

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

Next APSA Board Meeting is in July. Watch your e-mail for updates.

Website Update

APSA's website and Directory undergoes almost weekly changes. Please check your directory listing for accuracy. If you find anything in need of repair, please let us know by email. Thanks!

Also, FYI, As recommended by our website developer, we have changed our credit card merchant from PayPal to Stripe. Once implemented, it should be a seamless transaction. Many of you were having issues with PayPal, and when we attempted to update their stuff on our website, we got static, and no customer service. (We're also moving away from BofA for the same reason.) We'll update you when it's all done.

Free Continuing Education for APSA Members

We are still giving away FREE continuing education hours to all dues-paying members. But, yes, there's a catch. You must attend the board meeting (usually about an hour) on a Saturday morning to qualify for sitting in or the free continuing education class held afterward to get credit.

We'd love to see you participate!

APSA 2023-2024 Officers & Board Members:

Larry J. Ratcliff, President Direct: (928) 367-0510
John Osborn, Vice President (480) 821-1552
Barry R. Goldman, Secretary/Treasurer/Admin.
Ronald R. Ezell, Immed. Past Pres. (520) 631-3877
Nathan Botsch, Bd. Member (928) 864-5597
Kay Dean, Bd. Member (623) 670-9728
Susie Baldwin, Bd. Member (602) 920-1809

New Members & Membership Changes

Arnold's Process Service

Jennifer Kody Paschal

212 S Marina St

Prescott, AZ 86303

Phone: (928) 445-4807

Alternate Phone: Cell (928) 460-2512

Email: arnolds@arnoldsprocess.com

Member Since: 2021/02/22

Member Type: Regular Membership

Service Areas: Yavapai County

Service Types: Service of Legal Process, Notary Public

Arnold's Process Service

Tracy Arnold, A.C.P.S.

212 South Marina Street

Prescott, AZ 86303

Phone: 928-445-4807

Email: arnolds@arnoldsprocess.com

Member Since: 2015/01/01

Service Areas: Yavapai County

Service Types: Process Service, Legal Messenger

Service, Record Searches, Notary Public

Crews Process Serving

Patricia Gable

2513 Rainbow Avenue North

Lake Havasu City, AZ 86403

Phone: (928) 855-2410

Alternate Phone: Cell: (719) 201-3368

Email: tricia@crewslegalservices.com

Member Since: 2023/01/03

Member Type: 2023 Regular Member

Service Areas: Mohave County

Service Types: Service of Legal Process, Legal

Messenger Service, Record Searches/Legal Document

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

Research, Legal Document Copy/Scanning Service,
Member of NAPPS

Member & Reader Comments

Hi Barry, I want to thank you so much for the newsletters you send out each month. I especially found this month's issue very informative and eye opening on what it is that I need to be refreshed on. So, thank you for all your hard work.

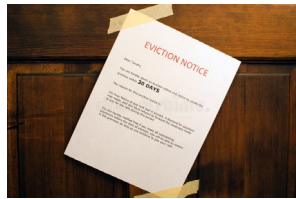
Sincerely,
Kay Dean, A2Z Process Service, LLC

Thank you, Barry, very much appreciated!!
Phil Alkhoury, We Due Process, LLC

Service Questions... We Get 'Em

Hi Barry, hope you're doing well. Had a quick question, wanted to get your input...

I'm supposed to be getting a 5-Day Notice to serve on a renter to pay or get out basically, from what I understand.



Regarding something like this, we can just post right from the start, right? Also, is there a time limit to post, like 48 hours from the date of the notice?

I seem to remember something like that in the rules but truth is, I don't do a lot of eviction cases.

Any quick info you can provide on the 5-Day Notice would be greatly appreciated! Thanks in advance!

The WWBD Answer Lady says...

Serving a five-day notice is done by personal, substitute, or posting/ mailing. If personal or substitute service is performed, the time to pay rent or quit is five days from the date of service. If the notice is

conspicuously posted on the front door of the premises and thereafter sent by certified mail, return receipt requested, the time to pay or quit turns from five to ten days. Most folks don't sign for certified mail, so the prudent thing to do is add the extra five days. I always send a copy by first class (regular) mail, as well. The additional five days are due to the mailing.

See ARS §33-1313(Notice), below:

A. A person has notice of a fact if he has actual knowledge of it, has received a notice or notification of it or from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.

B. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform the other in ordinary course whether or not the other actually comes to know of it. A person "receives" a notice or notification when it comes to his attention, or in the case of the landlord, it is delivered in hand or mailed by registered or certified mail to the place of business of the landlord through which the rental agreement was made or at any place held out by him as the place for receipt of the communication or delivered to any individual who is designated as an agent by section 33-1322 or, in the case of the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication or, in the absence of such designation, to his last known place of residence. If notice is mailed by registered or certified mail, the tenant or landlord is deemed to have received such notice on the date the notice is actually received by him or five days after the date the notice is mailed, whichever occurs first.

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

C. "Notice," knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting the transaction and in any event from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

The WWBD Answer Lady says... But She's Dead!

A member contacted me about serving papers at a residence where the homeowner told our server that his wife (the sole defendant) was deceased. It was a credit card collection lawsuit. It seems that because she didn't respond to the collection agency's notices, they filed suit against her. (Maybe she was indisposed?)

Neither the husband nor the community property estate was named on the summons and complaint, but "John Doe and Jane Doe" were. (Huh? I guess each lawyer has his/her own style.)

Our process server member, having good people sense and respect for a guy who was still obviously mourning his wife, didn't serve the paper. Our member notified the assigning agency, an out of state paper broker, who, apparently out of a sense of love of seeing other peoples' frustration, or desire to cause wanton pain, re-sent the same assignment to the server two more times. This, after the server confirmed and informed the agency that the defendant is deceased.

I'm all for diligent attempts, but what would this agency like, a stake out at a graveyard?

Our member called me for some friendly advice. Personally, I would have liked to have told the agency where to go and how to get there, but being more

reasonable, I would return the assignment unserved, as the defendant has been verified as deceased. And charge them for my time and efforts.

Contrary to what film director George A. Romero may want us to believe, you just can't serve a dead person. They're completely unresponsive...



When is a Protective Order an Abuse of Process?

The recent case of a state senator asking for an injunction against harassment against a reporter doing her job, making diligent (some would say "intrusive") inquiries into the politician's true residence most recently illustrates that a protective order can be rescinded, or vacated by the court.

Sen. Wendy Rogers (R-Flagstaff), requested an Injunction Against Harassment be issued in the Flagstaff Municipal Court on April 19th, alleging that the investigation by Arizona Capitol Times's reporter Camryn Sanchez amounted to harassment.¹ The IAH, issued by city Magistrate Judge Amy Criddle, was subsequently tossed by Howard Grodman, Justice of the Peace for the Flagstaff Justice Court after a hearing.

According to the Arizona Capitol Times, the reporter's investigation "...included an examination of publicly available property records that show Rogers and her husband bought a home in Chandler in January and signed a trust document that said she resides in Tempe and public records of per diem payments made to Rogers as a legislator who resides outside of Maricopa County."²

¹ <https://azcapitoltimes.com/news/2023/04/27/recording-rogers-wants-reporter-to-learn-their-lesson-with-injunction/>

² <https://azcapitoltimes.com/news/2023/05/10/judge-reporters-visit-to-rogers-home-legitimate-business/>

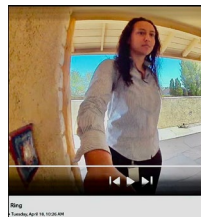
APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

Sanchez was in the process of investigating whether Rogers lives in a 1,000 S.F. mobile home Flagstaff or other homes she has owned outside of her district in Maricopa County.



During the course of the investigation, Sanchez visited Rogers' homes in Tempe and Chandler and spoke with a neighbor in Tempe and an electrician working on the home in Chandler, she testified. She was captured on Ring cameras at both homes ringing the doorbell.



William Fischbach, attorney representing Rogers, argued that the visits, coupled with incidents at the Arizona Senate in which Rogers requested Sanchez not speak to her at her desk, amounted to a pattern of harassment. The IAH issued in municipal court prohibited the reporter from being at or about Rogers' residence address(es), but not at the Capitol.

Christopher Hennessey, attorney for Sanchez, was quoted, "She's taken something intended to be a shield and turned it into a weapon," arguing Rogers abused the injunction process and to keep it in place would amount to the government placing prior restraint on a reporter.

So, the question of whether the reporter's conduct amounted to harassment, as defined in RPOP Rule 3(c) "...when applicable to an Injunction Against Harassment, means ... the following: (1) a series of acts over any period of time that are directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed, or harassed, and the conduct in fact seriously alarms, annoys, or harasses the person and serves no legitimate purpose. See A.R.S. §

12-1809(S)..." needed to be answered in light of the protections of the First Amendment. Ultimately, the court sided with the First Amendment, saying, "This doesn't come close to trespassing".

On another note, the Senator inquired (see footnote 1) of the municipal court judge if the IAH could be served by the Sergeant At Arms of the State Senate for free. The municipal court judge, seemingly unsure, referred her to the local constable, or a "registered process server". The court should note that Registered process servers are used in California. Here in Arizona, we are *Certified Private Process Servers*.

Governor Signs SB1061

SB1061, affecting public access to property records of certain individuals, specifically politicians, has been signed into law by the Governor. This bill, amending Arizona Revised Statutes sections 11-483, 11-484, 13-2401, 16-153, 28-454, 39-123 and 39-124, which formerly restricted access to public records recorded at the county recorders' offices we usually see for peace officers and judges, now includes "public officials", or politicians.



The new law defines a "PUBLIC OFFICIAL" as a person "WHO IS DULY ELECTED OR APPOINTED TO CONGRESS, THE LEGISLATURE OR A STATEWIDE OFFICE" (ARS §11-483, et seq.).

The bill also now restricts access to records of an elected public official, where "THE ADDRESS OF A PROPERTY (is) HELD IN TRUST BY THE PUBLIC OFFICIAL."

This exemption bill, formerly for the protection of a "former public official, peace officer, spouse of a peace officer, spouse or minor child of a deceased peace officer, justice, judge, commissioner, hearing

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

officer, public defender, prosecutor, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the commission on appellate court appointments, member of the board of executive clemency, law enforcement support staff member, employee of the department of child safety or employee of adult protective services who has direct contact with families in the course of employment, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment, person who is a participant in the address confidentiality program pursuant to title 41, chapter 1, article 3 or firefighter who is assigned to the Arizona counter terrorism information center in the department of public safety” now lumps politicians in with those who have a demonstrable need for the redaction of their public records.

The new law affects records maintained by county assessor and county treasurer under ARS §11-484, personal information on the internet (ARS §13-2401), voter registration records (ARS §16-153), driver license and vehicle registration records (ARS § 28-454), records maintained by a law enforcement agency (ARS §39-123/39-124).

How does this affect the service of process, you ask? It may make it harder for us to locate and serve a politician or former politician at their home.

Under ARS §11-483, a person seeking the reduction or protection of their personal information on record at the county recorder must still file a petition with the presiding judge of the superior court in their county of residence. Subsection (F) states:

“F. The presiding judge of the superior court shall review the petition and each attached affidavit to determine whether the action requested by each affiant

should be granted. If the presiding judge of the superior court concludes that the action requested by the affiant will reduce a danger to the life or safety of the affiant or another person, the presiding judge of the superior court shall order that the county recorder prohibit access for five years to the affiant's identifying information, including any of that person's documents, instruments or writings recorded by the county recorder and made available on the internet. If the presiding judge of the superior court concludes that the affiant or another person is in actual danger of physical harm from a person or persons with whom the affiant has had official dealings and that action pursuant to this section will reduce a danger to the life or safety of the affiant or another person, the presiding judge of the superior court shall order that the general public be prohibited for five years from accessing the unique identifier and the recording date contained in indexes of recorded instruments maintained by the county recorder and identified pursuant to subsection B of this section.”

So, while politicians have put their hats in the rings of persons who may need orders for their recorded information to be redacted, they still need to jump through the same hoops as everyone else.

Bad Service Leads to Frustration by Plaintiffs

In two separate (out of state) cases, attempts to serve defendants by email and certified mail were ruled insufficient for service of process.

In the first case, SCOTT v. VURAL (Lawyers Weekly No. 012-067-23, 7 pp.) (Jefferson Griffin, J.) Appealed from Mecklenburg County Superior Court (Paulina Havelka, J.) North Carolina Court of Appeals (unpublished):

Defendant presented (1) evidence that, three years before plaintiffs attempted to serve him with process via certified mail, he had sold and vacated the

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

home to which process was delivered and (2) his sworn affidavit that he did not receive the summons and complaint, did not sign the certified mail receipt and no longer owns or resides at the address. Moreover, the signature box on the return receipt shows “C-19,” as record of contactless delivery per USPS Covid Protocol. The USPS tracking history shows merely “delivered to an individual at the address.” Defendant rebutted the presumption of valid service of process.

The appeals court affirmed the trial court’s grant of defendant’s motion to dismiss.

In the second, a lien priority (judgment enforcement) dispute between two judgment creditors, the Illinois Supreme Court recently held that email delivery does not constitute proper service of process for judgment enforcement proceedings. (MIDWEST COMMERCIAL FUNDING, LLC, Appellant, v. ROBERT SYLVESTER KELLY (Heather Williams, Appellee) (2023 IL 128260, Supreme Court of the State of Illinois).

This case concerns a dispute between two judgment creditors over lien priority. After a default hearing on March 10, 2020, Williams obtained a \$4 million judgment (\$2,000,000 in compensatory damages and \$2,000,000 in punitive damages) against Kelly in March 2020 for his physical and sexual abuse of her when she was a minor. Midwest obtained a \$3,484,420.70 judgment against Kelly in July 2020 for breach of a commercial real estate lease. Midwest Commercial Funding, LLC (Midwest), and Heather Williams, each creditors of Robert Sylvester Kelly³, served citations to discover assets on Sony Music

Holdings, Inc. (Sony), which paid music royalties to Kelly. Sony received Midwest’s citation by e-mail before it received Williams’s citation sent registered mail, return receipt requested, through the United States Postal Service (USPS).



The Cook County circuit court found Midwest’s lien had priority over Williams’s lien based on the electronic service. The appellate court disagreed, finding that electronic service was not authorized for service of a citation to discover assets, so Midwest’s electronic delivery of the citation to discover assets to one of Sony’s attorneys did not perfect its lien prior to Williams. 2022 IL App (1st) 210644.

The appellate court reversed and remanded for entry of an order prioritizing Williams’s lien.

The Illinois Supreme Court affirmed the judgment of the appellate court.

For the Litigant:

What Happens After I Get My Papers Served?

Once you have served the other side with the summons and other required papers, they have 20 days to respond (file an Answer). If the other side answers the complaint, it will be filed in the court in which you

³ Robert Sylvester Kelly, a serial sexual predator, is professionally known as “R. Kelly” and was convicted on federal child pornography and exploitation charges in 2022. (U.S. Attorney's Office, Northern District Of Illinois)

He is currently serving over 30 years in federal prison for sexual abuse of minors.

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

filed your case. Depending on the type of case and applicable rules of court, each side may be given a chance at discovery— a fancy name to find out what evidence the other side has. This is a period when the two sides discuss the case and try to come to a resolution before trial. If there is no meeting of the minds, the case proceeds to mediation, arbitration, or trial with either a judge (called a bench trial) or jury deciding the outcome.

The other side can file an answer and also a cross-complaint, alleging that you owe them money, goods, services, or specific performance. Essentially at that point, both sides have competing claims. Either side can also file a third-party complaint, as well. This would be against another party not originally named in the lawsuit. It can get pretty complicated, here. It can go on and on.

If the other side does not answer, then you must prove your case, as if they had answered, and request a default judgment from the court. It is not as easy as it sounds, sometimes.

Once a judgment is issued, you can take steps to enforce the judgment. This is where it is helpful to know where the judgment debtors assets are, including their employment, self-employment, banking information, or other assets you would like to execute against. Writs may be issued by the court, as well as other post-judgment documents, such as an order to appear for examination and subpoena for records. These documents will have to be served on the judgment debtor (person who owes the money), as well as any party holding assets of the judgment debtor such as a bank, credit union or stock brokerage, or those owing

money to the judgment debtor, like an employer. Outside contractors and commissioned salespeople are garnished in the same manner as if the judgment debtor is employed.

If you win your case, the other side is obligated to pay you your costs for enforcement – that is your filing, process server, and in many instances, your legal document preparer fees. Those costs can be added to your judgment.⁴



Identity Theft - Should I File in Small Claims Court?

A client inquired that her deceased father was the victim of an unscrupulous girlfriend, and the family believes she not only siphoned off money from him, but forged his signature on real estate and other documents. She wanted to file a small claims case against the father's girlfriend, but didn't know about the procedures.

The justice courts have limited jurisdiction over matters. If there is a claim involving title to real estate (real property), the case must be filed in the Superior Court. Justice courts have no jurisdiction (authority) over real property -- titles, etc. If a forgery (identity theft) has occurred, it is a criminal act and should be reported to the local police agency. A criminal investigation and prosecution are separate from a claim for civil (or small claims) damages.

⁴ ARS §12-341. *Recovery of costs*: "The successful party to a civil action shall recover from his adversary all costs expended or incurred therein unless otherwise provided by law."

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

Knowing how much was siphoned off, how, when, and where will be key information in recovering money for the estate.



Squatters, Uninvited Guests, and Evictions

We hear the term, “squatter” and what do we picture? In my mind, it was usually some out of work drunk living in an abandoned warehouse surrounded by his sleeping bag and wine bottles. That may have been true years ago (and in some cases, now), but the many Arizona squatting cases that are filed for eviction (forcible detainer) these days are against professional squatters. Those are people either alone or in organized “families” who seek to take property titled to another by “adverse possession.” In instances where uninvited persons occupy a house or other structure, these are generally referred to as “squatters”.

Adverse possession is a legal term for staying on someone else’s property and seeking to occupy it without the property owner’s consent. You would think that if you are a property owner, you can call the cops and have the person forcibly removed and arrested, right. Not so fast. The squatter may claim rights of occupancy through alleged ownership or a phony lease.

Arizona allows a title to be transferred from one person to another, in what is called a “clear title”. A clear title refers to the fact that a title is clean, or not “colored”, or “clouded”. When there is a color on a title, it generally means that some other person has laid claim to the property by recording a lien against it.

Unfortunately, phony deeds and other documents are recorded all too often.

A property owner may have to file a “quiet title” action to remove the lien of the adverse possessor. An adverse possessor may also bring a quiet title action. “A quiet title action is a special legal proceeding to determine ownership of real property. A party with a claim of ownership to land can file an action to quiet title, which serves as a sort of lawsuit against anyone and everyone else who has a claim to the land. If the owner prevails in the quiet title action, no further challenges to the title can be brought. A quiet title action will seek to remove any clouds on the title to the property .”

Under Arizona law, a property owner may offer a compromise, of sorts, to avoid litigation against the adverse possessor claiming an interest in the property. Under ARS § 12-1103(B), “If a party, twenty days prior to bringing the action to quiet title to real property, requests the person ... holding an apparent adverse interest or right therein to execute a quit claim deed thereto, and also tenders to him five dollars for execution and delivery of the deed, and if such person refuses or neglects to comply, the filing of a disclaimer of interest or right shall not avoid the costs and the court may allow plaintiff, in addition to the ordinary costs, an attorney's fee to be fixed by the court.”

In other words, the property owner can deliver an unsigned quit claim to the adverse possessor twenty days in advance of a filing with payment of five dollars, and if the adverse possessor signs it, no quiet title action may be necessary. A quit claim (or any other deed) requires acknowledgment by a Notary Public. The adverse possessor must still deliver the quit claim deed and property to the rightful property owner.

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

But let's say the adverse possessor did or didn't sign the quit claim deed and didn't vacate the premises. The property owner still has a squatter.

Under Arizona law, a property owner has three years to bring a court action against a person claiming title by adverse possession. That means the property owner has a limited amount of time to get his property back. This includes banks and mortgage companies seeking to get squatters out of their foreclosed property, and property owners with neighbors who claim easements by notorious use or possession (i.e.: the neighbor who moved the fence line a few feet over).

Because title to the property was at issue, the property owner will need to file the lawsuit in Superior Court to get the title cleared and property returned. Filing in the Justice Court would be a waste of time because the Justice Court does not have jurisdiction when it comes to actions where title of real property is at question.

A squatter, as an uninvited person on the premises, forcibly detains the real property of another. Under ARS §12-1171: A person is guilty of forcible entry and detainer, or of forcible detainer, as the case may be, if he: 1. Makes an entry into any lands, tenements or other real property, except in cases where entry is given by law. 2. Makes such an entry by force. 3. Wilfully and without force holds over any lands, tenements or other real property after termination of the time for which such lands, tenements or other real property were let to him or to the person under whom he claims, after demand made in writing for the possession thereof by the person entitled to such possession.

Additionally, in circumstances where the property is still occupied by its former owner or occupant after the property was sold pursuant to a

foreclosure of a mortgage, deed of trust or contract for conveyance of real property, through a trustee's sale under a deed of trust, forfeited through a contract for conveyance of real property, sold by virtue of an execution and the title has been duly transferred, or sold by the owner and the title has been duly transferred, suit may be filed against the adverse possessor under ARS §12-1173.01.

For a property owner seeking to remove an adverse possessor, notice must be given before filing the lawsuit. Demand for unencumbered and undamaged return of the real property should be issued to any and all occupants, including those known and unknown (John Does and Jane Does). Often times, we may see a person remaining on the premises claiming he/she wasn't named and was not served. A process server may serve the notice by personal service, substituted service, or posting/ mailing. If made by personal or substitute service, the process server should inquire as to the names of other occupants, and have sufficient copies of the notice to be left for them with the person served, and should note who was served, and who notices were left for, etc. a good process server will at least note the physical description of the person(s) served on their report to the plaintiff or plaintiff's attorney.

Many times, after delivering notice to quit the premises, we see property owners being victimized by squatters tearing out copper piping, pouring concrete down toilets and sinks, and other types of criminal damage being done to the house. If the process server witnesses and reports this situation at the premises, the property owner may wish to pursue a criminal complaint, immediately.

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

Once notice is given, the property owner should file a suit. This may be for the quiet title, as well as forcible detainer of the property.

Serving the forcible detainer should be given immediate consideration by the process server, in that if the defendant(s) cannot be served by personal or substitute service, an order for alternative means of service should be expedited by plaintiff or plaintiff's counsel. Unlike a special detainer, where the posting and mailing of the eviction summons and complaint is statutorily authorized, forcible detainers require an alternative means of service order for posting and mailing.

Upon successful judgment by the plaintiff against the adverse possessor, the Superior Court issues a Writ of Restitution for service by the Sheriff or Constable. This is an executory writ (order) of the court for the forcible removal of a party deemed guilty of forcible detainer. The Sheriff or Constable must serve this writ as it requires the removal of persons or property. Once served, or executed, if the adverse possessor returns to the property, he/she may be criminally arrested and charged with trespassing under ARS §13-1502, §13-1503 or §13-1504 by the local law enforcement agency.

Sometimes former tenants will leave their friends and guests behind. (We've heard the term, "illegal tenant".) Property owners should be aware the exception to where a civil filing must be made to evict a squatter lies in ARS §33-1378 (Removal of guest): "A person who is a guest of a tenant who is not named on a written lease and who remains on the premises without the permission of the tenant or the landlord is not a lawful tenant and that person's presence in or on the premises does not constitute residency or tenancy. A person who knowingly remains on the premises without

the permission of the tenant or the landlord may be removed by a law enforcement officer at the request of the tenant or the landlord who is entitled to possession of the premises."



"Drop Service" - Nobody Wants to be Served!

A process server called me up the other day with a question. He was on stakeout at a defendant's house, trying to serve a summons and complaint for an out of state litigant. While watching the house, he observed the defendant go outside to his trash can. The process server approached from about 20 feet away and called out to the defendant. The defendant, having already been told by the plaintiff he was being sued, ignored the server, didn't turn, and didn't respond in any manner. Although the process server was within "easy speaking distance", because the defendant didn't turn around or acknowledge the server, the server went back to his car without serving him.

The process server asked what he should have done. The conversation went something like this:

I asked the server if he identified himself as a process server. "No." Did he tell the defendant in a loud voice he was being served? "No." Did he show the defendant the papers? "No." Did the defendant ever look at you or acknowledge your presence? "No." What did he do? "I called out his name and he just kept walking away." How loud were you? "Normal, I was my usual polite self." So, what did you do with the papers? "I took them back with me. I have them now."

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

So, what's your question? "Should I have left the papers there?" My answer: **NO**.

My take on this is that the server had proximity, but never made notice to the defendant. For all the defendant knew, hearing his name called could have been an auditory hallucination. The server didn't communicate with the defendant. There was no acknowledgment of the server's presence by the defendant. Even if the defendant "ignored" the server, body language often times betrays us. A shrug here, turn of the cheek, twitch of the arm in a defensive posture, increased speed in walking – these are all indicators that someone knows another is in proximity.

Coupled with the fact that the server didn't identify himself as a process server, didn't tell the defendant in a LOUD and DISTINCT voice he was being served, that the server didn't leave the papers in the personal space of the defendant (i.e.: tossing them at his feet in front of his direction of walking), no service was made, nor could service be supported even if the papers even were left at the house after this contact.

My next question: What did you do? "I got in my car and went to the next job". You didn't knock on the door? "No." Why not? "He knew he was being served and I figured he wouldn't answer." So, instead of trying and being diligent, you gave up? "Yeah, I guess so."

Which brings me back to "drop service". Leaving the papers in a defendant's personal space. Nobody wants to be served. Dropping the papers in a person's personal space isn't like shoving papers into someone's hand – that can be considered a form of assault. Reputable process servers won't do that.

Everyone's entitled to due process, beginning with receiving notice of the suit.

So, what do we do? When someone attempts to evade, or walk away, we leave the papers in the "personal space" of the person served. The person served may be the defendant, in the case of giving personal service (actual notice), or a person who resides with the defendant when making substitute service (giving constructive notice).

The legal documents (legal process) served must be visible to the party being served – the papers must be "open" and "notorious". Heading off claims of non-service by a defendant who files a motion to vacate a judgment is often done by process servers who use a body cam, dash cam, or another person to shoot surveillance photos or video to be used as evidence in such circumstances.

Several appeals court rulings have addressed service of process, and one case, in particular set the standard which most process servers follow. That most notable case is *In re Ball*, which established critical language in serving legal process, citing proximity and refusal to accept service:

"We take it that when men are within easy speaking distance of each other and facts occur that would convince a reasonable man that personal service of a legal document is being attempted, service cannot be avoided by denying service and moving away without consenting to take the document in hand." [*In re Ball*, 2 Cal.App.2d 578, 38 P.2d 411 (1934)]

There are several instances of case law guiding or supporting service of process under unusual or abnormal circumstances, including *Hatmaker et al v. Hatmaker et al*, [85 N.E.2d 345 (1949)] (service upon defendant who is unseen by process server); *Thorndyke v. Jenkins*, [142 P.2d 348 (Calif. C.A. 1943)] (motions

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

to quash service denied where defendant evaded service); *Blanche Tonelson v. Ronald S. Haines*, [2 Ariz. App. 127 (1965)] (In order for there to be a "leaving with" a person a copy of summons and complaint as required by rule, such person must be aware of the leaving), and others.

So, regardless of if the person served takes the papers in hand, when notice, proximity and presence are satisfied, the deed is done. Service is effective at the time of presentation, wanted or not. Service is effective whether or not the person served picks up the documents or leaves them.

Process servers give the gift that cannot be refused. Once it's given, it's not returnable – the papers are in custody and are the responsibility of the person served.



Understanding Collection Agencies

Anyone who knows me knows that I am not a fan of collection agencies. Granted, if it wasn't for collections papers, some of us would be out of work. I understand that.

Having been on both sides of debt collection, agency work leaves a bad taste in my mouth. They are parasitic. So, as you might guess, I have a bias. I published an article on my blog addressing this issue

(I'm Owed Money -- Should I Use a Collection Agency?) that I'll reprint, here:

Some time ago, I was contacted by the general manager of a small business client here in town. The company the GM works for is owed about \$17,000 from a scheming contractor who failed to provide parts and services as agreed which were paid for in advance by the client. The client had me draft out and send a demand notice to the wayward contractor for the \$17,000 damages owed. The deadbeat contractor, true to form, still has not paid the money that is owed to my client.

That was several months ago. The statute of limitations may run out, soon.

Today the GM called me up, and asked about sending the debt to a collection agency for payment. I never recommend using a collections agency, for good reason. As a former debt collector, I whittled down the collections process for him.

Collection agencies like to go after what's called, "low hanging fruit". In other words, easy money. But to do that, and make a profit, the collection agency needs volume. Collection agencies typically do not solicit individual debts from clients (creditors), rather opting to purchase portfolios of debts on an open (but not so well concealed) not-so-secret debt buyers/sellers markets -- a type of online swap meet for buying and selling bad debt. Like wholesale produce, bad debt is graded, grouped, and sold according to certain criteria.

Whether the debt is commercial or personal in nature makes no difference to the collection agency, because in essence, until they are collected, the debts are just numbers. Collection agencies purchase these portfolios of debts for pennies on the dollar then work them in assigned queues.

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

When a collection agency purchases, let's say the debt on a defaulted \$1,000 credit card, that debt is part of a larger portfolio that's purchased on the debt buying market. Collectors even have their own debt buyers and trade associations. The amount which defaulted debt is purchased for is pretty minimal – usually around \$0.05 on the dollar or so on the primary market.

That leaves a 95% spread for profit. But not every debt is collected, and in my experience, most are not collected, at least in full. The accounts that are not collected are repackaged and resold in portfolios to the secondary (and so forth) debt buyers' market. Over and over, again. (That may be why you receive telephone calls from debt collectors asking for the same person who used to have your phone number, over and over.)

When the debtor is contacted and money is demanded, the value of the debt is assessed in full without any discounts. Additionally, the collection agencies charge whatever rate of interest is allowed by the contract that got defaulted on, or by law, whichever is higher. It's a negotiating point.

There's plenty of profit potential for collection agencies.

Debt collection as a business is a numbers game, played right having very little downside for the agency. But for the small business who is owed a bad debt and considers assigning the debt to an agency to collect, in my opinion, there are too many downsides imaginable.

Let's look at some hypothetical situations.

First, when a collection agency purchases a single debt, they usually do so on a contract assigning the debt to them to act as the creditor's agent. A contingency contract usually reads something like, "...50% of any monies received for payment of the debt

shall be paid to, remitted to, or retained by the agency as its earned fee, regardless of the source of recovery...". Or the agency may charge the creditor a flat fee of the value of the assigned debt, regardless of recovery. I'll explain both, as follows.

Under the *contingency* scenario, let's say the debt gets assigned today, and the debtor pays the debt directly to the creditor in full, tomorrow. Does that mean the collection agency was remarkably effective in their efforts? Most likely not. The contract is most likely sitting at somebody's desk waiting to be assigned in a queue. But the agency is still owed their 50% contingency fee. And for whatever amount the creditor collected, the agency will sue the creditor for breach of contract if the creditor doesn't pony up the agency's fee.

In the flat fee scenario, let's say the debtor owes \$17,000 and pays \$9,000 before filing bankruptcy. The flat fee contract calls for 50% of the assigned debt (\$8,500) to be paid to the agency, regardless of the amount collected. That means, as the creditor, of that \$17,000 debt owed, and \$9,000 paid, the creditor gets \$500. Not *five thousand*, not *half*, but the remaining *five hundred* dollars. And if that debt was collected before a certain time period expired, under the bankruptcy code, the creditor may have to repay the recovered amount to the bankruptcy trustee for the benefit of all other creditors. The agency gets to keep their fee because they were charging the creditor a service fee, not a portion of the debt recovered.

Lots of loopholes in contracts.

Many collection agencies are owned by attorneys. Licensed collection agencies cannot go to court without being represented by counsel. That means in any instance where a legal demand letter is sent to a debtor, an attorney fee (usually an hour's fee for about

APSA FREE CLE Continuing Education for Members

FREE Continuing Education Classes will again be offered in 2023, starting in January and continuing through November. Class dates & times will vary. Continuing Education credits are not available for attending the Board meetings, but every APSA member attending is eligible to receive a free CE course afterward. The latest edition of the APSA Certified Process Server Training Manual may be ordered at <https://arizonaprocessservers.org/membership-application/>.

five minutes of work) is added to the amount owed. It also means that on any money recovered, the attorney fee(s) are deducted from any remittance issued to the assigning creditor. More profit.

If the collection agency files suit against the debtor (in the agency contract there is usually a blanket authorization to file suit), the creditor, as the assigning party, is responsible for payment of legal fees, court costs, sheriff/constable/process server fees, and any assorted garbage fees the agency wants to charge to add to its bottom line. The agency can recover all or part of the debt and release the debtor's obligation, at any point in time.

The agency can also re-sell the contract to another agency. There may be a right of first refusal clause in the contract. If the creditor wants to cancel the contract for any reason, the agency may want its full fee (let's say 50% of the assigned debt) to release the creditor, even if it was repackaging that debt to be sold to the secondary market for pennies on the dollar. Debt is a commodity to buy and sell.

In our scenario, let's say the creditor assigned the \$17,000 debt to an agency. The agency's portion, right off the top, is projected at a contingency of \$8,500. A demand letter (or two) is sent, adding \$500 in collection costs. Credit reports are pulled, costing the agency maybe \$3, but the creditor pays \$25. Postage is added. Then, after some time, because the debtor has some assets, a lawsuit is filed. That's another \$2,500 in attorney fees, \$600 or so in court and related costs, and when the debtor doesn't pay up after judgment, another \$1,000 in garnishment and related processing/legal fees/service fees and court costs. In this scenario, the amount of the original debt is recovered, the case gets settled, and a satisfaction of judgment is filed.

As the creditor, it's time to be paid. The agency holds all the cards. The creditor already knows the case settled for the amount of the original debt. The agency will deduct their fee (\$8,500), and the other fees and costs contractually agreed to (i.e.: court costs, etc.) of \$4,100. That means the creditor's net recovery is \$4,400 – a loss of \$12,900 because the creditor thought it was easier and more efficient to let someone else handle this.

Better for the creditor to have filed a lawsuit through their attorney, secured a judgment, then asked for my help in locating, securing, and recovering the assets. The creditor keeps control over their asset (the debt owed). At least that way, any money the creditor spends can be charged to the debtor and added to the judgment.

Like I said, I don't recommend collection agencies, and most likely never will.



To establish an account with AZPOPINT as a Process Server, please call them, directly. Their website is at <https://azpoint.azcourts.gov/>.

If you can't remember your username or need help with your password, you may use the Reset Password button on their website, or contact the Arizona Courts Support Center at (602) 452-3519 or toll-free at (800) 720-7743 during business hours, or email at PAsupport@courts.az.gov.

The Support Center is open Monday through Friday from 7:00 a.m. to 6:00 p.m. The Support Center is closed on weekends and on state holidays.