

Sound Corporate Housekeeping: How to Protect Your Entity's Independent Status

By: Keren Weiss

With the growing scrutiny of business operations and corporate liability, radiology and imaging practices must diligently work to maintain certain corporate formalities, thereby minimizing the risks and exposure to the business and its owners. Although often overlooked, medical practices of all sizes should recognize the value of operating the business entity as a limited liability entity or corporation. By utilizing a corporate structure such as a corporation, limited liability company (LLC), limited liability partnership (LLP) or limited partnership (LP), officers, directors and partners gain invaluable protection against personal liability for acts of the practice, including shielding personal assets from judgments or debt collectors.

Office managers and health care providers must properly maintain corporate records and accounts to enjoy the limited liability afforded by these structures. By doing so, the business creates a legal fiction whereby the entity exists by operation of law as a distinct entity separate from its owners and operators.

State Filings

While filing requirements vary from state to state, oftentimes companies are required to file standard annual or periodic reports with the Secretary of State. The reports may vary depending on the entity type and ownership structure, as well as the business' revenues and margins. These filings often also require the timely payment of filing fees. In addition, federal, state and local tax reports and returns are usually required to be filed. It is a good habit to regularly visit your Secretary of State's website to make sure your business is compliant with all state corporate filings and reports.

Corporate Records

In addition to filings with your respective state, a business must keep its corporate books and records updated to uphold the corporate shield. Upholding these formalities and maintaining current records protects an entity from 'piercing its corporate veil.' The failure to keep personal and business assets and actions separate may expose owners to personal liability for acts of the business entity.

Therefore, an entity must keep complete and accurate records of all meetings and business actions. A minute book serves as the official compilation of a business' records. It documents the entity's ownership structure and the owners' or managers' decision making processes. Simply stated, the minute book functions as a paper trail for a business and, when properly maintained, will withstand scrutiny from auditors, creditors, directors, shareholders and regulators.

A good practice is to include the following items, as applicable, in your minute book:

- Current bylaws, and any older versions;
- Current operating agreement, and any older versions;
- Shareholder agreements;
- Minutes from shareholder, partner, member, manager or board meetings held in the past 3 years, as well as any action taken without such meeting;
- List of current and past officers, directors, members and managers, including their full names and last known addresses; and
- Any reports, records or communications filed with the Secretary of State and tax authorities.

These documents should be kept in a safe place that is readily accessible.

Inaccurate or incomplete maintenance of these records may turn the simplest business decision or transaction into a costly and risky endeavor. By adopting simple, low cost, low demand housekeeping practices on an ongoing basis, your radiology practice or imaging center can withstand outside scrutiny and enjoy personal liability protection.

Reprinted with permission from RBMA RadCast August 2011 issue.

http://www.rbma.org/Products_and_Resources/Legal_Resources/RBMA_Monthly_Legal_Update_Digest_August_2011.aspx