

The Legal Strategist

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TEXAS ESOTERIC FACTS

- ◆ In Texas, it is illegal to take more than three sips of beer at a time while standing.
- ◆ The coldest recorded temperature in Texas occurred in Spearman in Jan. 1959; it was -22°. The hottest occurred in Seymour in Aug. 1932; it was 120°.
- ◆ Amarillo has the world's largest helium well.

With the start of a new year, I thought a timely topic for this quarter would be the issue of governance minutes. All Texas businesses such as corporations, LLC's, partnerships, etc., are required by law to maintain at least annual minutes documenting the actions of the entity for the previous year. However, annual minutes may not be adequate to help protect your business and personal assets. Each and every business is different. What actions constitute the need for special meetings and the documentation thereof for one business may not necessarily be required of another. Minutes not only act as the authoritative documentation, or evidence of "permission", to take action, but can also serve as a historical document evidencing the evolution of the entity.

As with all of our "Featured Topics" we are only presenting a highlighted overview; if you would like more information on this or any other topic previously covered in our newsletter (which can be viewed on [The Legal Strategist](#) tab of our web site), please contact our office to set up a consultation.

Hopefully, this quarter's topic will enhance your awareness of the need to keep current and accurate minutes. As always, we invite all comments and suggestions as well as ideas for new topics to be included in future issues.

Scott Barrett

FEATURE TOPIC:

MINUTES ARE ESSENTIAL



One of the most important reasons to form a legal entity under which to operate a businesses is to protect the owners personal assets from business risk and shield owners from personal liabilities. However, an often overlooked matter by many small businesses, especially if the business is owned by a single owner, is the entity's minutes. Minutes are never filed with any government entity, rather they are an internal matter and only come to light if there is a shareholder dispute or a claim by a third party that the entity is a sham. Current, complete, and accurate minutes can provide the documentation that may be the difference between a favorable owner settlement and a costly court or audit action. During an Internal Revenue Service audit, the agents will review the minutes to locate the resolutions accepted by the shareholders and/or directors to be certain the authority is present for the actions taken by the entity. Without proper documentation, the IRS may disallow certain expenses and reclassify the disbursements that could result in higher taxes or even double taxation.

Therefore, it is vital that all entities keep adequate governance documentation in the form of minutes of its members, shareholders, directors or managers meetings. Texas requires various entities to hold annual meetings to elect directors. Also, the bylaws of most corporations and the operating agreements of LLC's and partnerships require their board of directors to have annual meetings. In addition to the annual minutes, decisions and actions taken by the entity that are out of the ordinary for day-to-day operations normally require approval by the board of directors. Some actions are:

- ◆ Replacing officers of the entity; adopting business policies and plans, designating committees and allocating authority to them; issuing and selling equity in the entity; approving the sale, lease, conveyance, exchange, transfer, or other disposition of all or substantially all entity property and assets; approving mergers and reorganizations; approving loans to employees and owners; approving the adoption of pension, profit-sharing, other employee benefit plans, stock-option plans, and officer compensation; approving entity borrowing and loans; and entering into joint ventures, just to name a few.

Many small entities often have informal meetings where these types of matters are decided. These type of meetings are perfectly acceptable; the meeting should just be documented in the company's records by preparing minutes or unanimous written consents signed by all the directors in lieu of a meeting that approve the actions.

For sole owner entities, documentation is just as important, if not more so. Third parties and governmental agencies scrutinize sole owners to ensure that the entity is legitimate and not an altered ego of the owner. By keeping current and accurate minutes documenting entity actions, the sole owner can help maintain the veil that separates the individual from the entity.

As stated above, the single most important reason to keep corporate minutes is to ensure liability protection you desired when you created your entity. Generally, by maintaining current and complete minutes, the owners can rely on the entity itself for protection.

If you would like more information or assistance in preparing and managing your entity's minutes and minimizing governance and personal risk associated with your entity, please contact [Scott Barrett](#) to set up a consultation.

