

LEGAL EDGE

KEEPING CORPORATE MINUTES CAN GIVE YOU AN EDGE

And they are required by law—regardless of a business' size
— BY DAVID W. HOWARD

If you think recording the major decisions a company makes is a task required only of large corporations, think again. Small business owners who ignore the requirement to keep minutes run afoul of statutes and could be exposing themselves to personal liability issues.

Required by law, corporate minutes are a history of the major decisions made by the shareholders and board of directors of a corporation. And, any size corporation—from a sole proprietor doing business as a corporation, to a high-profile national corporation—is required to keep them.

PERSONAL LIABILITY BENEFIT

One of the main reasons to form a corporation is for the personal liability protection it offers. However, operating such a business and failing to keep proper records means an owner could be subject to a claim by a third party that he or she is not really functioning as a corporation, but is simply an individual operating in his or her own name and, thus, is personally liable. Corporate minutes can serve as one form of proof of incorporation.

Corporate minutes offer other benefits, as well. As a business compiles records of its decisions, it begins to form a company history, which shows where the company has been and what its focus was at the time a particular decision was made. Background like that can

be a helpful reference, especially to new board members.

HELP WITH LAWSUITS

Corporate minutes can become part of a lawsuit, especially when a corporate decision is the subject of a dispute between shareholders, board members, employees or outside parties. Here, minutes can provide insight into the thinking or reasons behind the decision. Provided the corporation is operating in an honest and principled manner, this fact is an asset to the company because the minutes will accurately reflect the board's or the shareholders' decisions and will provide a true record of actions taken. Companies operating unethically can be exposed to liability in a lawsuit if improper information shows up in the corporate minutes.

How extensive your company's minutes are, or the format they're in, is a matter of personal preference. Some owners like more detail than others. From a legal standpoint, more detail can raise more questions. That's why, in many cases, it's better to have a basic record of major decisions as opposed to pages of excruciating detail. Other times, it's important to add enough detail to show you're making a decision for all the right reasons.

PROTECT SECRET INFORMATION

Companies operating in highly

competitive industries, such as those who are creating new technologies or new scientific procedures, should be careful the corporate record does not reveal sensitive or confidential information. Most companies, however, operate in less sensitive industries, and only have to be concerned with striking a balance in the minutes of providing adequate detail without divulging private information.

Typically, a corporate secretary is responsible for taking minutes, but the task can be delegated to someone else. The principle here is to maintain consistency, which is why it's better to assign responsibility to a single individual who will record information and compose the minutes in the same style each time.

It's also a good idea to maintain a copy of your corporate minutes on site. Companies sometimes store them electronically, and that's fine so long as there are hard copies as backups. Providing a copy to your attorney is wise, as well.

In an era when questionable business decisions have made the front pages of newspapers on more than one occasion, it's smart to keep a record of your actions. If you're operating as a corporation, keeping corporate minutes can protect your personal assets. And, it's the law.

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