

MODEL REGISTERED AGENTS ACT (2006)
(Last Amended 2011)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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WITH PREFATORY NOTE AND COMMENTS

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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ABOUT ULC

The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 123rd year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff, and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft, and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

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- ULC keeps state law up-to-date by addressing important and timely legal issues.
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MODEL REGISTERED AGENTS ACT (2006)
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MODEL REGISTERED AGENTS ACT (2006)
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PREFATORY NOTE

The Model Registered Agents Act is one of several projects undertaken by the Uniform Law Commission (“ULC”) and the American Bar Association (“ABA”) to integrate state entity laws into a more coherent and rational scheme. Other projects include the development of the Model Entity Transactions Act jointly by the ULC and the ABA, the addition of Chapter 9 to the Model Business Corporation Act by the Committee on Corporate Laws of the ABA Section on Business Law, and the adoption of Chapter 9 of the Model Nonprofit Corporation Act by the Committee on Nonprofit Organizations of the ABA Section on Business Law as part of the Third Edition of that act.

This act grew out of discussions within the International Association of Commercial Administrators (“IACA”), which is the association of state corporation bureaus and similar filing offices in the United States and Canada. IACA was approached by representatives of corporation service companies who were seeking to solve problems they have encountered in their provision of registered agent services. IACA had also been considering on its own how filing requirements in state corporation bureaus could be simplified and standardized. IACA decided that the time was right for it to develop proposed statutory provisions on two subjects:

1. A standard set of provisions that would apply to all forms of entities that are required to designate in a public filing an agent for service of process.
2. A standard form of annual report to be filed with secretaries of state by all forms of entities.

The Ad Hoc Committee on Entity Rationalization of the ABA Section on Business Law (the “ABA Committee”) had been working cooperatively with IACA for several years on other projects of mutual interest. After IACA had prepared a first draft of provisions on registered agents and annual reports, the ABA Committee joined the drafting effort. The ABA Committee also approached the leadership of the ULC with the suggestion that the ULC also join the drafting effort. The result was the development of this act.

The original draft of this act contained separate articles dealing with the two subjects originally identified by IACA: (i) registered agents and (ii) annual report filings. After detailed consideration, the drafting committee and its advisors were all agreed that a separate article on annual reports was not necessary and should be omitted from this act. Instead, the changes needed to standardize annual report filings were included in the Appendix of conforming amendments to this act. As part of the project to harmonize all of the uniform unincorporated entity laws, the provisions of those acts on annual reports were conformed to each other, effectively superseding the provisions in the Appendix to this act relating to annual reports. Thus, this act now deals just with registered agent issues and applies to all forms of entities.

Under many state entity laws, an entity’s registered agent and the location of the registered agent’s office serve three purposes:

1. the registered agent is an agent of the entity authorized to receive service of process on behalf of the entity;
2. the location of the office of the registered agent determines where venue is to be laid in certain actions under the entity's organic law; and
3. the location of the office of the registered agent also determines where certain notices required by the entity's organic law are to be published.

The first function, that of being an agent for service of process, is the principal reason why the appointment of a registered agent is required under entity organic laws and is the focus of this act. The remaining two functions made sense at a time when the registered office address of an entity was often a business address for the entity. In recent years, however, it has become common for entities to use as their registered agents businesses whose principal activity is the provision of registered agent services, and thus the address of the registered agent has become divorced from any real connection with the business activities of the represented entity. Enacting states should consider whether to eliminate from their entity laws the second and third purposes stated above.

Amendments to the uniform unincorporated entity laws, including this act, to harmonize their language and facilitate their integration into the Code were approved at the 2011 Annual Meeting of the ULC. A final, more limited, set of amendments was then approved at the 2013 Annual Meeting of the ULC; except no amendments were made to MoRRA in 2013.

This act is Part 4 of Article 1 of the Uniform Business Organizations Code (2011) (Last Amended 2013) (UBOC). If a state enacts this act and subsequently enacts the UBOC, the state's initial version of this act should be repealed and reenacted as Part 4 of Article 1 of the UBOC.

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MODEL REGISTERED AGENTS ACT (2006)
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SECTION 1. SHORT TITLE. This [act] may be cited as the Model Registered Agents Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Commercial registered agent” means a person listed under Section 6.

(2) “Designation of agent” means a statement designating a registered agent delivered to the [Secretary of State] for filing under:

(A) [Section 31 of the Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2013)]; or

(B) Section 12 by a domestic entity that is not a filing entity or a nonregistered foreign entity.

(3) “Distributional interest” means the right under an unincorporated entity’s organic law and organic rules to receive distributions from the entity.

(4) “Domestic”, with respect to an entity, means governed as to its internal affairs by the law of this state.

(5) “Entity” means:

(A) a person that has:

(i) a legal existence separate from any interest holder of that person; or

(ii) the power to acquire an interest in real property in its own name; and

(B) does not include:

(i) an individual;

(ii) a trust with a predominately donative purpose or a charitable trust;

(iii) an association or relationship that is not a person described in

subparagraph (A) and is not a partnership under the rules stated in [Section 202(c) of the

Uniform Partnership Act (1997) (Last Amended 2013)] [Section 7 of the Uniform Partnership Act (1914)] or a similar provision of the law of another jurisdiction;

(iv) a decedent's estate; or

(v) a government or a governmental subdivision, agency, or

instrumentality.

(6) "Filing entity" means an entity whose formation requires the filing of a public organic record. The term does not include a limited liability partnership.

(7) "Foreign", with respect to an entity, means governed as to its internal affairs by the law of a jurisdiction other than this state.

(8) "Foreign registration application" means an application for registration to do business in this state delivered to the [Secretary of State] for filing by a foreign entity.

(9) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(A) receive or demand access to information concerning, or the books and records of, the entity;

(B) vote for or consent to the election of the governors of the entity; or

(C) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.

(10) "Governor" means a person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(11) "Interest" means:

(A) a governance interest in an unincorporated entity;

(B) a distributional interest in an unincorporated entity; or

(C) a share or membership in a corporation.

(12) “Interest holder” means a direct holder of an interest.

(13) “Jurisdiction of formation” means the jurisdiction whose law includes the organic law of an entity.

(14) “Noncommercial registered agent” means a person that is not a commercial registered agent and is:

(A) an individual or domestic or foreign entity that serves in this state as the registered agent of an entity; or

(B) an individual who holds the office or other position in an entity which is designated as the registered agent pursuant to Section 5(a)(2)(B).

(15) “Nonregistered foreign entity” means a foreign entity that is not registered to do business in this state pursuant to a statement of registration filed by the [Secretary of State].

(16) “Organic law” means the law of an entity’s jurisdiction of formation governing the internal affairs of the entity.

(17) “Organic rules” means the public organic record and private organic rules of an entity.

(18) “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, [general cooperative association,] limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(19) “Private organic rules” means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public

organic record, if any.

(20) “Public organic record” means the record the filing of which by the [Secretary of State] is required to form an entity and any amendment to or restatement of that record.

(21) “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(22) “Registered agent” means an agent of an entity which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity. The term includes a commercial registered agent and a noncommercial registered agent.

(23) “Registered agent filing” means:

- (A) the public organic record of a domestic filing entity;
- (B) a statement of qualification of a domestic limited liability partnership;
- (C) a foreign registration application; or
- (D) a designation of agent.

(24) “Registered foreign entity” means a foreign entity that is registered to do business in this state pursuant to a foreign registration application filed by the [Secretary of State].

(25) “Represented entity” means:

- (A) a domestic filing entity;
- (B) a domestic limited liability partnership;
- (C) a registered foreign entity;
- (D) a domestic or foreign unincorporated nonprofit association for which a designation of agent is in effect;
- (E) a domestic entity that is not a filing entity for which a designation of agent is in effect; or
- (F) a nonregistered foreign entity for which a designation of agent is in effect.

(26) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(27) “Type of entity” means a generic form of entity:

(A) recognized at common law; or

(B) formed under an organic law, whether or not some entities formed under that law are subject to provisions of that law that create different categories of the form of entity.

Comment

“Commercial registered agent.” [(1)] – A commercial registered agent is an individual or entity that is in the business of serving as a registered agent in the state and that files a listing statement under Section 6. Being listed as a commercial registered agent is voluntary and persons serving as registered agents are not required to be listed under Section 6. The benefits to the registered agent of being listed under Section 6, however, are substantial and most registered agents will elect to be so listed. Although this definition and Section 6 do not expressly require that a foreign entity that is listed as a commercial registered agent be qualified to do business in the state, the activity of serving as a registered agent is one that requires such registration.

“Designation of agent.” [(2)] – An appointment of agent is an optional filing that may be made by an entity that does not otherwise make a public filing in the state naming an agent for service of process. If a state has not enacted the Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2013), paragraph (A) of this definition should be omitted.

“Distributional interest.” [(3)] – This term is similar to the concept of a “transferable interest” found in the organic laws of several types of unincorporated entities, but has a broader meaning because the scope of this act includes entities in addition to those whose organic law uses the term “transferable interest.”

“Domestic.” [(4)] – The term “domestic”, when used in this act with respect to an entity, means an entity whose internal affairs are governed by the organic laws of the adopting state. Except in the case of general partnerships and unincorporated nonprofit associations, this will mean an entity that is formed, organized, or incorporated under domestic law. In the case of a general partnership organized under the Uniform Partnership Act (1997) (Last Amended 2013) (1997 UPA), it will mean a general partnership whose governing law under 1997 UPA § 104 is the law of the adopting state. Under 1997 UPA § 104 the governing law is determined by the location of the partnership’s principal office, except for limited liability partnerships where the governing law is the state where the statement of qualification is filed. It is a factual question whether the activities and organization of an unincorporated nonprofit association make it a domestic or foreign entity.

“Entity.” [(5)] – This definition is intended to include all forms of private organizations, regardless of whether organized for profit, and artificial legal persons other than those excluded by paragraphs (B)(i)-(v).

The term “entity” includes:

- business corporation;
- business or statutory trust;
- general partnership, whether or not a limited liability partnership;
- limited cooperative association;
- limited liability company;
- limited partnership, whether or not a limited liability limited partnership;
- nonprofit corporation; and
- unincorporated nonprofit association.

The term does not include a sole proprietorship which is excluded by subsection (B)(i).

This definition does not exclude regulated entities such as public utilities, banks and insurance companies. If any of those types of entities is organized under its own organic law and not a generally applicable organic law such as a general business corporation law, an enacting state must decide whether this act should apply to those types of entities.

Trusts with a predominantly donative purpose and charitable trusts are subject generally to the Uniform Trust Code (Last Amended 2010) and have been excluded from the definition of “entity,” thus excluding them from this act. Trusts that carry on a business, however, such as a Massachusetts trust, real estate investment trust, Illinois land trust, or other common law or statutory business trusts are “entities.”

Section 6 of the Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2013) (UUNAA) gives an unincorporated nonprofit association the power to acquire an estate in real property and thus an unincorporated nonprofit association organized in a state that has adopted that act will be an “entity.” At common law, an unincorporated nonprofit association was not a legal entity and did not have the power to acquire real property. Most states that have not adopted the UUNAA have nonetheless modified the common law rule, but states that have not adopted the UUNAA should analyze whether they should modify the definition of “entity” to add an express reference to unincorporated nonprofit associations.

There is some question as to whether a partnership subject to the Uniform Partnership Act (1914) (1914 UPA) is an entity or merely an aggregation of its partners. That question has been resolved by Section 201 of the 1997 UPA, which makes clear that a general partnership is an entity with its own separate legal existence. Section 8 of the 1914 UPA gives partnerships subject to it the power to acquire estates in real property and thus such a partnership will be an “entity.” As a result, all general partnerships will be “entities” regardless of whether the state in which they are organized has adopted the 1997 UPA.

Paragraph (B)(iii) of this definition excludes from the concept of an “entity” any form of co-ownership of property or sharing of returns from property that is not a partnership under 1997 UPA § 202(c) or 1914 UPA § 7. In that connection, Section 202(c) of the 1997 UPA provides in part:

In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entirety, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

A virtually identical provision appears in Section 7(3) and (4) of the 1914 UPA.

Paragraph (B)(iv) of this definition excludes decedent's estates for the same policy reason as trusts with a predominantly donative purpose and charitable trusts.

Paragraph (B)(v) excludes governmental subdivisions, agencies, and instrumentalities because they are not properly within the scope of this act.

Limited liability partnerships and limited liability limited partnerships are "entities" because they are general partnerships and limited partnerships, respectively, that have made the additional required election claiming LLP or LLLP status. A limited liability partnership is not a separate type of entity from the underlying general or limited partnership that has elected limited liability partnership status.

"Filing entity." [(6)] – Whether an entity is a filing entity is determined by reference to whether its legal existence requires the filing of a record with the state filing office. While the statute refers to the "formation" of an entity, it is intended to encompass corporations which are "incorporated" and limited liability companies which are "organized" as well as entities such as limited partnerships which are "formed" under their organic law. Business trusts (sometimes referred to as "statutory trusts") present a special problem. In some states a business trust is a filing entity, while in other states business trusts are recognized only by common law. Under section 201(a) of the Uniform Statutory Trust Entity Act (2009) (Last Amended 2013) (§ 8-201(a) of the Code), a statutory trust entity formed under that act is formed by delivery of a certificate of trust to the appropriate filing office, and is a filing entity.

The term does not include a limited liability partnership because an election by a general partnership of that status (*e.g.*, a statement of qualification under 1997 UPA § 901) is not required to form the underlying partnership. A limited liability limited partnership, on the other hand, is a filing entity because formation of the underlying limited partnership requires the filing of a certificate of limited partnership.

"Foreign." [(7)] – The term "foreign," when used in this act with respect to an entity, includes any non-domestic entity of any type. Where a foreign entity is a filing entity, the entity is governed by the laws of the state of filing. A nonfiling foreign entity is governed by the laws governing its internal affairs. It is a factual question whether a general partnership whose internal affairs are governed by the 1914 UPA is a domestic or foreign partnership. A 1914 UPA partnership will likely be deemed to be a domestic entity where the greatest nexus of contacts are found. The domestic or foreign characterization of partnerships under the 1997 UPA that have not registered as limited liability partnerships will be governed by 1997 UPA § 104(2) ("law of the jurisdiction in which the partnership has its principal office").

“Foreign registration application.” [(8)] – This definition should be construed broadly to include filings in the state that are required when a foreign entity is conducting activities in the state, regardless of whether the process is referred to as “obtaining a certificate of authority to do business,” “registering to do business,” “being authorized to transact business,” or some other formulation.

“Governance interest.” [(9)] – A governance interest is typically only part of the interest that a person will hold in an unincorporated entity and is usually coupled with a distributional interest (or economic rights). However, memberships in some nonprofit corporations and unincorporated nonprofit associations consist solely of governance interests and memberships in other nonprofit entities may not include either governance interests or distributional interests. In some unincorporated business entities, there is a more limited right to transfer governance interests than there is to transfer distributional interests. An interest holder in such an unincorporated business entity who transfers only a distributional interest and retains the governance interest will also retain the status of an interest holder. Whether a transferee who acquires only a distributional interest will acquire the status of an interest holder is determined by the definition of “interest holder.”

Governors of an entity have the kinds of rights listed in the definition of “governance interest” by reason of their position with the entity. For a governor to have a “governance interest,” however, requires that the governor also have those rights for a reason other than the governor’s status as such. A manager who is not a member in a limited liability company, for example, will not have a governance interest, but a manager who is a member will have a governance interest arising from the ownership of a membership interest.

“Governor.” [(10)] – This term has been chosen to provide a way of referring to a person who has the authority under an entity’s organic law to make management decisions regarding the entity that is different from any of the existing terms used in connection with particular types of entities. Depending on the type of entity or its organic rules, the governors of an entity may have the power to act on their own authority, or they may be organized as a board or similar group and only have the power to act collectively, and then only through a designated agent. In other words, a person having only the power to bind the organization pursuant to the instruction of the governors is not a governor. Under the organic rules, particularly those of unincorporated entities, most or all of the management decisions may be reserved to the members or partners. Thus, if a manager of a limited liability company were limited to having authority to execute management decisions made by the members and did not have any authority to make independent management decisions, the manager would not be a governor under this definition.

Except as described above, the term “governor” includes:

- director of a business corporation;
- director of a limited cooperative association;
- director or trustee of a nonprofit corporation;
- general partner of a general partnership;
- general partner of a limited partnership;
- manager of a limited liability company;
- member of a member-managed limited liability company; and

- trustee of a business or statutory trust.

“Interest.” [(11)] – In the usual case, the interest held by an interest holder will include both a governance interest and a distributional interest (or economic rights). Members in nonprofit corporations or unincorporated nonprofit associations generally do not have any distributional interest because they do not receive distributions, but they nonetheless may hold a governance interest in which case they would have the status of interest holders under this act.

The term “interest” includes:

- beneficial interest in a business or statutory trust;
- member’s interest in a limited cooperative association;
- membership in a nonprofit corporation;
- membership in an unincorporated nonprofit association;
- membership interest in a limited liability company;
- partnership interest in a general partnership;
- partnership interest in a limited partnership; and
- shares in a business corporation.

“Interest holder.” [(12)] – This act does not refer to “equity” interests or “equity” owners or holders because the term “equity” could be confusing in the case of a nonprofit entity whose members do not have an interest in the assets or results of operations of the entity but only have a right to vote on its internal affairs.

The term “interest holder” includes:

- beneficiary of a business or statutory trust;
- general partner of a general partnership;
- general partner of a limited partnership;
- limited partner of a limited partnership;
- member of a limited cooperative association;
- member of a limited liability company;
- member of a nonprofit corporation;
- member of an unincorporated nonprofit association; and
- shareholder of a business corporation.

“Noncommercial registered agent.” [(14)] – A noncommercial registered agent is a person that serves as an agent for service of process but that is not listed under Section 6. All agents for service of process that are not commercial registered agents are noncommercial registered agents.

“Nonregistered foreign entity.” [(15)] – A nonqualified foreign entity is a foreign entity for which there is no foreign registration document in effect in the adopting state.

“Organic law.” [(16)] – Organic law means statutes other than this act that govern the internal affairs of an entity. Entity laws in a few states purport to require that some of their internal governance rules applicable to a domestic entity also apply to a foreign entity with significant ties to the state. *See, e.g., CAL. CORP. CODE § 2115 (Foreign Corporations), N.Y.*

NOT-FOR-PROFIT-CORP. §§ 1318-1321 (Liabilities of Directors and Officers of Foreign Corporations), 15 PA.CON.S.TAT. § 6145 (Applicability of Certain Safeguards to Foreign Corporations). Such a “sticky fingers” law is not included within the definition of “organic law” for purposes of this act because those laws are not part of the law of the entity’s jurisdiction of formation.

“Person.” [(18)] – The term “person” has the standard meaning of that term in uniform acts at the time this act was promulgated.

“Private organic rules.” [(19)] – The term private “organic rules” is intended to include all governing rules of an entity that are binding on all of its interest holders, whether or not in record form, except for the provisions of the entity’s public organic document, if any. The term is intended to include agreements in “record” form as well as oral partnership agreements and oral operating agreements among LLC members.

The term “private organic rules” includes:

- bylaws of a business corporation;
- bylaws of a business or statutory trust;
- bylaws of a limited cooperative association;
- bylaws of a nonprofit corporation;
- constitution and bylaws of an unincorporated nonprofit association;
- operating agreement of a limited liability company;
- partnership agreement of a general partnership; and
- partnership agreement of a limited partnership.

“Public organic record.” [(20)] – A “public organic record” is a record that is required to be filed publicly to form, organize, incorporate, or otherwise create an entity. The term does not include a statement of partnership authority filed under 1997 UPA § 303 or any of the other statements that may be filed under the 1997 UPA since those statements do not create a new entity. Similarly, the term does not include a statement of authority filed under the Uniform Limited Liability Company Act (2006) (Last Amended 2013). A limited liability partnership is the same entity as the partnership that files a statement of qualification under 1997 UPA § 1001 to become a limited liability partnership and thus the statement is not a public organic record. A statement of authority filed under Section 7 of the UUNAA or a statement appointing an agent filed under Section 31 of that act is also not a public organic record. Where a public organic record has been amended or restated, the term means the public organic record as last amended or restated.

The term “public organic record” includes:

- articles of incorporation of a business corporation;
- articles of incorporation of a nonprofit corporation;
- articles of organization of a limited cooperative association;
- certificate of limited partnership; and
- certificate of organization of a limited liability company.

In those states where a deed of trust or other instrument is publicly filed to create a business trust, that filing will constitute a public organic record. But in those states where a

business trust is not created by a public filing, the deed of trust or similar document will be part of the private organic rules of the business trust.

“Record.” [(21)] – The term “record” has the standard meaning of that term in uniform acts at the time this act was promulgated.

“Registered agent.” [(22)] – This term is used in this act to refer to agents for service of process in contexts where it is not necessary to differentiate between commercial registered agents and noncommercial registered agents.

“Registered agent filing.” [(23)] – Some states require that filings in addition to those listed in this definition, such as articles of amendment or articles of merger, state the registered agent information of the entity making the filing. In states where that is the case, this definition should be amended to add the following additional provision:

“(E) any other filing with the [Secretary of State] under an entity’s organic law that must include the information required by Section 5(a).”

“Represented entity.” [(25)] – This definition lists the various classes of entities for which registered agents act as agents for service of process.

“Sign.” [(26)] – The term “sign” has the standard meaning of that term in uniform acts at the time this act was promulgated.

“Type of entity.” [(27)] – The term “type of entity” has been developed in an attempt to distinguish different legal forms of entities. It is sometimes difficult to decide whether one is dealing with a different form of entity or a variation of the same form. For example, a limited partnership, although it has been defined as a partnership, is a different type of entity from a general partnership, while a limited liability partnership is not a different type of entity from a general partnership. In some states cooperative corporations are categories of business corporations or nonprofit corporations, while in other states cooperatives are a separate type of entity.

SECTION 3. FEES.

(a) The [Secretary of State] shall collect the following fees when a record is delivered for filing under this [act]:

- | | |
|---|---------|
| (1) commercial registered agent listing statement | \$__. |
| (2) commercial registered agent termination statement | \$__. |
| (3) statement of change | \$__. |
| (4) statement of resignation | no fee. |
| (5) statement designating a registered agent | \$__. |

(b) The [Secretary of State] shall collect the following fees for copying and certifying a copy of any document filed under this [act]:

(1) \$__ a page for copying; and

(2) \$__ for the certification.

Legislative Note: *In a state where filing fees are set by rule making, this section may be replaced with the statement “The [Secretary of State] shall adopt rules in accordance with [this state’s administrative procedures act] setting fees for filings, and the services provided, under this [act].”*

Comment

Subsection (a) establishes the filing fees for each type of document that may be filed under this act. The dollar amounts for each filing should be inserted by the adopting state with reference to the filing fees charged for other filings with the Secretary of State or equivalent filing office.

Subsection (a)(4) provides that a fee is not required in connection with a filing of a statement of resignation. That permits a person who is named as a registered agent without the person’s consent, or who agrees to serve as registered agent for a fee and the fee is not paid, to reflect properly the status of the person in the records of the Secretary of State or equivalent filing office without expense.

Subsection (b) establishes fees for copying and certifying documents filed under this act. The dollar amounts for these fees should be inserted by the adopting state with reference to the fees charged for those services under the state’s various entity organic laws.

SECTION 4. ADDRESSES IN FILING. If a provision of this [act] other than Section 11(a)(4) requires that a record state an address, the record must state:

(1) a street address in this state; and

(2) a mailing address in this state, if different from the address described in paragraph

(1).

Comment

When this act requires that a filing state an address, the address used must always be a geographic location. Where a person uses a post office box as its mailing address, paragraph (2) requires that the post office box address also be stated.

SECTION 5. DESIGNATION OF REGISTERED AGENT.

(a) A registered agent filing must be signed by the represented entity and state:

(1) the name of the entity's commercial registered agent; or

(2) if the entity does not have a commercial registered agent:

(A) the name and address of the entity's noncommercial registered agent;

or

(B) the title of an office or other position with the entity, if service of process, notices, and demands are to be sent to whichever individual is holding that office or position, and the address to which process, notices, or demands are to be sent.

(b) The designation of a registered agent pursuant to subsection (a)(1) or (2)(A) is an affirmation of fact by the represented entity that the agent has consented to serve.

(c) The [Secretary of State] shall make available in a record as soon as practicable a daily list of filings that contain the name of a registered agent. The list must:

(1) be available for at least 14 calendar days;

(2) list in alphabetical order the names of the registered agents; and

(3) state the type of filing and name of the represented entity making the filing.

Legislative Note: *Subsection (c) may be omitted if (i) the records of the Secretary of State or equivalent filing office are searchable electronically in a manner that permits filings to be identified by the date of the filing and by the name of the registered agent named in the filing, and (ii) the searchable database is updated frequently. Subsection (c) will not be necessary under those circumstances because registered agents may consult the regular database maintained by the Secretary of State to verify when they have been named as a registered agent.*

Comment

Subsection (a)(1) gives an entity the option of listing just the name of its commercial registered agent in a registered agent filing and omitting the address of the registered agent. If the commercial registered agent subsequently changes its address, that change will be reflected in the filing made by the agent under Section 6, as amended under Section 10, but no change will be necessary in the registered agent filing of any of the entities represented by the commercial registered agent. The address of an entity's commercial registered agent may be ascertained from the records of the Secretary of State by consulting its listing under Section 6.

The address of an entity's noncommercial registered agent is usually not a business address of the represented entity. On the other hand, subsection (a)(2)(B) permits an entity to designate a person within the organization, such as its general counsel, to serve as its registered agent; and in that circumstance the address of the registered agent may very well be a business address of the represented entity.

The addresses required by subsection (a) to be stated in a registered agent filing must satisfy the requirements in Section 4.

Subsection (b) avoids the need to include with a registered agent filing a consent of the registered agent to serve as such.

Subsection (c) creates a procedure that will permit registered agents to determine if they have been named in filings of which they were not aware by periodically consulting the list prepared by the Secretary of State. Subsection (c) requires the registered agents to be listed in alphabetical order to facilitate the use of the list by registered agents and also to indicate the type of filing (e.g., articles of incorporation, certificates of limited partnership, appointments of agents under Section 12 of this Act, etc.) in which each registered agent is named.

SECTION 6. LISTING OF COMMERCIAL REGISTERED AGENT.

(a) A person may become listed as a commercial registered agent by delivering to the [Secretary of State] for filing a commercial-registered-agent listing statement signed by the person which states:

(1) the name of the individual or the name of the entity, type of entity, and jurisdiction of formation of the entity;

(2) that the person is in the business of serving as a commercial registered agent in this state; and

(3) the address of a place of business of the person in this state to which service of process, notices, and demands being served on or sent to entities represented by the person may be delivered.

(b) A commercial-registered-agent listing statement may include the information regarding acceptance by the agent of service of process, notices, and demands in a form other than a written record as provided in Section 13(d).

(c) If the name of a person delivering to the [Secretary of State] for filing a commercial-

registered-agent listing statement is not distinguishable on the records of the [Secretary of State] from the name of another commercial registered agent listed under this section, the person shall adopt a fictitious name that is distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.

(d) A commercial-registered-agent listing statement takes effect on filing.

(e) The [Secretary of State] shall note the filing of a commercial-registered-agent listing statement in the [index of filings] [records] maintained by the [Secretary of State] for each entity represented by the agent at the time of the filing. The statement has the effect of amending the registered agent filing for each of those entities to:

(1) designate the person becoming listed as a commercial registered agent as the commercial registered agent of each of those entities; and

(2) delete the name and address of the former agent from the registered agent filing of each of those entities.

Legislative Note: *If the Secretary of State or equivalent filing office is not able to identify from the records maintained by the Secretary of State all of the entities represented by a registered agent, subsection (e) should be amended to read:*

“(e) The commercial registered agent listing statement must be accompanied by a list in alphabetical order of the entities represented by the person. The [Secretary of State] shall note the filing of the commercial-registered-agent listing statement in the index of filings maintained by the [Secretary of State] for each listed entity. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.”

Comment

This section is a substantial simplification of practice because it removes the need to amend the filed record of every entity represented by a commercial registered agent when the agent changes its address.

Subsection (a)(3) only permits a commercial registered agent to list one address where service of process and other notices may be sent to entities represented by the agent. This may require a change in practice for registered agents who have previously maintained more than one address in a state and have permitted represented entities to choose which address they would use in their registered agent filings. A corporation, for example, located in one part of a state

might include in its articles of incorporation an address for its registered agent which is the address of an office of the agent located close to the corporation and which is different than the address used by a corporation in another part of the state which has the same registered agent but uses a different office of the agent. In the example given, the registered agent will need to pick just one address in the state where all service of process will be sent to it. If a commercial registered agent wishes to maintain more than one office in a state where service of process will be received by it, it can accomplish that result by organizing separate entities to conduct its business in the state and filing separate statements for each entity under this section.

The address required by subsection (a)(3) to be stated in a commercial registered agent listing statement must satisfy the requirements in Section 4.

Subsection (e) is a transitional provision that deals with the effect on the entities represented by a registered agent at the time the agent is first listed under this section. The effect is to amend the registered agent filing of each such entity to delete the address of the registered agent consistent with Section 5(a)(1).

SECTION 7. TERMINATION OF LISTING OF COMMERCIAL REGISTERED AGENT.

(a) A commercial registered agent may terminate its listing as a commercial registered agent by delivering to the [Secretary of State] for filing a commercial-registered-agent termination statement signed by the agent which states:

(1) the name of the agent as listed under Section 6; and

(2) that the agent is no longer in the business of serving as a commercial registered agent in this state.

(b) A commercial-registered-agent termination statement takes effect at 12:01 a.m. on the 31st day after the day on which it is filed by the [Secretary of State].

(c) The commercial registered agent promptly shall furnish each entity represented by the agent notice in a record of the filing of the commercial-registered-agent termination statement.

(d) When a commercial-registered-agent termination statement takes effect, the commercial registered agent ceases to be the registered agent for each entity formerly represented by it. Until an entity formerly represented by a terminated commercial registered

agent designates a new registered agent, service of process may be made on the entity pursuant to Section 13. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity has against the agent or that the agent has against the entity.

Comment

This section provides a procedure for a commercial registered agent to withdraw from the business of providing registered agent services. Use of the procedure in this section will terminate the status of the registered agent as the agent for service of process of all the entities represented by the agent. Thus, the procedure in this section differs from the procedure in Section 11, which permits a registered agent to resign with respect to just a single represented entity instead of resigning generally with respect to all of its represented entities.

SECTION 8. CHANGE OF REGISTERED AGENT BY REPRESENTED ENTITY.

(a) A represented entity may change the information on file under Section 5(a) by delivering to the [Secretary of State] for filing a statement of change signed by the entity which states:

- (1) the name of the entity; and
- (2) the information that is to be in effect as a result of the filing of the statement

of change.

(b) The interest holders or governors of a domestic entity need not approve the filing of:

- (1) a statement of change under this section; or
- (2) a similar filing changing the registered agent or registered office, if any, of

the entity in any other jurisdiction.

(c) A statement of change under this section designating a new registered agent is an affirmation of fact by the represented entity that the agent has consented to serve.

(d) A statement of change filed under this section takes effect on filing.

(e) As an alternative to using the procedure in this section, a represented entity may

change the information on file under Section 5(a) by amending its most recent registered agent filing in a manner provided by the law of this state other than this [act] for amending the filing.

Comment

A change in the identity of the registered agent of a represented entity or a change of the office address of a registered agent are usually routine matters that do not affect the rights of the interest holders of the represented entity. This section permits those changes to be made without a formal amendment of an entity's public organic document, without approval of its interest holders, and, indeed, even without formal approval by its governors (i.e., the persons managing the entity's affairs, such as the board of directors of a corporation).

Subsection (c) avoids the need to file with a statement of change a consent of the new registered agent being designated.

Subsection (e) makes clear that the procedures in this section are not exclusive. A common way in which an entity changes its registered agent or registered office is to include the change in an amendment of its public organic document.

SECTION 9. CHANGE OF NAME OR ADDRESS BY NONCOMMERCIAL REGISTERED AGENT.

(a) If a noncommercial registered agent changes its name or its address in effect with respect to a represented entity under Section 5(a), the agent shall deliver to the [Secretary of State] for filing, with respect to each entity represented by the agent, a statement of change signed by the agent which states:

- (1) the name of the entity;
- (2) the name and address of the agent in effect with respect to the entity;
- (3) if the name of the agent has changed, the new name; and
- (4) if the address of the agent has changed, the new address.

(b) A statement of change filed under this section takes effect on filing.

(c) A noncommercial registered agent promptly shall furnish the represented entity with notice in a record of the delivery to the [Secretary of State] for filing of a statement of change and the changes made in the statement.

Comment

This section permits a noncommercial registered agent to change the name and address of the agent that appears in the registered agent filing of an entity represented by the agent. Because the noncommercial registered agent is not listed under Section 6, the agent will not be able to use the procedures in Section 10 which permit commercial registered agents to make only one filing to change their name and address for all entities represented by them. Thus the noncommercial registered agent will need to make a filing under this section for each entity represented by the agent.

An address included in a statement of change must satisfy the requirements in Section 4.

SECTION 10. CHANGE OF NAME, ADDRESS, TYPE OF ENTITY, OR JURISDICTION OF FORMATION BY COMMERCIAL REGISTERED AGENT.

(a) If a commercial registered agent changes its name, its address as listed under Section 6(a), its type of entity, or its jurisdiction of formation, the agent shall deliver to the [Secretary of State] for filing a statement of change signed by the agent which states:

- (1) the name of the agent as listed under Section 6(a);
- (2) if the name of the agent has changed, the new name;
- (3) if the address of the agent has changed, the new address; and
- (4) if the agent is an entity:

(A) if the type of entity of the agent has changed, the new type of entity;

and

(B) if the jurisdiction of formation of the agent has changed, the new jurisdiction of formation.

(b) The filing by the [Secretary of State] of a statement of change under subsection (a) is effective to change the information regarding the agent with respect to each entity represented by the agent.

(c) A statement of change filed under this section takes effect on filing.

(d) A commercial registered agent promptly shall furnish to each entity represented by it

a notice in a record of the filing by the [Secretary of State] of a statement of change relating to the name or address of the agent and the changes made in the statement.

(e) If a commercial registered agent changes its address without delivering for filing a statement of change as required by this section, the [Secretary of State] may cancel the listing of the agent under Section 6. A cancellation under this subsection has the same effect as a termination under Section 7. Promptly after canceling the listing of an agent, the [Secretary of State] shall serve notice in a record in the manner provided in Section 13(b) or (c) on:

(1) each entity represented by the agent, stating that the agent has ceased to be the registered agent for the entity and that, until the entity designates a new registered agent, service of process may be made on the entity as provided in Section 13; and

(2) the agent, stating that the listing of the agent has been canceled under this section.

Comment

This section permits a commercial registered agent to make a single filing that has the effect of changing the name or address of the agent for all of the entities represented by it.

An address included in a statement of change must satisfy the requirements in Section 4.

Subsection (e) provides a procedure by which the Secretary of State or equivalent filing office may cancel the listing of a commercial registered agent when the filing office learns that the agent has changed its address without amending its listing as a commercial registered agent. When the filing office acts to cancel the listing of a commercial registered agent, the filing office is required to notify both (i) the entities represented by the agent that they no longer have a valid registered agent and (ii) the agent that it no longer is listed as a commercial registered agent. Unlike in the case of a resignation under Section 11 which is initiated by the registered agent and thus does not require a notice from the filing office to the agent, notice by the filing office to the agent is needed under this section so that the agent has notice that its representation of the entities it previously represented has terminated.

SECTION 11. RESIGNATION OF REGISTERED AGENT.

(a) A registered agent may resign as agent for a represented entity by delivering to the [Secretary of State] for filing a statement of resignation signed by the agent which states:

- (1) the name of the entity;
- (2) the name of the agent;
- (3) that the agent resigns from serving as registered agent for the entity; and
- (4) the address of the entity to which the agent will send the notice required by subsection (c).

(b) A statement of resignation takes effect on the earlier of:

- (1) 12:01 a.m. on the 31st day after the day on which it is filed by the [Secretary of State]; or

- (2) the designation of a new registered agent for the represented entity.

(c) A registered agent promptly shall furnish to the represented entity notice in a record of the date on which a statement of resignation was filed.

(d) When a statement of resignation takes effect, the person that resigned ceases to have responsibility under this [act] for any matter thereafter tendered to it as agent for the represented entity. The resignation does not affect any contractual rights the entity has against the agent or that the agent has against the entity.

(e) A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

Comment

Resignation under this section may be accomplished solely by action of the registered agent and does not require the cooperation or consent of the represented entity. Whether a resignation violates a contract between the registered agent and the represented entity is beyond the scope of this act and subsection (d) preserves whatever claims a represented entity may have against its registered agent for a wrongful termination. Even if a resignation were to violate such a contract, the resignation would still be effective if the provisions of this section are followed.

Resignation under this section relates only to the entity named in the statement of resignation. Thus, the procedure in this section differs from the procedure in Section 7 which terminates the status of a commercial registered agent as agent for all of the entities represented by it.

The requirements of Section 4 with respect to addresses do not apply to subsection (a)(4) because the registered agent may not have all the required information available.

Subsection (b) delays the effectiveness of a statement of resignation for 31 days to allow the notice of the resignation that must be sent under subsection (c) to reach the represented entity and to allow the represented entity to arrange for a substitute registered agent.

Subsection (e) makes clear that a registered agent may resign with respect to an entity that is not in good standing and supersedes the contrary administrative practice in some states of refusing to accept any filings with respect to an entity that is not in good standing until the problem with the entity's standing is cured.

**SECTION 12. DESIGNATION OF REGISTERED AGENT BY
NONREGISTERED FOREIGN ENTITY OR NONFILING DOMESTIC ENTITY.**

(a) A nonregistered foreign entity or domestic entity that is not a filing entity may deliver to the [Secretary of State] for filing a statement designating a registered agent signed by the entity which states:

- (1) the name, type of entity, and jurisdiction of formation of the entity; and
- (2) the information required by Section 5(a).

(b) A statement under subsection (a) is effective for five years after the date of filing unless canceled or terminated earlier.

(c) A statement under subsection (a) must be signed by a person authorized to manage the affairs of the nonregistered foreign entity or domestic entity that is not a filing entity. The signing of the statement is an affirmation of fact that the person is authorized to manage the affairs of the entity and that the agent has consented to serve.

(d) Designation of a registered agent under subsection (a) does not register a nonregistered foreign entity to do business in this state.

(e) A statement under subsection (a) may not be rejected for filing because the name of the entity signing the statement is not distinguishable on the records of the [Secretary of State] from the name of another entity appearing on those records. The filing of such a statement does

not make the name of the entity signing the statement unavailable for use by another entity.

(f) An entity that delivers to the [Secretary of State] for filing a statement under subsection (a) designating a registered agent may cancel the statement by delivering to the [Secretary of State] for filing a statement of cancellation, which takes effect upon filing and must state the name of the entity and that the entity is canceling its designation of a registered agent in this state.

(g) A statement under subsection (a) for a nonregistered foreign entity terminates on the date the entity becomes a registered foreign entity.

Comment

Filing under this section is elective, and no inference should be drawn from the failure of an entity to make such a filing.

SECTION 13. SERVICE OF PROCESS, NOTICE, OR DEMAND ON ENTITY.

(a) A represented entity may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(b) If a represented entity ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the entity at the entity's principal office. The address of the principal office of a domestic filing entity, domestic limited liability partnership, or registered foreign entity must be as shown in the entity's most recent [annual] [biennial] report filed by the [Secretary of State]. Service is effected under this subsection on the earliest of:

- (1) the date the entity receives the mail or delivery by the commercial delivery service;
- (2) the date shown on the return receipt, if signed by the entity; or
- (3) five days after its deposit with the United States Postal Service or commercial

delivery service, if correctly addressed and with sufficient postage or payment.

(c) If process, notice, or demand cannot be served on an entity pursuant to subsection (a) or (b), service may be made by handing a copy to the individual in charge of any regular place of business or activity of the entity if the individual served is not a plaintiff in the action.

(d) Service of process, notice, or demand on a registered agent must be in a written record, but service may be made on a commercial registered agent in other forms, and subject to such requirements, as the agent has stated in its listing under Section 6 that it will accept.

(e) Service of process, notice, or demand may be made by other means under law other than this [act].

Legislative Note: *It is recommended that provisions similar to subsections (b) through (e) be repealed to the extent they appear in a state's individual entity organic laws. In a state with that statutory scheme, subsections (b) through (e) will be needed to replace the repealed provisions. On the other hand, a state that does not have provisions similar to subsections (b) through (e) in its individual entity organic laws, and instead provides rules for service of process on entities in a statute separate from its entity organic laws or in rules of court, should omit subsections (b) through (e). If subsections (b) through (e) are omitted, conforming changes must be made to Section 10(e).*

Comment

Subsection (b) offers three alternative methods for establishing the date service is effected, a date important for determining the time frame in which an entity must respond to the process, notice, or demand served. Under subsection (b)(1), service is effected on the date or receipt by the entity of the mail or commercial delivery. Under subsection (b)(2), service is effected on the date shown on the return receipt, if signed on behalf of the entity. Under subsection (b)(3), service is effected five days after it is deposited with the Postal Service or with a similar commercial delivery service, if correctly addressed and with correct postage or payment. Service is effective at the earliest of the three listed circumstances. But for the party effecting service there are difficulties of proof under the first two circumstances. Under subsection (b)(1) the exact date of the receipt by the entity of mail or commercial delivery is peculiarly within the knowledge of the entity. Under subsection (b)(2) the return receipt must be signed on behalf of the entity. That requirement is designed to assure that the service is actually received by the entity. The problem is that the signature on the return receipt may not always show unambiguously that the signer was acting for the entity and was authorized to do so. As a practical matter, therefore, parties effecting service under subsection (b) may find it most convenient to rely on subsection (3) and to maintain their own records so that the date of deposit in the mails or with a commercial delivery service can easily be established.

Subsection (c) provides a means for serving process on an entity that cannot be served

under subsection (a) or (b). Some entity organic laws require that service of process in that circumstance be made on the Secretary of State, but that leaves unanswered the question of what the Secretary of State should do with the process. Compare Fed. R.Civ.Proc. 4(h)(1) which permits service to be made on an officer or managing or general agent of an entity.

SECTION 14. DUTIES OF REGISTERED AGENT. The only duties under this [act] of a registered agent that has complied with this [act] are:

(1) to forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand pertaining to the entity which is served on or received by the agent;

(2) to provide the notices required by this [act] to the entity at the address most recently supplied to the agent by the entity;

(3) if the agent is a noncommercial registered agent, to keep current the information required by Section 5(a) in the most recent registered agent filing for the entity; and

(4) if the agent is a commercial registered agent, to keep current the information listed for it under Section 6(a).

Comment

This section is limited to prescribing the duties of a registered agent under this act. An agent may undertake other responsibilities to a represented entity, such as by contract or course of dealing, but those duties will be determined under other law.

SECTION 15. JURISDICTION AND VENUE. The designation or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or a proceeding involving the entity.

Comment

This section makes clear that the address of a registered agent does not determine venue. This section may be inconsistent with other law or procedural rules in a state, and thus existing law on venue should be reviewed when this act is considered for adoption in a state. *Compare Cooper v. Chevron U.S.A., Inc.*, 132 N.M. 382, 49 P.3d 61 (N.M. 2002) (applying New Mexico statute permitting venue “in the county where the statutory agent designated by the foreign

corporation resides”).

SECTION 16. CONSISTENCY OF APPLICATION. In applying and construing this [act], consideration must be given to the need to promote consistency of the law with respect to its subject matter among states that enact it.

Comment

A provision similar to this section is included in each uniform act promulgated by the Conference. Because this act is not a uniform act, however, the usual formulation of this section has been changed from “uniformity” of application to “consistency” of application to promote the same policy while recognizing the different nature of this act.

SECTION 17. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Comment

This section responds to specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

SECTION 18. SAVINGS CLAUSE. This [act] does not affect an action commenced, proceeding brought, or right accrued before [the effective date of this [act]].

SECTION 19. EFFECTIVE DATE. This [act] takes effect . . .