

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 441 Removal of Unknown Parties in Possession

SPONSOR(S): Brackett

TIED BILLS: IDEN./SIM. BILLS: SB 522

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	17 Y, 0 N	Mathews	Jones
2) Judiciary Committee			

SUMMARY ANALYSIS

“Process” is used by a court or administrative body to acquire or exercise jurisdiction over a person or property. Original process includes an original writ or summons issued by the court as the first step in a lawsuit and includes a notice to the party being served regarding the time and date to appear before the court. The traditional and preferred form of service of process on a competent adult is by personal delivery to that person.

Under s. 48.184, F.S., a landowner or landlord may serve a summons for the removal of persons wrongfully occupying his or her property when the identities of such persons are unknown to the landowner or landlord. Such a summons must be issued to “Unknown Party in Possession” if the identity of the occupant or occupants is unknown. A separate summons must be issued for each such unknown occupant.

HB 441 amends s. 48.184, F.S., to clarify that a summons must be issued in the name of “Unknown Parties in Possession” rather than “Unknown Party.” Therefore, one summons can apply to all of the unknown occupants on a property and serve to put any and all unknown occupants on notice of the legal action.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Judicial Service of Process

“Process” is used by a court or administrative body to acquire or exercise jurisdiction over a person or property.¹ There are three primary types of process: original, mesne, and final process. Original process includes an original writ or summons issued by the court as the first step in a lawsuit and includes a notice to the party being served regarding the time and date to appear before the court. Mesne process is an intermediate process issued between the original process and the final judgment. Final process is a writ of execution pursuant to a final judgment issued in the subject legal proceeding.

Generally, service of process is made by:

- Delivering a copy of the process to the person to be served; or
- Leaving the process at the person’s usual place of abode² with any person residing there who is fifteen years of age or older and informing that person of the contents of the process.³

Service of Process on Unknown Parties in Possession

Under s. 48.184, F.S., a landowner or landlord may serve a summons for the removal of persons wrongfully occupying his or her property when such identities are unknown to the landowner or landlord. Such a summons must be issued to “Unknown Party in Possession” if the identity of the occupant or occupants is unknown. S. 48.184, F.S., only applies to the removal of an unknown party in possession in one of the following types of cases:

- Possession of real property obtained by forcible entry, unlawful entry, or unlawful detention, pursuant to s. 82.03, F.S.
- Removal of a tenant pursuant to s. 83.21, F.S.
- Removal of a holdover tenant who refuses to vacate the premises under s. 83.59, F.S.
- Eviction of a mobile home owner, mobile home tenant, mobile home occupant, or a mobile home pursuant to s. 723.061, F.S.

During the 2022 legislative session, the Legislature passed CS/CS/SB 1062 (CS/CS/HB 545) relating to service of process.⁴ The Governor approved the bill and signed it into law. The bill revised several components related to service of process, including service of process on unknown parties in possession of property. As such, a landlord may issue a summons for an “Unknown Party in Possession” when filing an eviction or detainer action rather than having to identify the party in question or identifying the parties as “John Doe” and “Jane Doe.” The clerk of court is required to issue a summons in the name of “Unknown Party in Possession.” The property owner must make three attempts at service, one during business hours, one during nonbusiness hours, and one on a weekend.⁵ On each attempt, the process server must inquire as to the name of the unknown occupant. The property owner must have a copy of the process mailed by the clerk of court to the unknown party in possession at the property address and must post a copy of the process conspicuously on the property. The date of service for purposes of calculating the deadline for a defendant to file an answer is the later of the date of personal service, the date of posting on the property, or the date the clerk mails the process. If the inquiry yields the name of the unknown person in possession, the person must be named in the pleadings. If the name is not known and the legal requirements of eviction are met, the

¹ Black’s Law Dictionary 837 (6th ed. 1995).

² “Usual place of abode” means the place where the party actually lives at the time of service of process. *Shurman v. Atlantic Mortg. & Inv. Corp.*, 795 So. 2d 952 (Fla. 2001).

³ S. 48.031(1)(a), F.S.

⁴ Ch. 2022-190, L.O.F.

⁵ In general, service of process may not be made on a Sunday. S. 48.20, F.S.

clerk may issue a writ of possession against an unknown person and the sheriff may remove any person in the property.

The 2022 legislation required a summons to be issued in the name of "Unknown Party in Possession" when the name of an occupant is unknown. S. 48.184(2), F.S., requires a separate summons served on each and every unknown party in possession of property. This may create a loophole for unknown parties to remain on a property if the correct number of summonses is not issued or if a person who does not receive a summons invites others back onto the property.

Effect of Proposed Changes

HB 441 amends s. 48.184, F.S., to clarify that a summons must be issued in the name of "Unknown Parties in Possession" rather than "Unknown Party." Therefore, under the bill, one summons can apply to all unknown occupants on a property and serve to put any and all unknown occupants in that property on notice of the legal action.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 48.184, F.S., relating to service of process for removal of unknown parties in possession.

Section 2: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce the amount of time and financial resources a property owner must utilize when attempting to evict unknown parties from his or her property.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES