SENATE, No. 226



STATE OF NEW JERSEY

219th LEGISLATURE



PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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SYNOPSIS

Revises law concerning partnerships, limited partnerships, and limited liability companies.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



An Act concerning partnerships, limited partnerships, and limited liability companies, supplementing P.L.2000, c.161 (C.42:1A-1 et seq.) and P.L.1983, c.489 (C.42:2A-1 et seq.), and amending P.L.2012, c.50.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. (New section) a. As used in this section:

“Converted entity” or “resulting converted entity” means a converting entity after it has been converted pursuant to this section.

“Converting entity” means an entity that will be converted pursuant to this section.

“Filing office” means the Division of Revenue in the Department of the Treasury, or such other State office as designated by law.

“Governing documents” means the: (1) certificate of incorporation, bylaws, and shareholders agreement, if any, of a corporation; (2) the certificate of formation and operating agreement or limited liability company agreement of a limited liability company; and (3) the certificate of formation, if any, and partnership agreement of a partnership.

“Other business entity” or “another business entity” means a business corporation, partnership, limited partnership, or a limited liability company.

b. (1) Pursuant to a plan of conversion, a partnership may convert into another business entity formed or organized under the laws of this State or any other state of the United States or any foreign country or other foreign jurisdiction, as the plan of conversion shall provide. Unless otherwise provided in the partnership agreement, a plan of conversion shall be approved by all partners of the converting entity. In connection with a conversion hereunder, interests in the converting entity may be exchanged for or converted into cash, property, rights, or securities of, or interests in, the converted entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights, or securities of, or interests in, a domestic limited partnership or other business entity which is not the converted entity. Notwithstanding prior approval, a plan of conversion may be terminated or amended pursuant to a provision for that termination or amendment contained in the plan of conversion.

(2) A partnership may not convert to another business entity if authority for that conversion is not granted by the laws of the jurisdiction under which the other business entity is organized.

(3) With respect to the conversion of a partnership to another business entity, that partnership shall comply with the provisions of this section and the resulting converted entity shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized.

c. (1) Pursuant to a plan of conversion, another business entity formed or organized under the laws of this State or any other state of the United States or any foreign country or other foreign jurisdiction may convert into a domestic partnership, as the plan of conversion shall provide. Unless otherwise provided in the governing documents of the converting entity, a conversion shall be approved by the converting entity in accordance with the laws of the jurisdiction under which the other business entity is organized. In connection with a conversion hereunder, rights or securities of, or interests in, the converting entity may be exchanged for or converted into cash, property, rights, or securities of, or interests in, the converted entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights, or securities of, or interests in, a domestic limited partnership or other business entity which is not the converted entity. Notwithstanding prior approval, a plan of conversion may be terminated or amended pursuant to a provision for that termination or amendment contained in the plan of conversion.

(2) Another business entity may not convert to a domestic partnership if authority for that conversion is not granted by the laws of the jurisdiction under which the converting entity is organized.

(3) With respect to the conversion of another business entity to a domestic partnership, that other business entity shall comply with the provisions of the laws of the jurisdiction under which it is organized and the resulting converted entity shall comply with the provisions of this section.

d. If a converting entity converts under this section, the converted entity resulting from the conversion shall file a certificate of conversion in the filing office. The filing office shall, upon filing, forward a copy of the certificate of conversion to the Director of the Division of Taxation. The certificate of conversion shall state:

(1) The name and jurisdiction of formation or organization of the converting entity;

(2) That a plan of conversion has been approved and executed by the converting entity;

(3) The name of the resulting converted entity;

(4) The future effective date or time, which shall be a date or time certain, of the conversion if it is not to be effective upon the filing of the certificate of conversion;

(5) That the plan of conversion is on file at a place of business of the converted entity, and shall state the address thereof;

(6) That a copy of the plan of conversion shall be furnished by the converted entity, on request and without cost, to any member, partner, or shareholder of the converting entity; and

(7) If the resulting converted entity is not a domestic partnership or other business entity organized under the laws of this State, a statement that the converted entity agrees that it may be served with process in this State in any action, suit, or proceeding for the enforcement of any obligation of the converting entity, irrevocably appointing the filing office as its agent to accept service of process in that action, suit, or proceeding and specifying the address within or outside this State to which a copy of process shall be mailed to it by the filing office.

e. Unless a future effective date or time is provided in a certificate of conversion, in which event a conversion shall be effective at that future effective date or time, a conversion shall be effective upon the filing in the filing office of a certificate of conversion.

f. (1) When any conversion becomes effective under this section, for all purposes of the laws of this State, all of the rights, privileges, and powers of the converting entity, and all property, real, personal, and mixed, and all debts due to the converting entity, as well as all other things and causes of action belonging to the converting entity, shall be vested in the resulting converted entity, and shall thereafter be the property of the resulting converted entity as they were of the converting entity, and the title to any real property vested by deed or otherwise, under the laws of this State, in the converting entity, shall not revert or be in any way impaired by reason of this section; but all rights of creditors and all liens upon any property of the converting entity shall be preserved unimpaired, and all debts, liabilities, and duties of the converting entity shall attach to the resulting converted entity, and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it.

(2) Unless otherwise agreed or as required under the applicable provisions of the laws of the jurisdiction under which the converting entity is organized, the converting entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of that other entity and shall constitute a continuation of the existence of the converting entity in the form of entity of the resulting converted entity.

2. (New section) a. As used in this section:

“Converted entity” or “resulting converted entity” means a converting entity after it has been converted pursuant to this section.

“Converting entity” means an entity that will be converted pursuant to this section.

“Filing office” means the Division of Revenue in the Department of the Treasury, or such other State office as designated by law.

“Governing documents” means the: (1) certificate of incorporation, bylaws, and shareholders agreement, if any, of a corporation; (2) the certificate of formation and operating agreement or limited liability company agreement of a limited liability company; and (3) the certificate of formation, if any, and partnership agreement of a partnership.

“Other business entity” or “another business entity” means a business corporation, partnership, or a limited liability company.

b. (1) Pursuant to a plan of conversion, a domestic limited partnership may convert into another business entity formed or organized under the laws of this State or any other state of the United States or any foreign country or other foreign jurisdiction, as the plan of conversion shall provide. Unless otherwise provided in the partnership agreement, a conversion shall be approved by the converting entity as follows: (a) by all general partners; and (b) by the limited partners, or, if there is more than one class or group of limited partners, then by each class or group of limited partners, in either case, by the limited partners who own more than 50 percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. In connection with a conversion hereunder, interests in the converting entity may be exchanged for or converted into cash, property, rights, or securities of, or interests in, the converted entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights, or securities of, or interests in, a domestic limited partnership or other business entity which is not the converted entity. Notwithstanding prior approval, a plan of conversion may be terminated or amended pursuant to a provision for that termination or amendment contained in the plan of conversion.

(2) A domestic limited partnership may not convert to another business entity if authority for that conversion is not granted by the laws of the jurisdiction under which the other business entity is organized.

(3) With respect to the conversion of a domestic limited partnership to another business entity, that domestic limited partnership shall comply with the provisions of this section and the resulting converted entity shall comply with the applicable provisions of the laws of the jurisdiction under which it is organized.

c. (1) Pursuant to a plan of conversion, another business entity formed or organized under the laws of this State or any other state of the United States or any foreign country or other foreign jurisdiction may convert into a domestic limited partnership, as the plan of conversion shall provide. Unless otherwise provided in the governing documents of the converting entity, a conversion shall be approved by the converting entity in accordance with the laws of the jurisdiction under which the other business is organized. In connection with a conversion hereunder, rights, or securities of, or interests in, the converting entity may be exchanged for or converted into cash, property, rights, or securities of, or interests in, the converted entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights, or securities of, or interests in, a domestic limited partnership or other business entity which is not the converted entity. Notwithstanding prior approval, a plan of conversion may be terminated or amended pursuant to a provision for that termination or amendment contained in the plan of conversion.

(2) Another business entity may not convert to a domestic limited partnership if authority for that conversion is not granted by the laws of the jurisdiction under which the converting entity is organized.

(3) With respect to the conversion of another business entity to a domestic limited partnership, that other business entity shall comply with the provisions of the laws of the jurisdiction under which it is organized and the resulting converted entity shall comply with the provisions of this section.

d. If a converting entity converts under this section, the converted entity resulting from the conversion shall file a certificate of conversion in the filing office. The filing office shall, upon filing, forward a copy of the certificate of conversion to the Director of the Division of Taxation. The certificate of conversion shall state:

(1) The name and jurisdiction of formation or organization of the converting entity;

(2) That a plan of conversion has been approved and executed by the converting entity;

(3) The name of the resulting converted entity;

(4) The future effective date or time, which shall be a date or time certain, of the conversion if it is not to be effective upon the filing of the certificate of conversion;

(5) That the plan of conversion is on file at a place of business of the converted entity, and shall state the address thereof;

(6) That a copy of the plan of conversion shall be furnished by the converted entity, on request and without cost, to any member, partner, or shareholder of the converting entity; and

(7) If the resulting converted entity is not a domestic limited partnership or other business entity organized under the laws of this State, a statement that the converted entity agrees that it may be served with process in this State in any action, suit, or proceeding for the enforcement of any obligation of the converting entity, irrevocably appointing the filing office as its agent to accept service of process in that action, suit, or proceeding and specifying the address within or outside this State to which a copy of process shall be mailed to it by the filing office.

e. Unless a future effective date or time is provided in a certificate of conversion, in which event a conversion shall be effective at that future effective date or time, a conversion shall be effective upon the filing in the filing office of a certificate of conversion.

f. (1) When any conversion becomes effective under this section, for all purposes of the laws of this State, all of the rights, privileges, and powers of the converting entity, and all property, real, personal, and mixed, and all debts due to the converting entity, as well as all other things and causes of action belonging to the converting entity, shall be vested in the resulting converted entity, and shall thereafter be the property of the resulting converted entity as they were of the converting entity, and the title to any real property vested by deed or otherwise, under the laws of this State, in the converting entity, shall not revert or be in any way impaired by reason of this section; but all rights of creditors and all liens upon any property of the converting entity shall be preserved unimpaired, and all debts, liabilities, and duties of the converting entity shall attach to the resulting converted entity, and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it.

(2) Unless otherwise agreed or as required under the applicable provisions of the laws of the jurisdiction under which the converting entity is organized, the converting entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of that other entity and shall constitute a continuation of the existence of the converting entity in the form of entity of the resulting converted entity.

3. Section 8 of P.L.2012, c.50 (C.42:2C-8) is amended to read as follows:

8. Name.

a. The name of a limited liability company shall contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co.".

b. Unless authorized by subsection d. of this section, the name of a limited liability company shall be distinguishable in the records of the filing office from:

(1) the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this State; and

(2) each name reserved under section 10 of this act.

c. Furthermore, the name of a limited liability company shall not contain any word or phrase, or any abbreviation or derivative thereof, the use of which is prohibited or restricted by any other statute of this State, unless the limited liability company has complied with the restrictions.

d. A limited liability company may apply to the filing office for authorization to use a name that does not comply with subsection b. of this section. The filing office shall authorize use of the name applied for if, as to each noncomplying name:

(1) the present user, registrant, or owner of the noncomplying name consents **[**in a signed record**]** to the use and submits **[**an undertaking**]** a signed record of consent in a form satisfactory to the filing office **[**to change the noncomplying name to a name that complies with subsection b. of this section and is distinguishable in the records of the filing office from the name applied for**]**; or

(2) the applicant delivers to the filing office a certified copy of the final judgment of a court establishing the applicant's right to use in this State the name applied for.

e. Subject to section 61, the provisions of this act shall apply to a foreign limited liability company transacting business in this State which has a certificate of authority to transact business in this State or which has applied for a certificate of authority.

(cf: P.L.2013, c.276, s.1)

4. Section 18 of P.L.2012, c.50 (C.42:2C-18) is amended to read as follows:

18. Formation of Limited Liability Company; Certificate of Formation.

a. One or more persons may act as organizers to form a limited liability company by signing and delivering to the filing office for filing a certificate of formation.

b. A certificate of formation shall state:

(1) the name of the limited liability company, which complies with section 8 of this act; and

(2) the street and mailing addresses of the initial registered office and the name of the initial agent at that office for service of process of the company.

c. Subject to subsection c. of section 12 of this act, a certificate of formation may also contain statements as to matters other than those required by subsection b. of this section. However, a statement in a certificate of formation is not effective as a statement of authority.

d. A limited liability company is formed when the filing office has filed the certificate of formation **[**and the company has at least one member**]**, unless the certificate states a delayed effective date pursuant to subsection c. of section 22 of this act.

e. If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a certificate of dissolution is signed and delivered to the filing office for filing and the filing office files the certificate.

f. Subject to any delayed effective date and except in a proceeding by this State to dissolve a limited liability company, the filing of the certificate of formation by the filing office is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

(cf: P.L.2012, c.50, s.18)

5. Section 38 of P.L.2012, c.50 (C.42:2C-38) is amended to read as follows:

38. Indemnification and Insurance.

a. As used in this section:

(1) "Company agent" means any person who is or was a member of a member-managed company, a manager of a manager-managed company, an officer, employee or agent of the indemnifying company or of any constituent company absorbed by the indemnifying company in a consolidation or merger and any person who is or was a member, manager, officer, director, trustee, employee or agent of any other enterprise, serving as such at the request of the indemnifying company, or any such constituent company, or the legal representatives of any such member, manager, officer, director, trustee, employee or agent.

(2) "Other enterprise" and "another enterprise" mean any domestic or foreign limited liability company other than the company, and any corporation, partnership, joint venture, sole proprietorship, trust or other enterprise, whether or not for profit, served by a company agent;

(3) "Expenses" means reasonable costs, disbursements and attorney's fees;

(4) "Liabilities" means amounts paid or incurred in satisfaction of settlements, judgments, fines and penalties; and

(5) "Proceeding" means any pending, threatened or completed civil, criminal, administrative or arbitrative action, suit or proceeding, and any appeal therein, and any inquiry or investigation which could lead to that action or proceeding.

(6) References to an "other enterprise" or "another enterprise" include employee benefit plans; and references to "fines" include any excise taxes assessed on a person with respect to an employee benefit plan.

b. A limited liability company shall indemnify a company agent against expenses to the extent that such company agent has been successful on the merits or otherwise in any proceeding brought against the company agent by reason of the company agent serving as a company agent or serving another enterprise at the request of the limited liability company. If the company agent is successful on the merits or otherwise in defense of any claim, issue or matter in any such proceeding, indemnification shall be provided under this subsection with respect to the claim, issue or matter.

c. A limited liability company shall indemnify a company agent against any debt, obligation, expense or other liability incurred by that company agent in the course of the company agent's activities on behalf of the limited liability company or another enterprise at the request of the limited liability company, if, in making the payment or incurring the debt, obligation, expense or other liability, the company agent :

(1) is a member of a member-managed limited liability company or a manager of a manager-managed limited liability company and

complied with the duties stated in sections 35 and 39 of this act ; or

(2) is other than a member of a member-managed limited liability company or a manager of a manager-managed limited liability company and acted in good faith and in a manner the company agent reasonably believed to be in the best interests of the limited liability company.

d. A limited liability company may purchase and maintain insurance on behalf of any company agent against any expenses incurred in any proceeding and any liabilities asserted against the company agent in his or her capacity as a company agent, whether or not the limited liability company could eliminate or limit the person's liability to the company for the conduct giving rise to the liability under subsection g. of section 11 of this act. The limited liability company may purchase such insurance from, or such insurance may be reinsured in whole or in part by, an insurer owned by or otherwise affiliated with the limited liability company, whether or not such insurer does business with other insureds.

(cf: P.L.2012, c.50, s.38)

6. Section 39 of P.L.2012, c.50 (C.42:2C-39) is amended to read as follows:

39. Standards of Conduct for Members and Managers.

a. A member of a member-managed limited liability company owes to the company and, subject to subsection b. of section 67 of this act, the other members, the duties of loyalty and care stated in subsections b. and c. of this section.

b. The fiduciary duty of loyalty of a member in a member-managed limited liability company includes the duties:

(1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member:

(a) in the conduct or winding up of the company's activities;

(b) from a use by the member of the company's property; or

(c) from the appropriation of a company opportunity;

(2) to refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

c. The duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

d. A member shall discharge the duties under this act or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

e. A member does not violate a duty or obligation under this act or under the operating agreement merely because the member's conduct furthers the member's own interest.

f. All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

g. It is a defense to a claim under paragraph (2) of subsection b. of this section and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

h. If, as permitted by subsection f. of this section or the operating agreement, a member enters into a transaction with the company that would otherwise be prohibited by paragraph (2) of subsection b. of this section, the member's rights and obligations are the same as those of a person not a member.

i. In a manager-managed limited liability company, the following rules apply:

(1) Subsections a., b., c. and g. of this section apply to the manager or managers and not the members, and the duty stated under paragraph (3) of subsection b. of this section continues until winding up is completed.

(2) Subsections d. and e. of this section apply to the managers as well as the members and, subject to subsection d. of this section, a member does not have any duty to the company or any other member solely by reason of being a member.

(3) The power to ratify stated in subsection f. of this section pertains only to the members.

j. A member of a member-managed limited liability company and a manager of a manager-managed limited liability company shall be fully protected in relying in good faith upon the records of the limited liability company and upon information, opinions, reports, or statements presented by another manager, member, or liquidating trustee, an officer or employee of the limited liability company, or committees of the limited liability company, members, or managers, or by any other person as to matters the member or manager reasonably believes are within that other person’s professional or expert competence, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the limited liability company, or the value and amount of assets, reserves, or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the limited liability company or to make reasonable provision to pay those claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to members or creditors might properly be paid. The protection afforded by this subsection shall extend to any claims under subsection c. of this section and any comparable claim in equity or at common law that the member or manager breached the duty of care required of that member or manager.

(cf: P.L.2012, c.50, s.39)

7. Section 51 of P.L.2012, c.50 (C.42:2C-51) is amended to read as follows:

51. Other Claims Against Dissolved Limited Liability Company.

a. A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

b. The notice authorized by subsection a. of this section shall:

(1) be published at least once in a newspaper of general circulation in the county in this State in which the dissolved limited liability company's principal office is located or, if it has none in this State, in the county in which the company's registered office is or was last located;

(2) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; **[**and**]**

(3) state **[**that a claim against the company is barred unless an action to enforce the claim is commenced within five years**]** the deadline for receipt of the claim, which may not be less than six months after publication of the notice; and

(4) state that the claim will be barred if not received by the deadline.

c. If a dissolved limited liability company publishes a notice in accordance with subsection b. of this section, **[**unless the claimant commences an action to enforce the claim against the company within five years after the publication date of the notice, the claim of each of the following claimants**]** a claim against a dissolved limited liability company is barred if the requirements of subsection b. of this section are met and:

(1) the claim is not received by the specified deadline except in the case of a claimant **[**that did not receive notice in a record under section 50 of this act**]** who shows good cause for not having timely sent a claim, to the extent as the Superior Court may allow; or

(2) **[**a claimant whose claim was timely sent to the company but not acted on; and**]** if the claim is timely received but rejected by the company:

(a) the company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within 90 days after the claimant received the notice; and

(b) the claimant does not commence the required action within 90 days.

(3) **[**a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution**]** (Deleted by amendment, P.L. , c. (C. ) (pending before the Legislature as this bill).

d. A claim not barred under this section may be enforced:

(1) against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person after dissolution.

(cf: P.L.2012, c.50, s.51)

8. This act shall take effect immediately.

STATEMENT

This bill makes various revisions to the laws governing partnerships, limited partnerships, and limited liability companies. The revisions permit partnerships and limited partnerships to convert to and from other business entities and clarify indemnification standards, address notice issues, and make certain other changes to the “Revised Uniform Limited Liability Company Act.”

The bill provides that, pursuant to a plan of conversion, a partnership or limited partnership may convert into another business entity formed or organized under the laws of this State or any other state of the United States or any foreign country or other foreign jurisdiction, as provided in the plan of conversion. The bill also provides that, pursuant to a plan of conversion, another business entity formed or organized under the laws of this State or any other state of the United States or any foreign country or other foreign jurisdiction may convert into a domestic partnership or limited partnership, as provided in the plan of conversion. Under the bill, “other business entity” means a business corporation, partnership, limited partnership, or a limited liability company.

The bill provides that, in order for a limited liability company to use a name that is similar to that of another entity, a limited liability company must submit to the filing office a signed record of consent from the entity currently using the name in a form satisfactory to the filing office.

The bill eliminates the requirement that a limited liability company must have a member before it may be formed. Instead, a limited liability company is formed when the filing office has filed the certificate of formation, unless the certificate states a delayed effective date.

Under the bill, a limited liability company shall indemnify a company agent against any debt, obligation, expense or other liability incurred by that company agent in the course of the company agent's activities on behalf of the limited liability company or another enterprise at the request of the limited liability company, if, in making the payment or incurring the debt, obligation, expense or other liability, the company agent: (1) is a member of a member-managed limited liability company or a manager of a manager-managed limited liability company and complied with certain duties or (2) is other than a member of a member-managed limited liability company or a manager of a manager-managed limited liability company and acted in good faith and in a manner the company agent reasonably believed to be in the best interests of the limited liability company.

The bill provides that a member of a member-managed limited liability company and a manager of a manager-managed limited liability company shall be fully protected in relying in good faith upon certain information and records of the limited liability company. This protection extends to claims that the applicable member or manager breached duty of care required of that member or manager.

The bill shortens the time following the newspaper publication of notice of the dissolution of a limited liability company in which a claim against the limited liability company must be brought before the claim is barred, currently five years. Under the bill, the claim must be received not less than six months following newspaper publication of notice.