Corporate Records Banks and Buyers Ask For

Your corporation exists because the state says so. Who owns it, who runs it, and who may sign for it exist only because your records say so.

Most small corporations are formed in an afternoon. The articles get filed, the state sends a certificate, and the owners go back to work. Nobody signs the organizational consent, nobody issues the shares, and nobody writes down who owns what.

That works until someone outside the company asks for proof. A bank wants to know who may open the account. A lender wants to know who may sign the note. A buyer wants to know who owns the stock it is paying for. A tax examiner wants to know why the owner's salary was set where it was. Each of them asks for the same short list of documents, and each of them treats a missing document the same way: as a reason to slow down, discount the price, or say no.

Think of the certificate from the state as the deed to an empty house. The records are the furniture, the locks, and the list of who holds a key. This guide covers what they are and what to do if yours were never made.

The Stock Ledger

The stock ledger is the corporation's own record of who owns it. Every issuance and every transfer goes in, in order. For each entry, record:

- **Who.** The shareholder's exact legal name. If an entity or a trust holds the shares, its exact name and, for a trust, the trustee.
- **What.** The number and class of shares.
- **When.** The date of issuance or transfer.
- **For what.** The consideration received: cash, property, services already performed, or a promissory note, and its value. This line matters more than people expect. Stock issued for nothing, or for consideration nobody recorded, invites a later argument about whether it was validly issued at all.
- **How evidenced.** The certificate number, or the date the statement of uncertificated shares was delivered.

Certificates or uncertificated shares. Shares do not need a paper certificate. Most states let the board authorize uncertificated shares, and many small corporations prefer them because nothing can be lost. The usual trade-off is that the corporation must send each shareholder a written statement of the information a certificate would have carried, including any transfer restrictions, within a reasonable time after issuance. Whichever you choose, the ledger is the controlling record, and it should match the certificates or statements exactly.

The Organizational Consent

The organizational consent is the corporation's first act. It turns a filing into a functioning company. A complete one does five things:

- **Accepts the incorporator's resignation,** where an incorporator other than the owners signed the articles. The incorporator's job ends once the board exists.
- **Elects or confirms the initial directors,** if the articles did not name them.
- **Adopts the bylaws.**
- **Appoints the officers:** at minimum, whatever offices your state's statute and your bylaws require.
- **Authorizes the issuance of shares:** to whom, how many, and for what consideration, with a board determination that the consideration is adequate.

It usually also approves the fiscal year, the bank account, reimbursement of formation costs, and any tax elections the owners intend to make.

Written Consents in Lieu of Meetings

Corporate law was written for boards that meet around a table. Small corporations rarely do, and they do not have to. Most states let directors and shareholders act by written consent instead of holding a meeting.

- **Directors** generally must consent unanimously to act without a meeting.
- **Shareholders** generally must also consent unanimously, unless the articles permit action by less than all, and some states attach notice requirements to the shareholders who did not sign.
- **Electronic signatures** are generally accepted, and your bylaws may say so expressly.

Use a written consent whenever the company makes a decision someone may later ask you to prove: opening or changing a bank account, borrowing, signing a lease, buying or selling a significant asset, setting officer compensation, declaring a distribution, issuing or redeeming shares, and electing directors each year. A one-page consent signed the week of the decision costs almost nothing. Recreating it three years later costs a great deal more.

Board Decisions and Shareholder Decisions

In a one-owner corporation, the same person may be the sole shareholder, sole director, and every officer. The roles still differ, and the records should show which hat was on.

- **Shareholders** elect and remove directors, amend the articles, and approve fundamental changes: a merger, a sale of substantially all assets, a conversion, or dissolution.
- **Directors** manage the business: they appoint officers, set compensation, authorize borrowing and major contracts, issue shares, and declare distributions.
- **Officers** carry out the board's decisions and sign the documents.

Fundamental changes usually need both: the board approves and recommends, then the

shareholders approve. A sale document signed only by the president, with no board or shareholder approval behind it, is exactly what a buyer's counsel looks for.

The Banking Resolution

A bank opening an account for a corporation is taking instructions from a stranger who says he speaks for the company. The bank wants proof that the corporation, not just the person at the counter, authorized it. That proof is a banking resolution: a board consent naming the bank, authorizing the account, and identifying by name and title who may sign, deposit, withdraw, and add or remove signers.

Many banks supply their own form. Use it if they insist, but make sure it agrees with your bylaws and your officer appointments. When a signer leaves, adopt a new resolution and update the signature card the same week. A former officer still on the account is a fraud risk and a control dispute waiting to happen. Lenders, title companies, and landlords ask for the same thing in their own form: a resolution or certificate of incumbency showing who holds which office and that the signer is authorized for this transaction.

Conflicts of Interest

In a small corporation, the directors often control the shareholders, or are the shareholders, or own the company on the other side of the deal. The board approving a lease from the president's real estate company, a loan from a shareholder, or the owner's own salary is a director approving a transaction in which he has a personal interest.

That is not prohibited. It is the ordinary state of affairs in a closely held company. But state law generally protects an interested-director transaction only if the interest was disclosed and the deal was approved by disinterested directors or shareholders, or the deal was fair to the corporation. When everyone is interested, fairness is the only protection left, and the consent is where you show it. The consent should:

- **Name the interest.** Who stands on both sides, and how.
- **State the terms.** Rent, rate, price, or salary, and the basis for it: a market comparison, an appraisal, a published rate.
- **Record the approval** of any disinterested director or shareholder, if there is one.

Disclosure in the document costs one paragraph. Its absence lets a minority shareholder, a buyer, a creditor, or the IRS tell the story their own way.

What the State Sees

Owners are often surprised to learn that their annual report is not a record of ownership. In most states, the annual report lists the corporation's officers and directors, and sometimes its principal address and registered agent, but not its shareholders. Requirements vary by state, and a few ask for more, so check your own state's form.

Two consequences follow. First, the state's record will not prove who owns your company; only

your stock ledger will. Second, the officers and directors you list should match your consents. An annual report naming a president the board never appointed is the kind of inconsistency that turns a routine bank or buyer review into a long one.

Issuing Shares Is a Securities Transaction

This surprises nearly everyone. When a corporation issues stock, even 1,000 shares to its own founder for $1,000, it is selling a security. Federal and state securities laws require every offer and sale of securities to be registered or to qualify for an exemption.

For founders issuing shares to themselves, an exemption is usually available. Federal law and most states have exemptions for private, limited offerings. Some exemptions carry conditions, and some require a notice filing with the SEC, the state where each purchaser lives, or both, often on a short deadline after the sale. The analysis changes, sometimes sharply, once shares go to anyone other than the founders: an employee, a friend who invests, a family member, or a buyer of a minority stake.

Which exemption applies, and whether any filing is due, is a question for an attorney who practices securities law. Ask it before shares are issued to anyone new, not after. The corporate records should show the exemption the company relied on and any filing made.

When the Records Are Missing

Many corporations reach their first bank review, loan, or sale with no organizational consent, no issued shares, and years of decisions nobody wrote down. That is common, and it is usually fixable.

The tool is ratification. The board and, where needed, the shareholders adopt a consent that recites what actually happened, approves it, and confirms it as an act of the corporation. Done properly:

- **It tells the truth about dates.** The consent is dated the day it is signed and says when each ratified act took place. It does not backdate. A backdated document is worse than a missing one, because it is evidence that someone tried to rewrite the history.
- **It works through the gaps in order:** the organizational actions first, then share issuances, then officer appointments, then each significant transaction since.
- **It reconciles ownership.** If the owners have been operating as 60/40 but no shares were issued, the ratifying consent issues shares consistent with how the business has actually been run and taxed, and the ledger records it.
- **It follows the statute.** Some states have a specific procedure for ratifying defective corporate acts, particularly overissued or improperly issued stock, with its own approvals and sometimes a state filing. Check whether yours does before relying on a simple consent.

Ratification is not a cure for everything. It cannot retroactively make a late tax election timely, and it cannot fix a share issuance that should have had a securities exemption but did not. It does

put the company's history in writing, which is what most banks and buyers are asking for.

Records to Keep

Keep one file, in one place, that holds:

- The articles of incorporation and every amendment, with the state's filing stamp.
- The bylaws, as amended.
- The organizational consent.
- The stock ledger, and copies of every certificate or statement of uncertificated shares, including canceled ones.
- Every board and shareholder consent and set of minutes, in date order, including annual director elections.
- Banking resolutions and current signature authority.
- Any shareholder agreement or buy-sell agreement.
- Records of each securities exemption relied on and each notice filing made.
- The IRS letter assigning the EIN, any Form 2553 S election and the IRS acceptance letter, and other tax elections.
- Annual reports filed with the state, and any certificate of good standing you have obtained.
- Documents for every related-party transaction: leases, loans, and compensation approvals, with the consent that approved each one.

Review it once a year, when the annual report is due. If anything happened that year that is not in the file, that is the week to write the consent.

Related reading at bjoffrionconsult.com/blog: "What business records should you actually keep, and for how long?" and "Who can sign for your LLC, and how do you prove it?"

If You Want Your Corporate Records Put in Order

Signature Authority & Resolutions — from $450. The consents and resolutions a bank, lender, or title company needs to accept your signer, including organizational and ratifying consents where the originals were never signed.

Entity Structure Audit — from $850. A written review of what your records show against what the state record, the tax filings, and the actual ownership say, and what to fix in what order.

Document Review — from $650. Whether your bylaws, consents, stock ledger, or shareholder agreement support the transaction in front of you, with specific recommended revisions.

The fee for a consultation is credited in full toward any written work you commission within 30 days.

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1500 N Grant St Ste N, Denver, CO 80203 · brandi@bjoffrionconsult.com · www.bjoffrionconsult.com
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