Service of Process on Business Entities: The Importance of Knowing the Rules

One of the important services provided by Secretaries of State is to provide the public with access to the name and address of the agent for service of process (aka the registered agent) appointed by their domestic and foreign business entities, as required by their states' business entity laws. The registered agent requirement facilitates service of process, benefiting both the parties filing lawsuits (the plaintiffs) and the business entity being sued (the defendant). However the state registered agent requirement is just one of the many aspects of service of process law that the parties and their counsel must be familiar with to ensure the lawsuit proceeds properly.

What is service of process?

Process, as a noun, refers to the document that notifies someone that they are being sued. Service of process refers to how the plaintiff gets that notice into the hands of the defendant, so that the defendant has a chance to respond and defend itself.

People may think that service of process is a simple procedure. But, in fact, service of process is a complex procedure, governed by a detailed set of statutes and rules that prescribe what has to be served, when, by whom, to whom, where, in what manner, and more. Service of process has been described as being "fraught with danger" because of all that can and does go wrong.

What is service of process law?

Service of process is governed by four main sources of law.

- State and federal civil procedure rules and statutes
- The business entity law that governs a defendant that is a corporation, LLC, or other statutory business entity
- State and federal case law interpreting the rules and statutes
- The due process clause of the 5^{th} and 14^{th} amendments to the US Constitution

The due process clause

The due process clause provides that no person can be deprived of life, liberty, or property without due process of law. Because of the due process clause, every defendant has to be provided with notice of the action filed against it and given an opportunity to be heard. And service of process is how that notice is given. Without valid service of process the court has no power over the defendant, and cannot order it to pay money to the plaintiff or do or refrain from doing any act.

Rules of civil procedure

Service of process is governed mainly by civil procedure rules. Although the specific rules vary from jurisdiction to jurisdiction, most deal with the same general topics. And those topics usually include the following:

- <u>Content of the summons</u> – The rules prescribe what has to be set forth in the document used to notify the defendant of the action filed against it, which under the federal rules and rules of most, although not all states, is called a summons. It generally has to set forth the name of the court and the parties, the name and address of the plaintiff's attorney, or if unrepresented, the plaintiff, the time within which the defendant must appear and defend, notify the defendant that the failure to do so will result in a default judgment, it has to be signed by the clerk, and bear the court's seal.

- What Documents are Served -The rules prescribe what documents have to be served on the defendant. Most jurisdictions require service of the summons along with a copy of the complaint.
- Who Can Serve Process - Not everyone can serve process. Typically, it must be a person who is not a party to the lawsuit and who is at least 18 years old. However, some state rules require process to be served by a sheriff or other state official.
- Methods of Delivery - The methods that can be used to deliver process to the defendant are also provided for in the rules. There are two principal methods of delivering process. The first is personal, or in-hand delivery. Personal delivery is a valid method under the federal rules and the rules of every state. The other is certified mail, return receipt requested, which is provided for by some, but not all jurisdictions.
- Who can receive service of process – the rules also prescribe who is authorized to receive service of process. Service of process on someone who is not authorized to receive service of process for the defendant is not valid service of process.

The federal rule, and the rules of the states that have adopted the federal approach, provide that service of process can be made on a corporation or unincorporated association by delivery to: (1) an officer, (2) a managing agent, (3) a general agent, (4) an agent authorized by appointment to receive service of process, or (5) an agent authorized by law to receive service of process.

Under this approach the plaintiff does not have to serve the registered agent. But they often do so because it's easy to locate the registered agent – you just look it up on the Secretary of State's website - and you know you're serving an authorized person. Neither of those is necessarily true when serving anyone other than the registered agent.

State business entity laws

The state business entity laws also have some provisions regarding service of process. These provisions are in addition to the civil procedure rules; they don't replace them.

Most notably, they require the entity to continually maintain a registered agent and office. A registered agent can typically be any individual resident of the state who is at least 18 years old or a domestic or qualified foreign business entity. The registered agent's

role is to receive service of process and forward it to the business entity that has appointed it as registered agent. Registered agents play a vitally important role in the American legal system by facilitating service of process on business entity defendants.

Consequences of not understanding service of process law

It's important for the parties and their attorneys to be familiar with the service of process law that applies to their lawsuit because of the consequences if they aren't.

For plaintiffs, an error in serving process can result in their lawsuit being dismissed -remember, the due process clause requires valid service of process. That means the plaintiffs will have to go through the time and expense of refiling their lawsuit and re-serving the defendant.

It can also result in their lawsuits being dismissed without the opportunity to refile because the statute of limitations ran. And it can result in their incurring the cost of litigating the issue of the adequacy of service when the defendant challenges it.

For the business entity defendants, not knowing the service of process rules can result in a default judgment if they failed to answer because they incorrectly thought service was improper, or because they failed to comply with the registered agent requirement. It can also result in a missed opportunity to challenge invalid service where the defendant incorrectly thought it was valid.

It's also important to note that the protections of the due process clause can be waived by the defendant. One way is for the defendant to consent to be served in a manner that would not otherwise comply with the applicable law. Another is if the defendant fails to raise the challenge in a timely manner or makes a general appearance in the case.

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