

Should You Keep a Corporate Minute Book?

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Many corporate clients ask why they should spend the time and money to maintain a corporate minute book. This is especially common in small or family-run operations. Other corporate clients don't even bother asking the question, they just don't do it. When (and if) I am asked why they should go through the time and expense of preparing minutes and maintaining a minute book, my short answer is that it is required under Michigan law. Section 485 of the Michigan Business Corporation Act states that *"a corporation shall keep books and records of accounts and minutes of proceedings of its shareholders, board, and executive committee, if any"*. In addition to it being a requirement under Michigan law, the following are some reasons why all corporations, big and small, solely-owned, family-owned or otherwise, should maintain a corporate minute book and update it annually:

- **To Protect Shareholders From Personal Liability.** If the shareholders and directors fail to maintain a corporation's minute book and the corporation is sued, the court could "pierce the corporate veil" and hold the shareholders personally liable for the corporation's obligations. The court could reason that since the shareholders failed to have the corporation "act" like a corporation, that the corporation should not be treated as a separate entity for liability purposes, and as a result, the shareholders should be personally responsible for those obligations. By maintaining the corporate minute book and complying with all corporate formalities, the shareholders can take advantage of the limited liability protection a corporation provides, which is usually the main reason a business is incorporated in the first place.

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- **Take Required Action.** Under the Michigan Business Corporation Act, certain actions cannot be taken without shareholder approval. These actions include the election of directors and amendments to a corporation's articles of incorporation. In addition, certain actions, such as the appointment of officers, cannot take place without director approval. Further, the corporation's bylaws typically require director approval for certain matters such as calling special shareholder meetings, filling vacancies on the board of directors and amending the corporation's bylaws, to name a few.
- **IRS Audit.** In the event of an IRS audit of a corporation, one of the first things an IRS agent will ask to review is the corporate minute book. If the minute book is not updated or hasn't been maintained at all, this puts the corporation (and its attorney) in the difficult position of having to bring the corporate minute book up to date prior to the audit. Depending upon how far out of date the minute book is, getting the book updated in time for the audit can be a costly and challenging endeavor.
- **Historical Record.** Minutes serve to provide an historical record of the important transactions which have taken place during the life of a corporation, including major purchases, sales, loans and leases to name a few. Further, matters such as salaries and bonuses for shareholder employees, contributions to company retirement plans, as well as corporate dealings with its own shareholders and directors (including loans to or from shareholders and directors) should be documented and approved as part of the corporate record. Doing so is not simply a matter of good practice, it can also serve to head off challenges brought by minority shareholders and provide support, in the event of an IRS audit, for those actions that were taken.
- **Officer and Director Liability.** Maintaining an updated corporate minute book can help an officer or director support the fact that they have conducted themselves properly and carried out their duties and responsibilities to the corporation.
- **Third Party Review.** Banks and lenders frequently ask to review a corporation's minute book or at least the articles of incorporation, bylaws and the most recent meeting minutes or consent resolutions of the corporation.
- **Hard to Reconstruct.** The failure to keep an updated minute book can be problematic when attempting to reconstruct at a later date what actually happened in any given year. Annually updating the minute book serves to avoid disputes among shareholders, directors and officers as to *what happened, when it happened and why it happened*, which is often the case when trying to document something that took place several years ago.

If you have any questions or would like to discuss any of this in more detail, please do not hesitate to contact Jay David at jdavid@fosterswift.com.