

Fun Facts about Corporate Minutes

10.24.14 | Linda J. Rosenthal, JD



Seriously? You were expecting fun facts about minutes?

We're more interested than the average law firm in drafting effective corporate documents, but even we don't think minutes are fun.

But they *are* important.

Corporate minutes are much more than meaningless formalities or mere note-taking; they are legal requirements of substance that have important consequences.

That's what we wrote in [*Breach of Fiduciary Duty by Ogling the Doughnuts*](#), our introductory post on the exhilarating topic of nonprofit corporate minutes.

Well – whether or not this is your idea of a good time – wake up, smell the coffee (o.k., grab a doughnut), and reevaluate your organization's minute-taking practices and procedures.

Why Bother?

The average person's knowledge of parliamentary procedure is little more than a vague notion that a meeting is called to order, minutes of the prior meeting are read and summarily approved, motions are made and seconded, votes are taken, and the meeting is adjourned – so the more important business of schmoozing can begin.

Most people view minute-taking as an amusing custom. It's not.

Board meeting minutes comprise the official history of the organization: They are presumed to be correct and are legal evidence of the validity of the meeting and the actions taken.



Especially in recent years, both state and federal regulators have taken a keen interest in corporate minutes. In the current Form 990, there are probing questions about corporate governance including minute-taking practices. IRS agents are directed to review the meeting minutes of an organization's board and subcommittee (executive, audit, finance, and compensation) to glean important information about the organization's eligibility for continued tax exemption.

And "whenever a nonprofit is named in a lawsuit" – by outsiders or because of disgruntled insiders – "the minutes of Board and other meetings are sought and closely scrutinized."

How to Do It Right: Some Tips

There is no one-size-fits-all formula; no "hard-and-fast rule regarding the level of detail ..."

A corporate secretary should take a page from the three bears' forest-cottage playbook: Draft meeting minutes that are not too long or too short, but are just right.

But what does "just right" mean?

It means just right under the specific facts and circumstances of each situation. Experts and observers have chimed in with useful examples – check them out: [here](#) and [here](#).

The best length and level of detail for corporate minutes are judgment calls that should be based on careful thought and input by the experienced corporate secretary and other officers and staff, along with the board of directors, and – in some cases – legal counsel.

At a minimum, the minutes should always be "clear, accurate, and sufficient to reflect what actually occurred at the meeting, how decisions were made, who participated, who dissented, and what actions were proposed but not adopted." They should be written "with an awareness of third parties. It's likely they will be read by important outsiders who were not at the meetings, but are trying to understand – after-the-fact – what occurred."

Minutes of board meetings and other key committee meetings should be drafted with care and deliberation. Poor or hastily written minutes can be harmful to an organization in the event of litigation or government investigation, but well crafted minutes not only avoid harming the organization, but can actually be highly beneficial.

Sample Outline

- Name of organization and type/purpose of meeting: for instance, "Regular Monthly Meeting of Directors of X Organization" or "Special Meeting of Audit Subcommittee"
- Date, place, and time of meeting
- Attendance list by category: directors; officers (with titles); invited staff; guests, including their affiliations and reasons for attending; all individuals making presentations, regardless of whether present; and names of all professionals and consultants who provided advice to the corporation on a matter presented for consideration (including the nature and form of that advice, regardless of whether present)



- List of absent directors, and departures or re-entries of any attendees
- Names and titles of persons presiding and taking minutes
- Number required for quorum, and acknowledgment that quorum requirement is met
- Notice of meeting, including when and how given – or alternatively – unanimous written consent
- Reading or review of minutes of prior meeting, including whether minutes were circulated prior to meeting; discussion of the minutes, including any problems or revisions; recording the vote to accept, revise, or refuse the minutes, including specific vote counts (pro, con, abstaining); and any revisions to previous minutes made

Agenda Items, Point by Point

- Presentations, documents, reports, and other information: identify, and attach or briefly summarize in text or footnotes the key points from any reports given to the board
- Discussion: summary of points raised; alternatives considered for important decisions; conflicts and dissents voiced, including pros and cons and by whom; recusals, including the reason for each, e.g., conflict of interest
- Time of beginning and end of discussion (yes – if the matter is significant, e.g., whether to lease or buy new headquarters; but no – if it's a decision about chicken or fish for next month's volunteer thank-you luncheon)
- Vote level needed per bylaws (majority, supermajority)
- Motions and resolutions proposed, and votes and action taken

New Matters

- Discussion of items not on the agenda: who raised each one, and the outcome (including step-by-step information, as above)
- Action items for next meeting, including people responsible for follow-up

Adjournment

- Motion to adjourn: outcome of vote and time of adjournment
- Date and time of next meeting

Conclusion

Taking corporate minutes may once have been viewed as a ministerial practice but now it is seen as more of an art form. It requires skill, care, and – especially – understanding of how regulators, other third parties, future boards, and the public may use or review these important documents.

A final, gratuitous observation from the trenches: If it's a luncheon or dinner, the corporate secretary should eat before the meeting; it's just not possible to juggle taking reliable minutes with enjoying



the meal.

— *Linda J. Rosenthal, J.D., FPLG Information & Research Director*