



The Importance of Corporate Minutes

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Forming a corporation is an important, and sometimes exhausting, task. Typically, after the new entity is established and the initial shares sold to stockholders, the owners take a deep breath and get back to doing what they do best -- running the day-to-day business operations. Unfortunately, as a result, the owners often put off dealing with many tasks necessary to running their new corporate entity.

Ignoring the care and feeding of your corporate legal entity is foolhardy. That's because failure to properly document and support important tax decisions and elections can result in a loss of crucial tax benefits. Even worse, the fact that you have ignored your own corporate existence may result in its being similarly disregarded by the courts, with the risk that you may be held personally liable for corporate debts. And, of course, as time passes and memories fade, if there is no written record of important decisions, directors or shareholders may forget who agreed to what and under what circumstances. This can lead to controversy and dissension, even in the ranks of a closely held corporation.

Fortunately, the regular structured use of written minutes and resolutions, which record all important corporate decisions and the votes taken to approve them, helps greatly to defuse all of these problems. Quite simply, your first and best line of defense against losing the protection of your corporate status while helping to ensure continued harmony among your directors and shareholders is to document important corporate decisions by preparing and maintaining adequate corporate records.

Minutes of meetings are easy to prepare and normally do not require the help of a lawyer or accountant. First, of course, you need to convene a shareholder's or director's meeting in accordance with the requirements in your corporate bylaws. Fortunately, this is usually easy to do. Next, clearly write out the decisions approved by your board of directors or shareholders by majority vote (the usual vote requirement for most corporate decisions). It is often easiest to do this using fill-in-the-blanks forms, since this really is a legal area where using standard legal language " boilerplate" works well. Finally, place a copy of the minutes in your corporate record book.

The good news is that you don't need to document routine business decisions -- only those that require formal board of directors' or shareholders' approval. In other words, you are not required to clutter up your corporate records book with day-to-day business records, such as those for purchasing supplies or products, hiring or firing low- or midlevel employees, deciding to launch new services or products, or any of the host of other ongoing business decisions.

But key legal, tax, and financial decisions absolutely should be acted on by your board of directors, and occasionally your shareholders. What kinds of decisions should be considered key? The proceedings of annual meetings of directors and shareholders, the issuance of stock to new or existing shareholders, the purchase of real property, the approval of a long-term lease, the authorization of a significant loan amount or substantial line of credit, the adoption of a stock option or retirement plan, and the making of important federal or state tax elections -- these, and other key decisions, should be made by your board of directors or shareholders and backed with corporate paperwork. That way, you'll have solid documentation in the event that key decisions are questioned or reviewed later by corporate directors, shareholders, creditors, the courts, or the IRS.

Why bother to prepare minutes of meetings or written consents for key corporate decisions? Here are a few excellent reasons:

- Annual corporate meetings normally are required under state law. If you fail to pay at least minimal attention to these ongoing legal formalities, you may lose the limited liability protection of your corporate status.
- Your legal paperwork provides a record of important corporate transactions. This " paper trail" can be important if disputes arise. You can use this paper trail to show your directors, shareholders, creditors, suppliers, the IRS, and the courts that you acted appropriately and in compliance with applicable laws, regulations, or other legal requirements.
- Formally documenting key corporate actions is a fail-safe way of keeping shareholders informed of major corporate decisions.
- Directors of small corporations commonly approve business transactions in which they have a material financial interest. Your minutes or consent forms can help prevent legal problems by proving that these self-interested decisions were arrived at fairly, after full disclosure to the board and shareholders.
- Banks, trusts, escrow and title companies, property management companies, and other institutions often ask corporations to submit a copy of a board or shareholder resolution approving the transaction that is being undertaken, such as a loan, purchase, or rental of property.

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