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You've Been Served: Lawsuits and Service of Process

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Lawyers are often accused of using legal jargon. Our clients do not always understand. One example that surfaces from time to time has to do with that most infamous byproduct of the legal process: the lawsuit. Whether an association is suing or being sued, the most fundamental requirement is to get "good service."

Service, which is more formally known as service of process, is nothing more than notifying the defendant that he or she is being sued. Generally speaking, the first requirement of filing a lawsuit is for the plaintiff to notify the defendant that he or she is being sued. While this seems obvious, many lawsuits never get off the ground because the plaintiff has not properly notified the defendant. There are three basic elements of this process of notification: (1) the manner in which the defendant is notified; (2) the timing of the notification; and (3) where the defendant is notified.

The manner in which the defendant is notified is critical. For example, it is usually not sufficient to notify the defendant by phone, or in most jurisdictions, even by first-class mail. The timing of the notice requires the plaintiff to notify the defendant in advance of the court date, within a certain period of time, or as otherwise proscribed by that jurisdiction's rules of procedure. Finally, where the defendant is notified can also determine whether or not the plaintiff has properly "served" the defendant. If the plaintiff does not satisfy any one of these elements, the court will not allow the lawsuit to go forward.

Each state has its own rules and laws that dictate how a plaintiff must serve a defendant. There are also

slight differences when the plaintiff is suing a corporation or other entity. It can also become more complicated when one party tries to sue another party in another state. In the following, we will provide an overview of the service requirements for Maryland and Virginia and highlight the differences for each.

VIRGINIA

The Significance of Posted Service: Somewhat surprisingly, Virginia has comparatively liberal service requirements. In all jurisdictions, "personal service," or hand delivering a copy of the summons to the defendant, is the preferred method of service. In some jurisdictions, it is the only recognized method of service. Virginia, like the other states, prefers that the Sheriff hand deliver the lawsuit to the defendant. However, Virginia also allows the Sheriff to post a copy of the lawsuit to the entrance to the defendant's home if the plaintiff also sends a copy of the lawsuit to the defendant by mail. This is referred to as "posted service."¹ If the defendant is not home, the Sheriff simply tapes the lawsuit to the door and reports to the Court that the lawsuit has been served upon the Defendant. The plaintiff can then go forward with the lawsuit. It is important to note, however, that the Sheriff must first try to serve the Defendant personally. Also, the Sheriff cannot post a copy of the lawsuit to the door if a resident at that address advises the Sheriff that the defendant no longer lives there². In many jurisdictions, this

¹ The unofficial title for this method of service is "nail and mail."

² This usually occurs when whoever answers the door informs the Sheriff that the Defendant no longer lives there.

manner of posted service is generally considered more efficient and is much easier to accomplish than service by hand delivering a copy of the lawsuit to the defendant..

When the Defendant Cannot Be Found: If the defendant cannot be served personally and does not appear to be residing at the last known address, the plaintiff may file an “alias” suit. This allows the plaintiff to re-serve the lawsuit by either having it served at a different address or filing it through the Secretary of the Commonwealth if the plaintiff has no other address (which is explained in greater detail below).

Service of process typically becomes an issue for community associations when the association is attempting to sue a non-resident owner. When serving non-resident owners, bad service can cause delays, but will not prevent the association from going forward with the lawsuit. If the association has attempted to serve the owner at the owner’s last known address, and the Sheriff has reported that the owner no longer resides there, we can then proceed with the lawsuit by filing it through the Secretary of the Commonwealth. When serving it through the Secretary of the Commonwealth, the lawsuit is simply mailed by the office of the Secretary of the Commonwealth to the defendant’s last known address. Once the court receives confirmation that the lawsuit has been mailed by the Secretary of the Commonwealth to the defendants last known address, the association can then proceed with the suit.

MARYLAND

The Significance of Personal Service: In Maryland, there are two commonly accepted methods to serve a defendant with notice that they are being sued: a) by delivering a copy of the suit to the defendant’s residence by certified mail, return receipt requested; or b) by having the Sheriff or a 3rd party (who does not have an interest in the suit) hand deliver a copy of

the lawsuit to the defendant in person. Since the Maryland Courts will only recognize service by certified mail in those cases where the defendant named in the lawsuit has signed the return receipt card, most defendants receive notice of a lawsuit by personal service. Moreover, since most local Sheriffs only work from 9 a.m. to 5 p.m., which are the same hours that most defendants are away from their residence, most lawsuits filed in Maryland are personally served by a 3rd party who does not have any interest in the lawsuit, these people are commonly referred to as private process servers.

When the Defendant cannot be found: If the local Sheriff or a private process server is unable to locate the defendant and hand deliver a copy of the lawsuit after a number of attempts, the Plaintiff can petition the Court to request that the defendant be served using posted service (which is the norm in Virginia). Generally, if the Plaintiff can adequately demonstrate to the Court that the defendant appears to be evading service of the lawsuit, the Court will permit the Plaintiff to serve the defendant by posted service. However, unlike Virginia, posted service of a lawsuit in Maryland is the exception rather than the rule and it requires the Court’s permission.

As outlined above, the procedures to serve a defendant with notice of a pending lawsuit differ significantly in Maryland and Virginia. Moreover, properly serving notice of a pending lawsuit upon a defendant is an important first step to ensure that your association’s suit can move forward to judgment.

The foregoing discussion is for the purpose of giving our clients a general idea of what is required in serving a lawsuit on a defendant. As with any rule, however, there are exceptions. If you have any questions, please do not hesitate to contact any of our Community Associations attorneys at (703) 790-1911.