



Corporations: How to Preserve Limited Liability and Protect Your Personal Assets

As a general rule, a corporation is deemed to be a separate legal entity from its owners. However, in many cases, the courts will disregard the separateness of a corporation and find the owners personally liable for corporate obligations. This doctrine is known as “piercing the corporate veil.”

If you have incorporated, it was probably done so, in part, to shield your personal assets from liability. However, merely incorporating your business is not enough. Your actions after incorporating your business are just as important as the initial incorporation process. If corporate formalities are not followed, the corporation may be deemed to be an alter ego of its owners, resulting in personal liability for those owners.

If you have incorporated, please pay attention to the following necessary corporate formalities:

- **Bylaws:** A corporation should adopt a set of Bylaws, which provide guidance as to how the internal affairs of the corporation are conducted.
- **Minutes:** Minutes are a written record of actions by the shareholders and board of directors of a corporation. Any extraordinary corporate actions should be documented in Minutes. Examples: officers’ compensation; loans; purchase of assets, not in the ordinary course of business; and payment of dividends. At a minimum, a corporation should prepare annual Minutes for its shareholders and board of directors.
- **Corporate Capacity:** Any document executed by an officer or director on behalf of a corporation should clearly indicate that the person is signing in a representative capacity on behalf of the corporation. Both the name of the corporation and the signer’s representative position should be stated in the document.
- **Accounting:** It is very important to maintain separate and distinct corporate bank accounts and accounting records. Co-mingling of assets between an owner and the corporation should be strictly avoided.
- **Documentation:** It goes without saying that all corporate transactions with third parties should be adequately documented. It is equally important to document all transactions between officers, directors and/or shareholders and the corporation. For example, in the event that a loan is made by a shareholder to the corporation, an adequate promissory note should be prepared, and the loan should be approved by minutes of the board of directors of the corporation.

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FALL 2004

Americans have just settled another very contentious presidential election. Passions ran high with many of us riveted to the daily machinations of the campaign. Record numbers of Americans watched the debates while political discussions reverberated across the country from family dinner tables to cocktail parties to workplace break rooms.

Regardless of how each of us voted, we can all share in the overarching success of the 2004 campaign. I can think of three specific good things that happened during this election that have nothing to do with which candidate won.

First, apathy was an orphan this year. More Americans voted for a presidential candidate than have ever done so in our country’s history. Citizens in both red and blue states waited in very long lines to vote, with few glitches and no violence to speak of. Voter participation was up in every demographic segment over the elections of 2000, 1996 and 1992.

Second, it was the voters rather than the courts that determined the winner of the election. Votes cast resulted in a clear victory by one candidate with more than a 3% difference in votes for the winner than for the second place finisher. This decisive conclusion belied dire predictions of a protracted race ending up in the Supreme Court or the House of Representatives. We avoided a contested razor-thin count, which in no way would have served the best interests of our country.

And finally, once it became clear he had lost, Senator Kerry publicly conceded the election. This peaceful, public and immediate concession, a tradition in American presidential politics, is perhaps the greatest proof of the strength of our system.

Ultimately, the American vote was for far more than any candidate, it was a vote for America itself. We salute the American republic and our electoral process.

Curtis Shortridge

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Although the foregoing is not a complete list of all corporate formalities which should be observed, it does address some of the practices which should be addressed for good corporate governance. And, keep in mind, that these practices should be observed by limited liability companies and all other limited liability-type entities which may be utilized under relevant state laws.

Year end is a great time to perform a business “tune up” with your business counselor. Just as seeking the assistance of an accounting professional in preparing tax returns often saves many dollars in taxes paid and audits avoided, your attorney can lead you through an efficient yearly audit and adjustment of business practices that protect your business and personal assets from those who might seek to usurp them.

About the author: Barry W. Rothman is a Shareholder in the firm. His areas of practice include Corporation Law; Business Transactions; Real Estate; and Employment Law.

Yearly Estate Planning Review Also Imperative for Protection of Wealth

As the end of 2004 rolls ever closer, now is the time to consider whether changes are needed in your Estate Planning and to set a time to discuss them with your professional advisor at SS&R. Some personal reasons to update your documents might include a change in family status (i.e. marriage, divorce or separation, birth of a child or death of a spouse or beneficiary) or that you desire to change personal representatives, guardians for minor children, trustee designations, agents or fiduciaries. Make peace of mind through good planning the gift that you give yourself this season.



SS&R Bids Welcome to James F. Booth, Jr.

James Ford Booth, Jr., recently joined the firm's Business, Estates, Trusts and Taxation group as an Associate. Jamie was born in St. Louis, Missouri but grew up in Colorado as an avid lover of outdoor activities such as mountain biking and skiing. He is pleased to be setting down his professional roots near home and family in private practice with Stewart, Shortridge & Rothman, P.C. and we are delighted to add his significant talents and expertise to the firm.

Having received his B.A. in Business Administration from the University of San Diego in 2001, Jamie returned to Denver where he then completed his J.D. at the University of Denver, College of Law in May, 2004. His studies continue, and at the end of February, 2005, he will receive his Masters of Law in Taxation (LL.M.) from the Graduate Tax Program.

Jamie's practice areas include Wills, Trusts and Estates, Probate, Tax Law, Business Law and Real Estate Law.