

CHAPTER 49

CONSTRUCTIVE SERVICE OF PROCESS

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49.011 Service of process by publication; cases in which allowed.—Service of process by publication may be made in any court on any person mentioned in s. 49.021 in any action or proceeding:

(1) To enforce any legal or equitable lien or claim to any title or interest in real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state.

(2) To quiet title or remove any encumbrance, lien, or cloud on the title to any real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state.

(3) To partition real or personal property within the jurisdiction of the court.

(4) For dissolution or annulment of marriage.

(5) For the construction of any will, deed, contract, or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien, or interest thereunder.

(6) To reestablish a lost instrument or record which has or should have its situs within the jurisdiction of the court.

(7) In which a writ of replevin, garnishment, or attachment has been issued and executed.

(8) In which any other writ or process has been issued and executed which places any property, fund, or debt in the custody of a court.

(9) To revive a judgment by motion or scire facias.

(10) For adoption.

(11) In which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States.

(12) In probate or guardianship proceedings in which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States.

(13) For termination of parental rights pursuant to part VI of chapter 39.

(14) For temporary custody of a minor child, under ss. 751.01–751.05.

History.—s. 1, ch. 20452, 1941; s. 5, ch. 67–254; s. 15, ch. 71–355; s. 1, ch. 73–5; s. 1, ch. 73–300; s. 13, ch. 84–311; s. 7, ch. 93–104; s. 45, ch. 94–164.

Note.—Former s. 48.01.

49.021 Service of process by publication, upon whom.—Where personal service of process or, if appropriate, service of process under s. 48.194 cannot be had, service of process by publication may be had upon any party, natural or corporate, known or unknown, including:

(1) Any known or unknown natural person, and, when described as such, the unknown spouse, heirs, devisees, grantees, creditors, or other parties claiming by, through, under, or against any known or unknown person who is known to be dead or is not known to be either dead or alive;

(2) Any corporation or other legal entity, whether its domicile be foreign, domestic, or unknown, and whether dissolved or existing, including corporations or other legal entities not known to be dissolved or existing, and, when described as such, the unknown assigns, successors in interest, trustees, or any other party claiming by, through, under, or against any named corporation or legal entity;

(3) Any group, firm, entity, or persons who operate or do business, or have operated or done business, in this state, under a name or title which includes the word “corporation,” “company,” “incorporated,” “inc.,” or any combination thereof, or under a name or title which indicates, tends to indicate or leads one to think that the same may be a corporation or other legal entity; and

(4) All claimants under any of such parties.

Unknown parties may be proceeded against exclusively or together with other parties.

History.—s. 2, ch. 20452, 1941; s. 7, ch. 22858, 1945; s. 5, ch. 67–254; s. 6, ch. 93–250.

Note.—Former s. 48.02.

49.031 Sworn statement as condition precedent.—

(1) As a condition precedent to service by publication, a statement shall be filed in the action executed by the plaintiff, the plaintiff’s agent or attorney, setting forth substantially the matters hereafter required, which statement may be contained in a verified pleading, or in an affidavit or other sworn statement.

(2) As used in this chapter:

(a) The word “plaintiff” means any party in the action who is entitled to service of original process on any other party to the action or any person who may be brought in or allowed to come in as a party by any lawful means.

(b) The word “defendant” means any party on whom service by publication is authorized by this chapter, without regard to his or her designation in the pleadings or position in the action.

(c) The word “publication” includes the posting of the notice of action as provided for in ss. 49.10(1)(b) and 49.11.

(3) After the entry of a final judgment or decree in any action no sworn statement shall ever be held defective for failure to state a required fact if the fact otherwise appears from the record in the action.

History.—s. 3, ch. 20452, 1941; s. 2, ch. 28301, 1953; s. 5, ch. 67–254; s. 1, ch. 74–152; s. 286, ch. 95–147.

Note.—Former s. 48.03.

49.041 Sworn statement, natural person as defendant.—The sworn statement of the plaintiff, his or her agent or attorney, for service of process by publication against a natural person, shall show:

(1) That diligent search and inquiry have been made to discover the name and residence of such person, and that the same is set forth in said sworn statement as particularly as is known to the affiant; and

(2) Whether such person is over or under the age of 18 years, if his or her age is known, or that the person's age is unknown; and

(3) In addition to the above, that the residence of such person is, either:

(a) Unknown to the affiant; or

(b) In some state or country other than this state, stating said residence if known; or

(c) In the state, but that he or she has been absent from the state for more than 60 days next preceding the making of the sworn statement, or conceals himself or herself so that process cannot be personally served, and that affiant believes that there is no person in the state upon whom service of process would bind said absent or concealed defendant.

History.—s. 4, ch. 20452, 1941; s. 5, ch. 67-254; s. 4, ch. 77-121; s. 287, ch. 95-147.

Note.—Former s. 48.04.

49.051 Sworn statement, corporation as defendant.—The sworn statement of the plaintiff, his or her agent or attorney, for service of process by publication against a corporation, shall show:

(1) That diligent search and inquiry have been made to discover the true name, domicile, principal place of business, and status (that is, whether foreign, domestic, or dissolved) of the corporate defendant, and that the same is set forth in said sworn statement as particularly as is known to the affiant, and that diligent search and inquiry have also been made, to discover the names and whereabouts of all persons upon whom the service of process would bind the said corporation and that the same is specified as particularly as is known to the affiant; and

(2) Whether or not the corporation has ever qualified to do business in this state, unless shown to be a Florida corporation; and

(3) That all officers, directors, general managers, cashiers, resident agents, and business agents of the corporation, either:

(a) Are absent from the state; or

(b) Cannot be found within the state; or

(c) Conceal themselves so that process cannot be served upon them so as to bind the said corporation; or

(d) That their whereabouts are unknown to the affiant; or

(e) That said officers, directors, general managers, cashiers, resident agents, and business agents of the corporation are unknown to affiant.

History.—s. 5, ch. 20452, 1941; s. 5, ch. 67-254; s. 288, ch. 95-147.

Note.—Former s. 48.05.

49.061 Sworn statement, parties doing business under a corporate name as defendants.—The sworn statement of the plaintiff, his or her agent or attorney, for service of process by publication against parties who have or may have done business under a corporate name, shall show:

(1) The name under which said parties have operated or done business; and

(2) That, after diligent search and inquiry, the affiant has been unable to ascertain whether or not the organization operating under said name was a corporation, either domestic or foreign; and

(3) The names, and places of residence if known, of all persons known to have been interested in such organization, and whether or not other or unknown persons may have been interested in such organization; or that, after diligent search and inquiry, all persons interested in such organization are unknown to the affiant, and, unless all such persons are unknown to the affiant,

(4) That the known persons interested in such organization, either:

(a) Are absent from this state; or

(b) Cannot be found within this state; or

(c) Conceal themselves so that process cannot be personally served upon them; or

(d) That their whereabouts are unknown to the affiant.

History.—s. 6, ch. 20452, 1941; s. 5, ch. 67-254; s. 289, ch. 95-147.

Note.—Former s. 48.06.

49.071 Sworn statement, unknown parties as defendants.—

(1) If relief is demanded against unknown parties, the sworn statement for service of process by publication against them shall show:

(a) That affiant believes that there are persons who are or may be interested in the subject matter of the action or proceedings whose names, after diligent search and inquiry, are unknown to the affiant; and

(b) Whether said unknown parties claim as heirs, devisees, grantees, assignees, lienors, creditors, trustees, or other claimants:

1. By, through, under or against a known person who is dead or not known to be dead or alive; or

2. By, through, under or against some corporation, domestic or foreign, that has been dissolved or which is not known to be existing or dissolved; or

3. By, through, under or against some organization which operated or did business under a name indicating a corporation; or

4. Otherwise as the case may be.

(2) In any case alleged against a named defendant, natural or corporate, who is stated, either in the pleadings or in the sworn statement, to be either dead or dissolved, or not known to be dead or alive, or dissolved or existing, any judgment, decree or order rendered against such defendant shall be as good, valid and effectual as if it had not been so stated.

History.—s. 7, ch. 20452, 1941; s. 5, ch. 67-254.

Note.—Former s. 48.07.

49.08 Notice of action, form.—On filing the sworn statement, and otherwise complying with the foregoing requirements, the plaintiff is entitled to have issued by the clerk or judge, not later than 60 days after filing the sworn statement, a notice of action which notice shall set forth:

(1) The names of the known natural defendants; the names, status and description of the corporate defendants; a description of the unknown defendants who

claim by, through, under or against a known party which may be described as "all parties claiming interests by, through, under or against (name of known party)" and a description of all unknown defendants which may be described as "all parties having or claiming to have any right, title or interest in the property herein described";

(2) The nature of the action or proceeding in short and simple terms (but neglect to do so is not jurisdictional);

(3) The name of the court in which the action or proceeding was instituted and an abbreviated title of the case;

(4) The description of real property, if any, proceeded against.

History.—s. 8, ch. 20452, 1941; s. 3, ch. 28301, 1953; s. 2, ch. 29737, 1955; s. 5, ch. 67-254.

Note.—Former s. 48.08.

49.09 Notice of action, return day.—The notice of action, except in foreclosure proceedings as defined in s. 702.09, shall require the defendant to file written defenses with the clerk of the court and to serve a copy not later than the date fixed in said notice, which date shall be not less than 28 nor more than 60 days after the first publication of the notice on plaintiff or his or her attorney whose name and address shall appear in, or be annexed to, said notice. In foreclosure proceedings, the notice of action shall require the defendant to file written defenses with the clerk of the court and to serve a copy within 30 days after the first publication of the notice on plaintiff or his or her attorney whose name and address shall appear in, or be annexed to, said notice.

History.—s. 9, ch. 20452, 1941; s. 4, ch. 28301, 1953; s. 2, ch. 29737, 1955; s. 5, ch. 67-254; s. 7, ch. 93-250; s. 290, ch. 95-147.

Note.—Former s. 48.09.

49.10 Notice of action, publication, proof.—

(1)(a) All notices of action, except those referred to in paragraphs (b) and (c), shall be published once during each week for 4 consecutive weeks (four publications being sufficient) in some newspaper published in the county where the court is located. The newspaper shall meet such requirements as are prescribed by law for such purpose.

(b) In proceedings described in s. 49.011(4), (10), and (11), except in those counties where, pursuant to s. 50.071(3), notices are by law required to be published

by designated record newspaper, the clerk of the court shall post notices of action in the manner prescribed by s. 49.11 when such notices are required of persons authorized to proceed as insolvent and poverty-stricken persons under s. 57.081.

(c) Notices of action in foreclosure proceedings as defined in s. 702.09 shall be published once during each week for 2 consecutive weeks (two publications being sufficient) in some newspaper published in the county where the court is located. The newspaper shall meet such requirements as are prescribed by law for such purpose.

(2) Proof of publication shall be made by affidavit of the owner, publisher, proprietor, editor, business manager, foreman or other officer or employee of the newspaper having knowledge of such publication. The affidavit shall set forth or have attached a copy of the notice, shall set forth the dates of each publication and otherwise comply with the requirements of law.

History.—s. 10, ch. 20452, 1941; s. 5, ch. 28301, 1953; s. 2, ch. 29737, 1955; s. 5, ch. 67-254; s. 2, ch. 74-152; s. 1, ch. 75-205; s. 8, ch. 93-250.

Note.—Former s. 48.10.

49.11 Notice of action, posting, proof.—If there is no newspaper published in the county, three copies of the notice shall be posted at least 28 days before the return day thereof in three different and conspicuous places in such county, one of which shall be at the front door of the courthouse in said county. Proof of posting shall be by affidavit of the person posting the notices, which affidavit shall include a copy of the notice posted and the date and places of its posting.

History.—s. 11, ch. 20452, 1941; s. 2, ch. 29737, 1955; s. 5, ch. 67-254.

Note.—Former s. 48.11.

49.12 Notice of action, mailing of.—If the residence of any party to be served by publication is stated in the sworn statement with more particularity than the name of the state or country in which the defendant resides, the clerk or the judge shall mail a copy of the notice by United States mail, with postage prepaid, to each defendant within 10 days after making or posting the notice, the date of mailing to be noted on the docket with a copy of the pleading for which the notice was issued.

History.—s. 13, ch. 20452, 1941; s. 7, ch. 29737, 1955; s. 5, ch. 67-254; s. 3, ch. 74-152.

Note.—Former s. 48.13.