

By the Committee on Judiciary; and Senator Powell

590-02331-19

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1 A bill to be entitled
2 An act relating to judicial process; amending s.
3 48.23, F.S.; providing that a person who acquires for
4 value a lien on property during the course of
5 specified legal actions takes such lien free of claims
6 in certain circumstances; specifying the effect of a
7 valid, recorded notice of lis pendens in certain
8 circumstances involving a judicial sale; providing
9 applicability; amending s. 48.021, F.S.; revising
10 authority of special process servers; revising a
11 cross-reference; requiring that civil witness
12 subpoenas be served by certain persons; amending s.
13 48.031, F.S.; revising requirements for substituted
14 service on the spouse of the person to be served;
15 revising requirements for documenting service of
16 process; conforming terminology; amending s. 48.062,
17 F.S.; revising requirements for service on limited
18 liability companies; amending s. 48.194, F.S.;
19 revising provisions specifying who may serve process
20 outside of the state; revising requirements for
21 documenting that service has been properly made
22 outside the state; amending s. 48.21, F.S.; revising
23 requirements for return-of-service forms; authorizing
24 certain persons to electronically sign return-of-
25 service forms; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Paragraphs (b) and (d) of subsection (1) of

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30 section 48.23, Florida Statutes, are amended to read:

31 48.23 Lis pendens.—

32 (1)

33 (b)1. An action that is filed for specific performance or
34 that is not based on a duly recorded instrument has no effect,
35 except as between the parties to the proceeding, on the title
36 to, or on any lien upon, the real or personal property unless a
37 notice of lis pendens has been recorded and has not expired or
38 been withdrawn or discharged.

39 2. Any person acquiring for value an interest in, or lien
40 upon, the real or personal property during the pendency of an
41 action described in subparagraph 1., other than a party to the
42 proceeding or the legal successor by operation of law, or
43 personal representative, heir, or devisee of a deceased party to
44 the proceeding, shall take such interest or lien exempt from all
45 claims against the property that were filed in such action by
46 the party who failed to record a notice of lis pendens or whose
47 notice expired or was withdrawn or discharged, and from any
48 judgment entered in the proceeding, notwithstanding the
49 provisions of s. 695.01, as if such person had no actual or
50 constructive notice of the proceeding or of the claims made
51 therein or the documents forming the causes of action against
52 the property in the proceeding.

53 (d) Except for the interest of persons in possession or
54 easements of use, the recording of such notice of lis pendens,
55 provided that during the pendency of the proceeding it has not
56 expired pursuant to subsection (2) or been withdrawn or
57 discharged, constitutes a bar to the enforcement against the
58 property described in the notice of all interests and liens,

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59 including, but not limited to, federal tax liens and levies,
60 unrecorded at the time of recording the notice unless the holder
61 of any such unrecorded interest or lien intervenes in such
62 proceedings within 30 days after the recording of the notice. If
63 the holder of any such unrecorded interest or lien does not
64 intervene in the proceedings and if such proceedings are
65 prosecuted to a judicial sale of the property described in the
66 notice, the property shall be forever discharged from all such
67 unrecorded interests and liens. A valid recorded notice of lis
68 pendens of such proceedings prosecuted to a judicial sale
69 remains in effect through the recording of any instrument
70 transferring title to the property pursuant to the final
71 judgment unless it expires, is withdrawn, or it is otherwise
72 discharged. If the notice of lis pendens expires or is withdrawn
73 or discharged, the expiration, withdrawal, or discharge of the
74 notice does not affect the validity of any unrecorded interest
75 or lien.

76 Section 2. The changes made by this act to s. 48.23,
77 Florida Statutes, are intended to clarify existing law and shall
78 apply to actions pending on the effective date of this act.

79 Section 3. Subsection (1) of section 48.021, Florida
80 Statutes, is amended to read:

81 48.021 Process; by whom served.—

82 (1) All process shall be served by the sheriff of the
83 county where the person to be served is found, except ~~initial~~
84 nonenforceable civil process, criminal witness subpoenas, and
85 criminal summonses may be served by a special process server
86 appointed by the sheriff as provided ~~for~~ in this section or by a
87 certified process server as provided ~~for~~ in s. 48.27 ~~ss. 48.25~~

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88 ~~48.31.~~ Civil witness subpoenas shall ~~may~~ be served by any person
89 authorized by rules of civil procedure.

90 Section 4. Subsections (2) and (5) and paragraph (a) of
91 subsection (6) of section 48.031, Florida Statutes, are amended
92 to read:

93 48.031 Service of process generally; service of witness
94 subpoenas.—

95 (2) (a) Substituted ~~Substitute~~ service ~~may be made~~ on the
96 spouse of the person to be served may be made at any place in a
97 ~~the~~ county by an individual authorized under s. 48.021 or s.
98 48.27 to serve process in that county, if the cause of action is
99 not an adversarial ~~adversary~~ proceeding between the spouse and
100 the person to be served, if the spouse requests such service or
101 the spouse is also a party to the action, and if the spouse and
102 person to be served reside ~~are residing~~ together in the same
103 dwelling, regardless of whether such dwelling is located in the
104 county where substituted service is made.

105 (b) Substituted ~~Substitute~~ service may be made on an
106 individual doing business as a sole proprietorship at his or her
107 place of business, during regular business hours, by serving the
108 person in charge of the business at the time of service if two
109 attempts to serve the owner are ~~have been~~ made at the place of
110 business.

111 (5) A person serving process shall place, on the first page
112 only of at least one of the processes served, the date and time
113 of service, his or her initials or signature, and, if
114 applicable, his or her identification number ~~and initials for~~
115 ~~all service of process. The person serving process shall list on~~
116 ~~the return of service form all initial pleadings delivered and~~

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117 ~~served along with the process.~~ The person requesting service or
118 the person authorized to serve the process shall file the
119 return-of-service form with the court.

120 (6) (a) If the only address for a person to be served which
121 is discoverable through public records is a private mailbox, a
122 virtual office, or an executive office or mini suite,
123 substituted ~~substitute~~ service may be made by leaving a copy of
124 the process with the person in charge of the private mailbox,
125 virtual office, or executive office or mini suite, but only if
126 the process server determines that the person to be served
127 maintains a mailbox, a virtual office, or an executive office or
128 mini suite at that location.

129 Section 5. Subsection (4) of section 48.062, Florida
130 Statutes, is amended to read:

131 48.062 Service on a limited liability company.—

132 (4) If the address ~~provided~~ for the registered agent,
133 member, or manager is a residence, a ~~or~~ private mailbox, a
134 virtual office, or an executive office or mini suite, service on
135 the domestic or foreign limited liability company, ~~domestic or~~
136 ~~foreign,~~ may be made by serving the registered agent, member, or
137 manager in accordance with s. 48.031.

138 Section 6. Subsection (1) of section 48.194, Florida
139 Statutes, is amended to read:

140 48.194 Personal service outside state.—

141 (1) Except as otherwise provided herein, service of process
142 on persons outside of this state shall be made in the same
143 manner as service within this state by any person ~~officer~~
144 authorized to serve process in the state where the person is
145 served. No order of court is required. A ~~An affidavit of the~~

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146 ~~officer shall be filed, stating the time, manner, and place of~~
147 ~~service. The court may consider the return-of-service form~~
148 ~~described in s. 48.21 affidavit, or any other competent~~
149 ~~evidence, in determining whether service has been properly made.~~
150 ~~Service of process on persons outside the United States may be~~
151 ~~required to conform to the provisions of the Hague Convention on~~
152 ~~the Service Abroad of Judicial and Extrajudicial Documents in~~
153 ~~Civil or Commercial Matters.~~

154 Section 7. Subsection (1) of section 48.21, Florida
155 Statutes, is amended to read:

156 48.21 Return of execution of process.-

157 (1) Each person who effects service of process shall note
158 on a return-of-service form attached thereto, ~~the date and time~~
159 ~~when it comes to hand, the date and time when it is served, the~~
160 ~~manner of service, the name of the person on whom it was served,~~
161 ~~and, if the person is served in a representative capacity, the~~
162 ~~position occupied by the person. The return-of-service form must~~
163 ~~list all pleadings served and be signed by the person who~~
164 ~~effects the service of process. However, a person who is~~
165 ~~authorized under this chapter to serve process and employed by a~~
166 ~~sheriff who effects such ~~the~~ service of process may sign the~~
167 ~~return-of-service form using an electronic signature ~~certified~~~~
168 ~~by the sheriff.~~

169 Section 8. This act shall take effect upon becoming a law.