

CORPORATIONS – BYLAWS

CORPORATIONS: BYLAWS (SLIDE 1)

A corporation's bylaws cover a wide range of topics all affecting the ownership and operations of the company. The bylaws are important. They should be comprehensive, yet flexible to accommodate growth. In this presentation we will discuss specific provisions that should be explored in a company's bylaws.

BYLAWS SUBJECT MATTER (SLIDE 2)

At a minimum, corporate bylaws should cover the following items¹:

- Shareholder meetings
- Board of directors
- Officers
- Stock
- Indemnification

In the next slides we will look at each of these topics.

SHAREHOLDERS MEETINGS (SLIDE 3)

Shareholder meetings. As owners of a corporation, shareholders have several rights. They are permitted to review the corporate books,² vote on major corporate decisions such as a merger³ and they have the right to intervene in a judicial proceeding on behalf of a company if the directors and officers are harming the business.⁴ Despite their status as owners of a company, shareholders do not have the right to interfere in the daily operations of the business.

Most shareholders only get to exercise their right to govern at the company's annual meeting where directors are elected and general business decisions are brought to a vote. The bylaws will articulate the purpose and process of the annual meeting. The bylaws can expressly set the meeting date—for example, the second Thursday of every November—or articulate the process by which an annual meeting date is picked—for example, at a date and time designated by the Board of Directors. The bylaws will also explain: how much notice shareholders will receive about meeting dates, quorum requirements and voting policies. Shareholders must have at least ten days' notice and no more than sixty days' notice for the annual meeting.⁵

¹ See *Top 10 Provisions to Include in Your Corporate Bylaws*, LEGALNATURE, <https://www.legalnature.com/article-center/business-formation/top-10-provisions-to-include-in-your-corporate-bylaws> (last visited Oct. 31, 2016).

² See N.Y. BUS. CORP. LAW § 624(b) (Consol. 2013).

³ See *id.* §§ 602, 903.

⁴ See *id.* § 626.

⁵ See *id.* § 605.

The bylaws may authorize special meetings of the shareholders that are called outside the annual meeting.⁶ If a corporation shall allow special meetings of the shareholders, the bylaws may outline the structure of these meetings.⁷ For example, the bylaws will establish a process to determine who runs a special meeting and how items are presented to shareholders. Under the NY Business Corporation Law, special meetings have special notice requirements. The notice calling for a special meeting should also explain who called the meeting and a description of the meeting's purpose.⁸

BOARD OF DIRECTORS (SLIDE 4)

Board of directors. The board of directors manages the operations of a corporation. Corporations must have at least one director.⁹ The bylaws establish the rules for making, maintaining and operating as the board. Founders should ask each other how large the board should be and for how long someone can hold a seat on the board. In addition, founders should articulate a process by which board seats are filled and directors are removed.

Meeting procedures are also outlined in the bylaws: scheduling, notice, quorums and voting. In general, a board action is only valid if it follows the procedure outlined in the bylaws.¹⁰ Board acts that do not follow the processes required in the bylaws are invalid and, therefore, void.¹¹ Meetings can be in person, virtual or by any other means articulated in the bylaws.

OFFICERS, STOCK, AND INDEMNIFICATION (SLIDE 5)

Officers. Officers operate the day-to-day functions of a corporation. They are appointed by the board of directors. Bylaws should depict the officer positions to be filled and the process by which those positions are filled or vacated.

Stock. The bylaws express the shareholder's right to a stock certificate and what to do in case the certificate is lost. In addition, the bylaws will outline how a stockholder's record date is established. The record date is a deadline that grants a new stockholder the right to attend the annual meeting for the year in which they become an owner.¹² The bylaws will also outline how dividends and reserves are coordinated.

Indemnification. If the company chooses to give specific legal protections to officers and directors, it is outlined in the bylaws. In most cases, the bylaws promise that the corporation will indemnify officers and directors, to the full extent under law, for any suit that comes against

⁶ See *id.* § 602.

⁷ See draft bylaws in resource.

⁸ See N.Y. BUS. CORP. LAW § 605(Consol. 2013).

⁹ See *id.* § 702.

¹⁰ See *id.* § 708.

¹¹ See *id.*

¹² See *id.* § 604.

them as a corporate director or officer. This protection cannot extend to officers and directors who do not act in the best interest of the corporation.¹³

¹³ *See id.* § 722.