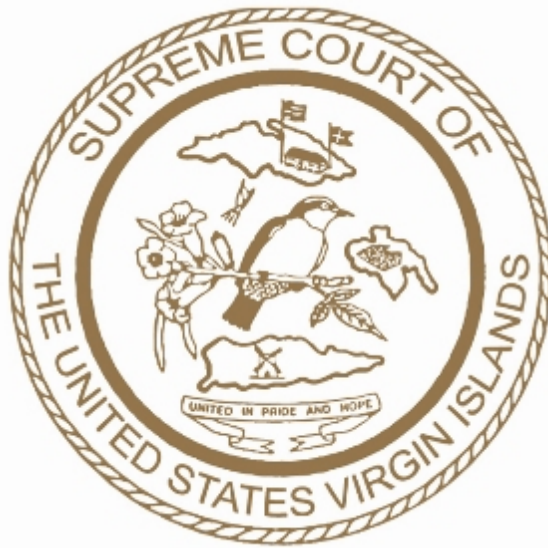


# SUPREME COURT OF THE VIRGIN ISLANDS



## VIRGIN ISLANDS LAW COMPONENT OUTLINE MATERIAL

Revised March 2018

### **MAILING ADDRESS**

Office of Bar Admissions  
Supreme Court of the Virgin Islands  
Post Office Box 590  
St. Thomas, VI 00804-0590

### **PHYSICAL ADDRESS**

Office of Bar Admissions  
Supreme Court of the Virgin Islands  
No. 161B Crown Bay  
St. Thomas, VI 00802

**Voice: (340) 774-2237**

**Fax: (340) 774-2258**

[www.visupremecourt.org](http://www.visupremecourt.org)

[bar.admissions@visupremecourt.org](mailto:bar.admissions@visupremecourt.org)

**VIRGIN ISLANDS LAW COMPONENT**  
**OUTLINE MATERIAL**

All rights reserved. These materials may be downloaded and printed, in whole or in part, without alteration, for noncommercial use only. These materials may not otherwise be reproduced in any form or by any means, electronic or mechanical, including photocopying, recording or by any informational storage system, nor may they be distributed, downloaded, modified, reused, reposted, retransmitted, disseminated, sold, published, broadcast or circulated or otherwise used or shared in any manner for commercial use, without express written permission from the Virgin Island Supreme Court Committee of Bar Examiners.

---

# TABLE OF CONTENTS

---

- I. Virgin Islands Government and Constitutional Law
- II. Legal Profession
- III. Virgin Islands Practice
- IV. Administrative Law
- V. Business Associations:
  - a. Corporations
  - b. Limited Liability
  - c. Partnerships
- VI. Domestic Relations
- VII. Wills

---

# VIRGIN ISLANDS GOVERNMENT & CONSTITUTIONAL LAW

---

## A. INTRODUCTION

The United States Constitution, including the protections in the Bill of Rights, do not apply directly to the U.S. Virgin Islands. Rather, some—but not all—provisions apply indirectly through the Revised Organic Act of 1954, codified at 48 U.S.C. § 1541 et seq. See *Malone v. People*, 53 V.I. 408, 417 n.4 (V.I. 2010). The Revised Organic Act is a federal statute that also serves as the *de facto* constitution for the U.S. Virgin Islands. See *Bryan v. Fawkes*, 61 V.I. 416, 427 (V.I. 2014). As such, the Revised Organic Act not only specifies which provisions of the United States Constitution apply to the U.S. Virgin Islands, but also is the equivalent of a state constitution, in that it serves as the basic charter of government and, in some cases, confers on Virgin Islanders greater protections than those required by the United States Constitution. See *Todmann v. People*, 57 V.I. 540, 546 (V.I. 2012).

Because federal constitutional law is comprehensively tested on the Uniform Bar Exam, the VILC does not test applicants on substantive law that has already been made fully applicable to the U.S. Virgin Islands through the Revised Organic Act (i.e. the First Amendment). Rather, the VILC will test applicants on the unique aspects of the Revised Organic Act, such as structure of the Virgin Islands government, as well as areas where the Revised Organic Act differs from the United States Constitution (such as by providing greater or lesser protections).

## B. THE VIRGIN ISLANDS GOVERNMENT

### 1. Legislative Branch

The legislative power and authority of the U.S. Virgin Islands is vested in the Legislature of the Virgin Islands, which consists of one house. See 48 U.S.C. § 1571(a). The members of the Legislature are known as senators, and the number of senators shall be as provided by Virgin Islands law. See 48 U.S.C. § 1571(b). The term of each senator is two years beginning on the second Monday in January following election. See 48 U.S.C. § 1572(a).

To be eligible to serve in the Legislature, an individual must be a United States citizen, have attained the age of twenty-one years, be a qualified voter in the U.S. Virgin Islands, been a bona fide resident of the U.S. Virgin Islands for at least three years preceding the date of election, and not been convicted of a felony or a crime involving moral turpitude (unless received a pardon restoring his or her civil rights). See 48 U.S.C. § 1572(b).

The Legislature possesses all powers inherent in legislative assemblies, including the power to establish its own rules, subpoena witnesses, conduct investigations, and administer oaths. See 48 U.S.C. § 1572(g).

---

## VIRGIN ISLANDS GOVERNMENT & CONSTITUTIONAL LAW

---

The Legislature may pass legislation on all rightful subjects not inconsistent with the Revised Organic Act or the laws of the United States made applicable to the U.S. Virgin Islands. See 48 U.S.C. § 1574(a). It may also issue bonds or other obligations on behalf of the Government of the Virgin Islands, and assess a customs duty on the importation of articles into the U.S. Virgin Islands for consumption therein. See 48 U.S.C. § 1574(b)(1), (f)(1).

A bill is passed by the Legislature if it was approved at a meeting, with a quorum present, by the affirmative vote of a majority of the senators present and voting. The number of senators that constitutes a quorum is not specified in the Revised Organic Act, but shall be determined by the laws of the Virgin Islands. See 48 U.S.C. § 1575(a).

### **2. Executive Branch**

The executive power of the U.S. Virgin Islands is vested in the Governor of the Virgin Islands. The Governor is elected jointly with the Lieutenant Governor, and serves a four-year term, beginning on the first Monday of January following the date of election. See 48 U.S.C. § 1591.

To be eligible to serve as Governor or Lieutenant Governor, an individual must be an eligible voter, a citizen of the United States and bona fide resident of the U.S. Virgin Islands for five consecutive years immediately preceding the election, and will be at least thirty years of age at the time of taking office. See 48 U.S.C. § 1591.

The Governor may, among other duties, exercise general supervision and control of all the departments, bureaus, agencies, and other instrumentalities of the Executive Branch; grant pardons; and appoint and remove all officers and employees of the Executive Branch, except as otherwise provided by law. See 48 U.S.C. § 1591.

The Governor may sign or veto bills passed by the Legislature. If the Governor disapproves of a bill, he or she must veto it within ten days (Sundays excepted), failing which it shall be deemed signed and become law. This period is extended to thirty days if the Legislature has adjourned. In the case of bills containing several items of appropriation of money, the Governor may exercise the line-item veto to disapprove of one or more parts of the bill while approving the other portions. See 48 U.S.C. § 1575(d).

If the Governor has vetoed a bill or exercised the line-item veto, the Legislature may override the veto and have the bill become law upon vote of two-thirds of its membership. See 48 U.S.C. § 1575(d).

### **3. Judicial Branch**

#### *a. Composition of Virgin Islands Courts*

---

## VIRGIN ISLANDS GOVERNMENT & CONSTITUTIONAL LAW

---

The Revised Organic Act vests the judicial power of the U.S. Virgin Islands in an appellate court and lower local courts as may be established by the Legislature. See 48 U.S.C. § 1611(a). Pursuant to this authority, the Legislature has established the Supreme Court of the Virgin Islands as the appellate court of last resort and the Superior Court of the Virgin Islands as a lower court of general jurisdiction. See 4 V.I.C. § 2(a).

The Supreme Court consists of the Chief Justice of the Virgin Islands and no fewer than two but no more than four associate justices. See 4 V.I.C. § 21. The Chief Justice serves as head of the Judicial Branch of the Virgin Islands, and is elected to a five-year term by secret ballot among the members of the Supreme Court. See 4 V.I.C. § 22(f). Justices of the Supreme Court serve a ten-year term upon nomination by the Governor and confirmation by the Legislature. See 4 V.I.C. § 22(a), (d).

The Superior Court consists of not less than six judges, one half of whom reside in the division of St. Croix and one half of whom shall reside in the division of St. Thomas-St. John. See 4 V.I.C. § 71(a). The Presiding Judge serves as head of the Superior Court, and is designated to a three-year term in order of seniority from among that court's active judges from alternating divisions. See 4 V.I.C. § 71(c). Judges of the Superior Court serve a six-year term upon nomination by the Governor and confirmation by the Legislature. See 4 V.I.C. § 72(a).

The Magistrate Division of the Superior Court is a division within the Superior Court that exercises limited jurisdiction to hear certain matters, including misdemeanor criminal cases where the maximum punishment is limited to not more than 364 days imprisonment, non-felony traffic cases, litter cases, small claims cases, landlord and tenant actions, and civil cases where the amount in controversy does not exceed \$75,000. See 4 V.I.C. § 123(a). The judicial officers assigned to the Magistrate Division are known as magistrate judges, who serve a four-year term upon appointment by the Presiding Judge from a list of nominees submitted by a Magistrate Judge Selection Panel. See 4 V.I.C. § 122.

### *b. Jurisdiction*

The Legislature may vest in the courts of the Virgin Islands jurisdiction over all causes in the U.S. Virgin Islands over which the courts of the United States do not possess exclusive jurisdiction. See 48 U.S.C. § 1611(a). The Legislature exercised this authority to grant the Superior Court with original jurisdiction in all civil and criminal actions over which the federal courts do not possess exclusive jurisdiction. See 4 V.I.C. § 76(a)-(b).

---

## VIRGIN ISLANDS GOVERNMENT & CONSTITUTIONAL LAW

---

Appeals from final judgments of the Superior Court, as well as certain interlocutory orders, are taken to the Supreme Court. See 4 V.I.C. §§ 32(a), 33. In addition to its appellate jurisdiction, the Supreme Court possesses all inherent powers consistent with its authority as the highest court of the U.S. Virgin Islands, including the power to issue writs of mandamus and other extraordinary writs, and to enter orders necessary for the supervision of the Judicial Branch. See 4 V.I.C. § 32(b). It may also transfer any action or proceeding pending in a local court or administrative agency to or from itself, if doing so will promote the administration of justice. See 4 V.I.C. § 32(d). The Supreme Court also exercises the exclusive jurisdiction to regulate the legal profession. See 4 V.I.C. § 32(e).

In virtually all circumstances, appeals from final judgments of the Magistrate Division of the Superior Court must be reviewed, in the first instance, by a judge of the Superior Court. See 4 V.I.C. § 125. Once such review is completed, the decision may then be appealed to the Supreme Court. See H&H Avionics, Inc. v. V.I. Port Auth., 52 V.I. 458, 462-63 (V.I. 2009).

### *c. Rule-Making Authority*

The rules of practice and procedure of the courts of the Virgin Islands shall be governed by local law or court rule. See 48 U.S.C. § 1611(c). This means that the Legislature of the Virgin Islands and the Virgin Islands Judiciary possess concurrent authority to promulgate procedural rules. See Phillips v. People, 51 V.I. 258, 275 (V.I. 2009). A rule is “procedural” if it regulates the judicial process for enforcing rights and duties recognized by substantive law and for justly administering remedy and redress for disregard or infraction of them. See Gov’t of the V.I. v. Durant, 49 V.I. 366, 373 (V.I. 2008). Examples of procedural rules include the rules of evidence and rules of civil and criminal procedure. See, e.g., Ventura v. People, 64 V.I. 589, 613 (V.I. 2016).

In the event of a conflict between a procedural rule adopted by the Legislature and one adopted by the Judiciary, the rule promulgated by the Judiciary controls. See Gerace v. Bentley, 65 V.I. 289, 302-03 (V.I. 2016). The Supreme Court, as the highest court of the U.S. Virgin Islands, exercises the Judiciary’s power to promulgate such procedural rules. See 4 V.I.C. § 32(f); Gerace, 64 V.I. at 304-05.

### *d. The Common Law*

The “common law” is generally understood to be a body of rules established by judicial precedents, as distinguished from a body of statutory law. The courts of the U.S. Virgin Islands possess the inherent authority to determine the common law of the Territory. See Banks v. Int’l Rental & Leasing Corp., 55 V.I. 967 (V.I. 2011).

When confronted with an issue of Virgin Islands common law that the Supreme Court of the Virgin Islands has not already resolved, courts must engage in a three-part analysis

---

## VIRGIN ISLANDS GOVERNMENT & CONSTITUTIONAL LAW

---

known as the Banks analysis. When performing a Banks analysis, one must first examine which common law rules Virgin Islands courts have applied in the past (if any). Next, one must identify the rules adopted courts in other jurisdictions, including identifying which approach represents the majority rule. Finally—but most importantly—one then determines which common law rule is soundest for the Virgin Islands. See Better Bldg. Maint, of the V.I., Inc. v. Lee, 60 V.I. 740, 757 (V.I. 2014).

### *e. United States District Court*

The Revised Organic Act also establishes the United States District Court of the Virgin Islands. See 48 U.S.C. § 1611(a). Because the United States District Court is a court established directly by Congress, it is not a court of the Virgin Islands and therefore not part of the Judicial Branch of the Virgin Islands. Id. The United States District Court is vested with the jurisdiction of a federal district court of the United States, including, but not limited to, diversity jurisdiction and the jurisdiction of a bankruptcy court. See 48 U.S.C. § 1612(a). However, it also shall have exclusive jurisdiction over all criminal and civil proceedings in the U.S. Virgin Islands with respect to the income tax laws applicable to the U.S. Virgin Islands. Id.

The United States District Court may also exercise, concurrently with the Superior Court, jurisdiction over offenses against the criminal laws of the U.S. Virgin Islands which are of the same or similar character, or a part of the same transaction, as a federal criminal offense over which the United States District Court possesses exclusive jurisdiction. See 48 U.S.C. § 1612(c). This authorization for the United States District Court to adjudicate a local crime when it relates to a federal crime is known as “supplemental criminal jurisdiction.” Bryan v. Fawkes, 61 V.I. 201, 219 n.8 (V.I. 2014).

Appeals from the United States District Court are taken to the United States Court of Appeals for the Third Circuit. See 28 U.S.C. § 41.

### *f. Relations Between Virgin Islands and Federal Courts*

The Revised Organic Act provides that

The relations between the courts established by the Constitution or laws of the United States and the courts established by local law with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings.



---

## VIRGIN ISLANDS GOVERNMENT & CONSTITUTIONAL LAW

---

48 U.S.C. § 1613. In other words, the Superior Court of the Virgin Islands is treated as the equivalent of a state trial court, while the Supreme Court of the Virgin Islands is treated as if it were a state court of last resort. See Bryan v. Fawkes, 61 V.I. 416, 439 (V.I. 2014).

Removal of a case from the Superior Court to the United States District Court is effectuated by filing a notice of removal in accordance with the federal removal statute, 28 U.S.C. § 1441 et seq. The notice of removal transfers jurisdiction over the case from the Superior Court to the United States District Court, and the Superior Court may not proceed further with the case until it is remanded by the United States District Court, even if the Superior Court determines that the notice of removal is defective or that the United States District Court lacks jurisdiction. See Hanen v. O'Reilly, 62 V.I. 494, 508 (V.I. 2015).

The Superior Court of the Virgin Islands is a state court for purposes of 11 U.S.C. § 362, which requires that civil proceedings be automatically stayed or otherwise suspended if the defendant has sought bankruptcy protection in federal court. See Cianci v. Chaput, 64 V.I. 682, 688 (V.I. 2016). Orders of the Superior Court entered in violation of an automatic bankruptcy stay that is in effect are void and with no legal effect. Id. at 690.

The United States Supreme Court may review final judgments or decrees rendered by the Supreme Court of the Virgin Islands by writ of certiorari in cases where the validity of a United States statute or treaty is drawn into question, a Virgin Islands statute is drawn in question on the ground that it is repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is set up or claimed under the Constitution, treaties, or laws of the United States. See 28 U.S.C. § 1260.

The Supreme Court of the Virgin Islands is bound by decisions of the United States Supreme Court on issues of federal law applicable to the U.S. Virgin Islands, but is not bound by decisions of any lower federal courts, even on questions of federal law. See Hughley v. Gov't of the V.I., 61 V.I. 323, (V.I. 2014). It is not bound by decisions of the United States Supreme Court that establish rules or principles applicable solely to the federal system and which would not extend to state courts. See, e.g., Antilles School, Inc. v. Lembach, 64 V.I. 400, 418 (V.I. 2016) (holding the Daubert standard adopted by the United States Supreme Court is not automatically binding because the applicable evidentiary rules in Virgin Islands courts are a function of local, not federal, law); Bryan v. Fawkes, 61 V.I. 201, 218 n.6 (V.I. 2014) (declining to adopt the political question doctrine as defined by the United States Supreme Court because Virgin Islands courts are not established by Article III of the United States Constitution).

The Superior Court of the Virgin Islands is bound by decisions of the Supreme Court of the Virgin Islands, as well as decisions of the United States Supreme Court on federal law applicable to the U.S. Virgin Islands. It may also be bound by other decisions that the Supreme Court of the Virgin Islands, as the court of last resort for the U.S. Virgin Islands,

---

## VIRGIN ISLANDS GOVERNMENT & CONSTITUTIONAL LAW

---

directs it to follow. See In re People of the V.I., 51 V.I. 374, 389 n.9 (V.I. 2009) (noting that the Superior Court should continue to follow as binding precedents certain decisions of the United States Court of Appeals for the Third Circuit issued prior to the creation of the Supreme Court of the Virgin Islands). A decision of the Superior Court is not binding precedent, even with respect to other Superior Court cases. See In re Q.G., 60 V.I. 654, 661 n.8 (V.I. 2014).

Although the United States District Court may exercise supplemental criminal jurisdiction to adjudicate cases in which a criminal defendant has been charged with a local offense related to federal offenses, such defendants, if convicted, may petition the Superior Court of the Virgin Islands for habeas corpus relief with respect to any local conviction. See Mitchell v. Mullgrav, S. Ct. Civ. No. 2015-0038, \_\_ V.I. \_\_, 2017 V.I. Supreme LEXIS 62, at \*12 (V.I. Oct. 16, 2017). However, the Superior Court lacks jurisdiction to grant habeas corpus relief with respect to a federal offense adjudicated in the United States District Court. See Rivera-Moreno v. Gov't of the V.I., 61 V.I. 279, 308-09 (V.I. 2014).

### **4. Separation of Powers**

The separation of powers doctrine extends to the U.S. Virgin Islands even if it is not made explicit in the Revised Organic Act, since it is implicit in the decision of Congress to establish a tripartite system of government. See In re Joseph, 65 V.I. 217, 224 (V.I. 2016). As such, unless expressly provided or incidental to the powers conferred by the Revised Organic Act, the legislature exercises neither executive nor judicial power, the executive cannot exercise legislative or judicial power, and the judiciary may not exercise either executive or legislative power. See Bryan v. Fawkes, 61 V.I. 201, 212 (V.I. 2014).

The Virgin Islands Judiciary possesses the inherent authority to determine the common law of the U.S. Virgin Islands. See Simon v. Joseph, 59 V.I. 611, 622 (V.I. 2013). Consequently, the Legislature may not enact a statute that completely deprives the Supreme Court of the ability to exercise its judicial power to shape the common law. See Banks v. Int'l Rental & Leasing Corp., 55 V.I. 967, 980 (V.I. 2011).

When the Legislature has established a self-regulating and independent agency and vested its management to a board, the separation of powers prohibits a court from directing that a specific attorney from that agency undertake a particular representation on behalf of the agency. See In re Joseph, 65 V.I. 217, 228 (V.I. 2016).

## **C. APPLICATION OF UNITED STATES CONSTITUTION**

### **1. Generally**

The Revised Organic Act identifies the U.S. Virgin Islands as “an unincorporated territory of the United States of America.” 48 U.S.C. § 1541(a). The United States Supreme Court

---

## VIRGIN ISLANDS GOVERNMENT & CONSTITUTIONAL LAW

---

has held that “the Constitution does not, without [federal] legislation and of its own force,” apply to unincorporated territories, except for a small number of fundamental rights. Dorr v. United States, 195 U.S. 138, 149 (1904).

The Revised Organic Act serves as the federal legislation that extends portions of the United States Constitution to the U.S. Virgin Islands. Specifically, the Revised Organic Act provides that

The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; article VI, clause 3; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments.

48 U.S.C. § 1561.

### **2. Particular Provisions**

#### *a. Supremacy Clause*

The Supremacy Clause of the United States Constitution broadly provides that federal laws enacted pursuant to the United States Constitution shall be the supreme law of the land and preempt any state laws to the contrary. U.S. CONST. art. VI, cl. 2. The Supremacy Clause is not identified in the Revised Organic Act as one of the provisions of the United States Constitution that has been extended to the U.S. Virgin Islands. However, the Supreme Court of the Virgin Islands has held that “the Supremacy Clause has no direct role in a conflict between federal and territorial law,” given that the Government of the Virgin Islands has been created through the Revised Organic Act and derives its sovereignty from Congress. Bryan v. Fawkes, 61 V.I. 416, 438 (V.I. 2014).

While not expressly incorporating the Supremacy Clause, the Revised Organic Act contains a provision with similar practical effect, stating that the Legislature of the Virgin Islands may enact legislation “not inconsistent with . . . the laws of the United States made applicable to the Virgin Islands” and that “no law shall be enacted which would impair rights existing or arising by virtue of any treaty or international agreement entered into by the United States.” 48 U.S.C. § 1574(a).

#### *b. Fifth Amendment Grand Jury Requirement*

---

## VIRGIN ISLANDS GOVERNMENT & CONSTITUTIONAL LAW

---

While the provision in the Revised Organic Act that “the first to ninth amendments inclusive” are extended to the U.S. Virgin Islands would ostensibly encompass the Grand Jury requirement of the Fifth Amendment, the same provision specifies that prosecutions in the courts of the Virgin Islands may be brought by information rather than by grand jury indictment. See 48 U.S.C. § 1561; see also Simmonds v. People, 59 V.I. 480, 491 (V.I. 2016) (rejecting argument that exclusion of the Grand Jury requirement is itself unconstitutional).

### *c. Double Jeopardy*

The Double Jeopardy Clause of the Fifth Amendment extends to the U.S. Virgin Islands through the Revised Organic Act. See 48 U.S.C. § 1561. However, the Legislature has enacted a statute that grants criminal defendants in the U.S. Virgin Islands greater protections than the Double Jeopardy Clause. This statute provides that “[a]n act or omission which is made punishable in different ways by different provisions of [the Virgin Islands Code] may be punished under any of such provisions, but in no case may it be punished under more than one.” 14 V.I.C. § 104. This means, unless provided otherwise in a particular criminal statute, that a criminal defendant who has committed multiple offenses may only be punished for a single offense if the offenses all stem from an indivisible course of conduct. See Galloway v. People, 57 V.I. 693, 712 (V.I. 2012). For example, a defendant convicted of both reckless driving and failure to stop at a red light may only be punished for one of those crimes when the convictions arose from the same acts. Id.

### *d. Bail*

The Excessive Bail Clause of the Eighth Amendment, which prohibits excessive bail for criminal defendants in pre-trial detention, extends to the U.S. Virgin Islands through the Revised Organic Act. See 48 U.S.C. § 1561. But Congress has codified additional bail protections in the Revised Organic Act that provide criminal defendants in the U.S. Virgin Islands with greater protections than under the Excessive Bail Clause. Specifically, the Revised Organic Act provides that

All persons shall be bailable by sufficient sureties in the case of criminal offenses, except for first degree murder or any capital offense when the proof is evident or the presumption great.

48 U.S.C. § 1561.

The Supreme Court of the Virgin Islands has interpreted this provision to hold that the only defendants who may be denied bail are those charged with first-degree murder whom the prosecution is able to prove committed the offense by clear and convincing evidence. See Browne v. People, 50 V.I. 241, 260-63 (V.I. 2008). Defendants charged

Page ix

---

## VIRGIN ISLANDS GOVERNMENT & CONSTITUTIONAL LAW

---

with any other crime, as well as defendants charged with first-degree murder in which the prosecution cannot make the requisite showing, must be granted the right to post bail in order to effectuate their pre-trial release. See Tobal v. People, 51 V.I. 147, 153-54 (V.I. 2009). Because these bail provisions are included in the Revised Organic Act, the Legislature lacks the authority to pass inconsistent legislation, such as a statute that would grant bail to defendants charged with first-degree murder where the proof is evident or the presumption great, or deny bail to defendants charged with robbery or other ordinary felonies. See Browne, 50 V.I. at 256-57; Tobal, 51 V.I. at 151.

---

# INTRODUCTION

---

The Virgin Islands Law Component (“VILC”) is an open-book, timed, online multiple-choice test developed by the Virgin Islands Committee of Bar Examiners under the supervision of the Supreme Court of the Virgin Islands. It is administered four (4) times per year during the months of March, June, September and December. The purpose of the VILC is to ensure that potential new members of the Virgin Islands Bar have been exposed to and have knowledge of law unique to the U.S. Virgin Islands. All applicants for regular admission to the Virgin Islands Bar Association must successfully pass the VILC.

The sole purpose of this outline is to assist applicants in their preparation to take the VILC. The outline is not intended for use as a hornbook or treatise on Virgin Islands law. The information contained herein is not designed as an exhaustive or verbatim presentation of unique and important issues of Virgin Islands. It is presented for informational purposes and only as a service to potential applicants seeking admissions to the Virgin Islands Bar.

The Committee of Bar Examiners endeavors to supplement, modify and update the outline from time to time. The Committee of Bar Examiners does not provide legal advice and the information contained in this outline may not be construed or interpreted as rendering legal advice.

Whether you are an experienced lawyer applying through admission on motion or a recent law school graduate seeking admission by examination, it is intended that after reviewing this outline you will quickly realize that the U.S. Virgin Islands is a special place to practice law.

The Committee of Bar Examiners look forward to you becoming a practicing member of the Virgin Islands’ Bar.

---

# VIRGIN ISLANDS PRACTICE

---

## A. OVERVIEW

The Supreme Court of the Virgin Islands possesses the inherent and statutory authority to promulgate the rules of practice that govern procedure in all the courts of the U.S. Virgin Islands. See 48 U.S.C. § 1611(c); 4 V.I.C. § 32(f). While the Legislature of the Virgin Islands has concurrent authority to enact statutes establishing procedural rules, the rules promulgated by the Supreme Court control in the event of a conflict. See Gerace v. Bentley, 65 V.I. 289, 302-03 (V.I. 2016).

Because civil procedure, criminal procedure, and evidence are comprehensively tested on the Uniform Bar Exam, the VILC tests applicants only on the areas where the Virgin Islands Rules of Civil Procedure, Virgin Islands Rules of Criminal Procedure, and Virgin Islands Rules of Evidence notably differ from the federal rules tested on the UBE. However, the VILC more broadly tests applicants on the aspects of Virgin Islands practice and procedure that are not tested on the UBE, such as appellate procedure.

## B. CIVIL PROCEDURE DISTINCTIONS

### 1. General Provisions

The Virgin Islands Rules of Civil Procedure govern the practice and procedure in all civil actions and proceedings in the Superior Court of the Virgin Islands, together with any other applicable statutes or rules. See V.I. R. Civ. P. 1.

When neither the Virgin Islands Rules of Civil Procedure nor any other controlling authority prescribes the procedure to follow in a matter, a judge may regulate practice in any manner consistent with Virgin Islands law. See V.I. R. Civ. P. 1-3.

### 2. Statutes of Limitations

Unless a different limitation is prescribed for a cause of action in a more specific statute, the following statutes of limitations apply to civil actions in the U.S. Virgin Islands:

<u>Limitations Period</u>	<u>Action</u>
Twenty Years	<ul style="list-style-type: none"><li>• Actions for the recovery of real property.</li><li>• Actions upon a judgment or decree of a court.</li><li>• Action upon a sealed instrument.</li></ul>
Ten Years	<ul style="list-style-type: none"><li>• All other causes of action not provided for.</li></ul>
Six Years	<ul style="list-style-type: none"><li>• Contracts.</li><li>• Actions for liability created by statute (other than penalty or forfeiture)</li><li>• Action for trespass upon real property.</li></ul>



---

## VIRGIN ISLANDS PRACTICE

---

	<ul style="list-style-type: none"><li>• Action for taking, detaining, or injuring personal property.</li></ul>
Three Years	<ul style="list-style-type: none"><li>• Action against a marshal or peace officer upon a liability incurred in his or her official capacity or omission of duty.</li><li>• Actions upon a statute for penalty or forfeiture if the action is given to the aggrieved party.</li></ul>
Two Years	<ul style="list-style-type: none"><li>• Torts.</li><li>• Action to set aside sale of real property for non-payment of real property taxes.</li><li>• Actions upon a statute for a forfeiture or penalty.</li></ul>
One Year	<ul style="list-style-type: none"><li>• Action against a peace officer for the escape of a person arrested or imprisoned on civil process.</li></ul>

See 5 V.I.C. § 31.

If a cause of action accrued while a person is insane, imprisoned on a criminal charge, or under the age of twenty-one years, the statute of limitations shall exclude the period of time in which that condition exists; however, in no case may the statute of limitations extend longer than two years after the condition ceases. See 5 V.I.C. § 36.

If a person entitled to bring a cause of action dies before the expiration of the statute of limitations, and the cause of action survives, a personal representative may commence the action after the expiration of time but within one year from the person's death. See 3 V.I.C. § 37(a).

Statutes of limitations are presumptively non-jurisdictional, and therefore may be waived if not timely asserted by a defendant, or equitably modified by a court. See Brady v. Cintron, 55 V.I. 802, 817 n.15 (V.I. 2011).

### **3. Contact Information and Data Forms**

All attorneys and self-represented parties must provide a current telephone number, mailing address, and e-mail address. This information shall be used by the court for serving orders or otherwise making contact in connection with the pending litigation. See V.I. R. Civ. P. 3-1(a). All parties must also complete a case information and litigant data form, which is completed by the plaintiff at the time the complaint is filed and by the defendant (or other party, such as an intervenor) at the time the first appearance is filed. See V.I. R. Civ. P. 3-1(c).



---

## VIRGIN ISLANDS PRACTICE

---

### **4. Service of Process**

#### *a. Time Limit*

Unless an extension of time is granted, a defendant must be served within 120 days after the complaint is filed. See V.I. R. Civ. P. 4(m).

#### *b. Service on the Virgin Islands Government*

When the Government of the Virgin Islands is a named defendant, service shall be made by serving the summons and complaint on the Governor of the Virgin Islands, as well as the Attorney General of the Virgin Islands. See V.I. R. Civ. P. 4(i)(1). When an action concerns the conduct or activity of the Legislative or Judicial Branches of the Government of the Virgin Islands, a summons and copy of the complaint must also be served (as the case may be) on the President of the Legislature or the Chief Justice of the Virgin Islands (or a person designated by them to receive service). See V.I. R. Civ. P. 4(i)(4).

To effectuate service on a public corporation, or an autonomous or semi-autonomous government agency or board, service shall be made in the same manner as the Government, as well as serving the summons and complaint on the chief executive officer of the entity (or other person authorized to accept service by law). See V.I. R. Civ. P. 4(i)(2). To serve an employee or officer sued in his or her individual capacity, the summons and complaint must be served on the chief executive officer, as well as the officer or employee. See V.I. R. Civ. P. 4(i)(2)(D).

To serve an employee or officer of the Government of the Virgin Islands, a public corporation, or an autonomous or semi-autonomous government agency for an act or omission occurring in connection with duties performed on behalf of the U.S. Virgin Islands (whether or not the person is also being sued in an official capacity), one must serve a copy of the summons and complaint on the officer or employee, as well as the Government of the Virgin Islands. See V.I. R. Civ. P. 4(i)(3).

#### *c. Service on a Minor or Incompetent Person*

A minor may be served by delivering a copy of the summons and the complaint on the minor, as well as a parent or guardian. See 5 V.I.C. § 111(1); V.I. R. Civ. P. 4(g). If the minor has no parent or guardian in the U.S. Virgin Islands, service shall be made on any person having care or control of the minor, or with whom the minor resides or in whose service the minor is employed. See 5 V.I.C. § 111(1).

A person who has been judicially declared incompetent may be served by delivering a copy of the summons and complaint on the person, as well as on the guardian that has

---

## VIRGIN ISLANDS PRACTICE

---

been appointed to mandate that individual's affairs. See 5 V.I.C. § 111(2); V.I. R. Civ. P. 4(g).

### *d. Service Outside the U.S. Virgin Islands*

The U.S. Virgin Islands has adopted the Uniform Interstate and International Procedure Act. See 5 V.I.C. §§ 4911-14; V.I. R. Civ. P. 4(f). Service may be effectuated outside the U.S. Virgin Islands through:

- personal delivery in the same manner as service within the U.S. Virgin Islands;
- the manner provided for by the laws of the jurisdiction where service is made;
- any form of mail addressed to the person to be served and requiring a signed receipt;
- the manner directed by the foreign authority in response to a letter rogatory; or
- any other manner as directed by the court.

See 5 V.I.C. § 4911(a). Service may be made by an individual permitted to make service under the laws of either the U.S. Virgin Islands or the jurisdiction where service is made, or by an individual designated by the court. See 5 V.I.C. § 4912. Proof of service shall be made either in the same manner as the U.S. Virgin Islands, under the laws of the jurisdiction where service was made, or as provided by the court. See 5 V.I.C. § 4911(b).

### *e. Service by Publication*

The court may authorize service by publication if, by affidavit, it is shown that service of the summons and complaint cannot be made as prescribed in Rule 4 of the Virgin Islands Rules of Civil Procedure, that the defendant after due diligence cannot be found in the Virgin Islands, and it appears to the satisfaction of the court that a cause of action exists against the defendant or that he is a proper party to the action. See V.I. R. Civ. P. 4-1(a); 5 V.I.C. § 112(b).

## **5. Constitutional Challenge to Virgin Islands Statute**

If a statute of the Virgin Islands is questioned and the parties do not include the Government of the Virgin Islands, one of its agencies or one of its employees in an official capacity, a party must promptly file a notice of constitutional question that states the question and identifies the pleading, motion or other paper that raises the issue. See V.I. R. Civ. P. 5.1(a) (1). The party must serve the notice and paper on the Attorney General of the Virgin Islands. Service may be by certified or registered mail or to an electronic address that the Attorney General has expressly designated for this purpose. See V.I. R. Civ. P. 5.1(a) (2).

---

## VIRGIN ISLANDS PRACTICE

---

The Government of the Virgin ISLANDS may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. The court may reject the constitutional challenge before the intervention period expires, but the court may not enter a final judgment that the statute is unconstitutional. See V.I. R. Civ. P. 5.1(c).

A party does not forfeit a timely constitutional claim or defense, because it failed to file and serve the notice. See V.I. R. Civ. P. 5.1(d).

### 6. Privacy Redactions

Unless ordered otherwise by the court, and subject to certain exemptions, all filings containing social security numbers, taxpayer identification numbers, birth dates, names of individuals known to be a minor, and financial account numbers must be redacted by providing only:

- the last four digits of the social security number and taxpayer identification number;
- the year of the individual's birth;
- the minor's initials; and
- the last four digits of the financial account number.

See V.I. R. Civ. P. 5.2(a). The court may order that a filing be made under seal without redaction. See V.I. R. Civ. P. 5.2(d).

### 7. Pleadings

The Virgin Islands is a notice pleading jurisdiction. See V.I. R. Civ. P. 8(a). The plausibility standard adopted by the Supreme Court of the United States for federal complaints has been abolished in the U.S. Virgin Islands. See Mills-Williams v. Mapp, S. Ct. Civ. No. 2016-0054, \_\_\_ V.I. \_\_\_, 2017 V.I. Supreme LEXIS 35 (V.I. July 14, 2017).

A prayer for relief in a pleading shall state that the damages are within the jurisdictional limit of the court, but shall not include a specific dollar amount sought for claims pled. See V.I. R. Civ. P. 8(a)(3); 5 V.I.C. § 5.

### 8. Venue

All civil actions shall be initiated in the judicial division where the defendant resides or where the cause of action arose or where the defendant may be served with process. See 4 V.I.C. § 78(a). For the convenience of the parties and witnesses and in the interest of justice, the court may transfer any action or proceeding pending in one judicial division to the other judicial division for hearing and determination. See 4 V.I.C. § 78(b).

### 9. Long-Arm Statute

---

## VIRGIN ISLANDS PRACTICE

---

A court may exercise jurisdiction over a nonresident defendant, who acts directly or by an agent, as to a claim for relief arising from the person-

- transacting any business in this territory;
- contracting to supply services or things in this territory;
- causing tortious injury by an act or omission in this territory;
- causing tortious injury in this territory by an act or omission outside this territory if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this territory;
- having an interest in, using, or possessing real property in this territory, or
- contracting to insure any person, property or risk located within this territory at the time of contracting;
- causing a woman to conceive a child, or conceiving or giving birth to a child; or
- abandoning a minor in this Territory.

See 5 V.I.C. § 4903.

There is a two-part test to determine whether a Virgin Islands court can exercise jurisdiction over a foreign defendant. See Molloy v. Independence Blue Cross, 56 V.I. 155, (V.I. 2012) “First, the plaintiff must show that there is a prima facie case for personal jurisdiction over the defendant under the Virgin Islands long arm statute ... [ and] [s]econd, the plaintiff must make a prima facie showing that the defendant’s due process rights would not be violated by being haled into court in the Virgin Islands.” Id.; see also St. Croix Ltd., v. Shell Oil Co., 60 V.I. 468, 474 (V.I. 2014).

### **10. Responsive Pleadings**

#### *a. Time to Respond*

A defendant served with the summons and complaint within the Virgin Islands must serve a responsive pleading within 21 days after being served. See V.I. R. Civ. P. 12(a)(1).

A defendant personally served outside of the Virgin Islands must serve a responsive pleading within 30 days from the date of service. See 5 V.I.C. § 112; V.I. R. Civ. P. 12(a)(1)(B).

A defendant served by order of publication must serve a responsive pleading within 30 days after the completion of the period of publication specified in the order. See 5 V.I.C. § 112(c); V.I. R. Civ. P. 12 (a)(1)(C).

---

## VIRGIN ISLANDS PRACTICE

---

A defendant served by mail requiring a return receipt must serve a responsive pleading within 30 days from the date process is received. See 5 V.I.C. § 112(c); V.I. R. Civ. P. 12(a)(1)(C).

The Government of the Virgin Islands, public corporations, autonomous or semi-autonomous government agencies or boards, or an officer or employee sued in an official capacity must serve an answer to a complaint, counterclaim or cross claim within 30 days after service upon the Governor and the Attorney General. See V.I. R. Civ. P. 12(a)(2).

An officer or employee of a public corporation, autonomous or semi-autonomous government agency or board sued in an individual capacity for an act or omission occurring in connection with that employment must serve an answer to a complaint, counterclaim or cross claim within 45 days after service upon the officer or employee, or service on the Attorney General, whichever is later. See V.I. R. Civ. P. 12(a)(3).

### *b. Motion to Dismiss After Answer*

A motion to dismiss after a party has already filed an answer is not properly before the Superior Court. See Smith v. Turnbull, 54 V.I. 369, 373-74 (V.I. 2010); Martinez v. Colombian Emeralds, Inc., 51 V.I. 174, 187-190 (V.I. 2009).

### *c. Workers' Compensation Bar*

The defense that an action is barred by the workers' compensation statute is an affirmative defense that must be affirmatively stated in a responsive pleading. See V.I. R. Civ. P. 8(c)(1).

## **11. Amendments to Pleadings**

A party moving to amend a pleading must attach a complete—and properly signed—copy of the proposed amended pleading to the motion papers. Except as otherwise ordered by the court, any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended specifically delineating the changes or additions and may not incorporate any prior pleading by reference. See V.I. R. Civ. P. 15-1(a).

If a proposed amended pleading requires approval by the court, such pleading shall—if leave is granted by the court—be deemed filed on the date the motion attaching a complete and executed copy of the pleading was initially filed. See V.I. R. Civ. P. 15-1(c)(2).

---

## VIRGIN ISLANDS PRACTICE

---

The court may initiate an amendment to any process or pleading for any omission or defect therein, or for any variance between the complaint and the evidence adduced at the trial. If a party is surprised as a result of such amendment, the court may adjourn the hearing for an appropriate period if justice so requires. See V.I. R. Civ. P. 15-2.

### **12. Discovery**

#### *a. Joint Final Pretrial Order*

The parties shall cooperate to prepare a proposed Joint Final Pretrial Order within the deadlines and in accordance with instructions given by the court. After each party has submitted the respective portions of the proposed order to the other parties, the plaintiff shall convene a conference, in person or by telephone, to attempt to reconcile any matters on which there is a disagreement. After diligent efforts to resolve such disagreements, all areas of agreement or disagreement shall be noted in the proposed Joint Final Pretrial Order. The proposed order shall be a single document reflecting efforts of all parties, signed by all counsel of record and any self-represented parties, and then filed by plaintiff for review and entry by the court. See V.I. R. Civ. P. 16-1.

#### *b. Effect of Motions*

The filing of any motions, including potentially dispositive motions such as a motion to dismiss or a motion for summary judgment- shall not stay discovery in the action, unless ordered by the judge. See V.I. R. Civ. P. 26(d)(4).

#### *c. Expert Witness Discovery Charges*

Unless there is a court order, a party seeking discovery must be presented with a proposed bill of the expert's charges within a reasonable period of time before the deposition. If there is an objection to the charges, the court, upon a prompt application, shall decide the reasonableness of the charges before the deposition. See V.I. R. Civ. P. 26-1.

#### *d. Discovery and Depositions Outside the U.S. Virgin Islands*

A court may issue letters rogatory to obtain discovery outside of the U.S. Virgin Islands. See 5 V.I.C. § 4921; V.I. R. Civ. P. 30(i).

The U.S. Virgin Islands has adopted the Uniform Interstate Depositions and Discovery Act, codified at 5 V.I.C. §§ 4922-25B, which provides for discovery involving jurisdictions

---

## VIRGIN ISLANDS PRACTICE

---

recognizing reciprocal discovery obligations, and includes provisions for issuance and service of subpoenas for depositions and production of documents in those jurisdictions. See V.I. R. Civ. P. 30(i).

### *e. Reasonable Diligence in Responding to Interrogatories*

A party must answer each interrogatory. If it cannot in the exercise of reasonable efforts prepare an answer with the information in its possession, it must make this representation in good faith. If the answer can be determined by examining, auditing, compiling, abstracting or summarizing a party's business records and the burden to do so would be the same for either party, the responding party may answer by

- i.) specifying the records with sufficient details and
- ii.) producing copies of the records, compilations, abstracts or summaries with the answer to the interrogatory unless the duplication is unduly burdensome.

See V.I. R. Civ. P. 33(d).

### *f. Discovery Disputes*

Before a party seeks the court's help to resolve a discovery dispute arising under the Virgin Islands Rules of Civil Procedure (except with regards to depositions), the parties must have first conferred in good faith about the dispute. The party initiates the conference by first serving a letter identifying each issue and/or discovery request in dispute, stating briefly its position (with legal authority) on each and specifying the terms of the order it will be seeking. The party is responsible for arranging the conference within 15 days after serving its letter. The conference may occur in person (preferable), telephonically or by video conferencing. See V.I. R. Civ. P. 37-1.

## **13. Mediation**

The court may refer a matter to mediation, which is "a process whereby a neutral third person called a 'mediator' acts to encourage and facilitate the resolution of a dispute between two or more parties." V.I. R. Civ. P. 90(a).

The first mediation conference must occur within 60 days of an order of referral and mediation completed within 45 days of that conference. See V.I. R. Civ. P. 90(d) (1), (10).

The mediator may be disqualified for bias, prejudice or impartiality on the same terms as if the mediator were a judge. See V.I. R. Civ. P. 90(e)(4)(B); 4 V.I.C. § 284.



---

## VIRGIN ISLANDS PRACTICE

---

Unless all parties agree, no communications, written or oral, in the course of the mediation proceeding are admissible as evidence in a subsequent legal proceeding. See V.I. R. Civ. P. 90(d)(9).

A public entity is deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. A party, otherwise, appears at the conference if physically present are the party or its representative and the insurance carrier representative (not the carrier's outside representative), each of whom has full authority to settle without further consultation. See V.I. R. Civ. P. 90(f).

### **14. Trials**

#### *a. Number of Jurors*

The trial jury in civil cases consists of six persons. See 5 V.I.C. § 80; Samuel v. United Corp., 64 V.I. 512 (V.I. 2016).

#### *b. Peremptory Challenges*

In civil cases each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs shall be considered as a single party for the purpose of making challenges. However, if there is more than one defendant the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly. See 5 V.I.C. § 323; V.I. R. Civ. P. 47(b).

#### *c. Juror Contact*

There should not be any contact, directly or indirectly, with any prospective or current member of the jury before or during the trial. See V.I. R. Civ. P. 47-1(a). Until the court discharges the jury, there should not be any contact, directly or indirectly, with any member of the jury. See V.I. R. Civ. P. 47-1(b).

#### *d. General Verdict with Answers to Written Questions*

The court cannot enter judgment when the answers are inconsistent with each other and one or more is inconsistent with the general verdict, which inconsistency the court cannot resolve. The court must direct the jury to consider its answers and verdict. If the jury cannot resolve the inconsistency, the court must order a new trial. A new trial can be avoided if the party disadvantaged by the inconsistent answers waives objection and accepts the verdict based on the answers least favorable to it. See V.I. R. Civ. P. 40(b)(4).



---

## VIRGIN ISLANDS PRACTICE

---

### C. CRIMINAL PROCEDURE DISTINCTIONS

#### 1. General Provisions

The Virgin Islands Rules of Criminal Procedure govern the practice and procedure in all civil actions and proceedings in the Superior Court of the Virgin Islands, together with any other applicable statutes or rules. See V.I. R. CRIM. P. 1.

To compute time under the Virgin Islands Rules of Criminal Procedure, one must exclude the day of the act, event, or default that begins the period. When the period is 15 days or more, every day must be counted, including intermediate Saturdays, Sundays, and legal holidays. However, when the period is 14 days or less, one does not count intermediate Saturdays, Sundays, and legal holidays. The last day of the period is included; however, If the last day of the period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. See V.I. R. CRIM. P. 45(a).

#### 2. Commencement of Action

Prosecutions in the courts of the Virgin Islands need not be brought by grand jury indictment. See 48 U.S.C. § 1561; see also Simmonds v. People, 59 V.I. 480, 491 (V.I. 2016). Felony prosecutions in the Superior Court of the Virgin Islands are initiated by the filing of an information by the Attorney General or an authorized representative of that office, while misdemeanor prosecutions are commenced with the filing of a complaint. See V.I. R. CRIM. P. 3(a).

#### 3. Statutes of Limitations

Unless a different limitation is prescribed for a particular offense in a more specific statute, the following statutes of limitations apply to civil actions in the U.S. Virgin Islands:

<u>Limitations Period</u>	<u>Offense</u>
No Limitation	<ul style="list-style-type: none"><li>• Murder</li><li>• Felony child abuse</li><li>• Felony child neglect</li><li>• Any felony sexual offense perpetrated against a victim</li><li>• Embezzlement of public monies</li><li>• Any falsification of public records</li></ul>
Three Years	<ul style="list-style-type: none"><li>• All other felonies.</li></ul>
One Year	<ul style="list-style-type: none"><li>• Misdemeanors.</li></ul>

---

## VIRGIN ISLANDS PRACTICE

---

5 V.I.C. § 3541.

### **4. Bail**

Subject to the provisions of the Revised Organic Act of 1954 (see section C(2)(d) of VIRGIN ISLANDS GOVERNMENT & CONSTITUTIONAL LAW, infra), bail is available to defendants “before conviction.” See V.I. R. CRIM. P. 5-1(a). Bail pending appeal after conviction is not authorized. See Todmann v. People, 57 V.I. 540 (V.I. 2012).

### **5. Pleas**

Unlike the federal system, the court may participate in plea discussions with the consent of the parties. See V.I. R. CRIM. P. 11(c). Prior to accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court to determine that the plea is voluntary, but need not determine that there is a factual basis for the plea. See V.I. R. CRIM. P. 11(b)(2).

### **6. Disclosure of Law Enforcement Personnel Records**

When seeking disclosure of personnel and/or internal affairs files of a particular law enforcement officer, the defendant must first confer with the Attorney General in an effort to reach agreement on the scope of any such disclosure. If agreement cannot be reached, the defendant may file a motion with the court to require disclosure of such files. The motion must include a report of the parties’ efforts to resolve the issue (or give reasons for not conferring), and show reasonable grounds to believe that the records sought may contain discoverable information. See V.I. R. CRIM. P. 16-1(a). The Attorney General may file a response to the motion, and as part of such response may request a protective order. See V.I. R. CRIM. P. 16-1(b). The court may direct disclosure of acts and information, whether substantiated or not, which could reasonably bear on the officer’s credibility or character for truthfulness, including, but not necessarily limited to, the substance of all disciplinary reports, citizen complaints, department and/or agency complaints, positive drug and/or alcohol testing results, and so forth. See V.I. R. CRIM. P. 16-1(c).

### **7. Correction of Sentence**

The court may correct an illegal sentence at any time, and may reduce a sentence or correct a sentence imposed in an illegal manner within 120 days after the sentence is imposed, or within 120 days after affirmance or dismissal of the appeal and expiration of the time for obtaining further review or appeal. See V.I. R. CRIM. P. 35(a).

---

## VIRGIN ISLANDS PRACTICE

---

### 8. Uniform Criminal Extradition Act

The U.S. Virgin Islands has adopted the Uniform Criminal Extradition Act, 5 V.I.C. §§ 3802 et seq., and implemented its provisions through Rule 40-1 of the Virgin Islands Rules of Criminal Procedure.

A court may issue a warrant to bring a defendant before the court upon oath of a credible witness that the defendant has committed an offense in another jurisdiction, is a fugitive from justice, is within the Virgin Islands, and is liable to be delivered over to the authorities of the other jurisdiction. See V.I. R. CRIM. P. 40-1(a). A defendant arrested on such a warrant shall appear before the court for a preliminary examination. If there is reasonable cause to believe that the information is true and that the person may be lawfully demanded, the defendant shall be detained or released in like manner as if the offense had been committed in the Virgin Islands. The defendant shall be ordered to appear before the court at a future date, so as to allow 30 days to obtain requisition from the governor of the state from which the person is a fugitive. See V.I. R. CRIM. P. 40-1(b). If the defendant is not demanded by requisition and appears before the court on the date ordered, the defendant shall be discharged unless the court finds some cause to detain or to release the defendant until a later date. See V.I. R. CRIM. P. 40-1(c).

On the demand of the governor of any state, the court may surrender any defendant in the Virgin Islands charged in that state with committing an act in the Virgin Islands or in another state, intentionally resulting in a crime in the state whose authority is making the demand, even if the accused was not in the state at the time of the commission of the crime and has not fled the state. See V.I. R. CRIM. P. 40-1(g). However, no defendant shall be delivered to the executive authority or an agent demanding the defendant unless the defendant is first taken before the court. See V.I. R. CRIM. P. 40-1(g)(3).

### D. EVIDENCE DISTINCTIONS

#### 1. General Provisions

The Virgin Islands Rules of Evidence govern the practice and procedure in all proceedings in the courts of the Virgin Islands, together with any other applicable statutes or rules. See V.I.R.E. 1101.

#### 2. Privileges

The U.S. Virgin Islands recognizes the following privileges:

- the attorney-client privilege, see 5 V.I.C. § 852;

---

## VIRGIN ISLANDS PRACTICE

---

- mental health provider, physician, and psychotherapist privilege, see 5 V.I.C. § 853;
- spousal privilege, see 5 V.I.C. § 854;
- marital communication privilege, see 5 V.I.C. § 855;
- confidential religious communication privilege, see 5 V.I.C. § 856;
- political vote privilege, see 5 V.I.C. § 857;
- trade secrets protection, see 5 V.I.C. § 858;
- state secret, official information, and governmental privilege, see 5 V.I.C. § 859; and
- informant privilege, see 5 V.I.C. § 860

V.I.R.E. 501(b).

### 3. Excluding Witnesses

An expert witness who will testify in the case shall not be excluded from the courtroom unless the court, in the exercise of its discretion, directs that the witness be excluded for part or all of the proceedings prior to the expert's testimony. See V.I. R. EVID. 615(b).

The court may order that each excluded witness be kept separate from all other witnesses. See V.I.R.E. 615(c).

## D. PROCEDURE IN MISCELLANEOUS CASES

### 1. Small Claims

The Virgin Islands Small Claims Rules are applicable to all actions in the Small Claims Division of the Superior Court of the Virgin Islands. See V.I SM. CL. R. 1.

The Small Claims Division possesses jurisdiction over civil actions where the amount in controversy does not exceed \$10,000, exclusive of interest and costs. See 4 V.I.C. § 112(a). Where the amount in controversy exceeds \$10,000, a party may nevertheless prosecute the action in the Small Claims Division by waiving recovery of any damages above \$10,000. See 4 V.I.C. § 112(b).

Neither party may be represented by an attorney in the Small Claims Division. See 4 V.I.C. § 112(d). A plaintiff who elects to file a complaint with the Small Claims Division rather than the Civil Division shall be deemed to have waived the right to a jury trial and the right to be represented by counsel. See V.I. SM. CL. R. 2(c). A defendant may receive a transfer from the Small Claims Division to the Civil Division as of right by demanding a jury trial, or if an attorney enters an appearance on behalf of the defendant or the defendant requests representation by an attorney prior to any party or witness being

---

## VIRGIN ISLANDS PRACTICE

---

sworn to give evidence in the small claims trial. See V.I. SM. CL. R. 2(d). A defendant who fails to request such a transfer shall be deemed to have waived both the right to a jury trial and the right to be represented by counsel at trial. See V.I. SM. CL. R. 2(c)(2).

All pleadings in the Small Claims Division shall be construed to do substantial justice. See V.I. SM. CL. R. 2(f).

### **2. Forcible Entry and Detainer**

A forcible entry and detainer (“FED”) action authorizes landlords to obtain a swift judicial decision in a summary proceeding in cases where a tenant is obtaining possession of a leased property in violation of the lease. See 28 V.I.C. § 781 et seq. Upon the filing of a FED complaint, a summons shall be served and returned within three days, requiring the defendant to appear within three days after service thereof. See 28 V.I.C. § 785.

To obtain relief through a summary FED proceeding, the landlord must establish that there is an undisputed oral or written lease agreement, that rent is due and owing thereon; or that there is an undisputed oral or written lease which has expired. See V.I. Port Auth. v. Joseph, 49 V.I. 424, 427-28 (V.I. 2008). Relief through a FED proceeding is not available if title to the premises is in question, or where there is a bona fide question as to the existence of a lease. Id.

### **3. Arbitration**

The Federal Arbitration Act (“FAA”) applies to cases filed in the Superior Court of the Virgin Islands only when an interstate nexus is shown. See Allen v. HOVENSA, LLC, 59 V.I. 430, 442 n.2 (V.I. 2013).

Even in cases where the FAA is applicable, only the substantive provisions of the FAA preempt local law. The Supreme Court of the Virgin Islands has held that the provision of the FAA authorizing an immediate interlocutory appeal of an order denying a motion for a stay pending arbitration is inapplicable to the U.S. Virgin Islands. See World Fresh Mkt. v. P.D.C.M. Assocs., S.E., S. Ct. Civ. No. 2011-0051, 2011 V.I. Supreme LEXIS 29, at \*5 (V.I. Aug. 25, 2011) (unpublished). The three-month limitations period for filing a motion to vacate an arbitration award is also not a substantive rule and is inapplicable. See Allen, 59 V.I. at 435.

## **E. APPELLATE PROCEDURE**

### **1. General Provisions**

The Virgin Islands Rules of Appellate Procedure govern the practice and procedure in all proceedings in the Supreme Court of the Virgin Islands. See V.I. R. APP. P. 1.

---

## VIRGIN ISLANDS PRACTICE

---

### 2. Appellate Jurisdiction

The Supreme Court possesses jurisdiction over all appeals arising from final judgments, final decrees, or final orders of the Superior Court. See 4 V.I.C. § 32(a). A final judgment is one that ends the litigation on the merits and leaves nothing to do but execute the judgment. See Rojas v. Two/Morrow Ideas Enters., Inc., 53 V.I. 684, 691 (V.I. 2010). Such an appeal must be taken within 30 days. See V.I. R. App. P. 5(a), (b).

The Supreme Court also possesses jurisdiction over interlocutory orders of the Superior Court that:

- (a) grant, continue, modify, refuse, or dissolve injunctions, or refuse to dissolve or modify injunctions.
- (b) appoint receivers, or refuse orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;
- (c) dismiss an information (or any part thereof) or terminate a prosecution in favor of the defendant, provided that the appeal would not be contrary to the Double Jeopardy Clause of the United States Constitution;
- (d) suppress or exclude evidence in a criminal proceeding, provided that jeopardy has not already attached;
- (e) release a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, the order granting release;
- (f) orders the detention of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, the order of detention.

See 4 V.I.C. § 33(b), (d). Such appeals must be taken within 30 days. See 4 V.I.C. § 33(d)(5).

In a civil case, the Superior Court may certify an order for interlocutory appeal if it is of the opinion that the order involves a controlling question of law as to which there is substantial ground for difference of opinion, and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. The Supreme Court may, in its discretion, permit the appeal. See 4 V.I.C. § 33(c). Such a petition for permission to appeal must be filed with the Supreme Court within ten days after entry of the Superior Court order. Id.

### 3. Original Jurisdiction

The Supreme Court possesses original jurisdiction to issue writs of mandamus and other

---

## VIRGIN ISLANDS PRACTICE

---

extraordinary writs. See 4 V.I.C. § 32(b). To obtain a writ of mandamus, a petitioner must establish that it has no other adequate means to attain the desired relief and that its right to the writ is clear and indisputable. See In re People of the V.I., 51 V.I. 374, 382 (V.I. 2009). However, even if the first two prerequisites have been met, the Supreme Court must be satisfied that the writ is appropriate under the circumstances. Id.

### **4. Presentation of Issues on Appeal**

Only issues and arguments fairly presented to the Superior Court may be presented for review on appeal. See V.I. R. APP. P. 4(h). However, when the interests of justice so require, the Supreme Court may consider and determine any question not so presented. Id.

### **5. Harmless Error**

No error or defect in any ruling or order or in anything done or omitted by the Superior Court or by any of the parties is ground for granting relief or reversal on appeal where its probable impact, in light of all of the evidence in the case, is sufficiently minor so as to not affect the substantial rights of the parties. See V.I. R. APP. P. 4(i).

### **6. Waiver**

Issues that were (1) not raised or objected to before the Superior Court, (2) raised or objected to but not briefed, or (3) are only adverted to in a perfunctory manner or unsupported by argument and citation to legal authority, are deemed waived for purposes of appeal. See V.I. R. APP. P. 22(m). The Supreme Court, at its open, may notice an error not presented that affects substantial rights. Id.

---

# LEGAL PROFESSION

---

## A. REGULATION OF THE PRACTICE OF LAW

### 1. Exclusive Jurisdiction of Supreme Court of the Virgin Islands.

The Supreme Court of the Virgin Islands possesses the exclusive jurisdiction to regulate the practice of law in the U.S. Virgin Islands. See 4 V.I.C. § 32(e). This includes the authority to admit persons to the Virgin Islands Bar, see In re Application of Shea, 59 V.I. 552, 556 (V.I. 2013), to discipline persons admitted to the practice of law, see V.I. Bar v. Brusch, 49 V.I. 409, 411 (V.I. 2008), to adjudicate claims that a person has engaged in the unauthorized practice of law, see In re Campbell, 59 V.I. 701, 709 (V.I. 2013), and to regulate judicial ethics and discipline, see 4 V.I.C. § 32(f), In re M.R., 64 V.I. 333, 350 (V.I. 2016). It also encompasses the authority to promulgate rules to govern these subjects, such as the Virgin Islands Rules of Professional Conduct, the Virgin Islands Code of Judicial Conduct. See 4 V.I.C. § 32(f).

The Supreme Court may exercise disciplinary jurisdiction over all current and former lawyers admitted to practice law in the U.S. Virgin Islands, as well as any lawyer not admitted in the U.S. Virgin Islands who practices law or renders or offers to render any legal services in the U.S. Virgin Islands. See V.I.S.Ct.R. 207.5(a). The disciplinary jurisdiction of the Supreme Court also extends to current and former judges. See V.I.S.Ct.R. 207.5(b)-(c).

### 2. Arms of the Supreme Court

To assist it in regulating the legal profession in the U.S. Virgin Islands, the Supreme Court has established several entities to perform quasi-judicial or other governance functions, subject to clearly defined rules and procedures adopted and approved by the Court. See In re Rogers, 57 V.I. 553, 561 (V.I. 2012). These entities—which are sometimes referred to as “arms of the court”—include:

- The **Committee of Bar Examiners**, which assists the Supreme Court in all matters related to admission to the Virgin Islands Bar, including administering the Virgin Islands Bar Examination, conducting character investigations, and otherwise ensuring that applicants have satisfied all the criteria for admission. See V.I.S.Ct.R. 204.
- The **Office of Disciplinary Counsel**, which screens, investigates, and prosecutes alleged violations of the Virgin Islands Rules of Professional Responsibility, the



---

## LEGAL PROFESSION

---

Virgin Islands Code of Judicial Conduct, or the prohibition on the unauthorized practice of law, as well as claims that a lawyer or judicial officer suffers from a physical or mental condition that adversely affects his or her ability to perform the functions of the position. See V.I.S.Ct.R. 203(c). The Office also administers the attorney registration system, see V.I.S.Ct.R. 203(e), as well as approves financial institutions for inclusion in the Virgin Islands Interest on Lawyer Trust Account (“IOLTA”) program, see V.I.S.Ct.R. 211.1.15-5.

- The **Board on Professional Responsibility**, which adjudicates all claims that an attorney has violated the Virgin Islands Rules of Professional Responsibility, or that an attorney suffers from a physical or mental condition that adversely affects his or her ability to practice law. See V.I.S.Ct.R. 207.2.
- The **Board on the Unauthorized Practice of Law**, which adjudicates all claims involving the potential unauthorized practice of law in the U.S. Virgin Islands. See V.I.S.Ct.R. 212.1.
- The **Commission on Judicial Conduct**, which adjudicates all claims that a judicial officer has violated the Virgin Islands Code of Judicial Conduct, or suffers from a physical or mental condition that adversely impacts his or her ability to hold judicial office. See V.I.S.Ct.R. 209.2.
- The **Virgin Islands Interest on Lawyers Trust Account Board**, which exercises general supervisory authority over the administration of the mandatory IOLTA program in the U.S. Virgin Islands. See V.I.S.Ct.R. 211.1.15-6.
- The **Standing Committee on Indigent Appointments**, which assists the Supreme Court in overseeing the system for appointing counsel to indigent parties in the courts of the Virgin Islands.
- The **Virgin Islands Bar Association**, which is an integrated Bar, meaning that all attorneys must be a member of the Virgin Islands Bar Association as a condition to practicing law in the U.S. Virgin Islands. See V.I.S.Ct.R. 205(b). The Bar Association administers the mandatory continuing legal education rule, see V.I.S.Ct.R. 208(a), as well as the system for payment of bar dues, see V.I.S.Ct.R. 205(d).

Although the Supreme Court of the Virgin Islands has delegated certain governance functions to these entities, and accords some deference to their findings, the Supreme

---

## LEGAL PROFESSION

---

Court is not bound by their decisions, and will ultimately have the final say on the matter. See, e.g., In re Application of Coggin, 49 V.I. 432, 436 (V.I. 2008); In re Petition of the V.I. Bar Ass'n to Amend Bylaws, 60 V.I. 269, 275 (V.I. 2013).

### B. ADMISSION TO THE VIRGIN ISLANDS BAR

#### 1. Regular Admission

The process of obtaining the unrestricted authorization to practice law in the U.S. Virgin Islands is known as “regular admission,” and is governed by Supreme Court Rule 204. There are three ways for an individual to obtain regular admission:

- **Admission by Examination.** The applicant must obtain a passing score on the Uniform Bar Exam (UBE) and the Multistate Professional Responsibility Exam (MPRE). See V.I.S.Ct.R. 204(e).
- **Admission by UBE Score Transfer.** The applicant must have obtained a passing score on the UBE within the last three years and a passing score on the MPRE within the last three years. See V.I.S.Ct.R. 204(g).
- **Admission by Motion.** The applicant must have been admitted by written exam to the practice of law in another United States jurisdiction, and have engaged in the active practice of law in one or more United States jurisdictions for five of the last seven years. See V.I.S.Ct.R. 204(j).

Whether seeking admission by examination, admission by motion, or admission by UBE score transfer, an applicant for regular admission must also:

- ✓ hold a J.D. or LL.B. from a law school approved by the American Bar Association (ABA);
- ✓ be at least twenty-one years of age and a citizen or lawful permanent resident of the United States;
- ✓ pass a character and fitness examination and personal interview;
- ✓ be in good standing in any other jurisdictions in which the applicant has been admitted to practice law, and not under any pending disciplinary action or disbarred, suspended, or sanctioned without reinstatement or exoneration; and
- ✓ pass the Virgin Islands Law Component (VILC).

See V.I.S.Ct.R. 204(d); 204(i)(1); 204(j)(1). All applicants for admission to the Virgin

---

## LEGAL PROFESSION

---

Islands Bar bear the burden of proving, by clear and convincing evidence, that they satisfy the criteria for admission, including the requisite character qualifications. See In re Coggin, 49 V.I. 432, 436 (V.I. 2008).

When an applicant for regular admission has satisfied all the requirements for admission, the Committee of Bar Examiners shall file a written motion with the Supreme Court, and the applicant shall be admitted to the Virgin Islands Bar upon the taking of the following oath (or affirmation) in open court:

*I do solemnly swear (or affirm):*

*I will support the Constitution and laws of the United States applicable to the Virgin Islands, and the laws of the Virgin Islands;*

*I will maintain the respect due to courts of justice and judicial officers, and conduct myself in accordance with the Virgin Islands Rules of Professional Conduct;*

*I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;*

*I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;*

*I will maintain the confidence and preserve inviolate the secrets of my clients, and will accept no compensation in connection with their business except from them or with their knowledge and approval;*

*To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;*

*I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;*

*I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay anyone's cause for lucre or malice;*

---

## LEGAL PROFESSION

---

*I will strive to uphold the honor and maintain the dignity of the profession and to improve not only the law, but the administration of justice; and*

*I will in all other respects conduct myself personally and professionally in conformity with the high standards of conduct imposed upon members of the bar as conditions for the privilege to practice law in the Virgin Islands.*

*So help me God. (I hereby affirm).*

See V.I.S.Ct.R. 204(i)(2).

The U.S. Virgin Islands has **not** adopted the ABA Model Rule on Practice Pending Admission, or promulgated a similar rule to permit applicants for regular admission to practice while their application is pending. Therefore, an applicant for regular admission may not practice law in the U.S. Virgin Islands, or otherwise exercise any of the privileges or responsibilities of membership in the Virgin Islands Bar, until and unless the required oath or affirmation is administered. See V.I.S.Ct.R. 204(i)(2).

After obtaining regular admission, the attorney is automatically classified as an “active” regular member of the Virgin Islands Bar. Active membership, if properly maintained (see section C, infra), grants the member the right to engage in the practice law in the U.S. Virgin Islands. See V.I.S.Ct.R. 206(a). A regular member who no longer wishes to practice law in the U.S. Virgin Islands may file a petition with the Supreme Court to transfer to “inactive” status, which if granted will relieve the member of most of the obligations associated with Bar membership but also eliminate the member’s ability to practice law in the U.S. Virgin Islands. See V.I.S.Ct.R. 206(b).

Even if duly-admitted as a regular member of the Virgin Islands Bar, an attorney may have restrictions placed on his or her ability to practice law in the U.S. Virgin Islands. The Supreme Court of the Virgin Islands may place an attorney on probation, and subject him or her to conditions or restrictions on practice, as a sanction for misconduct. See V.I.S.Ct.R. 207.20. It may also suspend or disbar an attorney for serious ethical misconduct, which precludes the attorney from practicing law until and unless reinstated. See V.I.S.Ct.R. 207.8. Additionally, attorneys who have been judicially declared incompetent, or found to suffer from a physical or mental condition that adversely affects their ability to practice law, may be involuntarily transferred to “disability inactive status,” which also precludes the attorney from practicing law until and unless reinstated. See V.I.S.Ct.R. 207.19.

---

## LEGAL PROFESSION

---

The Supreme Court may also suspend an attorney for failing to maintain the conditions of admission, such as not paying Bar dues, not complying with mandatory continuing legal education requirements, or not filing the annual registration statement. See section C, infra. While such suspensions are issued for administrative infractions rather than for ethical misconduct, the effect of the suspension remains the same, in that the attorney may not practice law until and unless reinstated: “simply put, a suspension is a suspension.” In re Application of Shea, 59 V.I. 552, 563-64 (V.I. 2013).

Attorneys who wish to voluntarily resign from the Virgin Islands Bar may do so by filing a petition with the Supreme Court. The Supreme Court will grant such a petition only if the resignation is not filed in lieu of disciplinary proceedings, suspension, or disbarment; the attorney provides at least 60 days advance notice to all clients, the Virgin Islands Bar Association, and the court; and adequate arrangements have been made to conclude all pending cases or to transfer them to other counsel. See V.I.S.Ct.R. 206(c).

### 2. Limited Admissions and Licenses

The Supreme Court of the Virgin Islands has established several licenses that authorize various levels of limited practice in the U.S. Virgin Islands. These licenses include:

- **Special Admission.** This admission allows attorneys who are admitted to at least one other United States jurisdiction and who are employed, or about to be employed, as an attorney by the Government of the Virgin Islands (including its branches, departments, agencies and instrumentalities), the United States, Legal Services of the Virgin Islands, Disability Rights Center of the Virgin Islands, or VIVA for Children, Inc., to be temporarily admitted to practice for no more than three years before obtaining regular admission. The specially-admitted attorney must practice under the direction and control of the moving agency, and must satisfy all requirements for regular admission other than passage of the bar exam. The special admission may last for up to three years if certain requirements are met, and in any case automatically terminates if the specially-admitted attorney ceases employment with the moving agency. See V.I.S.Ct.R. 202.
- **Pro Hac Vice Admission.** This admission allows an attorney admitted to practice in another United States jurisdiction, in good standing and who has not been disbarred or suspended, to practice with respect to a single legal matter, provided that the motion for *pro hac vice* admission is made by a regularly-admitted attorney of record who shall sign all pleadings and shall be accountable for compliance with all applicable rules. The *pro hac vice* admission lasts for the duration of the matter,

---

## LEGAL PROFESSION

---

and automatically terminates upon its conclusion. See V.I.S.Ct.R. 201. The regularly-admitted attorney of record must notify the Supreme Court within fourteen days of the conclusion of the matter or the *pro hac vice* attorney's withdrawal. See V.I.S.Ct.R. 201(a).

- **In-House Counsel.** This limited license allows an attorney admitted to the practice of law in another United States jurisdiction, in good standing in all jurisdictions to which admitted, who is or will be employed as a lawyer for an organization in the U.S. Virgin Islands (other than the Government of the Virgin Islands) that engages in lawful business other than the practice of law or the provision of legal services, to provide legal services to the employing entity or its organizational affiliates (and the employees, officers, and directors thereof). The attorney must maintain a systematic and continuous presence in the U.S. Virgin Islands, pass the character and fitness examination, and may not make court appearances, hold oneself out as authorized to practice law in the Virgin Islands, or provide legal services to any other person or entity (except for pro bono services offered under the auspices of an organized legal aid society). The limited license automatically terminates if the lawyer ceases to meet any of the requirements of the rule, such as if the lawyer's employment terminates, the lawyer no longer maintains a systematic and continuous presence in the U.S. Virgin Islands, or the lawyer fails to maintain active status in at least one United States jurisdiction. See V.I.S.Ct.R. 202.1.
- **Foreign Legal Consultant.** This limited license allows an attorney admitted to the practice of law in a foreign country to render legal services in the U.S. Virgin Islands with respect to the law of the foreign country in which the attorney is admitted to practice law. The attorney must maintain a systematic and continuous presence in the U.S. Virgin Islands, pass the character and fitness examination, may not hold himself or herself out as admitted to practice law in the Virgin Islands, and may not appear as a lawyer in court, render legal advice on Virgin Islands law, prepare wills or instruments effecting disposition of property or administration of a decedent's estate in the United States, or prepare any instrument effecting transfer or registration of title to real estate located in the United States. The limited license automatically terminates if the lawyer ceases to meet any of the requirements of the rule, such as if the lawyer no longer maintains a systematic and continuous presence in the U.S. Virgin Islands, or the lawyer fails to maintain active status in at least one foreign jurisdiction. See V.I.S.Ct.R. 202.2.
- **Legal Intern.** This limited license allows for supervised and restricted practice by

---

## LEGAL PROFESSION

---

(1) a law student at a law school accredited by the ABA, who has successfully completed at least one-half of the course work required for a J.D. or comparable degree, or

(2) a graduate of an ABA-accredited law school who earned a J.D. and has not failed the Virgin Islands Bar Examination or been denied admission to any bar for character and fitness reasons, so long as the applicant concurrently applies for regular or special admission to the Virgin Islands Bar.

The legal intern applicant must be personally supervised by a regular member in good standing of the Virgin Islands Bar, who among other things shall review all motions, briefs, or other documents prepared or signed by the legal intern, and shall sign the document and take responsibility for all its contents. Once admitted, the legal intern may perform, under the full and complete supervision of the supervising attorney, any act which may be performed by a regular member of the Virgin Islands Bar, except representing a criminal defendant in a criminal case in which any of the charged offenses is punishable by more than six months incarceration, or representing a client who has not given, or withdrawn, written informed consent to the representation. A judge may also preclude the legal intern from continuing to represent a client if the judge finds that the legal intern is being inadequately supervised or is rendering incompetent representation. A limited license to practice as a legal intern automatically terminates if the legal intern ceases to qualify for admission on the rule or, among other things, if there is probable cause that the legal intern engaged in the unauthorized practice of law. See V.I.S.Ct.R. 202.3.

- **Military Spouse.** This admission allows a spouse of a member of the United States Uniformed Services stationed within the U.S. Virgin Islands to practice law in the U.S. Virgin Islands. The applicant must be admitted to the practice of law in another United States jurisdiction, in good standing in all jurisdictions to which admitted, hold a J.D. or comparable degree from a law school accredited by the ABA, and pass the character and fitness examination. Once admitted, the lawyer may perform any act which may be performed by a regular member of the Virgin Islands Bar, and bear all the obligations of regular membership, but may not hold himself or herself out as a Virgin Islands attorney without disclosing the special nature of the admission. The special admission may last for up to three years if certain requirements are met, and in any case automatically terminates if the attorney ceases to meet any of the requirements for admission under the rule, such as if the attorney is no longer a spouse of the service member or if the service



---

## LEGAL PROFESSION

---

member leaves the United States Uniformed Services. See V.I.S.Ct.R. 202.4.

The Supreme Court has promulgated rules permitting applicants for special-admission and for an in-house counsel limited license to practice, on a provisional basis, while their applications for admission are pending. In both cases, the applicant cannot have commenced employment as an attorney with the employing entity or agency prior to the date the special admission or in-house counsel application was filed with the Supreme Court. See V.I.S.Ct.R. 202(b)(2)(i); 202.1(c)(1). In the case of an applicant for special admission, the applicant must also have never previously failed the Virgin Islands Bar Examination. See V.I.S.Ct.R. 202(b)(2)(iii). In both cases, the Supreme Court may rescind the provisional permission to practice pending admission if a substantial question exists as to whether the applicant satisfies the requirements for admission (including whether the applicant is a person of good moral character) or if the applicant has failed to prosecute the application in a timely manner. See V.I.S.Ct.R. 202(b)(2)(iv); 202.1(c)(2). There is no court rule permitting applicants for *pro hac vice* admission, limited license to practice as a foreign legal consultant or legal intern, or admission as a military spouse to practice on a provisional basis while their applications for admission are pending. As with applicants for regular admission, such applicants may not engage in the practice of law in the U.S. Virgin Islands until and unless the required oath or affirmation is administered. See, e.g., V.I.S.Ct.R. 202.2(c); 202.3(c); In re Application of Gonzalez, 59 V.I. 862, 863 (V.I. 2013).

### 3. Unauthorized Practice of Law

The unauthorized practice of law is prohibited both by court rule and statute. It is broadly defined as “the doing of any act by a person who is not a member in good standing of the Virgin Islands Bar Association for another person usually done by attorneys-at-law in the course of their profession.” See 4 V.I.C. § 443(a). This includes, but is not limited to:

- holding oneself out as a lawyer when not admitted to practice;
- establishing an office or other systematic and continuous presence in the U.S. Virgin Islands for the practice of law when not admitted to practice;
- representing another person, firm, or corporation before any court, commission, board, or similar body to which one is not authorized to practice, including preparing or filing legal papers.

See V.I.S.Ct.R. 211.5.5; 4 V.I.C. § 443(a).



---

## LEGAL PROFESSION

---

The textbook example of the unauthorized practice of law is a layperson not admitted to practice law in any jurisdiction representing the interests of others without any supervision by a duly-licensed Virgin Islands attorney, whether directly through a court appearance or indirectly by drafting a pleading or motion (also known as “ghostwriting”). See, e.g., Marsh-Monsanto v. Clarenbach, 66 V.I. 366, 393 (V.I. 2017); In re Suspension of Joseph, 60 V.I. 540, 553-54 (V.I. 2014). An attorney who assists another in the unauthorized practice of law—such as by filing a “ghostwritten” document without taking the time to review its legal sufficiency—has also violated the prohibition on unauthorized practice of law. See V.I.S.Ct.R. 211.5.5(a); Joseph, 60 V.I. at 554.

The prohibition on unauthorized practice of law also extends to lawyers who practice law in violation of the rules governing the legal profession. See V.I.S.Ct.R. 211.5.5(a). Unfortunately, virtually all instances of unauthorized practice of law addressed by the Supreme Court of the Virgin Islands have involved members of the Virgin Islands Bar exceeding the scope of their license, or bar applicants engaging in the practice of law prior to administration of the oath. Some of the acts by attorneys and applicants found to constitute the unauthorized practice of law include:

- A regular member of the Virgin Islands Bar filing motions in several pending matters while serving a suspension for failing to comply with mandatory continuing legal education requirements. See In re Disbarment of Rogers, 60 V.I. 293, 208 (V.I. 2013).
- A specially-admitted member of the Virgin Islands Bar, with the Virgin Islands Department of Justice serving as the moving agency, engaging in the private practice of law. See In re Motylinski, 60 V.I. 621, 640-41 (V.I. 2014).
- An applicant for special admission, whose application was subjected to a prolonged character and fitness review, commencing employment under the titles “Chief of the Criminal Division” and “Assistant Attorney General” and who exercised supervisory control over subordinate attorneys, including with respect to case strategy, plea offers, dismissals, and other decisions, and using the “Esq.” honorific in correspondence with the public. See In re Campbell, 59 V.I. 701 (V.I. 2013).
- A former specially-admitted member of the Virgin Islands Bar, no longer licensed to practice law in the U.S. Virgin Islands in any capacity, using the titles “staff attorney” and “corporate counsel” while being employed in the “Legal Department” of a corporation located in the U.S. Virgin Islands. See Motylinski, 60 V.I. at 645.

---

## LEGAL PROFESSION

---

- A *pro hac vice* applicant appearing as counsel at a status conference and filing a notice of appeal prior to taking the oath. See In re Application of Gonzalez, 59 V.I. 862, 863 (V.I. 2013).
- A *pro hac vice* applicant filing and signing an appellate brief and holding himself out as a “*pro hac vice* attorney” prior to taking the oath. See Mitchell v. Mullgrav, S. Ct. Civ. No. 2015-0038, 2015 V.I. Supreme LEXIS 38, at \*6 (V.I. Nov. 4, 2015) (unpublished).
- A *pro hac vice* applicant filing and signing an *amicus curiae* brief prior to taking the oath, despite disclosing in the brief that the *pro hac vice* application was “pending.” See In re Application of Nevins, 60 V.I. 800, 803-04 (V.I. 2014).
  - In the same case, the Supreme Court also declined to adopt a “pro bono exception” to the prohibition on unauthorized practice of law. Id. At 804-05.
- A *pro hac vice* applicant sending an e-mail to an opposing party identifying herself as the attorney in the matter, prior to taking the oath. See In re De Luna, 60 V.I. 683, 686-87 (V.I. 2014).

Because the regularly-admitted attorney moving for an applicant’s *pro hac vice* admission agrees to assume responsibility for supervising the applicant and ensuring compliance with all applicable rules, the Supreme Court has routinely referred the moving attorney to the Office of Disciplinary Counsel for further investigation upon finding that the *pro hac vice* applicant engaged in the unauthorized practice of law. See, e.g., De Luna, 60 V.I. at 687; Gonzalez, 59 V.I. at 865.

### C. OBLIGATIONS OF BAR MEMBERSHIP

#### 1. Bar Dues

All individuals licensed to practice law in the U.S. Virgin Islands, whether regularly-admitted attorneys or those with a limited license to practice, are required to pay annual dues to the Virgin Islands Bar Association pursuant to the following fee schedule:

<u>Member Classification</u>	<u>Annual Dues</u>
Regular (Active)	\$300.00
Regular (Inactive)	\$150.00
Regular (New / First Year)	\$75.00

---

## LEGAL PROFESSION

---

Specially-Admitted	\$225.00
<i>Pro Hac Vice</i>	\$75.00
In-House Counsel	\$225.00
Foreign Legal Consultant	\$225.00
Legal Intern	\$225.00
Military Spouse	\$225.00

See V.I.S.Ct.R. 205; V.I. BAR ASS'N BYLAWS § I(3)-(7); (9). Dues are payable to the Bar Association on or before December 1st of the prior calendar year, and failure to timely pay membership dues results in assessment of delinquency fees and interest. V.I. BAR ASS'N BYLAWS § I(12). Those who do not pay their bar dues by April 1 may be suspended from the practice of law by the Supreme Court of the Virgin Islands by motion of the Virgin Islands Bar Association. See V.I.S.Ct.R. 205(d); V.I. BAR ASS'N BYLAWS § I(12).

### **2. Mandatory Continuing Legal Education**

Every active member of the Virgin Islands Bar must complete a minimum of twelve hours of approved continuing legal education credits every year, of which two hours must be in the area of legal ethics or professionalism. See V.I.S.Ct.R. 208(b)(1). This requirement is prorated for new members, as well as those who were active for only part of the year, who must earn one credit hour per month the attorney claims active status. Id. For purposes of this rule, a "credit hour" consists of no less than 50 minutes of instruction or other approved activities. Id.

The Virgin Islands Bar Association serves as the administrator of the mandatory continuing legal education rule. See V.I.S.Ct.R. 208(a). To that end, the Virgin Islands Bar Association accredits courses and activities (other than those automatically accredited by court rule), see V.I.S.Ct.R. 208(f), and receives each member's self-reported certifications evidencing compliance with continuing legal education requirements. See V.I.S.Ct.R. 208(c). Certifications for the previous year are due on or before January 31, and failure to comply with this deadline may result in assessment of a delinquency fee. Id.

Members subject to mandatory continuing legal education requirements who fail to certify their compliance, or have failed to certify sufficient credit hours to satisfy the annual requirement, are subject to automatic suspension from the practice of law by the Supreme Court of the Virgin Islands. See V.I.S.Ct.R. 208(e)(6).

---

## LEGAL PROFESSION

---

### 3. Annual Attorney Registration

All active members of the Bar, whether regularly or specially admitted or admitted only on a *pro hac vice* basis, must file an Annual Registration Statement with the Office of Disciplinary Counsel no later than February 1, as well as a \$50.00 annual assessment fee. See V.I.S.Ct.R. 203(e). Newly-admitted members of the Bar shall register and pay the assessment no earlier than fourteen days and no later than one day before taking the oath of office. See V.I.S.Ct.R. 203(e)(1). Attorneys reinstated to active practice from suspension or disbarment, or after transfer from inactive status, shall register and pay within fourteen days of the order granting reinstatement or transfer, failing which the reinstatement or transfer shall be rescinded. See V.I.S.Ct.R. 203(e)(2).

The Annual Registration Statement requires attorneys to provide their name, home and business addresses, home and business telephone numbers, and personal and business e-mail addresses. Members who fail to register by the February 1 deadline must pay an additional late filing or delinquency fees, and may be automatically suspended from the practice of law if compliance is not achieved by March 2. See V.I.S.Ct.R. 203(e).

Information provided in the Annual Registration Statement is strictly confidential, and will be utilized by the Supreme Court of the Virgin Islands and the Office of Disciplinary Counsel in conjunction with their official duties. See V.I.S.Ct.R. 203(e). Official duties for which this information may be used includes service of the attorney of any disciplinary or disability proceedings. See V.I.S.Ct.R. 207.11(a).

### 4. Indigent Appointments & Pro Bono Services

The Supreme Court of the Virgin Islands has promulgated Rules Governing the Appointment of Counsel to Represent Indigent Parties, codified as Supreme Court Rule 210. Pursuant to this rule, all courts of the Virgin Islands must, as a general rule, appoint counsel for indigent parties in the following order:

- 1) The Office of the Territorial Public Defender;
- 2) From a list of attorneys who have volunteered to undertake such representation on a regular basis, known as “Private Attorney Panels”; and finally
- 3) Regularly-admitted members of the Virgin Islands Bar Association eligible to practice law in the U.S. Virgin Islands, with the exception of those employed by a government agency or who are otherwise exempt.

---

## LEGAL PROFESSION

---

See V.I.S.C.T.R. 210.2(a). The Rule is administered by the Supreme Court with the assistance of the Standing Committee on Indigent Appointments, which, among its other duties, is charged with recruiting qualified attorneys to apply for membership to the Private Attorney Panels.

While Rule 210 contemplates that most indigent parties will be appointed the Office of the Territorial Public Defender or a member of a Private Attorney Panel, courts are authorized to randomly appoint regular members of the Virgin Islands Bar as a last resort. All lawyers in the U.S. Virgin Islands possess an ethical obligation to accept such appointments, and to not seek to avoid such appointments except for good cause, such as representing the client would likely result in a violation of the Virgin Islands Rules of Professional Conduct or other law. See V.I.S.C.T.R. 211.6.2.

In addition, every lawyer has a professional responsibility to provide legal services to those to unable to pay, and should aspire to render at least 50 hours of pro bono legal services per year. See V.I.S.C.T.R. 211.6.1.

### **D. LEGAL ETHICS & DISCIPLINE**

#### **1. Virgin Islands Rules of Professional Conduct**

The Supreme Court of the Virgin Islands has adopted the Virgin Islands Rules of Professional Conduct, promulgated as Supreme Court Rule 211, as the standard of professional conduct for all members of the Virgin Islands Bar, regardless of their admission or license type. The Virgin Islands Rules of Professional Conduct are modelled after the 2007 version of the ABA's Model Rules of Professional Conduct, but contain some significant differences. Importantly, the Supreme Court has not adopted the amendments that were made to the ABA Model Rules of Professional Conduct subsequent to the 2007 version.

Because the ABA Model Rules of Professional Conduct are comprehensively tested on the MPRE, the VILC does not test applicants on rules where the Virgin Islands Rules of Professional Conduct are substantively identical to the ABA Model Rules. Rather, the VILC will focus on areas where the Virgin Islands Rules of Professional Conduct either differ from the current version of the ABA Model Rules of Professional Conduct, or where the Supreme Court of the Virgin Islands has clarified the meaning of a rule through a judicial decision which may differ from how similar rules have been interpreted in other United States jurisdictions. These areas include the following:

---

## LEGAL PROFESSION

---

*a. Competence (V.I.S.Ct.R. 211.1.1 / ABA Model Rule 1.1)*

In the Virgin Islands, simple negligence is not enough to trigger a violation of the duty of competence. See In re Suspension of Welcome, 60 V.I. 240 (V.I. 2013).

*b. Scope of Representation (V.I.S.Ct.R. 211.1.2(a) / ABA Model Rule 1.2(a))*

Both Supreme Court Rule 211.1.2(a) and ABA Model Rule 1.2(a) refer to the relationship between a client and an lawyer, and provide that a lawyer must abide by a client's decisions concerning the objectives of representation and whether to settle a matter, and may take such action on behalf of a client as is impliedly authorized. The Supreme Court of the Virgin Islands has held that the word "client" also encompasses a prospective client, and thus a lawyer who takes action on behalf of a prospective client who never ultimately retained the lawyer is in violation of this rule. See In re Rogers, S. Ct. Civ. No. 2012-0059, 2012 V.I. Supreme LEXIS 79, at \*11-12 (V.I. Oct. 26, 2012) (unpublished).

*b. Imputation of Conflicts of Interest (V.I.S.Ct.R. 211.1.10 / ABA Model Rule 1.10)*

Supreme Court Rule 211.1.10 deviates from ABA Model Rule 1.10, in that subsection (a)(2) of the Model Rule contains a provision that allows screening to avoid the imputation of conflicts of interest, whereas Supreme Court Rule 211.1.10 does not contain a provision allowing screening.

*c. Special Conflicts of Interest for Government Employees (V.I.S.Ct.R. 211.1.11 / ABA Model Rule 1.11)*

While both Supreme Court Rule 211.1.11 and ABA Model Rule 1.11 do not prohibit lawyers currently employed by the government from engaging in the private practice of law (provided that certain conflict of interest rules are complied with), Virgin Islands statutes and court rules completely prohibit the private practice of law for certain types of government lawyers. See, e.g., 3 V.I.C. § 117 (Assistant Attorneys General); V.I.S.Ct.R. 103.5(D) (judicial law clerks). The failure to abide by these stricter authorities may result in discipline. See In re Motylinski, 60 V.I. 621 (V.I. 2014).

*e. Client Trust Account Records (V.I.S.Ct.R. 211.1.15-1)*

Supreme Court Rule 211.1.15-1 has no counterpart in the ABA Model Rules. The rule requires that:

---

## LEGAL PROFESSION

---

- A lawyer who practices in the U.S. Virgin Islands maintain current financial records for all clients and retain all major accounting records for a period of five years after termination of representation.
- With respect to client trust accounts:
  - only a lawyer admitted to practice law in the U.S. Virgin Islands or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;
  - records of deposit should be sufficiently detailed to identify each item; and
  - withdrawals shall be made only by check or wire transfer payable to a named payee, not to cash.
- Records shall be kept in a form that can be produced and made readily accessible to the lawyer.
- Upon dissolution of a law firm, the partners shall make reasonable arrangements for the maintenance of client trust account records.
- Upon the sale a law practice, the seller shall make reasonable arrangements for the maintenance of trust account records.

*f. Client Files (V.I.S.Ct.R. 211.1.15-2)*

Supreme Court Rule 211.1.15-1 has no counterpart in the ABA Model Rules. The rule provides that:

- A client's file shall consist of any documents or property provided by the client or derived in the course of representation of the client, except the lawyer's notes, memoranda, research prepared by the lawyer and documents that have not been filed or served unless the client has explicitly paid for the drafting or creation thereof.
- Upon the client's request, the lawyer shall surrender the client's file. The lawyer may charge the client reasonable costs for reproduction and retrieval.
- The lawyer may retain copies of all documents within the client's file.
- A lawyer must maintain the client's file for 10 years after the conclusion of his representation unless the lawyer delivers the file to the client or the client



---

## LEGAL PROFESSION

---

authorizes destruction of the file in a writing, provided the time for appeal has expired and there are no pending or threatened legal proceedings known to the lawyer that relate to the matter.

- Notwithstanding the prior rules, a lawyer in a criminal matter must maintain the client's file for the life of the client if the matter resulted in a conviction and a sentence of death, natural life, life without parole, or an indeterminate sentence.
- To protect the client's interest in case of lawyer death or incapacity, a lawyer should prepare a plan for succession, with specific provisions as required by this rule.
- Upon dissolution of a law firm, or sale of a law practice, reasonable arrangements for client files shall be made in accordance with this rule.

*g. Client Trust Account Requirements; Mandatory IOLTA (V.I.S.Ct.R. 211.1.15-3 to 211.1.15-6)*

Supreme Court Rules 211.1.15-3 to 211.1.15-6 have no counterparts in the ABA Model Rules. The rules provide that:

- Virgin Islands lawyers need to have a Trust Account in their own name, or in the firm name, separate from all other accounts, specifically identified as being distinct from the business account that is connected to a Virgin Islands Bank approved by the Office of Disciplinary Counsel that participates in the IOLTA program whereby interest is paid to designated charitable fund. See V.I.S.Ct.R. 211.1.15-3.
- A lawyer shall not use a debit card or automated teller machine to remove funds from a Trust Account, nor can cash (or checks written to "Cash") be withdrawn. Only the lawyer or a person supervised by the lawyer may withdraw or transfer money from a Trust Account, which must be reconciled no less than quarterly by the lawyer or a person supervised by him or her. See V.I.S.Ct.R. 211.1.15-4.
- Only financial institutions in the Virgin Islands approved by the Office of Disciplinary Counsel can hold a Trust Account for a lawyer or law firm. See V.I.S.Ct.R. 211.1.15-5.
- The Virgin Islands Interest on Lawyers Trust Account Board shall exercise general supervisory authority over the administration of the mandatory IOLTA



---

## LEGAL PROFESSION

---

program in the U.S. Virgin Islands. See V.I.S.Ct.R. 211.1.15-6.

*h. Meritorious Claims and Contentions* (V.I.S.Ct.R. 211.3.1 / ABA Model Rule 3.1)

In the Virgin Islands, “an argument is frivolous if and only if it is not only against the overwhelming weight of legal authority but also entirely without any basis in law or fact or without any logic supporting a change of law.” In re Suspension of Welcome, 58 V.I. 236, 251 (V.I. 2013).

*i. Unauthorized Practice of Law* (V.I.S.Ct.R. 211.5.5 / ABA Model Rule 5.5)

Supreme Court Rule 211.5.5(b)(1) differs from ABA Model Rule 5.5(b)(1) in that it explicitly references the statutory definition of unauthorized practice of law codified in 4 V.I.C. § 443. For how the unauthorized practice of law has been defined in the U.S. Virgin Islands, see section B.3 of this outline, supra.

The Supreme Court of the Virgin Islands has not adopted ABA Model Rule 5.5(c), which permits lawyers admitted in other United States jurisdiction to provide legal services in the U.S. Virgin Islands on a temporary basis without obtaining *pro hac vice* or other admission to the Virgin Islands Bar.

The Supreme Court has also not adopted ABA Model Rule 5.5(d), which permits limited practice by in-house counsel. Instead, Supreme Court Rule 202.1 governs the admission and scope of authority of in-house counsel. This rule is discussed in section B.2 of this outline, supra.

*j. Truthfulness in Statements to Others* (V.I.S.Ct.R. 211.4.1 / ABA Model Rule 4.1)

The Supreme Court of the Virgin Islands has held, for purposes of the prohibition on “mak[ing] a false statement of material fact or law to a third person,” V.I.S.Ct.R. 211.4.1(a), that the phrase “third person” refers to someone other than the parties and the court. See In re Disbarment of Rogers, 60 V.I. 293 (V.I. 2013).

*k. Misconduct* (V.I.S.Ct.R. 211.8.4 / ABA Model Rule 8.4).

The Supreme Court of the Virgin Islands has not adopted ABA Model Rule of Professional Conduct 8.4(g), which explicitly provides that it is professional misconduct to “engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual

---

## LEGAL PROFESSION

---

orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.”

### 2. ATTORNEY DISCIPLINARY PROCEDURE

#### *a. Ordinary Proceedings*

The attorney disciplinary system in the U.S. Virgin Islands is primarily administered by the Office of Disciplinary Counsel (which investigates and, if necessary, prosecutes the charges) and the Board on Professional Responsibility (which makes probable cause determinations and, if necessary, adjudicates the charges). See V.I.S.Ct.R. 207.9. The purpose of the disciplinary system is not to punish attorneys, but “to protect the public and administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.” V.I. Bar v. Brusch, 49 V.I. 409, 419 (V.I. 2008).

If, after investigation by the Office of Disciplinary Counsel, the Board on Professional Responsibility determines that there is probable cause that the attorney engaged in misconduct, the attorney shall be served with a petition setting forth the alleged misconduct. See V.I.S.Ct.R. 207.9(d)(1). The attorney must respond within 20 days, failing which “all of the allegations and charges in the petition shall be deemed admitted, such that the sole remaining issue to be determined by the Board shall be the appropriate disciplinary sanction.” See V.I.S.Ct.R. 207.9(d)(2).

Disciplinary proceedings are neither civil nor criminal, but are *sui generis*. See V.I.S.Ct.R. 207.15(a). Unless otherwise provided in Supreme Court Rule 207, the proceeding is governed by the Virgin Islands Rules of Civil Procedure. See V.I.S.Ct.R. 207.15(b). In disciplinary proceedings, the Office of Disciplinary Counsel bears the burden of proof, and must prove the charges by clear and convincing evidence. See V.I.S.Ct.R. 207.15(c).

The Board on Professional Responsibility may issue certain sanctions with the consent of the attorney, such as private admonition, private probation, and conditional diversion. See V.I.S.Ct.R. 207.8(a)(6)-(8). However, other sanctions, including suspension and disbarment, must be approved by the Supreme Court of the Virgin Islands, even if the attorney consents to the sanction. See V.I.S.Ct.R. 207.9(e); 207.8(a)(10)-(5), (9)-(10). Orders imposing discipline are effective immediately upon issuance by the tribunal with authority to issue the sanction. See V.I.S.Ct.R. 207.21.

---

## LEGAL PROFESSION

---

### *b. Interim Suspension*

The Office of Disciplinary Counsel may petition the Supreme Court of the Virgin Islands to suspend an attorney on an interim basis pending the disposition of disciplinary proceedings if the attorney:

- has been charged with or convicted of a felony;
- has been charged with or convicted of other criminal conduct which demonstrates that the lawyer poses a significant threat of substantial harm to the public or the orderly administration of justice; or
- has otherwise engaged in professional misconduct which demonstrates that the lawyer poses a significant threat of substantial harm to the public or the orderly administration of justice.

See V.I.S.Ct.R. 207.16(a). A certified copy of a judgment of conviction of an attorney for any crime shall be prima facie evidence of the commission of that crime. See V.I.S.Ct.R. 207.16(b). The Supreme Court may grant or deny the petition, or may enter any such order it deems necessary to protect the interests of the public and the orderly administration of justice, including restricting the attorney's right to practice. See V.I.S.Ct.R. 207.16(f).

### *c. Reciprocal Discipline*

A lawyer admitted to practice in the U.S. Virgin Islands is required to promptly inform the Office of Disciplinary Counsel of any discipline imposed in another jurisdiction. See V.I.S.Ct.R. 207.18(a). Upon receipt of this information from the lawyer—or, if not disclosed, any other source—the Board of Professional Responsibility shall direct the lawyer to show cause as to why the same discipline should not be imposed in the U.S. Virgin Islands. See V.I.S.Ct.R. 207.18(b).

A final adjudication in another jurisdiction that a lawyer has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in the U.S. Virgin Islands. See V.I.S.Ct.R. 207.18(e). Therefore, to avoid reciprocal discipline, the attorney bears the burden of proving, by clear and convincing evidence, that:

- the procedure in the other jurisdiction was so lacking in notice or opportunity to be

---

## LEGAL PROFESSION

---

heard as to constitute a deprivation of due process;

- there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Supreme Court of the Virgin Islands could not, consistent with its duty, accept as final the conclusion on that subject;
- the imposition of the same discipline would result in grave injustice; or
- the misconduct established warrants substantially different discipline or no discipline in the U.S. Virgin Islands.

See V.I.S.C.T.R. 207.18(c). The Supreme Court of the Virgin Islands shall determine whether to impose reciprocal discipline or take other action. See V.I.S.C.T.R. 207.18(d). At its discretion, the Supreme Court may impose greater discipline for the misconduct than the other jurisdiction, such as if the attorney failed to timely disclose the issuance of the other jurisdiction's disciplinary order. See, e.g., In re Iverson, 60 V.I. 572, 576-77 (V.I. 2014).

### *d. Reinstatement from Suspension or Disbarment*

An attorney suspended for six months or less may resume practice at the end of the period of suspension by filing an affidavit with the Supreme Court and the Office of Disciplinary Counsel affirming that the lawyer has fully complied with the requirements of the suspension order, including paying any required costs. See V.I.S.C.T.R. 207.22(b).

An attorney suspended for greater than six months may, after the suspension period, file a petition for reinstatement with the Board on Professional Responsibility, and bear the burden of proving, by clear and convincing evidence in a hearing before the Board, that he or she:

- is professionally rehabilitated, including substantial rehabilitation from any drug or alcohol problems from which he or she suffered;
- has complied with all applicable disciplinary orders and other rules, including conditions of restitution;
- is fit to practice;
- competent and aware of recent developments in the law;

---

## LEGAL PROFESSION

---

- has not engaged in any other professional misconduct;
- recognizes the wrongfulness and seriousness of the misconduct upon which the suspension was predicated;
- possesses the requisite honest and professional integrity to resume the practice of law; and
- may resume the practice of law without it being detrimental to the administration of justice.

See V.I.S.Ct.R. 207.22(g). At its discretion, the Office of Disciplinary Counsel may present evidence in support of or adverse to the petition, and may make a recommendation to the Board with respect to the petition. Id. The Board shall submit a recommendation to the Supreme Court, which shall exercise the final decision as to whether the attorney should be reinstated. See V.I.S.Ct.R. 207.22(h).

A disbarred attorney may seek reinstatement on the same terms as an attorney suspended for greater than six months; provided, however, that a disbarred attorney may not file a petition for reinstatement until the passage of at least five years from the effective date of the disbarment. See V.I.S.Ct.R. 207.22(c).

If a petition for reinstatement is denied, an attorney may not file a successive petition until the passage of one year following an adverse judgment upon the prior petition. See V.I.S.Ct.R. 207.22(d).

\*\*\*\*\*

---

# ADMINISTRATIVE LAW

---

## A. REGULATORY AND ADJUDICATORY AUTHORITY

### 1. Regulations

As a default rule, agencies of the Government of the Virgin Islands are not conferred the general authority to adopt, administer, or enforce any regulations. Rather, each regulation adopted, to be effective, must be within the scope of authority conferred by law to that agency by statute or other provision of law. See 3 V.I.C. § 912.

For a regulation promulgated by an agency to have the force and effect of law, it must be approved by the Governor of the Virgin Islands, filed in the Office of the Lieutenant Governor, and published in the Virgin Islands Rules and Regulations. See 3 V.I.C. §§ 913, 933. However, the Governor may dispense with the requirement that the regulation be published in the Virgin Islands Rules and Regulations in case of emergency or other compelling circumstances that require that the regulation be effective without delay. See 3 V.I.C. § 938.

The Lieutenant Governor examines the regulation to determine that it complies with applicable requirements as to preparation and form. See 3 V.I.C. §§ 934, 936. In addition, the Governor must publish notice of the regulation in at least one newspaper of general circulation, see 3 V.I.C. § 913(a), and submit the regulation to the Legislature of the Virgin Islands, which may modify, amend, or revise the regulation at any time, see 3 V.I.C. § 913(b).

The publication of a regulation in the Virgin Islands Rules and Regulations raises a rebuttable presumption that the text of the regulation so published is the text of the regulation adopted, and courts may take judicial notice of such regulations. See 3 V.I.C. § 939.

Agencies lack the authority to enact regulations that contradict the plain language of their enabling statutes, or which otherwise exceed the scope of authority conferred by law. A regulation that purports to do so lacks legal effect and shall not be enforced by the courts. See Francis v. People, 54 V.I. 313, 320-22 (V.I. 2010).

### 2. Adjudication

The Legislature has granted certain agencies exclusive or concurrent jurisdiction to adjudicate disputes between parties. While an agency may establish its own rules to govern such proceedings, the procedures employed by the agency must comport with the right to due process safeguarded by the Revised Organic Act of 1954 and the United States Constitution, including providing the parties with the right to present their own arguments and evidence and confront adverse witnesses. See Hard Rock Café v. Lee, 54 V.I. 622, 632-33 (V.I. 2011).

---

## ADMINISTRATIVE LAW

---

When the Legislature grants an agency the authority to adjudicate a dispute, it implicitly grants it the authority to seek judicial enforcement of its decisions. See V.I. Narcotics Strike Force v. Gov't of the V.I., 60 V.I. 204, 214 (V.I. 2013). However, an agency—even one that performs judicial functions—is not a court. See Magens Point Resort Hotel v. Benjamin, 58 V.I. 191, 197 (V.I. 2009). Therefore, statutes referring to courts—such as the 20-year statute of limitation for enforcement of a judgment rendered by a court—do not extend to agencies. Id.

### **B. JUDICIAL REVIEW OF AGENCY ACTION**

#### **1. Authority for Judicial Review**

The Legislature has provided for several distinct methods for a party to obtain judicial review of an adverse agency decision. The general writ of review statute, codified as 5 V.I.C. § 1421 et seq., provides for judicial review of agencies in cases “where there is no appeal or other plain, speedy, and adequate remedy.” 5 V.I.C. § 1422. However, with respect to certain agencies, the Legislature has enacted specific provisions providing for appeal or review of an agency decision by a court. In such cases, the general writ of review statute is inapplicable, and the specific statute controls, even if it contains procedural requirements (such as time limits for initiating review) that are not found in the general writ of review statute. See, e.g., Mercer v. Bryan, 53 V.I. 595, 602-03 (V.I. 2010); Worldwide Flight Services v. Gov't of the V.I., 51 V.I. 105, 108-09 (V.I. 2009); Pichardo v. Comm'r of Labor, 49 V.I. 447 (V.I. 2008).

Judicial review of regulatory or non-adversarial agency decisions is also possible in certain instances. The Legislature has codified a taxpayer suit statute, which provides that a taxpayer may “maintain an action to restrain illegal or unauthorized acts by a territorial officer or employee, or the wrongful disbursement of territorial funds.” 5 V.I.C. § 80. The Supreme Court of the Virgin Islands has permitted litigants to seek judicial review under this statute of agency actions that might not otherwise not amenable to review, such as procurement decisions and a determination that a candidate meets the qualifications to hold public office. See, e.g., Virgin Islands Taxi Ass'n v. Indian Co., 66 V.I. 473, 485-87 (V.I. 2017); Haynes v. Ottley, 61 V.I. 567-68 (V.I. 2014).

#### **2. Barriers to Judicial Review**

##### *a. Compliance with Statutory Requirements*

As noted above, the Legislature has enacted specific provisions that govern judicial review of certain agency actions. For instance, many such statutes provide that a party must initiate judicial review within a specified period of time. See, e.g., 12 V.I.C. § 913(d) (must seek review of grant or denial of coastal zone permit within 45-days after such order



---

## ADMINISTRATIVE LAW

---

has become final); 24 V.I.C. § 70(a) (must seek review within 30-days of issuance of Department of Labor decision). Some statutes codify other requirements as well. See, e.g., 24 V.I.C. § 380(a) (providing that an application for review of a decision of the Public Employee Relations Board be filed by an “aggrieved party”).

Such statutory prerequisites to review may be either jurisdictional or claims-processing. This distinction is not merely academic. A claims-processing statute may be equitably tolled, judicially modified, or waived if not asserted by the opposing party. In contrast, the failure to comply with a jurisdictional statute can never be excused, and may be invoked at any stage of the proceeding, even by the court acting *sua sponte*. See Allen v. HOVENSA, LLC, 59 V.I. 430, 435-36 (V.I. 2013).

The intent of the Legislature is paramount in determining whether the procedure embodied in a statute governing agency review is jurisdictional or claims-processing. If the procedure is meant to limit the adjudicatory authority of the court, the statute is jurisdictional. In contrast, statutes that simply regulate the process of obtaining review are claims-processing requirements which may be waived. See Brooks v. Gov’t of the V.I., 58 V.I. 417, 425-26 (V.I. 2013).

### *b. Comity Between Courts and Agencies*

To promote the proper relationship between courts and agencies, the Supreme Court of the Virgin Islands has recognized the doctrines of exhaustion of administrative remedies and primary jurisdiction as potential bars to judicial review. These doctrines, while distinct, seek to preclude litigants from bringing premature challenges to administrative rulings in the courts.

- “Exhaustion” applies where a claim is cognizable in the first instance by an agency alone, and judicial interference is withheld until the administrative process has run its course.
- “Primary jurisdiction” applies where a claim is originally cognizable in the courts, but enforcement of the claim requires the resolution of issues which have been placed within the special competence of an agency.
  - For example, the doctrine of primary jurisdiction may preclude the courts from considering an appeal of the denial of a coastal zone permit by the Coastal Zone Management Committee when the Legislature has conferred the Board of Land Use Appeals with jurisdiction to hear such an appeal.

See V.I. Conservation Soc’y v. Golden Resorts, LLLP, 55 V.I. 613, 620-21 (V.I. 2011).



---

## ADMINISTRATIVE LAW

---

### 3. Standards of Review of Agency Actions

The United States Supreme Court has held that when a federal court reviews a federal agency's interpretation of an ambiguous federal statute, the court must defer to the construction chosen by the agency, even if it is not the best interpretation. See Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984). The Supreme Court of the Virgin Islands has rejected this doctrine—known as “*Chevron* defense”—with respect to interpretations of law by Virgin Islands agencies. Instead, Virgin Islands courts must apply plenary (or *de novo*) review with respect to all questions of Virgin Islands law, without deferring to a Virgin Islands agency's preferred construction. See Bryan v. Fawkes, 61 V.I. 201, 226-29 (V.I. 2014).

When reviewing an agency decision, Virgin Islands courts will ordinarily credit the agency's factual determinations if they are supported by substantial evidence in the record considered as a whole. See Williams-Jackson v. Public Emples. Rels. Bd., 52 V.I. 445, 450 (V.I. 2009). Substantial evidence is such evidence that a reasonable mind would accept as adequate to support an agency's conclusion. See Gov't of the V.I. v. Crooke, 54 V.I. 237, 256 (V.I. 2010). However, the Legislature may establish different standards of review for the factual determinations of specific agencies. See, e.g., 30 V.I.C. § 35 (providing that factual findings of the Public Service Commission are “conclusive” unless they are “arbitrary, capricious or procured through fraud”).

Disputes as to whether an agency has actually made a decision are treated as pure questions of law for purposes of judicial review. See Hansen v. O'Reilly, 62 V.I. 494, 518 (V.I. 2015). To determine the official action taken by an agency, a court will look to the agency's records, including written decisions memorializing its final actions. Id. *Post hoc* observations of a single member of a multi-member agency carry little, if any, weight with respect to impeaching or clarifying the agency's official records. Id. at 519.

### C. PUBLIC DISCLOSURE

Every citizen of the U.S. Virgin Islands possesses a right to examine and copy all public records belonging to an agency, unless access is limited by other provision of law. See 3 V.I.C. § 881(b). The news media may also publish such records. Id. Records which shall be kept confidential include attorney work-product, trade secrets, patient medical records, and student educational records. See 3 V.I.C. § 881(g).

An agency may initiate a court action to enjoin the examination or copying of a specific public record. The court may grant such an injunction only upon a finding that examination of the record would clearly not be in the public interest and would substantially and irreparably injure any person or persons. However, the court must take into account the

---

## ADMINISTRATIVE LAW

---

policy that free and open examination of public records is generally in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. See 3 V.I.C. § 883(h).

As a general rule, all meeting of agencies shall be open to the public. See 1 V.I.C. § 254(a). However, an agency may restrict public access to a meeting under certain limited circumstances, such as if the meeting can be reasonably expected to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, disclose trade secrets, concern the agency's participation in litigation, or disclose information that is required to be withheld from the public by statute. See 1 V.I.C. § 254(b). The Virgin Islands courts shall have jurisdiction to enforce the open meeting requirement, and to declare an agency action invalid if taken contrary to the open meeting laws. See 1 V.I.C. § 254(i).

All Virgin Islands boards and commissions must keep a verbatim record of their proceedings, which must be reduced to a transcript and made available for public inspection as a public record. See 3 V.I.C. § 881.

---

# BUSINESS ASSOCIATIONS: CORPORATIONS

---

## GENERAL CORPORATION LAW

A corporation is a separate and distinct legal entity created by law. It has the rights and duties of a natural person, is treated as a legal person, and is entitled to the constitutional guarantees of due process and equal protection. It does not, however, have the constitutional rights of a U.S. citizen under the Privileges and Immunities Clause of Article IV.

### 1. FORMATION

A corporation is formed in the Virgin Islands by three or more natural persons of lawful age uniting together by articles of incorporation to form a stock corporation, for any lawful business purpose or purposes not excluded by operation of law.

The articles of incorporation shall state: (a) the name, which shall not be such as will confuse it with any existing corporation, and which must also have a designation, such as "Corp." or "Inc." or "Ltd" (or the unabbreviated form of the word) at the end of its name to distinguish it from a natural person or partnership; (b) the purpose for its formation; (c) if authorized to issue stock, the type and number of shares; (d) the minimum amount of capital which cannot be less than \$1,000; (e) the physical location of its principal office; (e) its term of existence if not perpetual; (f) the number of directors, which shall not be less than three unless the number of shareholders is fewer than three, then it shall not be less than the number of shareholders (13 V.I.C. § 62(b)); (g) the name and physical address of its resident agent; and (h) the names and addresses of the incorporators forming the corporation. See 13 V.I.C. § 2.

### 2. FILING OF ARTICLES OF INCORPORATION

Articles shall be made in duplicate originals and shall be filed and kept at the office of the Lieutenant Governor ("LGO").

### 3. EVIDENCE AND COMMENCEMENT OF EXISTENCE

A copy of the articles of incorporation or a composite of the articles of incorporation, certified by the Lieutenant Governor under his hand and seal of office, stating that the articles have been filed, shall be evidence in all courts

---

## CORPORATIONS

---

and in any administrative proceeding in the United States Virgin Islands. Upon filing and payment of the fee, the corporation shall exist. See 13 V.I.C. § 5.

### **4. POWERS OF INCORPORATORS**

Until the directors are elected, the incorporators shall direct the affairs and the organization of the corporation, and may take such steps as are proper to obtain the necessary subscriptions to stock and to perfect the organization of the corporation, including the election of officers. See 13 V.I.C. § 7.

### **5. FIRST MEETING/NOTICE/WAIVER OF NOTICE**

- (a) The first meeting of every corporation may be called by any of the persons signing the articles of incorporation upon giving of not less than thirty days prior notice to each of the incorporators, either delivered personally or by mailing to each. Such notice shall designate the time and place of the meeting, which may be within or without the United States Virgin Islands, and shall state the purpose for which the meeting is called.
- (b) If all the incorporators sign a written waiver of notice and fix a time and place of meeting, then no notice as required by subsection (a) of this section shall be required.
- (c) The first meeting shall be held within one year of the filing of the articles of incorporation or the corporation shall ipso facto be dissolved.

See 13 V.I.C. § 8.

### **6. BYLAWS**

The original bylaws of a corporation may be adopted by the incorporators. Thereafter, the stockholders of any corporation formed under this chapter shall have the power to make, alter or repeal bylaws for the management of the affairs of the corporation, not inconsistent with the provisions of this chapter, or of other existing laws. The articles of incorporation may, however, vest in the board of directors the authority to make and to adopt bylaws, subject to the right of a majority of the stockholders to amend, repeal, alter, or modify such bylaws at any regular meeting, or at any special meeting called for such purpose. See 13 V.I.C. § 9.

---

## CORPORATIONS

---

### **7. POWERS OF THE CORPORATION**

Powers of the corporation are conferred by statute and as expressly given in its articles. Specific powers conferred by statute include: (1) to exist for the time stated in the articles, and, if not stated, then for perpetuity; (2) to sue and be sued; (3) to have a corporate seal; (4) to hold, purchase, convey, sell and mortgage real and personal property; (5) to appoint officers, agents and servants; (6) to make bylaws; (7) to wind up and dissolve itself; (8) to conduct business within and without the United States Virgin Islands; (9) to make donations for public welfare or for charitable, scientific or educational purposes, but only out of surplus; (10) to indemnify any and all of its directors officers, former directors. See 13 V.I.C. § 32.

### **8. PRINCIPAL OFFICE AND RESIDENT AGENT**

Every corporation shall maintain a principal office or place of business in the United States Virgin Islands and shall have a resident agent in charge thereof, who may be an officer of the corporation, or an individual resident in, or a corporation located in the United States Virgin Islands on whom service of legal process against the corporation can be made. When the resident agent changes address, it is required that notification be provided by executing a certificate, duly acknowledged, and the resident agent must identify all corporations represented. The principal place of business can be changed by the board of directors, but must always remain in United States Virgin Islands. See 13 V.I.C. § 51.

### **9. DIRECTORS AND OFFICERS**

Corporations are managed by a board of directors who are elected by the shareholders. See 13 V.I.C. § 61. The directors have the overall responsibility of the management and control of the corporation. Directors hold office until their successors are elected and qualified, and a majority shall constitute a quorum, unless the bylaws state otherwise, but shall be no less than one-third of the total number of directors or less than two directors. See 13 V.I.C. § 62.

Every corporation shall have a president, a secretary and a treasurer, and may have vice-presidents or an assistant secretary or treasurer. Officers are elected by the board of directors and are responsible for the day to day operations of the corporation. One person may hold two offices except that the president and secretary may not be the same person.

---

## CORPORATIONS

---

**10. RELIANCE UPON BOOKS OF ACCOUNT, ETC.**

A director or a member of any committee designated by the board of directors pursuant to authority conferred by section 65 of this title, shall, in the performance of his duties, be fully protected in relying in good faith upon the books of account or reports made to the corporation by any of its officials, or by an independent certified public accountant, or by an appraiser selected with reasonable care by the board of directors or by any such committee, or in relying in good faith upon other records of the corporation. See 13 V.I.C. § 67.

**11. FILLING BOARD VACANCIES**

Vacancies in the board shall be filled as required in the bylaws or if absent, the vacancy shall be filled by the board of directors. See 13 V.I.C. § 70.

**12. ULTRA VIRES**

Corporate action is invalidated when it is beyond the scope of the corporation's powers.

**13. CONSENT OF DIRECTORS IN LIEU OF MEETING**

Except as provided in Title 13, section 779(a) of this Code, unless otherwise restricted by the articles of incorporation or bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if **all** members of the board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the board, or committee. See 13 V.I.C. § 67(b).

**14. INDEMNIFICATION**

A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if:

(1) he acted:

---

## CORPORATIONS

---

- A. in good faith; and
- B. in a manner he reasonably believed to be in or not opposed to the best interests of the corporation.

See 13 V.I.C. § 67a.

### **15. LIABILITY**

If the directors or officers shall knowingly cause to be published or give out any written statement or report of the condition or business of the corporation that is false in any material respect, such officers and directors causing such report or statement to be published, or given out, or assenting thereto, shall be jointly and severally liable for any loss or damage resulting therefrom. No loans shall be made by a corporation to its officers or directors and no loans shall be made by a corporation secured by its shares, and if any such loan be made, the officer or officers who make it or assent thereto shall be jointly and severally liable until the repayment of the sum so loaned with interest. The provisions of this section shall not apply to corporations organized exclusively as savings and loan associations. Every corporation formed under this chapter shall maintain:

1. correct books of account of its business transactions; and
2. a stock ledger, which ledger shall be kept in the principal office of the corporation in the United States Virgin Islands and which shall be open daily to any stockholder for inspection at reasonable times. If any stock or bonds of any corporation be fraudulently issued for property at more than the cash value, or if a reduction of capital be made in the guise of a loan to stockholders, the directors of the corporation shall be jointly and severally liable to the creditors of the corporation for any loss or damage arising therefrom.

See 13 V.I.C. §§ 71, 72, 73.

### **16. STOCK ISSUANCE**

Generally, corporations issue stock to raise capital. Shares of stock are issued in the form of transferable certificates. Every corporation may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value, with such voting powers, full or limited, or without voting powers and in such



---

## CORPORATIONS

---

series and with such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation or of any amendment thereto, which resolution or resolutions shall be preceded by a determination by the directors, and include a statement that the directors have determined, that the preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof stated and expressed therein are under the circumstances prevailing at the time of adopting such resolution or resolutions fair and equitable to all the existing stockholders. The power to increase or decrease or otherwise adjust the capital stock as provided in this chapter shall apply to all or any such classes of stock.

### 17. CORPORATION'S OWNERSHIP OF STOCK

A corporation may purchase, hold, sell and transfer shares of its own capital stock; but no such corporation shall use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of the capital of the corporation. Shares of its own capital stock belonging to the corporation shall not be voted upon directly or indirectly. See 13 V.I.C. § 106.

### 18. TYPES OF STOCK

Capital stock is issued by a corporation. The two main capital stocks issued by a corporation are common stock and preferred stock. Corporations may issue other classes of stock with distinguishing features. At least one class of stock must have the right to receive assets upon dissolution of the corporation.

(1) **Common stock** generally entitles a shareholder to receive a share of the company profits through dividends and to vote for directors and other important matter related to the corporation. Common stockholders, however, do not receive preference regarding the distribution of corporate assets or dividends.

(2) **Preferred stock** entitles shareholders to receive a payment of dividends. Owners of preferred stock are entitled to receive a

---

## CORPORATIONS

---

distribution of assets before the holders of common stock receive their dividends and distributions.

### **19. STOCKHOLDER LIABILITY**

- (a) When the whole of the price payable for shares of a corporation has not been paid in, and the assets shall be insufficient to satisfy the claims of its creditors, each holder of such shares shall be bound to pay on each share held by him the sum necessary to complete the amount of the par value of such share as fixed by the articles of incorporation, or such proportion of that sum as shall be required to satisfy the debts of the corporation, or, in the case of stock without par value, this liability shall be limited to the unpaid balance of the price for which such shares were issued by the corporation.
- (b) The amounts which shall be payable as provided in subsection (a) of this section may be recovered on behalf of creditors in an action to which the corporation is a party, for the benefit of all the creditors of the corporation brought by a receiver, trustee in bankruptcy, or other competent representative of all creditors.
- (c) Anything in this chapter to the contrary notwithstanding, a holder of shares who has acquired such shares in good faith without knowledge that they were not paid in full or to the extent stated in the certificate for such shares shall not be liable either to the corporation or to its creditors for any amount beyond that shown by such certificate to be unpaid on the shares represented thereby. Any holder who derives his title through such a holder and who is not himself a party to any fraud affecting the issuance of such shares shall have all the rights of such former holder. See 13 V.I.C. § 107.

### **20. MEETINGS**

After the first meeting of the incorporators, the stockholders shall hold annual meetings. The stockholders and directors may hold their meetings and have an office or offices outside of the United States Virgin Islands, if the bylaws so provide. See 13 V.I.C. § 181.

### **21. QUORUM**

Subject to any provision of this chapter specifying the vote that shall be required for a specified action, the articles of incorporation or the bylaws may specify the number of shares and the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting

---

## CORPORATIONS

---

in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business.

**13 V.I.C. § 185**

### **22. ELECTIONS**

All elections of directors shall be by ballot, unless otherwise provided in the articles of incorporation, who shall be elected at the annual meeting of stockholders at the time and place stated in the bylaws upon the giving of at least 10 days advance notice to the stockholders. If the election for directors of any corporation shall not be held on the day designated by the bylaws, the directors shall cause the election to be held as soon thereafter as convenient. No failure to elect directors at the designated time shall work any forfeiture or dissolution of the corporation, but the district court may summarily order an election to be held upon the petition of any stockholder and at such election the shares of stock represented at said meeting, either in person or by proxy, shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the bylaws of the corporation to the contrary. See 13 V.I.C. § 193.

### **23. AMENDMENT OF ARTICLES OF INCORPORATION**

The incorporators, or the directors if any have been elected and qualified, of any corporation organized under the provisions of this chapter **before** the payment of any part of its capital, may file with the Lieutenant Governor an amendment or amendments to the articles of incorporation, duly signed by the incorporators named in the original articles of incorporation, or by the directors if any have been elected, and duly acknowledged in the manner required for articles of incorporation, modifying, changing, or altering its articles of incorporation in whole or in part. Upon the filing and issuance of the certificate of amendment, the articles of incorporation of said corporation shall be deemed to be amended accordingly as of the date on which the original articles of incorporation were filed. Nothing herein contained shall permit the insertion of any matter not in conformity with the provisions of this chapter. See 13 V.I.C. § 221.

### **24. After payment of capital, the corporation, by resolution of the board of directors and consent of shareholders, may, through its officers amend its articles of incorporation by:**

---

## CORPORATIONS

---

- (1) addition to its corporate powers and purposes, or diminution thereof, or both; or
- (2) substitution of other powers and purposes, in whole or in part, for those prescribed by its articles of incorporation; or
- (3) increasing or decreasing its authorized capital stock or reclassifying the same, by changing the number, par value, designations, preferences, or relative, participating, optional, or other special rights of the shares, or the qualifications, limitations or restrictions of such rights, or by changing shares with par value into shares without par value, or shares without par value into shares with par value either with or without increasing or decreasing the number of shares; or
- (4) changing its corporate title; or
- (5) making any other change or alteration in its articles of incorporation that may be desired.

Any or all such changes or alterations may be effected by one certificate of amendment.

All articles of incorporation as so amended, changed or altered, shall contain only such provisions as it would be lawful and proper to insert in original articles of incorporation made at the time of making such amendment. See 13 V.I.C. § 222.

### **25. FIDUCIARIES**

Members of the board of directors are fiduciaries and may be held personally liable to the corporation, shareholders, and third parties for if found to have breached duties of care, candor, and loyalty, to act in good faith and in a manner that the director reasonably believes to be in the best interests of the corporation. If held liable a director may seek indemnification as permitted by law.

### **26. CONSOLIDATION OR MERGER**

Two or more corporations may merge into a single corporation or may consolidate to form a new corporation when a majority of the directors of each

---

## CORPORATIONS

---

enter into an agreement setting forth the terms and conditions of consolidation or merger, which agreement must then be submitted to the stockholders of each corporation at a meeting called separately for the purpose of taking the same into consideration and voted on by ballot for adoption or rejection. If adopted, the president (or vice-president) and secretary of each corporation, under the corporate seal of each, shall certify such fact and acknowledge the agreement and file same at the LGO. If a foreign corporation which has qualified to do business in the Virgin Islands merges or consolidates with a Virgin Islands corporation, it must do so in accordance with the laws where the foreign corporation is incorporated. See 13 V.I.C. § 251 and § 252.

Once consolidated or merged, the prior existing corporation shall no longer exist and all debts owed or due to such corporation shall belong to the resulting new or surviving corporation. See 13 V.I.C. § 253.

### **27. CONTINUATION OF CORPORATION AFTER DISSOLUTION**

All corporations that are expired or dissolved shall continue to exist for a period of three years from such expiration or dissolution for purposes of defending or prosecuting actions by or against them, and the directors then in office shall serve as the liquidating trustees of the corporation. See 13 V.I.C. § 285 and §286.

### **28. ANNUAL REPORTS**

Domestic and foreign corporations which have qualified to do business in the Virgin Islands must file annual reports signed by the president or vice-president and the treasurer or assistant treasurer that contain a statement of the amount of capital used in conducting business, an exact general balance sheet for the close of the last fiscal year, a profit and loss statement. See 13 V.I.C. § 371.

Both domestic and foreign corporations which have qualified to do business here must also file a report and pay an annual franchise tax of \$1.50 per thousand dollars of each capital stock used in conducting business in the Virgin Islands. Failure to pay the annual franchise tax renders the corporation to not be in good standing and it cannot maintain any action in court until it brings itself current in such filings and payments, and is a basis for the Lieutenant Governor to dissolve the corporation. See 13 V.I.C. §531 and §533

---

## CORPORATIONS

---

**29. NO DEFENSE OF DEFECTIVE ORGANIZATION OR USURY**

Virgin Islands corporations cannot use as a defense in any suit against it the want of legal organization or law against usury. See 13 V.I.C. § 346 and § 347.

---

# **BUSINESS ASSOCIATIONS:**

## **UNIFORM LIMITED LIABILITY COMPANY ACT**

---

In 1998 the Virgin Islands adopted the Uniform Liability Company Act. A limited liability company (LLC) is an unincorporated company which has one or more members, but is a legal entity distinct from its members. The company may be either member managed or manager managed. It is formed by an organizer who files articles of organization with the office of the Lieutenant Governor and, unless the articles specify a later date for its effective date, its existence begins as of the date of filing of the articles.

### **1. FORMATION**

The articles of organization must set forth: (1) the name of the company, which must be a name distinguishable from other existing companies of record and must contain "limited liability company" or "limited company" or the abbreviation "L.L.C", "LLC", "L.C.", or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co."; (2) THE physical and mailing addresses of the initial designated office, (3) the name and physical address of the initial agent for service of process; (4) the name and physical address of each organizer; (5) the minimum amount of capital with which the company will commence business, which cannot be less than \$1,000.00; (6) whether the company is to be a term company and, if so, the term specified; (7) whether the company is to be manager managed, and, if so, the name, physical and mailing address of each initial manager; (8) whether one or more of the members of company are to be liable for debts and obligations. Articles of Organization may be amended at any time by delivering articles of amendment to the office of Lieutenant Governor. See 13 V.I.C. §1106 and §1203.

### **2. MEMBERS AND MANAGERS**

Each member is an agent of the limited liability company. A member is not an agent of the company for the purpose of its business solely by reason of being a member. A member managed limited liability company is managed by its members, with each member having equal rights in the management and conduct of the company's activities. If the company is manager managed as specified in the articles of organization, or if the operating agreement states that a member or members shall be designated as a manager, managers must obtain the consent of the members in order to act outside of the ordinary course of business. The manager is an agent of the company for carrying on the ordinary course of business. See 13 VIC § 1301.

### **3. OPERATING AGREEMENT**

All members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business, and to govern relations among the members,



---

## UNIFORM LIMITED LIABILITY COMPANY ACT

---

managers, and company. The operating agreement may not: (1) unreasonably restrict a right to information or access to records; (2) eliminate the duty of loyalty. (3) unreasonably reduce the duty of care; (4) eliminate the obligation of good faith and fair dealing; (5) vary the right to expel a member as required by law; (6) vary the requirement to wind up the limited liability company's business as specified by law; or (7) restrict rights of a person, other than a manager, member, and transferee of a member's distributional interest. It is permissible, however, for the operating agreement to: (1) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and (2) specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty. See 13 V.I.C. § 1104

### **4. OFFICE AND AGENT FOR SERVICE OF PROCESS**

A limited liability company must maintain an office (need not be a place of business), an agent and physical address of agent, and the agent must be an individual resident of the Virgin Islands, a domestic corporation, another limited liability company, or a foreign corporation or foreign company authorized to do business in the Virgin Islands. A limited liability company may change its designated office and agent for service of process by notifying the Office of the Lieutenant Governor and providing information specified in 13 V.I.C. § 1110.

### **5. ANNUAL REPORT**

A Virgin Islands limited liability company and a foreign limited liability company authorized to transact business in the Virgin Islands must file annual reports that state: (1) the name of the company and place where organized; (2) mailing and physical address of its designated office and name and physical address of its agent for service of process in the Virgin Islands; (3) mailing and physical address of its principal office; and (4) names and business addresses of any managers. An annual fee based on \$1.50 for each thousand dollars of capital used in conducting business in the Virgin Islands (with a minimum payment of \$300.00) must be paid when the annual report is filed on or before June 30th of each year following the calendar year in which the company was organized or authorized to transact business. See 13 V.I.C. §1211

### **6. DUTY**

The members of a limited liability company have fiduciary obligations to the other members and the company itself. The members have a duty of loyalty to account to and refrain from competing with the company. Additionally, the members have a duty of care to reasonably act in the best interests of the company.

---

## UNIFORM LIMITED LIABILITY COMPANY ACT

---

### 7. **LIABILITY**

As a distinct entity, a limited liability company may be subject to liability for its debts and obligations. Limited liability protects the members of a limited liability company from individual liability for the debts and obligations of the company, whether arising in tort, contract or otherwise. However, courts have pierced the LLC veil and held members individually liable for wrongful acts such as fraud. In those instances where a member is held liable, the member may be indemnified by the limited liability company.

### 8. **DISSOCIATION**

A member is dissociated from a limited liability company upon the following events: (1) the company's having notice of the member's express will to withdraw upon the date of notice or on a later date specified by the member; (2) an event agreed to in the operating agreement as causing the member's dissociation; (3) upon transfer of all of a member's distributional interest, other than a transfer for security purposes or a court order charging the member's distributional interest which has not been foreclosed; (4) the member's expulsion pursuant to the operating agreement; (5) the member's expulsion by unanimous vote of the other members. See 13 V.I.C. § 1601.

### 9. **DISSOLUTION**

A limited liability company winds up or dissolves a company when certain events occur as follows: (1) an event or circumstance specified in the operating agreement; (2) the consent of all members; (3) the lack of any members; (4) a court order based on unlawful or impracticable conduct of the company's activities, or (5) a court order based on illegal or harmful acts by the company's members.

The Lieutenant Governor may commence a proceeding to dissolve a limited liability company administratively if the company does not: (1) pay any fees, taxes, or penalties imposed by chapter 15 of Title 13 of Virgin Islands Code or other law within 60 days after they are due; or (2) deliver its annual report to the office of the Lieutenant Governor within 60 days after it is due.

During the winding up of the limited liability company's business, the assets of the company must be applied to discharge its obligations to creditors, including members who are creditors. Any surplus must be applied to pay in money the net amount distributable to members in accordance with their right to distributions.

---

## UNIFORM LIMITED LIABILITY COMPANY ACT

---

### 10. CONVERSIONS AND MERGERS

A partnership or limited partnership may be converted to a limited liability company if the partners so agree to the terms and conditions of conversion of interests of partners into interests in the converted limited liability company or the cash or other consideration to be paid as a result of the conversion as set forth in an agreement of conversion.

Once the conversion is approved, the partnership or limited partnership shall file articles of organization which contain: (1) a statement that the partnership was converted to a limited liability company; (2) its former name; (3) a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if less than unanimous, the number or percentage required by the partnership agreement; (4) if a limited partnership, a statement that the certificate of limited partnership is to be canceled as the date the conversion took place.

The conversion effective date is when the articles of organization are filed or at a later date as specified in the articles (i.e. conversion date cannot be retroactive).

The entity is for all purposes the same entity that existed before the conversion, and all assets of the converted partnership vest in the limited liability company and all of the liabilities and obligations of the converted partnership continue as obligations of the limited liability company. See 13 V.I.C. §§1902-1902

A limited liability company may be merged into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities pursuant to a plan of merger which sets forth: (1) the name of each entity that is a party to the merger; (2) the name of the surviving entity; (3) the type of organization of the surviving entity; (4) the terms and conditions of the merger; (5) the manner and basis for converting the interests of each party into interests or obligations of the surviving entity; (6) the physical address of the surviving entity's principal place of business.

Before filing the articles of merger, the plan must be approved by all or by the number of votes required in an operating agreement, partnership agreement, or as required by the laws of the Virgin Islands or the place of foreign jurisdiction for a foreign entity. The articles must set forth: (1) the name and jurisdiction of formation or organization of each of the entities that are to merge; (2) the date articles of organization were filed for each limited liability company that is to merge, and, if a foreign limited liability company, the jurisdiction and date of its

---

## UNIFORM LIMITED LIABILITY COMPANY ACT

---

initial filing of articles of organization and the date when its application for authority was filed at the office of the Lieutenant Governor; (3) that the plan of merger has been approved and signed by each entity that is to merge; (4) the name and address of the surviving limited liability company or other surviving entity; (5) the effective date of the merger; (6) if the surviving entity is a limited liability company, such changes as may be necessary in its articles of organization due to the merger; (7) if the surviving entity is other than a limited liability company, an agreement that the surviving entity may be served with process within the Virgin Islands and is subject to liability in any pending action or proceeding against any limited liability company subject to suit which is to merge.

Merger terminates the existence of the merging entities and property owned by the merged entities vests in the surviving entity and debts, liabilities and obligations continue in the surviving entity. Lawsuits may continue against merging entities as if no merger occurred or the surviving entity may be substituted as a party. See 13 V.I.C. §§1904-1906

---

# **BUSINESS ASSOCIATIONS:**

## **PARTNERSHIPS AND LIMITED PARTNERSHIPS**

---

### **A. FUNDAMENTALS OF PARTNERSHIPS**

A “Partnership” is an association of two (2) or more persons to carry on as co-owners a business for profit, whether or not the persons intend to form a partnership. See 26 V.I.C. § 22.

“Partnership Agreement” means the agreement, whether written, oral, or implied, among the partners concerning the Partnership. See 26 V.I.C. § 2(7).

“Partnership Interest” means all of a partner’s interests in the Partnership, including the partner’s transferable interest and all management and other rights. See 26 V.I.C. § 2(9).

A Partnership is an entity distinct from its partners. See 26 V.I.C. § 21.

Property acquired by a Partnership is property of the Partnership and not of the partners individually. See 26 V.I.C. § 23. A partner is not a co-owner of partnership property and has no interest in partnership property. See 26 V.I.C. § 91.

A partner’s Partnership Interest in the Partnership is personal property. See 26 V.I.C. § 92.

### **B. FORMATION OF A PARTNERSHIP**

In determining whether a Partnership is formed, the following rules apply:

1. Ownership of an asset as joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.
2. The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in the property from which the returns are derived.
3. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment of a debt by installment or otherwise, for services rendered as an independent contractor, or wages or other compensation to an employee, rent, annuity, or other similar matters.

See 26 V.I.C. § 22(3).

In the absence of a written partnership agreement, a court must consider the following:

1. Whether there was a sharing of profits as well as a sharing of losses.

---

## PARTNERSHIPS AND LIMITED PARTNERSHIPS

---

2. Whether there was a combination of property, skill, and knowledge.
3. The express or implied intent of the parties.
4. Whether there was joint control in management of the business.

See Yusuf v. Hamed, 59 V.I. 841 (V.I. 2013).

### **C. PARTNER'S LIABILITY, RIGHTS, AND DUTIES**

#### **1. Liability**

As a general rule, all partners are jointly and severally liable for all obligations of the Partnership, unless otherwise agreed by the claimant or provided by law. However, a person admitted as a partner into an existing Partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner. See 26 V.I.C. § 46.

An obligation of a Partnership incurred while the Partnership is a "limited liability partnership", whether arising in contract, tort, or otherwise, is solely the obligation of the Partnership. A partner is not personally liable for such a partnership obligation solely by reason of being or so acting as a partner in a limited liability partnership. See section H, infra.

#### **2. Rights and Duties**

All partners possess the following rights and duties to the Partnership and to each other:

1. Each partner is deemed to have a capital account.
2. Each partner has equal rights in the management and the conduct of the Partnership's business.
3. Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.
4. A partner may use or possess Partnership property only on behalf of the Partnership.
5. A person may become a partner only with the consent of all of the partners or as expressly provided in a written partnership agreement.
6. The partner has a duty of loyalty to the Partnership and the other partners, which includes the duty to refrain from competing with the Partnership in the conduct of the Partnership business before the dissolution of the Partnership.

---

## PARTNERSHIPS AND LIMITED PARTNERSHIPS

---

7. A partner also has a duty of care to the Partnership and the other partners to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or knowing violation of the law.
8. A partner shall discharge the duties to the Partnership and the other partners consistent with the obligation of good faith and fair dealing.
9. A Partnership shall reimburse a partner for payments made and indemnify a partner from liabilities incurred by the partner in the ordinary course of the business of the Partnership or for the preservation of its property.

See 26 V.I.C. §§ 71; 74.

### **D. TRANSFER OF PARTNERS' INTEREST**

A partner may transfer his partnership interest to another person and entitle the transferee to all of the rights of a partner only with the consent of all partners or as otherwise authorized in the partnership agreement. See 26 V.I.C. § 92.

If a transfer of a partnership interest is made without the consent of all partners or as authorized in the partnership agreement, then the only interest in the Partnership transferred to the transferee is the transferring partner's share of the profits and losses of the Partnership and the partner's right to receive distributions.

Such a transfer does not, as against the other partners or the Partnership, entitle the transferee to participate in the management or the conduct of the Partnership business, to require access to information concerning Partnership transactions, or to inspect or copy Partnership books or records.

### **E. LIMITED LIABILITY PARTNERSHIP**

A Partnership may elect to become a "limited liability partnership." See 26 V.I.C. §221. A Partnership elects to become a "limited liability partnership" by filing a statement of qualification with the Office of the Lieutenant Governor and paying all applicable filing fees.

An obligation of a Partnership incurred while a Partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the Partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such a partnership obligation solely by reason of being or so acting as a partner. Partners of a limited liability partnership are not liable jointly and severally for all obligations of the Partnership. See 26 V.I.C. § 46(c).

The status of a Partnership as a limited liability partnership is effective on the latter of the filing of the Statement of Qualification or a date specified in the Statement of Qualification.



---

## PARTNERSHIPS AND LIMITED PARTNERSHIPS

---

A limited liability partnership shall file an annual report and pay the annual fee between January 1 and June 30 of each year following the calendar year in which a partnership files a statement of qualification to be a limited liability partnership. See 26 V.I.C. § 223.

### **F. FOREIGN LIMITED LIABILITY PARTNERSHIP**

Before transacting business in the Virgin Islands, a foreign limited liability partnership must file a Statement of Foreign Qualification with the Office of the Lieutenant Governor and pay all applicable filing fees. See 26 V.I.C. § 242.

A foreign limited liability partnership authorized to transact business in the Virgin Islands shall file an annual report and pay the annual fee between January 1 and June 30 of each year following the calendar year in which a partnership files a statement of qualification to be a foreign limited liability partnership. See 26 V.I.C. § 223.

---

## PARTNERSHIPS AND LIMITED PARTNERSHIPS

---

### 1. LIMITED PARTNERSHIPS

A. In 1998, the U.S. Virgin Islands adopted the Uniform Limited Partnership Act.

B. Fundamentals of a Limited Partnership.

1. A Limited Partnership is a partnership formed by two (2) or more persons and having one or more general partners and one or more limited partners. (26 V.I.C. § 322(7))
2. A limited partnership may carry on any business that a partnership without limited partners may carry on. (26 V.I.C. § 327)
3. A person may be both a general partner and a limited partner. [citation needed]
4. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the Partnership Agreement, also has the powers, and is subject to the restrictions, of the limited partner to the extent of his participation in the Partnership as a limited partner. 26 V.I.C. §394.
5. Except as provided in the Uniform Limited Partnership Act or in the Partnership Agreement, a general partner of a Limited Partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners. (26 V.I.C. § 393)
6. In order to form a Limited Partnership, a Certificate of Limited Partnership must be executed and filed in the Office of the Lieutenant Governor. (26 V.I.C. § 341)
7. With limited exceptions, a limited partner is not liable for the obligations of a Limited Partnership unless he is also a general partner or, in addition of the exercise of his rights and powers as limited partner, he participates in the control of the business. However, even if a limited partner participates in the control of the business, he is liable only to persons who transact business with the Limited Partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner. [citations needed]

---

## PARTNERSHIPS AND LIMITED PARTNERSHIPS

---

8. A Partnership Interest is personal property. (26 V.I.C. § 471)
  9. Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all their partnership interest. (26 V.I.C § 472).
  10. An assignee of a Partnership Interest, including an assignee of a general partner, may become a limited partner if and to the extent the assignor gives the assignee that right in accordance with authority described in the Partnership Agreement; or all other partners' consent. (26 V.I.C. § 474)
- C. Foreign Limited Partnerships.
1. Before transacting business in the Virgin Islands, a Foreign Limited Partnership shall register with the Office of the Lt. Governor. In order to register, a Foreign Limited Partnership shall submit an application for registration as a foreign limited partnership in compliance with 25 V.I.C. §522 and pay all applicable filing fees.
  2. A Foreign Limited Partnership may cancel its registration by filing with the Office of the Lt. Governor a certificate of cancellation signed and sworn to by a general partner and pay all applicable filing fees.
- D. Limited Liability Limited Partnership.
1. A Limited Partnership may elect to become a "limited liability limited partnership" by filing a statement of qualification with the Office of the Lieutenant Governor, paying all applicable filing fees and complying with the other requirements in 26 V.I.C. §574.
  2. A Limited Liability Limited Partnership continues to be the same entity that existed before the filing of the Statement of Qualification. Both general partners and limited partners are not personally liable by way of contribution or otherwise for a Partnership obligation incurred while the Limited Partnership is a limited liability limited partnership solely due to being or so acting as a partner in the limited liability limited partnership. (26 V.I.C. § 574(c))

---

# VIRGIN ISLANDS PRACTICE

---

## A. OVERVIEW

The Supreme Court of the Virgin Islands possesses the inherent and statutory authority to promulgate the rules of practice that govern procedure in all the courts of the U.S. Virgin Islands. See 48 U.S.C. § 1611(c); 4 V.I.C. § 32(f). While the Legislature of the Virgin Islands has concurrent authority to enact statutes establishing procedural rules, the rules promulgated by the Supreme Court control in the event of a conflict. See Gerace v. Bentley, 65 V.I. 289, 302-03 (V.I. 2016).

Because civil procedure, criminal procedure, and evidence are comprehensively tested on the Uniform Bar Exam, the VILC tests applicants only on the areas where the Virgin Islands Rules of Civil Procedure, Virgin Islands Rules of Criminal Procedure, and Virgin Islands Rules of Evidence notably differ from the federal rules tested on the UBE. However, the VILC more broadly tests applicants on the aspects of Virgin Islands practice and procedure that are not tested on the UBE, such as appellate procedure.

## B. CIVIL PROCEDURE DISTINCTIONS

### 1. General Provisions

The Virgin Islands Rules of Civil Procedure govern the practice and procedure in all civil actions and proceedings in the Superior Court of the Virgin Islands, together with any other applicable statutes or rules. See V.I. R. Civ. P. 1.

When neither the Virgin Islands Rules of Civil Procedure nor any other controlling authority prescribes the procedure to follow in a matter, a judge may regulate practice in any manner consistent with Virgin Islands law. See V.I. R. Civ. P. 1-3.

### 2. Statutes of Limitations

Unless a different limitation is prescribed for a cause of action in a more specific statute, the following statutes of limitations apply to civil actions in the U.S. Virgin Islands:

<u>Limitations Period</u>	<u>Action</u>
Twenty Years	<ul style="list-style-type: none"><li>• Actions for the recovery of real property.</li><li>• Actions upon a judgment or decree of a court.</li><li>• Action upon a sealed instrument.</li></ul>
Ten Years	<ul style="list-style-type: none"><li>• All other causes of action not provided for.</li></ul>
Six Years	<ul style="list-style-type: none"><li>• Contracts.</li><li>• Actions for liability created by statute (other than penalty or forfeiture)</li><li>• Action for trespass upon real property.</li></ul>

---

## VIRGIN ISLANDS PRACTICE

---

	<ul style="list-style-type: none"><li>• Action for taking, detaining, or injuring personal property.</li></ul>
Three Years	<ul style="list-style-type: none"><li>• Action against a marshal or peace officer upon a liability incurred in his or her official capacity or omission of duty.</li><li>• Actions upon a statute for penalty or forfeiture if the action is given to the aggrieved party.</li></ul>
Two Years	<ul style="list-style-type: none"><li>• Torts.</li><li>• Action to set aside sale of real property for non-payment of real property taxes.</li><li>• Actions upon a statute for a forfeiture or penalty.</li></ul>
One Year	<ul style="list-style-type: none"><li>• Action against a peace officer for the escape of a person arrested or imprisoned on civil process.</li></ul>

See 5 V.I.C. § 31.

If a cause of action accrued while a person is insane, imprisoned on a criminal charge, or under the age of twenty-one years, the statute of limitations shall exclude the period of time in which that condition exists; however, in no case may the statute of limitations extend longer than two years after the condition ceases. See 5 V.I.C. § 36.

If a person entitled to bring a cause of action dies before the expiration of the statute of limitations, and the cause of action survives, a personal representative may commence the action after the expiration of time but within one year from the person's death. See 3 V.I.C. § 37(a).

Statutes of limitations are presumptively non-jurisdictional, and therefore may be waived if not timely asserted by a defendant, or equitably modified by a court. See Brady v. Cintron, 55 V.I. 802, 817 n.15 (V.I. 2011).

### **3. Contact Information and Data Forms**

All attorneys and self-represented parties must provide a current telephone number, mailing address, and e-mail address. This information shall be used by the court for serving orders or otherwise making contact in connection with the pending litigation. See V.I. R. Civ. P. 3-1(a). All parties must also complete a case information and litigant data form, which is completed by the plaintiff at the time the complaint is filed and by the defendant (or other party, such as an intervenor) at the time the first appearance is filed. See V.I. R. Civ. P. 3-1(c).

---

## VIRGIN ISLANDS PRACTICE

---

### **4. Service of Process**

#### *a. Time Limit*

Unless an extension of time is granted, a defendant must be served within 120 days after the complaint is filed. See V.I. R. Civ. P. 4(m).

#### *b. Service on the Virgin Islands Government*

When the Government of the Virgin Islands is a named defendant, service shall be made by serving the summons and complaint on the Governor of the Virgin Islands, as well as the Attorney General of the Virgin Islands. See V.I. R. Civ. P. 4(i)(1). When an action concerns the conduct or activity of the Legislative or Judicial Branches of the Government of the Virgin Islands, a summons and copy of the complaint must also be served (as the case may be) on the President of the Legislature or the Chief Justice of the Virgin Islands (or a person designated by them to receive service). See V.I. R. Civ. P. 4(i)(4).

To effectuate service on a public corporation, or an autonomous or semi-autonomous government agency or board, service shall be made in the same manner as the Government, as well as serving the summons and complaint on the chief executive officer of the entity (or other person authorized to accept service by law). See V.I. R. Civ. P. 4(i)(2). To serve an employee or officer sued in his or her individual capacity, the summons and complaint must be served on the chief executive officer, as well as the officer or employee. See V.I. R. Civ. P. 4(i)(2)(D).

To serve an employee or officer of the Government of the Virgin Islands, a public corporation, or an autonomous or semi-autonomous government agency for an act or omission occurring in connection with duties performed on behalf of the U.S. Virgin Islands (whether or not the person is also being sued in an official capacity), one must serve a copy of the summons and complaint on the officer or employee, as well as the Government of the Virgin Islands. See V.I. R. Civ. P. 4(i)(3).

#### *c. Service on a Minor or Incompetent Person*

A minor may be served by delivering a copy of the summons and the complaint on the minor, as well as a parent or guardian. See 5 V.I.C. § 111(1); V.I. R. Civ. P. 4(g). If the minor has no parent or guardian in the U.S. Virgin Islands, service shall be made on any person having care or control of the minor, or with whom the minor resides or in whose service the minor is employed. See 5 V.I.C. § 111(1).

A person who has been judicially declared incompetent may be served by delivering a copy of the summons and complaint on the person, as well as on the guardian that has

---

## VIRGIN ISLANDS PRACTICE

---

been appointed to mandate that individual's affairs. See 5 V.I.C. § 111(2); V.I. R. Civ. P. 4(g).

### *d. Service Outside the U.S. Virgin Islands*

The U.S. Virgin Islands has adopted the Uniform Interstate and International Procedure Act. See 5 V.I.C. §§ 4911-14; V.I. R. Civ. P. 4(f). Service may be effectuated outside the U.S. Virgin Islands through:

- personal delivery in the same manner as service within the U.S. Virgin Islands;
- the manner provided for by the laws of the jurisdiction where service is made;
- any form of mail addressed to the person to be served and requiring a signed receipt;
- the manner directed by the foreign authority in response to a letter rogatory; or
- any other manner as directed by the court.

See 5 V.I.C. § 4911(a). Service may be made by an individual permitted to make service under the laws of either the U.S. Virgin Islands or the jurisdiction where service is made, or by an individual designated by the court. See 5 V.I.C. § 4912. Proof of service shall be made either in the same manner as the U.S. Virgin Islands, under the laws of the jurisdiction where service was made, or as provided by the court. See 5 V.I.C. § 4911(b).

### *e. Service by Publication*

The court may authorize service by publication if, by affidavit, it is shown that service of the summons and complaint cannot be made as prescribed in Rule 4 of the Virgin Islands Rules of Civil Procedure, that the defendant after due diligence cannot be found in the Virgin Islands, and it appears to the satisfaction of the court that a cause of action exists against the defendant or that he is a proper party to the action. See V.I. R. Civ. P. 4-1(a); 5 V.I.C. § 112(b).

## **5. Constitutional Challenge to Virgin Islands Statute**

If a statute of the Virgin Islands is questioned and the parties do not include the Government of the Virgin Islands, one of its agencies or one of its employees in an official capacity, a party must promptly file a notice of constitutional question that states the question and identifies the pleading, motion or other paper that raises the issue. See V.I. R. Civ. P. 5.1(a) (1). The party must serve the notice and paper on the Attorney General of the Virgin Islands. Service may be by certified or registered mail or to an electronic address that the Attorney General has expressly designated for this purpose. See V.I. R. Civ. P. 5.1(a) (2).



---

## VIRGIN ISLANDS PRACTICE

---

The Government of the Virgin ISLANDS may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. The court may reject the constitutional challenge before the intervention period expires, but the court may not enter a final judgment that the statute is unconstitutional. See V.I. R. Civ. P. 5.1(c).

A party does not forfeit a timely constitutional claim or defense, because it failed to file and serve the notice. See V.I. R. Civ. P. 5.1(d).

### 6. Privacy Redactions

Unless ordered otherwise by the court, and subject to certain exemptions, all filings containing social security numbers, taxpayer identification numbers, birth dates, names of individuals known to be a minor, and financial account numbers must be redacted by providing only:

- the last four digits of the social security number and taxpayer identification number;
- the year of the individual's birth;
- the minor's initials; and
- the last four digits of the financial account number.

See V.I. R. Civ. P. 5.2(a). The court may order that a filing be made under seal without redaction. See V.I. R. Civ. P. 5.2(d).

### 7. Pleadings

The Virgin Islands is a notice pleading jurisdiction. See V.I. R. Civ. P. 8(a). The plausibility standard adopted by the Supreme Court of the United States for federal complaints has been abolished in the U.S. Virgin Islands. See Mills-Williams v. Mapp, S. Ct. Civ. No. 2016-0054, \_\_ V.I. \_\_\_, 2017 V.I. Supreme LEXIS 35 (V.I. July 14, 2017).

A prayer for relief in a pleading shall state that the damages are within the jurisdictional limit of the court, but shall not include a specific dollar amount sought for claims pled. See V.I. R. Civ. P. 8(a)(3); 5 V.I.C. § 5.

### 8. Venue

All civil actions shall be initiated in the judicial division where the defendant resides or where the cause of action arose or where the defendant may be served with process. See 4 V.I.C. § 78(a). For the convenience of the parties and witnesses and in the interest of justice, the court may transfer any action or proceeding pending in one judicial division to the other judicial division for hearing and determination. See 4 V.I.C. § 78(b).

### 9. Long-Arm Statute

---

## VIRGIN ISLANDS PRACTICE

---

A court may exercise jurisdiction over a nonresident defendant, who acts directly or by an agent, as to a claim for relief arising from the person-

- transacting any business in this territory;
- contracting to supply services or things in this territory;
- causing tortious injury by an act or omission in this territory;
- causing tortious injury in this territory by an act or omission outside this territory if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this territory;
- having an interest in, using, or possessing real property in this territory, or
- contracting to insure any person, property or risk located within this territory at the time of contracting;
- causing a woman to conceive a child, or conceiving or giving birth to a child; or
- abandoning a minor in this Territory.

See 5 V.I.C. § 4903.

There is a two-part test to determine whether a Virgin Islands court can exercise jurisdiction over a foreign defendant. See Molloy v. Independence Blue Cross, 56 V.I. 155, (V.I. 2012) “First, the plaintiff must show that there is a prima facie case for personal jurisdiction over the defendant under the Virgin Islands long arm statute ... [ and] [s]econd, the plaintiff must make a prima facie showing that the defendant’s due process rights would not be violated by being haled into court in the Virgin Islands.” Id.; see also St. Croix Ltd., v. Shell Oil Co., 60 V.I. 468, 474 (V.I. 2014).

### **10. Responsive Pleadings**

#### *a. Time to Respond*

A defendant served with the summons and complaint within the Virgin Islands must serve a responsive pleading within 21 days after being served. See V.I. R. Civ. P. 12(a)(1).

A defendant personally served outside of the Virgin Islands must serve a responsive pleading within 30 days from the date of service. See 5 V.I.C. § 112; V.I. R. Civ. P. 12(a)(1)(B).

A defendant served by order of publication must serve a responsive pleading within 30 days after the completion of the period of publication specified in the order. See 5 V.I.C. § 112(c); V.I. R. Civ. P. 12 (a)(1)(C).

---

## VIRGIN ISLANDS PRACTICE

---

A defendant served by mail requiring a return receipt must serve a responsive pleading within 30 days from the date process is received. See 5 V.I.C. § 112(c); V.I. R. Civ. P. 12(a)(1)(C).

The Government of the Virgin Islands, public corporations, autonomous or semi-autonomous government agencies or boards, or an officer or employee sued in an official capacity must serve an answer to a complaint, counterclaim or cross claim within 30 days after service upon the Governor and the Attorney General. See V.I. R. Civ. P. 12(a)(2).

An officer or employee of a public corporation, autonomous or semi-autonomous government agency or board sued in an individual capacity for an act or omission occurring in connection with that employment must serve an answer to a complaint, counterclaim or cross claim within 45 days after service upon the officer or employee, or service on the Attorney General, whichever is later. See V.I. R. Civ. P. 12(a)(3).

### *b. Motion to Dismiss After Answer*

A motion to dismiss after a party has already filed an answer is not properly before the Superior Court. See Smith v. Turnbull, 54 V.I. 369, 373-74 (V.I. 2010); Martinez v. Colombian Emeralds, Inc., 51 V.I. 174, 187-190 (V.I. 2009).

### *c. Workers' Compensation Bar*

The defense that an action is barred by the workers' compensation statute is an affirmative defense that must be affirmatively stated in a responsive pleading. See V.I. R. Civ. P. 8(c)(1).

## **11. Amendments to Pleadings**

A party moving to amend a pleading must attach a complete—and properly signed—copy of the proposed amended pleading to the motion papers. Except as otherwise ordered by the court, any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended specifically delineating the changes or additions and may not incorporate any prior pleading by reference. See V.I. R. Civ. P. 15-1(a).

If a proposed amended pleading requires approval by the court, such pleading shall—if leave is granted by the court—be deemed filed on the date the motion attaching a complete and executed copy of the pleading was initially filed. See V.I. R. Civ. P. 15-1(c)(2).

---

## VIRGIN ISLANDS PRACTICE

---

The court may initiate an amendment to any process or pleading for any omission or defect therein, or for any variance between the complaint and the evidence adduced at the trial. If a party is surprised as a result of such amendment, the court may adjourn the hearing for an appropriate period if justice so requires. See V.I. R. Civ. P. 15-2.

### **12. Discovery**

#### *a. Joint Final Pretrial Order*

The parties shall cooperate to prepare a proposed Joint Final Pretrial Order within the deadlines and in accordance with instructions given by the court. After each party has submitted the respective portions of the proposed order to the other parties, the plaintiff shall convene a conference, in person or by telephone, to attempt to reconcile any matters on which there is a disagreement. After diligent efforts to resolve such disagreements, all areas of agreement or disagreement shall be noted in the proposed Joint Final Pretrial Order. The proposed order shall be a single document reflecting efforts of all parties, signed by all counsel of record and any self-represented parties, and then filed by plaintiff for review and entry by the court. See V.I. R. Civ. P. 16-1.

#### *b. Effect of Motions*

The filing of any motions, including potentially dispositive motions such as a motion to dismiss or a motion for summary judgment- shall not stay discovery in the action, unless ordered by the judge. See V.I. R. Civ. P. 26(d)(4).

#### *c. Expert Witness Discovery Charges*

Unless there is a court order, a party seeking discovery must be presented with a proposed bill of the expert's charges within a reasonable period of time before the deposition. If there is an objection to the charges, the court, upon a prompt application, shall decide the reasonableness of the charges before the deposition. See V.I. R. Civ. P. 26-1.

#### *d. Discovery and Depositions Outside the U.S. Virgin Islands*

A court may issue letters rogatory to obtain discovery outside of the U.S. Virgin Islands. See 5 V.I.C. § 4921; V.I. R. Civ. P. 30(i).

The U.S. Virgin Islands has adopted the Uniform Interstate Depositions and Discovery Act, codified at 5 V.I.C. §§ 4922-25B, which provides for discovery involving jurisdictions

---

## VIRGIN ISLANDS PRACTICE

---

recognizing reciprocal discovery obligations, and includes provisions for issuance and service of subpoenas for depositions and production of documents in those jurisdictions. See V.I. R. Civ. P. 30(i).

### *e. Reasonable Diligence in Responding to Interrogatories*

A party must answer each interrogatory. If it cannot in the exercise of reasonable efforts prepare an answer with the information in its possession, it must make this representation in good faith. If the answer can be determined by examining, auditing, compiling, abstracting or summarizing a party's business records and the burden to do so would be the same for either party, the responding party may answer by

- i.) specifying the records with sufficient details and
- ii.) producing copies of the records, compilations, abstracts or summaries with the answer to the interrogatory unless the duplication is unduly burdensome.

See V.I. R. Civ. P. 33(d).

### *f. Discovery Disputes*

Before a party seeks the court's help to resolve a discovery dispute arising under the Virgin Islands Rules of Civil Procedure (except with regards to depositions), the parties must have first conferred in good faith about the dispute. The party initiates the conference by first serving a letter identifying each issue and/or discovery request in dispute, stating briefly its position (with legal authority) on each and specifying the terms of the order it will be seeking. The party is responsible for arranging the conference within 15 days after serving its letter. The conference may occur in person (preferable), telephonically or by video conferencing. See V.I. R. Civ. P. 37-1.

## **13. Mediation**

The court may refer a matter to mediation, which is "a process whereby a neutral third person called a 'mediator' acts to encourage and facilitate the resolution of a dispute between two or more parties." V.I. R. Civ. P. 90(a).

The first mediation conference must occur within 60 days of an order of referral and mediation completed within 45 days of that conference. See V.I. R. Civ. P. 90(d) (1), (10).

The mediator may be disqualified for bias, prejudice or impartiality on the same terms as if the mediator were a judge. See V.I. R. Civ. P. 90(e)(4)(B); 4 V.I.C. § 284.

---

## VIRGIN ISLANDS PRACTICE

---

Unless all parties agree, no communications, written or oral, in the course of the mediation proceeding are admissible as evidence in a subsequent legal proceeding. See V.I. R. Civ. P. 90(d)(9).

A public entity is deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. A party, otherwise, appears at the conference if physically present are the party or its representative and the insurance carrier representative (not the carrier's outside representative), each of whom has full authority to settle without further consultation. See V.I. R. Civ. P. 90(f).

### **14. Trials**

#### *a. Number of Jurors*

The trial jury in civil cases consists of six persons. See 5 V.I.C. § 80; Samuel v. United Corp., 64 V.I. 512 (V.I. 2016).

#### *b. Peremptory Challenges*

In civil cases each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs shall be considered as a single party for the purpose of making challenges. However, if there is more than one defendant the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly. See 5 V.I.C. § 323; V.I. R. Civ. P. 47(b).

#### *c. Juror Contact*

There should not be any contact, directly or indirectly, with any prospective or current member of the jury before or during the trial. See V.I. R. Civ. P. 47-1(a). Until the court discharges the jury, there should not be any contact, directly or indirectly, with any member of the jury. See V.I. R. Civ. P. 47-1(b).

#### *d. General Verdict with Answers to Written Questions*

The court cannot enter judgment when the answers are inconsistent with each other and one or more is inconsistent with the general verdict, which inconsistency the court cannot resolve. The court must direct the jury to consider its answers and verdict. If the jury cannot resolve the inconsistency, the court must order a new trial. A new trial can be avoided if the party disadvantaged by the inconsistent answers waives objection and accepts the verdict based on the answers least favorable to it. See V.I. R. Civ. P. 40(b)(4).

---

## VIRGIN ISLANDS PRACTICE

---

### C. CRIMINAL PROCEDURE DISTINCTIONS

#### 1. General Provisions

The Virgin Islands Rules of Criminal Procedure govern the practice and procedure in all civil actions and proceedings in the Superior Court of the Virgin Islands, together with any other applicable statutes or rules. See V.I. R. CRIM. P. 1.

To compute time under the Virgin Islands Rules of Criminal Procedure, one must exclude the day of the act, event, or default that begins the period. When the period is 15 days or more, every day must be counted, including intermediate Saturdays, Sundays, and legal holidays. However, when the period is 14 days or less, one does not count intermediate Saturdays, Sundays, and legal holidays. The last day of the period is included; however, If the last day of the period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. See V.I. R. CRIM. P. 45(a).

#### 2. Commencement of Action

Prosecutions in the courts of the Virgin Islands need not be brought by grand jury indictment. See 48 U.S.C. § 1561; see also Simmonds v. People, 59 V.I. 480, 491 (V.I. 2016). Felony prosecutions in the Superior Court of the Virgin Islands are initiated by the filing of an information by the Attorney General or an authorized representative of that office, while misdemeanor prosecutions are commenced with the filing of a complaint. See V.I. R. CRIM. P. 3(a).

#### 3. Statutes of Limitations

Unless a different limitation is prescribed for a particular offense in a more specific statute, the following statutes of limitations apply to civil actions in the U.S. Virgin Islands:

<u>Limitations Period</u>	<u>Offense</u>
No Limitation	<ul style="list-style-type: none"><li>• Murder</li><li>• Felony child abuse</li><li>• Felony child neglect</li><li>• Any felony sexual offense perpetrated against a victim</li><li>• Embezzlement of public monies</li><li>• Any falsification of public records</li></ul>
Three Years	<ul style="list-style-type: none"><li>• All other felonies.</li></ul>
One Year	<ul style="list-style-type: none"><li>• Misdemeanors.</li></ul>



---

## VIRGIN ISLANDS PRACTICE

---

5 V.I.C. § 3541.

### **4. Bail**

Subject to the provisions of the Revised Organic Act of 1954 (see section C(2)(d) of VIRGIN ISLANDS GOVERNMENT & CONSTITUTIONAL LAW, infra), bail is available to defendants “before conviction.” See V.I. R. CRIM. P. 5-1(a). Bail pending appeal after conviction is not authorized. See Todmann v. People, 57 V.I. 540 (V.I. 2012).

### **5. Pleas**

Unlike the federal system, the court may participate in plea discussions with the consent of the parties. See V.I. R. CRIM. P. 11(c). Prior to accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court to determine that the plea is voluntary, but need not determine that there is a factual basis for the plea. See V.I. R. CRIM. P. 11(b)(2).

### **6. Disclosure of Law Enforcement Personnel Records**

When seeking disclosure of personnel and/or internal affairs files of a particular law enforcement officer, the defendant must first confer with the Attorney General in an effort to reach agreement on the scope of any such disclosure. If agreement cannot be reached, the defendant may file a motion with the court to require disclosure of such files. The motion must include a report of the parties’ efforts to resolve the issue (or give reasons for not conferring), and show reasonable grounds to believe that the records sought may contain discoverable information. See V.I. R. CRIM. P. 16-1(a). The Attorney General may file a response to the motion, and as part of such response may request a protective order. See V.I. R. CRIM. P. 16-1(b). The court may direct disclosure of acts and information, whether substantiated or not, which could reasonably bear on the officer’s credibility or character for truthfulness, including, but not necessarily limited to, the substance of all disciplinary reports, citizen complaints, department and/or agency complaints, positive drug and/or alcohol testing results, and so forth. See V.I. R. CRIM. P. 16-1(c).

### **7. Correction of Sentence**

The court may correct an illegal sentence at any time, and may reduce a sentence or correct a sentence imposed in an illegal manner within 120 days after the sentence is imposed, or within 120 days after affirmance or dismissal of the appeal and expiration of the time for obtaining further review or appeal. See V.I. R. CRIM. P. 35(a).

---

## VIRGIN ISLANDS PRACTICE

---

### **8. Uniform Criminal Extradition Act**

The U.S. Virgin Islands has adopted the Uniform Criminal Extradition Act, 5 V.I.C. §§ 3802 et seq., and implemented its provisions through Rule 40-1 of the Virgin Islands Rules of Criminal Procedure.

A court may issue a warrant to bring a defendant before the court upon oath of a credible witness that the defendant has committed an offense in another jurisdiction, is a fugitive from justice, is within the Virgin Islands, and is liable to be delivered over to the authorities of the other jurisdiction. See V.I. R. CRIM. P. 40-1(a). A defendant arrested on such a warrant shall appear before the court for a preliminary examination. If there is reasonable cause to believe that the information is true and that the person may be lawfully demanded, the defendant shall be detained or released in like manner as if the offense had been committed in the Virgin Islands. The defendant shall be ordered to appear before the court at a future date, so as to allow 30 days to obtain requisition from the governor of the state from which the person is a fugitive. See V.I. R. CRIM. P. 40-1(b). If the defendant is not demanded by requisition and appears before the court on the date ordered, the defendant shall be discharged unless the court finds some cause to detain or to release the defendant until a later date. See V.I. R. CRIM. P. 40-1(c).

On the demand of the governor of any state, the court may surrender any defendant in the Virgin Islands charged in that state with committing an act in the Virgin Islands or in another state, intentionally resulting in a crime in the state whose authority is making the demand, even if the accused was not in the state at the time of the commission of the crime and has not fled the state. See V.I. R. CRIM. P. 40-1(g). However, no defendant shall be delivered to the executive authority or an agent demanding the defendant unless the defendant is first taken before the court. See V.I. R. CRIM. P. 40-1(g)(3).

## **D. EVIDENCE DISTINCTIONS**

### **1. General Provisions**

The Virgin Islands Rules of Evidence govern the practice and procedure in all proceedings in the courts of the Virgin Islands, together with any other applicable statutes or rules. See V.I.R.E. 1101.

### **2. Privileges**

The U.S. Virgin Islands recognizes the following privileges:

- the attorney-client privilege, see 5 V.I.C. § 852;

---

## VIRGIN ISLANDS PRACTICE

---

- mental health provider, physician, and psychotherapist privilege, see 5 V.I.C. § 853;
- spousal privilege, see 5 V.I.C. § 854;
- marital communication privilege, see 5 V.I.C. § 855;
- confidential religious communication privilege, see 5 V.I.C. § 856;
- political vote privilege, see 5 V.I.C. § 857;
- trade secrets protection, see 5 V.I.C. § 858;
- state secret, official information, and governmental privilege, see 5 V.I.C. § 859; and
- informant privilege, see 5 V.I.C. § 860

V.I.R.E. 501(b).

### 3. Excluding Witnesses

An expert witness who will testify in the case shall not be excluded from the courtroom unless the court, in the exercise of its discretion, directs that the witness be excluded for part or all of the proceedings prior to the expert's testimony. See V.I. R. EVID. 615(b).

The court may order that each excluded witness be kept separate from all other witnesses. See V.I.R.E. 615(c).

## D. PROCEDURE IN MISCELLANEOUS CASES

### 1. Small Claims

The Virgin Islands Small Claims Rules are applicable to all actions in the Small Claims Division of the Superior Court of the Virgin Islands. See V.I SM. CL. R. 1.

The Small Claims Division possesses jurisdiction over civil actions where the amount in controversy does not exceed \$10,000, exclusive of interest and costs. See 4 V.I.C. § 112(a). Where the amount in controversy exceeds \$10,000, a party may nevertheless prosecute the action in the Small Claims Division by waiving recovery of any damages above \$10,000. See 4 V.I.C. § 112(b).

Neither party may be represented by an attorney in the Small Claims Division. See 4 V.I.C. § 112(d). A plaintiff who elects to file a complaint with the Small Claims Division rather than the Civil Division shall be deemed to have waived the right to a jury trial and the right to be represented by counsel. See V.I. SM. CL. R. 2(c). A defendant may receive a transfer from the Small Claims Division to the Civil Division as of right by demanding a jury trial, or if an attorney enters an appearance on behalf of the defendant or the defendant requests representation by an attorney prior to any party or witness being

---

## VIRGIN ISLANDS PRACTICE

---

sworn to give evidence in the small claims trial. See V.I. SM. CL. R. 2(d). A defendant who fails to request such a transfer shall be deemed to have waived both the right to a jury trial and the right to be represented by counsel at trial. See V.I. SM. CL. R. 2(c)(2).

All pleadings in the Small Claims Division shall be construed to do substantial justice. See V.I. SM. CL. R. 2(f).

### **2. Forcible Entry and Detainer**

A forcible entry and detainer (“FED”) action authorizes landlords to obtain a swift judicial decision in a summary proceeding in cases where a tenant is obtaining possession of a leased property in violation of the lease. See 28 V.I.C. § 781 et seq. Upon the filing of a FED complaint, a summons shall be served and returned within three days, requiring the defendant to appear within three days after service thereof. See 28 V.I.C. § 785.

To obtain relief through a summary FED proceeding, the landlord must establish that there is an undisputed oral or written lease agreement, that rent is due and owing thereon; or that there is an undisputed oral or written lease which has expired. See V.I. Port Auth. v. Joseph, 49 V.I. 424, 427-28 (V.I. 2008). Relief through a FED proceeding is not available if title to the premises is in question, or where there is a bona fide question as to the existence of a lease. Id.

### **3. Arbitration**

The Federal Arbitration Act (“FAA”) applies to cases filed in the Superior Court of the Virgin Islands only when an interstate nexus is shown. See Allen v. HOVENSA, LLC, 59 V.I. 430, 442 n.2 (V.I. 2013).

Even in cases where the FAA is applicable, only the substantive provisions of the FAA preempt local law. The Supreme Court of the Virgin Islands has held that the provision of the FAA authorizing an immediate interlocutory appeal of an order denying a motion for a stay pending arbitration is inapplicable to the U.S. Virgin Islands. See World Fresh Mkt. v. P.D.C.M. Assocs., S.E., S. Ct. Civ. No. 2011-0051, 2011 V.I. Supreme LEXIS 29, at \*5 (V.I. Aug. 25, 2011) (unpublished). The three-month limitations period for filing a motion to vacate an arbitration award is also not a substantive rule and is inapplicable. See Allen, 59 V.I. at 435.

## **E. APPELLATE PROCEDURE**

### **1. General Provisions**

The Virgin Islands Rules of Appellate Procedure govern the practice and procedure in all proceedings in the Supreme Court of the Virgin Islands. See V.I. R. APP. P. 1.

---

## VIRGIN ISLANDS PRACTICE

---

### 2. Appellate Jurisdiction

The Supreme Court possesses jurisdiction over all appeals arising from final judgments, final decrees, or final orders of the Superior Court. See 4 V.I.C. § 32(a). A final judgment is one that ends the litigation on the merits and leaves nothing to do but execute the judgment. See Rojas v. Two/Morrow Ideas Enters., Inc., 53 V.I. 684, 691 (V.I. 2010). Such an appeal must be taken within 30 days. See V.I. R. App. P. 5(a), (b).

The Supreme Court also possesses jurisdiction over interlocutory orders of the Superior Court that:

- (a) grant, continue, modify, refuse, or dissolve injunctions, or refuse to dissolve or modify injunctions.
- (b) appoint receivers, or refuse orders to wind up receiverships or to take steps to accomplish the purposes thereof, such as directing sales or other disposals of property;
- (c) dismiss an information (or any part thereof) or terminate a prosecution in favor of the defendant, provided that the appeal would not be contrary to the Double Jeopardy Clause of the United States Constitution;
- (d) suppress or exclude evidence in a criminal proceeding, provided that jeopardy has not already attached;
- (e) release a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, the order granting release;
- (f) orders the detention of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, the order of detention.

See 4 V.I.C. § 33(b), (d). Such appeals must be taken within 30 days. See 4 V.I.C. § 33(d)(5).

In a civil case, the Superior Court may certify an order for interlocutory appeal if it is of the opinion that the order involves a controlling question of law as to which there is substantial ground for difference of opinion, and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. The Supreme Court may, in its discretion, permit the appeal. See 4 V.I.C. § 33(c). Such a petition for permission to appeal must be filed with the Supreme Court within ten days after entry of the Superior Court order. Id.

### 3. Original Jurisdiction

The Supreme Court possesses original jurisdiction to issue writs of mandamus and other

---

## VIRGIN ISLANDS PRACTICE

---

extraordinary writs. See 4 V.I.C. § 32(b). To obtain a writ of mandamus, a petitioner must establish that it has no other adequate means to attain the desired relief and that its right to the writ is clear and indisputable. See In re People of the V.I., 51 V.I. 374, 382 (V.I. 2009). However, even if the first two prerequisites have been met, the Supreme Court must be satisfied that the writ is appropriate under the circumstances. Id.

### **4. Presentation of Issues on Appeal**

Only issues and arguments fairly presented to the Superior Court may be presented for review on appeal. See V.I. R. APP. P. 4(h). However, when the interests of justice so require, the Supreme Court may consider and determine any question not so presented. Id.

### **5. Harmless Error**

No error or defect in any ruling or order or in anything done or omitted by the Superior Court or by any of the parties is ground for granting relief or reversal on appeal where its probable impact, in light of all of the evidence in the case, is sufficiently minor so as to not affect the substantial rights of the parties. See V.I. R. APP. P. 4(i).

### **6. Waiver**

Issues that were (1) not raised or objected to before the Superior Court, (2) raised or objected to but not briefed, or (3) are only adverted to in a perfunctory manner or unsupported by argument and citation to legal authority, are deemed waived for purposes of appeal. See V.I. R. APP. P. 22(m). The Supreme Court, at its open, may notice an error not presented that affects substantial rights. Id.

---

# DOMESTIC RELATIONS

---

## A. MARRIAGE

### 1. Void Marriages

A marriage is void from the very beginning, without being decreed so, and the marriage's nullity may be shown in a collateral proceeding when one of the parties to the marriage is:

- the party's grandmother, grandfather's wife, wife's grandmother, father's sister, mother's sister, mother, stepmother, wife's mother, daughter, wife's daughter, son's wife, sister, son's daughter, daughter's daughter, son's wife, daughter's son's wife, wife's son's daughter, wife's daughter's daughter, brother's daughter or sister's daughter; or
- any person previously married and whose previous marriage has not been terminated by death or a decree of divorce.

See 16 V.I.C. § 1.

### 2. Voidable Marriages

A marriage is voidable, and shall be invalid only if declared null by a judicial decree, if one of the parties to the marriage is

- is an idiot or a person adjudged a lunatic;
- has consented thereto by reason of fraud or force;
- is incapable, from physical causes, of entering into the marriage itself; or
- is under the age of consent, which is 16 years of age for males and 14 years for females.

See 16 V.I.C. § 2.

### 3. Void or Voidable Marriage Entered in Another Jurisdiction

If a person domiciled in the U.S. Virgin Islands enters into a marriage that is void or voidable under Virgin Islands law in another jurisdiction, such marriage shall be deemed illegal, and may be decreed void in the same manner as if it had been celebrated within the U.S. Virgin Islands. See 16 V.I.C. § 4.

### 4. Same-Sex Marriage

Although Virgin Islands statutory law defines marriage as a civil contract which may be entered into between a male and a female, see 16 V.I.C. § 31, on June 30, 2017, ruling of the Supreme Court of the United States in Obergefell et al/v. Hodges, which mandates recognition of same-sex marriage nationwide, has been adopted in the U.S.



---

## DOMESTIC RELATIONS

---

Virgin Islands.

### **5. Solemnization, Proof and Effect of Marriages**

No marriage shall be valid unless solemnized by

- a clergyman or minister of any religion whether he resides in the Virgin Islands or elsewhere in the United States; or
- witnessed by a Local Spiritual Assembly of the Bahai is according to the usage of their religious community; or
- any judge or any court of record.

See 16 V.I.C. § 32.

Those authorized to solemnize marriages must first be presented with a marriage license delivered by the Clerk of the Superior Court of the VI addressed to him or her and authorized by the Clerk. See 16 V.I.C. § 34. The Clerk must examine applicants for a marriage license under oath prior to issuing the license for solemnization. See 16 V.I.C. § 35. An applicant for marriage license must be at least 18 years of age, unless that person was already married. See 16 V.I.C. § 36.

### **6. Miscellaneous Effects of Marriage**

A spouse who owns property cannot be made liable for the contracts and liabilities of the spouse who has no interest in the property. See 16 V.I.C. § 62.

Neither spouse is liable for the debts or liabilities of the other incurred before marriage nor are either liable for the separate debts of the other nor is the rent or income of property of either liable for the separate debts of the other. See 16 V.I.C. § 66.

Spouses can manage and dispose of their own estates. See 16 V.I.C. § 67. The property rights of a spouse at the time of marriage or afterwards acquired by gift, devise, or inheritance or acquired by the spouse's own labor are not subject to the debts or contracts of the other spouse, and the spouse may manage, sell, convey or devise the same by will to the same extent and in the same manner as the other spouse can property belonging to him. See 16 V.I.C. §§ 68 and 69.

There is no common law interspousal immunity, therefore either spouse may sue and be sued, free from the other spouse's participation and control and also may sue one another for injuries to person or property to the same extent and manner as if unmarried. See 16 V.I.C. § 63.

A spouse is liable for all civil injuries he or she commits, and damages may be

---

## DOMESTIC RELATIONS

---

recovered against her alone. The other spouse would be jointly responsible only if he or she would be jointly responsible had they not been married. See 16 V.I.C. §70.

A conveyance, transfer or lien executed by either spouse to or in favor of the other, shall be valid to the same extent as between other persons and a spouse can serve as the other's attorney in fact to control or dispose of his or her property and may revoke the same to the same extent and manner as other persons. See 16 V.I.C. §§ 64 and 65.

### **B. DIVORCE AND ANNULMENT**

#### **1. Annulment**

Either party may bring an action to have their marriage declared void from the beginning based on the grounds set forth in sections A.1. and 2, supra. However, if the marriage already has been declared valid by the judgment of a court having jurisdiction in an action brought for this purpose, it cannot afterwards be questioned for the same cause directly or otherwise. See 16 V.I.C. § 103.

When either husband or wife claims that a marriage is void or voidable, then the other spouse may bring an action to declare it valid and lawful. In this action the court, based upon the evidence presented, may declare such marriage void from the beginning or from the time of the judgment, or that it is valid and lawful, and binding on the parties thereto. See Hamed v. Hamed, 63 V.I. 529 (V.I. 2015).

An action to annul a marriage of an individual under the age of consent may be brought by the individual, through a next friend, or by the individual's parents or guardian. An action to annul a marriage of an idiot or a lunatic must be brought through a next friend. See 16 V.I.C. § 3(a).

Only a party laboring under the disability or fraud described can bring an action to declare a marriage void. The exception is where the parties are found to have freely cohabitated as husband and wife after the disability is removed (i.e. the party with the disability, arrived at legal age, acquired sufficient understanding, been restored to reason, freed from the force, etc.) See 16 V.I.C. § 102.

No proceeding to declare the nullity of a marriage may be instituted by a person who, being fully capable of contracting a marriage, has knowingly and willfully contracted an illegal marriage. See 16 V.I.C. § 3(b).

If the marriage was not solemnized in the U.S. Virgin Islands, the party seeking annulment must be an inhabitant of the U.S. Virgin Islands for at least six weeks prior to filing an action for annulment. See 16 V.I.C. § 105.

#### **2. Divorce**

---

## DOMESTIC RELATIONS

---

### *a. Parties to Divorce*

Either spouse may maintain an action for legal dissolution of the marriage contract. See 15 V.I.C. § 101.

### *b. Requirements for Divorce*

A decree granting a legal separation or dissolving a marriage may be entered when the court is satisfied from the evidence presented that

- 1) there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed, and
- 2) there remains no reasonable likelihood that the marriage can be preserved.

See 16 V.I.C. § 104.

### *c. Jurisdiction of Superior Court*

Evidence of continuous and uninterrupted residence in the U.S. Virgin Islands for a period of six weeks prior to filing an action for divorce shall be presumptive proof of domicile sufficient to give the court jurisdiction, regardless of where the marriage was solemnized. See 16 V.I.C. § 106(a).

## **3. Interlocutory Orders**

Prior to final judgment, the court may in its discretion, enter the following interlocutory orders:

- that a party in need obtain from the other party such funds as may be necessary to enable the party in need to prosecute or defend the action, as the case may be;
- for the care, custody, and maintenance of the minor children of the marriage during the pendency of the action; or
- for the freedom of the wife from the control of the husband and to restrain either or both parties from disposing of the property of either party.

See 16 V.I.C. § 108.

## **4. Final Orders**

Once a marriage is declared void or dissolved, the court further decree as follows:

---

## DOMESTIC RELATIONS

---

- for the future care and custody of minor children of the marriage; see James v. Faust, 62 V.I. 554 (V.I. 2015).
- for the recovery from the non-custodial party parent such funds, which are just and proper to support the children of the marriage;
- for the recovery of an amount of money for the support and maintenance of the party in need;
- for the delivery to the wife of her personal property in the possession or control of the husband at the time of giving the judgment;
- for the appointment of one or more trustees to collect, receive, expand, manage, or invest, in such manner as the court shall direct, any sum of money necessary for the maintenance of the wife or the nurture and education of minor children committed to her;
- to change the name of the wife;
- for the award to the parties of all marital property, in accordance with principles of equitable distribution. Marital property is described as all real and personal property acquired by either spouse subsequent to the marriage with the exception of:
  - a. Property acquired by gift, bequest, devise, or descent;
  - b. Property acquired in exchange for property acquired prior to the marriage, or in exchange for property acquired by gift, bequest, devise, or descent
  - c. Property acquired by a spouse after a decree of legal separation;
  - d. Any property obtained by judgment awarded to a spouse from the other spouse;
  - e. Property excluded by valid, written agreement of the parties; and
  - f. Income from property acquired by a method listed in subparagraphs (A) through (E), if the income is not attributable to the personal effort of a spouse.

See 16 V.I.C. § 109.

Either party on notice may make a motion for modification of a Final Order any time after a judgment and the court may set aside, alter or modify so much of the

---

## DOMESTIC RELATIONS

---

order pertaining to alimony, the appointment of trustees, care and custody of the minor children, their nurture and education or maintenance of either party. See 16 V.I.C. § 110; Edney v. Edney, 64 V.I. 661(V.I. 2016)

Notwithstanding, a decree of divorce, neither party can contract marriage with a third person until the action has been heard and determined on appeal or until the expiration of the period allowed by law to take such appeal. However, the parties to an uncontested action to void or dissolve a marriage may contract for marriage with a third person immediately after judgment. See 16 V.I.C. § 111.

### 5. Child Custody

When making a child custody determination, the best interests of the child are of paramount concern. See Madir v. Daniel, 53 V.I. 623, 632 (V.I. 2010).

Neither the Legislature nor the Supreme Court of the Virgin Islands has defined which factors a court should or must consider in determining the best interests of a child. However, the Superior Court lacks the unbridled discretion to decide which factors should be considered in child custody proceedings. Instead, the Superior Court must only consider factors that are relevant to the best interests of the child; thus, factors that relate only to the interests of the parents—such as giving one parent the opportunity to have custody when he has not had custody in the past—should not be considered. See James v. Faust, 62 V.I. 554, 559-60 (V.I. 2015).

The U.S. Virgin Islands has adopted the Uniform Child Custody Jurisdiction and Enforcement Act, 16 V.I.C. § 115 et seq. Pursuant to this statute, the Superior Court of the Virgin Islands may exercise jurisdiction to make an initial child-custody determination if

- (1) The U.S. Virgin Islands is the home of the child when the action is commenced;
- (2) The U.S. Virgin Islands was the home of the child within six months prior to commencement of the action, and the child is absent but the parent or person acting as parent continues to live in the U.S. Virgin Islands;
- (3) No other state has jurisdiction under paragraph (1) supra, or the home state court has declined jurisdiction based on the ground that the U.S. Virgin Islands is the more appropriate forum, and
  - a. the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with the U.S. Virgin Islands other than mere physical presence; and

---

## DOMESTIC RELATIONS

---

b. substantial evidence is available in the U.S. Virgin Islands concerning the child's care, protection, training, and personal relationships;

(4) All courts having jurisdiction under paragraphs (1) or (2), *supra*, have declined to exercise jurisdiction on the ground that a court of the U.S. Virgin Islands is the more appropriate forum to determine the custody of the child; or

(5) No court of any other state would have jurisdiction under the criteria specified in any of the above paragraphs.

See 16 V.I.C. § 127. Once jurisdiction is established, the court exercises exclusive jurisdiction until a determination is made that there is no significant connection and substantial evidence is no longer available regarding the child, or that the child (parents and those acting as parents) do not presently reside in the U.S. Virgin Islands. See 16 V.I.C. § 128.

The Superior Court may modify another state court's child-custody determination if it has jurisdiction to make an initial child-custody determination, and (1) the other state court determines it no longer has exclusive, continuing jurisdiction, or that a court of the U.S. Virgin Islands would be a more convenient forum; or (2) a court of the U.S. Virgin Islands or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not properly reside in the other state. See 16 V.I.C. § 129.

### **6. Child Support**

In all actions for child support, child support payments shall be calculated by following the Child Support Guidelines enacted by the Attorney General of the Virgin Islands. See 16 V.I.C. § 345(b). However, a court may modify or disregard the guidelines if it is determined that injustice would result from their application; such a determination must be based on criteria taking into consideration the best interests of the child. See 16 V.I.C. 345(c).

All child support awards must be supported by findings on the record, even if the court chooses not to follow the Child Support Guidelines. See Bradford v. Cramer, 54 V.I. 669 (V.I. 2011).

### **7. Alimony**

In the U.S. Virgin Islands, alimony is not awarded based on fault, but only on the needs of the spouse. To determine alimony, the Superior Court should consider all factors to determine if the parties will be similarly situated after their divorce. If this general comparability of resources and capacity is shown, then that should be the end of the matter. But if the divorce causes an economic disparity between the former spouses, the Superior Court should fit an alimony award that strikes the appropriate balance between

---

## DOMESTIC RELATIONS

---

the party in need of the support and the other party's ability to pay. See Berrios-Rodriguez v. Berrios, 58 V.I. 477, 485 (V.I. 2013). In applying this test, the Superior Court should not simply look at the parties' current finances, but may consider their potential for future earnings based on their educational background, employment history, and other relevant factors. Id.

### C. ADOPTION

Any inhabitant of the U.S. Virgin Islands may petition the Superior Court of the Virgin Islands to adopt a child who is not his or her own and who is in the U.S. Virgin Islands. If the petitioner is married, the spouse must join in the petition. Except where two spouses adopt jointly, no person may be adopted by more than one person. The petition may also request that the name of the child be changed. See 16 V.I.C. § 141.

The parents of the child, or the survivor of them, must consent to the adoption in writing; however if there are no surviving parents then the guardian or next of kin in the VI as the case may be shall, may consent. If there is no next of kin, then the court may appoint a guardian ad litem to give or withhold consent. See 16 V.I.C. § 142(a). In addition, the child must consent to the adoption if he or she is 14 years or older. See 16 V.I.C. § 144.

If either parent is incapacitated, imprisoned for more than two years, willfully deserted and neglectful for more than one year prior to the date of the filing of the petition, the court may proceed as if that parent is dead, and may appoint a guardian ad litem to give or withhold consent. See 16 V.I.C. § 142(b).

To order an adoption, the Superior Court must find:

- That the child has resided with the petitioner for a length of time sufficient to indicate that the proposed adoption is in the best interest of the child;
- That the Commissioner of Public Welfare has submitted a report and recommendation with respect to the proposed adoption;
- That the court is satisfied of the identity and relations of the persons;
- That the petitioner is a proper person to bring up the child; and
- That and that it is fit and proper that such adoption should take effect.

See 16 V.I.C. § 145. If a change of name is requested, the court may adjudge the name change request as part of the same proceeding without further notice. See 16 V.I.C. § 145(b).

If an adoption petition is granted, the original birth record of the child, as well as all records or files in the custody of any government agency or of the court, shall be sealed and thereafter not open to inspection by any person other than the adopted person, if the person has attained majority and is not incompetent. See 16 V.I.C. § 145(c).

A child adopted pursuant to the adoption statute is deemed, for the purpose of inheritance

---

## DOMESTIC RELATIONS

---

and all other legal consequences, to be the child of the adopted parents as if born to them in lawful wedlock. However, the adopted child may not inherit property that is expressly limited to heirs of the body or bodies of the parents by adoption. See 16 V.I.C. § 146(a).

Ordinarily, the natural parents of an adopted child are deprived of all legal rights as to the child. See 16 V.I.C. § 146(b). However, in stepparent or second-parent adoptions—adoptions which involve an adult who wishes to adopt a child together with the child's biological or custodial parent—the biological or custodial parent shall retain his or her legal rights. See In re L.O.F., 62 V.I. 655 (V.I. 2015).



---

# WILLS

---

## A. MAKING OF A WILL

- a. **Capacity to make a will.** All persons except idiots, persons of unsound mind and persons under eighteen years of age may devise their real property by Last Will and Testament duly executed. See 15 V.I.C. § 2. Every person of the age of eighteen years or upwards, of sound mind and memory, and no others, may give and bequeath his personal estate, by will in writing. See 15 V.I.C. § 7.
- b. **Who can receive real property under a will?** A devise of real property can be made every person capable by law of holding real property; but no devise to a corporation is valid unless the corporation is specifically authorized by statute or by its charter to take by devise. See 15 V.I.C. § 4.
- c. **Manner of execution of a will.** All wills must be executed in the following manner:
  - 1) It must be subscribed by the testator at the end of the will;
  - 2) The subscription shall be made in the presence of each of the subscribing witnesses, or shall have been acknowledged by him, to have been so made to each of the subscribing witnesses;
  - 3) The testator, at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument to be so subscribed as his last will and testament;
  - 4) There shall be at least two attesting witnesses, each of whom shall sign his name as a witness at the end of the will, at the request of the testator.

See 15 V.I.C. § 13.

- d. **Statutory power to take possession and to sell, mortgage or lease real property in absence of a valid power in will.** Notwithstanding the absence of a valid power therein, every will of a person dying after the effective date of the Virgin Islands Code (1957) shall be construed as giving the Executor or Trustee the power to take possession of, collect rents, manage and to sell, mortgage and lease all of the real property owned by the deceased at the time of his death, except where the will expressly prohibits the Executor from doing so or where a particular property has been specifically devised. The Executor may sell such property where the power is necessary for the payment of

---

# WILLS

---

administration expenses, funeral expenses, debts or transfer or estate tax upon approval by the court. See 15 V.I.C. § 5.

- e. **Nuncupative or holographic wills.** The exception to the requirements of 15 VIC § 13 is the statute pertaining to nuncupative or holographic wills. No nuncupative or holographic will shall be valid unless made by a soldier or sailor while in actual military or naval service, or by a mariner while at sea and when made in the following manner:

- 1) A nuncupative oral will made within the hearing of two persons and the execution and the tenor thereof proved by at least two witnesses; or
- 2) a holographic will when written entirely in the handwriting of the maker even though it may be unattested.

Any such disposition of property by a soldier, sailor or mariner shall be invalid and unenforceable upon the expiration of one year following his or her discharge from the service, provided that he possesses testamentary capacity at the time of the expiration. If he lacks testamentary capacity at the time of the expiration, it will be valid until the expiration of one year from the time that he regains testamentary capacity. See 15 V.I.C. § 8.

## B. MATTERS AFFECTING PROVISIONS IN THE WILL.

- a. **Devise or bequest to certain societies, associations, corporations or purposes.** No person having a husband, wife, child or descendant or parent, shall by his will, bequeath to any benevolent, charitable, literary, scientific, religious organization or purpose, more than one-half part of his or her estate after payment of his or her debts, and the devise or bequest shall be valid to the extent of one-half and no more. The validity of a bequest of more than one-half may be contested only by a surviving husband, wife, child, descendant or parent. See 15 V.I.C. § 9. The word "descendant", as used in describing those competent to contest decedent's disposition of more than one-half of his estate to charity, means lineal heirs only, thereby excluding siblings, nieces and nephews from competence to contest the disposition. Estate of Georg v. Congregation Religiosa Hermanas Mercedaris de la Caridad Incorporada, 7 V.I. 298, 298 F. Supp. 741 (D.V.I. 1969).
- b. **Devise or bequest to subscribing witnesses.** If any person who is a subscribing witness to a will receives a beneficial interest or appointment of any kind and that person's signature is needed to prove the will, the bequest to that witness shall lapse. If the signature of the witness is not necessary to prove the

---

# WILLS

---

will (i.e. there are two other witnesses), the devise, legacy or appointment will stand.

If the signature of the subscribing witness receiving a legacy is necessary to prove the will but the witness would have been entitled to a share of the testator's estate, the legacy will stand to the extent of the legacy made in the will.

Even if the legacy of the subscribing witness is disallowed because his signature is needed in order to prove the will, that fact does not prevent the witness from being competent to testify respecting the execution of the will and it does not affect the validity of the will with the exception of the particular legacy that was disallowed. See 15 V.I.C. § 19.

- c. **Rights of children born after the execution of a will.** When a testator has a child born after the making of a will, whether born in the lifetime or after the death of the testator and shall die leaving the child not provided for by way of any settlement and not mentioned in the will, every such child shall succeed to the same portion of his parent's estate that he would have received in intestacy. The word "child" shall be deemed to include an illegitimate child in cases where the deceased has admitted paternity of the child by signing his birth certificate, has been adjudicated to be the father by a court of competent jurisdiction, has acknowledged, in writing, that the child is his or that paternity has been established by DNA testing. See 15 V.I.C. § 18.

This statute protects only children born after the execution of the will, for whom the testator has not provided. It does not protect the interest of any child who was born prior to the execution of the will. If the child is not provided for in the will, he does not inherit. There is no requirement that a child be expressly disinherited. See Estate of Walters, 38 V.I. 14 (V.I. Super. Ct. 1997).

- d. **Right of Election by Surviving Spouse.** A spouse has a personal right to elect against a will to take the share that he would have received in intestacy. The spouse is limited to a one-half share of the net estate after deductions for debts, estate taxes, funeral and administration expenses. See 15 V.I.C. § 10.

The rights of the spouse under the election statute turns on whether his intestate share is more or less than \$2,500.00 and what, if any, provisions have been made for the spouse in the will.

If the spouse's intestate share does not exceed \$2,500.00, the spouse can elect to take his estate share absolutely, which shall be in lieu of any provision for him in the will. See 15 V.I.C. § 10(a)(3).

---

# WILLS

---

If the spouse's intestate share is more than \$2,500.00 and the will has given the spouse, outright or in trust, more than the intestate share, with income payable for life, the spouse has the limited right to take \$2,500.00 absolutely and have that sum deducted from the trust fund and the terms of the will shall otherwise remain effective. See 15 V.I.C § 10(a)(2).

If the will contains an absolute legacy or devise, whether general or specific, for the spouse in excess of \$2,500.00 under the will and also a provision for a trust for his benefit for life of a principal equal to or greater than the excess between said legacy and the intestate share, there is no right of election. See 15 V.I.C § 10(a)(4).

If the will provides a spouse with an absolute legacy or devise, whether general or specific, of less than \$2,500.00 and a provision for a trust for his benefit for life of a principal equal to or more than the excess between such legacy or devise and his intestate share, the spouse shall have the limited right not to take more than the sum of \$2,500.00, inclusive of the amount of the legacy or devise, and the difference between the amount of the legacy or devise and the sum of \$2,500.00 shall be deducted from the principal of such trust fund and the terms of the will shall otherwise remain effective. See 15 V.I.C. § 10(a)(5).

Where the aggregate of the provisions under the will for the benefit of the surviving spouse including the principal of a trust, or legacy or devise, or any other form of testamentary provision, is less than the intestate share, the spouse shall have the limited right to elect to take difference between such aggregate and the amount of the intestate share and the terms of the will shall otherwise remain effective. In every estate, the spouse shall have the limited right to withdraw the sum of \$2,500.00 if the intestate share is equal to or greater than that amount. Such sum shall be inclusive of any absolute legacy or devise, whether general or specific. Where a trust fund is created for his or her benefit for life, the sum of \$2,500.00 or any necessary part thereon shall be paid from the principal of the trust fund. See 15 V.I.C. § 10(a)(6).

The provisions of Section 10 pertaining to the creation of a trust with income for life shall likewise apply to a legal life estate or to annuity or any other form of income for life created by the will created for the benefit of the surviving spouse. In the computation of the value of the provisions under the will, the capital value of the fund or other property producing the income and not the value of the life estate. See 15 V.I.C. § 10(a)(7).

---

# WILLS

---

If a spouse elects against the will, the will is still valid as to the residue remaining after the elective share has been deducted and the terms of the will shall be as far as possible remain effective. See 15 V.I.C. § 10(b).

The right of election is not available to a spouse against whom or in whose favor a final decree of divorce has been rendered. No right of election shall be available to a spouse who has procured, outside of the Virgin Islands, a decree of divorce where such judgment is not recognized as legal in the Virgin Islands or to a spouse who has neglected or abandoned the other spouse. See 15 V.I.C. § 10(c)(d)(e).

An election must be made within six (6) months of the issuance of Letters Testamentary. The time may be enlarged before the expiration for a period not to exceed six (6) months on any one application. If the spouse does not elect within the first six (6) months, the court may allow the election provided that no decree settling the account of the fiduciary has been made and that twelve (12) months have no elapsed since the issuance of letters. In the case of an incompetent or an infant, the court may permit an election to be made on behalf of the infant or incompetent up to the time of the entry of the decree on the first judicial account of the permanent representative of the estate made more than seven (7) months after the issuance of letters. See 15 V.I.C. § 10 (g).

The right of election can be waived either as to a particular will or as to any will of the deceased. The waiver has to be signed and acknowledged or proved in the manner for recording of a conveyance of real property. The waiver can be executed before or after the marriage; unilateral in form, executed only by the maker or bilateral in form, executed by both spouses; executed with or without consideration; and be absolute or conditional. See 15 V.I.C. § 10 (i).

The fact that a spouse files a petition for probate of a will does not constitute a waiver of the right of the spouse to take an elective share. See In re Estate of Thomson, 5 V.I. 636 (D.V.I. 1972).

- e. **Devise or bequest to descendant or to relative not to lapse.** Whenever any real or personal property shall be devised or bequeathed to a child or other relative of the testator and such legatee or devisee predeceases the testator, leaving a child or other descendant, the legacy will not lapse but shall vest in the surviving child or other descendant of the devisee or legatee as if the devisee or legatee had survived the testator and had died intestate. See 15 V.I.C. § 21. In other words, for this statute to apply, the testator's legatee or devisee has to be a child or other relative of the testator and the deceased legatee must have a child or other descendant to inherit the property.

---

# WILLS

---

## C. REVOCATION OF WRITTEN WILLS AND DEVISES.

- a. **Revocation or cancellation of written wills.** No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked, or altered, otherwise than by some other will, in writing, or some other writing of the testator, declaring such revocation or alteration, and executed with the same formalities which the will was required to be executed; or unless the will is burnt, torn or destroyed with the intent and for the purpose of revoking same, by the testator himself, or someone in his presence by his direction and consent. When another person destroys the will, the fact of the direction and consent of the testator and the fact or the injury or destruction, shall be proved by two witnesses. See 15 V.I.C. § 26.

**Case Notes.** If a will or codicil known to have been in existence during the testator's lifetime, in his custody or in a place where he had ready access to it, cannot be found at his death, a presumption arises that the will has been destroyed by the testator with intent to revoke it. In absence of rebutting evidence, the presumption is sufficient to justify a finding that the will was revoked. The standard to rebut the presumption of revocation is by clear and convincing evidence. Duvergee v. Sprauve, 413 F.2d 120 (3d Cir. 1969).

When an original will has been seen after the death of the testator, the court found that the will could not have been destroyed by the testator and that the will could be proved through a copy as a lost will. In re Estate of LeCuyer, 50 V.I. 156 (V.I. Super. Ct. 2008). Case was distinguished from Duvergee supra.

- b. **Agreement to convey property devised or bequeathed.** An agreement, for valuable consideration, by the testator, to convey any property devised or bequeathed in any will previously made, shall not be deemed a revocation of the devise but the property shall pass to the devisee subject to the agreement, with the same remedies available to the purchaser for enforcement of the agreement. See 15 V.I.C. § 28.
- c. **Charge or encumbrance not a revocation.** A charge or encumbrance upon any real or personal estate for the purpose of securing the payment of money or the performance of any agreement shall not be deemed a revocation of a will relating to the same estate previously executed. The devisees shall take the property subject to the charge or encumbrance. See 15 V.I.C. § 29.

---

# WILLS

---

- d. **Conveyance, when not deemed a revocation.** A conveyance, deed or other act by a testator by which his estate or interest in property, previously devised by him, is altered, but not wholly divested, shall not be deemed a revocation of the devise or bequest; but such devise or bequest shall pass to the devisee the actual estate or interest of the testator, which would otherwise pass to his heirs or next of kin, unless the instrument by which the alteration is made states the testator's intention to operate as a revocation of such previous devise. See 15 V.I.C. § 30.
- e. **Conveyance, when deemed a revocation.** If the provisions of the instrument referred to in §30 altering the testator's interest that are made are wholly inconsistent with the terms and nature of the previous devise, such instrument shall operate as a revocation thereof, unless the provisions depend on a contingency or condition and the contingency does not happen or the condition is not performed. See 15 V.I.C. § 31.
- f. **Effect of cancellation or revocation of second will.** If, after making a will, the testator duly makes and executes a second will, the destruction, cancelling or revocation of such second will, shall not revive the first will, unless it appears by the term of such revocation, that it was his intention to revive and give effect to the first will; or unless after such destruction, cancellation or revocation, he duly republishes his first will. See 15 V.I.C. § 32.

## D. DESCENT AND DISTRIBUTION.

- a. **Dower and Curtesy abolished; provision in lieu thereof.** The shares of the surviving spouse in Title 15 Chapter 3 and section 10 (right of election) are in lieu of all rights of dower or curtesy. See 15 V.I.C. § 83.
- b. **Descent and distribution of estate of decedent.** 15 V.I.C. § 84 sets forth the shares to which heirs are entitled in intestacy, depending on their relationship to the deceased. Some examples of the provisions of §84 are set forth as follows:

**Section 10**, which provides that no representation shall be admitted among collaterals after brothers' and sisters' descendants;

**Section 11** which provides that relatives of half-blood shall share with those of whole blood in the same degree (i.e. Half brother of the deceased shares equally with the full brother of the deceased);



---

# WILLS

---

**Section 12** which provides that a descendant begotten before the death of the deceased but born after his death shall take in the same manner as if he had been born in the lifetime of the deceased and survived him;

**Section 13** which provides that an illegitimate child shall have the same status for purpose of descent and distribution as if he were born in lawful wedlock, provided that where the ancestor is the father, he admitted paternity of record by signing the birth certificate, was adjudged to be the father by a court of competent jurisdiction or that he had acknowledged paternity in writing. **NOTE** that the provision in 15 V.I.C. § 18 pertaining to proof by DNA testing was not carried into this section.

**Section 14** which provides for the right of an adopted child to take a share of an estate continues as provided in Title 16. An adopted child is deemed for purposes of inheritance to be the child of his parents. However, he is not capable of taking property expressly limited to heirs of the body of the adoptive parents, nor is he allowed to inherit from the lineal or collateral kindred of his adoptive parents by representation. See 16 V.I.C. § 146. In other words, the adopted child can inherit from his adoptive mother or father in intestacy but he cannot inherit from his adoptive parents' parents or siblings in intestacy.

**Case note.** Unlike the UPC, there is no provision for inheritance by stepchildren in the Virgin Islands' statute. The stepchildren of the deceased cannot be considered as heirs in intestacy. Estate of Desrochers, 36 V.I. 59 (V.I. Super. Ct. 1997).

- c. **Advancements of real and personal estates.** If a child of an intestate shall have been advanced by him, by settlement or portion, real or personal property, during the testator's lifetime, the value must be reckoned for the purpose of descent and distribution. If the share advanced to the child is equal to or greater than the share that he would have been entitled to receive from the estate, such child or his descendants shall not share in the estate. If the advancement be less than such share, the child will receive just so much to make his share equal to that of the other heirs. The value of the property received must be either valued by an acknowledgement by the child of the value or it must be estimated according to the worth at the time it was given. Maintaining or educating a child or giving him money without a view to a portion or settlement is not an advancement. See 15 V.I.C. § 85. **NOTE:** Unlike some other jurisdictions, an advancement made to a child is charged against his descendants if the child should predecease the intestate deceased.



---

# WILLS

---

- d. **Effect of divorce, abandonment or refusal to support upon the rights to a distributive share.** No distributive share shall be allowed either to a person against whom or in whose favor a final decree of divorce is recognized by the law of this territory; to a spouse who obtained a divorce outside this territory where the decree or judgment is not recognized as valid in this territory; to a spouse who has abandoned the other spouse or who has refused to support him or her; in the estate of a child, to a parent who has neglected or refused to support the child or who has abandoned him during infancy, unless the parental relationship or duties are resumed and continue until the death of the child. See 15 V.I.C. § 87.

**Case notes.** A husband and wife who were residents of the U.S. Virgin Islands obtained a divorce from the Dominican Republic with neither party actually appearing in court there. The parties continued to live together after the divorce. After the death of the husband, the children of the deceased raised the issue of the divorce as a bar to the wife's right to inherit in view of the divorce. The wife stated that the divorce was a sham obtained in order to further the husband's business. The court held that because the wife had affirmatively participated in obtaining the divorce, she was not allowed to inherit. Estate of Pringle, 43 V.I. 15 (V.I. Super. Ct. 2000).

A father attempted to share in the estate of his son who died at the age of nineteen. The mother of the deceased child opposed the father's attempt because he had failed to support the child and essentially abandoned him for most of his childhood. The court applied two tests; to wit: had the father neglected the upbringing and guidance of the child; and had the father failed to provide material support for the child. The court held that the father had only minimal contacts with the child and was in arrears on a court-ordered child support decree. The court held that the appropriate standard of proof under the statute was a preponderance of the evidence. In re Estate of Remy, 2012 V.I. LEXIS 75 (V.I. Super. Ct. 2012).

- e. **Simultaneous deaths.** In a case where the title to property or the devolution thereof depends on the priority of death and there is no sufficient evidence that the parties have died other than simultaneously, the property of each person shall be disposed of as if he had survived, except as otherwise provided in this section. See 15 V.I.C. § 88(a).

Where the testamentary disposition of property depends upon the time of death of two or more beneficiaries designated to take alternatively by reason of survivorship and there is no sufficient evidence that they died other than simultaneously, the property shall be divided into as many shares as there were alternative beneficiaries and the property be distributed to those who would

---

# WILLS

---

have taken the whole property in the event that the beneficiary through whom they take had survived. See 15 V.I.C. § 88(b).

Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and the other one-half as if the other had survived. If there were more than two joint tenants and all of them have so died, the property will be distributed shall be in the proportion that one bears to the whole number of joint tenants. See 15 V.I.C. § 88(c).

Where the insured and the beneficiary of a policy of life or accident insurance have died and there is no sufficient evidence that they have died other than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary. See 15 V.I.C. § 88(d).

The provisions of 15 V.I.C. § 88 shall not apply in the case of wills, living trust, deeds or contracts of insurance wherein a provision other than that provided for by Section 88 has been made for the disposition of property. See 15 V.I.C § 88(e).

- f. **Presumption of death.** In the case of the absence from the jurisdiction of any person owning property therein, for a period of ten years or more, during which time there has been no knowledge or means of knowledge of his whereabouts afforded by him or obtainable by the exercise of reasonable diligence on the part of the heirs, beneficiaries or other parties in interest of his estate, such heir, beneficiary or other interested party may institute a proceeding for the administration of the estate of such absentee owner, on the presumption that the latter has died intestate. See 15 V.I.C § 168.

**Case note.** The party seeking the declaration of death must overcome the presumption of life and prove death by a preponderance of the evidence. Rice v. Clements, 26 V.I. 153 (V.I. Super. Ct. 1991).

## E. PROOF OF WILLS AND ADMINISTRATION OF ESTATES.

- a. **Proof of wills.** The probate court has jurisdiction over proof of wills when the testator at or immediately before his death was an inhabitant of the Virgin Islands and leaves assets therein; when the testator, not being an inhabitant of the Virgin Islands, shall have died in the Virgin Islands, leaving assets therein; when the testator, not being an inhabitant of the Virgin Islands, shall have died outside of the Virgin Islands, leaving assets therein; or when the testator, not being an inhabitant of the Virgin Islands, dies

---

# WILLS

---

outside the Virgin Islands, not leaving assets therein but where assets subsequently came into the Virgin Islands. See 15 V.I.C § 231.

- b. **Requirements for appointment of Administrator.** If there is no will, the petition is brought by the person seeking to be Administrator of the estate. In order to become an Administrator of an estate, the petitioner must be a resident of the Virgin Islands. He cannot be of unsound mind, a minor, a judicial officer of the courts or have been convicted of a felony or misdemeanor involving moral turpitude. See 15 V.I.C. § 235(a).
- c. **Priority in appointment of administrators.** Administration of an estate shall be granted by Letters of Administration first to the spouse or next of kin, or both, in the discretion of the court, then one or more of the principal creditors or any other person competent and then any other person competent and qualified selected by the court. See 15 V.I.C. § 236. If the widow or next of kin do not apply for letters of administration within thirty days from the date of death of the deceased, they shall be deemed to have renounced their right therefor. If the principal creditors do not apply within forty days, they will also have been deemed to renounced their right therefor. This statute only applies to priority of appointment and not the right to serve.
- d. **Nonresidents serving as Executors.** A nonresident named in a will may serve as Executor, provided that he otherwise qualifies under section (a) above, files a bond (unless it is waived) and appoints an agent or attorney resident in the Virgin Islands upon whom service of all papers can be made. The appointment must be filed with the clerk of the court. See 15 V.I.C. § 235(c)(3).
- e. **Petition for admission of a will to probate or for issuance of letters of administration.** The petition for testate or intestate probates are essentially the same, with the exception of the fact that in a testate probate, the petition makes reference to the execution of the will. The petition must set forth the residence and citizenship of the petitioner and by what right he makes the petition. He must estimate the value of all real and personal property of the deceased. He must list the names, addresses and relationship of all persons who would inherit from the deceased if there were no will and the proportion of the estate that each would inherit. He must state whether the heirs have signed waivers and consent to the petition, and, if they have not, he must ask for the issuance of citation to anyone who has not signed a waiver. If there is a requirement of support for a widow and/or minor children, he should so state. He should request the setting of a bond, unless the will waives the imposition of a bond. Wherever possible, a death certificate should be attached. **Super. Ct. R. 191(c).** If a minor or incompetent is an heir, the petition shall request that

---

# WILLS

---

a Guardian Ad Litem be appointed for said minor and incompetent. The duties of the Guardian Ad Litem is set forth in **Super. Ct. R. 192(e)**.

- f. **Issuance of Citations.** In either testate or intestate probates, notice must be given to the heirs-at-law. If the heirs-at-law have signed waivers and consents to the petition, citations are not needed. The form of the citation is set forth in **Super. Ct. R. 192(b)**. If the person cannot be served personally, the court, at the request of the petitioner, may authorize the publication of the citation once a week for three consecutive weeks in a newspaper of general circulation in the judicial district where the deceased last lived or had assets. The citation has to be returnable not less than twenty days after the date of the first publication **Super. Ct. R. 192(c)**. The form of the notice is set forth in the Rule.

## F. NOTICE TO CREDITORS AND CREDITOR'S CLAIMS.

- a. **Notice to Creditors.** After his appointment, the Administrator or Executor must give notice of his appointment and advising all creditors that they must present their claims to him within six months of the date of his appointment. Notice is given by publication in a newspaper of general circulation once a week for four consecutive weeks. Notice must also be posted in at least three public places in the judicial district, including the post office nearest the residence of the deceased if he died in the territory. See 15 V.I.C. § 391; **Super. Ct. R. 194(c)**. The form of the Notice to Creditors is set forth in the Rule.
- b. **Time for presentment of claims.** If a claim is not presented within six months of the publication of the Notice to Creditors, it shall not be barred but it shall not be paid until the claims that were filed within the period have been paid. Contingent claims should be presented as any other claim. See 15 V.I.C. § 392. Where a claimant failed to bring a claim within six months of the publication for creditors, it would not have priority. In re Estate of Vanderpool, 2010 V.I. LEXIS 113 (V.I. Super. Ct. 2010).
- c. **Verification of claims.** All claims must be verified by affidavit of the claimant or someone with personal knowledge thereof, setting forth the amount of the claim, that the amount is due and that there is no counterclaim to the best of the applicant's knowledge. When it appears that there is written evidence of the claim, the Executor or Administrator may demand written evidence of said claim or demand that the nonproduction be accounted for. See 15 V.I.C. § 393.
- d. **Court determination of Claims.** If a claim is rejected by the Executor or the Administrator, the claimant can request a hearing. The finding of the

---

# WILLS

---

court shall have the force and effect of a judgment, from which an appeal may be taken. No claim shall be allowed if the statute of limitations has run on the claim. See 15 V.I.C. § 395. Despite the language regarding the statute of limitations, if the Executor or Administrator does not raise the statute of limitations defense, it can be deemed waived. In re Estate of Sewer, 332 F. Supp. 2d 817 (D.V.I. 2004).

- e. **Preferences in payment of claims and charges.** Payment of claims that have been approved or that have been rejected but established by judgment, within the first three months after the appointment of the Executor or Administrator, shall be paid as follows:
1. Funeral Expenses;
  2. Taxes of whatever nature;
  3. Expenses of last sickness;
  4. Debts preferred by the law;
  5. Debts with at the time of death were a lien against his property or any right of interest therein, according to the priority of their several liens;
  6. Debts due employees of deceased for wages earned within the ninety days immediately preceding the death of the deceased;
  7. All other claims.

The preference given in item 5 shall extend only to the proceeds of the property upon which the lien exists and as to such proceeds such debts are to be preferred to any of the classes mentioned other than the taxes on such property.

The Executor or the Administrator may retain in his hands in preference to any claim the amount of his own compensation and the necessary expenses of administration. See 15 V.I.C. § 421.

- f. **Mortgages and other charges on real property inherited or devised.** Where real property subject to a mortgage or subject to any other charge, including a lien for unpaid purchase money, the devisee or distributee must satisfy the lien out of his own property without resorting to the Executor or Administrator for payment, unless there was a direction in the will that such mortgage or charge be otherwise paid. See 15 V.I.C. § 429.

There is a similar requirement for payment of charges or liens upon personal property without resort to the Executor or Administrator. See 15 V.I.C. § 12.

---

# WILLS

---

- g. **Real property taxes.** Notwithstanding any other law to the contrary, no interest or penalty shall accrue on real property taxes during the time that the real property for which the taxes are owed is involved in probate proceedings. See 15 V.I.C. § 430.

## G. ACCOUNTS OF EXECUTORS AND ADMINISTRATORS AND ADJUDICATION OF THE ESTATE.

- a. **Quarterly Accounts.** Every Executor and Administrator shall file successive serially numbered quarterly accounts. He shall charge himself with all assets which have come into his possession or control. He must itemize the debts paid and list the creditor's claims that have been presented during the quarter being reported. There shall be a brief narrative stating the progress of the administration, the reason for the delay, if any, and the balance of matters to be concluded. All quarterly accounts must be signed by the Executor or Administrator and his attorney and must be verified by the Executor or Administrator. See 15 V.I.C § 561; **Super. Ct. R. 197.**
- b. **Final account.** When the estate has been fully administered, the Executor or Administrator shall file a final account which shall be signed by both the Executor or Administrator and his attorney and which shall be verified by the Executor or Administrator. See 15 V.I.C. § 564; **Super. Ct. R. 199.**
- c. **Hearing on Final Account.** When the final account has been filed, the Executor or Administrator shall move for a hearing on final account. The court will set a date for hearing not less than thirty days from the date of the order setting the hearing. A copy of the Notice of Hearing on Final Account shall be mailed to each heir or distributee and to each creditor who has not been fully paid. The Notice shall be published once a week for four consecutive weeks and shall be posted in three public locations, including the post office closest to the residence of the deceased if he lived in the jurisdiction. See 15 V.I.C. § 564 (b); **Super. Ct. R. 200.**
- d. **Adjudication and Distribution.** If there have been no objections to the final account, the Executor or the Administrator shall move for entry of Adjudication and the court shall enter Adjudication which shall direct the distribution of the assets of the estate. The Executor or Administrator shall file receipts for all real and/or personal property that he distributes. If the distribution is of real property, the Executor or Administrator shall record the Adjudication in the Office of the Recorder. **Super. Ct. R. 201.** The form of the receipts is set forth in Rule 201.

---

# WILLS

---

## H. ALTERNATIVES TO FULL ADMINISTRATION OF ESTATES.

Virgin Islands law provides for an alternative to the full administration of a decedent's estate. The proceedings for settlement of an estate without administration are faster and simpler, in that there is only one round of publication. However, in both of the following versions, the heirs must all agree to accept the property subject to the debts of the deceased, making the property and themselves liable for payment of the debts. That requirement should be explained very carefully to the heirs and devisees before they opt for the proceeding.

- a. **Settlement without administration.** When a person dies intestate, leaving no debts or such debts as the heirs choose to assume and pay, the heirs can file a petition setting forth the name, address and date of death of the deceased, the names and capacities of the heirs, the fact that there are no debts or that they choose to assume such debts, the proportion of the estate due to each heir and requesting that they be recognized as the heirs of the deceased and that they be placed in full possession of the estate, real and personal. See 15 V.I.C. § 191, et. seq.; **Super. Ct. R. 205.**

The heirs must attach an Inventory to the petition, which shall be sworn to by two responsible persons and swearing to the value of the property of the estate at the date of death of the deceased. Publication takes place once a week for four consecutive weeks.

When proof of publication is submitted, the heirs may move for entry of adjudication. The Adjudication will spell out the fact that they are accepting the property subject to the debts of the deceased and making themselves and the property liable for any such debts. In the event that real property is adjudicated, the Adjudication has to be recorded in the Office of the Recorder. There is no \$500.00 Adjudication Fee payable as there is with a full probate.

There is a provision stating that the surviving spouse or the guardian of the minor can accept the property for the minor but that the minor will not be liable for any debts in excess of the equity in the assets received. See 15 V.I.C. § 196. There is no corresponding section limiting the liability of adults. The heirs should be aware of the lack of limitation.

- b. **Rule 210 proceeding.** When a person dies owning property in the Virgin Islands and having left a will which was admitted to probate in another jurisdiction, the legatees or devisees of the property located in the Virgin Islands may record duly authenticated copies of the will, the proofs thereon



---

# WILLS

---

and the order admitting the will to probate in the Office of the Recorder. When the recording process is complete, they may file a petition to be recognized as the heirs of the deceased in accordance with the terms of the will. The petition is almost identical to the petition in the Settlement Without Administration proceeding, with the exception that in the Rule 210 proceeding the copies of the will, proofs and order admitting the will to probate must be attached and the petition must make reference to the recording of same. The petitioners are required to agree to assume the property subject to the debts of the deceased and make themselves and the property liable for same. Petitioners are required to pay the \$500.00 Adjudication Fee. See 15 V.I.C § 198; **Super. Ct. R. 210.**

## I. INHERITANCE TAX.

In 1984, the legislature passed a bill that provided, inter alia, that an inheritance is exempt from payment of inheritance taxes if the deceased was a resident of the Virgin Islands or owned property located in the Virgin Island at the time of his death. See 33 V.I.C. § 5; **Super. Ct. R. 211.**

Throughout the Wills statute, there are references to the payment of the inheritance tax. Virgin Islands law no longer provides for an inheritance tax for persons who died after 1984, and who meet the conditions of the statute.