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About the Business Advisor

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CORPORATE RECORDS: Annual Meeting Minutes

by Mary Hanson

California corporation law requires that corporations hold annual meetings of its shareholders for the purpose of electing directors of the corporation. Even a one-person corporation is required to observe this formality.

Although the California Corporations Code requires only an annual meeting of shareholders and not an annual meeting of the Board of Directors, meetings of the Board of Directors are important for the proper operation of a corporation. A meeting of the Board of Directors typically follows a corporation's annual meeting of shareholders and most corporate bylaws call for a meeting of the Board of Directors following the annual shareholders' meeting.

Corporation law also requires that a corporation keep a written record of the meetings of the shareholders and the Board of Directors ("meeting minutes").

Since corporate minutes are not filed with any state, local, or federal agency, a corporation can neglect the requirement of corporate meetings and corporate records of meetings until a request is received from a shareholder, director, auditor, agency, claimant, or anyone else with a legal right to see the records.

Failure to comply with the meeting and record-keeping requirements makes a corporation vulnerable to claims that a business has not been properly operated as a corporation and that the individual shareholders are not protected by the "corporate

veil" that shields them from personal liability. It also makes a corporation vulnerable to claims by disgruntled shareholders that corporate actions were invalid because they were authorized at a meeting that was held without complying with the legal requirements.

Requirements regarding notices of meetings and adequate attendance at meetings usually are not a problem for a single shareholder who is also the sole director. The sole owner's attendance at a meeting is 100% attendance, and any decision is "unanimous." The notice requirements are met by the individual's attendance at the meetings. And the sole attendee is presumed to know the planned subject matter to be covered at his or her meeting.

Corporations with a number of shareholders need to have procedures in place to assure that requirements regarding notice, quorum, and voting are met and that the records kept show compliance with the requirements. This is especially important if any shareholder is a contentious person.

Since the legal requirements can be readily determined and most corporations will face the same issues for every meeting, it makes sense for corporations to establish a set procedure to use for each meeting that will assure that the meeting complies with legal requirements. The corporation can reduce the risk of making mistakes in calling and holding a meeting by using templates for the notices to be sent out, the

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minutes of the shareholders’ meetings, and the minutes of the meetings of the Board of Directors. The templates need to fit the particular circumstances of the corporation - whether owned by one shareholder, two or three partners, a married couple, a number of family members, or a contentious group of shareholders.

One Or Two Person Corporations

Corporations with one or two shareholders don’t need to worry about formal notices and other requirements. If there are two shareholders, both shareholders must be in attendance or there is no meeting.

Shareholders or directors of a one or two person corporation can use an “Action by Written Consent” instead of a meeting for authorization by the Board or approval by the Shareholders. When a bank or vendor or other third party requests proof of corporate authorization, the use of a Written Consent can be more convenient. Any action can be taken this way if a Written Consent to Action is signed by both shareholders or both Directors. The Consent is effective upon the signature of both shareholders or both directors.

Because a Written Consent is not effective until all the required signatures are obtained, a corporation with one or two shareholders may prefer to treat their discussions as a meeting and prepare minutes of the meeting. Minutes of a meeting can be prepared and signed long after a meeting was held. An individual who is the sole shareholder and sole director will use this flexibility to create minutes of annual meetings showing his or her

election as a director and election as all the officers over past years. Where there are no other shareholders or directors to object to the meeting at which such actions were taken, there is no one to question whether the sole owner had a formal meeting with himself or herself.

A sole owner most often (and most often should) name himself or herself as the sole director and all the officers at annual meetings. A template for annual meeting minutes evidencing these actions should be created and used year after year.

For two shareholders who plan to hold the same offices year after year, a similar approach can be used. A married couple who “hold meetings” with each other frequently has a situation not very different from that of a sole shareholder. Annual meeting templates showing the two shareholders electing themselves as directors and naming themselves to the same offices each year can be used. Often the only change in the annual meeting minutes is the date.

It’s helpful to keep in mind who could or would object to a meeting and why he or she would object. An objection to a shareholders’ meeting would be by a shareholder who feels that he or she was denied his or her right to participate in the election of directors, and the objection to a directors’ meeting would be by a shareholder who claims a particular action taken was invalid. The sole shareholder or couple who just wish to document the naming of the same officers and directors each year has little to fear.

Minutes that purport to show corporate approval of something other than the election of officers and directors can be a problem. Any

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action that might involve an outside party – for example, the IRS – needs to have evidence of some corporate approval and action beyond the minutes of a meeting. Backdating minutes to perpetrate a fraud is fraud.

Third parties should ask for proof of corporate authority much more often than they do. Even a small corporation purchasing equipment should be asked for a document that provides evidence that the corporate Board of Directors has approved a purchase. A third party shouldn't assume that the individual signing a contract on behalf of a corporation has authority to do so.

A corporation is a person under the law, but has no ability to take any action except by the direction or delegation of authority from the Board of Directors. Directors do not sign contracts. Typical formal approval by a Board of Directors will have two parts – a resolution approving the action (purchase of property, issuance of stock, approval of loan documents, etc.) and a resolution authorizing or directing officers of the corporation to sign agreements or take the actions necessary to effectuate the action approved. It is the officers of the corporation, acting on behalf of the corporation, authorized by the Board of Directors, who execute agreements, implement plans, manage the business, and otherwise take action as authorized or directed by the Board of Directors. The officers are the President, Secretary, Treasurer, and any Vice Presidents.

Corporation With More Than Two Shareholders

Shareholders' Meetings. Even if there are five or ten shareholders,

each shareholder in a typical family or closely held business holds the same type of shares and is entitled to vote on all matters for which California law, bylaws, or agreements require or permit a shareholder vote.

Basic corporation law requires that written notice of a meeting be delivered to each shareholder entitled to vote by approved methods of notice, containing the place, date, and hour of the meeting. The notice for an annual meeting must contain the nominees proposed by the Board of Directors for election to the Board. There are other matters that must be described in a meeting notice in order to have a valid vote.

California corporation law and most bylaws allow a corporation to avoid written notices by having shareholders sign a "Waiver of Notice" approving the holding of the meeting whether or not they have received notice. The waiver must include the description of the action to be taken if it would otherwise be required in the notice. A disgruntled shareholder will refuse to sign a Waiver of Notice, forcing the corporation to send out notices in compliance with all the applicable requirements in order to have a valid meeting.

Under California law a shareholders' meeting must have persons present at a meeting representing a majority of the shares entitled to vote, either in person or by proxy. This quorum requirement must be met for a meeting to be valid. At a shareholders' meeting for which valid notice was given and a quorum is present, the approval of a majority of the shares present and voting is required for a valid shareholder approval of a proposed action.

A Written Consent to Action can be used in place of a meeting by share-

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“No Director has a greater vote than any other Director, whether based on the number of shares owned by the Director, or the vote that elected the Director.”

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Publisher's Note

My article describes the typical requirements imposed by law on corporations, but a particular corporation must check the state law applicable to the corporation, the corporation's articles of incorporation, and the corporation's bylaws. It's unlikely, but possible, that more stringent requirements have been adopted by the corporation. In addition, a shareholder agreement, especially for a close corporation, may contain provisions that impact meeting and voting requirements.

A template approach using an established format, number of days' notice, list of recipients, and template content can be designed to cover all the typical requirements that apply to a particular corporation's shareholder and Board of Director approvals. The template approach might be the use of a Written Consent to Action or the use of Waivers of Notice for a meeting if those approaches work for all the corporation's shareholders and Directors. The simplest approach that works for the Directors and shareholders and meets the legal requirements can be used. The template approach eliminates the need to research and reinvent the wheel with each meeting and reduces the risk of making a mistake that will cause disputes or require a new meeting to be held. Once templates are set up for the typical meetings, it is easier to make adjustments in the templates if necessary to fulfill an additional requirement that might apply to a particular vote.

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holders for most actions, if the consent of all shareholders has been solicited. It may not be convenient if the corporation has a large number of shareholders, because a Written Consent to Action by shareholders requires the signatures of shareholders holding a majority of ALL shares entitled to vote (not just those attending a meeting) and the action is not valid until all necessary signatures are obtained.

Directors' Meetings. The notice requirements for meetings of Directors are much less stringent. Meetings can be called more informally and on short notice. But there are still legal requirements that must be met if the actions taken are to withstand a challenge. Directors may sign a "Waiver of Notice" consenting to the holding of a meeting to avoid a challenge based

on notice and the waiver of notice does not need to specify the purpose of the meeting.

A Consent to Action can be used by a Board of Directors, but this type of approval is only valid if it is unanimous and signed by all members of a Board of Directors. The approval of the action is not valid until the last signature is obtained.

A California corporation that has two or more shareholders must have two or more Directors and a corporation that has three or more shareholders must have three or more Directors. On the Board of Directors, each Director's vote is equal. No Director has a greater vote than any other Director, whether based on the number of shares owned by the Director, or the vote that elected the Director. **BA**