SPONSOR: Rep. M. Smith & Sen. Townsend
Rep. Wilson; Sen. Delcollo

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 404
AS AMENDED BY
HOUSE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLES 6 AND 8 OF THE DELAWARE CODE RELATING TO REQUIREMENTS FOR REGISTERED AGENTS WITH RESPECT TO ENTITIES AND ENTITY FILINGS WITH THE DEPARTMENT OF STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 132, Title 8 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 132. Registered agent in State; resident agent.

(b) Every registered agent for a domestic corporation or a foreign corporation shall:

(3) Accept service of process and other communications directed to the corporations for which it serves as registered agent and forward same to the corporation to which the service or communication is directed; ~~and~~

(4) Forward to the corporations for which it serves as registered agent the annual report required by § 502 of this title or an electronic notification of same in a form satisfactory to the Secretary of State ("Secretary")~~.~~;and

(5) Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the registered agent maintains a record for the reduction of risk of unlawful business purposes.

(c) Any registered agent who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications.

(1) A natural person serving as a commercial registered agent shall:

c. Be generally present at a designated location within this State during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (b) of this section; ~~and~~

d. Provide the Secretary upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary shall require; and

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e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the natural person maintains a record for the reduction of risk of unlawful business purposes.

(2) A domestic or foreign corporation, a domestic or foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

c. Have generally present at such office during normal business hours an officer, director or managing agent who is a natural person; ~~and~~

d. Provide the Secretary upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary shall require. ~~.~~;and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which it maintains a record for the reduction of risk of unlawful business purposes.

(d) Every corporation formed under the laws of this State or qualified to do business in this State shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is an officer, director, employee, or designated agent of the corporation, who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the corporation. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each corporation for which he, she or it serves as a registered agent. If the corporation fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such corporation pursuant to § 136 of this title.

(e) The Secretary is fully authorized to issue such ~~rules and regulations~~ regulations, as may be necessary or appropriate to carry out the enforcement of subsections (b), (c) and (d) of this section, and to take actions reasonable and necessary to assure registered agents' compliance with subsections (b), (c) and (d) of this section. Such actions may include refusal to file documents submitted by a registered agent~~.~~, including the refusal to file any documents regarding an entity's formation.

Section 2. Amend § 15-111, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) Every registered agent shall:

(3) Accept service of process and other communications directed to the partnerships for which it serves as registered agent and forward same to the partnership to which the service or communication is directed; ~~and~~

(4) Forward to the partnerships for which it serves as registered agent the statement for the annual tax described in § 15-1208 of this title or an electronic notification of same in a form satisfactory to the Secretary of State~~.~~; and

(5) Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the registered agent maintains a record for the reduction of risk of unlawful business purposes.

(f) Any registered agent who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications.

(1) A natural person serving as a commercial registered agent shall:

c. Be generally present at a designated location within the State of Delaware during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section; ~~and~~

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require~~.~~; and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the natural person maintains a record for the reduction of risk of unlawful business purposes.

(2) A domestic or foreign corporation, a domestic or foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

c. Have generally present at such office during normal business hours an officer, director or managing agent who is a natural person; ~~and~~

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require~~.~~; and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which it maintains a record for the reduction of risk of unlawful business purposes.

(g) Every partnership formed under the laws of the State of Delaware or qualified to do business in the State of Delaware that has and maintains a registered agent pursuant to this section shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is a partner, officer, employee or designated agent of the partnership, who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the partnership. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each partnership for which he, she, or it serves as registered agent. If the partnership fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such partnership pursuant to this section.

(h) The Secretary of State is fully authorized to issue such ~~rules and regulations~~ regulations, as may be necessary or appropriate to carry out the enforcement of subsections (e), (f) and (g) of this section, and to take actions reasonable and necessary to assure registered agents' compliance with subsections (e), (f) and (g) of this section. Such actions may include refusal to file documents submitted by a registered agent~~.~~, including the refusal to file any documents regarding an entity's formation.

Section 3. Amend § 17-104, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) Every registered agent shall:

(3) Accept service of process and other communications directed to the limited partnerships and foreign limited partnerships for which it serves as registered agent and forward same to the limited partnership or foreign limited partnership to which the service or communication is directed; ~~and~~

(4) Forward to the limited partnerships and foreign limited partnerships for which it serves as registered agent the statement for the annual tax described in § 17-1109 of this title or an electronic notification of same in a form satisfactory to the Secretary of State~~.~~; and

(5) Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the registered agent maintains a record for the reduction of risk of unlawful business purposes.

(f) Any registered agent, who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications.

(1) A natural person serving as a commercial registered agent shall:

c. Be generally present at a designated location within the State of Delaware during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section; ~~and~~

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require~~.~~; and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the natural person maintains a record for the reduction of risk of unlawful business purposes.

(2) A domestic or foreign corporation, a domestic or foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

c. Have generally present at such office during normal business hours an officer, director or managing agent who is a natural person; ~~and~~

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require~~.~~; and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which it maintains a record for the reduction of risk of unlawful business purposes.

(g) Every domestic limited partnership and every foreign limited partnership qualified to do business in the State of Delaware shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is a partner, officer, employee, or designated agent of the domestic or foreign limited partnership who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the domestic or foreign limited partnership. A domestic limited partnership, upon receipt of a request by the communications contact delivered in writing or by electronic transmission, shall provide the communications contact with the name, business address, and business telephone number of a natural person who has access to the record required to be maintained pursuant to § 17-305(g) of this title. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each domestic limited partnership and each foreign limited partnership for which he, she, or it serves as registered agent. If the domestic or foreign limited partnership fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such domestic or foreign limited partnership pursuant to this section. For purposes of this

subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

(h) The Secretary of State is fully authorized to issue such ~~rules and regulations~~ regulations, as may be necessary or appropriate to carry out the enforcement of subsections (e), (f) and (g) of this section, and to take actions reasonable and necessary to assure registered agents' compliance with subsections (e), (f) and (g) of this section. Such actions may include refusal to file documents submitted by a registered agent~~.~~, including the refusal to file any documents regarding an entity's formation.

Section 4. Amend § 18-104, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) Every registered agent shall:

(3) Accept service of process and other communications directed to the limited liability companies and foreign limited liability companies for which it serves as registered agent and forward same to the limited liability company or foreign limited liability company to which the service or communication is directed; ~~and~~

(4) Forward to the limited liability companies and foreign limited liability companies for which it serves as registered agent the statement for the annual tax described in § 18-1107 of this title or an electronic notification of same in a form satisfactory to the Secretary of State~~.~~; and

(5) Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the registered agent maintains a record for the reduction of risk of unlawful business purposes.

(f) Any registered agent who at any time serves as registered agent for more than 50 entities (a "commercial registered agent"), whether domestic or foreign, shall satisfy and comply with the following qualifications:

(1) A natural person serving as a commercial registered agent shall:

c. Be generally present at a designated location within the State of Delaware during normal business hours to accept service of process and otherwise perform the functions of a registered agent as specified in subsection (e) of this section; ~~and~~

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require~~.~~; and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which the natural person maintains a record for the reduction of risk of unlawful business purposes.

(2) A domestic or foreign corporation, a domestic or foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a domestic or foreign limited liability company, or a domestic or foreign statutory trust serving as a commercial registered agent shall:

c. Have generally present at such office during normal business hours an officer, director or managing agent who is a natural person; ~~and~~

d. Provide the Secretary of State upon request with such information identifying and enabling communication with such commercial registered agent as the Secretary of State shall require.~~;~~ ; and

e. Satisfy and adhere to regulations established by the Secretary regarding the verification of both the identity of the entity's contacts and individuals for which it maintains a record for the reduction of risk of unlawful business purposes.

(g) Every domestic limited liability company and every foreign limited liability company qualified to do business in the State of Delaware shall provide to its registered agent and update from time to time as necessary the name, business address and business telephone number of a natural person who is a member, manager, officer, employee or designated agent of the domestic or foreign limited liability company who is then authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the domestic or foreign limited liability company. A domestic limited liability company, upon receipt of a request by the communications contact delivered in writing or by electronic transmission, shall provide the communications contact with the name, business address and business telephone number of a natural person who has access to the record required to be maintained pursuant to § 18-305(h) of this title. Every registered agent shall retain (in paper or electronic form) the above information concerning the current communications contact for each domestic limited liability company and each foreign limited liability company for which that registered agent serves as registered agent. If the domestic or foreign limited liability company fails to provide the registered agent with a current communications contact, the registered agent may resign as the registered agent for such domestic or foreign limited liability company pursuant to this section. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

(h) The Secretary of State is fully authorized to issue such ~~rules and regulations~~ regulations, as may be necessary or appropriate to carry out the enforcement of subsections (e), (f) and (g) of this section, and to take actions reasonable and necessary to assure registered agents' compliance with subsections (e), (f) and (g) of this section. Such actions may include refusal to file documents submitted by a registered agent~~.~~, including the refusal to file any documents regarding an entity's formation.