



Keeping Corporate Minutes

The DC Nonprofit Corporation Code (the “Nonprofit Code”) provides that a nonprofit must keep minutes of its Board of Directors meetings as part of its permanent records. In addition, IRS Form 990 requires each nonprofit organization to provide certain information about its governance practices. In particular, Item 8 of Part VI of the IRS Form 990 requires the nonprofit to disclose whether it “*Contemporaneously document[s]* the meetings held or written actions undertaken during the year by” the board of directors and any committee authorized to act on behalf of the board.

The IRS has indicated that if a nonprofit organization is unable to answer affirmatively to questions such as Item 8, its management controls may be suspect, and it will be more likely to be audited. It is important for each not-for-profit organization to review its recordkeeping practices early in the coming year so that it will be able to answer affirmatively with respect to Item 8 when it files its Form 990.

What’s more, an organization that follows best practices with respect to the keeping of minutes is also ensuring that it is in compliance with the Nonprofit Code and has documentation of corporate actions.

This legal alert discusses the IRS requirements for contemporaneous documentation and provides additional guidance for keeping accurate and timely minutes of board and committee meetings.

IRS Definition of “Contemporaneous Documentation”

The instructions to Form 990 indicate that minutes or other documentation of board or committee actions will be considered contemporaneous if they are prepared before the *later* of the next meeting of the body or 60 days after the action is taken. Indeed, it is always in the interest of accuracy to prepare minutes as soon as possible after any meeting, while the minute taker’s memory is fresh.

Purpose of Minutes

Most actions relating to the operation of a not-for-profit organization are taken by its board of directors, which bears the primary responsibility for protecting the organization's assets and carrying out its mission. If the articles of incorporation or bylaws allow it, the board may form committees, such as finance or audit committees, and may authorize them to carry out certain functions of the board. Delegation to a committee does not, however, relieve the board members of their responsibility to the organization.

The board acts by voting at its regular or specially called meetings. Unless otherwise provided in the articles of incorporation or bylaws, a majority of the board members constitutes a quorum for transacting business, and actions are taken by vote of a majority of those present at a meeting where a quorum is present. The articles of incorporation or bylaws may permit meetings to be held via telephone conference or other electronic means. Each director has one vote, and voting by proxy is not permitted. The articles of incorporation or bylaws will specify how much advance notice of meetings must be given to board members and the means by which notice must be given.

The minutes of board and committee meetings document the actions taken and provide an official record that the formal requirements for action (notice, quorum, etc.) have been satisfied. In general, the minutes will include:

- the name of the organization;
- the date, time and place of the meeting;
- members present and absent (including which ones qualify as independent directors);
- who called the meeting to order and who kept the minutes;
- all motions made and the results of all voting; and
- when the meeting ended.

They will be prepared by the secretary or other authorized member and presented for approval at the next meeting.

Matters To Be Covered in Minutes

Aside from the factual matters specified above, the actual substantive content of the minutes require judgment, because meetings may be lengthy and include discussions of many issues. In general, it often is not desirable to create a detailed record of all discussions, but rather to include only information sufficient to show that the members acted reasonably in coming to decisions. As mentioned above, minutes of board meetings also will provide evidence of compliance with other good governance practices covered by Part VI of Form 990, which include:

- Actions that trigger the board's conflict of interest policy;
- Approval of related party transactions between the organization and its officers and directors;

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- Issues involving the organization's whistleblower policy and records retention policy;
- Application of the IRS safe harbor rules to the establishment of the salaries of the CEO and CFO; and
- Board review of the organization's annual financial audit and Form 990.

Because these practices are covered in Part VI of Form 990, minutes should cover any related discussions or actions by the members in order to provide documentation for the organization's responses. The D.C. Bar Pro Bono Program will provide further alerts describing the reporting requirements on these matters.

A sample form of board of directors meeting minutes is included in the appendix to this alert.

Additional Resources

You may find the following information helpful in reviewing your organization's recordkeeping policies:

- IRS Publication 4221, Compliance Guide for 501(c)(3) Public Charities
<http://www.irs.gov/pub/irs-pdf/p4221.pdf>
- Keeping Track – A Primer on Writing and Retaining Board Minutes
<http://www.lawhelp.org/dc/resource/keeping-track-a-primer-on-writing-and-retaining-board-minutes>
- Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations (October 2007)
<https://www.independentsector.org/principles>

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SAMPLE BOARD MINUTES FOR 501(c)(3) ORGANIZATIONS

NAME OF ORGANIZATION

Board Meeting Minutes

[Month] [Day] [Year]

[Time][Location]

Board Members:

Present: [List names]

Absent: [List names]

Quorum present? Yes/No

Others present: [List names and titles]

Notice of meeting:

Sent on: [Date]

Notice waived by: [List names]

Proceedings:

Meeting called to order at [time] by [Chair].

Minutes of previous meeting were reviewed. A motion to approve the minutes was made and seconded. Motion passed

Executive Director's Report. []

The Chair then recognized [Name] to give the report of the [Finance] Committee. [Finance Committee minutes are attached, including latest financial report of the not-for-profit organization.] [Name] reported that the [Finance] Committee recommended that []. [Name] reviewed the recommendation for the Board. After a brief discussion of the issues, a motion to [] was made and seconded. Motion passed.

Old Business:

New Business:

Meeting adjourned at [time].

Respectfully submitted,

[Name]

[Recording Secretary]