

Cherokee Nation Code Annotated

Title 33: Housing

Chapter 1: Cherokee Nation Mortgage Foreclosure Act

§ 8. Service of process and procedures

Cite as: 33 CNCA § 8

Service of process shall be performed according to the procedures set forth as follows:

1. Service by personal delivery.

a. At the election of the plaintiff, process shall be served by a Marshal, a person licensed to make service of process in civil cases, or a person specially appointed for that purpose. The Court shall freely make special appointments to serve all process, other than a subpoena under this subdivision.

b. A summons to be served by the Marshal shall be delivered to the Marshal by the Court Clerk or attorney of record by the plaintiff.

c. Service shall be made as follows:

i. upon an individual, other than an infant who is less than fifteen (15) years of age or an incompetent person, by delivering a copy of the summons and of the complaint to him/her personally or by leaving copies thereof at his dwelling house or usual place of abode with some person then residing therein who is fifteen (15) years of age or older or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process;

ii. upon an infant who is less than fifteen (15) years of age, by serving the summons and complaint upon him/her personally and upon either of his parents or his guardian, or if they cannot be found, then upon the person having the care or control of the infant or with whom he lives; and upon an incompetent person by serving the summons and complaint upon him personally and upon his guardian;

iii. upon the Housing Authority by delivering a copy of the summons and of the complaint to an officer or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by law to receive service of process by also mailing a copy to the defendant.

2. Service by mail.

a. At the election of the plaintiff, a summons and complaint may be served by mail by the plaintiff's attorney, any person authorized to serve process pursuant to this statute as

previously stated herein. Service by mail shall be effective on the date of receipt or if refused, on the date of refusal of the summons and complaint by the defendant.

b. Service by mail shall be accomplished by mailing a copy of the summons and petition by certified mail, return receipt requested and delivery restricted to the addressee. When there is more than one defendant, the summons and a copy of the petition or order shall be mailed in a separate envelope to each defendant. If the summons is to be served by mail by the Court Clerk, the Court Clerk shall enclose the summons and a copy of the petition or order of the Court to be served in an envelope, prepared by the plaintiff, addressed to the defendant, or to the resident service agent if one has been appointed. The Court Clerk shall prepay the postage and mail the envelope to the defendant, or service agent, by certified mail, return receipt requested and delivery restricted to the addressee. Such return receipt shall be prepared by the plaintiff.

c. Service by mail shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a returned envelope showing refusal of the process by the defendant. Acceptance or refusal of service by mail by a person who is fifteen (15) years of age or older who resides at the defendant's dwelling house or usual place of abode shall constitute acceptance or refusal by the party addressed. In the case of an entity described in division (3) of subparagraph (c) of paragraph (1)¹ of this subsection, acceptance or refusal by any officer or by any employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. A return receipt signed at such registered office or principal place of business shall be presumed to have been signed by an employee authorized to receive certified mail. In the case of a state municipal corporation, or other governmental organization thereof subject to suit, acceptance or refusal by an employee of the office of the officials specified in division (5) of subparagraph (c) of paragraph (1)¹ of this subsection who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal by the party addressed. If delivery of the process is refused, upon the receipt of notice of such refusal and at least ten (10) days before applying for entry of default, the person elected by plaintiff pursuant to subparagraph a of this paragraph to serve the process shall mail to the defendant by first-class mail a copy of the summons and petition and a notice prepared by the plaintiff that despite such refusal the case will proceed and that judgment by default will be rendered against him unless he appears to defend the suit. Any such default or judgment by default shall be set aside upon motion of the defendant if the defendant demonstrates to the court that the return receipt was signed or delivery was refused by an

¹ So in original.

unauthorized person. Such motion shall be filed within one (1) year after the defendant has notice of the default or judgment by default but in no event more than two (2) years after the judgment.

3. Service by publication.

a. Service of summons upon a named defendant may be made by publication when it is stated in the petition, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court, that with due diligence service cannot be made upon the defendant by any other method.

b. Service of summons upon the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or other association may be made by publication when it is stated in a petition, verified by the plaintiff or his attorney, or in a separate affidavit by the plaintiff or his attorney filed with the Court, that the person who verified the petition or the affiant does not know and with due diligence cannot ascertain the following:

i. whether a person named as defendant is living or dead, and, if dead, the names or whereabouts of his successors, if any,

ii. the names or whereabouts of the unknown successors, if any, of a named decedent,

iii. whether a partnership, corporation, or other association named as a defendant continues to have legal existence or not, or the names or whereabouts of its officers or successors,

iv. whether any person designated in a record as a trustee continues to be the trustee, or the names or whereabouts of the successors of the trustee, or

v. the names or whereabouts of the owners or holders of special assessment or improvement bonds, or any other bonds, sewer warrants or tax bills.

c. Service pursuant to this subdivision shall be made by publication of a notice, signed by the Court Clerk, one (1) day a week for three (3) consecutive weeks in a newspaper authorized by law to publish legal notices which is published in the county where the petition is filed. If no newspaper authorized by law to publish legal notices is published in such county, the notice shall be published in some such newspaper of general circulation which is published in an adjoining county. All named parties and their unknown successors who may be served by publication may be included in one (1) notice. The notice shall state the court in which the petition is filed and the names of the plaintiff and the parties served by publication, and shall designate the parties whose unknown successors are being served. The notice shall also state that the named defendants and their unknown

successors have been sued and must answer the petition on or before a time to be stated (which shall not be less than forty-one (41) days from the date of the first publication), or judgment, the nature of which shall be stated, will be rendered accordingly. If jurisdiction of the Court is based on property, any real property subject to the jurisdiction of the Court and any property or debts to be attached or garnished must be described in the notice.

Historical Data

LA 21-96, eff. December 16, 1996.