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LAW ALERT

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New Law Requires Immediate Action By Many Limited Liability Entities

By: William A. Ubert, Esq. and Michael I. Schnipper, Esq.

William A. Ubert

Michael I. Schnipper

A change in New York Law requires immediate action by many limited liability companies and limited liability partnerships. Clients and friends conducting business as a limited liability entity are urged to call us without delay to discuss this pressing issue.

Effective June 1, 2006, the publication requirements for foreign and domestic limited liability companies (including PLLC's), limited partnerships, and limited liability partnerships will change dramatically. On February 3, 2006, New York State Governor Pataki signed into law Senate Bill 85-A (now known as Chapter 767 of 2005) which governs the publication requirements for limited liability entities.

One of the most controversial changes effected by this change in the law is the requirement that entities disclose the names of the ten persons who are most actively engaged in the business and affairs of the limited liability entity and who have the most valuable membership interests. The law provides several ways to determine which members hold the most valuable interest but generally the language is vague so as to allow for a degree of interpretation. While publication of an individual's name does not affect his or her personal liability yet (see below), it does put the person's name into the public view and may result in the assertion of baseless personal claims. Under existing law, limited liability entities are not required to disclose the names of any individuals associated with the entity and are frequently formed by an attorney or someone working with the attorney.

A second and more dramatic change in the law is the penalty for failure to comply with the publication requirements. Under existing law, failure to publish merely

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Founded in 1968, Ruskin Moscou Faltischek P.C. has emerged as Long Island's preeminent law firm. As specialized as we are diverse, we have built cornerstone groups in all of the major practice areas of law, and service a diverse and sophisticated clientele. With more than 60 attorneys, superior knowledge of the law, polished business acumen and proven credentials, Ruskin Moscou Faltischek has earned a reputation for excellence and success. It is this ongoing achievement that makes us an acknowledged leader among our peers and the preferred choice among business leaders.

The strength of Ruskin Moscou Faltischek's resources greatly enhances what we can accomplish for our clients – to not only solve problems, but to create opportunities. We take pride in going beyond what is expected from most law firms. The invaluable contacts and relationships we have nurtured in the financial, venture capital and business communities heighten our value-added services. Our knowledge of technology and business models enables us to guide clients to the next level in their business evolution. Our intellectual capital, multidisciplinary approach, and our ability to navigate through the complexities of each court and administrative forum in which we practice, enable us to efficiently and cost effectively provide professional excellence and achieve success for our clients.

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RUSKIN MOSCOU FALTISCHEK P.C.
Smart Counsel. Straight Talk.

East Tower, 15th Floor
1425 Reckson Plaza, Uniondale, NY 11556-1425
516.663.6600 ▼ www.rmfpc.com

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results in an inability to initiate and maintain a lawsuit until publication has been accomplished. While the publication requirement has been viewed as costly and annoying, there were no significant consequences for non-compliance. As a result, many clients did not feel compelled to suffer the expense of publication unless and until necessary. It has now become necessary.

The amended law provides that failure to publish within one hundred and twenty (120) days of formation will result in suspension of an entity's authority to conduct business. Although the legal significance of such a suspension is not clear, at a minimum it will become a problem for any attorney to render a clean legal opinion – a requirement for virtually all significant business transactions. We understand that another bill pending in Albany would go so far as to strip the limited liability shield from an entity while it is delinquent in its publishing obligation. How this would work is not at all clear, as the lost protection would be reinstated upon successful publication. Needless to say, it is no longer a risk worth taking.

Pre-existing entities that have not satisfied the publication requirements must comply before December 1, 2007. Note that this retroactive reach of the statute only affects pre-existing entities that did not comply with the old law. There is no requirement that an entity, which properly published under the existing law, republish in order to satisfy the requirements of the amended law.

Please contact us to discuss the impact of the new law on your particular situation and the best way to comply with the revised law. Quick and thoughtful action now will avoid personal liability and permit for smooth continuity of your business.

William Ubert is a partner at Ruskin Moscou Faltischek, where he is a member of the Firm's Corporate & Securities Department. Mr. Ubert has a wide range of corporate and commercial legal experience, including mergers and acquisitions and corporate finance. He can be reached at 516-663-6514 or wubert@rmfpc.com

Michael Schnipper is an associate at Ruskin Moscou Faltischek, P.C. where he is a member of the firm's Corporate and Securities Department. He can be reached at 516-663-6674 or mschnipper@rmfpc.com