

Notice of Shareholder Meetings

Shareholders meetings can be a mundane part of corporate governance. They are often seen as serving little purpose, particularly among closely held, privately owned corporations.

However, as with many things, it is hard to grasp the importance of a procedure until something has gone wrong.

Shareholders meetings are an essential part of corporate governance and the failure to properly give notice of such meetings can have severe consequences . Accordingly, all directors and shareholders should be aware of how to effectively call and operate a shareholders meeting.

This article is the first in a three part series about shareholders meetings and the subsequent right of dissent. This article will focus on how to provide proper notice of a shareholders meeting.

WHEN IS A SHAREHOLDERS MEETING NECESSARY?

The *Business Corporations Act (Ontario)* (the “**OBCA**”), requires the directors of an Ontario corporation to call an annual meeting of shareholders each year, at which the following business is typically transacted:

- Considering the financial statements and auditor’s report;
- The election of directors;
- Reappointment of the incumbent auditor; and
- Consideration of minutes of an earlier meeting.

Any business apart from the above is considered under the OBCA to be ‘*special business*’. Additional shareholder meetings may be held throughout the year as necessary.

Not surprisingly, many private, closely held corporations prefer to forgo the holding of shareholders meetings in favour of a written resolution signed by each of the shareholders entitled to vote on the subject matter. This is an acceptable alternative to holding a meeting of shareholders under the OBCA.

However, in cases where the shareholders do not unanimously agree on a decision that requires their approval, a corporation is required hold a shareholders meeting to vote on the issue.

It is important that all shareholders meeting be held in strict accordance with the OBCA. Failure to do so could mean that the meeting is null and void and give rise to monetary damages and other unpleasant outcomes.

We strongly recommend providing the proper notice to each and every shareholders meeting.

THE OBCA, ARTICLES OF INCORPORATION AND BY-LAWS

The OBCA sets out the basic requirements for holding and conducting shareholders meetings. These requirements may be directly reflected or further refined in the corporation’s Articles and By-Laws.

Prior to calling a shareholders meeting, it is important to first review all of the corporation’s constating documents and the appropriate legislation to ensure all necessary procedures and timelines are complied with.

WHO MAY CALL A SHAREHOLDERS MEETING?

Generally, the directors of a corporation are responsible for calling both annual meetings and special meetings of shareholders. The formal notice of the meeting must be signed by the person or persons having authority to do so, otherwise the meeting will be improperly constituted and have no legal effect.

We recommend that unless the by-laws specifically allow for the chairman, secretary or other officer to sign the notice of a meeting on behalf of the board, that all directors of the board sign the notice.

Please note, that in certain circumstances shareholders may requisition the directors of the corporation to call a shareholders meeting. This is typically done when a faction of the shareholders disagree with the management of the directors and want to force the calling of a meeting. This is a separate and nuanced procedure that is beyond the scope of this article.

WHO IS ENTITLED TO NOTICE OF A SHAREHOLDERS MEETING?

Each shareholder entitled to vote at a shareholders meeting, each director and the corporation's auditor is entitled to receive notice of a shareholders meeting.

If a person who is entitled to receive notice of a meeting does not receive such notice, the proceedings of the meeting will be invalid.

It is very important for shareholders to keep their addresses on file with the corporation up-to-date and for the corporate officers to use their utmost care when preparing notice packages.

Other persons may attend the meeting if that right is granted in the by-laws or with the consent of the meeting.

CONTENT OF THE NOTICE PACKAGE

Generally, the notice package must contain the following information:

- Date, time and place of the meeting;
- A statement regarding the purpose of the meeting;
- Notice of special business to be conducted at the meeting along with the text of any resolutions to be passed at the meeting;
- Nature of the business to be conducted in sufficient detail to permit a shareholder to form a reasoned judgment; and
- Proxies for individual and corporate shareholders.

It is imperative that the notice package give all necessary background information in order for a shareholder to determine whether he/she should attend or appoint a proxy.

For example, it is inappropriate to call a shareholders meeting to vote on the sale of substantially all of the assets of the corporation or to amend its articles and not provide the shareholders with any supporting information. Failure to provide this information or any of the above information may make the notice deficient.

What constitutes 'sufficient information' can be a source of much legal debate. We typically recommend erring on the side of caution and providing as much information as possible.

LENGTH OF NOTICE

Notice of the time and place of the shareholders meeting must be sent to all the persons entitled to receive notice not less than 10 days and not more than 50 days' before the shareholders meeting.

The by-laws may provide for greater than 10 days' notice to be provided to all such persons, but must always comply with the minimum requirements set out in the OBCA.

DELIVERY

Unless the by-laws provide otherwise, notice may be served on each person personally, electronically or by mail at the address shown on the corporate register.

Delivering proper notice for a shareholders meeting can be a technical and time sensitive process. Please note, the provisions for notice in the OBCA are similar to, although not identical, to the provisions in the *Business Corporations Act (Canada)*. We also have experience providing notice for meetings of members under the *Corporations Act (Ontario)*.

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