



Mary Hanson

About the Business Advisor

The Business Advisor is written and published by Mary Hanson, a business attorney in Torrance, California.

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CORPORATE OFFICERS AND DIRECTORS: What Businesses Need to Know about Corporate Officers and Directors

by Mary Hanson

Since a corporation is legally an “artificial person,” it must have Directors to manage it and officers to act on its behalf. It is important for business owners to understand how the duties and authority of the Directors and officers of a corporation differ. If a business owner does not understand these different roles, employees or relatives may be named to positions that are not appropriate. Individuals inappropriately named as officers or Directors could inadvertently be exposed to personal liability for corporate operations, and the corporation may find that it needs the signature of a non-managerial person in order to enter into a contract. In addition, the validity of corporate contracts may be questioned if the persons signing the contract are not the persons identified in state filings as the officers of the corporation.

Here are some of the most important questions that corporate business owners and employees should ask and the answers under California corporation law:

Q: Must a corporation have Directors and officers? A: Yes. California law requires that a corporation have at least one Director on the Board of Directors, a President (Chief Executive Officer – “CEO”), a Treasurer (Chief Financial Officer – “CFO”), and a Secretary. Other offices, such as a Vice President, are allowed but not required.

Q: Are officers the same as Directors? A: No. The roles of officers and Directors are different. Directors hold the ultimate authority of a corporation. Officers act on behalf of the corporation, implementing the plans of the Board of Directors. Officers of a corporation are normally employees of the corporation; Directors are not.

Even if one person serves as a Director and more than one officer, each role is different. A Director is not automatically an officer and an officer is not automatically a Director.

A shareholder is neither an officer nor a Director unless the shareholder has been elected as a Director or named as an officer.

Q: Who names the Directors? A: The shareholders elect the Directors at annual shareholders’ meetings, which are required for the purpose of electing Directors.

Q: Can a person be the only Director? A: Yes, if there is just one shareholder. Under California law, a corporation must have two or more Directors if it has two shareholders, and three or more Directors if it has three or more shareholders. A person who is the sole shareholder of a corporation will often be the sole Director.

Q: Who names the officers? A: The Board of Directors names the

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officers. Officers serve “at the pleasure of the Board” and can be terminated at any time by the Board.

Q: Can one person be all the officers? A: Yes. In California any number of offices may be held by the same person unless the Articles of Incorporation or Bylaws provide otherwise. One person can be the President, Secretary, and Treasurer of a corporation in California. A person who is the sole shareholder of a corporation will often be all the officers.

Q: Do Directors have as much power as officers? A: Directors have more power than officers. Officers have no authority over Directors. A Director can’t be fired. In California shareholders can only remove a Director by a shareholder vote that meets requirements established by California corporation law.

The Board of Directors holds all corporate powers, unless the Articles of Incorporation limit the power of the Board or the Board has delegated its authority within the limits established by law.

Q: Doesn’t a sole shareholder have the power to fire a Director and make decisions for the corporation he or she owns? A: Not directly. The key legal power of shareholders is the right to vote for Directors. However, a sole shareholder can hold a valid meeting without notice (since there are no other shareholders), remove the entire Board of Directors, and elect a new Board. In addition, a shareholder (or anyone else) may have powers of persuasion or other personal power over the officers and Directors, but that does not limit the legal authority of the Directors or officers.

Q: What power does the President of the corporation have? A: The President has the powers delegated to the President by the Board of Directors or conferred upon the President by the Bylaws. In addition, a President has apparent authority, based on the circumstances of the position and presumptions of authority established by law.

The California Corporations Code provides a presumption of validity for written documents signed by combinations of officers. Corporate obligations are presumed to be authorized when signed by both the President and the Secretary or the Chief Financial Officer of the corporation, unless the party relying on the presumption knows that the signing officers do not have the authority to enter into the obligation on behalf of the corporation.

Q: Can the Board of Directors terminate the President if the President is a shareholder? A: Yes. The President, like all officers, serves “at the pleasure of the Board.” The Board of Directors can fire the President or any other officer. However, if the President holds enough shares as a shareholder, he or she may be able to remove the entire Board of Directors, elect a new Board of Directors, and ask to be rehired.

Q: Can the Board terminate the President if the President has an employment contract? A: The Board of Directors still has the power to terminate the President. If the termination violates some aspect of the employment agreement, the President would have a contract claim against the corporation. Even if the action breaches an agreement the Board still has the power to take that action.

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Q: What is an Agent for Service of Process? A: An Agent for Service of Process in California is an individual (or a corporation registered with the Secretary of State to act as a corporate agent) that is designated by the corporation as its agent for the purpose of accepting legal documents (e.g. service of process, lawsuits, other types of legal notices) on behalf of the corporation. In some states this is called a “registered agent.” Often a sole shareholder will choose to act as the agent for service of process of a corporation in addition to other roles. But it is a separate role.

A corporation doing business in a state other than the state in which it is incorporated will need to file with that state’s Secretary of State (or equivalent agency) and designate an agent for service of process or registered agent in that state. Different states have different names for the forms, the agencies for filing, the fees, the required documents, and even the definition of “doing business.” Usually having an office or employees in another state is “doing business” in that state and requires the “foreign corporation” to register to do business.

It is best to use an agent that is in the business of receiving such notices and immediately notifying a corporation’s management. When an agent is served with a lawsuit it is valid service of process and the corporation sued has a limited number of days to respond.

The Roles of Corporate Officers

Corporate Bylaws establish the roles of the officers of the corporation.

In California corporations must file annual Statements of Information with the Secretary of State, reporting the names of the Directors of the corporation and the names of the President, Secretary, and Treasurer. Other state agencies rely on the information in the current filed Statement of Information to hold individuals responsible for payment of taxes and other corporate obligations.

President. The President is the Chief Executive Officer of the corporation, unless the role is split between a President and a CEO. If the role is split, each role must be defined in the Bylaws of the corporation. Most often a small corporation only has a President, who is also the CEO. Bylaws typically state that the President has general supervision, direction, and control of the business and affairs of the corporation, subject to the direction and control of the Board of Directors.

Secretary. The typical role of the Secretary is to keep corporate minutes of all meetings of the Board of Directors and the shareholders and to maintain documentation, including records relating to the meetings, share ownership, and actions of the Board of Directors.

Treasurer. The role of the Treasurer includes maintaining books and records of the properties and business transactions of the corporation, keeping track of corporate funds, disbursing funds of the corporation in payment of obligations of the corporation, and responding to requests for financial information from the Board of Directors and the President.



“Directors hold the ultimate authority of a corporation.”

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Publisher's Note

Naming family members or employees as officers or Directors or issuing stock to them can create serious problems. Changing the Board of Directors requires a valid action by shareholders and changing the officers requires a valid action by the Board. If stock is issued to an employee, a corporation may be stuck with a shareholder no longer working for the company, working for a competitor, setting up a business as a competitor, demanding financial information about the corporation, or demanding an unreasonable purchase price for return of the shares. The assumption that a shareholder agreement assures the return of the shares places too much faith in agreements and human behavior.

In addition to the significant concern about getting the stock back, there are other concerns, such as needing the shareholder's vote in order to take certain actions, having to send formal meeting notices in order to have a valid shareholders' meeting, and needing to disclose financial information. Also, a third party (e.g., a lender, vendor, bank, or customer) may require the signatures of certain officers. The officers identified on the Statement of Information filed with the Secretary of State will be regarded by third parties as the legal officers of the corporation.

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Attorney/Publisher

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Vice President. Unless otherwise set by the Board of Directors or in the Bylaws, the role of a Vice President is to perform the duties of the President in the absence or disability of the President. It is not an insignificant position. When acting as the President, the Vice President has all the powers of the President.

In the past, small corporations have sometimes used a Vice President title to allow the corporation to exclude an employee from workers' compensation insurance coverage. Since July 1, 2018, California law has required that an employee be an officer or a Director of a corporation AND own at least 10% of the outstanding shares of stock of the corporation (just 1% if he or she is a family member of a shareholder

holding at least 10% of the stock) in order to be excluded. In addition, the employee must sign a waiver and declare under penalty of perjury that he or she meets the requirements and elects to be excluded from the insurance coverage.

Naming employees as officers or Directors or issuing stock to them in order to avoid workers' compensation premiums is unwise. The past practice of making an employee a Vice President at least involved a title the Board of Directors could change at any time. It is a more serious matter to name an employee as a Director and still more serious to make an employee a shareholder. As mentioned above, it is not easy to remove a Director. And an issuance of shares cannot be revoked.

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