

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 Committee on Community Affairs

BILL: CS/SB 522

INTRODUCER: Judiciary Committee and Senator Grall

SUBJECT: Removal of Unknown Parties in Possession

DATE: April 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Pre-Meeting
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 522 allows, in civil litigation where possession of real property is an issue, for a single service of process on a defendant or defendants who are unknown to the plaintiff and thus are an unknown party in possession of real property. Current law requires a separate “unknown” summons for each unknown party in possession. The bill also clarifies that a writ of possession may include all unknown parties in possession.

The bill is effective July 1, 2023.

II. Present Situation:

Service of process is the term used to describe the giving of notice of a legal proceeding to a party, making that party subject to the court’s jurisdiction.

Unknown parties may be in possession of real property through a number of means. An unknown party may be a person who believes that he or she is the lawful owner of the property, a tenant who has been defrauded by a landlord who is not the owner, a subtenant, an heir, a licensee, or a squatter. Unknown parties in possession appear in landlord-tenant actions, mortgage foreclosures, suits to quiet title, and ejectment actions.

Constitutional concepts of due process require adequate service of process on such unknown persons prior to hearing and forcible removal by a law enforcement officer. Of course, in an ideal

world the person in possession would be named and given personal service. But, if they were known to the plaintiff they would have been listed, and served, by name. Instead, an “unknown person” who may possibly have a legal right to possession of the property, is listed as defendant and service of process is attempted. The U.S. Supreme Court explained the law on such unknown persons:

“The fundamental requisite of due process of law is the opportunity to be heard.” And the “right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.” Personal service guarantees actual notice of the pendency of a legal action; it thus presents the ideal circumstance under which to commence legal proceedings against a person, and has traditionally been deemed necessary in actions styled in personam. Nevertheless, certain less rigorous notice procedures have enjoyed substantial acceptance throughout our legal history; in light of this history and the practical obstacles to providing personal service in every instance, we have allowed judicial proceedings to be prosecuted in some situations on the basis of procedures that do not carry with them the same certainty of actual notice that inheres in personal service.

But we have also clearly recognized that the Due Process Clause does prescribe a constitutional minimum: “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” It is against this standard that we evaluate the procedures employed in this case.¹

Until recently, service upon an unknown party in possession of real property was not addressed in statute. SB 1068, in the 2022 regular session, effective January 1, 2023, included creation of s. 48.184, F.S., codifying a procedure for service of process on the unknown party or parties in possession of real property.² Service is commenced by attempting service in the name of “Unknown Party in Possession.” A separate summons must be issued for each such unknown occupant. The process server is required to make three attempts at service, and if someone actually answers the knock on the door, the process server must ask who they are. Unless the plaintiff discovers the real name of the occupant, the final eviction order, known as a writ of possession, is issued in the name of “Unknown Party in Possession.”

In practice, the language used in the statute may be impractical. Technically, in all statutes, the singular also means the plural.³ However, service of process statutes are strictly construed, and are used and interpreted often by lay persons who are not familiar with this rule of interpretation. One practical problem lies in this paradox: if the occupant or occupants are unknown, how does one provide a separate summons for each, as they are unknown?

¹ *Greene v. Lindsey*, 456 U.S. 444, 449–50 (1982) (internal citations omitted).

² Chapter 2022-190, Laws of Fla.

³ Section 1.01(1), F.S.

III. Effect of Proposed Changes:

CS/SB 522 amends s. 48.184, F.S., to specify that an initial summons in a civil action where possession of real property is an issue is to be issued in the name of the “Unknown Parties in Possession.” Only one such initial summons need be issued. Section 48.184, F.S., is also amended to make clear that the writ of possession may be addressed to the party or parties in possession, and that therefore the deputy sheriff enforcing the writ of possession is to remove all persons and put the property owner in possession of the property.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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:

None.

VIII. Statutes Affected:

This bill substantially amends s. 48.184 of the Florida Statutes.

IX. 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 29, 2023:

The CS added that unknown parties in possession may be included in a writ of possession, and made other technical and conforming changes.

- B. **Amendments:**

None.