

FAIRFAX CIRCUIT COURT

Confession of Judgment

DEFINITION:

An action in which the defendant, debtor or attorney-in-fact (i.e. designated agent or the judgment debtor) provides written confession of a claim against the debtor/defendant and consents to entry of judgment in favor of the creditor/plaintiff without the formality, time or expense of an ordinary legal proceeding.

The judgment lien runs from the time it is docketed in the Judgment Lien docket of the clerk's office in which land of the defendant lies. Therefore it is extremely important that all the code requirements are satisfied. The information on the Confession of Judgment form must be neat, clear and legible.

NOTE: A suit, motion or action does not have to be pending in circuit court.

REFERENCE(S):

Virginia Code

- § 8.01-431 Judgment or decree by confession in pending suit
- § 8.01-432 Confession of judgment irrespective of suit pending
- § 8.01-433 Setting aside judgments confessed under 8.01-432
- § 8.01-433.1 Notice of confession of judgment provision
- § 8.01-434 Lien of such judgments
- § 8.01-435 Who may confess judgment / Substitute attorney-in-fact
- § 8.01-436 Form of Confession of judgment
- § 8.01-437 Endorsement of clerk thereon
- § 8.01-438 When judgment confessed by attorney-in-fact copy to be served on judgment debtor
- § 8.01-440 Docketing and execution
- § 8.01-441 When judgment confessed by virtue of power of attorney invalid
- § 8.01-461 Abstracts of Judgments
- § 17.1-240 Recording by micro photographic or electronic process
- § 17.1-249 General indexes for clerks' offices; daily index
- § 17.1-275(A14) Fees collected by clerks of circuit courts; generally
- § 17.1-279 Additional fee to be assessed by circuit court for information technology

REFERENCE(S): *(Continued)*

Attorney General Opinions

- AG opinion to Crouch, dated May 13, 1977 (1977, pages 76-77)
RE: more than one note of debtor to creditors
- AG opinion to Barry, dated Oct. 27, 1986 (1986, pages 86-87)
RE: non-lawyers & law firms capable of confessing judgment
- AG opinion to Barry, dated June 29, 1990 (1990, pages 27-29)
RE: requirement to note in judgment lien docket failure to execute within 60 days
- AG opinion to Barry, dated Nov. 14, 1991 (1991, pages 24-26)
RE: inclusion of attorney fees
- AG opinion to Frey, dated Oct. 17, 1997 (1997, pages 24-27)
RE: inclusion of attorney fees and writ of execution
- AG opinion to Frey, dated Nov. 23, 1999 (1999, pages 27)
RE: whether attorney-in-fact may appoint another party to act in his stead by power of attorney

FEES:

- Filing fee based on amount of judgment (See Current Civil Fee Schedule)
<http://www.fairfaxcounty.gov/courts/circuit/pdf/CCR-A-20.pdf>
 - Sheriff's service fees if applicable
- Substituting Attorney-in-Fact (See Current Land Records Fee Schedule)
<http://www.fairfaxcounty.gov/courts/circuit/pdf/CCR-A-50.pdf>

WHERE TO FILE:

Circuit Court Clerks Office
Civil Intake Division 3rd Floor
4110 Chain Bridge Road
Fairfax, VA 22030

FILING REQUIREMENTS:

Required Documents

NOTE: Confessions of Judgment must be filed by 3:00 p.m. to allow adequate time for docketing by end of business day.

- Original signed Promissory Note
 - Promissory note must contain (in bold-face print) “**IMPORTANT NOTICE**” as provided in Code 8.01- 433.1. (Note: We will accept no less than 8-point bold type.)
 - Note must specifically name the “attorney-in-fact” with the authority to confess judgment, per code.
 - Note must specifically authorize confession of the judgment in the Circuit Court of Fairfax County. “Any County or any Circuit Court in Virginia” is not acceptable. § 8.01-435
- A completed Confession of Judgment form.
 - Attorney’s own form may be used only if all information is provided and it is neat, clear and legible.
- Identification must be presented by the individual or Attorney-in-Fact Confessing the Judgment.

PROCESS:

Filing a Confession of Judgment

NOTE: Confessions of Judgment must be filed by 3:00 p.m. to allow adequate time for docketing by end of business day.

- A Confession of Judgment is filed in the Clerks Office “in-person” or by the “attorney-in-fact”.
- The promissory note and related documents are reviewed. The documents are **not** “file” stamped.
- Clerk circles the name of the attorney-in-fact on the original promissory note and writes “confessed” with the date and clerk’s initials in the margin.
- The person confessing judgment presents proof of identification and signs the confession form in the clerk’s presence.
- Clerk checks the information on the promissory note and the Confession of Judgment document and compares the names of the debtor(s), parties confessing judgment and creditor(s) to ensure spelling is consistent.

NOTE: The judgment may be confessed against select debtors even if multiple debtors are named in the note, also the debtor may confess judgment upon himself.

- Clerk makes a copy of the Confession of Judgment for the attorney-in-fact (this copy **cannot** be certified).
- Civil CL case number is assigned and documents placed in new civil case file.
- Clerk receipts the filing fee and service fees; places the original receipt in the file and provides the attorney-in-fact with a copy.
- The Clerk is required to docket the judgment the same day in the judgment lien index in accordance with §8.01-440.
- Upon docketing the judgment the Clerk prepares a Clerk's Order and service on the Judgment Debtors. Service is prepared for Sheriff's Service or Private Process Service.
- Collection on the Judgment may proceed 21 days after service is made on the debtor.

Filing a Request for Alias Service on a Confession of Judgment

- The Alias service must be requested within 60 days of the *entry date of the Clerk's order*.
- A praecipe requesting Alias service is required (if there is a change of address, the new address must be reflected in the praecipe).
- Also, two (2) copies of the Confession form must be attached to the request. Copies of the original Confession form can be obtained from the case file located in the Circuit Court File Room.
- The Clerks Office will prepare service and an Amended Final Order identical to the original Confession of Judgment order with the exception of a change in the date and the address if that is the reason for the request.
- Prepared Alias Service on Confession of Judgment is then taken to Sheriff or Mailed.

Motion to Set Aside the Confession of Judgment

The debtor/defendant may make a Motion to Set Aside or reduce the judgment.

- Debtor must make such motion within twenty-one (21) days of receiving notice.
- Debtor must provide creditor with notice of Motion to Set Aside or reduce judgment.
- Debtor must schedule a Friday hearing on the 10:00 a.m. Friday Motions Docket.
 - Debtor must file a Friday Motions Day Praecipe for a specific Friday.

If Motion to Set Aside is Granted by the Court:

- The court order must direct the clerk to record it in the judgment lien index.
- Contested case proceeds as any other civil complaint case.
- Filing fees are required and a new Civil Action (CL) case is opened.
 - Filing Fees are required for the new civil action based upon the amount of the Judgment. (SEE – Current Fee Schedule)

<http://www.fairfaxcounty.gov/courts/circuit/pdf/CCR-A-20.pdf>

Substituting Attorney-In-Fact

Pursuant to § 8.01-435 the payee, obligee, or person otherwise entitled to payment under any note or bond may appoint a substitute for any attorney-in-fact in an instrument appointing the substitute.

NOTE: The clerk's office has no form

- Such instrument shall be recorded and indexed in the Land Records Division of the clerk's office where the judgment is to be confessed.
- A separate instrument for each Confession of Judgment/Promissory Note must be filed in Land Records.
- Within 10 days after the instrument appointing the substitute attorney-in-fact is recorded, the person appointing the substitute attorney-in-fact shall send notice of the appointment by certified mail to the debtor's last known address as it appears in the records of the person appointing the substitute attorney-in-fact.
- Confession of Judgment/Promissory Note may be filed any time after the substitute attorney-in-fact instrument has been recorded. Must use Fairfax County Circuit Court Confession of Judgment form (link below).

<http://www.fairfaxcounty.gov/courts/circuit/pdf/confession-of-judgment-form.pdf>

Required Documents

To file a Substitute Attorney-in-Fact: (File in Land Records Division)

- Instrument appointing substitute attorney-in-fact
 - Instrument must contain:
 - Name of Judgment Creditor
 - Name of Judgment Debtor
 - Judgment Principal
- Filing Fee (See Current Land Records Fee Schedule)

<http://www.fairfaxcounty.gov/courts/circuit/pdf/CCR-A-50.pdf>

Additional Required Documents

When filing a Confession of Judgment: (File in Civil Intake Division)

In addition to the required documents for filing a Confession of Judgment you will need:
(SEE Page #3 - Confession of Judgment Filing Requirements)

- Certified copy of substituted attorney-in-fact instrument recorded in Land Records