

Virginia

Regulatory Hot Tip 2013 –2

Professional Insurance Agents Association of Virginia and DC, Inc.

WHEN THE SHERIFF PUSHES THROUGH YOUR OFFICE DOOR, WILL YOU BE READY?

Though we wrote a similar article in 2005 on this issue, we thought it might be useful to revisit the information and provide you with an update.

So there you are, sitting at your desk, and in walks the sheriff or a process server (for purposes of this article we will refer to both as a “Server”). Process server is merely a fancy name for a private agency who hires individuals that deliver legal documents to folks like you. What do you do after you pick yourself up from the floor besides popping an Aleve?

(i) Don’t shoot the messenger! The Server is merely doing his or her job. There is no point in getting angry with the Server.

(ii) Don’t panic! You need to be on your game at times like this, but there is no reason for you to panic. Importantly, you need to be very alert during the next stage of the process of being served.

(ii) Look at the documents carefully before accepting service! First you need to make sure that the paperwork is indeed intended for you and/or your business. Sometime the documents, be they a subpoena, complaint or some other document, name the wrong corporation or party, or includes an error in the corporate or party’s

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name. Keep in mind that the Server could actually be at the wrong address or have the wrong information; for example, is the paperwork intended for a prior tenant?

In other words, make absolutely sure that you should be receiving these papers. So before you agree to accept, ask the Server to show you where your name is found and how it is listed---look at the documents carefully. A good Server will certainly give you that courtesy. You can refuse service if there is a mistake on the face of the documents! This refusal should be done in consultation with your attorney. It is a good idea to carefully explain to the Server why you can't accept service so he can note the nature of your refusal to accept service.

You should also be aware that there are certain statutory agents in Virginia that are permitted to accept service on your behalf under certain circumstances, such as the Department of Motor Vehicles and the Clerk of the Virginia State Corporation Commission. Under the proper conditions, service on any of these statutory agents can be deemed proper service on you.

(iv) But, assume that it is indeed your name or your business's name on the papers, found in black and white. Then, in consultation with your attorney, you should accept service. The Server may request that you sign and date something to indicate that you accepted service. The Server should always give you a complete copy of all of the documents being served before the Server leaves.

The issues surrounding acceptance or rejection of service as well as actually having a Server physically come to your office are some of the reasons that some businesses hire a registered agent apart from themselves, to avoid having a Server show up at their place of business and disrupt the day-to-day flow. That is a big part of a registered agent's role for a business, accepting service of process.

(v) Review everything in the pile. Knowing that it might at first blush appear to be gobbledygook, you do need to familiarize yourself with what is in the paperwork. As registered agent for many different businesses, when our firm receives service, we initially: (i) look for the return date (when a response is due or when you need to appear in court), (ii) note the exact location of the court where you need to appear or the address where documents are to be returned if documents are being requested and (iii) highlight this information in an email to our clients (if you are accepting service, make a note of this information where you can refer to it again as needed). Our firm follows all email service correspondence (or telephone call if they do not respond to an email) by sending the documents in a fashion that the client requests, be it U.S. mail or overnight delivery. We always remind our clients that these are time sensitive documents and must be handled accordingly.

(vi) Diary any deadlines or due dates. Generally, upon receipt of served documents, some action is required of you: your presence, documents from your file, etc., and whatever is being requested is required to be delivered to a certain place at a certain time which is listed in the paperwork.

For example, if you are served with a warrant-in-debt for a General District Court case, there will be a return date noted on the papers, which means that you or your attorney must appear in the General District court listed in the warrant on that date to respond to the allegations. In other circumstances, you may be served with a subpoena for document production to a certain party and at a certain place. Failing to deliver the requested information by that date could result in you having to go to court to explain why you did not comply with the subpoena, or, even worse, having judgment entered against you.

(vii) Responding to Service. If a statutory agent or your registered agent accepts service on your behalf, the clock for responding starts to run when that agent is served, which will probably be a different date than when you actually receive the paperwork from the agent. Make sure that you note on the paperwork when the statutory/registered agent received the documents on your behalf if that date is different than when you physically received the documents.

(viii) Be responsive to communications from your external registered agents. As I said, some folks use attorneys, other permitted individuals, or limited liability corporations as their registered agent. Always make sure that your registered agent knows to notify you immediately (by email or telephone, your preference) when they receive service on your behalf. A quick turnaround is imperative due to the time sensitive nature of documents that are usually being served. Oftentimes, your registered agent may be your business attorney and not a litigator who would handle litigation. A copy of the documents should be forwarded to the appropriate individual in your office designated to process such information. They should know who else needs to receive a copy of the served paperwork. In fact, everyone in your shop should be aware of the procedure in case they are alone and the documentation comes in from your registered agent. If you do not have a procedure in place, create one in order to institute a procedure for handling service papers within your office. Remember, failure to respond in a timely manner is often the biggest risk associated with being served.

(ix) Contact your attorney. In most cases, the next logical step is to contact your attorney for advice on exactly how to proceed, if you did not contact them when the Server appeared at your office. If you do not have an attorney or do not wish to consult an attorney at this point, you should consider making contact with the Clerk of the court issuing the documents for any specific instructions connected with the response, but at any rate, make certain that you meet any dates that are discussed in the served papers. Again, don't delay!

(xi) Prepare for your response. Freely discuss with your attorney the type of information that you need to collect if the subpoena requests documents, and/or what the attorney needs from you to file a response to the court. If the response requires your physical presence consider asking your attorney to accompany you as your representative. One of the first things we learned in law school is that a person should

never represent themselves in any matter. You need to respond to the subpoena exactly as requested whether it be for you to attend, enter a written response or produce documents. Keep in mind that it is your responsibility to arm your attorney with enough information so that he or she can prepare an adequate response to the service.

Depending upon the advice that your attorney has for you, he or she may recommend that the attorney be permitted to file a *Motion to Quash* on your behalf. This sounds like a game played with a racket, but that is Squash and this is Quash. It is a motion that tells the court for the reasons stated in the document, you do not need to respond by producing documents or appear in court as the case may be. This is a legal pleading and the facts and circumstances of each situation will dictate whether it is appropriate, but I wanted to make sure that you are aware that this option might be available to you under certain legal parameters.

Much of what I have written in this hot tip you may already know, but when you are confronted during the hustle and bustle of everyday work life with a Server, I do not want you to find yourself surprised when they push through your office door holding a stack of papers for you. We live in a litigious society and with the problems related to the economy, we find more and more people are resorting to the legal arena for settling disputes. Remember, there is no reason for panic. The steps outlined above will model a way for you to respond timely and effectively with the least obtrusion to your business.