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## REGISTERED AGENT

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### WHERE IS MY PRINCIPAL OFFICE? PHYSICAL REQUIREMENTS IN A DIGITAL WORLD

The COVID-19 Pandemic changed the world, and, to point out other bits of obviousness, the sky is blue and water is wet. However, the obviousness of that statement does not belie the impact of the Pandemic; rather, it underscores how accepted those changes to our daily lives have become. In fact, so much has changed that one cannot help but notice all that has failed to keep pace; laws affecting business entities being a primary example.

Even before the Pandemic, the need for updated statutes governing business entities was apparent. The shift from standard brick and mortar establishments to digital marketplaces was already well underway before 2020; the Pandemic and associated stay at home orders merely accelerated this paradigm shift. With so many people forced to remain in their homes, business entities had no choice but to start conducting meetings virtually, through platforms like Zoom and Google Meet. Individual entrepreneurs and small businesses lacking the means to start or maintain a traditional business from a physical location took note of this shift and began national operations with decision makers and employees in multiple states and everyone working from the comfort of their living rooms.

With meetings happening virtually and company data being stored on remote servers, the need for a physical business location was quickly becoming moot...until these business entities were required to provide a principal office location.

### WHAT IS A PRINCIPAL OFFICE?

Numerous states define “principal office” as “the principal executive office of an entity,” with “principal executive office” usually remaining undefined. This definition provides no insight into the actual purpose or usage of a principal office. Case law and historical context provide a bit more clarity, with the definition usually including something like the entity’s “nerve center or headquarters” or “where decisions impacting the entity are made.”

As indicated above, what these definitions fail to take into account is the use of technology that has essentially rendered the “principal office” of some entities obsolete. Consider this

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example: *The president of an online retailer attends a virtual meeting of directors. All participants live in different states, and they vote to partner with an overseas supplier.*

Where is this entity's principal office? The living room of the President? The server that hosted the meeting? A home of a member of the board? The overseas supplier? There is no answer that fits into the general definitions provided above.

Even when removing technology from the equation, the issue persists. If a group of friends start a non-profit designed to raise money to help feed their local community and conduct all of their meetings from a Starbucks or entity that specializes in offering shared workspaces, where is their principal office?

The ease with which any individual can now form a business, coupled with the declining necessity of a physical business location, highlights the disconnect between principal office statutes and the reality of doing business in today's digital world.

### **THE PRIVACY PROBLEM**

Digital business owners now face an unfortunate dilemma: If the business operates out of a residence, is that residential address also the principal office address? If the answer is yes, then that raises legitimate privacy concerns. In most states, an entity's principal office address is publicly displayed on a state website. For brick and mortar establishments, this is not a concern as the goal is to increase customer awareness and foot traffic. Digital businesses, however, rely on a digital storefront. Website clicks and views are their form of foot traffic. Posting a residential address for the world to see in no way benefits the business, and displaying such information puts the resident at risk.

Doxxing, swatting, and identity theft are all valid privacy concerns that business owners would face if required to provide a residential address as their principal office address. Further, many states are now implementing address confidentiality programs designed to protect victims of domestic violence as well as public servants, such as judges and legislators. Failing to extend that same protection to small business owners lacks a reasonable basis.

Every business, at some point, deals with disgruntled customers. No business provides that customer with the home address of their employees.

### **USE OF REGISTERED OFFICE**

The simplest solution to this issue is to allow entities with no true physical office to list the address of their registered agent as their principal office address. Almost all states allow an entity registered to do business within the state to serve as another entity's registered agent. Many states have additional requirements for entities specializing in registered agent services, or Commercial Registered Agents (CRA).

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The appointment of a registered agent ensures that the state and interested parties have a valid point of contact for notices and service of process for each entity doing business within the state. Since most states already require the appointment of a registered agent, the need for an entity to specify its principal office address is seemingly immaterial. In states that do place additional reporting requirements on CRA, the need is further reduced as the CRA must maintain accurate contact information with the state at all times or risk fines or business forfeiture.

From a global perspective, the practice is commonplace. The registered office of an entity in most foreign jurisdictions is often the address listed on governmental filings as opposed to the entity's principal office address, though the registered agent industry in foreign jurisdictions is often more highly regulated due to the overlap with trustee, banking and nominee services.

States like Wyoming, however, have managed to find a happy medium. Entities are allowed to list the address of their registered agent as their principal office address, but registered agents in the state must maintain an individual communication contact with each client entity that includes a verified address.

### **VIRTUAL OFFICES**

Another potential solution is to allow the use of a virtual office address as an entity's principal office address. Many registered agent providers also provide virtual offices services. These services allow client entities use of the provider's physical address without the entity's actual physical presence. To further facilitate the business offerings of client entities, ancillary services such as mail and call forwarding are often included as part of a virtual office agreement.

If an entity can properly and responsibly serve its customer base without the need of a physical location, why must it adhere to statutory requirements rooted in such outdated conventions?

### **THE FRAUD FALLACY**

Opponents of both practices often cite the potential for fraud as a primary reason for why they should be prohibited. The rationale for this stance stems from the desire to know where a business is physically located should the business need to be contacted by the state or become embroiled in litigation and need to be served process; however, that rationale falls apart under even light scrutiny.

As stated above, the statutory role of a registered agent is to be the communication proxy between the state or interested parties needing to serve process on the entity. Thus, the requirement that an entity appoint a registered agent alleviates the need to know where the entity is physically located.

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Furthermore, the role of most, if not all, Secretary of State departments is ministerial, not investigative. So long as the principal office address provided to the state meets statutory criteria, which is usually just that an address be provided, it will be accepted. Thus, bad actors can simply pick an address at random to list as their principal office. Prohibiting an entity lacking a physical location from listing the address of its registered agent as its principal office is as likely to increase fraud as it is to decrease it. If bad actors intend to commit fraud, they do not need to hide behind the address of a registered agent to accomplish that when they can simply pull any address off of Google Maps to list as their principal office.

There is no reason to sacrifice personal privacy when the effect on curtailing fraud is nominal at best and the appointment of a registered agent is already mandatory.

### SUMMATION

In order to thrive in our ever evolving economy, business entities must be adaptive. A major part of that adaptation has been a move away from a physical office to a decentralized structure. However, the way some states' business statutes are drafted, interpreted, and enforced is hampering this ability to be adaptive. If states truly want small businesses to succeed, then antiquated requirements rooted in outdated business practices should not be adhered to. Rather, the preexisting statutory duty of the registered agent can and should be utilized to help facilitate this adaptation. With the role of most Secretary of State offices being ministerial, leveraging the relationship of the registered agent as the communication proxy between the state and business entities can help achieve the desired outcomes while still providing businesses with the flexibility needed to adapt to rapid, global change.

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