

950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

950 CMR 110.00: SERVICE OF LEGAL PROCESS

Section

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110.01: Purpose

The regulations in 950 CMR 110.00 implement the responsibilities of the Secretary of the Commonwealth under M.G.L. c. 181, § 15, M.G.L. c. 223, § 37, and M.G.L. c. 227, § 5, concerning the service of legal process.

110.02: Definitions

For the purposes of 950 CMR 110.00 and the forms issued to implement it, unless the context otherwise indicates:

- (a) "domestic corporation" means a corporation that has been established, organized, or chartered under the laws of the Commonwealth.
- (b) "foreign corporation" means a corporation that has been established, organized, or chartered under laws other than those of the Commonwealth.

110.03: Service On Domestic Corporation

In an action against a domestic corporation, (other than a county, city, town, parish, or religious society, or the proprietors of wharves, general fields, or real estate lying in common who are incorporated) service of legal process shall be made according to the following guidelines derived from M.G.L. c. 223, § 37:

- (1) The person desiring to initiate the action, hereinafter referred to as the plaintiff, should first contact an officer authorized to serve legal process;
- (2) Care should be taken to be certain that the correct corporate name is being used;
- (3) If the said officer after a diligent search can find no one upon whom he can lawfully make service he shall note this on his return of process;
- (4) The court to which such process is returned may, upon application of the plaintiff, issue an order of notice to the domestic corporation, directing it to appear and answer within a designated period;
- (5) The plaintiff shall then deliver a copy of such order in duplicate, that is, including two copies of the summons and two copies of the complaint, to the Division;
- (6) At this time a fee of \$5.00 shall be paid to the Division;
- (7) The Division shall forthwith send the copies by certified mail, return receipt requested, to such domestic corporation at the appropriate address on file;
- (8) As soon as may be after such mailing the Division shall send a certificate of compliance to the court attaching to it either the return receipt or the undelivered copies, as the case may be;
- (9) Duplicate copies of the legal process shall be kept on file in the Division for a period of at least three years.

110.04: Service On Foreign Corporation

Service of legal process in all judicial and administrative proceedings against a foreign corporation doing business in the Commonwealth shall be made by an officer authorized to serve legal process upon the Division. Service of legal process may be made upon the Division against a foreign corporation no longer doing business in the Commonwealth if the proceeding involves a liability alleged to have been incurred by the foreign corporation while it was doing business in the Commonwealth. If the foreign corporation has designated a resident agent in its most recent certificate filed with the Division then service of process shall not be deemed to have been completed until the resident agent has received the service of process from the Division, unless the resident agent cannot be found at the designated address or unless the resident agent refuses to act as such.

When legal process is served upon the Division by an officer authorized to serve such process, the Division shall take the following steps pursuant to M.G.L. c. 181, § 15:

- (1) Notice of such service and a copy of the legal process shall be sent to the foreign corporation by regular mail;
- (2) A fee of five dollars shall be paid to the Division and an additional fee of five dollars shall be paid to the Division in order to receive a certificate from the Division indicating compliance with the law;
- (3) The Division shall keep a record of all such process which shall show the day and hour of service.

In the event that the foreign corporation is not registered to do business in the Commonwealth and the plaintiff or his attorney has not furnished the address of the foreign corporation, the Division shall return the notice and copies of the process to the plaintiff or his attorney.

110.05: Criminal Service On Foreign Corporation

The service of legal process by the Division upon a foreign corporation for violation of any criminal law of the Commonwealth may be made pursuant to M.G.L. c. 181, § 15, and 950 CMR 118.04. However, in the case of such criminal service no fee shall be paid to the Division.

110.06: Service On Foreign Individuals Or Partnerships

Every individual not an inhabitant of the Commonwealth and every partnership composed of persons not such inhabitants, having a usual place of business in the Commonwealth or engaged in the construction erection, alteration or repair of a building, bridge, railroad, railway or structure of any kind, shall, before doing business in the Commonwealth, appoint a resident agent to accept legal process in a writing filed with the Division in accordance with M.G.L. c. 227, § 5. If such an individual or partnership fails to appoint such resident agent, then service of process shall be made according to the following guideline derived from M.G.L. c. 227, § 5:

- (1) Service of process, in duplicate, that is, including two copies of the summons and two copies of the complaint, may be made upon the Division by an officer authorized to serve such legal process;
- (2) The plaintiff or his attorney shall furnish the Division with the defendant foreign individual or partnership's last known address;
- (3) Copies of the legal process shall be sent to such address by the Division by certified mail, return receipt requested;
- (4) Signed receipt or undelivered copies shall be kept on file by the Division;
- (5) A fee of five dollars shall be paid to the Division by the plaintiff.

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110.07: Public Inspection of Records

The records of the Division pertaining to service of legal process shall be available for public inspection during regular business hours.

REGULATORY AUTHORITY

950 CMR 110.00: M.G.L. c. 181, § 15.