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## Glossary of Terms Commonly Used in Court

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**Abstract of judgment** - An official copy of the contents of a civil judgment.

**Abstract of conviction** - An official copy of the contents of a criminal or traffic verdict and sentence.

**Accord and Satisfaction** - An agreement between the parties whereby a claim or charge may be dismissed by the court upon a payment or other consideration given to the person injured.

**Accused** - The person against whom an accusation is made; one who is charged with a crime or traffic infraction.

**Action** - Proceeding in a court by which one party prosecutes another for the enforcement or protection of a right, or the redress or prevention of a civil wrong.

**Adjudicate** - To pass on judicially, to decide, settle, or decree.

**Admissible** - Pertinent and proper to be considered in reaching a decision. Refers to the evidence considered in determining the issues to be decided in any judicial proceeding.

**Adversary proceeding** - One having opposing parties; contested, as distinguished from a hearing in which only one party appears.

**Affiant** - The person who makes and signs an affidavit.

**Affidavit** - A written, printed, or videotaped declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having authority to administer such oath.

**Affirm** - To ratify, make firm, confirm, establish, reassert. Alternate procedure to swearing under an oath.

**Aggravating Factor** - A fact or circumstance associated with a criminal act that makes it more serious or injurious.

**Aggrieved party** - One whose legal right is invaded by an act complained of.

**Alleged** - Claimed; asserted; charged.

**Alias** - "Otherwise called," indicating one was called by one or the other of two names.

**Amend** - To change.

**Answer** - A pleading by which defendant in civil suit at law endeavors to resist the plaintiff's demand by stating facts. The defendant may deny the claims of the plaintiff, or agree to them, and may introduce new matter.

**Appeal** - Taking a case which has been decided in a court of inferior jurisdiction to one of superior jurisdiction, for the purpose of obtaining a review.

**Appeal bond** - A type of bond set by the court and filed by the appellant who had a civil judgment entered against him to forestall issuance of execution until the cause can be passed upon and disposed of by the superior court.

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**Appellant** - The party who takes an appeal from one court to another.

**Appellee** - The party who must respond to the appellant.

**Arraign** - Arraignment of an accused consists of calling upon him by name, reading to him the charges in the arrest documents, demanding of him whether he pleads guilty or not guilty or, in misdemeanors, nolo contendere, and entering his plea. This hearing may be combined with right to counsel hearing.

**Arrest** - To deprive a person of his liberty by legal authority.

**Attachment** - The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used either for the purpose of bringing a person before the court, of acquiring jurisdiction over the property seized, to compel an appearance, to furnish security for debt or costs, or to arrest a fund in the hands of a third person who may become liable to pay it over.

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**Bail** - The release of a person from legal custody by a written agreement that he shall appear at the time and place designated and submit himself to the jurisdiction of the court and observe the requirements set forth in the recognizance.

**Bail forfeiture** - Order by the court that the surety pay to the court the amount of security pledged for failure of an accused to comply with the requirements of the bond. The court in turn pays the funds to the jurisdiction whose laws were violated.

**Bill of particulars** - A written statement or specification of the details of the demand for which an action at law is brought.

**Bond** - A certificate or evidence of a debt with a sum fixed as a penalty, which contains a written agreement binding the parties to pay the debt, conditioned, however, that the payment of the penalty may be avoided by the performance of certain acts by one or more of the parties.

**Bondsman** - A professional surety who has entered into a bond as surety.

**Breach** - The breaking or violating of a law, right, or duty, either by commission or omission.

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**Capias** - A type of arrest document issued by the court charging the offender with a violation of a court order or court process of contempt of court.

**Child in Need of Services** - A child whose behavior, conduct, or condition poses a risk of harm to himself or another person.

**Child in Need of Supervision** - A child who is habitually absent from school or who abandons his family or guardian in a manner that requires intervention by the court to protect the child's welfare.

**Civil action** - A case brought for determination enforcement or protection of a right, or redress; or prevention of a wrong; every action other than a criminal action.

**CCRE** - Central Criminal Records Exchange; an abbreviation of the name of the report prepared by court clerk's offices and sent to the State Police.

**Codicil** - An amendment to a will. Wills are handled by the circuit courts.

**Commissioner in Chancery** - A neutral attorney appointed by the court to gather facts, conduct depositions, and create a report to the court setting forth the facts along with recommendations regarding the case. Commissioners in Chancery are appointed by circuit courts for certain circuit court cases.

**Complaint - criminal** - A charge brought before a judicial officer having jurisdiction, that a person named has committed a specified offense.

**Commonwealth's Attorney** - The name of the public officer who is elected in each city or county to conduct criminal prosecutions on behalf of the state.

**Contempt of court** - Any act which is calculated to embarrass, hinder, or obstruct

the court in administration of justice, or which is calculated to lessen its authority or its dignity.

**Continuance** - A postponement of further proceedings in a hearing, trial, or other judicial proceeding until a later date.

**Contract** - A legally enforceable agreement between two or more parties made orally or in writing.

**Contributory Negligence** - A legal doctrine which states that, in a civil action based on negligent conduct, the plaintiff may not recover from the defendant if the plaintiff was also negligent.

**Convict** - To find a person guilty of a criminal charge.

**Counterclaim** - A claim presented by a defendant in opposition to deduction from the claim of the plaintiff whether or not it arises from the matters in question in plaintiff's action.

**Court order** - A command or mandatory direction of a judge which is made during a case. Also includes a command of the judge which establishes courtroom or administrative procedures.

**Crime** - A positive or negative act in violation of penal law; an offense against the state classified either as a felony or misdemeanor.

**Cross-claim** - An expansion of the original action in which a claim is brought by a defendant against a third party not originally sued by the plaintiff in the same action or against a co-defendant or both concerning matters in question in the original action.

**Cross-examination** - The examination of a witness upon a trial or hearing, or upon taking a deposition, by the party opposed to the one who put him on the witness stand to testify.

**Custody** - The detainment of a person by virtue of lawful process or authority; actual imprisonment.

**Custody case** - In juvenile and domestic relations district court or circuit court, the type of proceedings in which the court determines which parent, other adult or agency shall have physical control over a child.

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**Damages** - Money awarded by the court to a person harmed by the unlawful or negligent act of another.

**Decree** - An order of the court in an equity matter. Decrees are issued by circuit courts.

**Defendant** - The party against whom relief or recovery is sought in a court action or suit. Sometimes used to designate the accused in criminal or traffic cases.

**Default** - An omission of that which ought to be done. Failure to act. Also, failure of the defendant in a civil case to appear and contest the claim.

**Demurrer** - A motion to dismiss a case because the claim is legally insufficient.

**Deposition** - The testimony of a witness taken upon oral examination, after notice to the adverse party, not in open court, but in pursuance of a notice to take testimony issued by the party wanting the deposition. The adverse party has the right to attend and cross-examine. Testimony is reduced to writing and duly authenticated, and intended to be used in connection with the trial of an action in court. These are used in circuit court.

**Deputy clerk** - A subordinate employee to the clerk who is empowered to act in the place of the clerk in the official business of the court.

**Detention** - The holding of a person in custody or confinement.

**Detinue** - A form of action which exists for the recovery of personal property (or their alternative value) from one who acquired possession together with damages for the detention.

**Direct Examination** - The initial questioning of a witness by the party who called the witness.

**Disclaim** - To refuse or deny.

**Discovery** - Procedures by which one party to a lawsuit may obtain information relevant to the case which is held or known by the other party.

**Dismissal** - An order disposing of an action, suit, etc., without trial.

**Distress** - The creation of a lien on or seizure of personal property belonging to a tenant to ensure collection of rent.

**Disposition** - Determination of the final arrangement or settlement of a case following judgment.

**Divorce** - Legal dissolution of a marriage by the court. Divorce cases are handled by circuit courts.

**Docket** - A record of all cases and actions scheduled to be heard in court, whether or not the matter is actually heard in a court on a particular day.

**Docket book** - The chronological collection of all docket sheets of a court.

**Docket sheet** - A form containing the docket. More than one docket sheet may be needed to contain one day's docket.

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**Elements** - Facts or circumstances that define a crime, each of which must be proven beyond a reasonable doubt in order to result in a conviction.

**Eminent Domain** - The power of the government to take private property for public use, with compensation. The procedure for taking property under eminent domain is called condemnation, and is reviewed by circuit courts.

**Enjoin** - To order a person to cease performing a certain act. Circuit courts may enjoin a person from acting in certain cases.

**Equity** - A body of civil law concerned with doing justice where money is inadequate or inappropriate as a remedy. Examples of equitable actions include divorce and injunctions. Equity cases are handled by circuit courts.

**Escrow** - Money or other property held upon agreement of the parties by a neutral third party, and released according to the agreement upon the fulfillment of its terms.

**Estate** - The property owned by a person, in his or her name, at the time of the person's death. Estates and wills are handled by circuit courts.

**Eviction** - The legal process by which one recovers land or a dwelling from another.

**Evidence** - All the means by which a matter of fact, the truth of which is submitted for investigation, is established or disproved.

**Execute** - To enforce a civil judgment by seizure and either transfer or liquidation of the judgment debtor's assets through post-trial judicial process.

**Executor** - A person named in a will who administers the estate of a deceased person. An executor must "qualify" before the circuit court where the will is filed.

**ex parte** - A judicial proceeding, order, injunction, etc., is said to be ex parte when it is taken or granted at the instance and for the benefit of one party only, and without notice to, any person adversely interested.

**Expungement** - A process by which a record, or a portion thereof, is officially erased or removed after the defendant is not convicted. Criminal record expungement requests are heard by circuit courts, and, under certain conditions, by the general district court.

**Extradition** - The surrender by one state to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender.

**Execution of judgment** - The process of putting into effect the judgment of the

court in civil cases; usually by garnishment or levy, through post-trial, statutory enforcement procedures requiring the forcible removal and disposal of the property of the losing party.

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**Felony** - A crime punishable by death or confinement in the penitentiary. See § 18.2-10 for classification of felonies and the punishment for each classification.

**Fiduciary** - A person who has a legal and ethical duty to act in the best interests of another person. Examples include an executor or a guardian.

**Finding** - The result of the deliberations of a court.

**Forfeiture** - A deprivation or destruction of a property right in consequence of the nonperformance of some obligation or condition.

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**Garnishee** - One garnished; a person against whom process of garnishment is issued; one who has money or property in his possession belonging to a judgment debtor, or who owes the judgment debtor a debt, which money, property, or debt is attached in his hands, with notice to him not to deliver or pay over to the judgment debtor the amount claimed in the garnishment summons until the judgment in the suit is entered.

**Garnishment** - A statutory post-judgment proceeding in which a third party who holds property, money or credits belonging to the judgment debtor is required to surrender such property, money or credits (to the extent of the judgment) to the court or sheriff for application against the judgment awarded against the judgment debtor.

**Grand Jury** - A special type of jury assembled to investigate whether criminal charges should be brought. Grand jury proceedings are supervised by circuit courts.

**Guardian *ad litem*** - A lawyer appointed to defend or prosecute a case on behalf of a party who is incapacitated by a young age or other condition.

**Guilty** - Responsible for committing a criminal offense or a traffic infraction. The word used by an accused in pleading to the charges when he confesses to committing the crime of which he is charged. It is also used by the judge if he finds that the accused committed a criminal offense or a traffic infraction.

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**Habeas corpus** - A writ commanding the person holding a prisoner in custody to bring the prisoner before the court for a determination of whether the prisoner is restrained of his liberty by due process. It is not used to determine the guilt or innocence of the prisoner.

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**Incarceration** - Imprisonment; confinement in a jail or penitentiary.

**Indemnify** - To shift responsibility for a loss from the person held legally responsible to another party.

**Indictment** - A formal accusation by a grand jury that charges a person with a crime. Indictments are used to bring more serious charges and are used in circuit court only.

**Indigent** - In a general sense, one who is needy and poor, or one who has insufficient property to furnish him a living nor anyone able to support him or to whom he is entitled to look for support.

**Information** - A formal accusation by a prosecutor setting forth criminal charges against a person. An information is used in circuit court.

**Insanity Plea** - A claim by a defendant that he or she lacked the mental capacity at the time of the crime and should not be held responsible for it.

**Interrogatories** - A set of series of written questions drawn up for the purpose of being asked of a party, a garnishee, or a witness or other party to be answered under oath.

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**Jail** - A place of confinement for persons awaiting trial and for persons sentenced to shorter terms of confinement for misdemeanors.

**Judgment** - A final decision and order of the court.

**Judgment creditor** - The person who wins an award against some other person in a civil suit.

**Judgment debtor** - The person against whom an award is made in a civil suit.

**Jurisdiction** - The authority of a court or other governmental agency to adjudicate controversies brought before it.

**Jury** - A body of persons selected from the community to hear evidence and decide a criminal or civil case. Juries are used only in circuit court.

**Juvenile** - A person under the age of 18.

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**Lack of jurisdiction** - The phrase may mean lack of power to act in a particular manner or to give certain kinds of relief. It may consist of a court's total lack of power to act at all, or lack of power to act in particular cases because the parties have not complied with conditions essential to the exercise of jurisdiction.

**Legal Aid** - Legal services are available in some areas to persons unable to afford an attorney. Legal aid offices handle only civil matters.

**Lesser Included Offense** - A less serious criminal charge that includes some of the same elements as the original charge.

**Letters Testamentary** - A document issued by the circuit court that gives an executor the power to take control of and distribute a deceased person's property.

**Levy** - A seizure; the setting aside of specific property from the general property of the debtor and placing it under the control of the sheriff until it can be sold and applied to the payment of the execution.

**Lien** - A charge or security or encumbrance upon property.

Liquidated damages - The term is applicable when the amount of the damages has been ascertained by the judgment in the action, or when a specific sum of money has been expressly stipulated by the parties to a bond or other contract as the amount of damages to be recovered by either party for a breach of the agreement by the other. In truck weight and length violations, liquidated damages are determined by a statutory formula.

**Litigant** - A party to a lawsuit; one engaged in litigation.

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**Magistrate** - A judicial officer with limited powers who handles certain preliminary matters such as issuing warrants, determining bail, issuing emergency protection orders and temporarily committing people to mental institutions.

**Mechanic's lien** - A claim created by law for the purpose of securing priority of payment of the price or value of work performed and materials furnished in building or repairing a structure or personal property.

**Mediation** - A form of dispute resolution that takes place outside of court where a neutral third party helps the parties reach a settlement.

**Minor** - An infant or person who is under the age of legal competence. One under 18.

**Misdemeanor** - Offenses punishable by fine not exceeding \$2,500 or being jailed for a term not exceeding 12 months or a combination of fine and jail within these limits.

**Mistrial** - A trial that is cut short and does not result in a verdict due to a procedural error or other problem. The trial must then start over from the beginning.

**Mitigating Factor** - A fact or circumstance associated with a criminal act that, while not an excuse or justification, may reduce its severity and result in a lesser sentence.

**Modification** - A change, addition, or deletion that alters but does not change the basic subject matter.

**Motion** - A request made to the judge by a litigant or other person connected with the case for a ruling or order.

**Motion for judgment** - A pleading filed by a plaintiff to start a civil case which sets forth the basis of plaintiff's claim and request's judgment in plaintiff's favor.

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**Negligence** - Failure to exercise that degree of care which a reasonable person would have exercised given the same circumstances.

**Next Friend** - A person who brings an action or handles matters for the benefit of a minor or a person who is legally incompetent, without formal appointment by the court.

**Nolle prosequi** - A formal motion by the prosecuting officer in a criminal action, which states that he "will no further prosecute" the case. The court would grant the motion in order to dispose of the case.

**Nolo contendere** - "I will not contest it". The name of a plea in a misdemeanor case or traffic infraction proceeding, having the same legal effect as a plea of guilty, so far as regards all proceedings in the case, and on which the defendant may be sentenced.

**Notary** - A public officer whose function it is to administer oaths; to attest and certify, certain classes of documents; to take acknowledgments, and certify the same.

**Not Guilty** - A finding or verdict in a criminal case wherein the judge or jury determines that the Commonwealth has not proven that the defendant is guilty of a charge. Also the plea that may be made by a defendant to assert that he or she is not guilty and to demand that the Commonwealth prove its case.

**Not Guilty by Reason of Insanity** - A finding or verdict in a criminal case wherein the judge or jury determines that a defendant is not responsible for the act(s) due to mental incapacity at the time of the offense.

**Notice** - Formal notification of a legal proceeding or determination.

**Nunc pro tunc ("Now for then")** - An order which is retroactively effective.

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**Objection** - A protest or exception made by a party against an action by the opposing party.

**Ordinance** - The enactments of the legislative body of a local government.

**Ore tenus** - Oral. Used as a technical term to describe a hearing or pleading which is orally presented.

**Original jurisdiction** - Jurisdiction in the first instance; jurisdiction to take cognizance of a cause at its inception, try it, and pass upon the law and facts.

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**Parole** - In criminal law, a conditional release. If prisoner makes good, he will receive an absolute discharge from balance of sentence, but, if he does not, he will be returned to serve unexpired time.

**Partial payment** - Payment of a sum less than the whole amount originally due.

**Party** - An individual person or a legal organization such as a partnership or corporation.

**Perjury** - A criminal offense committed by giving a false statement given under oath.

**Personal recognizance** - Release of a defendant from jail or arrest by a judicial officer, upon the promise to appear in court without the necessity of posting bond but with some conditions imposed.

**Petition** - A formal request to a court to take a certain action on a matter.

**Plaintiff** - A person who brings an action; the party who complains or sues in a personal action and is so named on the record.

**Plea** - Statement made by the defendant either as to his guilt or innocence to the charge made against him.

**Pleadings** - The formal allegations by the parties of their respective claims and defenses, for the judgment of the court.

**Power of Attorney** - Authorization given by one person allowing another to take action on their behalf.

**Preliminary hearing** - The hearing given to an accused which is held by a judge, to ascertain whether there is evidence to warrant the binding over of the accused on the felony charge to the circuit court for further proceedings.

**Preponderance** - Greater weight of evidence, or evidence which is more credible and convincing to the mind.

**Prima facie** - Evidence good and sufficient on its face.

**Probable cause** - A reasonable ground for belief in the existence of facts warranting the proceedings complained of (e.g., probable cause to believe that a crime has been committed and that the person accused may have committed it).

**Probation** - In modern criminal administration, allowing a person convicted of some offense to remain free under a suspension of a jail sentence during good behavior and generally under the supervision or guardianship of probation officer together with other restrictions as the court may impose.

**Putative father** - The alleged or reputed father of an illegitimate child.

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**Quash** - The action of a court to deny, vacate, or make void a request on legal process, such as a subpoena.

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**Reasonable Doubt** - The degree of certainty beyond which the Commonwealth must prove its accusations in order to obtain a criminal conviction.

**Recognizance** - An obligation entered into by an accused before a court, with condition to do some particular acts, including to appear in criminal court as required, to keep the peace, to be of good behavior, and not to depart from the Commonwealth.

**Remand** - Sending a case back to the same court out of which it came for purpose of having some action taken on it there.

**Restitution** - The act of making good or giving equivalent for any loss, damage or injury.

**Return** - The act of a sheriff, constable, or other ministerial officer, in delivering back to the court a writ, notice, or other paper, which he was required to serve or execute (see EXECUTE in this Glossary), with a brief account of his doings under the mandate, the time and mode of service or execution, or his failure to accomplish it, as the case may be. Also the endorsement made by the officer upon the writ or other paper, stating what he has done under it, the time and mode of service, etc..

**Revocation** - The recall of some power, authority, or thing granted, or a destroying or making void of some deed that had existed until the act of revocation made it void.

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**Satisfaction** - The discharge of an obligation by paying a party what is due to him or what is awarded to him, by the judgment of a court or otherwise.

**Sealed** - A file that is physically closed from review. Also, a document containing a seal or the word "seal" next to the signer's signature.

**Search warrant** - An order in writing, issued by a judicial officer, in the name of the

state, directed to a sheriff, or other officer commanding him to conduct a search to aid an official investigation.

**Seizure** - To take into possession forcibly.

**Sentence** - The judgment formally pronounced by the judge upon the defendant after his conviction in a criminal prosecution, setting the punishment for the offense.

- **Suspended** - Postponing the execution of the sentence after it has been pronounced upon certain conditions.
- **Deferred** - Postponing the imposition of the sentence or finding for a period of time upon certain conditions. Does not operate as a suspension of sentence.

**Service of process-publication** - Service of a summons or other process upon an absent or non-resident defendant, by posting a notice on the courthouse door and, unless dispensed with by the judge, by publishing the same as an advertisement in a designated newspaper, with such other effort to give him actual notice as the particular statute may prescribe.

**Service of process-personal** - Service of a summons or other process made by delivering it in person to the person named, in the process.

**Service of process-substitute** - Service of a summons or other process by any means authorized by statute other than by personal service. These include service by publication, posted service, service on alternative individual as authorized by statute.

**Show cause rule** - A court ruling directing the recipient to appear and present to the court such reasons and considerations as one has to offer why the recipient should not be punished for violating a court order or legal process or for contempt of court.

**Subpoena** - A process to cause a witness to appear and give testimony, commanding him to appear before a court therein named at a time therein mentioned to testify for the party named under a penalty therein mentioned.

**Subpoena duces tecum** - A process by which the court, at the request of a party to an action, commands a witness who has in his possession or control some document or paper that is relevant to the pending controversy, to produce it at or before the trial.

**Substitute judge** - A lawyer authorized to hold court in the absence of the regular judge of a general district court or a juvenile and domestic relations district court.

**Suit in debt** - A civil action brought upon claim of non-payment of debt.

**Suit in detinue** - A type of civil case in which the plaintiff seeks to recover personal property from a defendant who acquired possession of the personal property lawfully, but allegedly does not have the right to keep it. In this kind of case, the plaintiff may ask for money damages, but is not required to.

**Summons** - A document notifying a defendant that an action has been instituted against him and that he is required to answer to it at a specific time and place.

**Surety** - One who undertakes to pay money or to do any other act in the event that another, called his principal, fails to perform as promised. In criminal cases, the accused is the principal.

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**Tenant Assertion and Complaint** - A complaint filed by a tenant against a landlord asserting that the landlord has failed to fulfill an obligation.

**Transcript** - A written, verbatim record of a legal proceeding. Generally, transcripts are created only in circuit court and in some administrative hearings.

**Trial de novo** - A new trial or retrial had in a circuit court in which the whole case is re-tried as if no trial whatever had been had in the district court.

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**Unlawful detainer** - The unjustified retention of the possession of lands by one whose original entry was lawful and of right, but whose right to possession has terminated and who refuses to vacate the premises. This type of action applies to renters.

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**Venue** - "Venue" designates the particular county or city within which a court with jurisdiction may hear and determine the case.

**Verdict** - The formal decision or finding of guilt or innocence made by a judge in a criminal case.

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**Waive** - To abandon, renounce, repudiate or surrender a claim, a privilege, a right, or the opportunity to take advantage of some defect, irregularity or wrong.

**Warrant in Debt** - A form used in general district court to seek recovery of money from another party.

**Warrant in Distress** - A form used in general district court to assert a claim to property held by another, as satisfaction of a debt or in lieu of performance of an obligation.

**Warrant of Arrest** - A written order issued and signed by a judicial officer directed to a law enforcement officer or some other person specially named and commanding him to arrest the body of a person named in it who is accused of an offense.

**Will** - A written document in which a person declares how his or her property should be distributed upon death. Wills are handled by circuit courts.

**Witness** - One who testifies to what he has seen, heard or otherwise observed and who is not a party to the action.

**Writ** - An order in writing in the name of the state, issuing from a court, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as the commencement of a suit or other proceeding or as incidental to its progress, and requiring the performance of a specified act, or giving authority and commission to have it done.

**Writ of Possession** - This is the writ of execution employed to enforce a judgment to recover the possession of land in an unlawful detainer action or personal property in a detinue action. It commands the sheriff to enter the land or seize the personal property and give possession of it to the person entitled under the judgment.

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