

Memorandum 76-22

Study 67 - Unincorporated Associations (Service of Process)

You will recall that a number of years ago the Law Revision Commission recommended legislation (which was enacted) relating to service of process on unincorporated associations. This topic was retained on our agenda for consideration of current developments and additional aspects of the topic.

The new business corporation law renumbers and revises the service of process provisions of that statute. The separate statutory provisions relating to service of process on unincorporated provisions make reference to the provisions of the general business corporation law. However, no conforming revisions were made in the special statutory provisions applicable to unincorporated associations.

Attached is a draft of a recommendation to make the necessary conforming revisions. The staff has worked with Bill Holden of the Office of the Secretary of State in preparing the draft statute. Attached as Exhibit I are the various sections to which reference is made in the Comments in the recommendation.

We do not believe that the attached recommendation presents any policy issues. Assemblyman Knox has indicated he will introduce the necessary bill as soon as it has been drafted by the Legislative Counsel. If the attached recommendation is approved, the staff suggests that it be sent to the State Bar Committee on Corporations for review and comment as soon as possible. It is important, we believe, that the necessary conforming legislation be enacted at the current session of the Legislature.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

RELEVANT SECTIONS OF OLD BUSINESS CORPORATIONS LAW

SECTIONS 3301, 3301.5, 3301.6, 6403.5, and 6403.6

(Relevant Sections of New Business Corporation Law follow text of sections of old law)

§ 3301. Designation of agent for service of process; service on agent; corporate offices and officers; statement of identification; filing; fee; nonprofit corporations

* * * (a) A domestic corporation, if desired, * * * may designate, as the agent of such corporation for the purpose of service of process, any natural person residing in this state or any corporation which has complied with Section 3301.5 or Section 6403.5 and whose capacity to act as such agent has not terminated. If a natural person be designated, the statement shall set forth his complete business or residence address. If a corporate agent be designated, the statement shall set forth the state or place under the laws of which such agent was incorporated and the name of the city, town or village wherein it has the office at which the corporation designating it as such agent may be served, as set forth in the certificate filed by such corporate agent pursuant to Sections 3301.5, 3301.6, 6403.5 or 6403.6.

In the event of any change in the location or address of its principal office or the stated address of a natural person whom it has designated as such agent or the city, town or village wherein it may be served by delivery of a copy of any process to a corporate agent, a domestic corporation shall forthwith file with the Secretary of State a statement of such new location or address * * * or such new city, town or village, which statement shall also include the names and addresses of the then officers, the names and addresses of whom are required above to be stated.

A corporation may at any time file a new statement wherein a new agent for service of process is designated or a prior designation of agent is expressly revoked without designating a new agent, and such filing shall be deemed to revoke any prior designation of agent.

Delivery by hand of a copy of any process against the corporation (a) to any natural person designated by it as agent, or (b), if the corporation has designated a corporate agent, at the office of such corporate agent in the city, town or village named in the statement filed by the corporation pursuant to this section to any person at such office named in the certificate of such corporate agent filed pursuant to Section 3301.5 or 6403.5, if such certificate has not been superseded, or otherwise to any person at such office named in the last certificate filed pursuant to Section 3301.6 or 6403.6, shall constitute valid service on the corporation.

(b) Every domestic corporation shall within 90 days after the filing of its articles of incorporation with the Secretary of State, and every domestic corporation (other than a corporation which has already filed such a statement during the preceding three calendar months and there is no change in the information therein) shall during the period commencing on April 1st and ending on June 30th in each year, file with the Secretary of State, on a form prescribed by him, a statement of the names and complete business or residence addresses of its president, vice president, secretary, and treasurer, together with a statement of the location and address of its principal office.

The Secretary of State shall establish by regulation a fee to be charged and collected for filing a statement of the names and addresses of officers and the location and address of the principal office of the corporation as provided in this section. The filing fee shall approximate the estimated cost of such filing, and in any event shall not exceed three dollars (\$3) for each filing. * * * The information filed by a corporation pursuant to this section shall be made available to the public upon request. For furnishing a copy of any such statement the Secretary of State shall charge and collect a fee of one dollar (\$1). This section shall not be construed to place any person dealing with such corporation on notice of, or on duty or obligation to inquire about the existence or content of any such statement.

In the case of a nonprofit corporation the statement shall be filed every time there is any change of officers and every fifth year in accordance with regulations of the Secretary of State rather than each year. However, a nonprofit corporation may file a statement more frequently than every fifth year. The statement of a nonprofit corporation shall be filed without fee.

For the purpose of this section, a "nonprofit corporation" is a domestic corporation organized or existing pursuant to Part 1 (commencing with Section 8000), Part 2 (commencing with Section 10000), Part 3 (commencing with Section 10200), or Part 4 (commencing with Section 10400) of Division 2 of Title 1 of the Corporations Code, or organized or existing without authority to issue shares of stock pursuant to Division 21 (commencing with Section 28001) of the Education Code.

(Amended by Stats.1969, c. 1159, p. 2246, § 1, operative Jan. 1, 1971; Stats.1970, c. 671, p. 1300, § 1, operative Jan. 1, 1971; Stats.1971, c. 1438, p. 2842, § 1; Stats.1974, c. 41, p. —, § 2.)

§ 3301.5 Corporate agent for service of process; certificate

Any domestic corporation, before it may be designated as the agent for the purpose of service of process of any corporation pursuant to Section 3301 or 6403, shall file with the Secretary of State a certificate executed in its name by its president or a vice president and by its secretary or an assistant secretary setting forth all of the following:

(a) The complete address of its office in each city, town or village named in any statement filed pursuant to Section 3301, 6403, * * * or * * * 6403.5

wherein it is designated as such agent, and which shall be the office where the corporation designating it as such agent, may be served with process.

(b) The name of each person employed by it at each such office to whom it authorizes the delivery of a copy of any such process.

(c) Its consent that delivery thereof to any such person at the office where he is employed shall constitute delivery of any such copy to it, as such agent.

(Amended by Stats.1971, c. 1433, p. 2835, § 1.)

§ 3301.6 Corporate agent for service of process; supplemental certificates. Any corporation which has filed the certificate provided for in Section 3301.5 may file with the Secretary of State any number of supplemental certificates executed in the same manner as is required by said section, containing all the statements provided for in said section, which, upon the filing thereof, shall supersede the statements contained in the original or in any supplemental certificate previously filed. (Added Stats.1951, c. 628, p. 1805, § 3.)

§ 6403.5 Corporate process agent; qualification; certificate

Before it may be designated by any corporation as its agent for service of process, any foreign corporation which, as shown by the records of the Secretary of State, is authorized to transact intrastate business in this state shall file with the Secretary of State a certificate executed in its name by its president or a vice president and by its secretary or an assistant secretary setting forth all of the following:

(a) The date of its incorporation and the state or place under the laws of which it was created and the date on which it last qualified for the transaction of intrastate business in this state.

(b) The location and address of its main office.

(c) The complete address of its office in each city, town or village named in any statement filed pursuant to Section 3301, 6403, * * * or 6403.5 wherein it is designated as such agent, and which shall be the office where the corporation designating it as such agent may be served with process.

(d) The name of each person employed by it at each such office to whom it authorizes the delivery of a copy of any such process.

(e) Its consent that delivery thereof to any such person at the office where he is employed shall constitute delivery of any such copy to it, as such agent.

(Amended by Stats.1971, c. 1433, p. 2837, § 6.)

§ 6403.6 Corporate process agent; supplemental certificates. Any corporation which has filed the certificate provided for in Section 6403.5 may file with the Secretary of State any number of supplemental certificates executed in the same manner as is required by said section, containing all the statements provided for in said section, which, upon the filing thereof, shall supersede the statements contained in the original or in any supplemental certificate previously filed. (Added Stats.1951, c. 628, p. 1807, § 9.)

RELEVANT SECTIONS NEW BUSINESS CORPORATIONS LAW

SECTIONS 1502(b), 1505, 1701

1502. (a) Every corporation shall, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period in each year, file, on a form prescribed by the Secretary of State, a statement containing: (1) the presently authorized number of its directors; (2) the names and complete business or residence addresses of its incumbent directors; (3) the names and complete business or residence addresses of its chief executive officer, secretary and chief financial officer; (4) the street address of its principal executive office; (5) if the address of its principal executive office is not in this state, the street address of its principal business office in this state, if any; and (6) a statement of the general type of business which constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; retail department store).

(b) The statement required by subdivision (a) shall also designate, as the agent of such corporation for the purpose of service of process, a natural person residing in this state or a corporation which has complied with Section 1505 and whose capacity to act as such agent has not terminated. If a natural person is designated, the statement shall set forth such person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

* * *

1505. (a) Any corporation, before it may be designated as the agent for the purpose of service of process of any corporation pursuant to Section 1502 or 2105 or 2107, shall file a certificate executed in the name of the corporation by an officer thereof stating:

(1) The complete address of its office or offices in this state, wherein any corporation designating it as such agent may be served with process.

(2) The name of each person employed by it at each such office to whom it authorizes the delivery of a copy of any such process.

(3) Its consent that delivery thereof to any such person at the office where such person is employed shall constitute delivery of any such copy to it, as such agent.

(b) Any corporation which has filed the certificate provided for in subdivision (a) may file any number of supplemental certificates containing all the statements provided for in subdivision (a), which, upon the filing thereof, shall supersede the statements contained in the original or in any supplemental certificate previously filed.

(c) No domestic or foreign corporation may file a certificate pursuant to this section unless it is currently authorized to engage in business in this state and is in good standing on the records of the Secretary of State.

1701. Delivery by hand of a copy of any process against the corporation (a) to any natural person designated by it as agent or (b), if a corporate agent has been designated, to any person named in the latest certificate of the corporate agent filed pursuant to Section 1505 at the office of such corporate agent shall constitute valid service on the corporation.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

SERVICE OF PROCESS ON UNINCORPORATED ASSOCIATIONS

FEBRUARY 1976

CALIFORNIA LAW REVISION COMMISSION
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February 27, 1976

To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was authorized by Resolution Chapter 9 of the Statutes of 1966 to study the law relating to partnerships and other unincorporated associations. The Commission herewith submits its recommendation on one aspect of this topic--service of process on unincorporated associations. The recommended legislation is necessary to conform the statutory provisions relating to designation of an agent for service of process and the manner of service of process on unincorporated associations to the provisions of the new business corporation law (Cal. Stats. 1975, Ch. 682).

Respectfully submitted,

John N. McLaurin
Chairman

RECOMMENDATION

relating to

SERVICE OF PROCESS ON UNINCORPORATED ASSOCIATIONS

A new business corporation law (Chapter 682 of the Statutes of 1975) was enacted by the 1975 Legislature to take effect on January 1, 1977. The new law renumbered and made substantive changes in the provisions of the old business corporation statute relating to service of process. These provisions are incorporated by reference in the statutory provisions relating to service of process on foreign partnerships (Corp. Code § 15700) and unincorporated associations (Corp. Code §§ 24003-24007). The 1975 legislation did not make conforming revisions in the provisions relating to unincorporated associations.

The Commission has reviewed the provisions referred to above relating to foreign partnerships and unincorporated associations and recommends that the provisions be conformed to the new business corporations law.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 15700, 24003, and 24004 of the Corporations Code, relating to unincorporated associations.

The people of the State of California do enact as follows:

Corporations Code § 15700 (amended)

SECTION 1. Section 15700 of the Corporations Code is amended to read:

15700. Every partnership, other than a commercial or banking partnership established and transacting business in a place without the United States, which is domiciled without this state and has no regular

place of business within this state, shall, within 40 days from the time it commences to do business in this state, file a statement in the office of the Secretary of State in accordance with Section 24003 designating some natural person or corporation as the agent of the partnership upon whom process issued by authority of or under any law of this state directed against the partnership may be served. A copy of such designation, duly certified by the Secretary of State, is sufficient evidence of such appointment.

Such process may be served in the manner provided in subdivision (e) of Section 24003 on the person so designated, or, in the event that no such person has been designated, or the person designated cannot be found at the address as specified in the index referred to in Section 24004 if the agent designated for the service of process is a natural person and cannot be found with due diligence at the address stated in the designation or if such agent is a corporation and no person can be found with due diligence to whom the delivery authorized by subdivision (e) of Section 24003 may be made for the purpose of delivery to such corporate agent, or if the agent designated is no longer authorized to act , then service may be made by personal delivery to the Secretary of State, Assistant Secretary of State or a deputy secretary of state of the process, together with a written statement signed by the party to the action seeking such service, or by his attorney, setting forth the last-known address of the partnership and a service fee of five dollars (\$5). The Secretary of State shall forthwith give notice of such service to the partnership by forwarding the process to it by registered mail, return receipt requested, at the address given in the written statement.

Service on the person designated, or personal delivery of the process and statement of address together with a service fee of five dollars (\$5) to the Secretary of State, Assistant Secretary of State or a deputy secretary of state, pursuant to this section is a valid service on the partnership. The partnership so served shall appear within 30 days after service on the person designated or within 30 days after delivery of the process to the Secretary of State, Assistant Secretary of State or a deputy secretary of state.

Comment. Section 15700 is amended to delete the reference to the address as specified in the index referred to in Section 24004 because the address of the corporate agent is no longer required to be specified in the index referred to in that section. Language taken from Corporations Code Section 2111 is inserted in lieu of the deleted language.

406/185

Corporations Code § 24003 (amended)

SEC. 2. Section 24003 of the Corporations Code is amended to read:

24003. (a) An unincorporated association may file with the Secretary of State on a form prescribed by ~~him~~ the Secretary of State a statement containing either of the following:

(1) A statement designating the location and complete address of the associations's principal office in this state. Only one such place may be designated.

(2) A statement (1) designating the location and complete address of the association's principal office in this state in accordance with paragraph (1) or, if the association does not have an office in this state, designating the complete address of the association to which the Secretary of State shall send any notices required to be sent to the

association under Sections 24005 and 24006, and (ii) designating as agent of the association for service of process any natural person residing in this state or any corporation which has complied with Section ~~3301-5~~ or Section ~~6403-5~~ 1505 and whose capacity to act as such agent has not terminated.

(b) If a natural person is designated as agent for service of process, the statement shall set forth ~~his~~ the person's complete business or residence address. If a corporate agent is designated, the statement shall set forth the state or place under the laws of which such agent was incorporated and the name of the city, town, or village wherein it has the office at which the association designating it as such agent may be served, as set forth in the certificate filed by such corporate agent pursuant to Section ~~3301-5~~, ~~3301-6~~, ~~6403-5~~, or ~~6403-6~~ no address for it shall be set forth .

(c) Presentation for filing of a statement and one copy, tender of the filing fee, and acceptance of the statement by the office of the Secretary of State constitutes filing under this section. The Secretary of State shall note upon the copy of the statement the file number and the date of filing the original and deliver or send the copy to the unincorporated association filing the statement.

(d) At any time, an unincorporated association that has filed a statement under this section may file a new statement superseding the last previously filed statement. If the new statement does not designate an agent for service of process, the filing of the new statement shall be deemed to revoke the designation of an agent previously designated. A statement filed under this section expires five years from December 31 following the date it was filed in the office of the Secretary of State, unless previously superseded by the filing of a new statement.

(e) Delivery by hand of a copy of any process against the unincorporated association (1) to any natural person designated by it as agent ; or (2) if the association has designated a corporate agent, ~~at the office of such corporate agent; in the city, town, or village named in the statement filed by the association under this section to any person at such office named in the certificate of such corporate agent filed pursuant to Section 3301.5 or 6403.5 if such certificate has not been superseded; or otherwise to any person at such office named in the last certificate of the corporate agent filed pursuant to Section 3301.6 or 6403.6; constitutes~~ 1505 at the office of such corporate agent shall constitute valid service on the association.

(f) For filing a statement as provided in this section, the Secretary of State shall charge and collect the fee prescribed in Government Code Section 12185 for filing a designation of agent.

Comment. Section 24003 is amended to substitute a reference to Section 1505 which replaces former Sections 3301.5, 3301.6, 6403.5, and 6403.6. The requirement that the statement set forth the state or place under the laws of which the agent was incorporated and the city, town, or village where it has the office has been deleted to conform to the comparable provision of the new business corporations law which does not continue this requirement. See Corp. Code § 1502(b). Subdivision (e) of Section 24003 is revised to conform to the language of the comparable provision of the new business corporations law. See Corp. Code § 1701.

406/187

Corporations Code § 24004 (amended)

SEC. 3. Section 24004 of the Corporations Code is amended to read:

24004. (a) The Secretary of State shall mark each statement filed under Section 24003 with a consecutive file number and the date of filing. He may destroy or otherwise dispose of any such statement four

years after the statement expires. In lieu of retaining the original statement, the Secretary of State may retain a copy thereof in accordance with Government Code Section 14756.

(b) The Secretary of State shall index each statement filed under Section 24003 according to the name of the unincorporated association as set out in the statement and shall enter in the index the file number and the address of the association as set out in the statement and, if an agent for service of process is designated in the statement, the name of the agent and ~~his~~ , if a natural person is designated as the agent, the address of such person .

(c) Upon request of any person, the Secretary of State shall issue his certificate showing whether, according to his records, there is on file in his office, on the date and hour stated therein, any presently effective statement filed under Section 24003 for an unincorporated association using a specific name designated by the person making the request. If such a statement is on file, the certificate shall include the information required by subdivision (b) to be included in the index. The fee for such a certificate is two dollars (\$2).

(d) When a statement has expired under subdivision (d) of Section 24003, the Secretary of State shall enter that fact in the index together with the date of such expiration.

(e) Four years after a statement has expired, the Secretary of State may delete the information concerning that statement from the index.

Comment. Section 24004 is amended to reflect the fact that Section 24003 has been amended to delete the requirement that the statement contain the address of the corporate agent.

Transitional Provision

SEC. 4. (a) As used in this section, a reference to "Section 1505 of the new law" means Section 1505 of the Corporations Code as enacted by Chapter 682 of the Statutes of 1975, effective January 1, 1977, and as in effect on that date; a reference to Section 3301.5, 3301.6, 6403.5, or 6403.6 means that section of the Corporations Code as in effect prior to January 1, 1977; and the term "effective date" means the effective date of this act.

(b) When any corporate agent for service of process has been designated by an unincorporated association prior to the effective date and such designation of agent included the name of a city, town, or village wherein the corporate agent maintained an office, service on such agent may be effected at any office of the agent set forth in the certificate of the corporate agent filed pursuant to Section 1505 of the new law or filed pursuant to Section 3301.5, 3301.6, 6403.5, or 6403.6, whether or not such office is in such city, town, or village.

(c) Where an unincorporated association has designated prior to the effective date a corporate agent for service of process which has complied with Section 3301.5 or Section 6403.5 and whose capacity to act as such agent has not terminated prior to the effective date, the designation of such corporate agent shall not terminate after the effective date until the agent files with the Secretary of State a written statement of resignation as such agent in compliance with Section 24005, or until the statement filed by the unincorporated association under Section 24003 is superseded or expires, whichever is the earlier time.

Comment. This section is drawn from Sections 2300 and 2317 of the new business corporations law. Cal. Stats. 1975, Ch. 682. Subdivision (c) is designed to avoid the need of an unincorporated association filing a new designation of a corporate agent merely because of the enactment of this act.