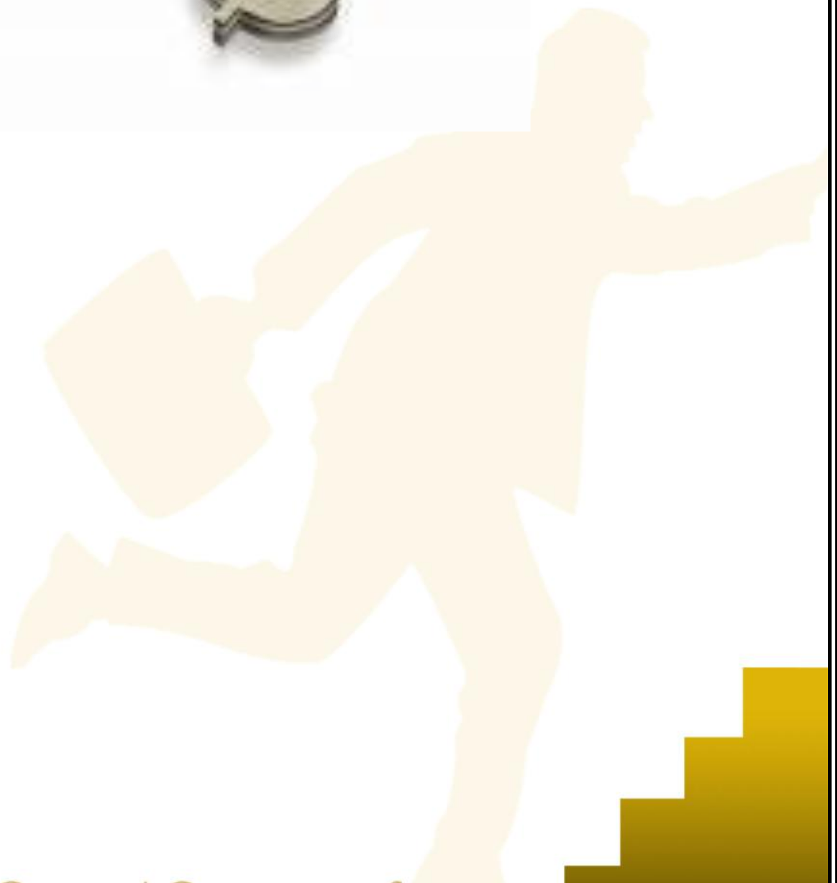
EXECUTIVE
ON THE GO, INC.
"EMPOWERING YOUR BUSINESS, ONE STEP AT A TIME."®

Key Business Basics

- ***Structures***
- ***Advantages***
- ***Protection***



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Corporate Information

What is a corporation?

A corporation is a legal entity that exists separately from its owners. Creation of a corporation occurs when properly completed articles of incorporation (called a charter or certificate of incorporation in some states) are filed with the proper state authority, and all fees are paid.

What paperwork is required to incorporate?

Articles of incorporation conforming to state law must be prepared and filed with the proper state authorities. Initial filing fees and franchise taxes must be paid.

If you incorporate through Executive on The Go, Inc., all you need to do is complete our order form. We will prepare and file your articles of incorporation. Additionally, the price you pay includes all filing fees. Just fill out the order form and we do the rest.

Do I need an attorney to incorporate?

No, an attorney is not a legal requirement to incorporate.

What should I name my corporation?

Choose the name of your corporation carefully. It is very important that you portray the image you want for your new corporation. Legally, the name you select must not be deceptively similar to any existing corporation in your state. For example, if a corporation named West Corp. exists in your state, you probably would not be allowed to name your business West Corporation. It is possible that the name you select will not be distinguishable; therefore, we ask for a second choice on the incorporation order form.

Additionally, the name you choose must show your business is incorporated. Most states require that the corporate name be followed by Corporation, Incorporated, or an abbreviation of either. Also, many states allow Limited, Company, or an abbreviated derivative of these words to be used as well.

What are the advantages of incorporation?

A primary advantage of incorporation is the limited liability the corporate entity affords its shareholders. Typically, shareholders are not liable for the debts and obligations of the corporation; thus, creditors will not come knocking at the door of a shareholder to pay debts of the corporation.

Other advantages:

- A corporation's life is not dependent upon its members. A corporation possesses the feature of unlimited life. If an owner dies or wishes to sell their interest, the corporation will continue to exist and do business.
- Retirement funds and qualified retirement plans (like a 401k) may be set up more easily with a corporation.
- Ownership of a corporation is easily transferable.
- Capital can be raised more easily through the sale of stock.
- A corporation possesses centralized management.

What is the organizational structure of a corporation?

The organizational structure of a corporation relies on three basic groups: shareholders, directors and officers.

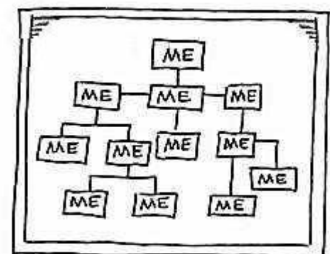
A corporation is owned by shareholders; however, they do not directly manage the corporation. Instead, they influence corporate decisions through indirect methods such as electing and removing directors, approving or disapproving amendments to the articles of incorporation and voting on major corporate issues.

The board of directors are responsible for managing the affairs of the corporation. Usually, directors make only the major business decisions and supervise and appoint the officers who make the day-to-day business decisions of the corporation.

Officers are responsible for the everyday management of the corporation. Typically, officers are appointed directly by the board of directors.

It is important to note that a shareholder may serve on the board of directors and as an officer. In fact, in most states one person is enough to form a corporation.

How many directors do I need to form a corporation?



Only one director is required in most states although you are allowed to have more. Some states use the number of shareholders in the corporation to determine the minimum number of directors. If the number of shareholders is three or more, then the corporation must have three directors. If the corporation has less than three shareholders, then the number of directors may equal the number of shareholders. States which have this rule include: AR, CA, HI, LA, ME, MD, MA, MO, NY, OH, UT, and VT.

Getting started

After making the difficult decision concerning what business entity is best for your business, articles of incorporation must be filed with the state government and initial fees must be paid. After your articles are filed, your corporation must hold an organizational meeting where bylaws are adopted and the incorporation process is completed. Share certificates should be distributed to

shareholders and these transactions should be recorded on the corporation's stock ledger. All of this information should be kept in a corporate record book.

When To Incorporate

There are many good reasons for placing business activity under the umbrella of a corporation. While the tax laws change occasionally, the value of the corporation remains constant. The bottom line is this: People who incorporate are interested in liability protection, financial privacy, lower taxes, and flexibility in the management and control of the business.

So the first question many people ask about incorporating is, “When should I incorporate?” While many accountants and attorneys tend to give their clients the same, standard advice when asked this question, there are usually factors that reach beyond any “pat” answer. The fact is, the laws that govern our society are far too complex for any standard answer to this question to be correct in all circumstances.

The right time for you to incorporate depends on what you or business has done in the past, what you are doing now, and what you are trying to accomplish in the future. Often, the “right” time for someone to incorporate was months or years before they ever get around to asking the question.

Recently, a nationally renowned radio talk show host who deals with a variety of personal and business related issues was asked about the best time to incorporate a business. The reply he gave was surprisingly shortsighted, but very demonstrative of the misinformation distributed by business professionals across the country on this important question. The talk show host gave an answer based on the amount of revenue that the business was generating.

It is typical for many business advisors to recommend that incorporation is not worthwhile until the business is generating a specified number of dollars in annual revenues. There can be no question that there are costs associated with incorporating, and from that perspective perhaps it makes sense to determine what the “break-even” point is for the corporation to make up those costs. Nevertheless, this perspective is too narrow an outlook of the value of the corporation.

Those who are concerned with financial privacy should probably incorporate before they do any business if it is at all possible. The only way to preserve your privacy is to stay out of the paper trail in the first place. Let your corporation do that. That way, the history of facts related to the transaction never leads directly to you, but only to the corporation.

What value do you place on the protection that a properly maintained corporation offers? The fact that a certain asset or activity exists under the corporate umbrella may save the owner millions of dollars in liability and judgments over time.

Even from the cost/benefit perspective, there are other reasons to consider incorporation besides simply revenue figures. Remember that it is income used to determine your tax liability. Losses are used as deductions against your income, and the less income you have, the lower your tax liability. That is one reason it is common to hear of the huge multinational companies reporting gargantuan losses from time to time that seem so incredible. They are simply lowering their tax bill.

Almost all new companies are expected to go through a period of financial struggles or loss. This period may last weeks, months, or years. Why shouldn't your corporation be allowed to take advantage of the tax losses that are being accumulated during the initial period? Quite simply, it should, and the tax laws provide for that through what is called a "loss carry-forward."

A new corporation can immediately begin spending money in many areas that you would otherwise be spending personal funds. The corporation's startup expenses may include automobile leases, maintenance, insurance, taxes, airline travel, meals, entertainment {still partially deductible}, retirement plans, equipment purchase, and miscellaneous expenses. Many of these deductions have a greater value to the corporation than to the individual because of the limits on individual deductions.

As you can see, many expenses of the entrepreneurial individual can be spent by the corporation. As you build up loss, you create a situation where you can reduce or eliminate future taxes by using a tax loss carry-forward or income averaging against future profits.

When you seek guidance on the right time for you to incorporate, make sure your advisors have their eyes open to all of the factors involved. Do not let them set an arbitrary income "incorporation line." If they insist, maybe you need to talk to someone with a broader sense of the business world.

Eight Legal Business Structures

The Sole Proprietorship: When you run your business as a sole proprietorship, you are the business. In essence, you as the owner of that business and your business are one and the same. Your assets are the business assets, and the business assets are yours. The same applies for liabilities. Your debts and the business debts are one in the same. If your business is sued, it is the same as if you are sued. Conversely, if you are sued personally, your business is sued. Everything you own and your business owns are up for grabs in a lawsuit. The same applies regarding the IRS. You file one return because all income is yours. You pay self-employment taxes{5.3% at the bottom of schedule C} before any deductions. This is true whether you use your name or a business name. When you use a D.B.A. {Doing Business As}, you and your business are still one.

The General Partnership: When you enter into an agreement {verbal or written with another partner to do business together} you are acting in Partnership with one another. All is operated as if it were one person. This is like a sole proprietorship, except with twice the exposure. Each is responsible for everything each of you own, owe, do and have done. You have joint and several liability with your partners. This means you are completely liable for everything, whether you are involved or not.

Limited Partnerships: {LP} are pass through entities that have the same basic characteristics as a general partnership except that the LP has limited partners who typically have neither liability for business activities nor management responsibilities. These limited partners are liable or risk only the extent of the amount that they have invested in the LP. The general partner, having responsibility and fully liable fot the activities of the partnership, provides full direction and management of the LP. The Limited Liability Partnership {LLP} is not recognized in all states and is designed to offer

existing professional partnerships, such as an engineering firm, to be transformed to an LLP without the need to dissolve an existing partnership.

The Corporation: A corporation is a separate legal entity governed by State law. It operates through its bylaws as well as resolutions written and adopted by its shareholders and directors. It must not function as the alter-ego of its stockholders. In other words, you must remain separate from your corporation. The chart on page 2.8 graphically illustrates the separation between you {as the founder and stockholder/owner of the corporation} and the corporation itself. Corporate formalities {The flow of activity and paperwork} must be followed to maintain a corporation as a separate legal entity. The state of incorporation has its own statures, rules and regulations from which a corporation operates.

"C" vs. "S" Corporation: What Corporation structure should you consider for your wealth building advantage? Although both C and S Corporations offer ease of ownership transfer and tremendous liability protection to its shareholders, directors and officers, the "S" Corporation is considerably different in its accounting structure and deduction capability. The "S" Corporation, like the Limited Partnership and the LLC is a flow through entity, meaning the net income {or lose} flows through to the shareholders and taxed {or deducted} on the individual returns. The "S" Corporation is organized by creating a "C" Corporation and applying for the "S" election with the IRS. This election occurs by the shareholders signing and submitting IRS Form 2553 in the year preceding the target year or within 2 ½ months after the start of the target year.

Most of the advantages of the "S" Corporation were deleted in the 1986 tax revision act. Since that time, change has been slow for professionals to acknowledge that the "S" Corporation no longer can serve as the overall ideal business entity. While the "C" Corporation is essentially the premier wealth building entity in the U.S.A. for the vast majority of business enterprise, the "S" Corporation does prove to be superior in three primary scenarios:

1}. The "S" Corporation offers advantages and an alternative to the "Professional Service Corporation {PSC]." As outlined below, PSC has a rather high flat tax and by using the "S" election, these individuals can disperse income to a lower personal rate.

2}. As business activity expands for individuals, the need of a multiple corporation strategy is often considered. In some circumstances, this strategy may need to avoid a controlled group ruling by the IRS and therefore create an "S" Corporation as an alternative.

3}. The third scenario offers relief to the tax burden of the W-2 wage earner. "S" Corporations can incur loses from business start up and/or ordinary business operations. These loses can be applied toward the earnings of the shareholders. As described later in this chapter under the Home Based Business topic, the personal tax savings involved will cause anyone to sit up and take note. Because situations vary, consult your strategy advisor to determine your best interest.

The Professional Corporation: Although most of us consider ourselves a professional in our field, there are a select group that the IRS considers "professional." These professionals of health, veterinary services, law, engineering, architecture, accounting, actuarial science, performing arts, or certain consulting services are admired so much

that when incorporating, they are required to file as a Professional Service Corporation {PSC}. This PSC is also admired with its own flat tax category of 35%. Your options for relief as a “Professional” are few but can be effective. As mentioned above, the “S” Corporation is a viable alternative. Another route to take is forming a “C” Corporation that can contract services with the PSC to conduct services such as advertising, marketing, purchasing, bookkeeping, office retail, maintenance to name a few which would spin off income and lower PSC taxes.

Not-for-Profit Corporations: All Nonprofit have three characteristics in common:

{1} They are designated as “Nonprofit” when organized.

{2} Profits or assets cannot be divided among corporate members, officers, or directors as corporate share dividends.

{3} They may lawfully pursue only such purposes as are permitted for such organizations by statutes.

There are three categories:

{1} Public Benefit{such as museums, schools, and hospitals}.

{2} Mutual Benefit{such as cooperatives, trade or professional associations and clubs}.

{3} Private Benefit{such as tax-exemption-benefit-seeking organizations as low cost housing developments and the like}.

The Limited Liability Company {LLC}: The LLC is a relatively new form of business organization that offers advantages and benefits not otherwise obtainable when operating as an “S” Corporation or partnership. The LLC combines the corporation characteristic of limited liability for all investors with the income flow-through attributes of a partnership. The LLC is attractive when the limited liability of all members is important, such as in real estate or oil and gas investments. See Section 5 for more detailed information.

Advantages of Corporations Over Sole Proprietorships and Partnerships

Limited Liability – In a sole proprietorship or general partnership, the owner’s personal assets can be attacked by their business creditors. On the other hand, as owners of a corporation, the shareholders are not personally liable for the debts or the liabilities of the company. Their exposure is limited to their investment in the company’s stock.

Flexibility – A corporation allows for more opportunities to plan for tax reduction. With the use of pension and profit sharing plans, medical reimbursement plans, and allocation of salaries and expenses, many corporations can avoid onerous taxation.

Continuity of Ownership – With most businesses, when the owner dies the business closes. With a corporation, there is a set of bylaws that describes with specificity the procedures for replacing an officer or director. Shares of stock or personal property, so if

the owner dies, the stock is given to the person designated in the will. In any event, the corporation may continue operating without a glitch.

The corporation is separate from its owners. If the corporation has credit problems, it does not affect the shareholders. As for privacy, our company provides nominee officers and directors for our clients' corporations. And Nevada permits bearer shares allowing the owners of the company to maintain total anonymity.

A corporation may be qualified by the IRS as a subchapter S company allowing the profits of the company to pass directly to its shareholders and avoid corporate taxation. A corporation may also be qualified as a nonprofit corporation upon the approval of the IRS and the state where the company is formed.

The Limited Liability Company {LLC}

The newest hybrid kind of corporation is a limited liability company. The LLC was first allowed in the United States in 1977 when Wyoming passed a Limited Liability Company Act. It wasn't until 1988 that the IRS issued a formal opinion on Wyoming's act concluding that the LLC formed under the act should be classified for federal income tax purposes as a partnership, even though none of the managers or members are personally liable for the obligations or debts of the company. Some of the benefits of an LLC are:

Limited Liability – With an LLC, the owners are called members. Just like a regular or C corporation, the liability of the members of an LLC is generally limited to their investment in the LLC.

Protection from Creditors – Like a C corporation, the creditors of the LLC cannot attack the personal assets of the members.

Taxed Like a Partnership – The tax treatment of an LLC is the primary reason people choose an LLC over a regular C corporation. Like a partnership or a subchapter S corporation, the profits of the company pass directly to its members avoiding double taxation on corporate profits at the corporate level and on the dividends at the shareholder level.

Piercing The Corporate Veil

By law, a corporation is designed to protect your personal assets from the claims of any potential creditors or customers doing business with the company. However, there are instances where the corporate veil can be pierced to hold the individual officers, directors, or shareholders personally liable. Different states have different requirements to pierce a corporation. What follows is a summary of events that may allow a creditor to pierce a corporate veil to seize your personal assets to satisfy the debts of a corporation:

Criminal Activity or Fraud – If you use a corporation to commit a crime, most states allow the corporation to be pierced to allow the wrongdoing individuals to be prosecuted. For instance, if the president of a company falsifies a corporate loan application to defraud a bank, the officer who signed the application can be prosecuted. He can't claim that only the corporation should be held liable.

Commingling Funds – When you commingle your personal funds with the corporate funds, a creditor can make the argument that the corporation failed to maintain its “distinct and different identity” allowing your personal assets to be attached.

Lack of Corporate Formalities – Most states require a corporation to keep annual shareholder and director meetings and to make timely annual corporate filings. If you fail to meet these requirements, your corporation may lose its “good standing” status, allowing a creditor to set the corporate structure aside to seize your personal assets.

Personal Guarantees – Many officers of corporations are not careful when they sign corporate documents. Absolutely every corporate document should be signed in the following manner: “By:{your name} – President{or whatever your position} of {your corporation name}.”

If an officer routinely signs corporate documents with his name only, a creditor may successfully argue that the contract included the individual signer in addition to the corporation. This allows the creditor to go after both corporate assets and the individual signer’s personal assets.

Alter Ego – This is an area where judges have the most discretion and are most likely to pierce a corporation to hold the individual officers, directors, and/or shareholders personally liable. And this is where privacy as part of any asset protection plan comes into play.

The concept of the corporation was originally created to protect an individual from personal liability. It was seen as a device to encourage entrepreneurs and investors to open new businesses, develop new products, and test market new ideas without having to risk their personal assets. In other words, states created corporations for the primary purpose of protecting people’s assets.

Corporate Record Keeping

Why are good corporate records are essential?

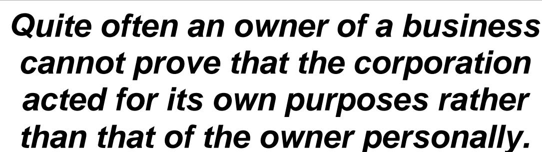
No business owner has become wealthy simply because he or she kept good corporate records. Yet, good corporate record keeping is essential for several important reasons.

1) *To protect you legally.* Generally, when you create a corporation, you create a legal entity separate and distinct from you as an individual. That means the corporation is responsible for its own actions. You are not legally responsible for the acts of the corporation, unless it engages in any criminal activity. That’s why it’s important for you to document all of the actions of the corporation. Without well-maintained corporate records, the courts may disregard your corporate status and allow creditors to sue you personally for debts of the business. This is called *piercing the corporate veil*. This means the courts can conclude that because the corporation did not accept its responsibilities and document its transactions, it is only a *sham,* or mere alter-ego of its owners. This problem occurs more often than you may think. This inevitably leads to personal as well as corporate liability for the business debts. If your corporation has multiple stockholders, the need for detailed corporate records becomes even more critical. Any one stockholder may

quite easily challenge the authority for a transaction. Only complete and accurate resolutions can demonstrate that the action was properly authorized by the stockholders and/or the directors. A corporation can encounter many additional legal problems. Where transactions require director or stockholder approval, then a detailed record of the transaction as discussed and/or voted at a directors' or stockholders' meeting may resolve the dispute in your favor. As an officer or director of a large corporation, you must particularly insist upon accurate minutes so you can prove your actions at these meetings and also show matters you voted against. Because lawsuits against directors are common, you must be able to defend your every action on behalf of the corporation. This is possible only with written proof, and that means good corporate records.

2) *To gain important tax benefits.* Have the corporate benefits you enjoy been properly voted? Have loans between you and your corporation been authorized in writing? Did you hold the required meetings to change your corporation's fiscal year? Do you have resolutions authorizing your own salary?

   The IRS will inspect your corporate minute book and without written documents to support the actions of the corporation, it may disallow any tax benefits resulting from those actions. This can produce a large tax liability—only because you failed to take the few moments necessary to keep up-to-date corporate minutes.



Corporate Governance

The corporate form of business ownership provides many benefits to the business' owners, or shareholders. One of the principle benefits is "limited liability". This means that a shareholder's personal liability for the debts of the corporation is limited to the amount of the shareholder's investment in the business. This benefit and others are available only if the corporation, through its shareholders, officers and directors, observe the rules of corporate governance.

If those rules are not followed, a corporate creditor may be entitled to "pierce the corporate veil". This is a legal theory that permits a creditor to bypass or "pierce" the limited liability protection based on the argument that the corporation is simply a sham entity. If the creditor is successful, a court may order one or more of the shareholders to pay the corporate debts from their personal assets.

Corporations are separate entities - In the eyes of the law, a corporation is an entity separate and distinct from its shareholder owners. Shareholders, directors and officers must treat the corporation as a separate "person". This means that corporate property should be held in the name of the corporation. Separate bank accounts should be established for the corporation. Action taken by officers on behalf of the corporation should be clearly identified as such. When an officer signs a check or agreement in his

or her corporate capacity, the signature should appear as "Acme, Inc., by Bill Johnson, President", not simply "Bill Johnson".

File reports promptly - Each state also requires some annual report and payment of taxes and fees for all incorporated entities. Be sure to file these on a timely basis. If you don't, the state may forfeit your corporate charter. If you do business in more than one state, you may also need to qualify in the states outside your home as a "foreign corporation" and make the required filings there. Failure to comply with these requirements may be useful to creditors trying to pierce the corporate veil.

Basic corporate governance - The rules of corporate governance are essentially the same, regardless of the size of the business or the number of shareholders. Even if only one individual owns all of the corporation's stock and serves as the sole director and officer, the rules must be observed.

The role of each group is as follows:

Shareholders - As owners of the corporation, this group has the ultimate authority to govern the corporation. This authority derives from, and is defined by, the law of the state where the corporation was formed and the Articles of Incorporation. The shareholders' powers are normally exercised by the election of directors and through approval of major transactions, such as sales of corporate property or mergers.

Directors - This group is charged with setting the overall objectives and plans for the corporation and- ensuring that they are carried out by the officers. Among other responsibilities, directors elect the officers and grant to them the authority to carry out the directors' business plan. Traditionally, directors meet in person on a regular basis and as needed to make decisions and approve actions. Many of these tasks can be completed without a "live" meeting, either through a meeting by telephone or through the use of written consents. The opportunity to hold telephone meetings and use written consents is a function of state law and of the corporation's Articles and bylaws.

Officers - These individuals carry out the daily functions of the corporation, including putting into effect the plans of the board of directors. Officers must be mindful of the limitations imposed on their authority by the Articles of Incorporation, the bylaws and the actions of the directors.

Typical matters for the directors - While most tasks are carried out by the officers without the need for specific board approval, many functions should be approved and authorized by the directors in advance. Whether an individual item requires director approval is a matter of state corporate law, the Articles of Incorporation, the corporation's bylaws and the corporation's practice. In some cases, shareholder approval may also be required. Following is a list of the kinds of things that require board approval or that typically are approved by the board:

- Election of officers (President, Vice President, Treasurer, Secretary, etc.)
- Entering any contract of employment with an officer or other key employee
- Any change in officer compensation or payment of a bonus (officers who are also board members should abstain from any vote that affects the officer)
- Any matter regarding compensation of directors
- Grant of any options or change to company option plan

- Change to capital stock structure or number of authorized shares
- Issuance of stock
- Payment of a dividend or other distribution with respect to stock
- Change in bank or bank account authority
- Change in bylaws
- Any real estate transaction e.g., office lease
- Any borrowing in excess of routine trade debt, including equipment leases or other situations where the company would incur an important or long term obligation or spend significant money
- Any sale, lease, license, mortgage or pledge of corporate property
- Acquisition of any important property, whether by purchase or license and regardless of whether debt is incurred
- Establishment of time, place and date of annual meeting and stockholder record date
- Approval, dismissal or change in company auditors
- Change in the corporation's fiscal year
- Any transaction, regardless of size, with a shareholder, officer or director (if with a board member, the member should abstain from voting)
- Any agreement or change in an agreement regarding transfer of corporate securities
- Any business transaction that is unusual or extraordinary
- Approval of corporate lawyers and accountants
- Getting into a new line of business or leaving a current one

Good practice - This list is not meant to be exhaustive. The best course of action is, when in doubt, to make sure that the proposed action is approved by the board in advance at a proper meeting or, when allowed, through written consent. Keep the minutes and signed consents in the corporate minute book.

Consult frequently with your business attorney to make sure that you follow the procedures applicable to your organization so that the benefits of incorporating will not be inadvertently lost.

Other considerations - Other rules and laws are important in determining the responsibilities of directors and officers. In particular, these individuals are "fiduciaries" of the corporation. That is, they operate in positions of trust and must put the interests of the corporation and the shareholders ahead of their personal business interests.

Officers and directors must also use good "business judgment". This does not mean that they guarantee the success of the corporation. Rather, their actions must be based on reasonable decision making.

Asset Protection

Camouflaging your assets is the first step in implementing any asset protection plan. Remember, if a federal judge can find an asset, he can seize it. Conversely, what he can’t find, or doesn’t know about, he can’t touch. Although I enjoy advertising bulletproof asset protection, the prescription for making an asset bulletproof is first to make it invisible.

One of my long-standing asset protection clients is a wonderful guy I'll call Gino. Gino made his money in the "adults only" business. He's close to seventy years old (doesn't look it) and lives in a beautiful, but modest home overlooking the ocean in Santa Barbara, California. The house is tastefully appointed and stuffed with mementos Gino has collected during his extensive travels. He rents the home from a Bahamian corporation and sends his monthly rent payments to the offshore bank account of the landlord company. He drives a leased Lexus (not a new one) and routinely eats lunch at Brophy's restaurant in the marina (cioppino, no cheese) where he always pays with cash. His favorite activity is golf. He carries a respectable sixteen handicap and hates slow play. So, he plays anytime he wants as a guest of a corporate member of a private country club. I'm not sure if he has a checking account, but he always has 'two inches' of cash in his left pocket. See, Gino loves to play gin rummy at a buck a point with anyone foolish enough to think he might be an absentminded old man. He files all his tax returns religiously and tips service people generously. Everyone knows his first name. If you won a lawsuit against Gino, you might be able to seize his used golf clubs, but that's about it. He carries an offshore debit card in a corporate name that works in any ATM machine. Financially speaking, Gino is invisible. Psychology speaking, Gino never worries about lawyers, or the IRS, or much of anything else for that matter. He's lived this way since I met him in 1990.

Personal privacy, especially in financial matters, although constitutionally protected, is routinely violated by collection agencies, private investigators, and the government, especially with the advent of the Internet. As a former collection/ eviction attorney, I routinely accessed the following records to learn about a debtor's assets and personal life:

1. Voter registration records
2. Workers' compensation information
3. Sheriff and county prosecutor records
4. Real estate recording records
5. Fictitious business name records
6. Professional licensing boards
7. Corporate registration records
8. Marriage license records
9. Property tax records
10. Utility and credit card bills
11. Litigation, divorce, and bankruptcy files
12. Probate records
13. Medical records
14. Telephone records

If your name appears in any one of these records, it could be linked to the remainder of the records. It should also be noted that we were able to get all this information before the advent of the Internet.

After the Oklahoma City bombing in 1995, President Clinton submitted a bill to Congress making it easier for federal authorities to check your personal records and use electronic surveillance and wiretaps more freely. The government can secretly obtain your financial records without accusing you of any crime under the Patriot Act.

The loss of personal financial privacy can be traced directly back to the 1980s and President Reagan's "war on drugs." Remember the "Just Say No!" campaign spearheaded by first lady Nancy? It was decided that since the DEA couldn't stop the

entry of drugs into the country at the borders, maybe the feds could disrupt the drug business by seizing the drug dealers' money. How this policy was somehow going to decrease the demand for drugs was never explained. This development was coupled with the fact that the federal government was forced to take over hundreds of failed banks and savings and loans during this same period. You may remember the now defunct Resolution Trust Corporation, better known as the RTC. This was the federal agency that liquidated hundreds of failed banks.

As a result of this widespread involvement of the federal government into the private banking business, any notion of banking secrecy or even privacy was washed away. Prior to this time, a bank's primary obligation was to protect its customers' privacy and money. But in the 1980s, any bank or financial institution insured by the government (FDIC) became an agent or extension of the federal bureaucracy. The banks shifted they're loyalty from their customers to the feds. The government insured their deposits, provided them with liquidity by way of the Federal Reserve, and cleaned up their mess when they engaged the reckless lending. The simple depositor or checking account customer held no such sway. After the S & L crisis of the 1980s and subsequent bailout, the federal government felt they had earned the right to meddle into and more closely regulate the affairs of its member banks.

Couple this development with the war on drugs, and you can see how the currency transaction report (CTR), the requirement for banks to report any "suspicious activities" of its customers, and the concept of "structuring" entered the banking lexicon. Suddenly, anyone dealing with cash was assumed to be doing something illegal. Any customer depositing or withdrawing more than $10,000 dollars in cash requires a bank to prepare a CTR to be filled directly with the federal government. Carrying more than $10,000 in cash in or out of the country requires a declaration of the same to the U.S Customs Service. Customs agents routinely seize cash, even amounts less than $10,000 at border entries if they believe the traveler is "suspicious" looking. The hapless traveler's only remedy is to hire an attorney, sue the federal government, and beg to get his money back.

If you deposit $9,000 in cash one day and $2,000 the next, you can be charged with "structuring" your deposit to avoid the CTR requirements. This is a felony.

At the congressional hearings on the abusive activities of the IRS in 1998, a parade of everyday taxpayers testified that the agency had investigated every aspect of their lives to determine if they would make profitable targets for an audit. Everyone claimed to be outraged and Congress promised the IRS would change their ways, but not a single IRS agent was dismissed as a result of the scandal. Arkansas Senator David Pryor (D) responded to the hearings by saying the evidence "confirmed the worst fears about government mismanagement of data concerning private citizens."

The most recent justification given by the federal government to further limit our right to privacy is the "war on terrorism." The Posse Comitatus Act of 1878 is supposed to protect us against a president using the army to enforce the law against civilians, but in 1996 President Clinton issued a presidential decision directive to authorize military intervention against terrorism on our own soil giving the military the power to do anything necessary to stop any perceived threats from terrorists. It isn't much of a stretch to assume that any of your financial activities are perceived to be for the benefit of terrorists your accounts will be seized.

President and part-time cigar smoker, Bill Clinton, personally ordered a missile strike on a pharmaceutical plant located near Sudan's capital city on August 20, 1998, the night of Monica Lewinsky's return to the grand jury and just three days after his pathetic "apology" bombed on national TV. He claimed the plant was manufacturing components used to make VX nerve gas and that it was being financed by Osama bin Laden, rich Saudi Embassies in Africa. This all turned out to be another presidential lie, of course (See *Vanity Fair*, March 1999, "Weapons of Mass Distraction" by Christopher Hitchens). Clinton's attack destroyed the plant and killed one person, but Defense Secretary William Cohen eventually was forced to admit that the plant did make medicine. But as Clinton would say, "Let's move on."

The parts of this story that went generally unreported were the activities if the U.S. Treasury Department. The plant was owned by Salah Idris, a Sudanese native now living in Saudi Arabia. Immediately after his plant was destroyed, the U.S Treasury Department's Office of Foreign Assets Control froze $24 million of Mr. Idris's U.S. accounts on the grounds he and his money were linked to terrorism. After six months of foot-dragging by the Treasury Department, Mr. Idris was forced to file suit in U.S. Federal Court on February 20, 1999, to get this money back. His lawyers made it clear that Mr. Idris was being made a scapegoat for and American blunder. By claiming that Idris had terrorist ties, U.S. officials claimed justification for the bombing and subsequent freezing of his assets. The Treasury Department quietly returned the $24 million to Mr. Idris, in effect admitting the bombing was a gross mistake. However, Treasury Department officials have refused to pay Mr. Idris for the damages to his plant, clinging pathetically to their original allegation that somehow the plant was involved with international terrorism. Mr. Idris was forced to file suit against the Treasury Department in federal court in an attempt to recover his damages.

U.S. officials subsequently admitted that they did not know that Mr. Idris had only purchased the plants four months prior to the bombing, but they claimed the former owners may have had links to Osama bin Laden. In the meantime, many Sudanese people have died because their impoverished country had lost its chief source of medicine.

It should be noted that the word "privacy" never appears anywhere in the Constitution. It's easy to understand why Jefferson and the other framers, living in a predominately agrarian society in the 1700s, weren't worried about people being left alone. Privacy only became an issue at the turn of the twentieth century with the advent of urbanization, the telephone, national banking, and the Sixteenth Constitutional Amendment creating the federal income tax.

The primary safeguard for privacy in the Constitution is the Fourth Amendment. It states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated." The eloquent Supreme Court Justice Louis D. Brandeis, a champion of individual freedom, said in 1928 in a dissenting opinion, "The right to be left alone in the most comprehensive of rights and the right most valued by civilized men."

The First Amendment's guarantees of freedom of expression and assembly have been interpreted by the courts to apply to the collection of data on political views and associations. Under the free speech provisions, any person can say or not say anything they choose so long as their actions don't harm or violate the rights of others. This includes the right to use whatever names or other identifying information a person so chooses. Creating an alternate identity is one of our most neglected freedoms.

Everyone has the right to change their name and identity so long as it is not done for criminal purposes. For instance, many movie stars, Whoopie Goldberg, Tom Cruise, and Woody Allen, to name just a few, use a second identity, not their birth names. Voluntarily becoming a "missing person" is not a criminal offense.

The Fair Credit Reporting Act of 1970 prohibits credit bureaus from sharing credit information with anyone but its authorized subscribers. It also gives consumers the right to review their credit records. Consumers are to be notified if their credit is investigated by an insurance company or employer. So far, so good. The privacy provisions implicit in this act lost their teeth, however, with the little known provision stating that credit agencies can share their information with anyone it reasonably believes has a "legitimate business need." Virtually anyone can claim they have a business need to look at your credit, so you can figure any of your personal information at any credit, so you can figure any of your personal information at any credit reporting agency is easy pickings for any creditor or investigator.

Congress responded to their constituents' complaints about the lack of privacy and passed the Right to Financial Privacy Act of 1978. It was designed to prohibit the federal government from perusing through bank account records without first alleging some kind of probable cause. But the act specifically excluded state agencies, law enforcement officials, and private employers.

Case Studies

The Trials of a Sole Proprietorship - The way not to run a business.
Alexander was an enthusiastic, brilliant young man with a tremendous desire for making and selling things. At age 15, his involvement with Junior Achievement brought him recognition as he won the most promising young entrepreneur award. He had the spirit, he had the support of his parents, and everything he touched turned a profit. He was often tempted to quit school and go into business full-time. But, Alexander did the smart thing; he persisted with his education and graduated with the highest honors, not just from high school, but also Harvard with a masters in Business Administration. Alexander continued making and selling things throughout high school, college and graduate school which brought him excellent survival skills and success. The year was 1968; at age 25 he had saved $50,000 and, as a sole proprietor, plunged it all into a promising business. After thriving three years, he sold it for $400,000. By the time he was 30, with a string of wise investments, he was a millionaire. By the time Alexander was 31, he was flat broke after being sued for creating an unsafe product. Although it was safe when used properly, the jury opposed his pleas and awarded the plaintiff millions.

The Trials of a 50/50 Partnership - The way not to run a business.
Alexander was still young and ambitious. Soon he recovered by selling everything and starting over. He started out small and became impatient as the cash was not flowing in as fast as he wanted it to. If only he had enough capital to expand, he could achieve beyond his cash flow problems. His father's friend offered him some advice, "Get a partner with money because two can succeed faster than one."

Alexander took that advice and joined with a friend with just the right amount of money. They had known each other for years. It was as natural as Alexander handled the manufacturing and his friend; Willis handled the advertising and sales. They were a perfect match. A hand shake and a smile sealed their agreement-50/50. It worked out perfectly and the business flourished. Soon they were both drawing a six-figure salary.

All through the eighties their business boomed. Alexander and Willis had a few differences, but for the most part it was a good match. January 1, 1992, an accident brought sudden death to Willis. There was no will and no provisions for the business. Alexander had grown very dependent on Willis. He was devastated as he realized what the full impact of Willis' loss would mean to the business.

Willis was survived by his wife, five children, seven brothers and his mother and father. They all claimed 50% of the partnership. Some wanted to sell, some wanted to work, some just wanted whatever they could get. Willis' wife, Wilma, had her own plan to be the sole 50% partner which she managed to become. She went wild with authority and money. Buying a new house and investing in real estate with money from the business. Within a year, Wilma went bankrupt causing Alexander to be wiped out again. As her business partner, he was jointly responsible for all her actions.

The Success and Protection of a Corporation—The way to run a business.
Alexander, at age 52, was forced to start over again. With less ambition and a disastrous business climate, the struggle was tough and he realized he wanted to give up. There had to be lesson here; a genius and a great business man, yet twice, he had lost it all. Alexander had not protected his business against lawsuits, against death, against unwanted ownership. He failed to understand the one essential cornerstone of building a business structure.—Incorporate first, to build your business on a solid foundation. Look at some of the corporate advantages:

- Bring in investors as stockholders, not partners.{If the partner dies, the business does not have to.}
- Keep control over your business
- Structure your business so no one can take anything.
- Don't pay more taxes than necessary.

Alexander incorporated his business and offered stock. This creates sufficient capital that allowed his business to take off instantly. Within a year he was back on top. Only this time he protected his every move. He prepared himself for any event, and the ability to pass his assets on to his children and spouse without fear of loss, taxation, court or legal costs.