

ILLINOIS BAR JOURNAL

The Magazine of Illinois Lawyers

March 2011 • Volume 99 • Number 3 • Page 158



Business Law

Recent Business Legislation and Trends: the Secretary of State's Perspective

Among other legislative changes, corporate filings now need only be made with the Secretary of State, not with counties.

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Many Illinoisans do not know that a core function of the Illinois Secretary of State's office is serving the business community. For the most part, that work is carried out by the Department of Business Services, which administers the Illinois business organization acts and Uniform Commercial Code.

What does the department do? Among other things, it accepts and files annual reports and other documents, proposes business-related legislation, collects the Illinois corporate franchise tax and other fees, files UCC financing statements and federal tax liens, and reviews and accepts trademark and service mark applications. The Secretary's website, www.cyberdriveillinois.com, is a gateway to its voluminous records and provides for electronic filing of most of its documents.

The department also handles the filing of approximately 200,000 UCC documents annually, along with trademark and service mark filings in Illinois. All told, the department files some 1.5 million business documents each year.

Consequently, the department is well positioned to track legislation and spot certain business trends in Illinois. Here are a just a few noteworthy developments.

Legislative update

Recording with counties no longer required. Effective January 1, 2011, corporations doing business in Illinois will have an easier time remaining in good standing. In addition to making filings with the Secretary of State, corporations previously had to record a myriad of filings, including changes of registered agents, adoptions of assumed corporate names, and articles of merger, with the counties in which their registered offices were situated. This recording requirement often went unnoticed, and foreign corporations that failed to comply risked revocation.

While the recording of corporate filings at the county level once served an important purpose, the Secretary of State's real-time, statewide database (available at www.cyberdriveillinois.com) has rendered it unnecessary. Public Act 96-1121, sponsored by State Senator Jeffrey Schoenberg and State Representative Jack Franks, amends the Business Corporation Act of 1983 and the General Not For Profit Corporation Act of 1986 to reflect that all corporate filings need only be made with the Secretary of State. This streamlines the filing process and reduces fees for corporations transacting business in Illinois.

A broader range of prospective registered agents. Public Act 96-0988, proposed by the Secretary of State and sponsored by State Senator William R. Haine and State Representative Thomas Holbrook, further modernizes Illinois' business organization acts. It harmonizes the Business Corporation Act of 1983, the General Not For Profit Corporation Act of 1986, and the Limited Liability Company Act to provide that any of the following may act as registered agents for corporations (for-profit or not-for-profit) or LLCs: individuals, corporations, limited liability companies, limited partnerships and limited liability partnerships.

An entity acting as a registered agent must have authority to transact business in the state and must be authorized to act as a registered agent by its statement of purpose. This legislation updates the respective business organization acts and provides more flexibility to business entities operating in Illinois.

Trends - explosive growth for LLCs

The Department of Business Services' main function is reviewing, accepting, and filing documents relating to for-profit and not-for-profit corporations, limited liability companies (LLCs), limited partnerships (LPs), and limited liability partnerships (LLPs). The department also acts as the filing office for lesser-known entity types such as series LLCs, low-profit LLCs and limited liability limited partnerships (LLLPs). While this alphabet soup can be confusing,

business law practitioners appreciate the options for taxation, management, and control these entities offer.

Corporations are number one. The variety notwithstanding, corporations remain the most popular business entity in Illinois. Over the last decade, the number of corporations registered in Illinois grew from 318,317 to 375,444. The number of not-for-profit corporations also rose steadily from 62,357 active entities in 2000 to 89,135 in 2010.

Explosion of LLCs, growth of LLPs. During that same time period, LLCs experienced explosive growth. In 2000, Illinois had 36,593 active LLCs; as of December 31, 2010, 161,428 LLCs were registered to transact business in Illinois. Beyond their sheer numbers, LLCs bring a number of options to the table: they can be for-profit or not-for-profit, series, or, the latest weapon in the LLC arsenal, low-profit.

At the same time, other limited liability models such as the LLP or LLLP are beginning to stake their claims to the title of business organization of choice for particular types of business or in specific tax circumstances. Though the corporation may still be king, its crown rests uneasily on its head.

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