

**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 Regulated Industries Committee

BILL: CS/SB 328

INTRODUCER: Judiciary Committee and Senator Margolis

SUBJECT: Service of Process

DATE: April 5, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Maclure	JU	<b>Fav/CS</b>
2.	Harrington	Imhof	RI	<b>Favorable</b>
3.			CJ	
4.			BC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The Committee Substitute (CS) authorizes sheriffs to charge a \$40 fee for processing a writ of execution (current law authorizes sheriffs to charge a \$40 fee for docketing and indexing a writ of execution) to reflect the modernization of the current practice for processing of the writs of execution. The CS allows the party requesting service to furnish the sheriff with an electronic copy of process, which must be signed and certified by the clerk of court.

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 CS specifies that the process server must place this information *on the front page* of the copy served. In addition, the person serving process must list on the return-of-service form all initial pleadings delivered and served along with the process. The return-of-service form must be filed with the court.

The CS provides that a gated residential community, including a condominium association or a cooperative, must grant unannounced entry into the community, including its common areas and common elements, to a person who is attempting to serve process on a defendant or witness who resides within or is known to be within the community.

The CS revises procedures for serving a corporation's registered agent under the alternative method in s. 48.081(3)(a), F.S. In addition, the CS imposes additional requirements on the return of execution of process to include a server's signature on the return.

This CS substantially amends the following sections of the Florida Statutes: 30.231, 48.031, 48.081, 48.21, and 48.29.

## 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.<sup>1</sup> The sheriff may appoint special process servers who meet specified statutory minimum requirements.<sup>2</sup> The chief judge of the circuit court may establish an approved list of certified process servers.<sup>3</sup> 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. Strict compliance with the statutory provisions of service of process is required in order for the court to obtain jurisdiction over a party and to assure that a defendant receives notice of the proceedings filed.<sup>4</sup> Each process server must document the service of process by placing the date and time of service and the process server's identification number and initials on the copy served.<sup>5</sup> Because strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms renders that service defective, resulting in a failure to acquire jurisdiction over the defendant.<sup>6</sup>

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.<sup>7</sup> 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

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<sup>1</sup> Section 48.021, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 48.27, F.S.

<sup>4</sup> *Vidal v. SunTrust Bank*, 41 So. 3d 401, 402-03 (Fla. 4th DCA 2010).

<sup>5</sup> Sections 48.29 and 48.031(5), F.S.

<sup>6</sup> Section 48.031, F.S.; *Vidal*, 41 So. 3d at 402-04 (holding as a case of first impression that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint that was served on the debtor rendered the service of the complaint defective).

<sup>7</sup> Section 48.031, F.S.

more attempts to serve the owner have been made at the place of business.<sup>8</sup> The requirements for service of process of witness subpoenas for both criminal and civil actions mirror those of the parties to the litigation.<sup>9</sup> Each person who effects service of process must note on a return-of-service form attached, the date and time when it comes to hand, the date and time when it is served, the manner of service, the name of the person on whom it was served, and, if served on a representative, the position occupied by the person.<sup>10</sup> A failure to state the foregoing facts invalidates the service, but the return is amendable to state the truth at any time on application to the court from which the process was issued.<sup>11</sup> On amendment, service is as effective as if the return had originally stated the omitted facts.<sup>12</sup> A failure to state all the facts in the return shall subject the person effecting service to a fine no greater than \$10, in the court's discretion.<sup>13</sup>

The law specifies the manner and method of process on private corporations.<sup>14</sup> As an alternative to the method and manner of process outlined in s. 48.081, F.S., process may be served on the agent designated by the corporation to receive process under s. 48.091, F.S. If service cannot be made on the registered agent because of failure to comply with s. 48.091, F.S., service of process must be permitted on any employee at the corporation's principal place of business or on any employee of the registered agent.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

The sheriffs of all counties of the state in civil cases must charge fixed, nonrefundable fees for docketing and service of process.<sup>20</sup> The sheriffs must charge \$40 for docketing and indexing

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Section 48.21, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Section 48.081, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Haney v. Olin Corp.*, 245 So. 2d 671 (Fla. 4th DCA 1971) (holding that there need not be communication between the process server and party to be served and that leaving suit papers on a doorstep can become effective delivery when the party to be served avoids service by closing the door in the process servers face).

<sup>18</sup> *Id.*

<sup>19</sup> Section 843.02, F.S.

<sup>20</sup> Section 30.231, F.S.

each writ of execution, regardless of the number of persons involved.<sup>21</sup> It is the responsibility of the party requesting service of process to furnish to the sheriff the original or a certified copy of process and sufficient copies to be served on the parties receiving the service of process.<sup>22</sup>

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.<sup>23</sup> 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.<sup>24</sup> The 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.<sup>25</sup>

### **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.<sup>26</sup> 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.<sup>27</sup> 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."<sup>28</sup> In *Boatfloat*, the court noted the challenge of successfully serving a limited liability company when the company's registered agents only address is a gated residential community and the company does not have regular business hours open to the public.<sup>29</sup>

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.<sup>30</sup> 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.<sup>31</sup> 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.'"<sup>32</sup>

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<sup>21</sup> Section 30.231(1)(d)1., F.S.

<sup>22</sup> Section 30.231(3), F.S.

<sup>23</sup> Fla. R. Civ. P. 1.070.

<sup>24</sup> *Id.*

<sup>25</sup> *Chaffin v. Jacobson*, 793 So. 2d 102 (Fla. 2d DCA 2001).

<sup>26</sup> *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).

<sup>27</sup> *Luckey*, 343 So. 2d at 54.

<sup>28</sup> *Id.*

<sup>29</sup> *Boatfloat*, 915 So. 2d at 289-90.

<sup>30</sup> *Delancy v. Tobias*, 26 So. 3d 77, 79-80 (Fla. 3d DCA 2010).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 80 (quoting *Bein v. Brechtel-Jochim Group, Inc.*, 6 Cal.App.4th 1387, 1393, 8 Cal.Rptr.2d 351 (1992)).

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.<sup>33</sup> 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.<sup>34</sup> The law applies only to a gated community that is staffed by a guard or other security personnel assigned to control access to the community at the time service is attempted.<sup>35</sup> 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.*<sup>36</sup> 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.<sup>37</sup>

### Condominiums

Condominiums are regulated under ch. 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.<sup>38</sup> "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).<sup>39</sup> 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 CS authorizes sheriffs to charge a \$40 dollar fee for *processing* a writ of execution, rather than for *docketing and indexing* a writ of execution, and reflects the modernization of the current practice for processing of the writs of execution. The CS allows the party requesting service to furnish the sheriff with an electronic copy of process, which must have been signed and certified by the clerk of court.

The CS provides that a process server must document, on the *front page* of at least one of the copies served, the date and time of service and the process server's identification number and initials. The person serving process must list on the return-of-service form all initial pleadings delivered and served along with the process. The person issuing the process must file the return-of-service form with the court.

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<sup>33</sup> CAL. CIV. PROC. CODE s. 415.21.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* (in historical and statutory notes to the section; see Section 2 of Stats.1994, c. 691 (A.B. 3307)).

<sup>37</sup> *Bein*, 6 Cal.App.4th at 1392-93.

<sup>38</sup> Section 718.103(8), F.S.

<sup>39</sup> Sections 718.103(15) and (19), F.S.

The CS provides that a gated residential community, including a condominium association or a cooperative, must grant unannounced entry into the community, including its common areas and common elements, to a person who is attempting to serve process on a defendant or witness who resides within or is known to be within the community.

The CS amends the requirements for service of process on a corporation. The CS provides that a person attempting to serve process on the registered agent of a corporation under the alternative method in s. 48.081(3)(a), F.S., may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is temporarily absent from his or her office.

The CS imposes additional requirements on the return of execution of process to address, in part, *Vidal v. SunTrust Bank*.<sup>40</sup> Under the CS, the return-of-service form must be signed by the person who effects the service of process. However, a person employed by a sheriff who effects the service of process may sign the return-of-service form using an electronic signature certified by the sheriff. On amendment of the return-of-service form, service is as effective as if the return had originally stated the omitted facts or *included the signature*. A failure to include the *signature on the return* shall subject the person effecting service to a fine not exceeding \$10, in the court's discretion.

The bill provides an effective date of July 1, 2011.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The bill authorizes sheriffs to charge a \$40 dollar fee for *processing* a writ of execution (current law authorizes sheriffs to charge a \$40 fee for *docketing and indexing* a writ of execution) and reflects the modernization of the current practice for processing of the writs of execution.

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<sup>40</sup> See *Vidal, supra* notes 4 and 6. In the case, the Fourth District Court of Appeal reiterated the importance of strict compliance with the statutory provisions governing service of process in order to avoid defective service process.

**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.

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

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

**CS by Judiciary on March 22, 2011:**

The committee substitute revises the procedures for service of process to:

- Authorize sheriffs to charge a \$40 fee for processing a writ of execution (current law authorizes a \$40 fee for docketing and indexing a writ of execution);
- Accommodate electronic copies of process;
- Clarify the manner and place that residents of gated residential communities must grant process servers unannounced entry into their community;
- Allow the process server to serve the process on any employee of the registered agent of a corporation during the first attempt at service even if the registered agent is temporarily absent from his or her office; and
- Impose additional requirements on the return of execution of process to include a server's signature on the return.

**B. Amendments:**

None.