

ESSENTIAL
COMPLIANCE
INSIGHTS

Your Registered Agent: Compliance Partner and First Line of Defense Against Risk

By Garth B. Jacobson

YOUR REGISTERED AGENT: COMPLIANCE PARTNER AND FIRST LINE OF DEFENSE AGAINST RISK

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The requirements that govern business entity compliance at the state level are varied and complex. In companies with multiple entities in multiple jurisdictions, the busy corporate legal department is hard-pressed to both monitor all requirements and efficiently comply with them.

The solution is to rely on an experienced, full service commercial registered agent. A commercial registered agent is an entity that represents multiple entities, as defined in the Model Registered Agents Act. A commercial registered agent is the most qualified party to provide compliance protection, governance assistance and help your department streamline litigation preparations. An experienced registered agent is uniquely positioned to minimize your exposure to risk by proactively combining two vital areas of knowledge: knowledge of your entity structure, and knowledge of each jurisdiction's compliance requirements.

Thus, contrary to common perceptions, selecting a commercial registered agent is an important decision with long-term consequences. Your chief screening criteria should be their qualifications for expertly managing your compliance activities. This white paper offers useful tips and guidance for becoming an informed purchaser of commercial registered agent services.

If you're responsible for protecting your company against the many risks of non-compliance, you should read this whitepaper. These risks can include losing the right to conduct business by falling out of good standing or not having the right licenses, and default judgments for failing to respond to service of process in a timely manner.

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› AVOIDING RISK WITH A REGISTERED AGENT SERVICE

Almost all jurisdictions require the appointment of a registered agent to satisfy their entity registration requirements. Registered agents, also known as statutory or resident agents, are commonly perceived as a representative that receives and forwards service of process and official state notices. While the appointment itself is fairly simple and straightforward, the simplicity of this task can conceal the important issues at stake when selecting a commercial registered agent—as noted previously, an entity that represents multiple entities.

The commercial registered agent can and should perform other vital roles in assisting with regulatory compliance.

- › First, they should help businesses avoid default judgments by facilitating a rapid response to service of process.
- › Second, they should manage required compliance filings and licenses thereby helping businesses maintain their legal right to do business in the states in which they are duly organized or qualified.
- › Third, the commercial agent should proactively warn businesses about legislative updates and other communications from the jurisdictions that may impact the conduct of business.

› WHAT'S AT STAKE

As noted above, state business entity requirements are complex—some legal professionals have even described them as convoluted and obscure. The twist on the old adage, “what you don’t know can hurt you,” is especially pertinent in the area of compliance.

1. Reliable and Efficient Handling of Service of Process

The consequences of default judgments can be severe and costly. A default judgment means that the party suing the business has won its case without the business filing a defense. A business will have to spend a great deal of money, time and effort in legal fees to have the default judgment overturned. The business may also be responsible to pay the claims made against it.

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2. Maintaining Good Standing

A business loses its entity status or its authority to conduct business in a state when it fails to make required filings such as annual report or franchise tax filings. When the business is no longer authorized to conduct business or is involuntarily dissolved, restrictions are serious. These include losing the abilities to initiate lawsuits, to enforce contracts and to secure financial loans in that jurisdiction. Reinstating an entity's good standing is also a costly and time-consuming process.

Each state mandates its own unique requirements for staying compliant with its laws. Companies doing business in multiple states can quickly be overwhelmed with the complexity of learning how different states calculate their filing due dates, as well as tracking all these dates. Corporations, limited liability companies, nonprofit corporations, limited partnerships and limited liability partnerships can have additional requirements for state filings, liabilities, operational requirements and taxation status.

3. Maintaining Uninterrupted Business Operations

State business laws and regulations can, and often do change, frequently.

However, even large national businesses have been reluctant—or simply unable—to incur the high costs of maintaining a legal staff to routinely track legislative updates and assess their impact on the business.

More typically, communications from the states go to different departments within the organization, such as legal, tax and audit. Without a central organization, businesses can be out of compliance in a jurisdiction without knowing about it. The consequences can be disruptions to business operations at best, to criminal liabilities in some jurisdictions at worst.

The Logical Solution: A Commercial Registered Agent

First, the complex obligations of compliance demand a specialized partner who has deep knowledge of jurisdictional requirements and is able to constantly stay on top of changes. Most in-house legal departments find that outsourcing to a dedicated, specialized registered agent service efficiently removes the burdens of compliance from them.

Second, once engaged, your registered agent is in a uniquely advantageous position to mitigate risk. Your registered agent becomes thoroughly familiar with

Risks of Non-compliance

Lapses in service of process

- Can lead to default judgements

Loss of good standing

- Missed filing deadlines, such as annual report or franchise taxes, can lead to loss of entity status or authority to conduct business

Interrupted business operations

- Lack of jurisdictional compliance can lead to disruptions to business operations and possible criminal liabilities

your entity structure. The best registered agent combines this knowledge with their knowledge of jurisdictional requirements to proactively help you manage compliance.

Thus, many forward-thinking in-house legal teams discover significant benefits when they strategically select a registered agent to be their true compliance partner. Here are some points that these savvy legal teams have learned about what it takes for a commercial registered agent to be fully qualified to minimize risk.

› **MAKING THE CHOICE: QUESTIONS TO ASK**

The field of available choices ranges from full-service national providers to small formation vendors who also market themselves as registered agents. To accurately assess the agent's capabilities, it's necessary to "[look under the hood](#)." Fulfilling the complete duties of a commercial registered agent requires advanced, robust compliance capabilities to protect your company against traps and pitfalls. Asking the following questions will reveal the registered agent's capabilities, infrastructure, adherence to quality standards, and commitment to customer-centered values:

1. Does the agent have the right resources deployed in the right places?

The ability to be responsive to a range of compliance situations requires an experienced, highly competent workforce that's physically located near the jurisdictions where customers do business, whether it's one state or all fifty. This helps ensure that the work is personally being handled by service representatives who are experienced with the local requirements and nuances of doing business, and who have long-term relationships with the staff of the Secretaries of State and other local officials.

2. Is the agent an expert in navigating the complex laws and nuances of each individual state jurisdiction?

Organizational indicators of an agent's expertise include the service personnel's cumulative years of experience. Their ongoing experience should also include internally certified training and testing. This documented expertise in managing risk provides a measure of assurance that customers' compliance issues will be

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handled accurately. It also removes the burden from customers of needing to know every detail themselves. Even businesses with local or regional geographic operations will benefit from a registered agent with high levels of expertise.

3. What is the agent's track record for accuracy and timeliness?

Matters such as managing service of process and legal filings require absolute accuracy and timeliness. A registered agent that is SOC 1 Type II compliant can provide customers with documented adherence to quality standards. This is an indicator that compliance tasks will be completed accurately, reliably and consistently.

4. How responsive can the agent be to urgent, complex or unexpected situations?

This is a crucial area where these factors come together—relationships, experience and processes. A competent registered agent's performance should be virtually invisible to a client on a day-to-day basis. It's the urgent or crisis situations that differentiate a responsive, expert registered agent. This experience will eliminate concerns that a company's legal right to do business could be in jeopardy during critical times.

5. Is the agent proactively looking after the interests of your business?

A commercial registered agent should have a dedicated legal staff who monitors new legislation as it is happening, on your behalf. The agent should have processes in place to interpret and immediately alert customers to the nature of the changes, the key points and actions to be taken. An expert commercial registered agent will even lobby government agencies on behalf of their entire client base for pro-business legislation.

6. Is the agent aware of the latest changes with anti-money laundering legislation and rules?

A commercial registered agent must comply with both the state and federal anti-money laundering (ALM) and economic sanctions legislation and rules.

What to Look for When Choosing a Registered Agent



Competent workforce
deployed in the right places



Expertise in navigating
individual state jurisdictions



Track record for accuracy
and deadlines



Responsiveness to urgent
or unexpected situations



Proactively monitors
new legislation on
behalf of your business



Up-to-date on latest
anti-money laundering
legislation and rules



Reduces your time spent
managing compliance

For example, the concern that terrorist organizations and other criminal enterprises conceal their identities behind business entities such as corporations, and in particular, LLCs, has spurred initiatives to make business entities more transparent and to give law enforcement easier access to beneficial ownership [records](#).

Likewise, the agent should conduct risk assessments to ensure compliance with these programs. Failure to comply with these requirements could harm not only the registered agent but also its clients.

7. Does the agent reduce the time you personally need to spend on managing compliance?

A commercial registered agent's expertise should be apparent in both its people and in intelligent Web-based tools. This combination empowers customers to manage their compliance work with greater speed and quality. This frees the legal team to focus on strategic legal issues, rather than on the tactical necessities of compliance.

Following are three representative scenarios that illustrate how these qualifications can make the crucial difference in minimizing the complex risks you face.

› SCENARIO 1: PEOPLE MAKE THE DIFFERENCE

Time is of the essence when managing multi-jurisdiction case concerns. Large business entities face litigation in many jurisdictions and must defend against everything from torts and contract disputes to intellectual property and antitrust matters. Complex litigation requires directing the matter to the proper inside or outside counsel. Generally, the answer or response must be filed within 20 days of the receipt of service. Therefore, it is essential for the attorney handling the case to receive the matter immediately. The defense team must start the process of planning the response and initiating discovery. Notice must be given to the IT people and individuals involved with the case to not destroy e-mail or otherwise violate discovery requirements.

In this scenario, the commercial registered agent's people and staffing configuration are important variables in facilitating a rapid response to the complaint and eliminating risk.

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Flexibility and Responsiveness

First, assuring that essential information reaches the right people quickly and accurately is crucial. This allows businesses and their outside counsel to make quick decisions and to begin planning their legal strategy as early as possible. An expert registered agent should have the flexibility to customize delivery instructions to the customer's specific needs. While this is most important to ensure that service of process is handled properly and not misplaced, customers should be able to specify delivery for other types of compliance documents, including case cover sheets that summarize the key facts of the case and communications from the Secretaries of State.

In order to achieve this flexibility and responsiveness to customer needs, the most effective service model is for the agent to have offices in key jurisdictions nationwide, staffed only by its own employees who understand the specifics of their customers' business and can respond to local needs and concerns. Additionally, the registered agent should provide a dedicated point of contact to support specific customers.

Knowledge and Experience

Second, the agent's knowledge of and ability to act on every jurisdiction's rules, actions, procedures and nuances of legal filings can help customers avoid costly pitfalls. Indicators that a registered agent has a high enough level of expertise include the size of the customer specialist staff; their specific understanding of the field and of the customer's business; and their cumulative years of experience in practicing law or working in compliance.

Quality Assurance

Third, a registered agent should be committed to zero tolerance of errors and customer dissatisfaction throughout its organization. This can be demonstrated by consistent investments in training and certifying their customer specialists, and by regularly measuring customer satisfaction with quantitative surveys.

When evaluating a registered agent, the processes that will have the most impact on accuracy and customer satisfaction are order processing, service of process management and customer records management.

Registered Agent Essentials



› SCENARIO 2: PROCESS MATTERS

A regional chain restaurant company is routinely served with garnishment and child support enforcement orders. While the company is not adversely affected by the action, it must comply with the order or be subject to liability if it fails to do so. Its legal and human resources departments must know what actions need to be taken.

Scenarios that involve potentially millions of individual services of process flowing over the course of 260 work days every year demand that the registered agent have the right processes in place to ensure that requirements are met with near flawless execution.

The procedures for issuance of a summons when the complaint is filed, and service of the summons and complaint on the defendants, are governed by the Federal Rules of Civil Procedure Rule 4, or the state jurisdiction equivalent.

However, ancillary service may follow alternative rules. Essential information in a service of process includes detailed information about the action, the type of lawsuit, the nature of the action, required response date and any discrepancies within documents that may lead to the action being dismissed or lost. An expert commercial registered agent will routinely provide a summary of the many data points to be analyzed in every service of process to help customers comply with the rules of civil procedure. Accuracy in this function is extremely important.

A registered agent that has successfully completed an SOC 1 Type II compliant audit demonstrates the extent of its effective internal controls—vital when processing customer transactions and protecting sensitive information. The SOC 1 Type II audit is a standard established by the American Institute of Certified Public Accountants that assesses a company's internal controls and processes, particularly those concerning information technology. Successful completion of the SOC 1 Type II audit also shows that a company meets the stringent internal control and reporting requirements of Section 404 of the Sarbanes-Oxley Act. In fact, an increasing number of businesses require their vendors to have completed the SOC 1 Type II audit to enhance their own Sarbanes-Oxley compliance.

Your commercial registered agent should also leverage the latest technology to aid in accurate and timely delivery of the process. For example, scanning and posting documents to a Web site in real time speeds distribution to the designated legal team and reduces the risk of lost or misplaced documents. Your agent should also provide full accountability and tracking for documents from the moment it is

received to the moment it is delivered. Individual contact names and case cover sheets detailing specific delivery instructions provide such assurances.

➤ SCENARIO 3: ESSENTIAL EXPERTISE

A company operates in all jurisdictions. Let's say hypothetically, a state enacts legislation that requires a company to hire only U.S. citizens or documented aliens. Failure to comply with the law subjects the company to loss of a license and possibly loss of its corporate charter. Other states are considering similar legislation. This raises the question: Will a state revoke an entity's certificate of authority for a violation of those employment laws?

This scenario is typical for companies in a variety of industries that operate in all 51 jurisdictions. There is no consistent, nationwide standard for local compliance filings. For example, each state determines its annual report deadlines by different criteria, and these criteria often change.

The expert registered agent will leverage its relationships with the various Secretaries of State to monitor this information. The agent will provide its customers with detailed information on scheduled and recurring state requirements, such as withholding, sales and franchise taxes and annual reports.

The agent's tools should be designed to dynamically integrate a business' corporate record information to send proactive alerts for upcoming due dates. The registered agent must collect and maintain a knowledge base that includes a wide variety of compliance information. Likewise, the registered agent should monitor legislation in all jurisdictions to identify trends and threats. And, if action needs to be taken, the registered agent should be able to provide a model legislative response and lobby for it.

➤ CONCLUSION: UNDERSTAND THE TRUE COSTS OF COMPLIANCE

The registered agent's functions have commonly been perceived as being limited to forwarding service of process and mail from the jurisdictions. As the scenarios in this white paper have shown, your registered agent is chief among your legal services partners to help you avoid the risks of non-compliance, which include involuntary dissolutions and default judgments.

In today's budget-conscious climate, cost is naturally a consideration when selecting a registered agent. For multi-entity organizations, it's helpful to frame this in terms of value vs. direct expenses. A full-service commercial registered agent provides the expert knowledge and infrastructure that you would otherwise have to maintain in your department. Their fees will typically be higher to reflect this. Providers offering lower fees typically provide less experience and narrower service capabilities.

This lack of resources can have a dramatic impact on the second type of cost to consider when choosing a registered agent – the unbudgeted costs of correcting mistakes, paying unexpected penalties and compensating for necessary services not provided by the lower-priced agent. Additionally, there is the hidden costs of time lost to compliance tasks which would have more productively been spent on strategic issues. In the final analysis, you may find that the consequences of inadequate risk protection to be extremely costly over time.

By understanding the full scope of the services a commercial registered agent should provide, your organization can realize significant peace of mind and streamlining of operations. Choosing the right commercial registered agent can be the most efficient and cost-effective solution for managing compliance activities and reducing risk. An experienced full-service partner will perform their functions expertly, empowering you to stay focused on your core business and legal issues. In the long run, you should be able to rely on your registered agent to keep the way clear to support your business' growth plans. If you're getting anything less than this, you're not getting full value for the fees you're paying.

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Garth B. Jacobson serves as a Senior Government Relations Attorney and Compliance Officer for CT Corporation, a Wolters Kluwer business. Prior to this position, he worked at Preston Gates and Ellis LLP. Previously he held the position of Chief Legal Counsel to the Montana Secretary of State where he successfully litigated election law cases before the state trial and appellate courts and federal courts. During that tenure, he served on the state bar committees that drafted business entity legislation including profit and nonprofit corporate acts, revisions to the partnership laws and the limited liability company act. Additionally, he developed and administered alternative dispute resolution of business name infringements.

Garth has served as an ABA advisor or observer to numerous Uniform Laws Commission Committees related to the development of business entity laws. He serves in leadership positions in both the ABA Business Law section and Science and Technology Law section. He serves as the Chair of the LLCs, Partnerships, and Unincorporated Entities Committee. Based upon his expertise in business entity law and anti-money laundering developments, the ABA President appointed him to the Gatekeepers Task Force. Additionally, he is the Budget Officer of the SciTech section. He co-authored an article "Electronic Service of Process," published in spring 2008 *The SciTech Lawyer*, and co-authored another article on electronic service of process for the *Internet Law Journal*. He holds membership with the bar association in the state of Washington and Montana.

He received a bachelor's degree in economics and philosophy, a Juris Doctorate and a master's degree from the University of Montana. Garth holds an LLM in Taxation from the University of Washington. The Council of State Governments named him a Toll Fellow. This prestigious national award recognizes outstanding leadership and service in state government.



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