

MEMORANDUM

TO: ALL LIMITED LIABILITY COMPANY CLIENTS

FROM: R. LEONARD DAVIS, III, ESQUIRE

DATE: FEBRUARY 20, 2009

RE: IMPORTANT REMINDER REGARDING ANNUAL MEETINGS

I greatly appreciate the privilege of representing you as your attorney for your Limited Liability Company (“LLC”).

This is an important reminder to all my LLC clients. Your Certificate of Organization and/or Operating Agreement may require you to hold regular annual meetings of the Members. If your LLC has Managers as well, there may also need to be an annual meeting of the Managers (who serve in a capacity similar to that of Directors in a Corporation). Even if your governing documents do not *require* Annual Meetings, it may be advisable to have them anyway, as discussed below.

Some of the LLCs I have set up (especially multi-member LLC’s organized on a “corporate” model) require an Annual Meeting of the Members to be held in the Spring of each year. Pursuant to appropriate Member and/or Manager action, the LLC can change the date of this Meeting to a different time during the year, but your Operating Agreement likely requires a meeting in the Spring, normally in March or April.

You should hold the Annual Meeting of Members annually on the required date. This applies even to many “single Member” LLCs.

We provide various legal services in the ongoing support of our LLC clients, including the following for your consideration:

1. Some of our LLC clients ask us to conduct their Annual Meetings of Members and/or Managers in our office. (This can also be done at the LLC’s office, or by means of a telephone conference call). Often, in these cases, I prepare the Minutes of those Annual Meetings. I recommend and prefer this approach, because it gives me an opportunity to meet on at least an annual basis with my LLC clients, the principals of those LLC’s, and often other advisors, including the LLC’s accountants.
2. Some LLC clients have their own internal meetings, but then call or write me with information about what transpired, and ask me to prepare a set of Minutes reflecting actions taken at the Annual Meetings. For such clients, I have attached a form of Sample Agenda for the Annual Meeting of the Members and Managers.
3. Some clients ask me to send them a form of Minutes each year, which they complete and maintain on their own.

My concern is that some clients are not conducting required Annual Meetings, or if they are, they

are not preparing Minutes of the Annual Meetings. Failure to hold required Annual Meetings or to prepare and maintain Minutes of such Annual Meetings can result in problems, as described below.

If you would like me to assist you in connection with your LLC Annual Meeting, in one of the ways described above, or if you have other ongoing LLC legal needs, please do not hesitate to contact me. I look forward to hearing from you. Set forth below are:

**“Six Reasons for Holding Regular Annual Meetings
of the Members and Managers of a Pennsylvania LLC”:**

1. Unlike Pennsylvania Corporations, which are required by statute (Pa.C.S.A. §1755) to have a minimum of one Shareholders Meeting each year, Pennsylvania LLCs are not mandated by statute to have Annual Meetings of Members. However, the LLC’s Certificate of Organization or Operating Agreement may have such a requirement, and if so, the Operating Agreement has the force of law.
2. Taxing authorities, such as the Internal Revenue Service and Pennsylvania Department of Revenue, require entities such as LLCs to observe “entity formalities,” one of which may be conducting Annual Meetings if so required by the LLC’s governing documents. Otherwise, questions will arise whether the individuals running the business are acting as proprietors or partners, rather than as Members having limited liability.
3. Observing “entity formalities” is very critical in the area of creditor-debtor relations. A principal reason for establishing an LLC is to shield Members from liability. However, a creditor of your LLC may be able to “pierce the veil” in the event that the LLC fails to observe proper formalities such as holding regular meetings of the Members and Managers (especially if required by the governing documents). If this were to happen, a creditor of your LLC could sue you, as a Member, and possibly attach your personal assets.
4. From a managerial standpoint, LLC meetings provide a record of decisions and proof of LLC authority to undertake certain actions. A clear record of decisions made, and of the persons assigned to carry out those decisions, is essential for effective management. Furthermore, this type of record keeping is essential to minimize liability of Members and Managers in cases where it may be alleged that they were acting outside the scope of their proper authority.
5. From a practical standpoint, the Annual Meeting of your LLC is an excellent occasion to step back from the day-to-day decisions of the business, review the past year’s performance and financial statements, and to plan and strategize for the future.
6. The Annual Meeting is an opportunity to discuss current issues and problems with your professional advisors--not only your LLC counsel, but also accountants, insurance agents, and the like.