

NOT ANOTHER MEETING!

Conducting Your Corporation's Annual Meetings

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“What are you working on?” my teenager asked me. “An article about how to run a corporate shareholder meeting,” I answered. “Seriously? It’s not like anybody would want to read about that.”

All right, I admit it’s not a heart-stopping page-turner. However, individuals who are shareholders, officers or directors may be curious about how to run an annual shareholder meeting and how to document the corporation’s actions in order to comply with California state law.

The general guidelines set forth below are intended to assist corporations in complying with this annual requirement and in preparing minutes or a written consent action to document the corporation’s compliance.

Why should a corporation have an annual meeting or annual written consent action?

California Corporations are required to hold an annual shareholder meeting, or in the alternative, to have the shareholders execute a unanimous written consent action.¹ The primary purpose of the annual meeting of shareholders is for the election of directors, but “any other proper business may be transacted” as well.²

Proper business includes voting on transactions in which a conflict of interest exists. For example, a transaction between a shareholder and the corporation, such as the purchase of an asset or the lease of real property, should be subject to approval by the disinterested shareholders, if any.

For more information regarding why corporations must have an annual meeting or an annual written consent action, please see my article “Meeting With Myself: The Significance of a Small Company’s Annual Meeting” dated April 1, 2011.

What is the procedure for holding an annual meeting of shareholders?

1. Deliver notice of the meeting or obtain a waiver of notice

If you elect to hold an annual meeting rather than execute an annual written consent action, the corporation will need to provide a written notice to the shareholders. The shareholders must

¹ California Corporations Code 600(b) and 603(a) and (d)

² Section 600(b)

receive the written notice not less than 10 days nor more than 60 days before the meeting, or they must waive notice of the meeting in writing.³

The notice must state the place, date and hour of the meeting, the means by which a shareholder may participate in the meeting (eg. electronic communication), the names of director nominees to be presented by the board for election, and other matters that the board intends to present for action.⁴ The notice to shareholders must be delivered in person, by electronic mail, or by first class mail.

If the corporation fails to give notice, the shareholder action at the meeting will nevertheless be valid if:

“a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, provides a waiver of notice or consent to the holding of the meeting or an approval of the minutes thereof in writing.”⁵

The notice and any waivers must be placed in the record book along with minutes of the meeting.

2. Follow a procedure when conducting the meeting

The president of the corporation will generally acts as chairman of the meeting. The president may also act as secretary, but it may be easier to have another person act as secretary for the purpose of recording the minutes.

The president should determine if a quorum is present. Unless otherwise stated in the articles, a majority of the shares entitled to vote, present either in person or by proxy, constitutes a quorum.⁶ The vote by a majority of shareholders at a meeting where a quorum is present is the act of the shareholders.

The president then begins the meeting by calling the meeting or order. The minutes of the prior meeting may be read and approved, and then the president will announce the items to be covered in the meeting. The officers will advise the shareholders of the corporation's financial affairs and any significant business events of the preceding fiscal year. It is helpful to have a printed financial report to attach to the minutes.

The shareholders may then (1) ratify and approve all action taken by the officers and directors on behalf of the corporation during the previous year, (2) elect directors for the following year, and

³ Section 601(a)

⁴ At annual shareholder meetings, the board may present any other proper business even if not expressly stated in the notice. However, if the board calls a special meeting, the notice must state the general nature of the business to be transacted, and no other business may be transacted. Section 601(a)

⁵ Section 601(e)

⁶ Section 602(a)

(3) approve any transactions between the corporation and its officers and directors. Specifically, they should approve salaries and bonuses paid to officers and directors, contracts in which the corporation and the officers or directors are parties, and any other benefits accruing to officers and directors. These actions and any other business conducted by the shareholders should be recorded in minutes.⁷

3. Prepare minutes for the meeting

The secretary or acting secretary should prepare the minutes and submit them to the shareholders for written approval. The original minutes should be signed and dated by the Secretary and placed in the corporation's minute book. Minutes should contain the following information:

- a. The time and place of the meeting;
- b. Whether the meeting is regular (held at a time and place specified in the bylaws) or special (held at some other time and place);
- c. If it is a special meeting, how it was authorized;
- d. The notice which was given, or alternatively, written waiver notice of the meeting, written consent to the holding of the meeting, written approval the minutes, or reference to the waiver of notice for regular meetings pursuant to the bylaws;⁸
- e. The shares represented at the meeting; and
- f. The business transacted at the meeting.

How do we prepare an annual written consent action by shareholders?

For corporations with few shareholders, it is often easier to execute a written consent action in lieu of an annual meeting. The written consent action includes all of the same transactions as the annual meeting, but actions are approved in writing. Because the annual written consent action by the shareholders involves the election of directors, it must be unanimous.

The written consent action should include:

- a. A statement indicating the name of the corporation and that the action is by the shareholders in lieu of the annual meeting;
- b. A statement indicating the names of the individuals who are elected to serve as members of the board of directors until the next annual meeting;

⁷ Section 1500

⁸ Section 601(e)

- c. A statement of the authorization, approval, ratification or other action taken by the corporation;
- d. A general authorization to take such further action and to execute such additional documents and instruments as may be required to accomplish the purpose of the resolution;
- e. The date of the meeting; and
- f. The signatures of all of the shareholders.

Is the board of directors required to have an annual meeting?

Directors are not required to meet annually, however, it is customary for the directors meet after the shareholders in order to appoint officers and discuss other transactions by the board.

What is the procedure for holding an annual meeting of directors?

1. Deliver notice of the meeting or obtain a waiver of notice if required

A meeting of the board may be called by the chair or president, any vice president, secretary or any two directors.⁹ Regular meetings may be held without notice if the time and place are fixed in the bylaws, and special meetings shall be held upon four days' notice or 48 hours' notice if notice is delivered personally or by telephone.

Directors may waive notice of the meeting or consent to holding the meeting. They may also approve the minutes in writing or simply attend the meeting without protesting the lack of notice.¹⁰ In whatever manner the directors approve of the meeting, it should be noted in the minutes.

2. Follow a procedure when conducting the meeting

The chair should determine if a quorum is present or represented at the meeting. A quorum exists if a majority of the authorized number of directors are present. An act by a majority of the directors present at a meeting held at which a quorum is present is the act of the board.¹¹

The chair will call the meeting to order and will guide discussion and actions on the following matters:

- a. Financial condition of the corporation;
- b. Compensation to key employees;

⁹ Section 307(a)(1)

¹⁰ Section 307(a)(2), (3)

¹¹ Section 307(a)(7)

- c. Bonuses to be paid to employees, including the dollar amount of the bonus, the name of the employee, and the directive that each employee be advised of the bonus prior to the end of the fiscal year;
- d. Declaration of dividends on the outstanding shares of stock or a determination as to the reasons no dividends were declared;
- e. The adoption or modification of retirement plans;
- f. Contributions to retirement plans;
- g. The provision of employee benefits, such as life insurance, disability insurance, medical expense reimbursement plans and similar items;
- h. Transactions involving, directly or indirectly, one or more shareholder, director or officer of the corporation; and
- i. The purchase, sale or lease of major assets of or on behalf of the corporation;
- j. The acquisition of debt; and
- k. Other significant actions.

The secretary of the meeting should record the results of any votes, resolutions or other actions taken by the board, and prepare minutes for approval by the board.

3. Prepare minutes for the meeting

The secretary or acting secretary should prepare the minutes and submit them to the directors for approval. The original minutes should be signed and dated by the Secretary and placed in the corporation's minute book. Minutes should contain the following information:

- a. The time and place of the meeting;
- b. Whether the meeting is regular (held at a time and place specified in the bylaws) or special (held at some other time and place);
- c. If it is a special meeting, how it was authorized;
- d. If it is a special meeting, the notice which was given, or alternatively, written waiver notice of the meeting, written consent to the holding of the meeting, written approval the minutes;
- e. The directors present at the meeting; and

- f. The business transacted at the meeting.

Can the board of directors sign a written consent action in lieu of a board meeting?

The board of directors may execute a unanimous written consent action in lieu of the board meeting.¹² The written consent action should be signed by the directors and placed in the corporate record book.

The written consent action should include:

- a. A statement indicating the name of the corporation and that the action is by the directors in lieu of a meeting;
- c. A statement indicating the names of the individuals who are chosen to serve as officers until the next annual meeting;
- g. A statement of the authorization, approval, ratification, resolution or other action taken by the directors;
- h. A general authorization to take such further action and to execute such additional documents and instruments as may be required to accomplish the purpose of the resolution;
- i. The date of the meeting; and
- j. The signatures of all of the directors.

The information above is generalized and may not apply to all circumstances your corporation may encounter. If you have specific questions that are not adequately addressed here, please send me an email. You may also wish to consult the links provided below.



For more information:

California Corporations Code

<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=corp&codebody=&hits=20>

California Secretary of State

www.ss.ca.gov

California Department of Corporations

www.corp.ca.gov

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¹² Section 307(b)