

## What is 'Private Administrative Process'?

Private administrative process ("PAP") is a document, usually in affidavit form (signed in front of a notary public who verifies the identity of the signer; an Acknowledgment), that is sent from one man or woman to another for the purpose of settling a dispute. If the matter is very serious, the affiant (the one who signs and affidavit; the sender) may want to have a 'Jurat' at the end of the document which means the contents of the document are sworn to rather than the affiant just having his or her identity acknowledged. A typical Acknowledgment may look like this:

New York State    )

                          ) ss:

Kings County        )

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me a notary public, the undersigned officer, personally

appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the wo/man whose name is subscribed to the within instrument, and acknowledged that s/he executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

but a jurat has this wording:

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by (Name of whomever making the statements) who proved on the basis of proper identification, to be who s/he claimed to be.

Generally, a PAP would consist of an initial document which states what the dispute is about, the facts as the affiant sees them and what action the affiant would like the respondent to take in order to settle the dispute. The parties to a PAP can also be referred to as the declarant and respondent, libellant and libellee, or some other such terms. The respondent(s) -- there can be more than one respondent -- are supposed to answer the affiant in affidavit form as well. This is why it is best directed to a private individual even if the dispute is with a corporation. Someone there can take responsibility for the corporation's actions by having his or her signature acknowledged on a reply so that affiant and respondent are at parity.

If there is no response, or if a response is made that is defective, meaning it did not answer the questions or address the statements made, then a Notice of Fault is sent, telling the respondent that the time given for answering has past but that s/he is being allowed more time as a courtesy. The time now given is usually 10 or 20 days but can be as little as 3 days depending upon circumstances. The respondent can also be notified of the consequences of not answering, which would be the action you intend to take if they don't try to settle the dispute, or the amount they'll owe.

Some processes provide for an additional warning called Further Ending of Commercial Grace, or Opportunity to Cure, or some such title, which gives the other party a little more time. This is usually done to be meticulous in giving the respondent plenty of notice and time so they cannot claim later on that the dog ate the mail and they didn't know, or they were on vacation and didn't have enough time to formulate an answer, or whatever.

The final document, of course, is the Notice of Default in which you can re-state all they've agreed to by their silence or defective response(s).

#### WITNESSING:

For greater effect, a notary public can be asked to witness the PAP which means that all documents in the process pass through the hands of the notary so a record of the proceedings can be made. At the end of the process, if no agreement or compromise between the parties was reached, the notary can then create a report of when documents were sent, how much time was given for the respondent to answer and whether or not there were any responses. This is called a Notice of Non-Response and carries more weight than if you say, yourself, that there was no response. As an agent of the Secretary of State, the notary is a public official and acts in an arms-length, impartial manner.

In the alternative, if your process demanded payment of

damages or some other monies from the respondent, instead of having the notary issue the Notice of Non-Response after the Default, the notary could serve your bill or demand for payment to the respondent. That is generally done three times at least 10 days apart. After that is finished, then the Notice of Non-Response can be issued for a more complete process.

## CERTIFICATE OF DISHONOR/DEFAULT ("COD") METHOD:

There is one final step that can be taken, and that is a method which is sometimes called 'Notary Protest', but that refers back to the days of lawful money of substance (gold and silver) when notaries only protested dishonored payment instruments, for example a bank refusing to pay out a check drawn on an account in its records. Now that the U.S. is in the final phases of a bankruptcy and everything has a monetary value, everything has been put into commerce, and so the COD method was developed.

The way the COD works is, after a process has completed, a copy of the documents used in the process is turned over to a notary with an affidavit describing the steps taken in the process and requesting the COD method be performed because of the lack of proper response (dishonor) to the affiant's documents. Usually, the affidavit requesting service isn't necessary if the COD is being done by the same notary who witnessed the process and issued the Notice of Non-Response.

The notary then does his/her own process which consists of

an initial Notice of Dishonor which explains to the respondent that the affiant requests that the documents used in the process be re-presented to give them another chance to resolve the issue. If there is no proper response after ten days, then the notary sends a Notice of Fault usually allowing an additional three days to answer. If no answer is forthcoming, then the notary issues a Certificate of Default if the respondent is a government agency or a Certificate of Dishonor for any other type of entity. The COD is also an administrative judgment.

### APOSTILLE:

Many people like to have the Secretary of State apply an apostille to the COD. An apostille authenticates that the document is legitimate by verifying that the notary is in good standing. It is generally used when a document is being brought into a foreign jurisdiction and is otherwise known as 'Authentication of Documents' which is a U.N. Convention under which the countries signing on to that Convention agree to honor each others documents as long as the documents bear an apostille (have been authenticated). As Americans became frustrated with their documents being ignored in the private, corporate courts and in dealings with other corporate entities, and also became aware that their public venue is foreign to the private venue of flesh and blood men and women, apostilles started being used as a way to gain greater recognition and acceptance for their documents.

### HANDLING THE COD:

There are two ways that CODs can be used. It, together with

the entire PAP, can be used as the basis of a Complaint for Declaratory Judgment which can be brought into court for an administrative review by an attorney or a judge. If the reviewing officer finds that the process was done correctly, that all parties received proper due process of law, then an order of Declaratory Judgment will be issued.

The other option is to create a lien based upon the PAP and the COD for filing in the Uniform Commercial Code office in the Respondent's state. Usually that is in the Secretary of State's office but a few states have it under the Dep't of Finance or the District Court.

The lien needs to contain the proper elements with which we can help you, the cost depending upon the complexity of your matter. Once filed, the lien takes 90 days to 'cure', during which time it can be challenged. After the 90 days, it becomes an asset as an account receivable.

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