

Meeting minutes may tell too much

By Nicole C. Snyder

HOLLAND & HART LLP

All meetings of a corporation's Board of Directors should be documented in minutes. The law does not provide specific guidance as to the components of these minutes, nor does it address the level of detail that should be included in the minutes. Nevertheless, Board minutes can play a key role in minimizing the risk of liability for both the corporation and its Board members.

Why keep minutes?

Board minutes are important for a variety of reasons. They keep track of the business conducted by the Board by documenting decisions and actions. Board minutes are often reviewed by the corporation's shareholders and auditors. When properly drafted, minutes also protect the corporation by documenting the information the Board reviewed and relied on in making its decisions.

Each Board member owes certain fiduciary duties to the corporation. The primary duties include the duty of care and the duty of loyalty. The duty of care is the duty to exercise good business judgment and to use the ordinary care and prudence in making management decisions. The duty of loyalty requires a director to act in good faith and in the best interest of the corporation, rather than in the director's own interest. Minutes should provide evidence that directors complied with their duties.

What should the minutes include?

First, minutes should provide basic information about the meeting, including the meeting's date, time, duration, and list of attendees. At each meeting, the Board also should review, edit, and approve the draft minutes from the prior meeting.

Second, minutes should document all topics discussed at the meetings. For each topic, the minutes should indicate the discussions that took place, the information the Board reviewed, and any final actions taken.

How much detail is appropriate?

Board minutes should not be a transcript of every word spoken at the meeting. Rather, they should include enough detail to show that the Board complied with the duties of care and loyalty discussed above. To do this, the minutes should be a record of the following:

- key points from the Board members' discussions

- alternatives discussed by the Board before taking any actions
- reports, studies, or any other data presented to the Board
- recommendations from the corporation's accountants, officers, attorneys, or other outside advisors
- the outcome of any votes taken
- whether any board members abstained from any votes or were excused from any discussions at the meeting

Is there anything that should not be included in the minutes?

It is important to remember that minutes may be reviewed by shareholders, litigants, courts, and other outsiders for a variety of reasons. As a result, there may be highly sensitive topics that should be recorded in significantly less detail, such as certain personnel matters or litigation that is pending or threatened.

In these situations, it may also be appropriate for the Board to convene an executive session, which is typically attended only by Board members who are neither officers nor other employees of the corporation. Executive session minutes do not need to contain the level of detail normally recorded in regular Board minutes.

Executive session minutes should, however, document basic information such as who attended, the duration of the meeting, the topics discussed, a reference to any information presented or discussed, and any recommendations made in the executive session to be presented to the full Board for action.

About the Author

Nicole C. Snyder is an attorney in the Boise office of Holland & Hart LLP. She practices business and employment law.

– © 2008 Idaho Business Review. All rights reserved. Originally published in an Idaho Business Review publication, Idaho Business & Law, October 27, 2008.