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For Those Involved in the Management and Support of Common Interest Developments

SERVICE OF PROCESS AT GUARD GATED COMMUNITIES

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INTRODUCTION

It's Friday afternoon, and a person claiming to be a process server drives up to the gate of an Association. The stranger demands entrance so that he can serve what looks like a court document. The guard, hesitant about letting the stranger into the community, calls the homeowner for permission. The homeowner instructs the guard not to allow the process server into the community. As the guard notifies the process server, the process server throws the document on the floor, snaps a photo of the document with his cell phone and leaves the document at the guard gate. Minutes later the community association managers receives a frantic call from the guard asking for advice. Unbeknownst to the homeowner nor guard, service of the documents was just successfully accomplished.

Community Association Managers of gated developments have commonly faced the challenge of whether to allow a process server into the bounds of the community. As the numbers of lawsuits, foreclosures, and bankruptcies have increased, employees at guard gated communities have experienced an increase in process servers visiting their communities. Concerned for the privacy of its residents, managers and guard employees are faced with the uncertainty of whether the process servers are legitimate, whether the residents will object or permit such entrance, and whether their actions will affect the rights of the person being served.

ISSUES

Proper service of documents is typically required before the commencement of an adversary proceeding. The purpose is to provide the person being sued with proper notice of the claims being asserted. When a legal document is served and left with the guard at a gate, the Association does not have the luxury of turning a blind eye. A resident's ability to timely respond to a Summons and Complaint can be as short as 20 days, after which the adverse side can ask the Judge to issue a Default Judgment against the resident. The failure of an Association to have a policy in place, coupled with brushing aside documents that are properly served to guards, may result in liability and legal headaches.

Since the inception of guard gated communities, homeowners have attempted to evade service of process in hopes of avoiding adversary proceedings such as litigation. However, in 1993, the legislature made it more difficult for a resident in a gated community to avoid service. According to Nevada Revised Statute 14.090 a person who resides at a location to which access is not reasonably available except through a gate, may be lawfully served with any legal process if there is:

- (a) A guard posted at the gate and the guard denies access to the residence for service of process, service of process is effective upon **leaving a copy thereof with the guard.**

- (b) No guard posted at the gate and entry through the gate is not reasonably available, the court may, if it is satisfied by affidavit that those facts are true, allow service of process by mailing a copy thereof to the residence by certified or registered mail.

Most issues arise from section (a) of NRS 14.090, because it requires the Association to take an active role in notifying a resident of the service of process. Common questions asked by manager, include:

- Is the guard required to allow a process server into the community?
- What if the process server has a badge or is a constable?
- What are we suppose to do with this documents?
- Is the Association required to mail the resident the document?
- Does the Association have to retain a copy?

CERTAINTY IS KEY

As with many grey areas with different ramifications for different actions, it is best for an Association to have a policy in place regarding process servers. The best way for an Association to protect itself is to have a policy in place, put the homeowners on notice, and strictly adhere to that policy. From a legal stand point **the most important part is that there is a policy** in place and that the homeowners are notified. Otherwise, so long as it is reasonable, it is up to the Association to determine what policy to adopt.

POLICY OPTIONS

An Association can choose from a myriad of policies including, in no particular order, the following: (1) Forwarding Policy, (2) Notice Only Policy, (3) No Assistance Policy, (4) Entrance Policy, (5) Escorting Policy.

A forwarding policy provides the flexibility of letting the homeowner determine whether to allow the process server into the community, while also agreeing to forward any documents served at the guard gate to the homeowner. Some Association, however, do not want the responsibility, liability and added postage costs of forwarding legal, time sensitive documents to homeowners. And, while the liability may be mitigated by proper record keeping and notice that "the Association will deliver the served document to the address on file via U.S. Postal Service only, and cannot guarantee the delivery of the document to the person served," the Association will still have the responsibility and incur postage charges.

Alternatively an Association can adopt a notice only policy, wherein the Association adopts a policy that it will only provide notice that a document has been served at the gate and will give the homeowner a set amount of time to pick up the documents. Along with notifying the residents of such policy, and taking the steps previously mentioned, the Association can eliminate any increased charge of forwarding large reams of paper. However, this approach does

not eliminate the responsibility that an Association would have, nor the need to properly document each occurrence.

Some Associations adopt a no assistance policy, which comes across just as positive as its name sounds. The Association adopts a policy and notifies all homeowners that it will not assist in forwarding documents left or served on the residents at the guard gates, and that if a resident denies access to a process server it will be responsibility of the homeowner to contact the server. The issue with this approach is that process servers tend to come at all hours of the morning, day and evening. Many times a resident will not be present to permit grant entrance into the Association, thereby leaving some homeowners without any notice of the service.

Most common is an entrance policy, wherein a guard will permit any process server the ability to enter the Association so long as the process server has identification and documentation to legitimately serve. More often than not, the person attempting to accomplish service of process is a licensed commercial process server or a constable or sheriff's deputy. In rare instances non-commercial process servers may attempt to serve documents for a friend or relative. With an entrance policy these type of process servers are permitted entrance to serve documents as well.

Finally, and perhaps, most time intensive is an escort policy. Any person that represents to the gate that it is attempting to accomplish service of process is escorted to the residence and escorted off the property. In such cases if the homeowner is not home, the process server may not simply leave a copy of the document at the gate to accomplish service. Board members and community managers in charge of Associations with sufficient staff resources prefer this approach.

CONCLUSION

Each approach has its harms, risks and benefits. So long as the Association adopts a reasonable policy, puts its homeowners on notice and documents/logs its efforts, the Association should not be exposed to liability for failing to properly notify a resident when it has been served.

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