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NOTICE TO CLIENTS

RE: DOCUMENTING LIMITED LIABILITY COMPANY ACTIONS

Although one of the benefits of operating a business as a limited liability company (LLC) rather than a corporation in Michigan is that LLC's are not required to hold annual meetings of its members, it may not be a bad idea to do so nonetheless. In order to effectively protect a member's limited liability and to take advantage of the tax benefits of an LLC, documenting the important actions and decisions of an LLC should be a top priority.

The Michigan Business Corporation Act (MBCA) governs the operation of corporations in the State of Michigan. Under the MBCA, a corporation is required to hold annual meetings of its shareholders. However, under the Michigan Limited Liability Company Act (MLLCA), limited liability companies are not required to hold annual meetings of their members.

In order to protect yourself and maintain limited liability as a member of an LLC, the LLC must operate as a separate business entity. For example, if the LLC is using assets owned by a member of the LLC or if monies are being loaned between the LLC and a member, whether to or from that member, these transactions should be documented in order to ensure that the member's assets will not be deemed LLC assets and possibly lost to LLC creditors in satisfaction of an LLC obligation.

Also, although the LLC may be a pass-through entity for tax purposes, in that all tax liability is passed through to its members, the LLC can deduct qualifying operating costs and expenses as well as depreciate assets. Any transactions involving tax issues should be reflected in LLC meeting minutes. The minutes may be useful, for example, in defending the LLC's position to the IRS or Department of Treasury during an audit of the company.

Following are some other examples of transactions which you may want to document in meeting minutes:

- leases of real or personal property
- acquisition or sale of assets by the LLC not in the ordinary course of business
- transferring of ownership interests between members and from the company to members
- any decisions requiring the consent of the members

Notice to Clients
January 2005
Page 2

Just because the law does not require LLC's to hold annual meetings or follow other types of formalities required of corporations, it behooves all LLC's to keep track of important transactions by putting them in writing and storing them in a company book in order to maintain the limited liability offered to members in an LLC structure.

Of course, please feel free to contact our office should you have any questions regarding this notice.

Very truly yours,

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January 2005