

MEMORANDUM

TO: Model Registered Agents Act
Drafting Committee

FROM: William H. Clark, Jr.

DATE: June 26, 2006

RE: IACA Inspired Revisions to MoRAA

After the May 11, 2006 draft of the Model Registered Agents Act was prepared following the conference call of the drafting committee on March 16, 2006, the Act was discussed at the annual meeting of the International Association of Commercial Administrators (“IACA”). I was able to participate in that discussion along with the IACA Liaisons to the drafting committee. The discussion was very helpful and provided useful input from the people who will be most involved in the implementation of the Act. Following the meeting I prepared the May 30, 2006 draft, which has been distributed to the drafting committee and will be the text considered in Hilton Head. At Terry Care’s request, I have prepared this memo to explain the changes following the IACA meeting.

The most important change is in Section 6 and is described first below. The other changes are more in the nature of clean-up and are summarized following the discussion of Section 6.

Section 6. One of the principal purposes of the Act is to create a centralized system for identifying and tracking registered agents. An agent that is part of the new system will be identified by name in the filings of each entity it represents, along with a statement that the agent is a commercial registered agent (in other words, part of the new system). The new system will allow a registered agent to change its name or address by making a single filing with the Secretary of State instead of making a filing for each entity represented by the agent.

The prior draft of the Act provided a procedure for a registered agent to become part of the new system, but required the agent to make a filing for each represented entity indicating that the registered agent had become part of the new system. The discussion at the IACA meeting identified the possibility of a better approach that will avoid the need for the filings relating to each individual represented entity. The new approach is reflected in Section 6(e) and has two parts:

- Many states have the capability to identified in their computerized databases all of the entities represented by a registered agent. In those states, the individual filings the Act previously required will not be necessary because the filing office can correct the records

for each represented entity. States in this category should adopt the new Section 6(e) that is part of the text of the Act.

- In the case of a state that cannot identify from its database all of an agent's represented entities, a new Legislative Note to Section 6 advises the state to use an alternative form of Section 6(e) which will require an agent making the filing to become a commercial registered agent to include with its filing a list of all of the entities represented by the agent. That list will then be used by the filing office to note the change of status of the agent in the records for each represented entity.

Two other unrelated changes are also made to Section 6:

- New Section 6(b) is a conforming change that ties to Section 13(d).
- New Section 6(c) requires that the names of commercial registered agents be distinguishable on the records of the Secretary of State. This change was suggested at the IACA meeting to avoid confusion among commercial registered agents. The test of being "distinguishable on the records of the Secretary of State" is the same test used in other entity laws to avoid the use of the same name by more than one entity.

Other changes. The other changes in the May 30, 2006 are as follows:

- Section 2(a)(4)(B): The added reference to a "statutory trust" recognizes that the term "business trust" is being replaced by "statutory trust." See, for example, the Uniform Statutory Trust Act that will be considered on first reading in Hilton Head.
- Section 5: The new Legislative Note was suggested at the IACA meeting by some states whose computerized databases are publicly available and updated frequently. Section 5(c) requires a state to make available a daily listing of filings that name a registered agent. The purpose of that provision is to permit a registered agent to check on whether it has been named to represent an entity without the knowledge of the agent. It was pointed out at the IACA meeting that requiring the production of a list of filings naming an agent is an unnecessary step where the information is already accessible by the public.
- Section 9: The changes to this section conform to the new approach adopted in Section 6 as described above.
- Section 10: The changes to this section are intended to be clarifying.
- Section 11(e): The addition of this provision was suggested by some of the registered agents at the IACA meeting. Some states will not accept any filing with respect to an entity while the entity is not in good standing. The obvious purpose of that requirement is to force entities back into good standing; but the consequence is that a registered agent may be prevented from resigning even though the agent has no ability to force the entity to restore its status. New Section 11(e) makes clear that an agent can always resign – even though the represented entity is not in good standing.
- Section 12: New subsections (d) – (f) supply mechanical provisions that were missing from the previous draft.

W.H.C., Jr.