

Topic: Registered Agents

Question by: Kristyne Tanaka

Jurisdiction: Hawaii

Date: 27 October 2010

Jurisdiction	Question(s)	
	<b>Does your State allow registered agents to resign from a dissolved entity?</b>	<b>For mergers, does your law state that the registered agent be irrevocably appointed? If yes, the reason why the agent is irrevocably appointed ?</b>
<b>Manitoba</b>		
<b>Corporations Canada</b>	Corporations Canada is responsible only for the incorporation of businesses and not-for-profit organizations that choose to incorporate federally in Canada, rather than provincially or territorially. We do not register corporations nor does our legislation include a requirement for a registered agent.	
<b>Alabama</b>		
<b>Alaska</b>		
<b>Arizona</b>		
<b>Arkansas</b>		
<b>California</b>	Yes	No and the merger statutes do not specifically address service of process issues.
<b>Colorado</b>	Yes	No
<b>Connecticut</b>		
<b>Delaware</b>		
<b>District of Columbia</b>	Yes	No
<b>Florida</b>	Yes	No, however, like Texas, the Secretary of State is appointed as Registered Agent if the survivor of a merger is not a Florida entity.

<b>Georgia</b>		
<b>Hawaii</b>		
<b>Idaho</b>		
<b>Illinois</b>	Yes	<p>Not the agent of record but the Secretary of State. (see (805 ILCS 5/11.35) (from Ch. 32, par. 11.35)(b)(2) &amp; (c)(2).  (805 ILCS 5/11.35) (from Ch. 32, par. 11.35)  Sec. 11.35. Merger, consolidation or share exchange of domestic and foreign corporations. One or more foreign corporations and one or more domestic corporations may be merged or consolidated or their shares exchanged in the following manner, provided such merger, consolidation or exchange is permitted by the laws of the state under which each such foreign corporation is organized:</p> <p>(a) Each domestic corporation shall comply with the provisions of this Act with respect to the merger, consolidation or exchange, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.</p> <p>(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this State, it shall comply with the provisions of this Act with respect to foreign corporations if it is to do business in this State, and in every case it shall file with the Secretary of State of this State:</p> <p>(1) an agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation,</p> <p><b>(2) an irrevocable appointment of the Secretary of State of this State as its agent to accept service of process in any such proceeding, and</b></p> <p>(3) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this Act with respect to the rights of dissenting shareholders.</p> <p>The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations.</p> <p>(c) If the acquiring corporation in a share exchange is governed by the laws of any state other than this State, it shall comply with the provisions of this Act with respect to foreign corporations if it is to do</p>

		<p>business in this State and, in every case, it shall file with the Secretary of State of this State:</p> <p>(1) an agreement that it may be served with process in this State in any proceeding for the enforcement of the rights of a dissenting shareholder of a domestic corporation whose shares are acquired against the acquiring corporation.</p> <p><b>(2) an irrevocable appointment of the Secretary of State of this State as its agent to accept service of process in any such proceeding, and</b></p> <p>(3) an agreement that it will promptly pay to the dissenting shareholders of such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this Act with respect to the rights of dissenting shareholders.</p> <p>(Source: P.A. 841308.)</p>
<b>Indiana</b>		
<b>Iowa</b>		
<b>Kansas</b>	Yes, 17-6808 states that receivers can be appointed and they can then appoint agents under them, or if no one is appointed the secretary of state's office provides service of process.	<p>No, only if the agent is the Secretary of State's office in a merger out of Kansas.</p> <p>17-6702 If the corporation surviving or resulting from the merger or consolidation is to be governed by the laws of the District of Columbia or any state other than this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, as well as for enforcement of any obligation of the surviving or resulting corporation arising from the merger or consolidation, including any suit or other proceeding to enforce the right of any stockholder as determined in appraisal proceedings pursuant to the provisions of K.S.A. 17-6712, and amendments thereto. Such corporation shall irrevocably appoint the secretary of state as its agent to accept service of process in any such suit or other proceedings and shall specify the address to which a copy of such process shall be mailed by the secretary of state.</p>
<b>Kentucky</b>		
<b>Louisiana</b>	Yes	No
<b>Maine</b>	Yes	No
<b>Maryland</b>		
<b>Massachusetts</b>	No	No
<b>Michigan</b>		
<b>Minnesota</b>		
<b>Mississippi</b>		

<b>Missouri</b>	Yes	No
<b>Montana</b>	Yes	No
<b>Nebraska</b>		
<b>Nevada</b>	Yes	No. However, the statute does provide that if the surviving organization in a merger is not a Nevada entity, the organization is consider to have appointed the Nevada secretary of state as the organization's agent for services of process in a proceeding to enforce any obligation of a Nevada entity that is a party to the merger.
<b>New Hampshire</b>	Yes the agent can resign from a dissolved entity but a new agent cannot be named.	No
<b>New Jersey</b>		
<b>New Mexico</b>		
<b>New York</b>		
<b>North Carolina</b>	Yes, this is the only document which can be filed on a business entity profile.	No.
<b>North Dakota</b>	While North Dakota adopted MORAA, that was one aspect that we changed. Our previous statutes provided that when a corporation dissolved or when a foreign corporation's authority was withdrawn or terminated, the Secretary of State became the agent for service of process. We retained that provision in our version of MORAA.	We do not have the language related to the irrevocable provision upon merger.
<b>Ohio</b>		
<b>Oklahoma</b>		
<b>Oregon</b>	In Oregon, we do allow registered agents to resign from a dissolved entity. We often find that the agents were assigned without their knowledge or consent in the first place. The Secretary of State often becomes the de facto registered agent in this case	Nothing is entirely irrevocable here, including RA appointments.
<b>Pennsylvania</b>		
<b>Rhode Island</b>	YES. Resignations are accepted regardless of status.	If the surviving or new entity is not domestic the following applies:  If the surviving or new entity is to be governed by the laws of a state other than the State of Rhode Island, and such surviving or new entity is not qualified to conduct business in the state of Rhode Island, the entity agrees that it: (i) may be served with process in Rhode Island in any proceeding for the enforcement of any obligation of any domestic entity which is a party to the merger or consolidation; (ii) irrevocably appoints the Secretary of State as its agent to accept service of

		process in any action, suit, or proceeding; and (iii) the address to which a copy of such process of service shall be mailed to it by the Secretary of State is:
<b>South Carolina</b>		
<b>South Dakota</b>		
<b>Tennessee</b>		
<b>Texas</b>	Yes	No. However, the statute does provide that if the surviving organization in a merger is not a Texas entity, the organization is consider to have appointed the Texas secretary of state as the organization's agent for services of process in a proceeding to enforce any obligation of a Texas entity that is a party to the merger.
<b>Utah</b>		Utah has no "irrevocable" appointment for agents that I can find.
<b>Vermont</b>		
<b>Virginia</b>	Virginia terminates or cancels the existence of its entities. To me, this is the equivalent of the principal dying, which under agency law, results in the termination the agency relationship. Currently, however, we do allow the registered agent to resign after "dissolution."	We do not have an irrevocable appointment of a registered agent incident to a merger. I presume this occurs in Hawaii when the survivor is a foreign entity. In Virginia, by statute, the Clerk of the Commission is appointed as the agent of a foreign surviving corporation, but only for a proceeding to enforce the appraisal rights of a nonsurviving Virginia corporation's shareholders.
<b>Washington</b>	Yes, a registered agent may resign from a dissolved entity. Our laws make the Secretary of State registered agent if, for any reason, the registered agent can't be found.	No, our merger laws do not use the word "irrevocably", but they do require a foreign corporation to "(2) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:  (a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and (b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under chapter 23B.13 RCW." [RCW 23B11.070]
<b>West Virginia</b>		
<b>Wisconsin</b>		
<b>Wyoming</b>		

**Additional comments:**

**Full text of email:**

Hawaii has two questions regarding registered agents.

1) Does your State allow registered agents to resign from a dissolved entity?

2) For mergers, does your law state that the registered agent be irrevocably appointed?

If yes, the reason why the agent is irrevocably appointed ?

**HRS §414-315 Articles of merger or share exchange.** (a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, articles of merger or share exchange shall be signed on behalf of each corporation and each other entity that is a party to the merger and shall be delivered to the department director for filing. The articles of merger or share exchange shall set forth:

(1) For a merger, the name and jurisdiction of each entity that is a party to the merger, and the name, address, and jurisdiction of the surviving entity;

(2) For a share exchange, the name, address, and jurisdiction of both the corporation whose shares will be acquired and the acquiring corporation;

(3) A statement that the plan of merger or share exchange has been approved by each entity involved in the merger or share exchange;

(4) If a merger, a statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and

(5) A statement that includes:

(A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State that is to merge;

(B) An irrevocable appointment of a resident of this State as its agent to accept service of process in a proceeding under subparagraph (A), that includes the resident's street address in this

State; and

(C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.

(b) If the articles of merger provide for a future effective date, and:

- (1) The plan of merger is amended to change the future effective date;
- (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
- (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the department director articles of amendment that identify the articles of merger and set forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the department director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger operate as an amendment to the corporation's articles of incorporation. [L 2000, c 244, pt of §1; am L 2001, c 129, §33; am L 2002, c 41, §9; am L 2003, c 124, §7; am L 2004, c 121, §10; am L 2006, c 184, §5]

***Mahalo and Aloha,***  
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