

# WEST VIRGINIA CODE: §16-9D-5

## **§16-9D-5. Agent for service of process.**

(a) Requirement for agent for service of process. --

(1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state, or in the United States, to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this article and article nine-b of this chapter, may be served in any manner authorized by law. The service constitutes legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number and proof of the appointment and availability of the agent to the satisfaction of the commissioner and the Attorney General.

(2) Any nonresident stamping agent authorized to affix stamps to packages of cigarettes evidencing payment of the tax levied by article seventeen, chapter eleven of this code, on cigarettes to be sold in this state that has not registered to do business in this state as a foreign corporation or business entity shall, as a condition precedent to being authorized to affix West Virginia tax stamps, appoint and continually engage without interruption the services of an agent in this state, or in the United States, to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this article and article nine-b of this chapter, may be served in any manner authorized by law. The service constitutes legal and valid service of process on the nonresident stamping agent. The nonresident stamping agent shall provide the name, address, phone number and proof of the appointment and availability of the agent to the satisfaction of the commissioner and the Attorney General.

(b) The nonparticipating manufacturer or the nonresident stamping agent shall provide written notice to the commissioner and the Attorney General thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer, or nonresident stamping agent, as the case may be, shall notify the commissioner and Attorney General in writing of the termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(c) Any nonparticipating manufacturer and any nonresident stamping agent whose cigarettes are sold in this state, who has not appointed and engaged an agent as required by this section, shall be considered to have appointed the Secretary of State of West Virginia as the

agent and may be proceeded against in the courts of this state by service of process upon the Secretary of State: Provided, That the appointment of the Secretary of State as the agent of the manufacturer or the nonresident stamping agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory.