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Mind Your State Registration

By [Marie Ignozzi](#)

All companies that conduct business in Maryland, including corporations, limited liability companies, and non-profit organizations, must register their principal office location and the name and address of its Resident Agent with the Maryland State Department of Assessments and Taxation, commonly known as SDAT. The Resident Agent is authorized to accept service of a court summons on behalf of the company.

The contact information must be promptly updated with SDAT if it changes at any time. This includes when a company relocates its principal office or if the Resident Agent retires, is no longer with the company, or is otherwise unable or unwilling to continue to serve as the Resident Agent in Maryland.

If not updated, the information provided to SDAT will eventually go stale. Frequently, this occurs as the result of innocent oversights. Resident agents retire or move, or business ownership changes hands after the initial formation and subsequent owners or managers might not be aware of this requirement and inadvertently cause the registration information to become outdated. As a result, significant problems can arise for the company.

In litigation, when the plaintiff names a business as a defendant, the plaintiff must serve the summons on the Resident Agent. If, however, the Resident Agent is no longer at the address registered with SDAT, then the plaintiff can serve process through alternative means. Similarly, if the principal office location is not correct, any papers mailed to the defendant would be sent to a stale address. A plaintiff would then be able to effectively serve a lawsuit on a corporate defendant, but the defendant may not even know of the lawsuit since it did not receive the summons directly. Ultimately, this puts the company at risk for a default judgment.

A judgment entered by default is the most common result when the defendant does not take any action in response to a court summons. The court, in essence, awards the plaintiff money without the plaintiff having to put on evidence to prove its case. This means that the defendant lost the opportunity to offer evidence to challenge the plaintiff even in cases that lack merit. Default judgments are particularly problematic for a defendant when there might have been insurance available to pay the judgment. Most commercial general liability policies contain a provision that the insured must timely give notice of a claim and cooperate in the defense, so if a judgment is entered against the insured defendant by default, the insurer could potentially disclaim coverage because it did not receive notice of the claim.

If you do not update your company's principal office and Resident Agent's name and address, you are putting your company at significant risk. To avoid this scenario, all companies that conduct business in Maryland, or are organized under Maryland law, should promptly review their contact information with SDAT at <https://egov.maryland.gov/BusinessExpress/EntitySearch>, and consult with corporate counsel to update their registration if any portion is in need of correction.

Leveling Online Sales Retailers With Brick and Mortar Stores

By [Don Walsh](#)

On June 21, the U.S. Supreme Court decided *South Dakota v. Wayfair*, allowing states to tax online sales even if the retailer does not have a physical presence in the state. Although a potential boon for state coffers, this decision has shaken the retail industry and is a welcome way to even the playing field for brick and mortar retailers. Many states have expanded the concept of a physical presence, or “nexus,” for many years. Other states have been pursuing online retailers based on where inventory is located in fulfillment centers and several states passed laws requiring sellers to report sales of goods delivered into the state.

Wayfair indicates that a lack of physical presence in a state will no longer prevent the state from requiring out-of-state sellers to remit sales and use taxes, but the decision does not say that out-of-state sellers must immediately pay sales or use taxes to all states with such taxes. All online businesses which sell products or services will now have to face this new frontier of sales tax compliance. Online sellers which have previously not collected and remitted sales or use taxes must now reexamine their tax collection and payment obligations on a state-by-state basis. It is fully expected that the states will take advantage of the possibility of collecting new revenue as well so watch for new legislation to be introduced on the state level.

Wave Goodbye to Effective Waivers

By [Max Stadfeld](#)

Any contractor who has worked on a commercial project is familiar with the importance of carefully reviewing and executing waivers required for progress payments. A recent decision out of New Hampshire now puts out a careful warning for owners regarding the effectiveness of proper waivers.

In *Fraser Eng'g Co. v. IPS-Integrated Project Servs., LLC*, IPS-Integrated Project Services, LLC (“IPS”) was the general contractor on a project to design and construct a manufacturing facility in Portsmouth, New Hampshire. IPS notified its subcontractor, Fraser, that it was to accelerate its work and Fraser put IPS on notice that acceleration would result in a claim for labor inefficiencies.

Under its subcontract with IPS, Fraser was required to submit lien waivers with each of its payment applications. During its work, Fraser submitted eight such waivers. Although IPS was aware that Fraser intended to submit a claim for labor inefficiency, Fraser executed its first seven waivers without including



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any reservation of rights to assert its inefficiency claim. It was not until its eighth payment application and waiver that Fraser expressly reserved such rights. When IPS argued that Fraser waived those portions of its lien arising from its inefficiency claim by executing the waivers without a reservation of rights, Fraser argued that the waivers were not enforceable because IPS knew that the waivers were inaccurate at the time they were executed as the parties had repeatedly discussed Fraser's labor inefficiencies.

Even though the court held that the waivers at issue "do not merely release lien rights, but also 'all claims, demands, or causes of action . . . which [Fraser] has, or might under any present or future law, assert against [IPS] or [the owner] relating to the Partial Payment and/or the labor services, materials or equipment for which the partial payment has been made,'" it declined to find the claim was waived as a matter of law. The court concluded that, based on the remedial nature of the New Hampshire mechanics' lien statute, it could not hold that actual notice is irrelevant to the enforceability of a waiver as a matter of law.

The court also held that, even assuming the waivers were enforceable, IPS failed to apportion the value of the work alleged to be covered by the first seven lien waivers and the work covered by the eighth waiver, which expressly reserved Fraser's rights. As a result, the court held that the record was insufficient to determine what portion, if any, of the lien was waived.

This is a fair warning to all owners to carefully review waiver language and insist on complete written disclosures from contractors.

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