

WHY KEEP A CORPORATE MINUTE BOOK?

In the giant scheme of things, maintaining a corporate minute book will never be the most important use of your time. Nevertheless, there are a couple of good business reasons to keep minutes of your board of director and shareholder meetings.

Keeping a minute book is one way of observing the "corporate formalities." If you want to be treated as a corporation for liability or income tax reasons (and those are the main reasons for forming a corporation), the law requires that you act like a corporation. Having regular meetings of shareholders and the Board of Directors, and keeping minutes of those meetings, is one important way of acting like a corporation. (Most state laws require the shareholders and the board of directors of a corporation to meet at least annually.) Failing to "act like a corporation" may lead a court to "pierce the corporate veil" and hold individuals liable for corporate business. The Internal Revenue Service has also been known to deny corporate tax benefits to companies that, although incorporated, did not act like a corporation.

A well-maintained corporate minute book can protect you in other ways as well. First, corporate minutes provide a written record of decisions that were made and how they were made. A few years ago, a departing shareholder of one of our clients claimed ownership of the company's season football tickets. The company had always paid for the tickets, but the tickets were in the shareholder's name. The shareholder transferred the tickets to the company years ago, because he could no longer afford to keep them. Fortunately, a discussion of this matter was included in minutes of a meeting of the Board of Directors. Those minutes provided the evidence that the shareholder intended to permanently transfer the tickets to the company, and the court ruled that the company was the owner of the tickets.

There are many other types of decisions that can lead to future disputes, such as setting salaries and bonuses or awarding special privileges or benefits to an employee. If the employee is also a shareholder, documenting these decisions in minutes is especially important in case they are later challenged by another shareholder.

Sometimes, corporate minutes may be required by someone with whom the company is doing business. For example, banks will typically require minutes authorizing a company to take a loan or even open a bank account.

Minutes can also be important from a tax standpoint. If your company or its retirement plan is ever audited, the Internal Revenue Service will want to see your minute book. Thus, your minutes should document matters that might be challenged by the IRS. For example, if your company is adopting a retirement plan, a corporate resolution is required. If your company is making a contribution to a profit sharing plan, it is always a good idea to authorize the contribution in minutes adopted before the end of the plan year. Minutes authorizing bonuses will make it more difficult for the IRS to argue that bonuses to shareholders should be treated as non-deductible dividends. Similarly, any loans to shareholders should be approved in minutes to prevent the IRS from treating loan amounts as dividends.

Minutes do not have to be fancy, and you certainly do not need a lawyer to write them for you. However, you should be careful about how much detail is included in minutes. Including information that might be offensive or harmful to a third party should always be omitted. We encourage our clients to send us copies of their minutes. That way, we can give them a quick review and let our clients know if something in the minutes should be rewritten or deleted.