

99-052

CIVIL REMEDIES AND PROCEDURE: EXECUTIONS AND OTHER MEANS OF RECOVERY — PROCESS.

COURTS OF RECORD: CLERKS, CLERKS' OFFICES AND RECORDS – FEES.

Sheriff, and not private process server, serves 72-hour notice to vacate and may charge each person served with notice \$12 fee; may charge additional \$12 fee for execution of writ of possession.

The Honorable Eric Cantor
Member, House of Delegates
August 27, 1999

You ask several questions regarding the fees to be charged for service of notice to vacate and execution of writ of possession in unlawful detainer cases.

You first inquire whether, pursuant to § 8.01-470 of the *Code of Virginia*, a twelve dollar fee for serving a notice to vacate within seventy-two hours and an additional twelve dollar fee for executing the writ of possession may be charged in unlawful detainer cases.

Section 8.01-470 provides, in part:

In cases of unlawful entry and detainer and of ejection, the officer to whom a writ of possession has been delivered to be executed shall, at least seventy-two hours before execution, serve notice of intent to execute, including the date and time of execution, on the defendant ..., with a copy of the writ attached.

A 1997 opinion of the Attorney General concludes that pursuant to § 8.01-470, "[t]he notice of an intent to execute [a writ of possession] must be served at least seventy-two hours before execution and the notice itself must include the date and time of execution."¹ Accordingly, the opinion states that "[p]ursuant to [§ 17.1-272], a sheriff may charge twelve dollars for serving a notice of intent to execute a writ of possession."² Section 17.1-272(A)(6) authorizes a fee of twelve dollars for levying an execution. Thus, this fee may likewise be charged. It is my opinion, therefore, that a sheriff may charge a twelve-dollar fee for each person served with a notice to vacate within seventy-two hours and may charge an additional twelve-dollar fee for executing the writ of possession.

You next inquire whether the property owner first may pay a fee for service of the seventy-two hour notice to vacate and pay a subsequent twelve-dollar fee should it be necessary to execute the writ of possession.

"The fees set out in [§ 17.1-272] shall be allowable for services provided by such officers."³ Thus, the fees chargeable for services of a sheriff in carrying out the instances of process and service set forth in § 17.1-272 are for services actually rendered. Therefore, a twelve-dollar fee may be imposed for service by the

sheriff of a notice to vacate.⁴ Another twelve-dollar fee subsequently may be charged for the sheriff's execution of a writ of possession; however, if the sheriff does not execute the writ of possession, the latter fee may not be charged.⁵

Lastly,⁶ you ask whether a private process server may serve the seventy-two hour notice to vacate.

"[U]nder § 8.01-293,⁷ service by a qualified private process server and service by a sheriff are equally legitimate forms of service."⁸ Previous opinions of the Attorney General recognize that "[t]o avoid the anticipated increase in the cost of bringing suit in general district court, some volume filers may use private process servers rather than the local sheriff to effect service of process."⁹ Section 8.01-293(B), however, expressly provides that "only a sheriff may execute an order or writ of possession ... arising out of an action in unlawful entry and detainer or ejection." Section 8.01-470 directs "the officer to whom a writ of possession has been delivered to be executed" to serve the notice of intent to execute such writ "at least seventy-two hours before execution." Reading these two statutes together,¹⁰ it is my opinion that the service of the notice to vacate is restricted to the sheriff. Accordingly, it is my opinion that a private process server may not effect service of the seventy-two hour notice to vacate.

¹1997 Op. Va. Att'y Gen. 22, 23.

²*Id.* (citing § 14.1-105, predecessor statute to § 17.1-272).

³Section 17.1-272(C).

⁴For purposes of clarification, it is my opinion that service of the notice to vacate (to which § 8.01-470 requires that a copy of the writ of possession be attached) is equivalent to *service* of the writ of possession; thus, only one \$12 charge per person for such service is allowable. *Compare* 1987-1988 Op. Va. Att'y Gen. 128, 129 (concluding that motion for judgment and notice of motion for judgment are to be considered as single process and one fee charged for their service).

⁵For example, where a tenant vacates the premises as a result of receiving the notice to vacate, making it unnecessary for the sheriff to execute the writ of possession (assuming the sheriff is so apprised).

⁶Because it is my opinion that only one \$12 fee may be charged for serving the notice to vacate (with the writ of possession attached to the notice), it is unnecessary to address your inquiry concerning a \$24 fee for such service. See *supra* note 4.

⁷Section 8.01-293 authorizes certain persons to serve process and includes sheriffs and private process servers. Note that only a sheriff, as opposed to a private process server, may execute a writ of possession. See § 8.01-293(B).

⁸1992 Op. Va. Att'y Gen. 26, 28.

⁹1995 Op. Va. Att'y Gen. 54, 55 (commenting on increase to \$12 for sheriff's fee for service of all papers, except those returnable out of state, effective July 1, 1995).

¹⁰See 1996 Op. Va. Att'y Gen. 134, 135 (statutes relating to same subject should be considered *in pari materia*).