



# The Florida Bar

651 East Jefferson Street  
Tallahassee, FL 32399-2300

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Executive Director

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## SECTION LEGISLATIVE OR POLITICAL ACTIVITY REQUEST FORM

- This form is for committees, divisions and sections to seek approval for section legislative or political activities.
- Requests for legislative and political activity must be made on this form.
- Political activity is defined in SBP 9.11(c) as “activity by The Florida Bar or a bar group including, but not limited to, filing a comment in a federal administrative law case, taking a position on an action by an elected or appointed governmental official, appearing before a government entity, submitting comments to a regulatory entity on a regulatory matter, or any type of public commentary on an issue of significant public interest or debate.”
- Voluntary bar groups must advise TFB of proposed legislative or political activity and must identify all groups the proposal has been submitted to; if comments have been received, they should be attached. SBP 9.50(d).
  - The Legislation Committee and Board will review the proposal unless an expedited decision is required.
  - If expedited review is requested, the Executive Committee may review the proposal.
  - The Bar President, President-Elect, and chair of the Legislation Committee may review the proposal if the legislature is in session or the Executive Committee cannot act because of an emergency.

### General Information

**Submitted by:** *(list name of section, division, committee, TFB group, or individual name)*

Real Estate Leasing Committee of the Real Property, Probate, and Trust Law Section

**Address:** *(address and phone #)* C/O Chair Brenda Ezell / 904.432.3200

3560 Cardinal Point Drive, Suite 202; Jacksonville, FL 3225

**Position Level:** *(TFB section / division / committee)* RPPTL Real Estate Leasing Committee

651 East Jefferson Street • Tallahassee, FL 32399-2300 • FAX: (850) 561-9405

## Proposed Advocacy

Complete Section 1 below if the issue is legislative, 2 if the issue is political. Section 3 must be completed.

### 1. Proposed Wording of Legislative Position for Official Publication

Support proposed legislation creating Florida Statutes 49.072 establishing a process to serve unknown parties in possession of real property in connection with their removal thereof.

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### 2. Political Proposal

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### 3. Reasons For Proposed Advocacy

a. Is the proposal consistent with [Keller v. State Bar of California](#), 496 US 1 (1990), and [The Florida Bar v. Schwarz](#), 552 So. 2d 1094 (Fla. 1989)? Yes

b. Which goal or objective of the [Bar's strategic plan](#) is advanced by the proposal?

Objective 1:

Ensure the Judicial System, a Coequal Branch of Government, is Fair, Impartial, Adequately Funded and Open to All.

c. Does the proposal relate to: (*check all that apply*)

☐ Regulation and discipline of attorneys

☒ Improvement of the functioning of the courts, judicial efficacy, and efficiency

☐ Increasing the availability of legal services to the public

☐ Regulation of lawyer client trust accounts

☐ Education, ethics, competency, integrity and regulation of the legal profession

d. Additional Information: 

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# THE FLORIDA BAR

## Referrals to Other Committees, Divisions & Sections

The section must provide copies of its proposed legislative or political action to all bar divisions, sections, and committees that may be interested in the issue. SBP 9.50(d). List all divisions, sections, and committees to which the proposal has been provided pursuant to this requirement. Please include with your submission any comments received. **The section may submit its proposal before receiving comments but only after the proposal has been provided to the bar divisions, sections, or committees.** Please feel free to use this [form](#) for circulation among the other sections, divisions and committees.

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Real Property Problems Study Committee; Real Property Litigation; Residential Real Estate and Insurance Liaison

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Real Property Finance and Lending; Title Insurance and Standards; Probate and Trust Litigation; and Jurisdiction & Due Process Committee

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## Contacts

### Board & Legislation Committee Appearance *(list name, address and phone #)*

Cary Wright; Legislative Co-Chair RPPTL: 4221 W. Boy Scout Blvd. Suite 1000; Tampa, FL 33607

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(813) 223-7000 x4135

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### Appearances before Legislators *(list name and phone # of those having direct contact before House/Senate committees)*

Peter Dunbar; Dean Mean & Dunbar; 215 S. Monroe, Suite 815; Tallahassee, FL 32301

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(850) 999-4100

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### Meetings with Legislators/staff *(list name and phone # of those having direct contact with legislators)*

Same

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Submit this form and attachments to the OGC, [jhooks@floridabar.org](mailto:jhooks@floridabar.org), (850) 561-5662.

1        49.072 Service of Process for removal of unknown parties in  
2        possession. - This section applies only to actions  
3        governed by Section 51.011, Florida Statutes, and only to  
4        the extent such actions seek relief for the removal of  
5        unknown parties in possession of real property.

6        (1) A Summons shall be issued in the name of "Unknown  
7        Party in Possession" when the name of an occupant of real  
8        property is not known to the Plaintiff and the property  
9        which the unknown party occupies is identified in the  
10       Complaint and Summons. A separate Summons shall be issued  
11       for each such unknown occupant.

12       (2) The Summons shall be served on any unknown occupant(s)  
13       of the property described in the Summons and Complaint and  
14       the process server shall make an inquiry as to the name(s)  
15       of the unknown occupant(s) at the time of service. The  
16       return of service shall note the name(s) of the occupant(s)  
17       if obtained by the process server or state that the name(s)  
18       of the occupant(s) could not be obtained after inquiry. If  
19       the name(s) of the occupant(s) become known to the  
20       Plaintiff through the return of service or otherwise, then  
21       without notice or hearing thereon, all subsequent  
22       proceedings shall be taken under the true name(s) of such  
23       occupant(s) and all prior proceedings shall be deemed  
24       amended accordingly.

RM:6724080:1

25 (3) If an Unknown Party in Possession is not served after  
26 at least two attempts to obtain service at the property,  
27 service of process shall be made by attaching the Summons  
28 and Complaint to a conspicuous location on the premises  
29 involved in the proceedings. The minimum time delay between  
30 two attempts to obtain service shall be six hours.

31 (4) If a Plaintiff causes or anticipates causing an  
32 unknown occupant to be served with a Summons and Complaint  
33 solely by attaching them to a conspicuous location on the  
34 premises involved in the proceedings, the Plaintiff shall  
35 provide the Clerk of Court with one additional copy of the  
36 Summons and Complaint for each unknown occupant and a pre-  
37 stamped envelope for each unknown occupant addressed to the  
38 unknown occupant at the address of the premises involved in  
39 the proceedings. The Clerk of Court shall immediately mail  
40 a copy of the Summons and Complaint by first class mail,  
41 note the fact of mailing in the Docket, and file a  
42 certificate in the court file of the fact and date of  
43 mailing. Service shall be effective on the Unknown Party  
44 in Possession on the date of attaching the Summons and  
45 Complaint to a conspicuous location on the premises or  
46 mailing, whichever occurs later, and at least 5 days from  
47 the date of service must have elapsed before a Judgment for  
48 final removal of the unknown party in possession may be  
49 entered.

RM:6724080:1

50       (5) The Judgment and Writ of Possession shall refer to any  
51       "Unknown Party in Possession" by name if the name is shown  
52       on the return of service or is otherwise known to the  
53       Plaintiff. If the name of any unknown party in possession  
54       is not shown on the return of service or otherwise known to  
55       the Plaintiff, and service has been effected as provided in  
56       this section, the Judgment and Writ of Possession shall  
57       refer to each such person as an "Unknown Party in  
58       Possession" and the Writ of Possession shall be executed by  
59       the Sheriff by placing the Plaintiff in possession of the  
60       property and dispossessing the occupants.

## WHITE PAPER

### SERVICE OF PROCESS ON UNKNOWN PARTIES IN POSSESSION

#### I. SUMMARY

This legislation will amend Chapter 49, Florida Statutes by adding a new section 49.072 which would allow service on unknown parties in possession of real property. The bill does not have a fiscal impact on state funds.

#### II. CURRENT SITUATION

In Florida, the filing of a "John Doe" complaint does not commence an action against a real party. *Grantham v. Blount, Inc.*, 683 So.2d 538 (Fla. 2<sup>nd</sup> DCA 1996). In *Grantham*, the Court elected to treat the John Doe complaint at issue in the same manner as a complaint that substantially misidentifies the defendant, holding that it does not commence an action against the real party.

The Third District Court of Appeal has similarly held that service on an unknown party is ineffective, granting the defendant's motion to quash service of process as to an "unknown John Doe". The court stated that, because there is no statute that authorizes the procedure of filing of a "John Doe" complaint, the service is not sufficient to commence an action against a real party in interest. *Liebman v. Miami-Dade County Code Compliance Office*, 54 So.3d 1043 (Fla. 3<sup>rd</sup> DCA 2011) (citing *Grantham*, 683 So.2d 538).

Currently in Florida, service of process is authorized by Chapter 48, F.S., which provides that service 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..." Chapter 49, F.S. allows constructive service of process by publication on any party identified in Sec. 49.021, F.S. in any action to "enforce any legal or equitable lien or claim to any title or interest in real or personal property...." See § 49.011(1). Where personal service is not possible, service of process by publication may be made on any party, known or unknown, who cannot be personally served. See § 49.021(1). §§ 49.011 and 49.021(1), F.S. also provide that an unknown spouse may be served by service of process by publication. See also *Martins v. Oaks Master Prop. Owners Ass'n, Inc.*, 159 So. 3d 142, 145-46 (Fla. 5<sup>th</sup> DCA 2014) ("Pursuant to sections 49.011(1) and 49.021(1), Florida Statutes (2010), service of process by publication may be made on any known or unknown party, upon which personal service cannot be effected, in an action or proceeding to enforce any legal or equitable lien or claim to any title or interest in real or personal property.") (citation omitted).

While there is no statutory prohibition against service on unknown parties under Chapter 48, Circuit Courts in Florida are inconsistent in how this is handled. For example, some counties currently do not allow issuance of summons against unknown parties in possession. Additionally, Florida caselaw (discussed below) provides that the filing of a "John Doe" complaint, without more, does not commence an action against a real party. Currently, in eviction, unlawful detainer and other actions governed by Section 51.011, Florida Statutes, the filing of an Affidavit of Diligent Search and subsequent publication for 30 days to serve unknown parties is a significant burden on land owners. In the time it takes to meet the statutory notice requirements in the publication statute, significant waste could be had upon the property in question. Further, there has been an increase in the number of cases involving "squatters" since the great recession and it is

believed that once existing pandemic moratoria are lifted, there will be a significant number of cases filed against unknown parties.

This proposed legislation would clear up any inconsistencies across the state regarding service of unknown parties in possession.

### **III. EFFECT OF PROPOSED CHANGES**

This statute would authorize the filing and prosecution against unknown parties in possession only in actions governed by Section 51.011, Florida Statutes, and only to the extent such actions seek relief by providing for the issuance of a Summons in the name of “Unknown Party in Possession” when the name of an occupant of real property is not known to the Plaintiff and the property which the unknown party occupies is identified in the Complaint and Summons.

### **IV. FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS**

The proposal does not have a fiscal impact on state or local governments.

### **V. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR**

This statutory amendment will have a positive impact on the private sector by allowing land owners to retake possession of real property from unknown party unlawfully in possession of the property by not requiring the time and expense of proceeding with service by publication, which is currently the only statutorily authorized means of serving an unknown party in possession.

### **VI. CONSTITUTIONAL ISSUES**

Notice which is reasonably calculated, under the circumstances, to inform interested persons of the pendency of an action in which they are a party to afford them the chance to respond is a fundamental requirement of due process. *Mullane v. Central Hanover Bank Trust Co*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950) (citations omitted). The intent of service of process is to notify a defendant of proceedings against the defendant and to warn that appearance must be made at a time and place to proffer defenses to the action. *Gilliam v. Smart*, 809 So.2d 905, 907 (Fla. 1<sup>st</sup> DCA 2002) (citing *Abbate v. Provident Nat'l Bank*, 631 So.2d 312, 313 (Fla. 5<sup>th</sup> DCA 1994) (stating “[J]urisdiction is perfected by the proper service of sufficient process.”). *Id.* Personal jurisdiction must be established for a court to have the authority to determine the rights of the parties. *Id.* (citing *Ruth v. Dep't of Legal Affairs*, 684 So.2d 181 (Fla. 1996)).

It is well established that personal jurisdiction is not required for actions in rem. *See Hinton v. Gold*, 813 So.2d 1057, 1059 (Fla. 4<sup>th</sup> DCA 2002) which are actions relating to the title, ownership, or possession of a particular property.

Based on the foregoing, because the proposed statute is only applicable to in rem proceedings to determine possessory real property rights, no personal jurisdiction is required, and thus, personal service is not required. Therefore, a statute authorizing service on unknown parties in possession would not run afoul of any Due Process Rights claimed by any party served under any such statute.

### **V. OTHER INTERESTED PARTIES**

None.