

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 291 Residential Tenancies
SPONSOR(S): Civil Justice Subcommittee; Artiles and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 426

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Billmeier	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Currently, three categories of persons may serve process in Florida: a sheriff, a person appointed by the sheriff in the sheriff's county, or a certified process server appointed by the chief judge of the circuit court. The sheriff may serve all process in Florida legal actions. Special process servers and certified process servers may only serve process as specified by statute.

A writ of possession directs the sheriff to put a person in possession of real property. Under current law, only a sheriff may serve a writ of possession. Certified process servers cannot serve writs of possession. A writ of possession is a two-step process. The writ is served on the resident or on the property and if the premises is not vacated within 24 hours, the sheriff returns to keep the peace while the property owner removes the belongings.

This bill authorizes a person to use a certified process server in certain counties, rather than the sheriff, to serve the initial writ of possession in an action to recover the premises. The certified process server must provide written notice to the sheriff within 12 hours of posting the writ.

This bill does not appear to have a fiscal impact on state government. The fiscal impact on sheriffs and on private parties is not known.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Service of Process

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Statutes governing service of process are strictly construed to insure that persons served receive notice of an action against them and have the opportunity to protect their rights. There are two types of service of process: enforceable and non-enforceable. Enforceable service is a court order which requires the sheriff to take action such as make an arrest or seize property. Non-enforceable service of process is designed to place another party on notice that he or she must take action.

Currently, three categories of persons may serve process in Florida: a sheriff, a person appointed by the sheriff in the sheriff's county ("special process server"), or a certified process server appointed by the chief judge of the circuit court.¹ All process must be served by the sheriff of the county where the person to be served is found, except initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses, which may be served by a special or certified process server.²

A certified process server must be appointed by the chief judge of the judicial circuit in which he or she shall be allowed to serve process.³ A person applying to become a certified process server must:

- Be at least 18 years of age;
- Have no mental or legal disability;
- Be a permanent resident of the state;
- Submit to a background investigation;
- Certify that he or she has no pending criminal case, no record of any felony conviction, nor a record of conviction of a misdemeanor involving moral turpitude of dishonesty within the past 5 years;
- If prescribed by the chief judge of the circuit, submit to an examination testing his or her knowledge of the laws and rules regarding the service of process;
- Execute a bond in the amount of \$5,000, which shall be renewable annually, for the benefit of any person injured by any malfeasance, misfeasance, neglect of duty, or incompetence of the applicant, in connection with his or her duties as a process server; and
- Take an oath that he or she will honestly, diligently, and faithfully exercise the duties of a certified process server.⁴

Once the process server is certified, he or she may serve initial nonenforceable civil process, criminal witness subpoenas and criminal summonses on a person found within the circuit where the server is certified.⁵ A certified process server may charge a fee for his or her services.⁶

¹ See s. 48.021(1), F.S.

² See s. 48.021(1), F.S.

³ See s. 48.27(1), F.S.

⁴ See s. 48.29(3), F.S.

⁵ See s. 48.27(2), F.S.

⁶ See s. 48.29(8), F.S.

Florida Residential Landlord Tenant Act and Writs of Possession

Part II of ch. 83, F.S., titled the “Florida Residential Landlord and Tenant Act” governs the relationship between landlords and tenants under a residential rental agreement.⁷ A landlord may recover possession of a dwelling unit if the tenant does not vacate the premises after the rental agreement is terminated.⁸ Once the court enters a judgment allowing the landlord to take possession of the premises, the clerk of the court must issue a writ of possession to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours’ notice conspicuously posted on the premises.⁹ The sheriff serves the writ of possession or posts it on the premises. Twenty four hours later, the sheriff goes to the premises to ensure that the landlord can take possession of the premises. After the 24-hour period elapses from the posting of the writ, the landlord may remove any personal property found on the premises.¹⁰ The landlord may request that the sheriff be present while the landlord changes the locks and removes the personal property from the premises.¹¹

Sheriffs must charge fixed, nonrefundable fees for the service of process in civil actions as established by a statutory schedule.¹² Current law provides that the sheriff may charge \$90 for service of a writ of possession.¹³ The sheriff is authorized to charge a reasonable hourly rate if a person requests that the sheriff stand by as the landlord takes possession of the property and that person is responsible for paying for the sheriff’s time.¹⁴

Under current law, only sheriffs can serve writs of possession. Certified process servers and special process services are not permitted to do so.

Effect of this Bill

This bill amends s. 48.27, F.S., to allow certified process servers to serve writs of possession in actions pursuant to s. 83.62, F.S., of the Florida Residential Landlord Tenant Act. Under this bill, the landlord may choose to have a certified process server serve the writ of possession rather than the sheriff. This bill amends s. 83.62, F.S., to require the clerk of the court to issue the writ of possession or to a certified process server. If a certified process server serves the writ, he or she must provide written notice to the sheriff within 12 hours of posting the notice.

The provision allowing a certified process server to serve writs of possession only applies to counties as defined in s. 125.011, F.S. Section 125.011(1), F.S., provides:

“County” means any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word “county” within the above provisions shall include “board of county commissioners” of such county.

Currently, this definition applies to Miami-Dade County.

This bill does not change the requirement that sheriff ensure that the landlord can take possession of the premises. The certified process server may only complete the first portion of the eviction.

⁷ See s. 83.41, F.S.

⁸ See s. 83.59, F.S.

⁹ See s. 83.62(1), F.S.

¹⁰ See s. 83.62(2), F.S.

¹¹ See s. 83.62(2), F.S.

¹² See s. 30.231, F.S.

¹³ See s. 30.231(1)(d), F.S.

¹⁴ See s. 83.62(2), F.S.

This bill does not affect special process servers. It only allows the sheriff or certified process servers to serve the writ of possession. Special process servers, created by s. 48.021, F.S., are not affected.

Sheriffs would still be required to serve writs of possession in foreclosure actions pursuant to s.702.10(2)(h), F.S.,¹⁵ and in actions relating to mobile homes.¹⁶

This bill takes effect July 1, 2011.

B. SECTION DIRECTORY:

Section 1 amends s. 48.021, F.S., relating to service of process.

Section 2 amends s. 48.27, F.S., relating to certified process servers.

Section 3 amends s. 83.62, F.S., relating to restoration of possession to landlord.

Section 4 provides that this bill is effective July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "Fiscal Comments."

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

The effect on sheriffs is not known. This bill permits persons to use certified process servers instead of the sheriff to serve the writ of possession. To the extent, persons exercise this option, sheriffs will lose revenue and certified process services will gain revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

¹⁵ Section 702.10(2)(h), F.S., provides that the clerk "shall issue to the sheriff" and does not contemplate certified process servers or special process servers.

¹⁶ Section 723.062, F.S. (describing the procedure for a landlord to take possession of a mobile home and providing that the clerk shall issue a writ of possession to the sheriff).

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The Civil Justice Subcommittee considered the bill on March 29, 2011, and adopted an amendment. The amendment provided that the provisions related to certified process services are only applicable in counties as defined in s. 125.011, F.S. The bill, as amended, was reported favorably as a committee substitute. This analysis reflects the committee substitute.