



## Corporate Records – Often Forgotten, But Always Important

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### Introduction

Recently, The Center dealt with a situation where a corporation was keeping insufficient records. While this may sound like a no-harm, no-foul prospect, having little or no records in this case became a dire situation. In fact, the court ruled that, due to the lack of records, the corporation was for the most part, invalid and liability extended into the owners of the business.

The fact is that thousands of people own corporations for the purpose of conducting business while limiting liability. What many people don't realize is that the limited liability is effective only if certain requirements are met. One of the requirements to avoid losing the protection of limited liability, also known as piercing the corporate veil, is to hold meetings and keep accurate records. Failure to keep records does not mean certain failure in court or the IRS, but it is definitely a strike against you.

### Definition and Requirements

Corporate records are documents prepared by a business to fulfill requirements imposed by law. Under the Model Business Corporation Act, a corporation shall keep as permanent records,

minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors on behalf of the corporation. Records must also be kept of resolutions creating all classes of stock, all written communications to the shareholders, the most recent annual report, and names of shareholders. The form of the requirements require that the records be kept in written form or in a form that can be reduced to writing in a reasonable time and be made available to shareholders or the government upon request.

Meetings can be held on a regular basis or a special meeting can be called. Regular meetings can have their notice requirement waived. Generally, special meetings require notice which must be shown in the corporate records. At a minimum, corporate meetings are required to be held once per year.

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**Mike Ertel is a Certified M & A Advisor and a Principal Broker with Legacy Advisors Group, a full-service M & A Advisory firm with an office in Tampa, Florida specializing in representing sellers and buyers of small- to mid-sized companies. Prior to joining Legacy Advisors Group, Mike's business career spanned 30+ years with Fortune 500 and Fortune 1000 Companies, with senior management roles in Marketing, Operations and Logistics. Mike also served as President, COO of a mid-sized Manufacturing company headquartered in Tampa. Mike also holds a BS in Electrical Engineering and an MS in Industrial Administration, both from Purdue.**

## A CASE STUDY

The Tax Court has held that cash disbursements from a closely-held company to its sole shareholder, in addition to payments for a variety of expenses, resulted in constructive dividend income to the shareholder. The taxpayers were further found liable for the

accuracy-related penalty on their underpayment of tax. The court found that the taxpayers were negligent because they failed to maintain adequate records, they could not substantiate deductions they had claimed, and they had mislabeled their expenses.

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**The Center for Financial, Legal & Tax Planning, Inc.**

**Discussion**

After reviewing the above requirements, are your records up to par? If you've been in business for 12 years, can you count 12 meeting notes in your records? If not, let me use an example to illustrate just how the lack of minutes can be used to cause you problems.

Oftentimes, business owners will use their own personal property for business use. Being that it is used for the business use, it is often indecipherable who owns the property. During a lawsuit to seize assets, any assets located in the building can be presumed to be business property. In this example, unless the business owner has a corporate record of his personal property being authorized for use by the corporation, it is very likely that the property will be presumed to be that of the corporation's and be subject to the lawsuit.

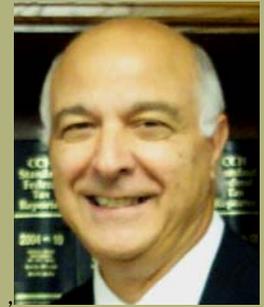
At other times, corporations will face lawsuits from individuals. Corporate records will be seized under a subpoena power of the court. If the corporate records do not exist or have not been kept up, it is too late to produce them. The person suing at that point has another foot forward in proving that your corporation is merely an

alter ego of the owner. Under this theory, a court can pierce the corporate veil to attach the owner's personal assets to satisfy claims against it. **IT IS IMPORTANT TO KEEP RECORDS.** Granted you will not be legally bulletproof with them, but without them you are a sitting duck!

**Conclusion**

There is no requirement or rule stating that records cannot be created for past events. Therefore, records can be created for events that happened long ago, from memory. However, records must be maintained in a particular format. Writing "had a meeting on 4/15/04 to discuss tax problem" is not sufficient. There is a format used to show formality both of the record and of the meeting. The format should state the date, time, location, and actions taken at each meeting.

The Center maintains corporate records for numerous clients. If you would like the professionals at The Center to assist you with your record keeping, please give us a call. Remember, the law states that you should have corporate records and keep them current!



***Dr. Bart A. Basi is an attorney, CPA, and the Senior Advisor of The Center for Financial, Legal & Tax Planning, Inc, a full service company specializing in financial, legal & tax matters. Basi is a nationally recognized author, lecturer, and advisor on how to structure deals to minimize taxes. Tax structure makes the difference between getting the deal done and watching the deal fall apart. Many of you may be familiar with Basi and the topics he covers in the Financial, Legal & Tax Advisory which may be read in various industry-specific trade publications.***

**A CASE STUDY CONTINUED:**

**Editor's Comment:** The taxpayers in this case provide a good example of the worst way to run a company. These facts demonstrate the importance of keeping your company's finances in order, which is especially true for closely-held corporations with only one shareholder, as was the case here. When a dispute arises with the IRS, it is always helpful to be able to show that you have participated in straight forward, organized, and accurate record keeping.



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## Points of Interest

- What many people don't realize is limited liability is effective only if certain requirements are met.
- During a lawsuit to seize assets, any assets located in the building can be presumed to be business property.
- There is no requirement or rule stating that records cannot be created for past events.



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## **COMMON MISTAKES MADE WHEN SELLING A BUSINESS – PART 1**

**Mike Ertel, CBI/ M&AMI/ CM&AA**

Selling a business takes careful preparation, the ability to reach an optimum number of qualified buyers and still maintain confidentiality, and the ability to handle a complex transaction. Most business owners have developed a lot of expertise at running their own business, but are not experienced in selling a business. Without professional assistance, they will often make costly mistakes if they attempt to handle the sale of their business on their own. Here is the first in a two-part series of the most common mistakes to avoid:

1. Not understanding the process. Like anything you do in life, there will be a learning curve when it comes to selling a business. Understand the selling process, learn the typical steps and terminology, explore various types of buyers for your business, understand various deal structures and how business sales can be financed to make the most of this once-in-a-lifetime opportunity.

2. Selling too quickly. Unless you have to sell the business quickly for dire financial or personal reasons, you should not rush into a sale without first exploring all of your options – both for structuring the sale and for what you will do post-sale. Here again, consulting with an experienced business broker, your accountant, your attorney, and your personal financial planner can pay huge dividends in arriving at the best outcome.

3. Waiting too long. Having arrived at the decision to sell your business, most business owners simply wait too long to begin the process. Most business owners are surprised to learn that they should start 2 – 3 years before the very last day they would like to be actively working in their business. It takes time to prepare the business for sale, to gather and package the needed information, to find and negotiate with qualified buyers, to complete the buyer's due diligence and get the necessary financing, to finalize the definitive purchase agreement and all of the related legal documents, and to actually get the sale closed. Even then, many buyers will want/need the seller to stay on in an employment/consulting role for several months or even a year or longer.

Many business owners have a difficult time grasping the fact that the best time to sell any business is when you don't have to, and when the best years of for the business still seem to be in the immediate future. Buyers will pay a reasonable premium for such a business. On the other hand, by waiting until the best days have come and gone, and/or you can no longer enthusiastically run the business yourself, the business may appear to be in a state of decline, or the economy may have taken a turn for the worse and buyers will deeply discount such a business, if they're interested in purchasing it at all.

To be continued...

***If you know of a business owner who's thinking of selling or buying a business and who might benefit from a free, confidential, consultation with us, have them contact me at [mertel@legacyadvisorsgroup.com](mailto:mertel@legacyadvisorsgroup.com)***

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## Frequently Asked Questions...



**Q: What is the last day one can contribute to their retirement account for purposes of a tax deduction?**

**A: For retirement account contributions, April 15 of the following year is the last day one can contribute an amount that can be deductible for the previous tax year.**

**Q: I have heard that owners of traditional IRAs can convert their traditional IRAs to Roth IRAs this year, regardless of income. Is this true?**

**A: Yes, this year, and this year only, taxpayers earning any amount of money can convert their traditional IRAs to Roth IRAs. There are various advantages to doing so. The advantages include providing tax free income during retirement, providing a tax free legacy to your heirs and the ability to remove the money contributed penalty-free.**

**Q: I want to file my return electronically. Do electronically filed returns get refunds faster?**

**A: Generally, returns filed electronically receive their returns within 2 weeks. The traditional paper method filing usually nets a return in 6 weeks.**

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