CHAPTER 9

Summonses, Orders of Publication and Service of Papers Generally

ARTICLE 1

Summons Generally

**SECTION 15‑9‑15.** Affidavit as proof of service by publication.

 In addition to the method of proof of service by publication provided by the South Carolina Rules of Civil Procedure, proof of service by publication may be made by affidavit before a notary public of this State that the appropriate notice has been printed or published.

HISTORY: 1988 Act No. 400, Section 1.

**SECTION 15‑9‑17.** Service of summons, complaint or other judicial documents on Sunday.

 Notwithstanding another provision of law, a process server may serve a summons, complaint, or other judicial documents on Sundays; however, a process server may not serve a person who is going to or from or attending a regularly or specially scheduled church or other religious service on Sunday.

HISTORY: 2000 Act No. 360, Section 1.

ARTICLE 3

Personal or Substitute Service in State

**SECTION 15‑9‑210.** Service of process on domestic corporations.

 (a) A domestic business or nonprofit corporation’s registered agent is the agent of the corporation for service of any process, notice, or demand required or permitted by law to be served, and the service is binding upon the corporation.

 (b) The business or nonprofit corporation may be served under Rule 4(d)(8) of the South Carolina Rules of Civil Procedure by registered or certified mail, return receipt requested, addressed to the office of the registered agent, or the office of the secretary of the corporation at its principal office. Service is effective upon the date of delivery as shown on the return receipt. Entry of default and default judgments shall be subject to the conditions of Rule 4(d)(8).

 (c) If the business or nonprofit corporation has no registered agent, or the agent cannot be served with reasonable diligence by means authorized by rule or statute, other than under Section 15‑9‑710, and such appears by affidavit, the court or judge thereof, the clerk of the court of common pleas or the master may grant an order that the corporation may be served by registered or certified mail, return receipt requested, addressed to the office of the secretary of the corporation at its principal office. The summons shall state the date it was mailed under this subsection, and the date service is effective. Service is perfected five days after its deposit in the United States mail, as evidenced by the postmark, or other evidence of the date the summons and complaint was mailed pursuant to this paragraph, if mailed postpaid and correctly addressed to the address of the company’s principal office which is listed on the last filed annual report of the business corporation or last filed notice of change of principal office for a nonprofit corporation or, if none has been filed, the address of the principal office specified in the initial annual report of the business corporation filed with the South Carolina Department of Revenue and, in the Articles of Incorporation (or initial annual report, if filed) for a nonprofit corporation. Entry of judgment and judgment by default may be taken as otherwise provided by Rule 55 of the Rules of Civil Procedure.

 (d) This section does not prescribe the only means, or necessarily the required means, of serving a domestic business or nonprofit corporation.

HISTORY: 1962 Code Section 10‑421; 1952 Code Section 10‑421; 1942 Code Section 434; 1932 Code Section 434; Civ. P. ‘22 Section 390; Civ. P. ‘12 Section 184; Civ. P. ‘02 Section 155; 1870 (14) 456 Section 157; 1873 (15) 497; 1882 (18) 256; 1883 (18) 437; 1887 (19) 835; 1892 (21) 404; 1899 (23) 42; 1927 (35) 292; 1940 (41) 1831; 1941 (42) 275; 1947 (45) 322; 1964 (53) 1830; 1981 Act No. 146, Section 4; 1988 Act No. 444, Section 3; 1993 Act No. 42, Section 1; 1993 Act No. 181, Section 258; 1994 Act No. 384, Section 2.

**SECTION 15‑9‑220.** Service on corporations generally; who is deemed to be agent of railroad.

 Service upon any person occupying an office or room in any railway station and attending to and transacting therein any business of any railroad shall be deemed service upon the corporation under the charter of which such railroad is authorized by law. Any such person shall be deemed the agent of the corporation, notwithstanding he may claim to be the agent of some other person or corporation claiming to operate the railroad by virtue of any lease, contract or agreement.

HISTORY: 1962 Code Section 10‑422; 1952 Code Section 10‑422; 1942 Code Section 434; 1932 Code Section 434; Civ. P. ‘22 Section 390; Civ. P. ‘12 Section 184; Civ. P. ‘02 Section 155; 1870 (14) 456 Section 157; 1873 (15) 497; 1882 (18) 256; 1883 (18) 437; 1887 (19) 835; 1892 (21) 404; 1899 (23) 42; 1927 (35) 292; 1940 (41) 1831; 1941 (42) 275.

**SECTION 15‑9‑230.** Service on corporations generally; qualification as to foreign corporations.

 Service can be made in respect to a foreign corporation under the provisions of Section 15‑9‑210 only (a) when it has property within the State, (b) when the cause of action arose therein or (c) when such service shall be made in this State personally upon the president, cashier, treasurer, attorney, secretary or any other agent thereof.

HISTORY: 1962 Code Section 10‑423; 1952 Code Section 10‑423; 1942 Code Section 434; 1932 Code Section 434; Civ. P. ‘22 Section 390; Civ. P. ‘12 Section 184; Civ. P. ‘02 Section 155; 1870 (14) Section 157; 1873 (15) 497; 1882 (18) 256; 1883 (18) 437; 1887 (19) 835; 1892 (21) 404; 1899 (23) 42; 1927 (35) 292; 1940 (41) 1831; 1941 (42) 275.

**SECTION 15‑9‑240.** Service of process on authorized foreign corporation.

 (a) The registered agent of a foreign business or nonprofit corporation authorized to transact business in this State is the corporation’s agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

 (b) A foreign business or nonprofit corporation may be served under Rule 4(d)(8) of the South Carolina Rules of Civil Procedure by registered or certified mail, return receipt requested, addressed to the office of the registered agent, or office of the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report. Service is effective upon the date of delivery as shown on the return receipt. Entry of default and default judgments shall be subject to the conditions of Rule 4(d)(8).

 (c) If the foreign business or nonprofit corporation:

 (1) has no registered agent or its registered agent cannot be served with reasonable diligence by other means authorized by rule or statute, other than under Section 15‑9‑710 service by publication;

 (2) has withdrawn from transacting business in this State as provided by law; or

 (3) has had its certificate of authority revoked as provided by law, and such appears by affidavit, the court or judge, the clerk of court of common pleas, or the master may grant an order that the corporation may be served by registered or certified mail, return receipt requested, addressed to the office of the secretary of the corporation at its principal office. The summons shall state the date it was mailed under this subsection and that service is perfected five days after its deposit in the United States mail.

 (d) Service is perfected under subsection (c) five days after its deposit in the United States mail, as evidenced by the postmark, or other evidence of the date the summons and complaint was mailed pursuant to this subsection, if mailed postpaid and correctly addressed to the address of the company’s principal office which is listed on the filed annual report of a business corporation or listed on the last filed notice of change of principal office for a nonprofit corporation (or in its application for certificate of authority if no annual report or notice of change of principal office has ever been filed).

 (e) This section does not prescribe the only means, or necessarily the required means, of serving a foreign business or nonprofit corporation.

HISTORY: 1962 Code Section 10‑424; 1952 Code Section 10‑424; 1942 Code Section 7765; 1932 Code Section 7765; Civ. C. ‘22 Section 4029; Civ. C. ‘12 Section 2665; Civ. C. ‘02 Section 1780; R. S. 1466; 1893 (21) 409; 1922 (32) 1023; 1933 (38) 486; 1964 (53) 1830; 1981 Act No. 146, Section 5; 1988 Act No. 444, Section 3; 1993 Act No. 42, Section 2; 1994 Act No. 384, Section 3.

**SECTION 15‑9‑245.** Service of process on foreign corporation not authorized to do business in state.

 (a) Every foreign business or nonprofit corporation which is not authorized to do business in this State, by doing in this State, either itself or through an agent, any business, including any business activity for which authority need not be obtained as provided by Section 33‑15‑101, is considered to have designated the Secretary of State as its agent upon whom process against it may be served in any action or proceeding arising in any court in this State out of or in connection with the doing of any business in this State.

 (b) Service of the process is made by delivering to and leaving with the Secretary of State, or with any person designated by him to receive such service, duplicate copies of the process, notice, or demand. The Secretary of State immediately shall cause one of the copies to be forwarded by certified mail, addressed to the corporation either at its registered office in the jurisdiction of its incorporation, its principal place of business in the jurisdiction, or at the last address of the foreign business or nonprofit corporation known to the plaintiff, in that order.

 (c) Proof of service must be by affidavit of compliance with this section and filed, together with a copy of the process, with the clerk of court in which the action or proceeding is pending. There must be filed with the affidavit of compliance the return receipt signed by the foreign business or nonprofit corporation or other official proof of delivery or, if acceptance was refused, there must be filed the original or a photostated or certified copy of the envelope with a notation by the postal authorities that acceptance was refused. If acceptance was refused, a copy of the notice and process, together with notice of the mailing by certified mail and of refusal to accept must be sent promptly to the foreign business or nonprofit corporation. If this section is complied with, the refusal to accept delivery of the certified mail or to sign the return receipt shall not affect the validity of the service, and the foreign corporation refusing to accept the certified mail must be charged with knowledge of the contents thereof.

 (d) Service under this section may be made also by delivery of a copy of the process to any foreign business or nonprofit corporation outside the State. Proof of the delivery must be made by affidavit of the person making delivery, and the affidavit must be filed with the clerk of court in which the action or proceeding is pending.

 (e) The Secretary of State shall charge a fee of ten dollars for the service.

 (f) This section does not prescribe the only means, or necessarily the required means, of serving a foreign business or nonprofit corporation not authorized to do business in this State.

HISTORY: 1981 Act No. 146, Section 6; 1988 Act No. 444, Section 3; 1994 Act No. 384, Section 4.

**SECTION 15‑9‑250.** Service on foreign rural electric cooperatives.

 Service of process may be made upon the Secretary of State as agent for a foreign rural electric cooperative pursuant to his appointment as such under the provisions of Section 33‑49‑1320. In the event of such service, the Secretary of State shall forthwith forward it by registered mail to such corporation at the address specified in the instrument appointing the Secretary of State as such agent.

HISTORY: 1962 Code Section 10‑424.2; 1952 Code Section 10‑424.2; 1942 Code Section 8555‑116; 1939 (41) 240.

**SECTION 15‑9‑270.** Service on insurance companies.

 The summons and any other legal process in any action or proceeding against it must be served on an insurance company as defined in Section 38‑1‑20, including fraternal benefit associations, by delivering two copies of the summons or any other legal process to the Director of the Department of Insurance, as attorney of the company with a fee of ten dollars, of which five dollars must be retained by the director to offset the costs he incurs in service of process and of which five dollars must be deposited to the credit of the general fund of the State. A company shall appoint the director as its attorney pursuant to the provisions of Section 38‑5‑70. This service is considered sufficient service upon the company. When legal process against any company with the fee provided in this section is served upon the director, he shall immediately forward by registered or certified mail one of the duplicate copies prepaid directed toward the company at its home office or, in the case of a fraternal benefit association, to its secretary or corresponding officer at the head of the association.

HISTORY: 1962 Code Section 10‑425; 1952 Code Section 10‑425; 1947 (45) 322; 1960 (51) 1646; 1964 (53) 1746; 1971 (57) 709; 1979 Act No. 15, Section 1; 1987 Act No. 155, Section 15; 1988 Act No. 366, Section 1; 1993 Act No.181, Section 259.

**SECTION 15‑9‑280.** Service on unauthorized insurer.

 (a) Any act of transacting an insurance business as set forth in Section 38‑25‑110 by an unauthorized insurer is equivalent to and constitutes an irrevocable appointment by the insurer, binding upon him, his executor or administrator, or successor in interest if a corporation, of the Secretary of State or his successor in office to be the true and lawful attorney of the insurer upon whom may be served all lawful process in any action, suit, or proceeding in any court by the Director of the Department of Insurance or his designee, or by the State and upon whom may be served any notice, order, pleading, or process in any proceeding before the Department of Insurance and which arises out of transacting an insurance business in this State by the insurer. Any act of transacting an insurance business in this State by an unauthorized insurer is signification of its agreement that any such lawful process in such court action, suit, or proceeding and any such notice, order, pleading, or process in such administrative proceeding before the Department of Insurance so served are of the same legal force and validity as personal service of process in this State upon the insurer.

 (b) Service of process in such action is made by delivering to and leaving with the Secretary of State, or some person in apparent charge of his office, two copies thereof and by payment to the Secretary of State of the fee prescribed by law. Service upon the Secretary of State as attorney is service upon the principal.

 (c) The Secretary of State shall immediately forward by certified mail one of the copies of the process or the notice, order, pleading, or process in proceedings before the Department of Insurance to the defendant in the court proceeding or to whom the notice, order, pleading, or process in the administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. The service is sufficient if:

 (1) notice of the service and a copy of the court process or the notice, order, pleading, or process in the administrative proceeding are sent within ten days thereafter by certified mail by the plaintiff or the plaintiff’s attorney in the court proceeding or by the Department of Insurance in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading, or process in the administrative proceeding is addressed or directed at the last known principal place of business of the defendant in the court or administrative proceeding; and

 (2) the defendant’s receipt or receipts issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff’s attorney in a court proceeding or of the Department of Insurance in an administrative proceeding, showing compliance therewith, are filed with the clerk of court in which the action, suit, or proceeding is pending or with the Department of Insurance in administrative proceedings, by the date the defendant in the court or administrative proceeding is required to appear or respond thereto, or within any further time as the court or the Department of Insurance may allow.

 (d) No plaintiff is entitled to a judgment by default, a judgment with leave to prove damages, or a judgment pro confesso in any court or administrative proceeding in which court process or notice, order, pleading, or process in proceedings before the Department of Insurance is served under this section until the expiration of thirty days from the date of filing of the affidavit of compliance.

 (e) Nothing in this section limits or affects the right to serve any process, notice, order, or demand upon any person or insurer in any other manner permitted by law.

HISTORY: 1962 Code Section 10‑426; 1952 Code Section 10‑426; 1947 (45) 322; 1960 (51) 1646; 1987 Act No. 155, Section 2; 1993 Act No. 181, Sections 260‑262.

**SECTION 15‑9‑285.** Service on unauthorized insurer through service on Chief Insurance Commissioner.

 (a) The issuance and delivery of a policy of insurance or contract of insurance or indemnity to any person in this State or the collection of a premium thereon by an insurer not licensed in this State, as required, irrevocably constitutes the Chief Insurance Commissioner, and his successors in office, the true and lawful attorney in fact upon whom service of any and all processes, pleadings, actions, or suits arising out of the policy or contract in behalf of the insured may be made.

 (b) Service of process in the action is made by delivering to and leaving with the Chief Insurance Commissioner or some person in apparent charge of his office two copies of it and by payment to the Chief Insurance Commissioner of a fee of ten dollars, of which five dollars must be retained by the Chief Insurance Commissioner to offset the costs he incurs in service of process and of which five dollars must be deposited to the credit of the general fund of the State.

 (c) The Chief Insurance Commissioner shall immediately mail by registered mail one of the copies of the process to the defendant at its last known principal place of business and shall keep a record of all process serviced upon him. The service of process is sufficient if:

 (1) Notice of the service and a copy of the process are sent within ten days thereafter by registered mail by the plaintiff’s attorney to the defendant at its last known principal place of business; and

 (2) The defendant’s receipt or a receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff’s attorney showing compliance herewith are filed with the clerk of court in which the action is pending by the date the defendant is required to appear or within such further time as the court may allow.

 (d) No plaintiff is entitled to a judgment by default, a judgment with leave to prove damages, or a judgment pro confesso under this section until the expiration of thirty days from the date of filing of the affidavit of compliance.

 (e) Nothing in this section limits or abridges the right to serve any process, notice, order, or demand upon any person or insurer in any other manner permitted by law.

HISTORY: 1987 Act No. 155, Section 3; 1988 Act No. 366, Section 2.

**SECTION 15‑9‑290.** Service on unauthorized insurer; alternative method.

 Service of process in any action, suit, or proceeding involving an unauthorized insurer is, in addition to the manners provided in Section 15‑9‑280 and Section 15‑9‑285, valid if served upon any person within this State who, in this State on behalf of the insurer, is:

 (1) soliciting insurance,

 (2) making any contract of insurance or issuing or delivering any policies or written contracts of insurance, or

 (3) collecting or receiving any premium for any such insurer, or adjusting any loss or claim for such insurance, and if counsel, within ten days after service upon such person, causes to be sent by registered mail to the last known address of the insurer a copy of the process with proper postage affixed to the envelope containing it and files an affidavit with the clerk of court or magistrate in whose court the cause is pending, of compliance herewith, with leave to the court to extend the time for the mailing of process and filing of affidavit.

HISTORY: 1962 Code Section 10‑426.1; 1952 Code Section 10‑426.1; 1947 (45) 322; 1987 Act No. 155, Section 4.

**SECTION 15‑9‑300.** Service on unauthorized insurer; other methods of service unaffected by foregoing provisions.

 Nothing contained in Section 15‑9‑280, Section 15‑9‑285, or Section 15‑9‑290 limits or abridges the right to serve any process, notice, or demand upon any insurer in any other manner permitted by law.

HISTORY: 1962 Code Section 10‑426.2; 1952 Code Section 10‑426.2; 1947 (45) 322; 1987 Act No. 155, Section 13.

**SECTION 15‑9‑310.** Service on attorney of reciprocal insurance subscribers.

 Service of process on the attorney, as defined in Section 38‑45‑20, for subscribers, as defined in Section 38‑45‑10, to reciprocal or interinsurance contracts shall be made by serving three copies thereof upon the Director of the Department of Insurance as the agent of such attorney pursuant to the provisions of Section 38‑45‑60. The director shall file one copy, forward one copy to the attorney and return one copy with his acceptance of service.

HISTORY: 1962 Code Section 10‑426.3; 1952 Code Section 10‑426.3; 1947 (45) 322; 1960 (51) 1646; 1987 Act No. 155, Section 14; 1993 Act No. 181, Section 263.

Editor’s Note

In the opinion of the Code Commissioner, the text references to Sections 38‑45‑10 and 38‑45‑60 should be to Sections 38‑17‑10 and 38‑17‑60, respectively. The reference to Section 38‑45‑20 cannot be correlated; that section no longer exists.

**SECTION 15‑9‑320.** Service on joint‑stock companies.

 In suits brought against any joint‑stock company formed after December 23, 1879 service upon the president, chief manager, purser or other principal officer named in such articles of agreement shall be good service upon each and every one of the company or association at that time recorded as shareholders therein or who were so at the time the cause of action arose, and no change or transfer of the shares pending the action shall cause any abatement thereof.

HISTORY: 1962 Code Section 10‑428; 1952 Code Section 10‑428; 1942 Code Section 7792; 1932 Code Section 7792; Civ. C. ‘22 Section 5066; Civ. C. ‘12 Section 3332; Civ. C. ‘02 Section 2225; G. S. 1406; R. S. 1772; 1879 (17) 70.

**SECTION 15‑9‑330.** Service on unincorporated associations.

 Process served on any agent of any unincorporated association doing business in this State under the name and style by which it is usually known shall be sufficient to make such association a party in any court of record in the county in which such agent may be served.

HISTORY: 1962 Code Section 10‑429; 1952 Code Section 10‑429; 1942 Code Section 7797; 1932 Code Section 7797; Civ. C. ‘22 Section 5071; Civ. C. ‘12 Section 3337; Civ. C. ‘02 Section 2230; G. S. 1411; R. S. 1777; 1863 (13) 215.

**SECTION 15‑9‑350.** Service on Director of Department of Motor Vehicles as attorney of nonresident motorists.

 The acceptance by a nonresident of the rights and privileges conferred by the laws in force in this State permitting the operation of motor vehicles, as evidenced by the operation of a motor vehicle by such nonresident on the public highways, the streets of any incorporated municipality or the public roads of this State or anywhere within this State, or the operation by such nonresident of a motor vehicle on any such public highways, streets or public roads or anywhere within the State other than as so permitted or regulated shall be deemed equivalent to the appointment by such nonresident of the Director of the Department of Motor Vehicles or of his successor in office to be his true and lawful attorney upon whom may be served all summons or other lawful process in any action or proceeding against him growing out of any accident or collision in which such nonresident may be involved by reason of the operation by him, for him or under his control or direction, express or implied, of a motor vehicle on such public highways, streets or public roads or anywhere within this State. Such acceptance or operation shall be a signification of his agreement that any such process against him shall be of the same legal force and validity as if served on him personally.

HISTORY: 1962 Code Section 46‑104; 1952 Code Section 46‑104; 1949 (46) 342; 1962 (52) 2159; 1993 Act No. 181, Section 264; 1996 Act No. 459, Section 26.

Editor’s Note

2003 Act No. 51, Section 18 directed the Code Commissioner to substitute “Department of Motor Vehicles” for “Department of Public Safety”.

**SECTION 15‑9‑360.** Service on Director of Department of Motor Vehicles as attorney for nonresident motor carriers.

 The acceptance by a nonresident motor carrier of the rights and privileges conferred by the laws now or hereafter in force in this State, permitting the operation of motor vehicles as evidenced by the operation of a motor vehicle by such nonresident either personally or through an agent or employee on the public highways in this State, or the operation of such nonresident either personally or through an agent, lessee, or employee, of a motor vehicle on the public highways of this State other than as so permitted or regulated, shall be deemed equivalent to the appointment by such nonresident motor carrier of the Director of the Department of Motor Vehicles, or his successor in office, to be his true and lawful attorney and the attorney of his executor or administrator, upon whom may be served all summonses or other lawful process or notice in any action, assessment proceeding, or other proceeding against him or his executor or administrator, arising out of or by reason of any provisions in Chapter 31 of Title 12 relating to such vehicle or relating to the liability for tax with respect to operation of such vehicle on the highways of this State. Acceptance or operation shall be a signification by such nonresident motor carrier of his agreement that any such process against or notice to him or his executor or administrator shall be of the same legal force and validity as if served on him personally or on his executor or administrator. All of the provisions of Sections 15‑9‑370, 15‑9‑380, and 15‑9‑350 shall be applicable with respect to the service of process or notice pursuant to this section.

HISTORY: 1962 Code Section 65‑1231.5; 1956 (49) 1635; 1962 (52) 2309; 1993 Act No. 181, Section 265; 1996 Act No. 459, Section 27.

Editor’s Note

2003 Act No. 51, Section 18 directed the Code Commissioner to substitute “Department of Motor Vehicles” for “Department of Public Safety”.

**SECTION 15‑9‑370.** Service on nonresident motor vehicle drivers and motor carriers.

 Service of process upon the Director of the Department of Motor Vehicles, as agent of a: (a) nonresident driver under the provisions of Section 15‑9‑350; (b) resident driver who subsequently becomes a nonresident; (c) nonresident motor carrier under the provisions of Section 15‑9‑360; or (d) nonresident unregulated motor carriers engaged in transporting persons, hauling farm or dairy products, hauling any other perishable products or haulers of lumber or logs, shall be made by leaving a copy thereof, with an appropriate fee, in the hands of the Director of the Department of Motor Vehicles or his office and such service shall be sufficient service upon the nonresident if notice of the service and a copy of the process are forthwith sent by certified mail by the plaintiff or the Director of the Department of Motor Vehicles to the defendant and the defendant’s return receipt and the plaintiff’s affidavit of compliance herewith are appended to the summons or other process and filed with the summons, complaint, and other papers in the cause. The Director of the Department of Motor Vehicles shall keep a record of all processes which shall show the day and hour of service upon him. When the certified return receipt shall be returned to the Director of the Department of Motor Vehicles, he shall deliver it to the plaintiff on request and keep a record showing the date of its receipt by him and its delivery to the plaintiff.

HISTORY: 1962 Code Section 10‑431; 1952 Code Section 10‑431; 1949 (46) 342; 1959 (51) 54; 1962 (52) 2309; 1965 (54) 77; 1993 Act No. 181, Section 266; 1996 Act No. 459, Section 28.

Editor’s Note

2003 Act No. 51, Section 18 directed the Code Commissioner to substitute “Department of Motor Vehicles” for “Department of Public Safety”.

**SECTION 15‑9‑380.** Procedure when nonresident motorist or motor carrier defendant does not accept and receipt for notice sent by certified mail.

 If the defendant in any such cause shall fail or refuse to accept and receipt for certified mail containing the notice of service and copy of the process and it shall be returned to the plaintiff or the Department of Motor Vehicles, the original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and the envelope and affidavit of mailing with sufficient postage of such open letter shall be filed with the clerk of court in which such action is pending and upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant.

HISTORY: 1962 Code Section 10‑431.1; 1952 Code Section 10‑431.1; 1949 (46) 342; 1962 (52) 2309; 1993 Act No. 181, Section 267.

Editor’s Note

2003 Act No. 51, Section 18 directed the Code Commissioner to substitute “Department of Motor Vehicles” for “motor vehicle records division of the Department of Public Safety”.

**SECTION 15‑9‑390.** Service on nonresident operators of aircraft.

 Service of process upon the Secretary of Commerce, as agent of the nonresident operator of any aircraft which has set down in South Carolina, shall be made by leaving a copy thereof, with a fee of four dollars, in the hands of the Secretary of Commerce or his office and such service shall be sufficient service upon the nonresident if notice of the service and a copy of the process are forthwith sent by certified mail by the plaintiff or the Secretary of Commerce or his designee to the defendant and the defendant’s return receipt and the plaintiff’s affidavit of compliance herewith are appended to the summons or other process and filed with the summons, complaint and other papers in the cause. The Secretary of Commerce or his designee shall keep a record of all processes which shall show the day and hour of service upon him. When the certified return receipt shall be returned to the Secretary of Commerce or his designee, he shall deliver it to the plaintiff on request and keep a record showing the date of its receipt by him and its delivery to the plaintiff.

HISTORY: 1962 Code Section 10‑431.2; 1971 (57) 132; 1993 Act No. 181, Section 268; 1994 Act No. 361, Sections 8, 9.

**SECTION 15‑9‑400.** Procedure when nonresident aircraft operator defendant does not accept and receipt for notice sent by certified mail.

 If the defendant in any such cause shall fail or refuse to accept and receipt for certified mail containing the notice of service and copy of the process and it shall be returned to the plaintiff or Director, the original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and the envelope and affidavit of mailing with sufficient postage of such open letter shall be filed with the clerk of court in which such action is pending and upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant.

HISTORY: 1962 Code Section 10‑431.3; 1971 (57) 132.

**SECTION 15‑9‑410.** Provisions as to nonresident aircraft operators are not applicable to certain air carriers.

 The provisions of Sections 15‑9‑390 and 15‑9‑400 shall not apply to any incorporated air carrier holding a certificate of public convenience and necessity from the Division of Aeronautics of the Department of Commerce.

HISTORY: 1962 Code Section 10‑431.4; 1971 (57) 132; 1993 Act No. 181, Section 269.

**SECTION 15‑9‑415.** Service on nonresident vessel operators.

 Service of process upon the Director of the South Carolina Department of Natural Resources, as agent of the nonresident operator of any vessel as defined in Section 50‑21‑10 in the waters of this State as defined in Section 50‑21‑10, shall be made by leaving a copy thereof, with a fee of four dollars, in the hands of the director or his office and such service shall be sufficient service upon the nonresident if notice of the service and a copy of the process are forthwith sent by certified mail by the plaintiff or the director to the defendant and the defendant’s return receipt and the plaintiff’s affidavit of compliance herewith are appended to the summons or other process and filed with the summons, complaint and other papers in the cause. The director shall keep a record of all processes which shall show the day and hour of service upon him. When the certified return receipt shall be returned to the director, he shall deliver it to the plaintiff on request and keep a record showing the date of its receipt by him and its delivery to the plaintiff.

HISTORY: 1980 Act No. 470, Section 1; 1993 Act No. 181, Section 270.

**SECTION 15‑9‑416.** Procedure when nonresident vessel operator defendant does not accept and receipt for notice sent by certified mail.

 If the defendant in any such cause shall fail or refuse to accept and receipt for certified mail containing the notice of service and copy of the process and it shall be returned to the plaintiff or Executive Director, the original envelope as returned shall be retained and the notice and copy of the summons shall be sent by open mail and the envelope and affidavit of mailing with sufficient postage of such open letter shall be filed with the clerk of court in which such action is pending and upon the filing thereof shall have the same force and legal effect as if such process has been personally served upon such defendant.

HISTORY: 1980 Act No. 470, Section 1.

**SECTION 15‑9‑420.** Service on certain traveling shows.

 Service of any process in any action or proceeding against any circus or other traveling show exhibiting under canvas or outdoors for gain may be made upon any clerk of court appointed agent or attorney of such show under the provisions of Section 52‑1‑60 and such service must be in duplicate. When so made it shall be deemed sufficient service upon any such circus or traveling show. When legal process against any such circus or show is served upon any such clerk of court he shall forthwith forward by certified mail one of the duplicate copies prepaid directed to the person and the address as furnished him in the power of attorney referred to in Section 52‑1‑60.

HISTORY: 1962 Code Section 10‑432; 1952 Code Section 10‑432; 1942 Code Section 6335; 1939 (41) 102, 1962 (52) 2309.

**SECTION 15‑9‑430.** Service on nonresident directors of domestic corporations.

 (a) Each director of a domestic business corporation who is a nonresident of this State at the time of his election or who becomes a nonresident during his term in office, shall by his acceptance of election or by continuing in office as director, be deemed to have appointed the Secretary of State as an agent to receive service of process upon him in any action or proceeding relating to actions of such corporation and arising while he held office as director of such corporation.

 (b) Service of such process shall be made by delivering to and leaving with the Secretary of State, or with any person designated by him to receive such service, duplicate copies of such process. The Secretary of State shall thereupon immediately cause one of such copies to be forwarded to the nonresident director by certified mail. Proof of service shall be by affidavit of compliance with this section filed, together with a copy of the process, with the clerk of court in which the action or proceeding is pending.

 (c) Service under this section may also be made by delivery of a copy of the process to the nonresident director at his address outside the State. Proof of such delivery shall be made by affidavit of the person making delivery and the affidavit shall be filed with the clerk of court in which the action or proceeding is pending.

 (d) The resignation in good faith of any nonresident director, effective as of the date of filing with the Secretary of State a notice of his resignation, shall terminate the application to him of the provisions of this section, except for any cause of action already accrued.

 (e) Every domestic business corporation which has any director who is or becomes a nonresident of this State after the corporation has filed its most recent annual report pursuant to Section 12‑19‑20 shall file with the Secretary of State the names and addresses of its directors and shall file supplementary reports showing any change of address or residence of any director. The reports must be filed within ten days from the date of election, removal from this State, or change of address of any director. The Secretary of State shall compile and maintain a current list, indexed by corporation, of all nonresident directors of domestic business corporations which are listed on such interim filings. Delivery of copies of service as required in subsections (b) and (c) to the nonresident director must be made by delivering the copy to the most recent address on file with the company’s most current annual report or any more current interim report which has been filed with the Secretary of State pursuant to this subsection.

 (f) The Secretary of State shall charge a fee of ten dollars to accompany service thereunder.

HISTORY: 1962 Code Section 10‑432.1; 1952 Code Section 10‑432.1; 1947 (45) 561; 1981 Act No. 146, Section 7; 1988 Act No. 444, Section 3; 1994 Act No. 384, Section 5.

**SECTION 15‑9‑440.** Service on trustees of inter vivos trusts.

 (1) Service on resident trustee constitutes service on all other trustees. —Service upon one resident trustee of an inter vivos trust shall constitute service on all other trustees, resident and nonresident, of the same trust, for the purpose of adjudicating any action or proceeding in a court of this State involving, directly or indirectly, such trust.

 (2) Trustee served to notify other trustees. —The resident trustee, so served, shall within five days, give prompt notice to such nonresident trustee and other resident trustee of the action. The failure of notification to the other trustees shall in no way impair the action.

 (3) Service on nonresident trustee when there is no resident trustee. —When there is no resident trustee, the nonresident trustee of an inter vivos trust shall be deemed to have consented to the service of any summons, notice or other legal process in connection with any proceeding in the courts of this State involving such trust, directly or indirectly, when served upon the Secretary of State, when the trust was created under the laws of this State or, in the case of a foreign trust, when part of the trust property is situated in this State.

 (4) Time allowed for answer. —The time within which to answer under the provisions of this section shall be the same as that provided for by law for substituted service.

 (5) Penalties. —Any trustee responsible for notifying another trustee, who fails to comply with the provisions of this section, shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than one hundred dollars or imprisoned for not more than thirty days.

HISTORY: 1962 Code Section 10‑432.2; 1962 (52) 1955.

**SECTION 15‑9‑450.** Service on nonresident individual fiduciaries.

 Service, upon any individual nonresident executor, administrator, guardian, conservator, or trustee, of any claim, demand, debt, dues, summons, or any other process, or pleading in suits or actions relating to the administration of the estate in his charge may be made upon the resident of this State appointed by such fiduciary as his agent for such purpose pursuant to the provisions of the South Carolina Probate Code or, in the event of the death, removal, resignation or absence from the State of such agent, or the inability of the person desiring to serve such agent so to do for any other reason, then upon the probate judge or the clerk of the court of common pleas of the county wherein the application of such fiduciary for appointment was made.

HISTORY: 1962 Code Section 10‑433; 1952 Code Section 10‑433; 1942 Code Section 8952; 1932 Code Section 8952; Civ. C. ‘22 Section 5368; Civ. C. ‘12 Section 3591; 1902 (23) 1064; 1933 (38) 200; 1934 (38) 1402; 1935 (39) 387; 1937 (40) 523; 1955 (49) 456; 1986 Act No. 539, Section 3(1)(C).

**SECTION 15‑9‑460.** Service on certain nurserymen.

 Service of process on any person who shall have appointed the Secretary of State as his agent to accept service under the provisions of Section 46‑33‑40 may be made by serving such process upon the Secretary of State.

HISTORY: 1962 Code Section 10‑433.1; 1952 Code Section 10‑433.1; 1942 Code Section 3267; 1932 Code Section 3267; 1926 (34) 957.

**SECTION 15‑9‑510.** Service of legal papers on patient in state mental health facility; duties of director of facility.

 The director of a state mental health facility must not accept service of legal papers, or consent to the appointment of a guardian ad litem, for any patient. When a legal paper is served on a patient in a facility, a copy of the legal paper must be filed with the director who shall cause it to be made a part of the permanent record of the patient. The director immediately, in writing, shall inform the court, out of which the process issued, of the date of service of the process, the procedure under which the patient was admitted to the facility, and the present mental and physical condition of the person.

HISTORY: 1962 Code Section 10‑437; 1952 Code Section 10‑437; 1942 Code Section 6240; 1932 Code Section 6240; Civ. C. ‘22 Section 5101; 1920 (31) 704; 1952 (47) 2042; 2008 Act No. 266, Section 1, eff June 4, 2008.

Effect of Amendment

The 2008 amendment substituted “director” for “superintendent”, deleted “or trainee”, and made nonsubstantive changes throughout.

ARTICLE 5

Service by Publication or Out of State

**SECTION 15‑9‑710.** When service by publication may be had.

 When the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State and (a) that fact appears by affidavit to the satisfaction of the court or judge thereof, the clerk of the court of common pleas, the master, or the probate judge of the county in which the cause is pending and (b) it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made or that he is a proper party to an action relating to real property in this State, the court, judge, clerk, master, or judge of probate may grant an order that the service be made by the publication of the summons in any one or more of the following cases:

 (1) when the defendant is a foreign corporation and has property within the State or the cause of action arose therein;

 (2) when the defendant, being a resident of this State, has departed therefrom, with intent to defraud his creditors or to avoid the service of a summons or keeps himself concealed therein with like intent;

 (3) when the defendant is a resident of this State and after a diligent search cannot be found;

 (4) when the defendant is not a resident of this State but has property therein and the court has jurisdiction of the subject of the action;

 (5) when the subject of the action is real or personal property in this State and the defendant has or claims a lien or interest, actual or contingent, therein or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein;

 (6) when the defendant is a party to an adoption proceeding and is either a nonresident or a person upon whom service cannot be had within the State after due diligence;

 (7) when the defendant is a party to a proceeding for the determination of parental rights and is either a nonresident or a person upon whom service cannot be had within the State after due diligence; and

 (8) when the defendant is a party to an annulment proceeding or where the subject of the matter involves the custody of minor children, support of minor children or wife, separate maintenance, or a legal separation.

HISTORY: 1962 Code Section 10‑451; 1952 Code Section 10‑451; 1942 Code Section 436; 1932 Code Section 436; Civ. P. ‘22 Section 392; Civ. P. ‘12 Section 185; Civ. P. ‘02 Section 156; 1870 (14) 456 Section 158; 1876 (16) 190; 1898 (22) 698; 1901 (23) 635; 1904 (24) 379; 1913 (28) 40; 1914 (28) 534; 1933 (38) 452; 1940 (41) 1825; 1941 (42) 275; 1959 (51) 409; 1961 (52) 429; 1988 Act No. 531, Section 1.

**SECTION 15‑9‑720.** Service on unknown parties by publication for certain real property actions.

 (A) For the purposes of this section, “court” means a court, judge, clerk of court, master‑in‑equity, special referee, or judge of probate of competent jurisdiction in the county where the action is pending.

 (B)(1) A court shall grant an order allowing a party with an interest in or lien on a parcel of real property subject to a partition action, mortgage foreclosure action, or other action affecting the property’s title to serve by publication any unknown party to the action and who has an interest in or lien on the real property, any such legal notice as will accomplish the underlying purposes set forth in this section, if the:

 (a) residence of the unknown party cannot, with a reasonably diligent effort, be ascertained by the plaintiff; and

 (b) plaintiff presents an affidavit to the court stating he has been unable to ascertain the residence of the unknown party after making a reasonably diligent effort.

 (2) A court order allowing a party to serve an unknown party by publication must require the party serving by publication to publish the service once a week for three weeks in a newspaper of general circulation in the county where the property is situated. Service by publication under this section is equal to personal service on the unknown party.

 (C) A party may accomplish service by publication pursuant to this section for multiple units in a single horizontal property regime by consolidating the services into a single service that identifies each apartment included in the action based on the apartment’s description in the master deed. This consolidated service must comply with the other requirements of this section and other applicable statutes, including the requirement that publication must take place once a week for three weeks in a newspaper of general circulation in the county where the property is situated.

HISTORY: 1962 Code Section 10‑452; 1952 Code Section 10‑452; 1942 Code Section 436; 1932 Code Section 436; Civ. P. ‘22 Section 392; Civ. P. ‘12 Section 185; Civ. P. ‘02 Section 156; 1870 (14) 456 Section 158; 1876 (16) 190; 1898 (22) 698; 1901 (23) 635; 1904 (24) 379; 1913 (28) 40; 1914 (28) 534; 1933 (38) 452; 1940 (41) 1825; 1941 (42) 275; 2010 Act No. 164, Section 1, eff May 12, 2010.

Effect of Amendment

The 2010 amendment rewrote the section.

**SECTION 15‑9‑730.** Service on certain domestic corporations by publication.

 In any action or proceeding in this State in which the defendant is a corporation created by or organized under the laws of this State when no officer or agent thereof upon whom service of process can be made can, after due diligence, be found in this State and this is made to appear by affidavit, process may be served upon such corporation by publication.

HISTORY: 1962 Code Section 10‑453; 1952 Code Section 10‑453; 1942 Code Section 435; 1932 Code Section 435; Civ. P. ‘22 Section 391; 1920 (31) 797.

**SECTION 15‑9‑740.** Publication and mailing of summons.

 The order of publication shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made, most likely to give notice to the person to be served and for such length of time as may be deemed reasonable not less than once a week for three weeks. The court, judge, clerk, master or judge of probate shall also direct that a copy of the summons be forthwith deposited in the post office directed to the person to be served at his place of residence, unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him. In case of minors, persons imprisoned outside of this State, lunatics confined outside of this State or in like cases, a similar order shall be made and like proceedings be had as in case of adults not under disabilities.

 In all cases in which publication is made the complaint must first be filed and the summons, as published, must state the time and place of such filing. When service is made by publication the ten days’ notice of application for judgment to be made at chambers as required in contested cases of certain kinds as provided by law may be inserted in the first or any subsequent publication mailed to the last known residence of the defendant. In case of publication of summons upon a minor under Section 15‑9‑480, or on a person non compos mentis under Section 15‑9‑490 when an order nisi has been passed and filed appointing a guardian ad litem it shall be sufficient publication of such order to publish with the summons, and it shall be a sufficient service of such order out of the State to serve with the summons, a notice giving the name and address of the guardian, the date when the appointment becomes absolute and the office in which the order is filed.

HISTORY: 1962 Code Section 10‑454; 1952 Code Section 10‑454; 1942 Code Sections 37, 402, 436; 1932 Code Sections 37, 402, 436; Civ. P. ‘22 Sections 35, 359, 392; Civ. C. ‘12 Section 3833; Civ. P. ‘12 Sections 165, 185; Civ. C. ‘02 Section 2736; Civ. P. ‘02 Sections 137, 156; G. S. 2115; R. S. 2247; 1818 (7) 321; 1870 (14) 451 Section 139, 456 Section 158; 1876 (16) 190; 1882 (17) 38; 1887 (19) 813; 1891 (20) 1123; 1898 (22) 698; 1899 (23) 30; 1901 (23) 635; 1904 (24) 379; 1908 (25) 1055; 1912 (27) 623; 1913 (28) 40; 1914 (28) 534; 1920 (31) 806; 1921 (32) 281; 1925 (34) 94; 1930 (36) 1247; 1933 (28) 50, 452; 1937 (40) 79; 1940 (41) 1825; 1941 (42) 275; 1944 (43) 1326; 1956 (49) 1600.

Code Commissioner’s Note

At the direction of the Code Commissioner, “as provided by law” was substituted for “by Section 15‑27‑30” in the second sentence of the second paragraph.

**SECTION 15‑9‑750.** Effect of personal service out of State.

 Personal service of the summons out of State shall be equivalent to publication and deposit in the post office, and when such service is had no affidavit, as provided for in Section 15‑9‑710, order for publication or deposit in the post office shall be necessary. Such personal service so made shall be complete and final on the day of the date of the personal service of the summons as fully as if such personal service had been made under the provisions of statutes providing personal service within the State.

HISTORY: 1962 Code Section 10‑455; 1952 Code Section 10‑455; 1942 Code Section 436; 1932 Code Section 436; Civ. P. ‘22 Section 392; Civ. P. ‘12 Section 185; Civ. P. ‘02 Section 156; 1870 (14) 456 Section 158; 1876 (16) 190; 1898 (22) 698; 1901 (23) 635; 1904 (24) 379; 1913 (28) 40; 1914 (28) 534; 1933 (38) 452; 1940 (41) 1825; 1941 (42) 275; 1960 (51) 1753.