



## Bart Basi

Dr. Bart A. Basi is an expert on closely-held enterprises. He is an attorney, a Certified Public Accountant, and President of The Center for Financial, Legal & Tax Planning, Inc. He is a member of the American Bar Association's Tax Committee on Closely-Held Businesses.

# CORPORATE RECORDS? I THINK THEY ARE AT MY ATTORNEY'S OFFICE...

### Introduction

Unfortunately, corporate records are routinely neglected by those in charge. The subject rarely comes up, and record books are largely perceived as unnecessary, tedious records that take up precious time to format and get right. The fact is many corporations fail to hold even annual meetings. Additionally, many corporations' record books are blank and many directors, officers, and shareholders (many times one and the same) are not even aware of the requirements and potential liabilities.

Corporate record books contain the formal minutes of a corporation's stockholders' and directors' regular and special meetings held during each year. The books should contain the articles of incorporation, corporate by-laws, stock certificates, resolutions and minutes of corporate meetings.

Specific requirements exist in each state regarding form, content, viewing rights, and penalties for not complying with the law. Illinois holds the following:

#### **[A] Required to be kept under Illinois Business Corporation Act of 1983**

Each corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its shareholders and board of directors and committees thereof; and shall keep at its registered office or principal place of business in this State, or at the office of a transfer agent or registrar in this State, a record of its shareholders, giving the names and

addresses of all shareholders and the number and class of the shares held by each. A record of shareholders certified by an officer or transfer agent shall be competent evidence in all courts of this State.

#### **[B] Shareholders are entitled to view the records**

Any person who is a shareholder of record shall have the right to examine, in person or by agent, at any reasonable time or times, the corporation's books and records of account, minutes, voting trust agreements filed with the corporation and record of shareholders, and to make extracts therefrom, but only for a proper purpose. In order to exercise this right, a shareholder must make written demand upon the corporation, stating with particularity the records sought to be examined and the purpose therefore.



#### **[C] If the records are not available for viewing, penalties can follow.**

If the corporation refuses examination, the shareholder may file suit in the circuit court of the county in which either the registered agent or principal office of the corporation is located to compel by mandamus or otherwise such examination as may be proper. If a shareholder seeks to examine books or records of account the burden of proof is upon the shareholder to establish a proper purpose. If the purpose is to examine minutes or the record of shareholders or a voting trust agreement, the burden of proof is upon the corporation to establish that the shareholder does not have a proper purpose.