

UB Law Alumni Association's Social Wellness Committee

Navigating NY WBE Certification: Legal Insights and Best Practices

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WBE Certification in New York

- Overview of WBE Certification
- Importance of attorneys in guiding applicants
- Objectives:
 - To identify common issues that can lead to denial and provide strategies for avoiding them

Legal Framework

- Article A-15 of Executive Law
- 5 NYCRR Part 144
- Division of Minority and Women's Business Development (DMWBD)

WBE Certification Requirements

- 51% Minority or Woman-owned
- Real and substantial capital contribution
- Control of operations and decisions
- Independent from non-woman-owned firms

Legislative Background & Development

- Article 15-A enacted in 1988
- Implementing regulations
- 2010 & 2014 regulatory amendments
- Scherzi Systems, LLC

Trends in WBE Certification Denials 2016-2025

- Increased scrutiny on control and management
- Emphasis on technical competency
- Family-owned business transitions
- Rising denial and appeal rates
- Legislative development

Capital Contribution

Common Issues

- Joint marital assets
- Gifts or transfers without value
- Inheritance without personal investment
- Post hoc contributions
- Unequal compensation
- Reliance on unverified expertise

Capital Contribution

Strategies

- Document contributions precisely
- Separate personal/business finances
- Avoid symbolic ownership
- Valuing non-cash contributions
- Reinforce ownership in governing documents
- Anticipate scrutiny in familial transfers

Capital Contribution

Case Studies

Bore Tech, LLC

CNC Construction, Inc.

S.C. Spencer Electric, Inc.

PamTen, Inc.

Conxx NE, Inc.

Java Joe's Roasting Co.



Control and Management

Common Issues

- Not holding highest officer position
- Boards' overriding authority
- Male partners controlling operations
- Limited involvement or external employment
- Contradictory public records

Control and Management

Strategies

- Clearly identify and document leadership roles
- Eliminate external control
- Clearly define operational supervision
- Maintain consistency in public records

Control and Management

Case Studies

Scherzi Systems, LLC



PamTen, Inc.



Upstate Electrical, LLC



Signs Now of Rochester, Inc.



Independence

Common Issues

- Shared resources and space
- Financial dependence
- Related party contracts
- Overlapping leadership

Independence

Strategies

- Separate finances, facilities, and personnel
- Avoid referrals from family related businesses
- Document transactions clearly
- Demonstrate distinct organizational structures

Case Studies

Independence

Versatile LLC

Dale Workforce Solutions

The Big Deal Casino Acedemy, LLC



Core Business Functions

Common Issues

- Administrative role only
- Male employees directing technical work
- Lack of required licenses
- Limited involvement in day to day operations

Core Business Functions

Strategies

- Highlight industry specific expertise
- Document supervisory role in day to day operations
- Acquire and maintain necessary licenses to demonstrate qualifications and expertise

Core Business Functions

Case Studies

Certified Hood and Fire Co., Inc.

West Branch Engineering, P.C.

TCI Systems, Inc.

J. McBain, Inc.

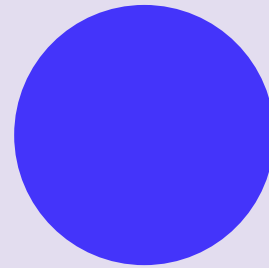


Key Take Aways

- For your clients:
 - Stress the importance of clear, well-supported documentation
- For you:
 - Get ahead of the structuring of the business to plan for WBE submission and structure accordingly
 - Develop strategies for addressing denials

Questions?

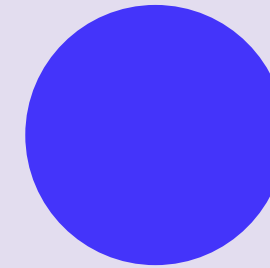
Thank you!



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