

Issues & Insights

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Do You Know Your Registered Agent as Well as You Should?

Designating a registered agent is essential to managing your company's risks. In fact, the law has recognized an agent as a person (or company) authorized to represent or act for another.¹ Given the nature and scope of the authority vested in a registered agent, clients should ensure that they are measuring their relationship with any agent against the highest standard of trust and care.

Effective registered agents receive, forward, and present legal documents to clients as seamlessly as if the agents were your own employees. In addition to this statutory duty, registered agents should also be in a position to help manage a range of compliance, governance, litigation, and legal support demands.

However, when companies don't know their registered agent as well as they should, unexpected liability can result. Potential risks might range from late delivery of important legal or tax compliance documents to runaway default judgments like the eye-popping, billion-dollar-plus judgment in the recent PepsiCo case described below. Fortunately, you can avoid all these problems by evaluating your new or current registered agent according to objective criteria.

THE HIGH COSTS OF SERVICE OF PROCESS

As illustrated by a recent court case involving PepsiCo, it is critical for both the company and its registered agent to ensure that they are managing service of process effectively to avoid costly problems. The PepsiCo situation, which unfolded over more than a year, began like many other legal actions: with the filing of a lawsuit against PepsiCo alleging violations of trade secrets. As is often the case, the plaintiffs claimed they served the lawsuit on PepsiCo's registered agent.

¹Black's Law Dictionary, 7th Edition, (West, 1999)

Over the course of a number of events, a response to the lawsuit was not filed in time. As a result, the judge issued a \$1.26 billion dollar default judgment against PepsiCo, forcing the company to seek to vacate the award.

In addition to dealing with negative publicity, companies that incur this type of default judgment encounter other hidden costs. Even if they are successful in convincing the court to vacate the judgment, companies must spend time and money to try to fix the situation on an expedited basis. For this reason, your registered agent should have a time-tested process that alerts you when litigation is received and delivers legal documents electronically to a secure online system. This helps to ensure that your in-house legal team or assigned outside counsel can review the documents, act quickly, and potentially prevent these problems altogether.

THREE STAGES OF BAD NEWS WHEN DOCUMENTS GO ASTRAY

When legal documents go astray, the bad news spins outward from the legal department in three stages. Each stage is worse than the one that preceded it. It's a legal department's worst nightmare.

Stage One: The unwanted fire drill.

When documents are not presented in a timely manner or even go missing, legal department productivity suffers when employees are diverted into searching for files and papers. Staff members waste time and experience anxiety when dealing with last-minute fire drills to get things back on track. Even if the document

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turns up in time for a rushed response, the costs are measurable in more than dollars.

Stage Two: A preventable and costly legal crisis.

Once it becomes clear that deadlines have passed, the fire drill can quickly escalate into a legal crisis. Companies must apply for extensions and hire outside counsel more quickly than usual. Even worse, if the plaintiff has filed for a default judgment, the company is immediately put on the defensive and must explain to the court or governing body why it was unable to respond before the case even started. This takes time and money, in addition to the usual expenses required to defend the case. The cost of operating under tight timeframes can compromise positions, with a company scrambling to defend itself on procedural grounds from the start.

Stage Three: A loss of confidence.

When legal processes fail, a loss in confidence may

rise up through the corporation. In the unfortunate event that a company does not receive timely service of process and fails to defend itself by responding to the lawsuit, the plaintiffs will likely file for a default judgment (which the court will probably grant). It's possible to fight a default judgment by asking the court to vacate, or remove, the judgment. However, there is no guarantee this will succeed. In this stage, the company's legal department loses the opportunity to develop a carefully considered response to the litigation. High-profile lawsuits generate the wrong kind of publicity: the kind that negatively affects the company, its stock price, and, most importantly, its reputation. Smaller private companies can suffer the same fate or even become saddled with a judgment that is financially disastrous.

Each of these three stages distracts the company from focusing on the strategic aspects of running its business and diverts the law department from its work in minimizing risks to the corporation. It's far better to employ a registered agent who can help you prevent these problems.

GUIDELINES FOR CHOOSING THE RIGHT REGISTERED AGENT

You don't want to suffer through these three stages. That's why it's important to avoid the following mistakes:

Mistake: Splitting representation among different registered agents or designating an agent that lacks a unified national team, integrated system, and proven technology platform

Why to Avoid: Because different agents or offices may have different processes and systems, you may not receive your legal documents in a consistent format or timeframe.

Mistake: Relying on paper delivery of documents

Why to Avoid: Paper is costly to handle, easy to lose, and difficult to track. In contrast, electronic delivery integrated with a litigation management system avoids these issues and can also incorporate automated e-mail reminders to help you meet deadlines.

Mistake: Buying registered agent services based solely on price

Why to Avoid: Based on legal time and expense alone, a single mistake by an inadequate registered agent can cost much more than the registered agent's fees. Mistakes may also impact your company's stock price and reputation.

Mistake: Failing to conduct extensive due diligence

Why to Avoid: It's easy for a registered agent to showcase impressive-looking marketing materials that aren't backed by high-quality service. Look behind the glitz at their expertise, experience, and technology.

Are you ready to prevent the kinds of problems that can result from these mistakes? Resolve to re-examine your choice of registered agent today. Begin by familiarizing yourself with your current registered agent and the services they perform for you.

For more information about Corporation Service Company and our suite of litigation management and compliance and governance services, including registered agent representation, please contact us at 888.253.3731.

