

# The Basics of the Minnesota Professional Firms Act

by Jeffrey C. O'Brien

The Minnesota Professional Firms Act, Minnesota Statutes Chapter 319B, provides a means to protect professionals and consumers of professional services from non-professionals' interference with the judgment and decision-making authority of professionals.

"Professionals" are defined by Chapter 319B to include persons who practice any of the following licensed professional services: medicine and surgery, physician assistant, chiropractic, registered nursing, psychology, social work, marriage and family therapy, dentistry and dental hygiene, pediatric medicine, veterinary medicine, architecture, engineering, surveying, landscape architecture, geoscience, certified interior design, accountancy, or law.

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## History

Chapter 319B is the third version of a professional firms act in Minnesota. The two prior versions, codified at Minnesota Statutes Chapters 319 and 319A, were known simply as the "Minnesota Professional Corporations Act" and covered only professional corporations. The Minnesota Legislature enacted Chapter 319B in 1997 in part to include limited liability companies (LLCs) and limited liability partnerships (LLPs) within the definition of what constitutes a "professional firm."

Prior to the enactment of the original Minnesota Professional Corporations Act, many types of professionals could not practice their professions through any liability limiting entity (such as a corporation). Chapter 319 allowed these professionals to establish a corporation so long as they complied with the various provisions and restrictions of the statute. The current Chapter 319B, however, is an "opt-in" overlay to an otherwise validly formed entity. In other words, if a group of professionals intends to form a corporation, limited liability company or limited liability partnership through which

to operate their business, they must follow the requirements of the basic organizational statute for the entity and they can elect to be further governed by the Minnesota Professional Firms Act. Some professional licensing boards, however, require a 319B election. For example, the Lawyer's Board of Professional Responsibility requires a law firm to file under Chapter 319B as a professional firm and a firm that fails to do so is considered to be engaged in the unauthorized practice of law. The only other professionals required by their licensing statutes to elect to be governed under 319B are veterinarians. The licensing statutes for accountants, however, require a simple majority of those holding voting rights to be licensed but do not require a Chapter 319B election.

The "opt-in" nature of Chapter 319B results in a professional firm being governed by two organizational statutes. If the professional firm is a corporation it is governed by Chapter 302A, the Minnesota Business Corporations Act and the Minnesota Professional Firms Act.

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## Election

The election is made in one of two ways.

- 1 If the election is made upon the initial formation of the entity, the organizational document (i.e., Articles of Incorporation for a corporation, Articles of Organization for an LLC or Statement of Qualification for an LLP) will reference both governing statutes.
- 2 If the election is made at a later date, the organizational document is amended to reference both governing statutes.

An election to be governed by Chapter 319B has implications for ownership, governance, and regulatory compliance. Ownership interests in a professional firm may not be owned or held, either directly or indirectly, except by professionals who are licensed and not disqualified, general partnerships other than LLPs authorized to furnish at least one

category of professional services, or other professional firms authorized to furnish at least one category of services. No other persons or entities may own ownership interests in the professional firm and any transfer (including transfers by will) are void. If an owner dies, Section 319B.08 requires the professional firm to acquire the owner's interest in the professional firm using the mechanisms provided for therein.



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## Governance

With regard to governance, Section 319B.09 provides that no decision entailing the exercise of professional judgment may be delegated or assigned to anyone who is not a professional licensed to practice the professional services in the decision. Furthermore, any professional whose license is revoked or suspended may not exercise governance authority. The purpose of these restrictions is to preserve professional independence and safeguard professional judgment.

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## Compliance

With regard to regulatory compliance, Section 319B.11 requires the filing of a professional firm's organizational document, an initial report of owners and their addresses, the positions within the professional firm which exercise governance authority and the names and addresses of the persons in those positions with the relevant licensing board.

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