

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**

Senate Bill 736

(Senator McFadden)

(By Request – Baltimore City Administration)

Judicial Proceedings

Judiciary

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**Criminal Procedure - Process Against Limited Liability Companies - Summons,  
Service, and Execution**

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This bill adds limited liability companies (LLCs) to provisions of law that govern (1) service of process on a corporation when a criminal charging document is filed; and (2) failure of the corporation to appear in court in response to service of process. The bill includes limited liability partnerships (LLPs) and limited liability limited partnerships (LLLLPs) in the definition of LLCs.

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**Fiscal Summary**

**State Effect:** Potential operational efficiencies to the Judiciary due to more expeditious service of process to LLCs in District Court criminal cases.

**Local Effect:** Potential operational efficiencies to the circuit courts due to more expeditious service of process to LLCs in circuit court criminal cases.

**Small Business Effect:** None. This bill provides for the consolidation of service of process methods in criminal and civil cases involving LLCs. LLCs, as defined in this bill, are currently required to designate resident agents with the State Department of Assessments and Taxation (SDAT). The resident agent of an LLC must consent to being designated as the resident agent for the entity. The consent requirement does not apply to resident agents designated before October 1, 1998.

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## Analysis

**Current Law:** The Criminal Procedure Article has special provisions regarding service of process on corporations, but does not address service on LLCs. When a charging document is filed against a corporation, the clerk of the court may issue a summons to the corporation in its corporate name to appear at the court to answer the charging document. A summons may be served on the corporation in the same manner as service of process in civil suits under the Maryland Rules. A summons in a criminal case advises the defendant to appear in person at the time and place specified or, in the circuit court, to have counsel enter an appearance in writing at or before that time.

If a sheriff returns a summons as “summoned” or “served,” the corporation is considered as in court and as appearing to the charging document. The court will then enter an appearance and not guilty plea for the corporation. If the corporation fails to appear, proceedings can then continue as if the corporation appeared in court and entered a not guilty plea, including passing a judgment concerning the charging document, issuance of process of execution to the sheriff against the property of the corporation to the extent fines and costs are awarded against the corporation, and any subsequent sheriff’s sale of the property.

Under the Maryland Rules, in a civil suit, service is made upon a corporation by serving the corporation’s resident agent, president, secretary, or treasurer. If the corporation does not have a resident agent, or if a good faith attempt was made to serve these individuals, then service can be made upon the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.

For LLCs and limited partnerships, service in civil suits is made upon the entity’s resident agent. If the entity does not have a resident agent, or if a good faith attempt to serve the resident agent has failed, service can be made upon any other person authorized to receive service of process. For LLCs, service in these circumstances can also be made on any member of the LLC. For limited partnerships, service can also be made on any general partner.

Substituted service on a business entity required to have a resident agent can be made by serving two copies of the summons, complaint, and all other papers filed with it, along with the requisite fee, upon SDAT. This substituted service can only be used if (1) the entity has no resident agent; (2) the resident agent is dead or is no longer at the address for service of process maintained with SDAT; or (3) two good faith attempts on separate days to serve the resident agent have failed.

**Background:** LLCs, LLPs, and LLLPs are different types of business entities.

When a general partnership files a certificate of limited liability partnership with SDAT, an LLP is formed. In LLPs, the general partners are not individually liable for the partnership's obligations or the obligations of the other partners. Exceptions exist for negligence or misconduct.

Limited partnerships are partnerships containing at least one general partner and at least one limited partner. General partners typically have more control over the daily activities of the business and are susceptible to more liability than limited partners. One way of limiting the liability of a general partner in a limited partnership is to register the limited partnership as an LLLP with SDAT. In an LLLP structure, the general partners and limited partners all have limited liability.

In order to form an LLC, members of the LLC must file articles of organization with SDAT. LLCs are unincorporated business entities that function like partnerships. However, members of an LLC have the same protection from liability as shareholders in a corporation, and unlike limited partnerships, all the members of the LLC can actively participate in the day-to-day management of the business.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 708 (Delegate Marriott, *et al.*) (By Request – Baltimore City Administration) – Judiciary.

**Information Source(s):** Montgomery County; Prince George's County; Garrett County; Dorchester County; Judiciary (Administrative Office of the Courts); Baltimore County; Anne Arundel County; Richard A. McCray & Ward L. Thomas, *Limited Liability Companies as Exempt Organizations, Topic H*, Exempt Organization Continuing Professional Education Technical Instruction Program for FY 2000 (IRS Aug. 31, 1999); *Guide to Legal Aspects of Doing Business in Maryland*, Office of the Attorney General and Department of Business and Economic Development, June 2003; Department of Legislative Services

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