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To: All Clients and Friends

From: Cliff Bernstein

Re: Limited Liability Company – New Publishing Requirements

TITLE INSURANCE BULLETIN – NEW YORK

Chapter 767 of the Laws of 2006, signed into law on February 3, 2006 and effective June 1, 2006, amends the publication requirements for domestic and foreign limited liability companies, domestic and foreign professional limited liability partnerships (each an “Entity”).

Among the changes made by Chapter 767 is that notice of formation is required to be published once a week for four successive weeks in two newspapers of the county in which the office of the entity is intended to be located, instead of for six weeks as the law now provides. In addition, Chapter 767 requires that the affidavits of publication filed with the New York Department of State be accompanied by a certification of publication of the Entity. There is also a new requirement that the notice set forth the names of the ten persons, or such lesser number of persons, who are actively engaged in the business and affairs of, and have the most valuable membership, or general and limited partnership interests, as applicable, in the Entity.

For an Entity formed on or after June 1, 2006, if within 120 days of the date of its formation the certificate and affidavits of publication are not filed with the Department of State, and if the requirements for publication are not met, the authority of the Entity to carry on, conduct or transact any business in New York is suspended until there is substantial compliance. However, neither the failure to comply with the requirements for publication nor the suspension of the Entity’s authority to conduct business impairs or limits the validity of any contract or act of the Entity, or its rights to defend in any action or special proceeding brought against it in New York State.

An Entity formed prior to June 1, 2006 that has complied with the publication and filing requirements in effect when it was formed is not required to comply with the new requirements. An Entity formed prior to June 1, 2006 which did not comply with publication and filing requirements under prior law has 18 months to comply with the new publication and filing

requirements.

However, an Entity formed prior to January 1, 1999 is deemed to be in compliance with prior law without regard to whether an affidavit of publication was filed with the Department of State, and an Entity formed between January 1, 1999 and June 1, 2006 that filed one affidavit of publication with the Department of State prior to June 1, 2006 is deemed to have complied with prior law.

Exempt from the requirement that ten persons be named in the published notice are (i) investment advisors, as defined in the Investment Advisors Act of 1940, (ii) a commodity pool operator or commodity trading advisor, as defined in the Commodity Exchange Act, and (iii) a collective investment vehicle (and any direct or indirect subsidiary or affiliate thereof) sponsored, advised or managed by an entity in items (i) or (ii).

Exempt from the publication requirements is a limited liability company which is a Theatrical Production Company so long as the words "Limited Liability Company" appears in its name.

Information has been received that a companion Bill supported by the Governor, not yet passed by the legislature, would reduce the period in which an Entity formed prior to June 1, 2006 is, when applicable, required to comply with the new publication and filing requirements from 18 months to 120 days of the date of the Entity's formation. The Bill would also change the number of weeks in which publication of a notice of formation is required from four successive weeks back to six successive weeks.

The text of that Bill also provides that if an Entity required to comply with new publication and filing requirements does not do so within the statutory time period, each member or limited partner, as applicable, "shall be personally and fully liable, jointly and severally, with such [Entity] and with each other [member/limited partner] for all debts, obligations and liabilities of such [Entity] incurred or arising at any time after such effective date [June 1, 2006]". There would be no liability for the members or limited partners if the Entity subsequently complies with the publication and filing requirements of Chapter 767 other than the requirement that there be compliance within 120 days of formation.

Chapter 767 can be obtained at <http://assembly.state.ny.us/leg/?bn=S00085&sh=t>

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