

February 2006

New York Governor Signs Into Law Changes to Business Entity Publication Requirements

On February 3, 2006, New York Governor George Pataki approved Senate Bill No. 85-A. (Note: This bill was substituted for Assembly Bill No. 1075-A.) **This bill changes the newspaper publication requirements for domestic and foreign limited liability companies and other business entities.** The act becomes effective “on the first day of the first month which commences not less than ninety days after the date upon which the act shall have become a law.” [The New York Department of State has confirmed the effective date is **June 1, 2006.**]

Some of the significant provisions include:

- **A reduction in the number of required publications** from once a week for 6 successive weeks to once a week for 4 successive weeks in two newspapers of the county in which the office of the business entity is intended to be located with one newspaper to be printed weekly and one newspaper to be printed daily.
- **Expansion of publication requirement to include the names of the 10 persons with the most valuable ownership interests in the business entity.** Excludes from disclosure* in the notice of publication the names of the significant investors of an entity which is (i) an investment adviser as defined in the Investment Advisers Act of 1940 or a commodity pool operator or commodity trading advisor as defined in the Commodity Exchange Act, or (ii) a collective investment vehicle or any direct or indirect subsidiary and affiliates thereof sponsored, advised or managed by an investment adviser, commodity pool operator or commodity trading advisor as set forth in item (i) of this sentence.

**This exclusion is cited in sections of the new amendatory legislation pertaining to domestic and foreign limited liability companies, domestic and foreign professional service limited liability companies, and domestic and foreign limited partnerships.*

- **Adds a new requirement for a certificate of publication** which must be completed by the entity, executed under penalties of perjury and filed with the Department of State along with the affidavits of publication from the newspapers. The certificate of publication must include the information that the newspapers described in the affidavits of publication satisfy the requirements set forth by law and the designation made by the county clerk.

- If no proof of publication is filed with department of state within 120 days after establishment of business, **suspension** of domestic or foreign business entity's authority to carry on, conduct or transact business in NY State may occur.

- **Publication for businesses formed prior to effective date of new provisions.** There is no re-publication requirement for those businesses which complied with old law publication requirements prior to the effective date of new provisions. **If they did not comply under old law publication requirements, entity has 18 months to publish after subdivision's effective date. If entity does not to comply within that 18 month period, it will be suspended.** The act also defines compliance with publication and filing requirements for earlier established entities: If formed (and filed) with department of state on or after January 1st, 1999 and before new provision's effective date and the entity filed at least one affidavit of the printer or publisher of a newspaper with department of state at any time prior to such effective date, or the entity was formed (and filed) before January 1st, 1999, without regard to whether the entity did or did not file any affidavit of the printer or publisher of a newspaper with the Secretary of State.

To view the full text of the bill in PDF format, [click here](#).

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