

AFFIDAVIT OF SERVICE

State of _____

County of _____

I, the undersigned, being duly sworn, hereby affirm that:

1. My name is _____;

2. I reside at _____, _____, _____;

3. I am not a party to this action;

4. I am over 18 years of age;

5. I am not related to the parties in this action by way of blood, adoption, marriage, or employment.

6. On _____, I served _____ upon _____ located at _____, _____, County of _____.

7. I completed service by

		Signature of Process Server

		Printed Name

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GENERAL INSTRUCTIONS

What is an Affidavit of Service?

An Affidavit of Service is a sworn document that states that the server delivered specified papers to a person, organization, or business as requested by a party to a lawsuit. When service of documents is to a group of people, for example a club, business, or association, delivery must be made to the registered agent of the organization. The affidavit of service must identify who was served, and the time, date and location where service occurred. Once the affidavit is complete, it is filed with the court, along with a copy of the papers that were served.

As a reference, people often call an affidavit of service by the name proof of service.

A simple affidavit of service often identifies the following elements:

- **Jurisdiction:** the court that has the authority to hear civil cases, and make judgements based on the information presented.
- **Civil Lawsuit:** a claim filed with a court which states that one person was been harmed or otherwise suffered a loss due to the actions of another person.
- **Plaintiff:** the person who files the lawsuit
- **Defendant:** the person against whom the lawsuit was filed

The person delivering the papers is commonly referred to as the server or the process server. A process server can be:

- A person appointed by the court to serve court documents as required
- A person licensed to work as a process server
- A person hired by a party to the lawsuit to deliver court documents on their behalf

In every situation you will pay a fee for service, and the cost will depend on how quickly you need service to occur and the ease or difficulty in locating the person to be served.

When is One Needed?

An affidavit of service is needed whenever proof of delivery of court documents is required by law. Most

courts require proof of service in every instance that documents related to a court case are sent to another party. For example, the state courts require affidavit of service in New York whenever legal papers are delivered in a lawsuit. An affidavit of service is required in state and federal courts, and is most often needed when there is an exchange of important documents between the parties. This can include:

- **A Summons:** an order to appear in court
- **A Complaint:** the document that a plaintiff files which details the harm they have experienced due to the defendant's actions
- **An Answer:** the document filed by the defendant challenging the plaintiff's claims
- **A Cross Complaint:** the document filed by a defendant claiming harm experienced by the actions of the plaintiff
- **Divorce Papers:** the documents that detail a spouse's intent to divorce and accompanying papers
- **Foreclosure Notifications:** the documents filed by a lender informing the mortgage holder that they are in default and the lender is seizing the property.
- **Motions:** actions a party requests the judge to take, for example: a motion to dismiss
- **Orders:** a written decision by a judge that impacts the court case, for example: a child custody order

An affidavit of service is necessary to prove delivery of these documents and meet legal requirements.

The Consequences of Not Using One

When there is no affidavit of service, or the affidavit is incomplete and therefore unlawful, the person required to prove service can face severe consequences. Failing to prove that documents were sent to the opposing party can result in:

- Dismissal of the case
- Judgement for the other party
- A party being found in contempt of court
- Loss of property, custody rights, and other significant damages
- Suspension or postponement of proceedings

As a result, the person who fails to prove service of documents as required by law faces severe legal and financial consequences. A contempt of court charge may also include a jail sentence.

