

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 328

INTRODUCER: Senator Margolis

SUBJECT: Service of Process

DATE: March 21, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Maclure	JU	Pre-meeting
2.			RI	
3.			CJ	
4.			BC	
5.				
6.				

I. Summary:

The bill revises the requirements for each process server to record all service of process. Currently, each process server must document on the copy served the date and time of service and the process server's identification number and initials. The bill specifies that the process server must place this information on the *on the front page* of the copy served.

Under the bill, a person authorized to serve process must be granted unannounced access to the common areas, both general and limited, of condominiums, gated communities, or any secured residential areas where a defendant or witness resides or is known to be.

This bill amends sections 48.031 and 48.29, Florida Statutes

II. Present Situation:

Service of Process

Under Florida Rule of Civil Procedure 1.070(b), any person who is authorized by law to complete service of process may do so in accordance with applicable Florida law for the execution of legal process. Chapter 48, F.S., identifies three classes that may serve process in civil cases. Process may be served by the sheriff in the county where the defendant is located.¹ The sheriff may appoint special process servers who meet specified statutory minimum requirements.² The chief judge of the circuit court may establish an approved list of certified

¹ Section 48.021, F.S.

² *Id.*

process servers.³ Additionally, each trial judge has the authority to appoint a special process server in any particular case. Authorized process servers serve the complaint or petition to defendants in a civil case so that the court may acquire personal jurisdiction over the person who receives service. Each process server must document all service of process by placing the date and time of service and the process server's identification number and initials on the copy served.⁴

The law specifies the manner and methods that service of process must be executed by process servers. Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents.⁵ The usual place of abode refers to the place where the defending party is actually living at the time of service. Substitute service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service if two or more attempts to serve the owner have been made at the place of business.⁶ The requirements for service of process of witness subpoenas for both criminal and civil actions mirror those of the parties to the litigation.⁷

Under specified circumstances, substitute service may be made. Substitute service may be made on the spouse of the person to be served at any place in the county if the spouse requests the service, the spouses are living together, and the proceeding is not an adversary proceeding between the spouse and person to be served.⁸ A person within a court's jurisdiction may not avoid service and has an obligation to accept service of process when reasonable attempts are made to serve that person.⁹ The sheriff's or process server's reasonable attempt to personally serve a person at his or her home may not be frustrated by that person's willful refusal to accept the service of process.¹⁰ Whoever resists, obstructs, or opposes any officer or any other person authorized to execute process in the execution of legal process or in the lawful execution of legal process or in the lawful execution of any legal duty, without offering or doing violence to the person of the officer, may be liable for violation of a first-degree misdemeanor, which is punishable by jail time up to one year and the imposition of a fine up to \$1,000.¹¹

Service of process is required, and when a plaintiff in a civil action has not properly served a defendant within 120 days after filing the initial pleading, the action may be dismissed without prejudice.¹² In lieu of the dismissal of the action, if the plaintiff shows good cause or excusable neglect for the failure, the court may extend the time for service for an appropriate period.¹³ The

³ Section 48.27, F.S.

⁴ Section 48.29 and 48.031(5), F.S.

⁵ Section 48.031, F.S.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Haney v. Olin Corp.*, 245 So. 2d 671 (Fla. 4th DCA 1971).

¹⁰ *Id.*

¹¹ Section 843.02, F.S.

¹² Fla. R. Civ. P. 1.070.

¹³ *Id.*

trial court has great discretion to extend the time even when good cause has not been shown for failure to serve the defendant within the required period.¹⁴

Service of Process in Gated Residential Communities

The growth in the number of gated residential communities (communities composed of multifamily residences and single-family residences that have entrances locked or otherwise restrict physical access to their dwellings) have presented a challenge to litigants' efforts to provide service of process to party defendants living in these residences.¹⁵ In *Luckey v. Thompson*, the plaintiff sought to vacate a default judgment entered against him in a prior case because the trial court found that he had concealed himself to avoid service.¹⁶ The appellate court refused to vacate the judgment and upheld the trial judge findings supported by evidence that showed that genuine attempts by various methods were made to effect service on the plaintiff who had "secreted himself from the world and lived in isolation in a high security apartment refusing to answer the telephone or even to open the mail."¹⁷ In *Boatfloat*, the court noted the challenge of successfully serving a limited liability company when the company's registered agent's only address is a gated residential community and the company does not have regular business hours open to the public.¹⁸

The Third District Court of Appeal recently held that the plaintiff had demonstrated due diligence to personally serve the party defendant, and, based upon the record, it upheld the plaintiff's substitute service of the party defendant.¹⁹ The court found that the plaintiff attempted to serve the party defendant "twenty-two times over a three-month period at his admittedly correct Florida address" but due to the fact that the defendant's residence is gated, the process server was barred from access to the front door.²⁰ The court held that "litigants have the right to choose their abodes; they do not have the right to control who may sue or serve them by denying them physical access."²¹

California law specifically addresses service of process in gated communities and grants a registered process server or a representative of a county sheriff's or marshal's office access into a gated community in order to make service of process.²² The law provides that any person shall be granted access to a gated community for a reasonable period of time for the purpose of performing lawful service of process or service of a subpoena, upon identifying to the guard the person or persons to be served, and upon displaying proper identification, including a driver's license and sheriff's or marshal's identification, or evidence of current registration as a process server.²³ The law applies only to a gated community that is staffed by a guard or other security

¹⁴ *Chaffin v. Jacobson*, 793 So. 2d 102 (Fla. 2d DCA 2001).

¹⁵ See *Luckey v. Thompson*, 343 So. 2d 53 (Fla. 3d DCA 1977), and *Boatfloat LLC v. Golia*, 915 So. 2d 288 (Fla. 4th DCA 2005).

¹⁶ *Luckey*, 343 So. 2d at 54.

¹⁷ *Id.*

¹⁸ *Boatfloat*, 915 So. 2d at 289-90.

¹⁹ *Delancy v. Tobias*, 26 So. 3d 77, 79-80 (Fla. 3d DCA 2010).

²⁰ *Id.*

²¹ *Id.* at 80 (quoting *Bein v. Brechtel-Jochim Group, Inc.*, 6 Cal.App.4th 1387, 1393, 8 Cal.Rptr.2d 351 (1992)).

²² CAL. CIV. PROC. CODE s. 415.21.

²³ *Id.*

personnel assigned to control access to the community at the time service is attempted.²⁴ In enacting the law granting process servers access to gated communities, the California Legislature expressed intent to not abrogate or modify the holding in *Bein v. Brechtel-Jochim Group, Inc.*²⁵ The court in *Bein* held that substitute service on the guard of a gated community is adequate, if the guard refuses to admit the process server.²⁶

Condominiums

Condominiums are regulated under chapter 718, F.S. Condominium property that is not located within the boundaries of individual condominium units and is jointly owned by all condominium unit owners in a condominium is defined as common elements.²⁷ “Limited common elements” in a condominium are those common elements that are reserved for the use of a certain unit or units to the exclusion of all other units, as specified in the declaration of condominium (an instrument by which the condominium is created).²⁸ Limited common elements are often appurtenant to a condominium unit owner’s unit. Examples of limited common elements include assigned parking spaces, patios, balconies, stairways, and storage lockers.

III. Effect of Proposed Changes:

The bill revises the requirements for each process server to record all service of process. Each process server must document, on the *front page* of the copy served, the date and time of service and the process server’s identification number and initials.

Under the bill, a person authorized to serve process must be granted unannounced access to the common areas, both general and limited, of condominiums, gated communities, or any secured residential areas where a defendant or witness resides or is known to be.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁴ *Id.*

²⁵ *Id.* (in historical and statutory notes to the section; see Section 2 of Stats.1994, c. 691 (A.B. 3307)).

²⁶ *Bein*, 6 Cal.App.4th at 1392-93.

²⁷ Section 718.103(8), F.S.

²⁸ Sections 718.103(15) and (19), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires gated residential property owners to allow a process server into their community without any requirement for identification or knowledge of the legitimacy of the person who alleges that he or she is a process server. Community associations of gated residential communities where physical access to the community is controlled may be faced with additional liability for handling service of process issues for its residents.

The bill refers to “common areas, both general and limited, of condominiums, gated communities, or any secured residential areas where a defendant or witness resides or is known to be” without defining the terms for purposes of the service of process. Condominiums have common elements that are jointly owned by unit owners in a condominium. Limited common elements are those common elements that are reserved for the use of a certain unit or units to the exclusion of all other units; thus, it is unclear why the term is used for purposes of service of process. A secured residential area may reasonably be interpreted to include any home that is secured by a lock.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.