



# PROFESSIONAL LIABILITY INSURANCE

“Everything You Need to Ask”

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*Presented to:*

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*Presented By:*

**Brenda & Brian Kouwenhoven  
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*Specializing in Professional Liability Insurance*



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### Professional Liability Insurance

- ◆ Occurrence Policies
- ◆ Claims-Made Policies
- ◆ Why Lawyers Professional Liability Policies are written on a Claims-Made basis

### Understanding Prior Acts Coverage

- ◆ Coverage provided for Legal Services only on behalf of Named Insured
- ◆ Coverage provided for Legal Services on behalf of Named Insured and a prior law firm/career coverage
- ◆ Coverage provided for Legal Services on behalf of Named Insured, prior law firm/career coverage and moonlighting
- ◆ Prior Acts Coverage/Retroactive Date/"TAIL" Coverage
- ◆ Career Coverage vs. Lateral Hire
- ◆ Continuity of Coverage – Think Before You Leap

### **The Dreaded Application**

- ◆ Complicated and unique to each company
- ◆ Named Insured & Predecessor Firm history is correct
- ◆ Internal Procedures
- ◆ Suits for Fees
- ◆ Claims, Incidents & Bar Complaints
- ◆ AOP – Areas of Practice differ by Insurance Company
- ◆ High Risk areas that affect insurability and rates

### **Outside Interests**

- ◆ Outside Interest – Definitions are different by Company
- ◆ Equity Interest in Firm Client(s)
- ◆ Equity Interest in Non-Clients of Firm
- ◆ Board of Directors/Officers
- ◆ Spouse & Immediate Family Members Equity Interest in Firm Client(s)

### **Warranty Statement**

- ◆ Inquire in Writing all Attorneys and Staff of Claims or Potential Claims
- ◆ Bar Complaints – How to Handle
- ◆ Responsibility to Notify Carrier of Any Changes After Application was Originally Signed

### **Analyze Exclusions in Policy**

- ◆ Know Your Policy Equity Interest Thresholds
- ◆ Percentage of Equity Interest Combined
- ◆ Spouses & Immediate Family Members Included for Equity Interest
- ◆ Intellectual Property
- ◆ Securities
- ◆ Investment Advice

### **Reporting Claims, Incidents & Bar Complaints**

- ◆ Report Immediately
- ◆ Incidents/Bar Complaints – Don't Assume!
- ◆ Communicate Procedures to Both Attorneys and Staff
- ◆ Consent to Settle/Hammer Clauses
- ◆ Corrective Action

### What to Consider When a Firm Dissolves

- ◆ How does coverage continue on for the past work of the partners and associates
- ◆ Extended Claims Reporting Period Endorsement – “TAIL” Coverage
- ◆ How are the limits of the policy affected?
- ◆ What is the cost of “TAIL” coverage?
- ◆ What about past equity partners – are they willing to share in cost?
- ◆ Funds set aside in a special trust account to purchase “TAIL”?

### What to Consider When a Firm Merges

- ◆ Predecessor Firms/ Successor Firms – How does coverage apply?
- ◆ Proactive steps should be taken when a new firm forms by merging with another firm
- ◆ Which firm is considered the successor firm?
- ◆ Does the successor firm’s insurance company provide coverage to the predecessor firms?
- ◆ Does the successor firm WANT to pick up the exposure?
- ◆ Funds set aside in a special trust account to purchase “TAIL”?
- ◆ What is the successor firm’s financial responsibility to the exposure?

**The Florida Bar Ethics Opinions & Bar Rules**

- ◆ Rules Regulating The Florida Bar set out limits and boundaries for lawyers and law firms
- ◆ Ethics Opinions often provide guidance to work out real dilemmas
- ◆ Call your Florida Bar Ethics Hotline at 850-561-5780
- ◆ Call your Florida Bar LOMAS Practice Management Advisors at 850-561-5616