



Corporate Conundrums

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Foster Swift Business & Tax Law News

November 19, 2019

"What am I supposed to do, have a meeting with myself?" Sharon asked. Sharon is a client who owns a successful small business and her question was in response to a letter she received from me. It was a letter advising her that it was time for her to update her corporate minute book, which is done through her holding annual meetings of the sole shareholder and sole director or preparing consent resolutions in lieu thereof.*

"I wasn't suggesting that," I replied. "However, even though you don't need to conduct a meeting with yourself, you should document your corporate minute book annually with written consent resolutions of the sole shareholder and sole director prepared in lieu of your annual meetings. You should do this for a variety of reasons, including:

- **To Appoint Officers and Directors and Ratify Actions.** To appoint officers and directors of the Company for the coming year. Officers are appointed by directors and directors are appointed by the shareholders. Further, you should document certain transactions that took place over the prior fiscal year, as well as ratify your actions taken as the sole director, and the actions taken by the officers and agents of the Company on behalf of the Company during that period of time.
- **Historical Record.** Documenting the corporate book annually provides an historical record of what took place with your Company from year to year, including important transactions that were completed, such as major purchases, contracts, sales, loans, and leases, to name a few.
- **Third Party Review.** Banks and lenders frequently ask to review the corporate minute book or at least the articles of incorporation, bylaws and the most recent meeting minutes or consent resolutions when the Company is applying for a loan or has already received a loan, and the lender wants to make sure the Company is in compliance with the bank's lending requirements.

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- **IRS Audit.** If your Company is audited, the auditor will ask to review the corporate minute book, and if it is not up to date, it can leave you scrambling to bring it up to date prior to the audit. This could be problematic if you are several years out of date.
- **Officer and Director Liability.** Documenting your corporate minute book annually and ratifying the actions you took as an officer and director will help support the fact that you conducted yourself properly in carrying out your duties and responsibilities on behalf of the Company.
- **Protecting Yourself from Personal Liability.** In the event a lawsuit is filed against the Company, you want to make sure that any damages for which the Company is found to be responsible are isolated with the Company and do not come back on you personally. By failing to maintain a corporate minute book the plaintiff in the lawsuit against the Company could argue that you failed to separate your 'personal self' from your 'corporate self,' and as a result it has the right to 'pierce the corporate veil' and hold you personally liable for the Company's obligations.
- **Legally Required.** Michigan law *requires* a corporation to keep books and records of accounts and minutes of proceedings of its shareholders and board of directors.

So even though it might seem silly to you to have to do this every year, it doesn't take much time to keep your corporate minute book up to date. And by doing so, you will be complying with Michigan law, avoiding potential problem areas for the Company, as well as protecting yourself, both personally and in your fiduciary capacity as an officer and a director, from potential liability."

****Although Sharon is the sole shareholder and sole director of her company, the reasons stated above for documenting a corporate minute book equally apply to companies with multiple shareholders and directors.***

If you would like to learn more about the benefits of updating your corporate minutes, contact Jonathan David or another member of Foster Swift's Business & Tax practice group.