

How Up-to-Date is Your Company Record Book?

By Donald R. Scherer, JD

If you're planning to sell your business, or merge with another company, one document that will require your attention is your corporate record book.

With the numerous day-to-day responsibilities inherent in managing a business, owners frequently overlook the important task of updating this vital document.

The record book is often created when a corporate entity is formed, then placed on a shelf and forgotten until a problem arises. While statutory requirements governing the record keeping of different business structures vary, real world transactions and prudent business sense dictate the need for current company records.

No matter what business structure you use, an up-to-date record book is vital. First, it provides a meaningful audit trail for corporate decisions and transactions. It helps to determine effective dates for tax purposes, and evidencing compensation, bonuses, owner distributions, and dividends.

Second, up-to-date records confirm corporate authority to enter transactions, thereby minimizing challenges to corporate authority from other owners, directors, managers, and governmental agencies. For in-house use, timely records can be used to avert any potential internal disagreements between owners or shareholders.

Third, up-to-date records provide a meaningful point of reference for counsel. For example, when a company enters a lending transaction, its attorneys and accountants are frequently asked to render an opinion as to the company's history and authority to enter the transaction. This also holds true in a potential sale or merger situation. Often your corporate record book is the foundation of the due diligence process conducted by a buyer's acquisition team.

Finally, the record book provides concise evidence of the current and past ownership of the entity.

While this list is not all inclusive, it does highlight some of the more important reasons for updating a company's record book. If not done on a regular basis, a company can find itself in the midst of an IRS audit with no meaningful records to track its business transactions or payments to owners. As the proverb goes, "If it isn't written down, it didn't happen."

In the scheme of things, updating your corporate record book is a seemingly mundane task. But its importance should not be overlooked. If you've been remiss in this regard, contact your attorney for help.

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