

Adinamis & Saunders, P.C.
250 East 96th Street, Suite 150
Indianapolis, Indiana 46240
(317) 218-2600

STANDARDS FOR OPERATION OF YOUR CORPORATION

The Internal Revenue Service takes the position that a corporation must not only be organized as a corporation but it must also be operated as a corporation if it is to receive the appropriate tax treatment. Simply because you have obtained a certificate of incorporation from the Secretary of State does not necessarily guarantee you treatment as a corporation for federal income tax purposes. Likewise, the limitations upon personal liability provided by the corporate entity may be lost if you fail to act like a corporation.

In an effort to provide you with some guidelines for the general operation of your corporation as well as to minimize the possibility of an attack on your corporate status by the Internal Revenue Service or by a creditor, we have prepared the following recommended procedures. If you have any questions regarding these procedures, you should contact us.

A. MEETINGS:

1. Shareholders. Shareholders' meetings must be held each year. Each shareholder must receive written notice of the meeting no fewer than ten (10) days nor more than sixty (60) days prior to the meeting. The notice should contain the place, day and hour of the meeting and a brief description of proposals to be presented at the meeting. A shareholder may, however, waive notice of the meeting either by signing a written notice of waiver or by actually participating in the business of the meeting. If the Articles and Bylaws so provide, a Shareholders' meeting may be held through simultaneous telecommunications.

2. Directors. There is no requirement for annual Board of Directors' meetings, but we strongly recommend that a Directors' meeting be held at least once each year. Generally, that meeting may be held immediately following your annual shareholders' meeting. Notice should be sent to the directors of that meeting setting forth the place, day and hour of the meeting. As with the shareholders' meeting, the directors may waive notice of the meeting by signing a written notice of waiver or by actually participating in the business of the meeting. A Directors' meeting need not be in person and may be held by simultaneous telecommunications.

3. Conducting Business. A majority of the directors must be present at a meeting where any business is to be transacted, other than the filling of vacancies. If there is business which must be conducted and you are aware in advance that certain of your directors may not attend, you should attempt to obtain proxies authorizing other directors to vote on their behalf or arrange for telecom. Our office can provide you with the necessary forms for those proxies.

The board of directors should document approval of certain actions taken by the corporation. It is not a good idea to substitute informal conversational agreements for a formal directors meeting. The board, for example, should approve all employment contracts, employee benefit plans, fringe benefit agreements, corporate leases, securing of loans, and purchases of corporate insurance and new equipment. Any wage or salary increases (especially large ones) should be implemented by the board of directors, preferably at the beginning of the year and the corporate minutes should reflect why the decision was reached.

B. MINUTES AND RECORDS:

1. Minute Book. Your corporate minute book is a written record of all formal action taken by shareholders and directors. As a matter of custom, resolutions that are adopted are set out in full. All other matters are summarized. Usually the secretary of the corporation keeps and prepares the minutes, which is prepared at or about the time of the meeting. The basic purpose of the minutes is to avoid any misunderstanding as to the precise action taken by the shareholders or directors. It should be prima facie evidence of what occurred. The minute book is also one of the first items to be examined by the IRS in the course of an audit. They will examine the minute book closely to see that the expenditures are actually authorized corporate expenditures and to see that, pension plans, etc. have met all formal requirements.

2. Minutes. The corporate minutes should record the date, time, and place of the meeting, the authority for holding the meeting, the names of the chairman and secretary, the persons present or represented, the reports given, the elections conducted, the resolutions adopted or defeated, and any other occurrences which may be considered worthy of permanent record. If you have any questions in relation to the format of the minutes, we can provide you with sample forms. Likewise, if you wish, our office can prepare minutes for you if you will give us the necessary information. Alternatively, you may also prepare Written Consents to Resolutions to be signed and dated which have the same effective as minutes.

3. Shareholder Information. The corporation must keep a record of current shareholders, their post office addresses, the class and number of shares they hold. This listing must be kept at the corporation's principal office or at an agent of the corporation. It is important that this information is updated whenever there is any transfer of shares.

4. Business Entity Report (BER). Each business entity must biennially deliver a Business Entity Report to the Secretary of State for filing. The report is due in even years for companies organized in even years, and odd years for companies organized in odd years. The report is due in the same month the entity was organized. The Secretary of State's office will send a reminder prior to the due date. The BER may be filed online at the Secretary of State's website <http://www.sos.in.gov> paying the filing fee by credit card, or you may go online and print BER to be completed and sent by regular mail with a check for the filing fee. We recommend that you forward a copy of the BER that you download after filing online to us, or send us a hard copy so that we may fill it out and be sure that a file-stamped copy is placed in the Company

Record Book. If you would like for our office to file the BER on your behalf, you may advise us of this and will also need to be sure we have updated information on the Corporation. Your first BER will be due two years after the corporation is organized.

C. ISSUING STOCK:

1. Stock Certificate. The stock certificates provided in your minute book should be filled in showing the name of the registered holder, the number of shares represented by the certificate, the par value or a statement that the shares have no par value, and whether such shares are fully paid up and non assessable. If shares are not fully paid up, the certificate must be legibly stamped to indicate the percent which has been paid and must be updated as other payments are made. We do not recommend you issue any stock which has a par value or any stock which is not fully paid up.

The stock certificate must be signed by persons holding two different offices. The transfer sheet which follows the stock certificate in your minute book should be filled out showing the certificate number, the number of shares, the date the certificate is signed and the name and address of the person to whom the certificate is issued. The shareholder should then sign the transfer sheet acknowledging his or her receipt of each certificate. The certificate can be kept by the shareholder, but we recommend that the original be kept in the corporate minute book.

2. Payment for Stock. The amount to be paid for a share of stock shall be fixed from time to time by the board of directors. The shares may be paid for in whole or in part in cash, in other property whether tangible or intangible, or in labor actually performed for or services actually rendered to the corporation. In the absence of actual fraud, the judgment of the board of directors as to the value of this consideration or the value of the corporation's assets will be conclusive. We do not recommend you issue any stock other than for cash. If you anticipate issuing stock in exchange for property or services, please be sure to discuss that matter with us and be certain that your minute book reflects the nature of the transaction giving rise to the issuance of the stock.

3. Transfer of Shares. If shares are transferred, the original certificate should be surrendered to the corporation, the transfer sheet appropriately executed and the new certificate issued to the new owner.

4. Buy-Sell Agreements. If you wish to restrict transfer of stock, you should discuss with us the possibility of executing a buy-sell agreement. If a buy-sell agreement has been executed by you, you should be certain that any stock issued bears the legend set forth in your buy-sell agreement.

D. SUBCHAPTER S:

In the course of preparing your corporate documents, we also discussed the ramifications of a Subchapter S election. There are certain requirements in relation to the Subchapter S status which should be known to you.

1. Initial Election. The following requirements must be met for a valid Subchapter S election:

a. All persons who are shareholders in a corporation on the day the election is made must consent to the election;

b. The election to be valid for a particular taxable year may be made any time during the preceding taxable year or at any time before the 15th day of the third month of the taxable year;

c. If the election is made after the first 75 days of the taxable year and on or before the last day of the taxable year the election will be treated as if it were made for the following taxable year;

d. The election must be made in the manner as prescribed by the Secretary of the Treasury in the regulations; that is, you should use the form provided by the IRS;

e. A properly made Subchapter S election is effective for the taxable year of the corporation for which it is made and for all succeeding years, unless it is terminated.

2. Continuing Nature. The Subchapter S election shall remain in effect for all succeeding years unless the election is revoked or terminated for some other reason.

3. Reasons for disqualification. A corporation to remain a Subchapter S corporation must meet the following requirements:

a. The corporation must be a domestic corporation and may not be a member of an affiliated group;

b. The corporation must not have more than 100 shareholders;

c. The corporation must not have as a shareholder an entity who is not an individual (with the exception of certain estates and trusts);

d. The corporation must not have a non-resident alien as a shareholder; and

e. The corporation must not have more than one class of stock, disregarding voting differences in voting rights.

4. Filing. The form to be filed is an Internal Revenue Form 2553 as well as the consent of each shareholder. **You or your CPA must see that the consent is filed within 75 days from the date of your incorporation.**

E. USE OF THE CORPORATE NAME:

1. Stationery. Every item of stationery from your letterhead to your billing statements to your memo pads should have the full corporate name and not just the name of the particular employee or officer involved. The desire to use up your old stationery first to save the money may be penny wise and pound foolish in the long run. If nothing else, you should obtain one or two rubber stamps that have your corporate name including the designation "Inc." or "Corp." These stamps should be used liberally by all of your office personnel in substituting your corporate name for whatever designation may exist on your stationery and office forms.

2. Public Announcements. If your business maintains a mailing list, you should have an announcement of a change to corporate status prepared and mailed to everyone on the list. A copy of your printed announcement and the mailing list should be retained with your corporate records. It is appropriate in some situations to place a dignified announcement in the local newspaper stating that your business has been incorporated under your corporate name. A copy of the newspaper containing this announcement should be retained with the corporate records.

3. Bank Accounts. With the guidance of your accountant, new checking accounts should be opened at the bank in the name of the corporation. All corporate receipts should be kept separate from receipts of your old practice or business.

4. Telephone Books. Your office telephone should be listed in the name of the corporation both in the white and yellow pages.

5. Signs. All office signs should be changed to reflect the name of the corporation.

6. Outside Contracts. If you have contracts with outside parties for services, they should be transferred or redrafted in the corporate name. Leases, purchase agreements and the like should be assigned to the corporation, if assignment cannot be achieved a new lease should be obtained, if possible.

7. Personnel. Personnel should be hired by the corporation and not by any of your employees or officers as individuals. They should understand that they are coming to work for the corporation rather than for any particular person. All employees salaries and wages should be

paid by check from the corporation rather than, for example, being paid individually by customers. A central policy concerning hiring and salaries should be adopted and followed.

8. Receipts and Payments. Customers should not be encouraged to make payments to any individual, but rather to the corporation in its corporate name. Any check that might be made payable to an individual in the business should be endorsed over to the corporation immediately before it is deposited. Any one who provides services to the corporation should be instructed to bill the corporation for payment. Similarly, individuals in the corporation should be reimbursed for their expenditures pursuant to a formally adopted plan. This plan should be strictly adhered to and the corporate employee should keep careful records of the items involved.

9. Liability Insurance. Type, amount and cost of liability insurance should be determined, contracted, and paid for by the corporation as a whole rather than by individual employees. Individual policies, however, may also have to be maintained.

F. PROPER FORM OF CORPORATE SIGNATURE:

Since the corporation is intended to be the party to be obligated by the contract, note or other document being signed, the actual corporate name should be used (including the words incorporated, corporation, or an accepted abbreviation thereof). The corporate name should then be followed by the word "By". This indicates that someone is signing the document in his or her representative capacity on behalf of the corporation. The corporate officer should then sign and designate his or her elected title or office indicating authority to sign on behalf of the corporation. A proper corporate signature is illustrated as follows:

WIDGETS, INC.

By: _____
Tom Widget, President

G. WRITTEN EMPLOYMENT CONTRACTS:

Employment contracts between a corporation and its shareholder-employees should include a clause requiring employees to devote substantially full time to the business of the corporation.

H. SHAREHOLDER-EMPLOYEE PROPERTY:

If shareholder-employees wish to retain personal ownership of corporation-used property they may lease it to the corporation at a fair rental, but your tax advisor should be consulted.

I. FRINGE BENEFITS:

In providing fringe benefits for its employees, the corporation must not incur a substantial cost or loss in revenue. The benefit, service, or personal property provided must be of a type that the corporation ordinarily provides to the public in the line of business for which the recipient employee is employed. The corporation in dispensing a benefit that is of such a small value that accounting for it would be impractical, must be careful to avoid providing that benefit with such a high frequency that its small value becomes suspect.

Only a present or retired employee and that employee's spouse and dependent children are eligible for fringe benefits. In determining which employees are eligible for certain benefits, the corporation may create reasonable categories such as seniority, full or part time employment, and job description. No category, however, should include a substantially higher number of highly paid employees than other employees. Rules on fringe benefits have been recently changed. You should consult your tax adviser.

J. EMPLOYMENT TAX LIABILITY:

While operating in corporate form is potentially a shield against most liabilities, officers and directors and certain employees maybe held personally liable for unpaid withholding, unemployment and employer's share of FICA. It is the responsibility of the employer (corporation) to prepare and file payroll tax returns. If you are unclear about payroll tax compliance, please contact this office or your tax advisor immediately.

K. EMPLOYMENT OF ILLEGAL ALIENS:

The Immigration Reform and Control Act requires that employers check the documents of all prospective employees to make sure that they are not illegal aliens.

The employee must produce a U.S. passport or a foreign passport with a valid U.S. work permit. If these are not available, the employee must present a birth certificate or social security card and a driver's license, other state I.D., or a resident alien card (green card). If the employee does not have all the necessary documents immediately on hand, he can still begin work, but must produce them within 24 hours. There is a form "I-9" describing the documents checked for you to fill out, and the employee must sign it and certify that he is not an illegal alien.

You are not required to check the documents of a "casual hire," such as a one-time employee. You are, however, required to comply with the documentation requirements if you hire free-lance, temporary, or domestic help that will be employed for considerable length of time or on a regular basis. You are subject to the provisions of the law even if you have only one employee.

Penalties range from a \$100-\$1,000 civil fine for failure to keep accurate records to a \$250-\$2,000 fine for a first offense to a \$3,000 fine and imprisonment for a pattern or practice of knowingly hiring illegal aliens.

Another important aspect of the law is a provision prohibiting discrimination against legal aliens. There is some uncertainty as to whether the provision applies only to intentional discrimination or to hiring practices that negatively affect legal aliens as a group.

If you have questions concerning your company's hiring practices and whether they are in compliance with the law, please give us a call.

L. OTHER CONCERNS.

Internal Revenue Service -- Registration: Businesses must obtain an Employer Identification Number (EIN). Our office generally will obtain the EIN on behalf of your corporation and provide that to you.

Indiana Department of Revenue: Indiana imposes various taxes on businesses. For more information, we urge you to contact your accountant regarding withholding, sales tax, and corporate tax.

Department of Workforce Development: Businesses with employees have numerous responsibilities. An Employer's Desk Guide may be obtained by contacting the DWD at (317) 232-7436 or (800) 437-9136.

Remember that these are general guidelines to assist you in operating your corporation in a manner that will achieve the benefits that you desire. This document should not be considered to be a complete summary of items you should be aware of with regard to the corporation. If you have any major problems regarding your incorporation you should contact us. Further, whenever you are making decisions regarding tax effects, you should make these decisions in conjunction with your attorney and/or certified public accountant.