

Code of Virginia

Title 8.01. Civil Remedies and Procedure

Chapter 17. Judgments and Decrees Generally

**§ 8.01-428-D-FRAUD UPON THE COURT****§ 8.01-428. Setting aside default judgments; clerical mistakes; independent actions to relieve party from judgment or proceedings; grounds and time limitations.**

A. Default judgments and decrees pro confesso; summary procedure. Upon motion of the plaintiff or judgment debtor and after reasonable notice to the opposite party, his attorney of record or other agent of the court may set aside a judgment by default or a decree pro confesso upon the following grounds: (i) fraud on the court, (ii) a void judgment, (iii) on proof of an accord and satisfaction, or (iv) on proof that the defendant was, at the time of service of process or entry of judgment, a servicemember as defined 50 U.S.C. § 3911. Such motion on the ground of fraud on the court shall be made within two years from the date of the judgment or decree.

B. Clerical mistakes. Clerical mistakes in all judgments or other parts of the record and errors therein arising from oversight or from an inadvertent omission may be corrected by the court at any time on its own initiative or upon the motion of any party and after such notice, as the court may order. During the pendency of an appeal, such mistakes may be corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending such mistakes may be corrected with leave of the appellate court.

C. Failure to notify party or counsel of final order. If counsel, or a party not represented by counsel, who is not in default in a circuit court is not notified by any means of the entry of a final order and the circuit court is satisfied that such lack of notice (i) did not result from a failure to exercise due diligence on the part of that party and (ii) denied that party an opportunity to pursue post-trial relief in the circuit court or to file an appeal therefrom, the circuit court may, within 60 days of the entry of such order, modify, vacate, or suspend the order or grant the party leave to appeal. Where the circuit court grants the party leave to appeal, the computation of time for noting and perfecting an appeal shall run from the entry of such order, and such order shall have no other effect.

D. Other judgments or proceedings. This section does not limit the power of the court to entertain at any time an independent action to relieve a party from any judgment or proceeding, or to grant relief to a defendant not served with process as provided in § 8.01-322, or to set aside a judgment or decree for fraud upon the court.

E. Nothing in this section shall constitute grounds to set aside an otherwise valid default judgment against a defendant who was not, at the time of service of process or entry of judgment, a

servicemember as defined in 50 U.S.C. § 3911.

1977, c. 617; 1991, c. 39; 1993, c. 951; 2005, cc. [333](#), [909](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired. 5/29/20

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