

Publication Requirements For New York Limited Liability Entities

New York recently enacted a strict new law concerning publication requirements for limited liability entities. The old requirement was often overlooked as the consequences for non-compliance were minimal. The consequences for non-compliance with the new law, however, are more severe and result in a suspension of the entity's authority to conduct business.

The law, effective June 1, 2006, covers the following entities, whether formed in New York or doing business in New York, regardless of the jurisdiction of incorporation: LLCs, PLLCs, LPs and LLPs. Entities that fail to comply with the publication requirements will be suspended from carrying on, conducting or transacting business in New York during the period of noncompliance – although it is unclear what actual negative consequences will result from such suspension. Existing entities not in compliance with the publication requirements must comply before June 1, 2007.

I. Publication Requirements For Entities Formed After June 1, 2006

A limited liability entity formed after June 1, 2006 will have 120 days after it is formed (or, if different, after its initial articles of organization become effective) to publish a copy of the articles of organization or a notice containing the substance of such articles for six consecutive weeks in one daily and one weekly newspaper in the county where the company intends to be located. The county clerk for the county selects the available publications. There are procedures in the statute if no publication is selected.

The entity must then file proof of publication with the New York Department of State.

Consequences of Non-compliance

If a limited liability entity fails to comply with the publication requirements within 120 days, its authority to carry on, conduct or transact business in New York is suspended. Such suspension becomes effective upon the expiration of the 120-day period.

However, suspension can be subsequently annulled at any time upon the filing of proof of publication.

A non-compliant entity will be barred from maintaining a legal action in New York, but the statute does not address whether suspension will result in other consequences. The statute does provide, however, that suspension (and non-compliance) shall not (i) result in any member, manager or agent of such limited liability company becoming liable for the contractual obligations or other liabilities of the limited liability company or (ii) limit or impair the validity of any contract or act of such limited liability company, or any right or remedy of any other party under or by virtue of any contract, act or omission of such limited liability company, or the right of any other party to maintain any action or special

proceeding on any such contract, act or omission, or right of such limited liability company to defend any action or special proceeding in New York.

II. Grandfather Provisions

A limited liability company formed prior to January 1, 1999 is automatically deemed in compliance with the new publication requirements. A limited liability company formed thereafter but before June 1, 2006 which complied with the then-applicable publication requirements has no new publication requirements.

Any limited liability company formed after 1998 but prior to June 1, 2006 which did not comply with the then-applicable publication requirements, however, has a grace period of 12 months ending June 1, 2007 to cure such non-compliance by publishing its articles of organization or a complying notice followed by the filing of proof of such publication with the Department of State.

Failure to cure the noncompliance within 12 months will subject the limited liability company to suspension in the same manner and with the same limitations as non-compliant limited liability companies formed after June 1, 2006.