

CIVIL REMEDIES AND PROCEDURE: ACTIONS - UNLAWFUL ENTRY AND DETAINER — EXECUTIONS AND OTHER MEANS OF RECOVERY.

Officer to whom writ of possession has been delivered in unlawful detainer action must provide defendant 72-hour notice of intent to execute writ, notwithstanding court's 'immediate possession' direction on writ.

The Honorable John R. Newhart

Sheriff for the City of Chesapeake

May 20, 1999

You ask what constitutes immediate possession under § 8.01-129 of the *Code of Virginia*.

You state that, in unlawful detainer actions, the office of the sheriff has been receiving writs of possession on which the courts have written "immediate possession." Your office has been posting a seventy-two hour notice to vacate and proceeding with the eviction as soon as possible following this period. You question whether this procedure is consistent with § 8.01-129.

Section 8.01-129 provides for an appeal to the circuit court from a judgment of a general district court in a proceeding for unlawful entry and detainer.¹ The appeal must be taken and the required security posted within ten days of the date of the general district court judgment.² Section 8.01-129 further provides:

Unless otherwise specifically provided in the court's order, no writ of execution shall issue on a judgment for possession until the expiration of this ten-day period, except in cases of judgment of default for the nonpayment of rent where the writ of execution shall issue immediately upon entry of judgment for possession, if requested by the plaintiff.^[3]

Section 8.01-470 governs the issuance and execution of a writ of possession on a judgment for the recovery of specific property:

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 in accordance with § 8.01-296, with a copy of the writ attached.

The primary goal of statutory construction is to discern and give effect to the intent of the legislature.⁴ In determining legislative intent, statutes dealing with the same subject matter should be construed together in order to give effect to all acts of the legislature.⁵ While § 8.01-129 provides that the court is to issue the writ of execution "immediately upon entry of judgment for possession," the statute contains no language suggesting a legislative intent to override the seventy-two hour notice requirement imposed on officers by § 8.01-470. Both statutes thus should be given full effect to the extent possible. Accordingly, it is my opinion that,

notwithstanding the courts' "immediate possession" direction on a writ of execution issued under § 8.01-129, the officer to whom the writ of execution is delivered is to provide the seventy-two hour notice mandated by § 8.01-470.

¹Sections 8.01-124 to 8.01-130 comprise the unlawful entry and detainer statutes. A motion for judgment for unlawful entry and detainer may be heard in general district court if the summons is issued by a magistrate. Section 8.01-126. The case may be removed to the circuit court if the amount in controversy exceeds \$500. Section 8.01-127.

²Section 8.01-129.

³The exception clause for cases of judgment of default for the nonpayment of rent was added to the statute at the 1998 Session of the General Assembly. See 1998 Va. Acts ch. 750, at 1813.

⁴See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

⁵See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); see also *Op. Va. Att'y Gen.*: 1996 at 197, 198; 1993 at 135, 137; 1992 at 97, 99.