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LEGAL BRIEFING: CORPORATE LAW
BIENNIAL STATEMENTS

- Pg. 1 of 1

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Biennial Statements: What LLCs & Corporations Need to Remember

Now that April 15th (Tax Day) has passed, it is important to remind managers, members, officers and directors of Limited Liability Companies ("LLCs") and corporations to file your biennial statements, if you have not already done so. While the filing of a biennial statement may seem inconsequential to some, the failure to abide by New York State's rules and regulations could cause a number of issues for your business. For instance, a corporation or LLC that fails to file its biennial statement will be shown to be past due in the records of the New York Department of State and may be subject to a \$250 penalty for the delinquency. This could prevent a business from executing certain business transactions because an LLC or corporation's Certificate of Good Standing or status letter will also reflect that it is past due in the filing of its biennial statement. Additionally, if an LLC or corporation has moved locations without filing its biennial statement and litigation is initiated against the entity, it could prevent the Department of State from serving process, which may result in a default judgment against the entity if it is unaware of the pending litigation.

So, what do LLCs and corporations need to know? In New York State, domestic and foreign business corporations and LLCs are required to file a biennial statement every two (2) years with the Department of State. The filing period for corporations or LLCs is the month in which its original Certificate of Incorporation, Articles of Organization, or Application for Authority was filed with the New York Department of State.

The information required to be submitted on a biennial statement is set forth in Section 301(e) of the Limited Liability Company Law ("LLCL") and Section 408 of the Business Corporation Law ("BCL"). Section 408 of the BCL requires that the corporate biennial statement set forth the following:

- i. The name and business address of its Chief Executive Officer
- ii. The Street address of its principal executive office; and
- iii. The address to which the New York Secretary of State shall forward copies of process accepted on behalf of corporation

For LLCs, pursuant to Section 301(e) of the Limited Liability Company Law, the biennial statement must set forth the address to which the New York Secretary of State shall mail a copy of any process accepted on its behalf.

In recent years, New York State has made the process for filing a biennial statement relatively easy. LLCs and corporations may file their statements online at the Department of State website for a fee of nine dollars (\$9.00). Additionally, as of January, 2016, LLCs and corporations are also permitted to file this information on their annual tax reports, in lieu of filing a biennial statement.

If you have any questions about this Legal Briefing, please contact any attorney of our Firm at 585-730-4773.

This Legal Briefing is intended for general informational and educational purposes only and should not be considered legal advice or counsel. The substance of this Legal Briefing is not intended to cover all legal issues or developments regarding the matter. Please consult with an attorney to ascertain how these new developments may relate to you or your business.

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