

MODEL REGISTERED AGENT'S ACT

Background

The Model Registered Agent's Act (MoRAA or Act) was drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in association with the American Bar Association (ABA) and the International Association of Commercial Administrators (IACA).

As the result of a resolution adopted during the 2004 IACA conference to address registered agent issues, IACA initiated the drafting process as a joint task force between filing officers and the service companies that support IACA. An initial meeting of the joint task force was held in St. Louis in November 2004.

The jurisdictions of Arkansas, Idaho, Maine, Montana, Nevada, North Dakota, South Dakota, and Utah have adopted MoRAA, and the Act has been introduced in Hawaii. Other jurisdictions are considering whether to adopt the Act.

Purposes of the Act

MoRAA is intended to (1) provide filing offices with one registration procedure for commercial and noncommercial registered agents no matter the type of business entity represented by the agent; (2) streamline and provide for efficiencies in the registration procedures for registered agents by providing a one-to-many relationship between the registered agent and its represented entities in each jurisdiction; and (3) provide incentives for its use by the registered agent community.

Major Features of the Act:

1. Creates two distinct classes of registered agents: commercial and noncommercial;
2. Encourages those serving as agents to create a commercial registered agent listing by waiving the fee for resignation and allowing a commercial registered agent to change its address for all of its represented entities for one filing fee;
3. Provides for the appointment of a registered agent (either a commercial or noncommercial registered agent);
4. Eliminates the requirement that a registered agent signs an acceptance of its duties;
5. Creates a one-to-many relationship so that changes to a commercial registered agent's profile information (such as an address change) generates the same change to the agent's information in the records of all entities the commercial registered agent represents;
6. Eliminates the concept of registered office address;
7. Requires the entity appointing a registered agent to affirm that the registered agent has consented to serve as the entity's registered agent;
8. Requires the filing office to provide a daily listing of filings, organized by entity, that name a commercial registered agent;
9. Provides for a listing mechanism to create a commercial registered agent;
10. Creates a process for the termination of a commercial registered agent listing;
 - a. The termination of a commercial registered agent listing has the same effect as a commercial registered agent's resignation;
 - b. The commercial registered agent must notify the entity/entities it represents of its termination; and

- c. The filing office is required to send notice to each of the commercial registered agent's represented entities of the entity's failure to maintain a registered agent.
11. Provides for a change of registered agent by an entity;
12. Provides for a registered agent's resignation;
 - a. The registered agent must notify the entity/entities it represents of its resignation;
 - b. The filing office is required to notify each of the registered agent's entities of the entity's failure to maintain a registered agent;
 - c. The registered agent's resignation does not take effect until the 31st day after the resignation was filed; and
 - d. The registered agent may resign whether or not the entity is in good standing.
13. Creates a process for nonfiling or nonqualifying foreign entities to file a statement appointing an agent for service of process;
 - a. Duration of the appointment is 5 years, unless cancelled earlier; and
 - b. Appointment terminates if the entity become qualified;
14. Removes the requirement that the filing office serves as the default agent for service of process for those entities without an agent and provides direct service on corporate office or alternative and three dates for service, of which the earliest would perfect service;
15. Establishes the duties of the registered agent; and
16. Provides that venue in a legal action involving a particular entity is not determined by the address of the entity's registered agent.

Appendix to the Act

The Act's Appendix contains conforming amendments to implement the Act as well as to rationalize annual report filings. Some important changes in the Appendix include:

1. The requirement that the registered office address be current has been removed from the administrative dissolution and revocation statutes;
2. The requirement to provide a brief description of the nature of business has been removed from the annual report;
3. The requirement to provide the total number of authorized, issued or outstanding shares, itemized by class and series has been removed from the annual report (this may be an issue for those states which calculate the annual fee using authorized or issued shares);
4. The names of the entity's directors are required to be provided in the annual report (the shareholders' names are added if the entity has eliminated the board directors);
5. The following requirements are eliminated from a nonprofit annual report: brief description of the nature of its activities; whether the nonprofit has members; whether the nonprofit is a corporation for public benefit, mutual benefit or a religious corporation; and if the nonprofit is a foreign entity, whether it would be a public benefit, mutual benefit or a religious corporation if it were a domestic corporation.

Discussion Points

1. Promotes uniformity for registered agent filings among states that adopt the Act;
2. Promotes current information on the public record regarding the address of the registered agent;
3. Promotes correctness of the public record with respect to the status of the registered agent;

4. Provides companies in the registered agent business and attorneys (law firms) who represent entities a streamlined process to manage their information and status in regards to the entities they represent;
5. Promotes online filings within the Act;
6. Promotes electronic communication between the filing office and the registered agent;
7. Provides better (and potentially real time) access to the list of represented entities because the Act eliminates the requirement that the agent sign to accept the appointment;
8. Allows an agent to be designated for entities that might not otherwise provide one on the public record;
9. Provides efficiencies for the filing office and therefore reduces the use of taxpayer dollars on registered agent filings;
10. Places the burden of service of process on the person seeking service;
11. Implementation of the Act could require system changes;
12. Each filing office should perform a cost-to-benefit analysis when considering the Act.

Issues to Note When Considering MoRAA:

Section 3: Fees

The Act permits the filing office to establish filing fees for each type of document that may be filed under the Act and for copying and certifying documents. However, it is left up to each filing office to determine the amount of the fees. The Act expressly states that there be no fee for filing a statement of resignation

In states that have implemented MoRAA, the commercial registered agent listing fees range from \$75 to \$1000 and the commercial registered agent termination statement fees range from \$150 to \$500 with no fee for resignation (per entity) of commercial registered agents. States which have implemented this Act took into consideration the current fees for commercial registered agents and how to amortize the fees proportionately to those who benefit.

Section 5: Appointment of Registered Agent

1. Section 5(a) is referred to in the Conforming Amendments as required on any filing which previously required the registered agent/office information. However, on the annual report, you may want additional information to be required (i.e., e-mail address and/or telephone number for the registered agent);
2. The daily listing may be omitted if the records of the filing office are properly searchable.
3. If there is no online searchable database, how will this record be provided?

Section 6: Listing of Commercial Registered Agent

1. Name availability standard in the Act may be less restrictive than the standard applied to entity formation, but the standards do not need to be consistent.
2. States may want to include a provision in the Act, or consider whether an internal policy is all that is necessary, to allow corrections to Registered Agent names already on record to match the newly filed listing statement.

Section 13: Service of Process on Entities

1. How is service perfected if the business entity does not keep a current principal office address on record with the filing office?
2. What are the options for those states with service of process statutes and procedures for the filing office to perfect service?
3. When serving a commercial registered agent what constitutes “other forms of record?”

Links to Some State Legislation

Montana <http://data.opi.mt.gov/bills/2007/billhtml/HB0153.htm>

Maine <http://janus.state.me.us/legis/ros/lom/LOM123rd/PUBLIC323.asp>

North Dakota <http://www.legis.nd.gov/cencode/t10c011.pdf>

Utah <http://www.le.utah.gov/UtahCode/section.jsp?code=16-17>

<http://corporations.utah.gov/business/mora.html> (web site info for the commercial registered agents)