

# Knowing and Understanding Your Corporate Documents

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*Many banks we have worked with* this year are focusing on internal operations and making sure everything is in order, whether that is to promote ongoing independence or getting ready for a sale. A bank and bank holding company are primarily governed by two key documents, the Articles of Incorporation and the Bylaws, along with whatever state or national law provides. That seems simple and straightforward enough, and, in particular, if you are dealing with shareholder issues, then if you have a bank holding company, it is those corporate documents that apply to shareholders not the bank's documents. However, the biggest problem that we often see is that those documents, once they are adopted, tend to be put aside (or lost entirely) unless and until there is ever some controversy that arises. At that point, people start searching for them, pulling them out, dusting them off and trying to figure out what they say. Not surprisingly, many organizations find that a document adopted many years ago has no applicability to the current situation or is in fact contrary to what the organization is trying to currently do.

It is important to keep in mind, also, that often times the Articles of Incorporation or Bylaws get amended for some specific purpose at a period in time and that purpose may not carry forward into the future. That is why it is important to review and update your documents periodically. For example, does the organization have a classified Board of Directors that is divided into three groups where three or more directors are elected each year for three-year terms? That would be typical, but is that still necessary or do you have the board members to meet the requirement? Alternatively, if you eliminated a classified board in the past, would it be appropriate to add that back in now so that directors serve for three-year terms rather than having every director reelected every year? What about preemptive rights? Your organization might have had a very valid reason for implementing preemptive rights (meaning that shareholders have the right to subscribe for a pro rata share of any new stock issuance so that their ownership does not get diluted). But, in the current environment, if you need to raise capital quickly and there are two or three stockholders who are willing to write a check to buy new shares, this may completely slow down the process by having to go through an actual offering to every single stockholder. So, is that still the best structure for your organization?

The same might be true for cumulative voting, or similarly, antitakeover measures that might have been put in during the 1980s that would have no applicability in the current environment. We encounter situations where an organization might want to conduct a transaction, but buried in the Articles or Bylaws is some kind of provision that requires an 80% vote of the Board and a two-thirds vote of the stockholders or require some other type of odd voting structure intended to prevent a transaction. In an organization's infancy, this may have been appropriate to promote ongoing independence but now that the

next generation is ready to sell, serves as a hurdle to getting the deal done.

The Board of Directors and management should periodically (probably no less frequently than maybe every two to three years) have an agenda item to review and update the organization's Articles and Bylaws, if for no other reason to ensure they are consistent with recent state and federal laws and regulations. It may be that nothing needs to be modified, or it may be that you find a new tweak or revision every year. From a scheduling standpoint, changes to Bylaws often can be made by a simple vote of the Board of Directors, but changes to the Charter or Articles of Incorporation generally require a vote of the shareholders at either an annual meeting or special meeting. It is important to keep this in mind to ensure adequate time is devoted to necessary changes.

The point is that you want your corporate documents to mature and stay relevant to the same extent that your organization is growing. Many documents allow you to provide notice by telegram or facsimile but still do not allow a shareholder meeting to be conducted by Zoom or electronically. This likely does not reflect the technological advancements most organizations have made over their lifetime. An organization's corporate documents need to help it, not hurt it, and a good review and evaluation every few years can really keep your organization on its toes and ready to act when the need arises.



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