BUSINESS OWNERS FACE RISK FROM IMPROPERLY MAINTAINING CORPORATE RECORDS

Case Study

Case Overview

A brother and sister, who are the majority shareholders and directors of a second generation family business, are engaged in a legal battle against one another. Not only will the litigation be devastating to the business, but also the dispute has led to the disintegration of the personal, family, and business relationships.

Several years ago, these clients were looking for ways to reduce legal expenses, they decided that they would hold their own annual meetings for the corporation and prepare the minutes and resolutions for the meetings. However, they did not fully understand the different roles that each of them had as a shareholder, director, officer, and employee.

The authority and responsibilities of shareholders, directors, officers, and employees are specified by four sources, which include state corporate statutes, the corporation's articles of incorporation, the corporation's bylaws, and by private agreements. By not conforming to the requirements of these four sources, the actions taken pursuant to the meetings, some of which were memorialized in the minutes and resolutions, are unenforceable because the legal capacity in which each person acted was not properly specified.

The consequences and problems that resulted include: (1) the salaries voted on are unenforceable because the minutes do not specify what capacity (officer or director) the compensation is for; (2) the actions taken were never officially adopted and therefore are not valid and binding; (3) there is a risk of shareholder liability because it appears that the shareholders were improperly participating in the board of director's meetings; and (4) directors may be exposed to liability for inappropriately delegating their duties and obligations to others.

In an effort to save a small amount of money on legal expenses, the brother and sister now face expensive litigation to have the courts decide what actions were taken, and whether they were properly authorized. The shareholders, directors, and officers of the corporation also face personal liability because they acted outside of the scope of the governing documents and state statutes. The decision to "save" the legal cost of annual maintenance of the corporation by attempting to perform the maintenance themselves, may result in the clients losing their business and personal assets they have worked so hard to accumulate.

"Kathy and I loved the Scorecard. We saw our estate more clearly than ever before. We felt like all the details had finally come together and we understood which assets were at risk and how much risk. We thought we had put things together pretty well, but when we got our Scorecard we realized how the individual parts of our planning should work together and that each asset needed to be reviewed and placed. We are really glad we had our system put together; it has made a huge difference in our lives."

Dr. Tim from Illinois

LAW OFFICES OF
TRAVIS BOWEN, PC

136 E. SOUTH TEMPLE,
SUITE 1050
SALT LAKE CITY, UTAH
84111-0637

PHONE: 801.364.0123
FAX: 801.595.0976

WWW.BOWENLAW.COM