

Honoring "Corporate Formalities"

Avoiding Personal Liability for Corporate Actions

OBJECTIVE:

- People that create corporations are normally shielded from personal liability in the event of litigation. As long as the "corporate formalities" are observed, the courts will not allow creditors to "pierce the corporate veil" and hold individual directors and members personally liable for corporate debts.

"OBSERVING THE CORPORATE FORMALITIES"

- Courts will honor a corporation and shield its directors and members from personal liability but ONLY if the corporation has acted as if really were corporation and not just a bunch of individuals acting informally. A corporation must follow its bylaws and all of its actions must be authorized by a formal vote of its board of directors. To comply with the corporate formalities the following rules should be followed:
 - Comply with all requirements of the bylaws
 - All actions taken officers and agents must first have been authorized (or later ratified) by a formal vote taken at a properly called meeting of the board of directors with a quorum present.
 - All authorizations given by the board of directors should be documented in formal minutes of the meetings where the authorizations were given
 - All minutes should be stored in a formal (and credible) minute book

WHAT IS A "CREDIBLE MINUTE BOOK

- A minute book should instantly be recognizable as minute book.
 - The minutes should be collected into a three ring binder with a label on the cover saying "Minute Book".
 - As much as possible it should include minutes of every directors meeting that had ever had been held in chronological order from the date of incorporation until the present.
 - It should include ONLY minutes (not miscellaneous handouts that were distributed at meetings)

KEEPING MINUTES - [Click here to download sample minutes](#)

- Keep minutes sparse. Limit them, for the most part, to a record of formal votes that were taken

- The sole purpose of the minutes is to provide a record of formal authorizations. Minutes should not to include anything that might be interpreted as an authorization being given unless such authorization was actually given by a formal vote.
- Often people want to include detailed summaries of the discussions that took place. AVOID DOING THAT because such summaries might sometimes include statements that inadvertently and mistakenly hint that authorizations were given even though there had been no actual vote at the meeting.
- The minutes should not be a substitute for the corporation's newsletter.
- How Resolutions should be worded in the minutes:
 - When writing the wording of a Resolution in the minutes use the following boilerplate language (modify if the vote was not unanimous):

"Upon a properly made and seconded motion it was unanimously RESOLVED that [[insert text here describing the authority being give]]".

- If needed, include optional introductory language: it might be occasionally necessary to include some introductory remarks for a particular Resolution in order to provide background information. In most cases this will not be necessary. Such introductory language might start off with something like:

"Whereas it came to the attention of the directors that [[insert text here briefly describing the background]], and for that reason the following Resolution was adopted"

- RECORD OF DISCUSSIONS: Normally, the threshold for inclusion in the minutes is when someone makes a motion, it is seconded, and a vote was taken. **Do not** include a detailed summary of discussions that took place at the meeting.
- LIMIT THE INCLUSION OF NAMES. Don't state the names of the directors who made and seconded a motion. BUT, you should definitely include the names of all directors who voted against the motion or abstained (because if something bad results from the vote these people may want to be able to prove that they were against it). If the corporation were ever sued the lawyers may want to see the minutes of the meetings where the relevant issues were discussed. Directors named in the minutes are more likely to be hauled in for depositions, etc.
- STANDARD AGENDA ITEM - ADOPT MINUTES FROM PRIOR MEETING: A standard item on the agenda of each and every board meeting should be the adoption of minutes from prior meetings. A particular document is not actually the "minutes" of a meeting unless and until the directors have voted to adopt it as such.
- A sign-in sheet should be attached to the minutes of each meeting so that you can later prove that a quorum was present
- Avoid making tape or video recordings of meetings. If the corporation is ever sued such recordings may become the target of court sanctioned "discovery" by the opposing lawyer making it more likely that the individual directors will be hauled in for depositions. Despite this, if recordings of meetings are to be routinely made the directors, at a minimum, should adopt a formal policy requiring that all such recordings be destroyed after 30 days.

MEETING NOTES vs MINUTES

- If you feel compelled to circulate detailed notes of what was discussed at a meeting put those notes in a separate document and label them as "Meeting Notes" (not "Minutes"). **It is generally not a good idea to create such notes** because of the danger that they could be mistaken as minutes and the possibility that someone might wrongfully interpret a mere comment as being an official corporate authorization.
- If the directors feel the need for a detailed summary of what happened at the meeting someone should be delegated to create a separate document entitled "meeting notes". **It should include the following disclaimer near the top:** "any and all authorizations given at the meeting and votes taken are documented in the formal minutes and not in these notes".
- Do not attach meeting notes to the official Minutes and do not put them in the minute book

MEMBERSHIP ROSTER:

- Under Florida law a nonprofit corporation is not required to have "members". BUT, if the bylaws DO create a membership Florida law requires that the corporation keep a "roster" of their names and addresses.

DOCUMENTING THE COMPOSITION OF THE BOARD

- If the bylaws specify a term of office for directors make sure that the board's calendar has the expiration dates noted so that those terms are not forgotten and ignored
- "Housekeeping" Resolutions Upon Change of Directors: Anytime there is a change in the composition of the board of directors there should be a formal housekeeping type of resolution adopted that specifies the change that was made. You should include in that resolution a statement of the current composition of the board of directors following the change (including the remaining terms if relevant). Habitually doing this will provide an accurate record of the board's composition from the present day back to the date of incorporation.

CORPORATE CALENDAR.

- The board of directors should keep a calendar showing each important date in the bylaws (such as when elections are to be held, dates when notices need to be sent, when nominating committees need to be appointed, when terms of office expire, etc.). The calendar should be brought to each meeting of the directors by the corporate secretary so that it can be updated contemporaneously.

DIRECTORS MUST ACTUALLY MEET

- Director can act only at actual sit down, face to face, meetings (telephone and video conference call participation is OK). Voting by proxy is not allowed.
 - Exception - directors can act by unanimous written consent. Such consents can be obtained by email BUT only if done correctly ([read more](#))