



VIRTUAL PARALEGAL SERVICES

PROTECT YOUR ASSETS



The Importance of
Annual Maintenance

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Annual Maintenance

In order to maintain the limited liability protection offered to a corporation’s stockholders, a corporation must follow certain legal requirements pursuant to the laws of its state of incorporation. However, if the corporation fails to follow the legal requirements, a court may decide to “pierce the corporate veil” by treating the obligations and liabilities of the corporation as the obligation and liabilities of its stockholders. This is most often applied when stockholders fail to recognize the “separateness” of the corporation, having either used the corporation for personal or unlawful purposes or by failing to:

-  Supply it with Adequate Resources
-  Observe Corporate Formalities such as Holding Annual Meetings of Stockholders and Directors
-  Keep Separate Record Books Of the Corporation
-  Distinguish Corporate Assets From Personal Assets
-  Issue Stock

The Importance of an Annual Meeting

The requirements for annual meetings vary by state and whether the corporation is a private or public entity. Generally, there are two annual meetings: a stockholders’ meeting and a directors’ meeting. Both of these meetings are held within a prescribed time following the fiscal year end so that the financial performance of the corporation for the previous fiscal year may be reviewed in a timely fashion. The charter or bylaws may provide for a date and location (i.e. inside or outside the U.S.) where the annual meeting will be held or may provide that the directors determine the meeting date and location. In the absence of such provisions in the charter or bylaws, state laws prescribe meeting requirements.

There are two ways to satisfy annual meeting requirements. Depending upon the relevant state law, annual meetings may be held by written consent or at a meeting held for such a purpose. The manner chosen will depend upon:

-  Whether the Corporation is Public
-  The Provisions of State Laws, the Charter and the Bylaws of the Corporation
-  The Number of Stockholders
-  Preference

the Securities and Exchange Commission (SEC) requirements governing annual meetings are much more stringent than those of private companies

Holding an Annual Meeting

If an annual meeting is to be held, the annual stockholders' meeting will generally take place immediately before the annual directors' meeting in order that the newly-elected directors may participate in the directors' meeting. Once the meeting date for each is set (which may be the same date for each meeting), notice of the meeting must be provided to all stockholders or directors, as the case may be, or a waiver of notice of meeting must be obtained, if the date is not provided in the bylaws.

Public corporation annual meeting requirements are governed by regulations promulgated by the Securities and Exchange Commission (SEC) and are much more stringent than those of private companies. Annual meetings for public companies take careful planning to assure that the record date is set properly and that the stockholders receive notice of the meeting and proxy materials. Proxy materials must also be delivered to the SEC and any securities exchanges on which securities of the corporation are traded.

Meetings Held by Remote Communications

Many states allow meetings to be held by remote communications such as the Internet or teleconference. *Delaware (8 Del. C. 211) establishes certain requirements for online stockholder meetings including the requirement that corporations implement reasonable measures to insure that stockholders are deemed present and permitted to vote by remote communications.*

Actions Taken by Written Consent

Closely-held and private corporations, if permitted by state law and the bylaws, often choose to take action by written consent in lieu of meetings. At the very least, the stockholder consent will elect directors for the upcoming year; the director consent will elect officers for the upcoming year. This is an opportune time to consider any actions that were taken throughout the year that may not have been approved, such as entering a lease, registering to do business in a foreign state, and other seemingly routine business that by law requires director or stockholder consent. Ending with a ratification resolution will authorize any and all actions taken by the officers and directors in the prior years that may have been missed.

most states require the filing of an annual, biennial and/or franchise tax report

Joint Consents

In small, closely-held and private corporations, where the directors and stockholders are the same or predominantly the same people, a joint consent may be the way to go so that the stockholders and directors can sign a single document.

Annual Report

As part of annual maintenance, most states require the filing of an annual, biennial, or franchise tax report. These reports are not only due in the domestic state, but they are also due in each foreign state in which a corporation is qualified to conduct business. State annual report forms are available either through the state's web site or are delivered by the state through the registered agent. Many states now provide for online filing. Annual reports filed with the secretaries of state are separate and distinct from a public corporation's requirements to file 10K or 10Q reports with the Securities and Exchange Commission or the annual reports to its stockholders.

Franchise or Corporate Tax

A franchise tax is often imposed on corporations, limited liability companies and other businesses in states in which it is incorporated (or formed, in the case of an LLC) or qualified to do business. This tax may be referred to variously as excise tax or franchise tax. Rates of taxes also vary from state to state. In some states, like Delaware, the franchise tax report is the same as the annual report. In other states, one report is filed with the secretary of state and taxes are paid to the department of revenue.

“Green Heart Attack”

The corporation may receive a franchise tax notice that states several thousands of dollars of tax due. Some people have referred to this as the “green heart attack”

Delaware’s franchise tax for corporations (limited liability companies and limited partnerships pay a flat \$250 tax annually by June 1st) is assessed on their annual reports, which are due by March 1st each year for the prior calendar year. A corporation may receive a franchise tax notice that claims thousands of dollars due. Some people have referred to this as the “green heart attack” resulting from Delaware’s computation of taxes based on authorized shares reported to the corporation on Delaware’s green, annual franchise tax report. This heavy tax assessed by the state may be drastically reduced by using the alternative calculation method, known as “assumed par value method”, easily calculated on the online annual report form. For this method, Delaware requires the total issued stock of the corporation and total gross assets as of December 31 of the prior year (and other dates if the corporation had filed any amendments increasing or decreasing stock throughout the year).



Virtual Paralegal Services (“VPS”) provides annual maintenance assistance. VPS helps track annual report and annual consent due dates for clients through its internal docketing system. Clients are reminded 60 days in advance of filing requirements. This is a valuable service to clients:

- 🗓️ **Ensure Legal Protection Against “Piercing the Corporate Veil”**
- 🗓️ **Eliminating the Last Minute Rush to Bring Entities into Good Standing**
- 🗓️ **Preventing the Need to Pay Penalties Associated with Late Filing**

VPS also provides clients with an annual report questionnaire so that VPS captures all resolutions that should be included in the current annual consents and minutebook.

For more information contact Denise Annunciata at denise@virtualparalegalservices.com or at 508-405-1943 ext. 101.