

House Bill 91 - 2019 Florida Legislature

An act relating to judicial process; amending s. 48.23, F.S.; providing that a person who acquires for value a lien on property during the course of specified legal actions takes such lien free of claims in certain circumstances; revising provisions relating to time requirements for intervention in certain proceedings; specifying the effect of a valid, recorded notice of lis pendens in certain circumstances involving a judicial sale; providing applicability; amending s. 48.021, F.S.; revising authority of special process servers; revising a cross-reference; requiring that civil witness subpoenas be served by certain persons; amending s. 48.031, F.S.; revising requirements for substituted service on the spouse of the person to be served; revising requirements for documenting service of process; conforming terminology; amending s. 48.062, F.S.; revising requirements for service on limited liability companies; amending s. 48.194, F.S.; revising provisions specifying who may serve process outside of the state; revising requirements for documenting that service has been properly made outside the state; amending s. 48.21, F.S.; revising requirements for return-of-service forms; authorizing certain persons to electronically sign return-of-service forms; amending s. 316.29545, F.S.; exempting certified process servers from certain window sunscreening restrictions; providing an effective date.

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

Section 1. Paragraphs (b) and (d) of subsection (1) of section 48.23, Florida Statutes, are amended to read:

48.23 Lis pendens.—

(1)

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lien upon, the real or personal property unless a notice of lis pendens has been recorded and has not expired or been withdrawn or discharged.

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

(d) Except for the interest of persons in possession or easements of use, the recording of such notice of lis pendens, provided that during the pendency of the proceeding it has not expired pursuant to subsection (2) or been withdrawn or discharged, constitutes a bar to the enforcement against the property described in the notice of all interests and liens, including, but not limited to, federal tax liens and levies, unrecorded at the

time of recording the notice unless the holder of any such unrecorded interest or lien moves to intervene intervenes in such proceedings within 30 days after the recording of the notice and the court ultimately grants the motion. If the holder of any such unrecorded interest or lien does not intervene in the proceedings and if such proceedings are prosecuted to a judicial sale of the property described in the notice, the property shall be forever discharged from all such unrecorded interests and liens. A valid recorded notice of lis pendens of such proceedings prosecuted to a judicial sale remains in effect through the recording of any instrument transferring title to the property pursuant to the final judgment unless it expires, is withdrawn, or it is otherwise discharged. If the notice of lis pendens expires or is withdrawn or discharged, the expiration, withdrawal, or discharge of the notice does not affect the validity of any unrecorded interest or lien.

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

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

48.021 Process; by whom served.—

(1) All process shall be served by the sheriff of the county where the person to be served is found, except initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses may be served by a special process server appointed by the sheriff as provided for in this section or

by a certified process server as provided ~~for~~ in s. 48.27 ss. 48.25–48.31. Civil witness subpoenas shall ~~may~~ be served by any person authorized by rules of civil procedure.

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

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

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

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

(5) A person serving process shall place, on the first page ~~only~~ of at least one of the processes served, the date and time of service, ~~his or her initials or signature~~, and, if applicable, his or

her identification number and initials for all service of process. The person serving process shall list on the return-of-service form all initial pleadings delivered and served along with the process. The person requesting service or the person authorized to serve the process shall file the return-of-service form with the court.

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

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

48.062 Service on a limited liability company.—

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

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

48.194 Personal service outside state.—

(1) Except as otherwise provided herein, service of process on persons outside of this state shall be made in the same manner as service within this state by any **person** **officer** authorized to serve process in the state where the person is served. No order of court is required. **A An affidavit of the officer shall be filed, stating the time, manner, and place of service. The** court may consider the return-of-service form described in s. 48.21 **affidavit**, or any other competent evidence, in determining whether service has been properly made. Service of process on persons outside the United States may be required to conform to the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

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

48.21 Return of execution of process.—

(1) Each person who effects service of process shall note on a return-of-service form attached there to, the date and time when it comes to hand, the date and time when it is served, the manner of service, the name of the person on whom it was served, and, if the person is served in a representative capacity, the position occupied by the person. The return-of-service form **must list all pleadings and documents served and** be signed by the person who effects the service of process. However, a person **who is authorized under this chapter to serve process and** **employed by a sheriff** who effects **such** **the** service of process may sign

the return-of-service form using an electronic signature ~~certified by the sheriff~~.

Section 8. Section 316.29545, Florida Statutes, is amended to read:

316.29545 Window sunscreening exclusions; medical exemption; certain law enforcement vehicles, **process server vehicles**, and private investigative service vehicles exempt.—

(1) The department shall issue medical exemption certificates to persons who are afflicted with Lupus, any autoimmune disease, or other medical conditions which require a limited exposure to light, which certificates shall entitle the person to whom the certificate is issued to have sunscreening material on the windshield, side windows, and windows behind the driver which is in violation of the requirements of ss. 316.2951-316.2957. The department shall consult with the Medical Advisory Board established in s. 322.125 for guidance with respect to the autoimmune diseases and other medical conditions which shall be included on the form of the medical certificate authorized by this section. At a minimum, the medical exemption certificate shall include a vehicle description with the make, model, year, vehicle identification number, medical exemption decal number issued for the vehicle, and the name of the person or persons who are the registered owners of the vehicle. A medical exemption certificate shall be nontransferable and shall become null and void upon the sale or transfer of the vehicle identified on the certificate.

(2) The department shall exempt all law enforcement vehicles used in undercover or canine operations

from the window sunscreening requirements of ss. 316.2951-316.2957.

(3) The department shall exempt from the window sunscreening restrictions of ss. 316.2953, 316.2954, and 316.2956 vehicles that are owned or leased by process servers certified pursuant to s. 48.29 or by private investigators or private investigative agencies licensed under chapter 493.

(4) The department may charge a fee in an amount sufficient to defray the expenses of issuing a medical exemption certificate as described in subsection (1).

(5) The department is authorized to promulgate rules for the implementation of this section.

Section 9. This act shall take effect upon becoming a law.