

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Department of Assessments and Taxation  
(DLS Control No. 16-204)**

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## **Overview and Legal and Fiscal Impact**

This regulation adopts the affidavit forms required to be used in the process to verify that a governing or charter document does not contain an entity name in violation of § 1-201.1 of the Corporations and Associations Article.

The regulation presents no legal issues of concern.

There is no fiscal impact on State or local agencies.

## **Regulation of COMAR Affected**

### **Department of Assessments and Taxation:**

Business Organizations: Prohibited Filings: COMAR 18.04.11.01

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## **Legal Analysis**

### **Background**

Chapter 653 of 2016 prohibits a person from causing to be recorded a governing or charter document of an entity that (1) the person knows is not authorized by at least one individual whose name is included in the entity name or (2) does not otherwise conform to State law. Chapter 653 also establishes a process by which a person who believes that a governing or charter document was recorded in violation of this prohibition may submit an affidavit to the State Department of Assessments and Taxation stating the factual basis for the person's belief and, under specified circumstances, have the department void the governing or charter document.

### **Summary of Regulation**

The regulation adopts the affidavit forms required under § 1-201.1 of the Corporations and Associations Article and states that the department has the forms available to provide to the public. The department indicates that a hyperlink to the affidavit form will be provided in the regulation in a similar manner to the hyperlink to the affidavit provided in COMAR 18.14.01.05B.

### **Legal Issues**

The regulation presents no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The department cites § 1-201.1(c) of the Corporations and Associations Article as statutory authority for the regulation. Section 1-201.1(c) of the Corporations and Associations Article requires the Department to adopt by regulation and make available forms of the affidavits that must be used to state the factual basis for a person's belief that a governing document or charter document was recorded in violation of § 1-201.1(a) of the Corporations and Associations Article. Section 1-201.1(a) of the Corporations and Associations Article provides that a person may not cause the recording of a governing document or charter document of an entity that the person knows is not authorized by at least one individual whose name is included in the entity name or does not otherwise conform to State law. In addition, § 1-201.1(c) of the Corporations and Associations Article requires the Department to adopt by regulation and make available forms of the affidavits that must be used by a resident agent that receives notice that a governing document or charter document may be voided by the Department. Section 1-201.1(b)(2)(v) of the Corporations and Associations Article requires that the affidavit state the resident agent's or other authorized person's belief that the governing document or charter document does not violate § 1-201.1(a) and provide a factual basis for the belief.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

## **Technical Corrections and Special Notes**

As submitted, the regulation incorrectly cites § 1-201.1(c) of the Commercial Law Article as requiring the affidavit; rather, as noted above, the regulation should refer to § 1-201.1(c) of the Corporations and Associations Article. The department has indicated that it will correct this erroneous reference.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The regulation implements a provision of Chapter 653 of 2016 (House Bill 1446), which required the State Department of Assessments and Taxation (SDAT) to establish a process by which a person who believes that a governing or charter document was recorded in violation of newly established prohibitions may submit an affidavit to SDAT stating the factual basis for the person's belief. Any fiscal impact has already been assumed under the fiscal and policy note for House Bill 1446.

## **Impact on Budget**

There is no impact on the State operating or capital budget.

## **Agency Estimate of Projected Small Business Impact**

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs and notes that any impact has already been accounted for in the fiscal and policy note for House Bill 1446.

### **Contact Information**

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