

**INSTRUCTIONS FOR COMPLETING FORM  
WARRANT IN DEBT – INTERPLEADER (Form DC-428)**

1. **Court (City/County).** File the interpleader in the General District Court where the purchaser(s) or seller(s) reside. If not local, then file where property or broker’s office is located.
2. **Court street address, City, State, Zip.** The Court will give you the mailing address.
3. **Return date and time** (this is the first hearing date). To be completed by the Clerk.
4. **Date issued.** To be completed by the Clerk.
5. **Signature of Clerk.** To be completed by the Clerk.
6. **Claims:** Insert a description on the line, such as “\$1,000.00 contract deposit held in escrow for terminated real estate transaction.”
7. **Check  the box** labeled “no other case is connected with this Warrant in Debt”.
8. **Date.** Insert date that the interpleader is filed.
9. **Signature of person filing the claim.** Broker must sign on the signature line and check  the applicable box, “Plaintiff” or “Plaintiff’s Employee/Agent” below the signature line.
10. **Return date.** To be completed by the Clerk.
11. **Court case number.** To be completed by the Clerk.
12. **Connecting Court Case No.** Not Applicable.
13. **Plaintiff.** Insert name and address of broker or brokerage firm filing the interpleader.
14. **Defendants.** Insert the names and addresses of the purchaser(s) and seller(s). Be sure to include city or county of residence.
15. **Check  the box** labeled “to dispute this claim, you must appear on the return date for the judge to set another date for trial.”
16. & 17. To be completed by Clerk or Judge.
18. & 19. Leave blank.

**REVERSE SIDE** (leave reserve side blank except for items 20 and 21)

20. Insert date that you mailed a copy of Warrant in Debt--Interpleader to the defendants. (Do not mail until you have a return date and time, see Item 3 above.)
21. **Signature of person filing the claim.** Broker must sign on the signature line and check  the applicable box, “Plaintiff” or “Plaintiff’s Employee/Agent” below the signature line.

**WARRANT IN DEBT—INTERPLEADER**

Commonwealth of Virginia Va. Code § 16.1-79

..... **1** ..... General District Court  
CITY OR COUNTY

..... **2** .....  
STREET ADDRESS OF COURT

TO ANY AUTHORIZED OFFICER: You are hereby commanded to summon the Defendant(s).  
TO THE DEFENDANT(S): You are summoned to appear before this Court at the above address on

..... **3** ..... to answer the Plaintiff(s)' civil claim and interplead your claims (see below)  
RETURN DATE AND TIME

..... **4** ..... DATE ISSUED  
..... **5** .....  
[ ] CLERK [ ] DEPUTY CLERK [ ] MAGISTRATE

**CLAIMS:** Plaintiff(s) claim that Defendant(s) have or may have claims in the following personal or real property or money held by or on behalf of Plaintiff(s).

..... **6** .....  
DESCRIPTION

Plaintiff(s) further claim that:

[ ] no other case is connected with this Warrant in Debt } **7**  
[ ] this action is connected with

..... v. ....  
PLAINTIFF(S) DEFENDANT(S)

.....  
COURT NAME AND CASE NUMBER

Plaintiff(s) request that this court determine the rights of the parties to the personal or real property or money described above.

..... **8** .....  
DATE  
..... **9** .....  
[ ] PLAINTIFF [ ] PLAINTIFF'S EMPLOYEE/AGENT [ ] PLAINTIFF'S ATTORNEY

**CASE DISPOSITION**

Use Form DC-480

**DISABILITY ACCOMMODATIONS**

for loss of hearing, vision, mobility, etc., contact the court ahead of time.

RETURN DATE **10** CASE NO. **11**  
Connecting Case No. **12**  
PLAINTIFF(S)  
**13**  
DEFENDANT(S) v.  
**14**

**WARRANT IN DEBT – INTERPLEADER**

\* \* \*

TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you. See the additional notice on the reverse about requesting a change of trial location.

[ ] To dispute this claim, you must appear on the return date to **15** try this case.

[ ] To dispute this claim, you must appear on the return date for the judge to set another date for trial.

\* \* \*

Bill of Particulars ..... **16** .....  
ORDERED DUE

Grounds of Defense ..... **17** .....  
ORDERED DUE

ATTORNEY FOR PLAINTIFF(S)  
..... **18** .....

ATTORNEY FOR DEFENDANT(S)  
..... **19** .....

**RETURNS: Each defendant was served according to law, as indicated below, unless not found.**

NAME .....	
ADDRESS .....	
<input type="checkbox"/> PERSONAL SERVICE	Tel. No. ....
Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.	
<input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> Served on Secretary of the Commonwealth	
<input type="checkbox"/> Not found	_____
SERVING OFFICER	
.....	for _____
DATE	

NAME .....	
ADDRESS .....	
<input type="checkbox"/> PERSONAL SERVICE	Tel. No. ....
Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.	
<input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> Served on Secretary of the Commonwealth	
<input type="checkbox"/> Not found	_____
SERVING OFFICER	
.....	for _____
DATE	

NAME .....	
ADDRESS .....	
<input type="checkbox"/> PERSONAL SERVICE	Tel. No. ....
Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.	
<input type="checkbox"/> Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> Served on Secretary of the Commonwealth	
<input type="checkbox"/> Not found	_____
SERVING OFFICER	
.....	for _____
DATE	

**OBJECTION TO VENUE:**

To the Defendant(s): If you believe that Plaintiff(s) should have filed this suit in a different city or county, you may file a written request to have the case moved for trial to the general district court of that city or county. To do so, you must do the following:

1. Prepare a written request which contains (a) this court's name, (b) the case number and the "return date" as shown on the other side of this form in the right corner, (c) Plaintiff(s)' name(s) and Defendant(s)' name(s), (d) "I move to object to venue of this case in this court because" and state the reasons for your objection and also state in which city or county the case should be tried, and (e) your signature and mailing address.
2. File the written request in the clerk's office before the trial date (use the mail at your own risk) or give it to the judge when your case is called on the return date. Also send or deliver a copy to plaintiff.
3. If you mail this request to the court, you will be notified of the judge's decision.

I certify that I mailed a copy of this document to the defendants named therein at the address shown therein on <b>21</b>	
<b>20</b> DATE	<input type="checkbox"/> Plaintiff <input type="checkbox"/> Plaintiff's Atty. <input type="checkbox"/> Plaintiff's Employee/Agent
Fi. Fa. issued on .....	
Interrogatories issued on .....	
Garnishment issued on .....	
.....	

## SERVICE ON THE SECRETARY OF THE COMMONWEALTH

If the Sheriff is unable to serve a defendant because the party no longer resides at the stated address, service may be made through the Secretary of the Commonwealth. When service is made on the Secretary, the broker must file an affidavit with the court stating either: (i) the person to be served is a nonresident; or (ii) that, after exercising due diligence, the broker has been unable to locate the person. In either case, the affidavit must set forth the last known address of the person to be served.

An example of due diligence includes, performing an internet search for the person you're trying to locate, checking the telephone listings and making contact with persons who knew such person.

To file for service through the Secretary of the Commonwealth you will need to first attempt service through the Sheriff at the last known address of the party being served. Once the Sheriff is unable to effect service, you can then proceed through the Secretary of the Commonwealth. You will need:

- 1 original and 1 copy of an "Affidavit For Service of Process on the Secretary of the Commonwealth" (Form DC410) (sample copy attached). Form may be obtained at <http://www.courts.state.va.us/forms/district/dc410.pdf>
- 1 copy of the "Warrant In Debt—Interpleader" filed with the Court.
- 1 envelope addressed to the person being served (use the broker's address as the return address).
- 1 certified mail card (green) addressed to the person being served (use the broker's address as the return address).
- A check or money order for \$28.00 per person being served payable to the "Secretary of the Commonwealth".

(NOTE, if a couple is being served, two separate sets of papers are required.)

Mail or hand-deliver all of the above items to the Clerk of Court with a letter requesting service on the Secretary of the Commonwealth.

**Form DC-410 AFFIDAVIT OF SERVICE OF PROCESS  
ON THE SECRETARY OF THE COMMONWEALTH  
INSTRUCTIONS FOR COMPLETING FORM**

1. Court case number.
2. Court name.
3. Name and address of plaintiff (insert name of broker or brokerage firm—same as interpleader).
4. Name and address(es) of defendant(s). (same as interpleader).
5. Attachments. Check  box “Warrant”
6. Check  the box “the above-named defendant”.
7. Check  the box “same as above”.
8. If the person is a non-resident of Virginia, check  this box. Otherwise, leave blank.
9. If the Sheriff is unable to locate at the last know address and you have performed due diligence in attempting to locate the person, check  this box.
10. Insert the return date for the court hearing (given to you by the Clerk of Court).
11. Insert date of signing.
12. **Signature of person filing the claim.** Broker must sign on the signature line and check  the applicable box, “Party” or “Party’s Agent” below the signature line. . **MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR CLERK OF COURT.**
13. through 18. To be completed by Notary Public or Clerk of Court.
19. through 21. To be completed by Office of the Secretary of the Commonwealth.

**AFFIDAVIT FOR SERVICE OF PROCESS ON THE SECRETARY OF THE COMMONWEALTH**

Commonwealth of Virginia Va. Code §§ 8.01-301, -329; 55-218.1; 57-51

Case No. 1

2 District Court

3 v. 4

TO THE PERSON PREPARING THIS AFFIDAVIT: You must comply with the appropriate requirements listed on the back of this form.

5 Attachments:  Warrant  Motion for Judgment

I, the undersigned Affiant, state under oath that:

6  the above-named defendant

whose last know address is:  same as above  7

8 1.  is a non-resident of the Commonwealth of Virginia or a foreign corporation and Virginia Code § 8.01-328.1(A) applies (see NON-RESIDENCE GROUNDS REQUIREMENT on reverse).

9 2.  is a person whom the party seeking service, after exercising due diligence, has been unable to locate (see DUE DILIGENCE REQUIREMENT on reverse) and that

10 is the return date on the attached warrant, motion for judgment or notice (see TIMELY SERVICE REQUIREMENT on reverse).

11  
DATE

12  
 PARTY  PARTY'S ATTORNEY  PARTY'S AGENT

State of 13  City  County of 14

Acknowledged, subscribed and sworn to before me this 15 day of 15, 20 15

16  
NOTARY REGISTRATION NUMBER

17  
 CLERK  MAGISTRATE  NOTARY PUBLIC (My commission expires .....

18  Verification of the date of filing of the certificate of compliance requested in the self-addressed stamped envelope provided.

NOTICE TO THE RECIPIENT from the Office of the Executive Secretary of the Commonwealth of Virginia:

You are being served with this notice and attached pleadings under Section 8.01-329 of the Code of Virginia which designates the Secretary of the Commonwealth as statutory agent for Service of Process. The Secretary of the Commonwealth's ONLY responsibility is to mail, by certified mail, return receipt requested, the enclosed papers to you. If you have any questions concerning these documents, you may wish to seek advice from a lawyer.

SERVICE OF PROCESS IS EFFECTIVE ON THE DATE THAT THE CERTIFICATE OF COMPLIANCE IS FILED WITH THE ABOVE-NAMED COURT.

**CERTIFICATE OF COMPLIANCE**

I, the undersigned, Clerk in the Office of the Secretary of the Commonwealth, hereby certify the following:

1. On 19, legal service in the above-styled case was made upon the Secretary of the Commonwealth, as statutory agent for persons to be served in accordance with Section 8.01-329 of the Code of Virginia, as amended.

2. On 20, papers described in the Affidavit were forwarded by certified mail, return receipt requested, to the party designated to be served with process in the Affidavit.

21  
SERVICE OF PROCESS CLERK, DESIGNATED BY THE AUTHORITY OF THE SECRETARY OF THE COMMONWEALTH

**TIMELY SERVICE REQUIREMENT:**

Service of process in actions brought on a warrant or motion for judgment pursuant to Virginia Code § 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.

**NON-RESIDENCE GROUNDS REQUIREMENT:**

If box number 1 is checked, insert the appropriate subsection number:

A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:

1. Transacting any business in this Commonwealth;
2. Contracting to supply services or things in this Commonwealth;
3. Causing tortious injury by an act or omission in this Commonwealth;
4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;
5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in the sale of goods outside this Commonwealth when he might reasonably have expected such person to use, consume, or be affected by the goods in this Commonwealth, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;
6. Having an interest in, using, or possessing real property in this Commonwealth;
7. Contracting to insure any person, property, or risk located within the Commonwealth at the time of contracting; or
8. (ii). Having been ordered to pay spousal support or child support pursuant to an order entered by any court of competent jurisdiction in this Commonwealth having in personam jurisdiction over such person.
9. Having incurred a liability for taxes, fines, penalties, interest, or other charges to any political subdivision of the Commonwealth.

**DUE DILIGENCE REQUIREMENT:**

If box number 2 is checked, the following provision applies:

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.

# How to File an Interpleader

## (Transferring Deposits to the Court)

### FAQ's

1. What is an interpleader? An interpleader is a civil process filed in the General District Court by a disinterested holder of an asset (such as a real estate broker holding a contract deposit) so that the court can determine who should receive it.
2. Who can file an interpleader? As a disinterested holder of a contract deposit, the broker or brokerage firm in control of a contract deposit can file an interpleader.
3. Why should a broker or brokerage firm file an interpleader? Many brokers or brokerage firms are in possession of contract deposits for transactions that were terminated many months or years ago. By filing an interpleader, the broker or brokerage firm can clear out its escrow account of these contract deposits.
4. Where is the interpleader filed? The interpleader should be filed in the General District Court where the purchaser or the seller (listed in the contract) resides. If they are not local, then the interpleader should be filed in the jurisdiction where the property or broker's office is located.
5. What form do I use and where can I obtain it? The form is called a "Warrant In Debt—Interpleader" (Form DC-428). It's referred to most often simply as an "interpleader". The form can be obtained at the General District Court Clerk's Office, or it can be downloaded at <http://www.courts.state.va.us/forms/district/dc428.pdf>.
6. What is the cost? The cost is typically \$44.00 to file the interpleader and a \$12.00 service fee for each defendant. Sorry, there is no process to get reimbursed, but at least the broker or brokerage firm will not have the hassle of carrying the deposit on the books from year-to-year.
7. Am I suing my client? While a broker or brokerage firm is not making a claim for anything, the broker or brokerage firm will be listed as the plaintiff and the purchaser(s) and seller(s) under the contract will be listed as the defendants. The dispute is between the defendants, not with the plaintiff (broker).
8. What if my client objects to being named a defendant? Before filing an interpleader, contact your client and explain that you have to clear out your escrow account because the transaction did not close. Either your client can agree to release the deposit (to end the dispute) or you'll be forced to file an interpleader so the court can decide who is entitled to the contract deposit.



9. What information do I put on the Warrant In Debt—Interpleader? You will need to insert court name and address, the names and addresses of the parties, the amount of the contract and some other basic information. See the attached “Instructions for Completing Form” as a guide.
10. When can I file the interpleader? A broker should first attempt to resolve the deposit dispute between the parties by obtaining a signed release or written authorization to disburse the deposit to the appropriate party(ies). This is the simplest way to proceed. If a release or written authorization can not be obtained, then the broker must adhere to VREB Regulations and provide written notice to the party not to receive the deposit, by hand delivery receipted for by the addressee or by certified mail, return receipt requested, that this payment will be made unless a written protest from such party is received by the broker. If a party contests the release of the deposit, then an interpleader can be filed.
11. Who determines the court date? The Clerk of Court will instruct you as to the date of the hearing (called the “return date”) at the time you file the “Warrant In Debt—Interpleader”. Typically, it will be at least 45 days after the filing date. If the matter is contested on the return date, the Court may set it for trial on another date.
12. What is “service of process”? Before a court can hear a case, each party must be served with the “Warrant In Debt—Interpleader”. A party is usually served by the Sheriff’s Office (must be a Virginia resident). That’s why the addresses of the parties are necessary to initiate the interpleader process. If a party is not served, the case can not be heard.
13. I don’t have an address for one or both of the parties and/or they are nonresidents of Virginia, can I still file an interpleader? Yes, but you will need to take additional steps and the cost is more. You will need to file an affidavit and other information with the “Secretary of the Commonwealth”. Please see attached instructions for “Service on the Secretary of the Commonwealth”.
14. Do I need to appear on the return date? Yes, unless the Clerk of Court informs you that it is unnecessary based upon local custom. Typically, you will need to appear on the return date and time to explain the basic transaction details to the judge. You must bring a copy of the contract and any notice of contract termination. You will not be required to give an opinion—that’s the judge’s responsibility. Sometimes a case is continued at the request of a party. If the matter is continued or contested by a party, ask the judge if you must return for the hearing date. Once your part is finished, you can request to be excused and that ends your role in the matter.