

Instruction: This is a model letter. Adapt to fit your facts and circumstances.

Date

Name  
Company  
Address  
City, State Zip Code

Dear :

Now that \_\_\_\_\_ has been formed and the organizational meeting of directors has been held, it is important that you keep in mind the following information about corporations. Limited personal liability and the tax benefits of doing business in the corporate form are available only when you comply with the numerous requirements of corporate law. This letter is intended to acquaint you with some of the basic requirements of corporate operation, and to alert you to areas in which it is unsafe to act without further legal guidance.

The benefits of corporation operation flow from the legal recognition of the corporation as an entity separate from its individual shareholders, directors and officers. To enjoy these benefits, you must operate the corporation as a separate entity and in accordance with certain formal requirements.

It is essential that corporate and personal affairs be kept separate. Never mix corporate and personal funds, assets, or accounts. Do not use corporate funds or assets for personal or other noncorporate purposes. Business should be done in the corporate name. Avoid any indication that you are dealing in a personal capacity. The corporate name should be used on the telephone, advertisements, letterheads, cards, signs, etc.

When signing documents, it should always be made clear that you are acting on behalf of the corporation. This is accomplished by signing in the following manner:

**Name of Corporation**

By: \_\_\_\_\_, Its President

If you are also required to obligate yourself personally, you should add:

And \_\_\_\_\_, personally

In keeping with the recognition of the corporation as a separate legal entity, the formalities of corporation operation provide the mechanism by which the corporation governs itself, makes decisions, and takes action. Properly held meetings of shareholders and directors are the key to

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formal operation.

To better understand who must meet and when meetings are required, you should become familiar with the different capacities -- shareholder, director, and officer -- in which you will be acting at different times.

As shareholder, you own the corporation. Shareholders do not own the business; the corporation owns the business -- all assets and all funds. Shareholder control of the corporation extends only to the election and removal of directors, amendment of the articles of incorporation and bylaws, and a few other major actions, such as dissolution, merger, sale of all the corporate assets, the making of certain loans, and the creation of new stock. These actions will be valid only if authorized by the shareholders acting as shareholders, in a properly held shareholders' meeting.

As director, you are the managers of the corporation. You make all major business decisions, such as the hiring and firing of officers, compensation of employees, payment of dividends to shareholders, contracting with other businesses, loaning or borrowing money, initiation of new ventures, purchase of new equipment, etc. These decisions are expressed in the form of resolutions adopted by a majority vote in a directors' meeting, and recorded in the corporate minutes. Your authority is limited by law, by the articles of incorporation, and by the bylaws, but you may amend the bylaws. Within areas over which directors have control, only those acts authorized by resolution will be considered acts of the corporation.

As officer, you are an employee of the corporation. You conduct the everyday business of the corporation under the direction of the board of directors. Your acts are the acts of the corporation so long as you act within the authority given by the articles of incorporation, the bylaws, and the resolutions of the board of directors.

In closely held corporations such as yours, when the same people act in more than one of these capacities, the practical necessity of keeping the roles straight is very important. First, the courts consider observance of the formalities as important evidence in deciding whether or not the corporation has been operated as a separate entity. Second, the formalities are often the source of authority for those who act on behalf of the corporation. Officers, directors, and employees who act without authority (that is, without the necessary approval of the shareholders or the directors, properly made and recorded in the corporate minutes) may be personally liable for their acts.

Oversight in authorization can often be corrected by later ratification of actions already taken. The test practice, however, is to avoid problems by holding regular and frequent meetings of the board of directors. Also, for tax purposes many actions must be taken in a timely manner

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or they cannot be taken at all. Shareholder meetings should be held at least once a year for election of directors, and at other times as the necessity for shareholder approval of specific actions may arise.

Legally, a meeting that does not comply with the bylaws is no meeting at all. No action taken at an improperly conducted meeting will be effective to accomplish its purpose. For this reason, you should become familiar with the bylaw provisions governing meetings.

A written record that shows that a meeting was properly held and that recites the actions taken at the meeting must be prepared. These are the functions of the corporate minutes. The minutes must show that a quorum was present, and that proper notice was given to everyone involved. In addition to containing the substance of resolutions passed, the minutes should also list the names of those voting for and against any resolution that is not passed unanimously.

A device for facilitating the meeting process is the waiver of notice. Technical problems of giving proper notice of meetings can be avoided by routinely obtaining a waiver of notice from all shareholders or directors, as appropriate. If you would like form waiver to use as an example, we will be happy to provide you with one.

There is a substitute for the meeting process when actual meetings are inconvenient, or when a consensus can be reached informally. Unanimous written consent of all shareholders or all directors will serve as the legal equivalent of a meeting. The minutes of the organizational meeting illustrate the proper form.

The written consent resolutions, waivers of notice, proofs of notice, and minutes of actual meetings must all be kept in the corporate minute book. We suggest that the minute book be reviewed annually by our office.

You should also be aware of restrictions on the manner in which directors conduct the corporation's affairs. Directors hold a great deal of power within the corporate structure. In order to protect others, both within and without the corporation, from abuse of this power, the law places certain constraints on directors' actions.

Directors are held to a fiduciary standard of loyalty to the corporation. This means that in the capacity of director, and also as an individual, the director must act in the best interest of the corporation. Any conflict between the director's personal interest and the corporation's interest must be resolved in favor of the corporation. For example, a director may not individually pursue a new business opportunity if the opportunity could be pursued by the corporation and is within the

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corporation's line of business. Of course, a director cannot engage in a business that competes with the corporation.

All dealings between a director and the corporation must be approved, after full disclosure, by an independent vote of a majority of the other directors, or by the shareholders. Do not enter into any agreement with the corporation, sell to or buy from, rent to or rent from, or otherwise deal with the corporation, without first consulting us.

The corporation may make loans to directors only with formal approval by the shareholders. Directors and shareholders may make loans to the corporation, but these loans may, in some circumstances, be considered capital contributions. Again, consult us before you take any action.

The following acts are specifically prohibited by law, and will result in personal liability for directors:

1. Voting to pay dividends in violation of the articles of incorporation or state law.
2. Voting to purchase the corporation's own shares beyond amounts authorized by state law.
3. Voting to distribute assets during liquidation before payment of indebtedness.
4. Voting to make a corporate loan to a director without the approval of the shareholders.

Any director present at a meeting where one of these votes is taken will be treated as having voted in favor of the action, unless a dissent is entered in the minutes, or a written dissent is filed with the secretary of the meeting before adjournment, or filed by registered mail immediately after the meeting.

The directors are responsible for the timely filing of all tax returns and other required reports. The failure to file tax returns and to pay the taxes due may make the directors personally liable for the payment of some taxes. Directors may also be personally liable if the corporation fails to pay wages or withhold employee income taxes.

The restrictions and obligations described above are also generally applicable to the officers of the corporation.

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A number of other areas require legal advice. Please consult us whenever you are considering:

1. Issuing new stock or debt instruments.
2. Purchasing stock from a shareholder.
3. Doing business in other states.
4. Amending the articles of incorporation.
5. Dissolving or merging the corporation.
6. Selling the majority of the corporation's assets outside of the ordinary course of business.

If you have any questions regarding the above information or concerning other aspects of your corporation, do not hesitate to call.

Very truly yours,

By: