - we are not necessarily encouraging people to do the affidavit part on their own because there is a monetary portion in them and is a sworn document with the penalty of perjury. It is also taking that next step of being serious and prepared to enter into arbitration. We are only asking a few people to do affidavits from what I've heard from Heather. You may want to reach out to her on that specifically.*

2. Writ of Quo Warranto:

Apply to the Circuit Court by sworn petition. surety bond of petitioner is required to indemnify court and state against costs,
§ 8.01-637. By whom filed; when leave granted and writ issued.

A. The Attorney General or attorney for the Commonwealth of any county or city of which the circuit court has jurisdiction of the proceeding, at his own instance or at the relation of any interested person, or any interested person, may apply to such court by petition verified by oath for a writ of quo warranto. In case of an application under § [8.01-636](#) 2a the term "any interested person" shall include any attorney licensed to practice law in this Commonwealth and qualified to practice before the Supreme Court of Virginia, or the circuit court in which the petition is filed.

B. If, in the opinion of the court, the matters stated in the petition are sufficient in law to authorize the issuance of such writ, a writ shall issue thereon, commanding the sheriff to summon the defendant to appear at a date set forth in the writ.

C. If the petition is filed on the relation of any person or by any person at his own instance, before the clerk shall issue the writ the court shall require the relator or person to give bond with sufficient surety, to be approved by the clerk, to indemnify the Commonwealth against all costs and expenses of the proceedings, in case the same shall not be recovered from and paid by the defendant.

Code 1950, §§ 8-858, 8-859, 8-860; 1977, c. 617; 1980, c. 705.
§ 8.01-639. How summons directed and served.

The writ and a copy of the petition attached thereto may be directed to the sheriff of any county or city and shall be served as in other actions.

Code 1950, § 8-861; 1977, c. 617.

§ 8.01-640. Judgment when defendant fails to appear.

If the defendant fails to appear in accordance with the writ, the court may hear proof of the allegations of the petition, and if the allegations are sustained, shall give judgment accordingly.

Code 1950, § 8-862; 1977, c. 617.

§ 8.01-641. Reopening same when made on service by publication.

But if service is made by publication, the defendant against whom the judgment is rendered may file a motion within thirty days from the rendition of judgment to have such judgment set aside, upon giving bond with good security as prescribed by the court, with condition to pay all such costs as shall be awarded in the cause against the defendant. The defendant may then make such defense to the petition as he might have made, and in the same manner, before the judgment was rendered.

Code 1950, § 8-863; 1977, c. 617.

§ 8.01-642. Pleading when defendant appears.

The defendant against whom the writ was issued may plead, demur or answer the petition within the time set forth in the writ for his appearance.

Code 1950, § 8-864; 1977, c. 617.

§ 8.01-643. Trial; verdict; judgment; costs; attorney's fee.

Unless the defendant shall ask for a trial by jury, the court shall hear the same. If the case is tried by jury and the defendant is found guilty as to only a part of the charges, the verdict shall be guilty as to such part and shall particularly specify the same. As to the residue of such charges, the verdict shall be not guilty. If the defendant appears and is found guilty the court shall give such judgment as is appropriate and authorized by law and for costs incurred in the prosecution of the information, including a reasonable attorney's fee to be prescribed by the court.

Code 1950, § 8-865; 1977, c. 617.

3. Writ of Mandamus:

Application for a writ of mandamus shall be on petition verified by oath, after the party against whom the writ is prayed has been served with a copy of the petition and notice of the intended application a reasonable time before such application is made.....

All of this information on how to file these writs is on <https://law.lis.virginia.gov/vacode/title8.01/chapter25/>

Drafted by: Jessica Longshore, Jul 3, 2021