



How a Secretary of State Can Facilitate Service of Process

One of the most valuable services the Secretary of State can offer its individual and business entity citizens is providing, on its website, the name and address of the registered agent appointed by its domestic and qualified foreign business entities.

A registered agent is required to be appointed by nearly every state business corporation, nonprofit corporation, LLC, LP, LLP, and other statutory business entity law. A registered agent is an individual or company authorized by the business entity to receive service of process and other legal documents or official communications on the entity's behalf.

Appointing a registered agent is required so often because: (a) it makes it easier for a state's citizens to serve important documents on business entities, as they can serve the registered agent instead of searching for an in-state officer, manager, or other individual authorized to receive documents on the entity's behalf; (b) it benefits the state's business entities by helping ensure important, time-sensitive legal documents quickly get into the hands of an individual who can respond; and (c) it benefits the state's courts by not clogging their dockets with litigation over whether an individual served was authorized to accept legal documents.

However, none of those benefits can be realized if the individuals searching for the name and address of the registered agent on the secretary of state's website don't understand what a registered agent is or does. Many people looking to deliver legal or official documents are told to "send them to the registered agent", but are not told that a registered agent's sole role is to receive and forward service of process. Perhaps confused by the word "agent", they may believe that the registered agent is part of the entity that they actually need to respond to.

It is common for serving parties, whether they are pro se plaintiffs, attorneys, government agency officials, law enforcement officers, or others, to incorrectly name the registered agent as the defendant in a summons, or as the employer in a garnishment order, or as the party to provide records in a subpoena, or even as the party being cited for a code violation that the registered agent has no involvement in. This is particularly the case where the registered agent is another entity, such as a commercial or professional registered agent.

One likely reason for this is that those serving parties do not understand that a registered agent is a vendor and that the party they really need to name is the registered agent's customer. Documents incorrectly naming the registered agent, or not naming any entity to which the registered agent should forward the process being served, at best delay business entities from receiving proper notice, and in some cases result in costly, time-consuming court battles over the validity of service of process.

So what can be done to avoid this problem? We believe a useful first step is to educate the public as to what a registered agent is – and is not. Particularly that a commercial or professional registered agent is a third-party vendor. How can Secretaries of State contribute to this effort? By including, on their websites where the search for a registered agent is conducted, a brief explanation of the role of the registered agent. For example:



“If you are searching for a corporation, LLC, or other business entity’s registered agent, please note that the registered agent’s sole responsibility under our state’s law is to receive and forward service of process or other legal documents to the corporation, LLC, or other business entity for which it was appointed as registered agent. The documents you serve (for example a summons and complaint, garnishment order, or subpoena) should name the relevant company as the defendant, garnishee, or subpoena subject, not their registered agent. They should also be addressed to the company you are serving care/of (c/o) the registered agent at the registered agent’s address. Please note that this is not intended as legal advice and that if you have any questions about these issues you should seek counsel from an attorney.”

That simple message can help your state’s individual and business entity citizens avoid the many harms that can result from service of process errors.