Do You Really Want to be the Registered Agent?

by Stuart L. Pachman

Statutes authorizing artificial entities (corporations and limited liability companies, for example) require the entity to designate a registered agent. The designation of a registered agent: 1) provides the state someone through whom or which it may communicate with the entity, and 2) ensures the state's citizens someone on whom process may be served when the entity is sued.

There are two schools of thought on whether the lawyer forming a closely held entity should act as registered agent. Some believe it maintains a contact between lawyer and client. Also, by being the agent through which process is served, the opportunity to be engaged to defend the actions is enhanced.

On the other hand, as many lawyers have discovered, the client who calls with the emergent need for an entity to be formed immediately will, a day or two later, report that the deal collapsed and the need for an entity has evaporated. Whether or not the lawyer receives the courtesy of the second call, the client has no desire to deal with the fact that the entity was formed or the consequence of the practitioner being the agent shown on the state's records. The same result follows when a client, without informing the lawyer, retires, goes out of business, or for some other reason abandons his or her entity, or changes lawyers. The practitioner continues to receive communications from the state as the agent of an entity that is no longer his or her client. To be removed from the state's records, one must take the steps required by the relevant statute to resign and then hope that the efforts were successful.

Worse than these annoyances is the risk of personal liability. In *Int'l Envtl. Mgmt., Inc. v. United Corp. Servs., Inc.*,[1] a large multi-state corporation changed its registered agent, or at least thought it did, as did both the old and new agent. Things went awry, however. The document intended to effect the change in Missouri was misfiled, resulting in the agent originally named remaining of record as the corporation's registered agent in that state. When process was served on it sometime later, delivery to the corporation somehow failed. Much later, the corporation learned that a substantial default judgment had been taken against it, which it paid when relief from the judgment was denied by the court.

The corporation sued both its original agent and the one it believed had been named as successor. The latter settled. The former moved to dismiss and was successful in the trial court, but in a split decision the court of appeals reversed. The majority held that the agent shown on Missouri's records had a continuing duty to the corporation notwithstanding the fact that the corporation had informed it that the corporation was changing registered agents.

The disadvantages of serving as registered agent can be avoided by naming the individual client (or a service company) as such. Nonetheless, when a good client asks one to serve in that capacity, it remains pragmatic to do so. ■

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Endnote

1. 858 F.3d 1121 (8th Cir. 2017).