

EXHIBIT B

CORPORATE FIREWALL PROTECTION: USING CORPORATIONS AND OTHER ENTITIES TO PROVIDE LIABILITY PROTECTION

Certain endeavors that would normally result in liability may be placed under a limited liability company, a regular corporation, or certain other limited liability entities to provide “firewall” protection. The law is very clear that the shareholder or member of a company or limited liability company (LLC) is not responsible for liabilities of the company itself absent guarantees, personal negligence, or certain other exceptions to what we call “firewall” liability. See Fl. Stat. § 608.4227 (discussing liability for members of a LLC).

This is why virtually all successful businesses, professional practices, and many real estate and other endeavors are established under corporations, LLCs, limited liability limited partnerships (LLLPs), and similar entities.

It is important to make sure that business entities are properly managed from a legal documentation and fiscal standpoint. Individuals working on behalf of or managing a limited liability entity may become responsible for their own acts or acts of those that they are or should be supervising.

Many single professionals have significant furniture, equipment, and accounts receivable held under their professional practice corporations. It is often possible to structure debt, ownership, and multiple corporate arrangements to reduce exposure to creditors under professional practice circumstances. This is where firewall protection comes into place, to prevent the owner of a company or certain other entities from being responsible for liabilities of the entity.

For example, rental property should almost always be owned under limited liability companies, so that if there is a catastrophic accident on the property a tenant would not be able to sue the owners. Please note, however, that a tenant might be able to sue a manager who was shown to have negligently caused the injury to the tenant.

The Manager or Officers May Still Be Sued. Notwithstanding that the owner of a company will generally not be personally responsible for liabilities thereof, the manager or president of a company may be held personally responsible for any negligent or inappropriate conduct. Why not make your nephew who has no assets the manager of your property rental company? Clients should think through who the responsible officer or manager of a company or other entity should be when potential liability is a factor. We therefore normally recommend that the doctor’s spouse has minimal involvement with any company that the doctor is involved with, at least from a management and officer standpoint. Joint ownership is discussed in Chapter 12, and may be useful for

other purposes. An owner is not necessarily responsible for liabilities or obligations incurred by the entity owned.

Many advisors and laymen think that LLCs or other corporations that are disregarded for income tax purposes or treated as S corporations do not shield liability like other companies do. This is incorrect. More information on LLCs and other business entities can be found in Chapter 23.

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