

## CHAPTER 10-01.1 REGISTERED AGENTS ACT

### 10-01.1-01. Citation.

This chapter may be cited as the "North Dakota Registered Agents Act".

### 10-01.1-02. Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "Appointment of agent" means a statement appointing an agent for service of process filed by a domestic entity that is not a filing entity or a nonqualified foreign entity under section 10-01.1-12.
2. "Commercial registered agent" means a person that is listed under section 10-01.1-06 that serves in this state as the agent for service of process for another entity and that is:
  - a. An individual residing in this state; or
  - b. A domestic or foreign corporation or limited liability company.
3. "Domestic corporation" means a corporation, other than a foreign corporation, incorporated under any chapter of this code.
4. "Domestic entity" means an entity whose internal affairs are governed by the laws of this state.
5. "Domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.1.
6. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
  - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
7. "Entity" means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:
  - a. An individual;
  - b. A testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;
  - c. An association or relationship that is not a partnership by reason of section 45-14-02 or a similar provision of the law of any other jurisdiction;
  - d. A decedent's estate; or
  - e. A government or governmental subdivision, agency, or instrumentality, or a quasi-governmental instrumentality.
8. "Filed with the secretary of state" means, except as otherwise permitted by rule or law:
  - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-01.1-03, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
  - b. That the secretary of state did then:
    - (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
    - (2) Record the record in the office of the secretary of state.
9. "Filing entity" means an entity that is created by the filing of a public organic document.
10. "Foreign corporation" means a corporation:
  - a. That is incorporated under laws other than the laws of this state; and
  - b. That is a qualified foreign entity.
11. "Foreign entity" means an entity other than a domestic entity.
12. "Foreign limited liability company" means a limited liability company:
  - a. That is organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.1; and
  - b. That is a qualified foreign entity.

13. "Foreign qualification document" means an application for a certificate of authority or other foreign qualification filing with the secretary of state by a foreign entity.
14. "Governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:
  - a. Receive or demand access to information concerning, or the books and records of, the entity;
  - b. Vote for the election of the governors of the entity; or
  - c. Receive notice of or vote on any or all issues involving the internal affairs of the entity.
15. "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.
16. "Interest" means:
  - a. A governance interest in an unincorporated entity;
  - b. A transferable interest in an unincorporated entity; or
  - c. A share or membership in a corporation.
17. "Interest holder" means a direct holder of an interest.
18. "Jurisdiction of organization", with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.
19. "Noncommercial registered agent" means a person that is not listed as a commercial registered agent under section 10-01.1-06 that serves in this state as the agent for service of process for another entity and that is:
  - a. An individual residing in this state; or
  - b. A domestic or foreign corporation or a domestic or foreign limited liability company.
20. "Nonqualified foreign entity" means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the secretary of state.
21. "Nonresident LLP statement" means a registration as provided in subsection 23 of section 45-22-01 and is:
  - a. A registration of a domestic limited liability partnership that does not have an office in this state; or
  - b. A registration of a foreign limited liability partnership that does not have an office in this state.
22. "Organic law" means the statutes, if any, other than this chapter, governing the internal affairs of an entity.
23. "Organic rules" means the public organic document and private organic rules of an entity.
24. "Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
25. "Principal executive office" means:
  - a. If the entity has one or more elected or appointed governors, then an office where one or more of the governors has an office; or
  - b. If the entity has no elected or appointed governors, then the office of the registered agent of the entity.
26. "Private organic rules" means the rules, whether or not in a record, that:
  - a. Govern the internal affairs of an entity;
  - b. Are binding on all of its interest holders; and
  - c. Are not part of its public organic document, if any.
27. "Public organic document" means the public record the filing of which creates an entity, and any amendment to or restatement of that record.
28. "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a filing with the secretary of state.
29. "Record" means information is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form.

30. "Registered agent" means:
  - a. A commercial registered agent; or
  - b. A noncommercial registered agent.
31. "Registered agent filing" means:
  - a. The public organic document of a domestic filing entity;
  - b. A nonresident LLP statement;
  - c. A foreign qualification document; or
  - d. An appointment of agent.
32. "Registered office" means the address in this state of a registered agent as provided in this chapter and need not be the same as the principal place of business or principal executive office of the represented entity.
33. "Represented entity" means:
  - a. A domestic filing entity;
  - b. A domestic or qualified foreign limited liability partnership that does not have an office in this state;
  - c. A qualified foreign entity;
  - d. A domestic or foreign unincorporated nonprofit association for which an appointment of agent has been filed;
  - e. A domestic entity that is not a filing entity for which an appointment of agent has been filed; or
  - f. A nonqualified foreign entity for which an appointment of agent has been filed.
34. "Signed" means:
  - a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record is signed by a person authorized to do so by the organic rules of the entity; and
    - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.
35. "Transferable interest" means the right under an entity's organic law to receive distributions from the entity.
36. "Type", with respect to an entity, means a generic form of entity:
  - a. Recognized at common law; or
  - b. Organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

**10-01.1-03. Fees.**

1. The secretary of state shall collect the following fees when a filing is made under this chapter:
  - a. Commercial registered agent listing, one thousand dollars;
  - b. Commercial registered agent termination statement, five hundred dollars;
  - c. Statement of change, ten dollars except when the change is a change of address and in the secretary of state's opinion that change results from rezoning or postal reassignment;
  - d. Statement appointing an agent for service of process, ten dollars; and
  - e. Any process, notice, or demand for service, twenty-five dollars.
2. The secretary of state shall collect the following fees for copying and certifying a copy of any document filed under this chapter:
  - a. The fee provided in section 54-09-04 for copying a record;
  - b. Fifteen dollars for furnishing a certificate; and
  - c. Five dollars for a search of records when supplying copies, certification, or written verification of facts.

3. The secretary of state may not collect a fee to file a statement of resignation.

#### **10-01.1-04. Addresses in filings.**

Whenever a provision of this chapter, other than subdivision d of subsection 1 of section 10-01.1-11 requires that a filing state an address, the filing must state:

1. An actual street address or rural route box number in this state; and
2. A mailing address in this state if different from the address under subsection 1.

#### **10-01.1-05. Appointment of registered agent.**

1. A registered agent filing must state:
  - a. The name of the commercial registered agent of the represented entity; or
  - b. If the entity does not have a commercial registered agent, then the name and address of the noncommercial registered agent of the entity.
2. The appointment of a registered agent pursuant to subsection 1 is an affirmation by the represented entity that the agent has consented to serve as such.
3. Upon request and as soon as practicable, the secretary of state shall make available in a record a list of filings that contain the name of a registered agent. The list must:
  - a. List in alphabetical order the names of the registered agents; and
  - b. State:
    - (1) The type of filing;
    - (2) The name of the represented entity making the filing; and
    - (3) The address of the principal executive office if disclosed in the record filed by the represented entity.

#### **10-01.1-06. Listing of commercial registered agent.**

1. An individual residing in this state or a domestic or foreign corporation or limited liability company may become listed as a commercial registered agent by filing with the secretary of state a commercial registered agent listing statement signed by or on behalf of the person which states:
  - a. The name of the individual or the name, type, and jurisdiction of organization of the entity;
  - b. That the person is in the business of serving as a commercial registered agent in this state; and
  - c. The address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.
2. An individual residing in this state or a domestic or foreign corporation or limited liability company may file additional listings as a commercial registered agent if filed with trade names registered under chapter 47-25. The filing must be in the same manner as provided in subsection 1 and disclose the trade name being used. A listing with a trade name may provide an alternate address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.
3. If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person must adopt and register a trade name that is so distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.
4. A commercial registered agent listing statement takes effect on filing.
5. The secretary of state shall note the filing of the commercial registered agent listing statement in the record of the represented entity and in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

6. The secretary of state may make minor modifications to the name of a registered agent in a previously filed record in order to cause the modified name to be consistent with the correct name of a proposed commercial registered agent when it can be concluded from the previously filed record that the name of the proposed commercial registered agent was intended.

**10-01.1-07. Termination of listing of commercial registered agent.**

1. A commercial registered agent may terminate its listing as a commercial registered agent by filing with the secretary of state a commercial registered agent termination statement signed by or on behalf of the agent which states:
  - a. The name of the agent as currently listed under section 10-01.1-06; and
  - b. That the agent is no longer in the business of serving as a commercial registered agent in this state.
2. A commercial registered agent termination statement takes effect on the thirty-first day after the day on which it is filed.
3. The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.
4. When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it.
  - a. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in section 10-01.1-13.
  - b. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

**10-01.1-08. Change of registered agent by entity.**

1. A represented entity may change the information currently on file under subsection 1 of section 10-01.1-05 by filing with the secretary of state a statement of change on forms prescribed by the secretary of state and signed on behalf of the entity which states:
  - a. The name of the entity; and
  - b. The information that is to be in effect as a result of the filing of the statement of change.
2. The interest holders or governors of a domestic entity need not approve the filing of:
  - a. A statement of change under this section; or
  - b. A similar filing changing the registered agent or registered office of the entity in any other jurisdiction.
3. The appointment of a registered agent pursuant to subsection 1 is an affirmation by the represented entity that the agent has consented to serve as such.
4. A statement of change filed under this section takes effect on filing.
5. Instead of using the procedures in this section, a represented entity may change the information currently on file under subsection 1 of section 10-01.1-05 by amending its most recent registered agent filing as provided by the laws of this state other than this chapter for amending that filing.

**10-01.1-09. Change of name or address by noncommercial registered agent.**

1. If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to subsection 1 of section 10-01.1-05, the agent shall file with the secretary of state, with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent which states:
  - a. The name of the entity;

- b. If the name of the agent has changed, its new name; and
  - c. If the address of the agent has changed, its new address.
2. A statement of change filed under this section takes effect on filing.
3. A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

**10-01.1-10. Change of name, address, or type of organization by commercial registered agent.**

1. If a commercial registered agent changes its name as a result of a merger, conversion, exchange, sale, reorganization, or amendment, its address as currently listed under subsection 1 of section 10-01.1-06, or its type of jurisdiction of organization, the agent shall file with the secretary of state a statement of change signed by or on behalf of the agent which states:
  - a. The name of the agent as currently listed under subsection 1 of section 10-01.1-06;
  - b. If the name of the agent has changed, its new name;
  - c. If the address of the agent has changed, its new address; and
  - d. If the type or jurisdiction of organization of the agent has changed, then its new type or jurisdiction of organization.
2. The filing of a statement of change under subsection 1 is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.
3. A statement of change filed under this section takes effect on filing.
4. A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement or change relating to the name or address of the agent and the changes made by the filing.
5. If a commercial registered agent changes its address without filing a statement of change as required by this section, then the secretary of state may cancel the listing of the agent under section 10-01.1-06. A cancellation under this subsection has the same effect as a termination under section 10-01.1-07. Promptly after canceling the listing of an agent, the secretary of state shall notify:
  - a. Each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in section 10-01.1-13; and
  - b. The agent, stating that the listing of the agent has been canceled under this section.
6. The secretary of state shall note the filing of the commercial registered agent change statement in the index of filings maintained by the secretary of state for each entity represented by the commercial registered agent at the time of the filing.

**10-01.1-11. Resignation of registered agent - Removal of agent appointed without consent.**

1. Until the legal existence of a represented entity ceases, or until the authority of a foreign entity is withdrawn or revoked, a registered agent may resign at any time with respect to a represented entity by filing with the secretary of state a statement of resignation signed by or on behalf of the registered agent which states:
  - a. The name of the entity;
  - b. The name of the registered agent;
  - c. That the registered agent resigns from serving as agent for service of process for the entity; and
  - d. The name and address of the person to which the registered agent will send the notice required by subsection 3.

2. A statement of resignation takes effect on the earlier of the thirty-first day after the day on which it is filed or the appointment of a new registered agent for the represented entity.
3. The registered agent shall promptly furnish the represented entity with notice in a record of the date on which a statement of resignation was filed.
4. When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity may have against the registered agent or that the registered agent may have against the entity.
5. A registered agent may resign with respect to a represented entity whether or not the entity is in good standing but not after the legal existence of the represented entity has ceased or, in the case of a foreign entity, after its authority has been withdrawn or revoked.
6. If a person becomes aware of having been named as a registered agent without the person's prior consent, the appointed person shall notify the secretary of state in writing of the nonconsensual appointment. Upon notification, the secretary of state shall remove the appointed person as registered agent in the published record and notify the entity that it fails to maintain a registered agent. The entity that filed a document with the secretary of state evidencing a nonconsensual appointment of registered agent is subject to the provisions related to failure to maintain a registered agent as provided in the laws of this state which govern the entity and the documents filed.

**10-01.1-12. Appointment of agent by nonfiling or nonqualified foreign entity.**

1. A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the secretary of state a statement appointing an agent for service of process signed on behalf of the entity which states:
  - a. The name, type, and jurisdiction of organization of the entity; and
  - b. The information required by subsection 1 of section 10-01.1-05.
2. A statement appointing an agent for service of process takes effect on filing.
3. The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.
4. A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the secretary of state from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of the entity filing the statement unavailable for use by another entity.
5. An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which shall take effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process, which has not been canceled earlier, is effective for a period of five years after the date of filing. The secretary of state may destroy a statement provided for in this section after the statement has been on file for six years.
6. A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

**10-01.1-13. Service of process on entities, nonresident governors, and the secretary of state.**

1. Until the legal existence of an entity ceases, or until the authority of a foreign entity is withdrawn or revoked, service of any process, notice, or demand on the entity or nonresident governor may be served on:
  - a. A registered agent;
  - b. A governor of the entity, whether resident in this state or not;

- c. Any responsible person found at the registered office or at the principal executive office if located in this state; or
  - d. On the secretary of state as provided in this section.
2. Service is perfected under this section pursuant to North Dakota Rules of Civil Procedure or applicable law.
3. The secretary of state is the agent for service of process:
  - a. When a foreign entity transacts business without a certificate of authority;
  - b. When a domestic entity has been dissolved;
  - c. If an entity that previously filed a registered agent filing with the secretary of state no longer has a registered agent; or
  - d. If the registered agent, governor, or responsible person cannot with reasonable diligence be served.
4. Service of process, notice, or demand on a registered agent must be in the form of a written document.
5. Service on the secretary of state:
  - a. Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication.
  - b. Shall include the return of the sheriff, or the affidavit of an individual who is not a party, verifying that neither the registered agent nor a responsible person can be found at the registered office or at the principal executive office.
  - c. Is deemed personal service upon the entity and must be made by filing with the secretary of state:
    - (1) Three copies of the process, notice, or demand; and
    - (2) The fees provided in section 10-01.1-03.
  - d. Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
6. The secretary of state shall immediately forward, by registered mail, a copy of the process, notice, or demand addressed to:
  - a. The entity at the principal executive office address of record;
  - b. Any address provided by any serving party; or
  - c. To any forwarding address provided by the United States postal service.
7. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.
8. Service of process, notice, or demand may be perfected by any other means provided by law other than this chapter.
9. The court shall determine if service is proper.

**10-01.1-14. Duties of registered agent.**

The only duties under this chapter of a registered agent who has complied with this chapter are:

1. To forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;
2. To provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity; and
3. If the agent is:
  - a. A noncommercial registered agent, then to keep current the information required by subsection 1 of section 10-01.1-05 in the most recent registered agent filing for the entity; or
  - b. A commercial registered agent, then to keep current the information listed for it under subsection 1 of section 10-01.1-06.

**10-01.1-15. Jurisdiction and venue.**

The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or proceeding involving the entity.



**10-01.1-16. Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.], but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

**10-01.1-17. Savings clause.**

This chapter does not affect an action or proceeding commenced or right accrued before the effective date of this chapter.