

---

July 2015

## A Look at the Publication Requirement in New York Limited Liability Company Law

Matthew J. Moisan

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Business Organizations Law Commons](#)

---

### Recommended Citation

Moisan, Matthew J. (2015) "A Look at the Publication Requirement in New York Limited Liability Company Law," *Touro Law Review*: Vol. 31: No. 3, Article 12.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol31/iss3/12>

This The New York LLC Act at Twenty is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact [lross@tourolaw.edu](mailto:lross@tourolaw.edu).

## A LOOK AT THE PUBLICATION REQUIREMENT IN NEW YORK LIMITED LIABILITY COMPANY LAW

*Matthew J. Moisan\**

### I. INTRODUCTION

The limited liability company (“LLC”) is a unique vehicle that offers a few distinct benefits over other corporate entities: (i) limited liability of all of its owners or members, setting it apart from partnerships and limited partnerships; (ii) pass through taxation, setting it apart from “C” corporations; and (iii) flexibility due to its contractual origins, setting it apart from both “C” and “S” Corporations.<sup>1</sup> Due to these benefits, it is often the perfect vehicle for small business owners.

This is, of course, from a legal perspective. As a small business owner, a parallel concern to legal considerations is cost. Unfortunately, in New York City it costs approximately three times as much to form an LLC than it does to form a corporation.<sup>2</sup> This additional cost is due to the requirement that an LLC meet a publication requirement.<sup>3</sup> The publication requirement states that an LLC announce its existence in two papers, one of weekly publication and one of daily publication, each for a period of six weeks.<sup>4</sup>

---

\* Mr. Moisan received a Bachelor of Arts in Psychology from Boston University, and his Juris Doctorate from Touro Law School. At Touro he graduated cum laude and was a member of the *Touro Law Review* and the *Willem C. Vis International Moot Court Team*. He is currently an attorney at Moisan Legal, P.C.

<sup>1</sup> Thomson Reuters Foundation and Morrison & Foerster LLP, *Which Legal Structure Is Right for My Social Enterprise? A Guide to Establishing a Social Enterprise in the United States*, MORRISON & FOERSTER 44 (May 2013), <http://media.mofo.com/files/Uploads/Images/Guide-to-Establishing-a-Social-Enterprise.pdf>.

<sup>2</sup> *Choosing Between an S Corporation and an LLC*, N.Y. SMALL BUS. LAW, [http://www.newyorksmallbusinesslaw.com/new\\_york\\_small\\_business\\_1/2012/04/choosing-between-an-s-corporation-and-an-llc.html](http://www.newyorksmallbusinesslaw.com/new_york_small_business_1/2012/04/choosing-between-an-s-corporation-and-an-llc.html) (last visited Mar. 7, 2015).

<sup>3</sup> *Id.*

<sup>4</sup> N.Y. LTD. LIAB. CO. LAW § 206(a) (McKinney 2006); *Limited Liability Companies*

The high filing cost associated with the publication requirement is fundamentally misaligned with the purpose of the Limited Liability Company Act. This article will discuss the expense of complying with the publication requirement of the Act and compare it with other jurisdictions, opining that the publication requirement is antiquated.

## II. BACKGROUND

While entities similar to LLCs existed in Europe for some time, in 1977 the state of Wyoming passed the first limited liability company act as a special interest legislation for an oil company.<sup>5</sup> Subsequently, the Internal Revenue Service (“IRS”) issued a private letter indicating that this new entity would be treated as a partnership for federal tax purposes.<sup>6</sup> Five years later, Florida followed with its own act, based upon Wyoming’s legislation.<sup>7</sup> During this five-year period, the IRS issued conflicting opinions regarding the taxation of this new corporate entity.<sup>8</sup> Taxation was not the only area of uncertainty; during that period, the courts had yet to confirm whether or not to limit the liability of the members of an LLC.<sup>9</sup> Thus, between approximately 1982 and 1990, no other state enacted similar legislation and this area of law was relatively quiet.<sup>10</sup>

In 1989, eleven years after Wyoming’s legislation, the IRS published *Revenue Ruling 88-76*, which laid the foundation for and described the criteria behind, the classification of LLCs as partnerships, officially granting LLCs pass-through status under federal income tax law.<sup>11</sup> In 1991, Virginia, Utah, Texas and Nevada passed statutes creating LLCs.<sup>12</sup> Delaware’s statute, often viewed as the

---

FAQs, DEP’T OF STATE N.Y., <http://www.dos.ny.gov/corps/lcfaq.asp> (last visited Mar. 7, 2015).

<sup>5</sup> Carol H. Gonnella & M. Jason Majors, *Planning with the Wyoming Close LLC*, in WYOMING CLOSE LLC KIT 44 (2004).

<sup>6</sup> John Cunningham, *Understanding LLC History*, WEALTH COUNSEL (Nov. 25, 2013), <https://www.wealthcounsel.com/blog/understanding-LLC-history/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Susan Pace Hamill, *The Origins behind the Limited Liability Company*, 59 OHIO ST. L.J. 1459, 1469, 1473-74 (1998).

<sup>11</sup> Carter G. Bishop & Robert R. Keatinge, *Limited Liability Companies at 20: An Introduction*, 42 SUFFOLK U. L. REV. 455, 455-56 (2009).

<sup>12</sup> Wayne M. Gazur, *The Limited Liability Company Experiment: Unlimited Flexibility*,

most flexible, was also passed in that same year.<sup>13</sup> As of the date of this writing, all fifty states have adopted regulations authorizing the creation of LLCs, though such regulations are severely limited in a handful of states.<sup>14</sup>

Each of these statutes maintained the same core structure. An LLC is an entity that limits the liability of its owners, without the relatively strict guidelines that govern corporations, and is based on contract law.<sup>15</sup> Specifically, numerous provisions of New York Limited Liability Company Law, for instance, state: “Except as otherwise provided in the Operating Agreement.”<sup>16</sup> In other words, the LLC encompasses freedom of contract. There are a few fundamental distinguishing characteristics of an LLC as compared to a corporation. First, profits and losses can be allocated and distributed without regard to amount or form of capital invested; an LLC does not need to create a “surplus” account for dividends.<sup>17</sup> Second, an LLC is not constrained to a tiered management structure consisting of a “Board of Directors” (serving at the leisure of the shareholders) who appoint a “President,” “Treasurer,” or “Secretary.”<sup>18</sup> Third, members of an LLC are not required to have annual meetings (or any meetings, unless contractually prescribed).<sup>19</sup> Again, this flexibility is the beauty of the LLC form. However, this is not to say that this flexibility is always beneficial. Critics have commented that the lack of corporate formalities allows managers to contract around standard fiduciary duties, which underpin both corporations and partnerships.<sup>20</sup>

---

*Uncertain Role*, 58 LAW & CONTEMP. PROBS. 135, 141 (1995).

<sup>13</sup> *Id.* However, note that Delaware’s legislation was introduced in 1991 yet ultimately passed in 1992. See *History of the Limited Liability Company (LLC)*, DELAWAREINC.COM, <https://www.delawareinc.com/llc/history-of-delaware-llc/> (last visited Mar. 8, 2015).

<sup>14</sup> John D. Chambliss, *Entity Overview of LLCs, LPs and LLPs*, available at <http://www.davismalm.com/UploadedDocuments/Articles/ChamblissPartnershipsLLCsandLLPs.pdf> (last visited Mar. 8, 2015).

<sup>15</sup> *Losh Family, LLC v. Kertsman*, 228 P.3d 793 (Wash. Ct. App. 2010).

<sup>16</sup> See, e.g., N.Y. LTD. LIAB. CO. LAW § 408 (b)-(d) (McKinney 1994) (providing that the operating agreement may change the default provisions relating to manager-managed LLCs); *id.* § 417(2) (stating that the operating agreement may change the statutory default provisions for amending the operating agreement).

<sup>17</sup> *Id.*

<sup>18</sup> Nellie Akalp, *The 5 Biggest Tax Differences between an LLC and Corporation*, ENTREPRENEUR.COM (Oct. 24, 2014), <http://www.entrepreneur.com/article/238844>.

<sup>19</sup> *LLC Operating Agreements*, N.Y. SMALL BUS. LAW, [http://www.newyorksmallbusinesslaw.com/new\\_york\\_small\\_business\\_l/2012/04/llc-operating-agreements.html](http://www.newyorksmallbusinesslaw.com/new_york_small_business_l/2012/04/llc-operating-agreements.html) (last visited Mar. 18, 2015); see also N.Y. LTD. LIAB. CO. LAW § 417.

<sup>20</sup> Rachel Maizes, Note, *Limited Liability Companies: A Critique*, 70 ST. JOHN’S L. REV.

Formation of an LLC typically requires:

1. Deciding on an available name for the developing business, which complies with the state's governing LLC rules.
2. Filing Articles of Organization with the state, which is a relatively short document that generally contains the name of the entity, address for service of process, and possibly whether the entity is member-managed or manager-managed. The latter is required in New York, but not Delaware.<sup>21</sup>
3. Paying the required filing fee associated with the paperwork, which typically ranges from \$100 to \$800, depending upon the state of formation.
4. Devising and producing the document governing the operation of the LLC. In New York, this document is titled an "Operating Agreement," and in Delaware, it is titled a "Limited Liability Company Agreement." The purpose of this agreement is to stipulate the rights and obligations of the entity's members, binding them to certain duties.
5. Obtaining necessary licensure and permits in order to operate the business, if required under governing law.<sup>22</sup>

### III. N.Y. LLC LAW § 206: THE PUBLICATION REQUIREMENT

#### A. Background

New York adopted its LLC law in 1994.<sup>23</sup> This law was subject to significant comment. Many critics noted that this would result in less revenue for the State due to its single taxation.<sup>24</sup> Critics were

---

575, 583-84 (1996).

<sup>21</sup> Compare N.Y. LTD. LIAB. CO. LAW § 203, with DEL. CODE. ANN. tit. 6, §18-201 (West 2012).

<sup>22</sup> See Akalp, *supra* note 18.

<sup>23</sup> N.Y. LTD. LIAB. CO. LAW ch. 34.

<sup>24</sup> Maizes, *supra* note 20, at 576-78.

also concerned that the limited liability of investors would shift business losses to creditors and tort victims.<sup>25</sup> The original statute contained section 206, which has often been referred to as the “publication requirement.”<sup>26</sup> Section 206 requires an LLC to publish its existence within 120 calendar days of filing its Articles of Organization.<sup>27</sup> The notice to be published must include certain information and fulfill certain standards such as:

- a. The date the LLC was formed;
- b. The name of the LLC;
- c. The county where the LLC is located;
- d. A statement from the Secretary of State designating agency;
- e. The name and address of said registered Agent;
- f. The purpose of the LLC (usually stated as “to engage in any lawful act or activity”); and
- g. The date of dissolution, if a specific dissolution date is provided in the organization documents.<sup>28</sup>

As mentioned above, this notice must be published in two newspapers within the State of New York, one of daily publication and one of weekly publication, each for a period of six weeks.<sup>29</sup> Of course, this process is more esoteric than simply finding a newspaper and publishing the notice; certain newspapers are approved for publication and others are not.<sup>30</sup> In some counties, the list of approved newspapers is available online, and in others, one must submit a request to the county clerk who then replies with the appropriate papers.<sup>31</sup> Upon completion of the six-week period of publication, the LLC delivers an affidavit of publication to the Department of State.<sup>32</sup> The Department of State then delivers a Certificate of Publication to

---

<sup>25</sup> *Id.* at 578-79.

<sup>26</sup> N.Y. LTD. LIAB. CO. LAW § 206.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Forming a Limited Liability Company in New York*, DEP’T OF STATE N.Y., <http://www.dos.ny.gov/corps/lcfaq.asp> (last visited Mar. 7, 2015).

<sup>31</sup> *Id.*

<sup>32</sup> N.Y. LTD. LIAB. CO. LAW § 206(a).

the entity, which is promptly filed for future reference.<sup>33</sup>

It appears that the justification for this requirement is akin to the justification for other public notices, like auctions in foreclosure and bankruptcy. The statute alerts the general public by informing them that a new entity has been formed. I question whether the general public reviews this section in the paper. I also question the actual benefit of that information, as New York State maintains a searchable database online which can be accessed free of charge.<sup>34</sup> The database includes the date the entity was formed and its registered agent.<sup>35</sup> To the extent that the publication notice requirement fostered this database, it would add value and could be justified. However, there is simply no interplay between this database and the publication fee. The publication fee is paid to the newspaper in which the notice is published.<sup>36</sup> Adding further ambiguity, if an LLC chooses not to comply with the publication requirement, there is limited punishment.<sup>37</sup> This forces additional questioning of the requirement as to its usefulness.

### B. Failure to Comply

Perhaps counter-intuitively, the general consensus is that failure to comply with section 206, while not totally harmless, does not significantly impact the business operations of an LLC within New York. Specifically, by failing to publish, the New York Limited Liability Company Act states that the entity cannot avail itself of the court system of the state, that is, it cannot bring suit within New York.<sup>38</sup>

A few business owners have attempted to invalidate the requirement altogether. Such attempts to reject the publication requirement have been met with some success. For example, State Supreme Court Justice Alice Schlesinger authored a decision in

<sup>33</sup> *Id.*

<sup>34</sup> *Search the Corporation & Business Entity Database*, DEP'T OF STATE N.Y., [http://www.dos.ny.gov/corps/bus\\_entity\\_search.html](http://www.dos.ny.gov/corps/bus_entity_search.html) (last visited Mar. 7, 2015).

<sup>35</sup> *Forming a Limited Liability Company in New York*, *supra* note 30.

<sup>36</sup> *Id.*

<sup>37</sup> N.Y. LTD. LIAB. CO. LAW § 206(b) (3)-(6).

<sup>38</sup> *See id.* § 206(a). Commentators have also suggested that this might result in the loss of its members' limited liability, but this theory remains unproven in court. *Contra* Anthony Q. Fletcher, *Publish or Perish: The New York Limited Liability Company Law Publication Requirement the Fundamental Flaw of an Otherwise Flawless Law*, 1 N.Y.U. J.L. & BUS. 139, 184-85 (2004).

November 2001, which stated that section 206 violated the plaintiff's constitutional rights of due process and equal protection under the United States and New York State Constitutions.<sup>39</sup> This decision, however, was overturned in *Barklee Realty Co. LLC v. Pataki*.<sup>40</sup> Though ultimately resolved in favor of the State, the proceedings in *Barklee* offer an intimate perspective of the issues faced by small business owners due to section 206.<sup>41</sup>

The businesses represented in this case were Barklee Realty Company and Barklee 94, two LLCs established by small business owner, Barbara Kraebel.<sup>42</sup> Although Kraebel was familiar with the publication requirement, she declined to comply with the provision when forming these entities.<sup>43</sup> Kraebel brought an action contesting the constitutionality of the publication requirement.<sup>44</sup> Noting the language of section 206, Kraebel alleged that the punishment prescribed for non-compliance deprived her and like business owners of their fundamental rights to due process and equal protection.<sup>45</sup> The allegations were grounded on the premise that by not fulfilling the requirement, the LLC would be denied access to New York State's court system.<sup>46</sup> The trial court saw merit in Kraebel's argument, granting her summary judgment and ruling section 206 unconstitutional.<sup>47</sup> However, soon after the decision, New York State announced its intention to appeal.<sup>48</sup>

Following the announcement to appeal, an amicus curiae brief was filed on behalf of a collective group of small business organizations interested in preserving the lower court's ruling.<sup>49</sup> The brief sought to reinforce the provision's unconstitutionality and further

---

<sup>39</sup> *Barklee Realty Co., LLC v. Pataki*, No. 120546/99, 2001 WL 36384022 (Sup. Ct. N.Y. County Nov. 16, 2001), *rev'd* 765 N.Y.S.2d 599 (App. Div. 1st Dep't 2003).

<sup>40</sup> 765 N.Y.S.2d 599 (App. Div. 1st Dep't 2003).

<sup>41</sup> *Id.*

<sup>42</sup> *Barklee Realty Co.*, 2001 WL 36384022.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Barklee Realty Co.*, 2001 WL 36384022.

<sup>48</sup> *Barklee Realty Co.*, 765 N.Y.S.2d at 599.

<sup>49</sup> See Brief for Cmty. Hous. Improvement Program, Inc. et al. as Amici Curiae Supporting Respondents, *Barklee Realty Co., LLC v. Pataki*, 765 N.Y.S.2d 599 (App. Div. 1st Dep't 2003) (No. 120546/99), available at [http://www.nationalcorp.com/ncr/file?filename=Barklee\\_AmiciCuriae\\_Jan\\_03.pdf](http://www.nationalcorp.com/ncr/file?filename=Barklee_AmiciCuriae_Jan_03.pdf).



discussed the inherent ineffectiveness of the statute.<sup>50</sup> Contained in the brief were detailed accounts of long-standing criticisms of the provision and the expenses it imposes on LLCs.<sup>51</sup> Noted in the brief were quotes by the then State Attorney General, who believed the measure to be expensive and unnecessary, as well as objections by the New York City Bar, for the same reasons.<sup>52</sup> The brief claimed that the public, at large, did not seek out or rely upon weekly news publications when researching LLCs.<sup>53</sup> Instead, the brief opined that the public relied upon freely available information to guide its research.<sup>54</sup> The brief concluded that the stated justification behind section 206 was invalid, and therefore, the decision holding the statute unconstitutional should prevail.<sup>55</sup>

Despite the controversial nature of the publication requirement and the compelling arguments against it, the appellate court overturned the lower court's decision.<sup>56</sup> The court stated that the "plaintiffs have not met their heavy burden of demonstrating unconstitutionality beyond a reasonable doubt," and therefore, declared the provision valid.<sup>57</sup> Furthermore, the court noted that LLCs never enjoyed "unrestricted" access to the courts, being subject to the "same limitations as natural persons" and that no fundamental interest was at stake.<sup>58</sup> Therefore, the court held that substantive due process concerns were met by the provision as it did not "arbitrarily alter or restrict a right of access."<sup>59</sup> Finally, the court in *Barklee* concluded that the rational basis behind the provision was not related to justiciability, but instead sought to encourage commerce in the state and "compliance with administrative requirements unrelated to the court system that might otherwise be ignored."<sup>60</sup> As such, the provision stands today as valid.

In 2009, section 206 again came before the courts. The case,

---

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *See supra* note 49.

<sup>55</sup> *Id.*

<sup>56</sup> *Barklee Realty Co.*, 765 N.Y.S.2d at 607.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 603.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 606.

*In re Empire Equities Capital Corp.*,<sup>61</sup> provides a glimpse into the legal precedent behind what occurs following an LLC's non-compliant action under section 206. At its heart, this case involved a bankruptcy matter in which a foreign LLC (subject to essentially the same requirements and qualification as a domestic LLC) sought to retain a contract deposit after debtor Equities Capital failed to close on a transaction involving an option contract.<sup>62</sup> The debtor, in response, argued that the foreign LLC failed to comply with section 206 at the time the action was brought, and thus, did not have the authority to enter into the contract in the first place, nor sue to keep the deposit.<sup>63</sup> The court, however, erred on the side of the LLC, and rejected the debtor's argument on two grounds.<sup>64</sup>

First, the court noted that section 802 of the New York Limited Liability Company Law, while substantially identical to section 206, explicitly states that failure to comply with the publication requirement: "shall not limit or impair the validity of any contract or act of such foreign limited liability company, or any right or remedy of any other party under or by virtue of any contract, act or omission of such foreign limited liability company . . . ."<sup>65</sup> With this, the court effectively mandated that non-compliance may never be grounds for impairment of an LLC's business conduct.<sup>66</sup>

Second, the court held that upon compliance with the publication requirement, a non-compliant LLC will be granted full privileges retroactively to the date of the LLC's formation, as if such entity was never non-compliant.<sup>67</sup> Interestingly, this allows a non-compliant LLC, when wishing to enforce a contract, to bring suit without waiting until publication as it can cure its own failure to publish at any time after bringing the suit. This begs the question, why comply with the publication requirement?

All in all, failure to comply with the qualifications of section 206 seems, by and large, to be relatively harmless, until necessary. Due to the fact that a small business owner might object to the heavy fees, the choice to not publish is attractive for small business owners.

---

<sup>61</sup> No. 09-12751, 2010 WL 1849391 (Bankr. S.D.N.Y. May 6, 2010).

<sup>62</sup> *Id.* at \*1.

<sup>63</sup> *Id.* at \*3.

<sup>64</sup> *Id.* at \*3-4.

<sup>65</sup> *Id.* at \*3 (quoting N.Y. LIM. LIAB. CO. LAW § 802(b)(i) (McKinney 2006)).

<sup>66</sup> *In re Empire Equities*, 2010 WL 1849391, at \*3.

<sup>67</sup> *Id.* at \*4.

Nevertheless, in the spirit of the law, most attorneys advise clients to comply with the publication requirement.

### C. Avoidance

Founding LLC members have and continue to take actions to minimize the high costs associated with filing. Specifically, according to the New York Limited Liability Company Act, an LLC must comply with the publication requirement in the county in which an office of the LLC is located.<sup>68</sup> Many, if not most, LLCs use a corporate service for service of process—which maintains an office in Albany, New York,<sup>69</sup> where the publication fees are less than they are in Manhattan.<sup>70</sup> To use this corporate service, the LLC pays an annual fee.<sup>71</sup> This annual fee could be characterized as rent—and just like that, the LLC has an office in Albany. As it stands, avoidance is a common remedy, though it is suggested that the business fulfill the publication requirement rather than avoid its obligations under state law.

### D. What Sets New York's Requirement Apart

While section 206 has been controversial since its inception, New York is not the only state that imposes a publication requirement.<sup>72</sup> In fact, four other states have similar requirements. Specifically:

- **Nebraska:** Requires the LLC publish once a week for three weeks, in two periodicals. The *Daily Reporter* charges a flat rate of \$32.06, while the more cosmopolitan *Omaha World Herald* charges between \$200 and \$250, depending on notice

<sup>68</sup> N.Y. LTD. LIAB. CO. LAW § 206(a).

<sup>69</sup> See *id.* at § 301; see also N.Y. BUS. CORP. LAW § 306(a)-(b)(1) (McKinney 1990).

<sup>70</sup> Amy E. D'Agostino, *Practical Considerations for Forming LLCs in New York and Delaware*, CHADBOURNE.COM (July 8, 2009), [http://www.chadbourn.com/files/Publication/7544b5f5-276b-4e41-ba34-c2c398823e9c/Presentation/PublicationAttachment/bca2f303-8819-4791-980f-cb57790b0ba5/July2009\\_Law.comArticle.pdf](http://www.chadbourn.com/files/Publication/7544b5f5-276b-4e41-ba34-c2c398823e9c/Presentation/PublicationAttachment/bca2f303-8819-4791-980f-cb57790b0ba5/July2009_Law.comArticle.pdf) (stating that because “[a]n LLC must publish in the county of the office designated in its articles of organization,” electing to designate Albany County may be advantageous due to low publication costs).

<sup>71</sup> *Id.*

<sup>72</sup> See NEB. REV. STAT. § 21-193(1) (West 2012); ARIZ. REV. STAT. ANN. § 29-635(C) (2009); 15 PA. CONS. STAT. ANN. § 1307 (1988); GA. CODE ANN. § 14-2-201.1(b) (West 1993).

length.<sup>73</sup>

- **Arizona:** Requires the LLC to publish three times, in at least one periodical. Average costs in Maricopa range between \$40-\$60 (representative of state's average), while in Yuma, costs rise to \$120-\$160. Here, the LLC must comply with this requirement within 60 days of formation.<sup>74</sup>
- **Pennsylvania:** Like New York, requires publication in at least two periodicals, with one being a legal periodical. However, the LLC must be published only once in each. *Montgomery Law Reporter* charges \$86, though some publications offer a cheaper, online option (such as the *Times Herald*, which costs about \$50).<sup>75</sup>
- **Georgia:** While no explicit publication must be made, the LLC is required to publish a "notice of intent to incorporate," in the county where it is located and will operate, where at least 60% of subscriptions are paid. The notice must comply with a specific format, and must be easily accessible on the state website, for a cost of \$40, with the paper of choice.<sup>76</sup>

While these provisions from other states remain substantively similar to New York's legislation, the most noticeable difference pertains to fees. Furthermore, in New York, the county clerk assigns the paper which the entity must publish, denying some flexibility that these other statutes allow.<sup>77</sup> Of note, within New York City, every LLC must publish in the *New York Law Journal*, for the price of \$723.<sup>78</sup> According to publicly available information, the *New York Law Journal* ran more than 20,000 notices, accruing about \$15 million in fees.<sup>79</sup>

- **Manhattan:** The *New York Law Journal* has a minimum fee of \$723.<sup>80</sup>

---

<sup>73</sup> NEB. REV. STAT. § 21-193(1).

<sup>74</sup> ARIZ. REV. STAT. ANN. § 29-635(C).

<sup>75</sup> 15 PA. CONS. STAT. ANN. § 1307 (Pennsylvania and Georgia require all company forms to publish; whether LLCs must strictly comply is a point of discussion, though it is encouraged).

<sup>76</sup> GA. CODE ANN. § 14-2-201.1(b).

<sup>77</sup> *Limited Liability Companies FAQs*, *supra* note 4.

<sup>78</sup> D'Agostino, *supra* note 70.

<sup>79</sup> *Browse Public Notices*, N.Y. LAWJOURNAL.COM, <http://www.newyorklawjournal.com/public-notices?from=01%2F01%2F2012&to=05%2F01%2F2012> (last visited Mar. 5, 2015) (calculating 20,000 notices at \$723.00 per notice).

<sup>80</sup> D'Agostino, *supra* note 70.

- **Nassau:** *Mineola American* offers a flat rate of \$160, which is on par with other like publications in the county. Costs rarely exceed \$500.<sup>81</sup>
- **Brooklyn** (Kings County): Costs vary between \$750-\$1,200. For example, in Queens, the *Jewish Press* appears to be one of the more popular, cost effective options. *Brooklyn Downtown Star* is often used as well.
- **Queens:** Costs range from \$750-\$1,200. *Queens Ledger*, or even *Newsday*, are papers often used, with varying cost.
- **Albany:** Costs vary widely, from \$26.88 (Altamont Enterprise) to \$350 when using the more prominent papers.

The average fee downstate is \$1,000 and can be as high as \$1,200. In light of the lack of penalty and small risk of non-compliance, one can understand why companies might not comply.

#### IV. CONCLUSION

What remains is a broken system: one in which certain publications are profiting via legislation that fails to serve a justifiable purpose, one in which the true letter of the law is often avoided because failure to comply is not seriously punishable, and most importantly, one in which the entrepreneur is suffering by being forced to spend additional dollars on administrative fees rather than putting those dollars to use. Rather than investing in marketing, a new employee, or additional inventory—investments which foster business and lead to new revenue—the entrepreneur is forced to waste these funds. In light of the foregoing, I would advocate that the publication requirement either be repealed or it receive a substantial overhaul to add value to the general public.

---

<sup>81</sup> Ellen Victor, *N.Y. LLC Publication Requirements Are a Burden for Small Businesses*, LONG ISLAND BUS. LAWYER (Aug. 13, 2009), <http://longislandbusinesslawyer.com/business-entities/ny-llc-publication-requirements-are-a-burden-for-small-businesses/>.