

# SCOTT LEGAL SERVICES, P.C.

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## Forming A Corporation? What Do “Corporate Formalities” Mean and How Difficult Are They To Implement?

When deciding on which business entity to select, a corporation is almost always one of the options considered. The primary reason is a Corporation solves the problem of potentially losing your personal assets by separating the individual and the business and this structure limits the business owner’s risk to the amount of money invested in the business. In order to make sure that you are in fact protected though, the corporation must adhere to “corporate formalities” and if these formalities are not followed the corporation will not be recognized and a business owner and/or shareholders may open themselves up to personal liability. When a corporation is not recognized because formalities have not been followed, this is known as “piercing the corporate veil” and this is something you want to avoid.

### What are “Corporate formalities” and how Difficult are they to Implement?

Adherence to corporate formalities is often cited as a significant disadvantage for those who consider a Corporation as a business form and this is often why many instead opt for a Limited Liability Company (LLC). While forming an LLC is certainly an option, corporate formalities are not as bad as most think. Here is a list of corporate formalities you must follow along with some general comments.

1. **Create Bylaws.** Every corporation must have bylaws and bylaws are really a set of internal rules governing how the corporation is run. While this at first may seem like a daunting task, there are many templates that can be used as a starting point. Also, if you hire a lawyer to set up your corporation, he/she will typically draft these for you and this will usually be included in the set up fee.
2. **Hold Shareholders Meetings.** Shareholders of the corporation should meet at least annually to elect directors. When you initially form a corporation, you should immediately hold a meeting and elect the board. Minutes should also be recorded at this meeting. You should note that shareholders, board members and officers can all be the same people and each can have multiple roles. What that means is that a corporation formed by one person will hold a meeting by himself and document the appointment of himself to the various roles.
3. **Hold Board of Director Meetings.** The board of directors of the corporation has to meet regularly. Also, a designated person from the corporation (eg. person designated secretary) should record minutes of the meetings, reflecting resolutions and discussions that the directors had at that meeting. When forming a corporation, the initial bylaws should also be adopted at the first board meeting. All major decisions of the corporation should be adopted in a board resolution pursuant to the procedure set forth in the bylaws (such as mergers, stock issuances, major financial decisions such as loans, dividends, guarantees, hiring of consultants and legal experts, transactions with insiders, senior officer compensation, etc.).

4. **Maintain A Stock Ledger & Issue Stock Certificates.** A stock ledger should be maintained which reflects the stock ownership of the corporation and the names and addresses of the shareholders. You should also issue stock certificates to those who own shares that represent their ownership in the corporation. If you do not have a ledger or certificates, you can pick one up at a stationary store.
5. **Set up a Corporate Bank Account.** The Corporation has to have a separate bank account that is in the name of the Corporation.

Here are some additional things that you should consider when setting up a corporation to establish strong corporate governance and to ensure that you do not run into any piercing the corporate veil problems.

1. All business of the corporation with third parties should be conducted in the name of the corporation so that it is clear that the directors and officers are acting on behalf of the corporation and not in their individual capacity.
2. The corporation should file all appropriate federal, state and local tax returns and pay taxes when due, as well as obtain all necessary permits and licenses. In addition, the corporation should apply for a federal tax ID number and this can easily be obtained by applying online by visiting the IRS Web site.
3. Retain a qualified accountant. A qualified accountant can assist you with your tax return and can set up your books and records for you.
4. You should make sure the corporation is adequately capitalized by maintaining adequate capital in the corporation to meet all current and foreseeable debts. If you do not, your corporation could be viewed as a “sham” corporation which would permit the corporate veil to be pierced.
5. You should ensure that you maintain adequate liability insurance necessary for your type of business.
6. You should consult with a lawyer before you personally guarantee any debts of the corporation and do not offer to personally pay corporate debts.
7. Do not commingle corporate and personal funds by placing any corporate funds in personal accounts.
8. Make sure you do not use corporate assets for personal use unless the board of directors of the corporation explicitly authorizes such use.

The above is not an exhaustive list of all corporate formalities but the majority are covered. While maintaining corporate formalities for a small company is not difficult, issues do arise and it is very important to establish a strong corporate governance structure as your company expands. As such, you should seek the counsel of an experienced attorney familiar with corporations and corporate formalities.

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If you are considering setting up a corporation, contact Scott Legal Services, P.C. for a consultation. You can call us at 212-223-2964 or email us at [iscott@legalservicesincorporated.com](mailto:iscott@legalservicesincorporated.com).

Also, click [here](#) to obtain a [free chart](#) that summarizes a number of things to consider when selecting a business entity in an easy to read and understandable format.