FEATURED · CORPORATE COMPLIANCE — MINUTE BOOKS, RECORDS & GOVERNANCE

FROM THE SHORE *What looks effortless from here is the result of maintenance nobody photographs.*

CORPORATE COMPLIANCE

The Protection You Formed *Only Works If You Keep It*

Corporate governance is what makes limited liability real. Without the records behind it, the veil is pierced.

TAMARA L. HARPER, J.D., AEP® • 7 MIN READ • CORPORATE · COMPLIANCE

One of the reasons for forming a corporation or limited liability company is to have the liability protections a legal entity can provide.

One of the main advantages corporations have is that the owners — **shareholders** in a corporation, **members** in an LLC — enjoy limited liability protection and are typically not personally responsible for business debts. This means creditors cannot pursue your home or car to pay business debts. However, the key to creditor protection is to diligently govern and maintain accurate and historical records of the corporate entity to ensure legal compliance. Ethics, risk management, compliance, and administration are all elements of governance. Without corporate governance the liability protections will not stand up, the owners will be responsible for liability — this is known as **piercing the corporate veil** — and the reason you formed the corporation or LLC is for naught.

A corporation or LLC can engage in business, enter into contracts, own property, and more. But incorporating also brings legal obligations: tax filings, annual reports, and corporate governance.

AT A GLANCE

What this issue covers

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THE BASICS

What is corporate compliance?

Corporate compliance is documenting and approving the actions of the Board of Directors and Shareholders — or, for an LLC, the Members — through minutes and resolutions.

Our **Annual Business Maintenance Questionnaire**, found under the Resources and Forms tab at tamaraharper.com, lists the areas and actions that are required to be documented. Compliance also extends well past the minute book: it includes filing the **Statement of Information** and other regulatory filings unique to you — foreign state registration filings, Attorney General renewals — along with tax filings to the FTB, IRS, and State Board of Equalization, renewal of City or County Business Property Tax Returns, and licensing renewals.

THE COST OF MISSING ONE

A late Statement of Information: $250, plus suspension or forfeiture

Failure to timely file a Statement of Information results in a late fee of $250 and corporate entity suspension or forfeiture. A suspended entity cannot sue, defend a suit, or in many cases close a transaction — which is usually how the lapse is discovered.

WHY IT MATTERS

It keeps the protection standing

Liability, deductions, and defense

Corporate governance maintains the liability protections of the corporation or LLC, documents the approval of Board and Shareholder actions, and supports **expense deductions** for IRS compliance — shareholder or member loans to and from the company, for instance. It is also important for defense purposes, especially in a **shareholder lawsuit**.

WHAT FAILURE LOOKS LIKE

The alter ego finding

Piercing the corporate veil

Failure to remain compliant may result in piercing the corporate veil — treating the corporation or LLC as your **alter ego** and reaching through its protections to make shareholders, members, officers, and directors personally responsible.

> “
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> *A critical record-keeping asset, the minute book acts as the documentation that maintains the corporate separateness of an entity and its shareholders and management.*
>
> ON THE PURPOSE OF THE MINUTE BOOK

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BEST PRACTICES

Maintaining the minute book

California law requires accounting books, records, and minutes of proceedings of the shareholders and board to be maintained and available for shareholder and director inspection. The same is required of limited liability companies.

AUTHORITY

Corp. Code §§ 1500, 1601, 1602 — and § 17701.13 for LLCs

These are inspection rights, not merely internal housekeeping. A shareholder or director who asks to see the records is entitled to see them, and the absence of any of these records could expose the shareholders, members, or management to personal liability.

A minute book — the corporate records book — is comprised of a variety of documents, and **anything driven by the entity** should be captured in it. As a best practice, the minute book should hold all historic and current information. Minute books become the **navigational chart** an entity has followed during its time functioning as an entity, and may be referred to in response to a wide variety of inquiries.

THE CONTENTS

What belongs in the corporate records book

- → **Articles & formation documents** Including every amendment
- → **Bylaws** Or the LLC operating agreement
- → **Resolutions** Board, Shareholder, and Member
- → **Shareholder ledger** And all share transfers
- → **Officer & Director lists** With current addresses
- → **Stock certificates** And exemption from registration filings
- → **Shareholders Agreement** And any Buy-Sell Agreement
- → **Written communications** Everything sent to shareholders
- → **Meeting minutes** Every meeting, every year
- → **Annual report filings** Statements of Information included
- → **Tax returns** Income, and sales and use tax filings
- → **IRS issuance letters** FEIN and S-Election

A minute book holds the information requested during **due diligence** — whether triggered by litigation, financing, audits, historical inquiry, or a transaction. If the records are not kept, legal counsel has to revisit and replicate past events, meetings, or changes: a challenging, expensive, and time-consuming task.

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THE CONSEQUENCE

What happens if a corporate records book is not maintained?

If evidence is uncovered that a corporate entity's actions are not documented in historic or active record keeping, the shareholders, members, and management could lose personal liability protection.

01

IN LITIGATION

Corporate records are demanded, and their absence is evidence

Corporate records are demanded in litigation. If it is shown that corporate compliance and governance has not been completed, an **alter ego theory** can be established, the corporate veil pierced, and the litigant will seek liability from shareholders, officers, and directors — or members and managers, in an LLC. The Court will disregard the corporate entity, allowing individuals to be held liable, and will consider the failure to comply with the law a factor for personal liability.

02

IN DILIGENCE

The gap surfaces at the worst possible moment

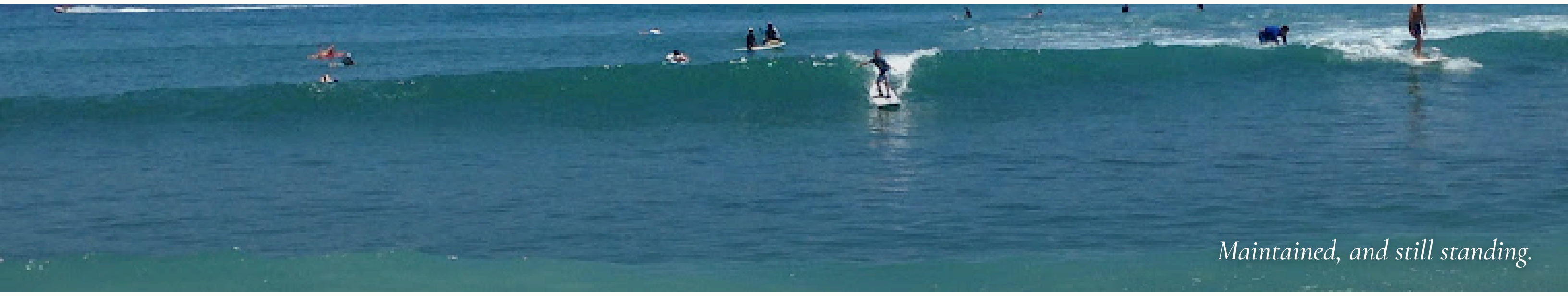
The minute book is what a lender, buyer, or auditor asks for first. Missing minutes and unsigned resolutions rarely stop a deal outright — they delay it, invite price adjustments, and force counsel to reconstruct years of history from memory and bank statements at exactly the moment you have the least time to spare.

03

THE REMEDY

Corporate clean-up

Deficiencies can be resolved. A conversation with our team will enable you to complete and maintain compliance, and determine whether any **corporate clean-up** is required to resolve deficiencies and close any liability gaps. It is far less expensive done now, on your schedule, than under a document demand.



Maintained, and still standing.

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HOW WE HELP

Compliance, handled on a calendar

To address the challenges of managing and accessing key legal documentation, our office puts the whole cycle on a schedule so nothing depends on remembering it.

- **Calendared meeting reminders and the Annual Business Maintenance Questionnaire.** Sent to you on time, every year, so the record of your actions is built while the details are still fresh.
- **Annual minutes and resolutions, unique to your entity.** Prepared from your responses to the Questionnaire — not a form pulled from a shelf.
- **Domestic registered agent service.** Including the annual Statement of Information and foreign registration renewals.
- **Secure digital records in your Clio Client Portal.** New documents, resolutions, and transactions uploaded as they happen, accessible any time from tamaraharper.com.

Deciding to form a business and maintaining corporate governance and compliance can be complicated, but with the right experts guiding you, establishing and running a successful business is an extremely rewarding experience. It is also important to think about **transfers of membership interest or stock** provisions in the Operating Agreement or Buy-Sell Agreement, the ownership of those interests in trust, and how those provisions affect your estate planning. We welcome a further conversation about your estate planning and asset protection.

LET'S TALK

Find out whether your records would hold up.

We advocate for and protect your corporate and personal interests, and your employment and labor law liability exposure. We understand how you feel — we are an employer and business owner too.

BOOK A MEETING →

CALL 805-409-0530 ↗

RESOURCES & CONTACT

- Annual Business Maintenance Questionnaire
  tamaraharper.com · Resources and Forms tab
- 805-409-0530
  Virtual or in-office appointments
- 141 Duesenberg Drive, Suite 7B
  Westlake Village, CA 91362

Kind regards

Staying in compliance with California law is overwhelming, and most of the clients we work with felt exactly that way before we started. What changes is not the volume of requirements — it is knowing that someone is tracking them, and that the record will be there when someone asks for it.

This article is provided for general informational purposes and does not constitute legal advice. Compliance obligations vary by entity type, industry, and jurisdiction, and statutory penalties are subject to change. For guidance specific to your entity, please contact our office in Westlake Village, California. Tamara L. Harper is a proud member of the Conejo Valley Estate Planning Council and WealthCounsel, and holds the AEP® accreditation with the National Association of Estate Planners and Councils.