HAND OUT #6

DELBERT HOSEMANN
Secretary of State

2009 Business Reform Committees
Minutes of the Model Registered Agents Act Study Group, Meeting # 1
June 23, 2009

The first meeting of the Model Registered Agents Act Study Group was called to order on Tuesday, June 23, 2009 at 11:00 A.M. at the Secretary of State's Office, 700 North Street, Jackson, Mississippi. A list of the persons who were present is attached at Exhibit A.

Introduction

Cheryn Baker, Assistant Secretary of State, Policy and Research Division ("the Division"), welcomed everyone to the meeting and described the purpose of the study group.

Opening Remarks

Gina Jacobs, Study Group Chair, remarked that the Division had conducted additional research since the Group's last meeting, and had prepared a survey of states which had enacted the Model Registered Agents Act ("MoRAA" or the "Act").

Presentation

Ms. Baker presented the background and substance of MoRAA. She stated that adopting the Act would achieve several goals: it would create a consistent standard defining which types of entities may serve as registered agents for service of process; reduce paperwork for businesses, registered agents and the state; and improve the accuracy of the Secretary of State's database of registered agents. Ms. Baker also stressed that MoRAA does not hold commercial and noncommercial agents to different standards of care. She also stated that under MoRAA, business entities would still need to obtain the consent of a registered agent before designating it as such, but that businesses would no longer need to provide the Secretary of State's Office a written consent form from the registered agent.

Ms. Baker noted that the Division had contacted the secretaries of state in seven of the nine states that have adopted MoRAA to get their input on how adopting the Act had affected their operations. Ms. Baker reported that all of the contacted states reported that adopting MoRAA had made registered agent filings significantly easier and improved their systems overall. She also pointed out that the adoption of MoRAA had enabled at least one state to move to an online filing system. No state reported any significant complaints.

Discussion

Effect of MoRAA on Secretary of State as Default Agent for Service of Process. Tom Riley, Assistant Secretary of State for Business Services, asked how MoRAA would affect service of process upon the Secretary of State as default agent for service of process. Ms. Baker responded that MoRAA would permit service of process on other parties who have a governing interest in a business entity, but would not eliminate the law that permits the Secretary of State's Office to receive process on behalf of businesses. She referenced a chart prepared by the Division showing how various business entities may be served under current state law (see MoRAA Materials Section 5 – Comparison Chart: Methods for Service of Process on Business Entities under Mississippi Law). Chairman Jacobs clarified that MoRAA would affect only the state's business entity laws and not the numerous miscellaneous provisions providing for the Secretary of State to serve as default agent for service of process (see MoRAA Materials Section 6 – Statutes Providing for Secretary of State as Default Agent for Service of Process). Ms. Jacobs suggested that the Study Group consider adding language to MoRAA to make this clear.

MoRAA Requirements and Concerns. The Group discussed the MoRAA provision which provides for the Secretary of State to make available a "fourteen-day list" of new designations of registered agents. Several members expressed their support for such a list. In response to concerns about firms being designated as registered agents without their knowledge, Ms. Baker stated that MoRAA requires business entities to affirm under penalty of law that they have obtained the agent's consent before designating it as their agent. Ms. Baker further added that the Group would be free to suggest what these penalties should be. Another member asked why business entities are not required under MoRAA to obtain the registered agent's written consent. Ms. Baker responded that overall, the elimination of that requirement makes the filing process easier on businesses, registered agents and the state, and that one of the surveyed states specifically mentioned that eliminating the written consent requirement had permitted them to adopt an online filing system. Ms. Jacobs suggested that the Group consider a compromise requiring business entities to obtain and keep on file a signed consent form from their registered agent.

Registered Agent's Address and Venue. Doug Jennings, Senior Attorney for the Division, delivered a presentation concerning the effect under current law and under MoRAA of a registered agent's address upon venue in litigation filed against the represented entity under MoRAA. Under Mississippi's current Chancery Court venue statute, it is unclear whether venue is appropriate in the county where the registered agent is located with respect to a non-resident corporation defendant which has no principal place of business within the state. Professor Jeffrey Jackson from the Mississippi College School of Law would address this issue in depth at the next meeting. Ms. Jacobs stated that it was her interpretation that MoRAA would preclude the placing of venue solely on the basis of a registered agent's address. The Group agreed that this was the best approach, and that adopting MoRAA would put to rest any confusion regarding the relationship between venue and the location of a registered agent's office.

Commercial and Noncommercial Agents. One member noted that a major advantage for commercial registered agents under MoRAA was that they can change their address on file with

the Secretary of State by submitting a single form. In contrast, noncommercial registered agents would be required to make a separate change-of-address filing for each business they represent. One member expressed concern with publishing the names of all commercial agents on the website, noting that some commercial agents might not want to be listed publicly. Another member suggested adding an opt-out provision for entities registered as commercial agents but who did not want to be included on the Secretary of State's website. Ms. Baker noted that MoRAA was actually silent on these issues but that the Group may recommend how or whether the names of the commercial agents should be made available or publicized to the public. She noted that the names of commercial agents are listed on the websites in some states, but are not listed in other states.

Discussion of Proposed Mississippi Act

Mrs. Baker referred to the proposed Mississippi Model Registered Agents Act (the "MS Act") that was included in the materials. The proposed MS Act prepared by the Division includes two non-uniform provisions of note. She stated that a MoRAA provision permitting an entity to designate a position as an agent rather than a person was inserted by the American Bar Association. This provision is not included in the MS Act because it was unnecessary to achieve the goals of MoRAA and had the potential to unnecessarily complicate filing procedures. Another provision has been deleted that requires commercial agents to state in the listing statement that they are in the business of acting as a commercial agent due to the possibility that this affirmation could be incorrectly construed as holding commercial agents to a higher duty of care than noncommercial agents.

Reminders about Upcoming Meetings and Other Business

Ms. Baker reminded everyone of the two meetings scheduled for August 11th and September 8th, and that Professor Jackson would address the venue issue at the August 11th meeting. She asked that the members review the proposed MS Act as well as the conforming amendments and bring any suggested changes to the next meeting. She reminded the Group that it would be making a final recommendation for adoption of the Mississippi Model Registered Agents Act at the final meeting on September 8.

With no further business to discuss the meeting was adjourned at 12:25 P.M.

Respectfully Submitted,

Cheryn Baker
Assistant Secretary of State
Policy and Research Division

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EXHIBIT A

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In Attendance:

1. Gina Jacobs (Chair)
2. William Noblin
3. Caryn Quilter
4. Virginia Weaver
5. Tom Riley, Assistant Secretary of State, Business Services

Secretary of State's Staff:

1. Cory Wilson, Chief of State, Mississippi Secretary of State
2. Cheryn Baker, Assistant Secretary of State, Policy and Research
3. Doug Jennings, Senior Attorney, Policy and Research
4. Phillips Strickland, Division Coordinator, Policy and Research
5. Michael Kelly, Legal Intern, Policy and Research
6. Steven Corhern, Legal Intern, Policy and Research

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