

Do You Know Where Your Corporate Minutes Are?

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Forming a new business has become easier to complete by the general public and thus certain issues have also become more common. It is not unusual for a business owner to own several businesses. There are several alternatives in the form of business to choose which is outside the scope of this article and can be addressed later with sufficient interest. However, corporations and subsequent Subchapter "S" elections for corporations and LLCs remain popular and appropriate in many cases. These new business owners often overlook and/or mishandle one requirement when maintaining the companies, the requirement to hold board meetings [if required in the LLC Operating Agreement] and properly maintain records of those proceedings.

Such an incomplete record or failure to maintain such a formality can lead to unintended and very inconvenient and/or expensive tax and/or legal consequences pursuant to the corporation being deemed non-existent. This determination if ever made would be a disastrous situation and certainly non-trivial.

What's in a Name

A properly chosen name is important for many reasons. Illinois provides an online tool to check a corporation or LLC's status:
<http://cdsprod.ilsos.net/CorpSearchWeb/corpsrch.html>. To complete the incorporation process a unique name must be chosen. This Search tool should be consulted to determine if the intended or desired name is available. This could be tricky if incorporating an existing Proprietorship with already established name recognition where the owner wants essentially the same name. Much like choosing a website domain name, if the name is already taken, there is nothing that can be done except choose another. Usually Illinois will not allow the same LLC name to be created as a

corporation extension [Inc, Ltd, etc] and vice versa. Therefore, use the search option that looks in both corporation and LLC names together.

Considerations and consequences are discussed below from failing to follow through when maintaining records and filings. One thing that can happen if the annual Secretary of State renewal lapses – that company name becomes available for someone else to take. Imagine if suddenly it became illegal for you to operate your business under the existing name – preprinted forms and business cards, advertising, potential damages payable to the ‘rightful user’ of that company name, etc.

Potential Non Compliance Consequences

The point of losing the company’s name was just discussed. This consequence follows specifically not filing the Annual Report. Missing a filing deadline for the Annual Report is an expensive, inconvenient and potentially disastrous development. It happens more often than expected. No past due letters or notices are issued. The main reminder given by the State is the Annual Report form which does not always arrive especially if there is an address change. Therefore, be sure to diary the anniversary date yourself which can be any month of the year.

When the IRS begins a field audit of a corporation or LLC, the standard request on the first day is the Corporate Records. Perhaps they know that often the formalities are overlooked. This could provide them an option when drafting a tax assessment to disregard the corporation and consider the tax consequences of the transactions without that structure. That usually produces horrendous tax consequences.

Many business operators seek limited personal liability from claims or damages arising from their business. A normal plaintiff tactic to support collection of a judgement is to attempt to attach shareholders’ personal assets. If the lack of formality resulted in a plaintiff’s ‘golden fleece’ of ‘piercing the corporate veil’, a major purpose to form and advantage of operating as a corporation/LLC is lost with the resulting exposure of personal assets.

Incorporating

More new business owners of late have made use of online tools and services to complete the incorporation. This works, is fast and easy [the name can be formalized and recorded within 24 hours], the fees compare favorably with alternatives and retains control of the process with the company rather than relying on an outside professional. The Incorporator will receive a formal document called Articles of Incorporation [Organization for LLC] which evidences the completion of the recording.

To complete the original incorporation a few elements need to be determined at the outset – the company's name [see above], the Registered Agent who is the individual who is listed publicly to receive legal documents such as lawsuits, the number of issued and authorized stock shares and optionally the names and addresses of the officers.

One required initial filing step to keep in mind is recording the Articles with the local county's Recorder's office. This helps satisfy another operation formality element, publicizing the corporation's existence which also advises those doing business with this entity of its limited liability status.

Corporate Records Maintenance Procedure and Content

Mentioned above is the Annual Report which must be filed with the state of Illinois to maintain the corporation's 'good standing'. The link mentioned above to check the availability of a company name also notes a way to search a corporation's status. While the Annual Report is a revenue stream from the Franchise Tax that is paid with this filing, filing provides an opportunity to maintain and/or revise the list of officers and directors, registered agent and/or the address of the company.

The By-Laws [Operating Agreement for LLC] comprise a major component of the Corporate Records. This document follows a fairly consistent form and content. Few new and small business owners give any consideration to its content and use the standard form the incorporator provides. However, it dictates the subsequent content and procedure that must be followed to maintain the corporation's standing. Therefore, even though no effort may be exerted when choosing or coding the By-Laws or Agreement, attention needs to be given to know its contents and follow it subsequent to adoption.

One of the processes designated by the By-Laws [corporation] is designation of officers and directors and subsequent annual [re]election of them. This primary repeating function that must be formally performed by the corporation by way of an annual meeting of the directors and the shareholders. These and all other meetings must be documented in the record as Minutes with signatures by corporate Secretary and Directors. These meetings can be brief and conducted in a variety of formats including faxes or conference calls.

This Record Book also includes Stock Ledgers [record of issuance and surrender tracked by certificate ID] and surrendered certificates. These certificates are original pre-printed documents like checks and are authenticated with a corporate seal. In case some readers forget, the corporate seal is the heavy device with the corporations image which is squeezed onto documents. It's design produces the required 'crimping' that results in the raised image on the document akin to other 'sealed' legal documents. This is the company's signature.

Other major decisions made by the company must also be made by board/member meetings and thus documented in the Minutes. Examples include opening bank accounts and credit lines, major equipment purchases, establishing or changing insurance and pension plans, loans to and from officers and directors, mergers and divestitures, and By-Law amendments.

Records Maintenance Supplement - Banking

Worth separate mention is one more issue which the writer sees on regular occasion. A major element of separateness the company must maintain is finances. While this sounds obvious, the writer has so often seen new business owners form a corporation in a rush or perhaps before there are transactions so they do not immediately open a separate bank account. Then transactions start occurring – because they are busy generating business and for expedience they start disbursing from personal accounts, etc. It is strongly recommended that a separate bank account in the name of the new company be established at the earliest opportunity. This applies as well to Proprietorships.

Even after establishing a separate bank account, payment of personal expenses with business funds needs to be avoided if possible, quickly repaid and or loans recorded with interest recognized. With inappropriately casual treatment, these disbursements generally are considered dividends which are not deductible to the corporation and are taxable to the shareholder. This is another area that can be easily abused if not handled properly.

When opening a business checking account, most banks want the Articles of Incorporation and/or a Federal Tax ID Number. The latter can now be obtained online immediately as well:

<http://www.irs.gov/businesses/small/article/0,,id=102767,00.html> and click on 'Apply Online Now'.

Practical Considerations – Getting it Done

Note the number of online resources available to check name availability and company standing, incorporate and obtain a federal ID number. Online compliance resources have expanded to much of the ongoing requirements so obtaining and maintaining records is easier than before. Record keeping services are also available who will take information you provide [also online] and compose resolution and meeting minutes for The Book.

The requirements do not spell out the format of the records but conventional format for minutes and resolutions is available. Word document samples can be found that offer general working and content.

Summary

This task is not difficult except possibly for lack of adequate familiarity with the simple basics. The implications of failing these requirements are vast by comparison. Corporate Records requirements often do not get adequate attention from the business owners and are commonly lacking. So what's in your Record Book – do you even know where it is?