

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 540
Judiciary

(Delegates Niemann and Clippinger)

Criminal Procedure - Search Warrants - Foreign Entities

This bill requires a foreign entity that is served with a search warrant authorizing the seizure of documents or records to provide the documents or records in compliance with the search warrant. Under the bill, the service of the search warrant is effective if it is made in accordance with the provisions of the Maryland Rules governing service of process.

Fiscal Summary

State Effect: The bill is procedural/technical and does not materially affect State finances.

Local Effect: The bill is procedural/technical and does not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: A foreign entity is one of the following types of businesses that is organized under the laws of a jurisdiction other than the State of Maryland: a corporation; a limited liability company (LLC); a limited liability partnership; a limited partnership; a limited liability limited partnership; a professional corporation; a trade name filer; or a business trust.

Service of Process: Under the Maryland Rules, in a civil suit, service is made upon a corporation by serving the corporation's resident agent, president, secretary, or treasurer.

If the corporation does not have a resident agent, or if a good faith attempt was made to serve these individuals, then service can be made upon the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.

For LLCs, limited partnerships, and limited liability partnerships, service in civil suits is made upon the entity's resident agent. If the entity does not have a resident agent, or if a good faith attempt to serve the resident agent has failed, service can be made upon any other person authorized to receive service of process. For LLCs, service in these circumstances can also be made on any member of the LLC. For limited partnerships, service can also be made on any general partner.

Substituted service on a business entity required to have a resident agent can be made by serving two copies of the summons, complaint, and all other papers filed with it, along with the requisite fee, upon the State Department of Assessments and Taxation (SDAT). This substituted service can only be used if (1) the entity has no resident agent; (2) the resident agent is dead or is no longer at the address for service of process maintained with SDAT; or (3) two good faith attempts on separate days to serve the resident agent have failed.

Search Warrants: A circuit court or District Court judge may issue a search warrant whenever it is made to appear to the judge that there is probable cause to believe that (1) a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within the jurisdiction of the judge or (2) property subject to seizure is on the person or in or on the building, apartment, premises, place, or thing.

An application for a search warrant must be in (1) writing; (2) signed and sworn to by the applicant; and (3) accompanied by an affidavit that sets forth the basis for probable cause and contains facts within the personal knowledge of the affiant that there is probable cause.

A law enforcement officer may request, in an application for a search warrant, that a building, apartment, premises, place, or thing be searched without the officer having to provide notice of the officer's authority or purpose. To execute such a warrant (also referred to as a "no-knock" warrant), the officer must have a reasonable suspicion that, without the authorization, the property subject to search or seizure may be destroyed, disposed of, or secreted, or the life or safety of the executing officer or another person may be in danger. This warrant authorizes the executing law enforcement officer to enter the building, apartment, premises, place, or to search a thing without giving notice of the officer's authority or purpose.

Any search and seizure made under the authority of a search warrant must be made within 15 calendar days after the day the warrant was issued. A search warrant is void after this 15-day period.

A judge who issues a search warrant must retain a copy of the warrant, application, and supporting affidavit. A judge may order a supporting affidavit to be sealed for up to 30 days under certain circumstances. The warrant, application, affidavit, and other supporting documentation may not be filed with the clerk of the court until the search warrant is returned executed. Generally, an executed search warrant must be returned to the issuing judge or a judge in the same circuit or district as promptly as possible or within 10 days after the date the warrant was executed. The judge to whom the warrant is returned must attach specified supporting documentation and file the papers with the clerk of the county in which the property was seized. The papers filed with the clerk must be sealed and may only be opened for inspection upon order of the court. The clerk must maintain a confidential index of search warrants. A warrant that is not executed within the 15-day time period must be promptly returned to the issuing judge, who may destroy it.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

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mc/kdm

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