

## RESOLUTION 7-01-03

### DIGEST

Securities Law: Filing of Consent to Service by Limited Liability Corporations and Partnerships  
Amends Corporations Code section 25165 to exempt limited liability corporations and limited liability partnerships from the duty to file a consent to service of process when applying for qualification of a sale of securities.

### RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

#### History:

None known.

#### Reasons:

This resolution amends Corporations Code section 25165 to exempt limited liability corporations and limited liability partnerships from the duty to file a consent to service of process when applying for qualification of a sale of securities. This resolution should be approved in principle because limited liability corporations and partnerships are already required to file the name and address of an agent for service of process with the Secretary of State.

Section 25165 requires an applicant for qualification of a sale of securities to consent to service of process upon the commissioner. This section presently exempts California corporations from this requirement because the name and address of the corporation's agent for service of process have already been filed with the Secretary of State in the articles of incorporation (Corp. Code, § 202, subd. (c)), and must be updated regularly (Corp. Code, § 1502, subd. (b)). The identity of the agent thus can be readily obtained through the Secretary's website and other sources.

Like corporations, limited liability corporations and limited liability partnerships are required to maintain a current name and address for an agent for service with the Secretary of State. (Corp. Code, §§ 17057, subd. (b), 16953, subd. (a)(3).) A party seeking to serve those entities can determine whom to serve in the same manner as with a corporation. In its present form, however, section 25165 still requires limited liability entities to consent separately to service on the commissioner. Because limited liability entities already publicly disclose their agent for service of process, it is unnecessary to require them to consent to service in any other manner.

### TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Corporation Code section 25165 to read as follows:

- 1 §25165
- 2 Every applicant for qualification of the sale of securities under this law or every person filing
- 3 an application or a notice under Sections 25100.1, 25101.1, 25102.1, and 25230.1 or a request for or
- 4 notice of an exemption from qualification (other than a California corporation, California limited
- 5 liability company, California limited liability partnership, or a person licensed as a broker-dealer in
- 6 this state) shall file with the commissioner, in such form as prescribed by rule, an irrevocable consent
- 7 appointing the commissioner or his or her successor in office to be the applicant's or person's
- 8 attorney to receive service of any lawful process in any noncriminal suit, action or proceeding
- 9 against the applicant or person or the successor, executor or administrator thereof, which arises under
- 10 this law or any rule or order hereunder after the consent has been filed, with the same force and

11 validity as if served personally on the person filing the consent. A person who has filed such a  
12 consent in connection with a previous qualification under this law (or application for a permit under  
13 any prior law if the application under this law states that such consent is still effective), or in  
14 connection with a notice filing under Section 25100.1, 25101.1, 25102.1, and 25230.1, need not file  
15 another. Service may be made by leaving a copy of the process in the office of the commissioner but  
16 it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action or  
17 proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process  
18 by registered or certified mail to the defendant or respondent at the last address on file with the  
19 commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on  
20 or before the return day of the process, if any, or within such further time as the court allows.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of Northern San Diego County

#### STATEMENT OF REASONS

Existing Law: In order to file a notice of transaction pursuant to Corporation Code section 25102(f) with the Department of Corporation, limited liability companies and limited liability partnerships must file a consent to service of process whereas corporations do not.

This Resolution: Amends Corporation Code section 25165 to exclude California limited liability companies and California limited liability partnerships from having to file a consent to service of process as a requirement for filing a notice of transaction.

The Problem: Corporation Code section 25102(f) recognizes an exemption from obtaining a permit for the issuance of securities for a small offering to no more than 35 persons who have a pre-existing relationship or sufficient experience to protect their own interest. This "small offering" exemption is widely used by small companies who incorporate or form limited liability companies or limited liability partnerships. It is believed that the language of section 25165, which excludes corporations from the requirement of filing a consent for service of process (which must be notarized), was adopted when limited liability companies and limited liability partnerships did not exist in California. There is no reason why a corporation should be exempt from filing a consent to service of process but a limited liability company or partnership should not. Each must identify the agent for service of process with an address in California in their articles and in the annual statement filed with the Secretary of State.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

AUTHOR AND PERMANENT CONTACT: David R. Moore, MOORE & SKILJAN, 7700 El Camino Real, Suite 207, Carlsbad, CA 92009; voice (760) 944-7700

RESPONSIBLE FLOOR DELEGATE: David R. Moore