

Understanding the Role of Registered Agents

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Q: I have been asked to serve as my association's registered agent. Can you tell me more about the role and what I would be expected to do?

A: Generally, a registered agent is an individual or corporation appointed to serve as the association's representative with respect to routine matters in a designated state. Who qualifies to serve as a registered agent and the extent of the agent's duties are determined by the corporate laws of the state in which the agent is appointed.

Qualifications

A registered agent may be an individual residing in the state, or it may be a legal entity, such as a corporation, limited liability company or limited partnership, organized for the purpose of providing business services, usually for a fee. In most jurisdictions, including Illinois, the association itself cannot serve as the agent. Generally, registered agents must have a valid, physical street address. That address serves as the association's registered office. A post office box usually is not sufficient.

In most states, an association designates its first registered agent on its articles of incorporation. An association incorporated in one state but having its headquarters in another must appoint a registered agent in both states. The agent will be named in the articles in the state of incorporation and on an appli-

cation to conduct affairs as a foreign corporation in the headquarters state.

Responsibilities

The principal responsibilities of a registered agent are to accept and forward to the association: (i) official correspondence received from the Secretary of State (e.g., annual reports); (ii) subpoenas or service of process served on the association in any legal action; and (iii) any tax notices sent by the local, state or federal government. In addition, several state nonprofit laws require corporations to make a registered agent available for a period of time, sometimes two years or more, after the association leaves the state or is dissolved. The requirement relates generally to the state's interest in ensuring that someone will be available to receive and forward service of process or otherwise wrap up the association's business in the state after it leaves.

Changes

It is important that those serving as registered agents understand the circumstances under which they are required to initiate communication with the Secretary of State. For example, an agent typically must notify the Secretary of State of any office move. Although the specific requirements vary from one jurisdiction to another, agents usually are required to file a change of address form whenever they move to a new office within the state. While com-

pleting the form is a simple and inexpensive exercise, it is nonetheless a critical one. Because one of the principal functions of the agent is to provide an address on which the public can rely for legal service of process, the agent is responsible for keeping that address up to date. Thus, the Secretary of State will not forward mail addressed to an agent or otherwise attempt to track the agent down.

When a registered agent does not receive an annual report form from the Secretary of State, the agent and the association are much more likely to forget about, and therefore fail to complete, the association's annual report. Failure to file a single annual report can lead a state authority to administratively dissolve the association. Depending on the jurisdiction, reinstatement at a later date (presumably when the association recognizes that the dissolution has occurred) may or may not be possible. Even when it is allowed, the process can be costly and time-consuming.

If an agent moves out of state or the association wants to appoint someone new, the association must file a change of registered agent form with the Secretary of State. On occasion, an agent himself will want to resign for personal or professional reasons. In that event, the agent usually has a responsibility to notify not only the Secretary of State, but also the association, of that decision. In Illinois, for example, an agent wishing to resign must file a

notice of resignation with the Secretary of State and send a copy to the association's principal place of business. The copy must be mailed at least 10 days prior to the date of the Secretary of State filing. In addition, the notice must acknowledge, and the agent must understand, that the effective date of the resignation will be no less than 30 days after the date of the Secretary of State filing.

Although the duties of a registered agent are straightforward, they cannot be neglected. Thus, it is important that both an association and its agent understand an agent's role, and the association should only appoint an individual or business it can trust to assume the responsibility. **■**

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.