

Inside This Issue

Annual Shareholder Meeting Requirements

Success Story

Time To Update Your Distracted Driving Policy

Tax Corner

The Latest News at SLG

Real Estate Corner

Employment Corner

Dates to Remember

Did You Know?

Annual Shareholder Meeting Requirements



Tamara B. Pow, Esq.

Every California corporation is required to hold an annual meeting of the shareholders, and can have additional special meetings at any other time when properly called. The rules are complicated and if certain requirements are not followed, claimants may ***“pierce the corporate veil”*** bringing liability to the shareholders personally that should have been limited to the corporation. In order to hold a proper meeting, the meeting must be properly called, noticed, and held. Of course, every corporation is subject to the specifics of its corporate documents, but here are some general guidelines.

When should the annual shareholder meeting be held? The annual meeting should be held on a date and time that is stated in the bylaws.

What action is required at the annual shareholder meeting? The only action required to be taken by the shareholders at an annual meeting is the election of the board of directors. Any other proper business requested by the Board may also be taken, so long as it was included in the meeting notice.

Required Notice - What should the notice say?

All shareholders who are entitled to vote should receive written notice of the annual meeting (and any special meeting). The notice to shareholders must include the date, time and place of the meeting, and whether shareholders can attend by telephone or electronically. For annual meetings, the notice must state the names of the persons nominated for election, as well as any other matters the board intends to discuss. At a special meeting, the shareholders are not allowed to act on business not included in the notice.

Required Notice - How do you give notice?

You should always check to see what is in the corporation’s bylaws but for most corporations, notice can be given by first class mail, in person, or by electronic delivery such as facsimile or e-mail. Notice should go to the address or contact information provided by the shareholder to the corporation. The corporation is considered to have provided notice as of the date it mails, emails or faxes the notice, or delivers it personally.

Once the notice has been sent, the corporation must determine who has the right to vote and how many votes are required. Other items to consider include waiving notice for closely held corporations and improper notice. If you have questions about your annual shareholder meeting minutes or notice, get advice in advance.



Success Story

When one of SLG’s clients faced complaints from one of its customers, SLG cost-effectively helped the client make a compromise proposal to resolve the dispute. Unfortunately, the customer declined the proposal and refused to negotiate. Instead, the customer filed a small claims action. Although SLG does not represent clients in small claims court, SLG prepared the client for the hearing, for presenting documents at the hearing, and for the pre- and post-hearing process. As a result, SLG’s client won the case in its entirety.

Time To Update Your Distracted Driving Policy

In light of recent lawsuits against companies whose employees were involved in car accidents while using a cell phone, many employers are updating their distracted driving policies. Once an employee is involved in an accident, it is now routine for the employee's cell phone records to be pulled. Courts are ruling against people who are talking or texting while driving, including those who are talking on a cell phone while using a hands free device, which is still legal in most states.

For example, a Texas jury recently handed down a \$21 million verdict against Coca-Cola for a case where a car was hit by a Coca-Cola employee driving a company vehicle while talking on a hands-free device. The lawsuit alleged that Coca-Cola's cell phone policy for company drivers was vague and ambiguous.

In addition, many counties in California have recently cracked down on tickets for distracted driving, including cell phone use and texting while driving.

In light of the above, now is a good time to look at revising your company policy on distracted driving.

Some items to consider in your company policy include:

- No use of a personal or company hand-held cell phone while operating a company vehicle whether the vehicle is in motion or stopped at a traffic light.
- Answering or making phone calls, reading or responding to emails, instant messages and text messages relating to company business are also prohibited.
- If an employee must use a cell phone, they are required to pull over to the side of the road or another safe location.
- Finally, some companies may want to consider prohibiting their employees from eating, putting on makeup and reading while driving a company owned vehicle.

If you have any questions regarding writing or revising your company's distracted driving policy, please do not hesitate to contact our office.



Tax Corner

Employees Can Deduct Short-Term Local Lodging Costs

According to new IRS regulations, employees can deduct short-term local lodging costs as a business expense. The lodging must be necessary to participate in business meetings, training activities or other business functions of the employer. If the costs are paid by the employer or reimbursed to the employee, then the amounts are not included in the employee's income. To qualify, the stays must be for five days or less and cannot take place more often than once a quarter. An overnight hotel stay in conjunction with attendance at an employer's team building exercise is an example. Stays at extravagant hotels, or hotel stays to avoid a long commute, are excluded. In those cases, the employer's payment is taxable income. *Source: Kiplinger Tax Letter Vol. 87, No. 9, April 27, 2012.*



Make Sure Your Short Sale or Foreclosure Is Complete Before Year End

The exclusion for cancellation of debt (also known as COD) income from a qualified principal residence is scheduled to expire on December 31st of this year. If the government does not choose to extend the exclusion, and a property is not foreclosed on or sold by short sale by the end of the year, the exclusion no longer applies. The only way to qualify for the exclusion after December 31st, may be insolvency. Under this method, a taxpayer may exclude from income a discharge of indebtedness that occurs while the taxpayer is insolvent, up to the amount by which he or she is insolvent.

Currently between January 1, 2007 and January 1, 2013, a taxpayer may exclude from income up to \$2 million of COD income from the discharge of qualified principal residence indebtedness. In California, qualified principal residence indebtedness is limited to \$800,000 instead of the \$2 million allowed under federal law, and the maximum California COD income exclusion is limited to \$500,000. *Source: Spidell's California Taxletter, Vol. 34.5, May 1, 2012.*

The Latest News At



SLG Welcomes Jack Easterbrook



Jack W. Easterbrook, Esq.

We are very excited to announce that John (Jack) Easterbrook has joined our firm as a debt financing, creditor's rights and insolvency attorney. Jack represents financial institutions, business entities and individuals in matters concerning commercial financing, real estate transactions, creditor's rights, contract matters and insolvency. His practice includes documenting complex debt transactions, usually secured by real property, intellectual property or business assets. The attorneys in our firm have relied on his expertise in the past. It is very exciting to have him in-house now so that his services can be easily provided to our clients.

Jack joins us from Silicon Valley Law Group in San Jose. He has also worked at other large law firms in Silicon Valley. Before entering the legal industry, Jack worked for Wells Fargo in commercial lending and management positions. Jack has repre-

sented many commercial banks. His background in commercial lending gives him the ability to better understand and be responsive to the needs of clients, including banking institutions.

He received his J.D. from Santa Clara University and an MBA from U.C. Berkeley. He frequently publishes articles and he also received the distinguished AV Peer Review Rating of 5.0 out of 5.0 from Martindale-Hubbell®. Jack can be reached by phone at (408) 441-7500 or by email at jwe@structurelaw.com.

It's A Boy!

Krystle Warren gave birth to her second son in May, Blake Warren. Krystle is currently out on maternity leave. **Congratulations to Krystle and her family!**



Real Estate Corner

Moving Into A Rental House Acquired In A Like-Kind Swap Won't Trigger Tax.

A couple recently sold an apartment house and used the proceeds to buy a single family house which they intended to rent out. After eight months they were unable to rent out the property and were forced to sell their primary house and move into the rental house.

According to the IRS, this proved that the couple never intended to hold the rental house for rental purposes. When personal use property is acquired, like-kind-swap treatment is barred, so the IRS said the couple was not able to defer the gain on the apartment house. The Tax Court ruled against the IRS because the couple made efforts to rent out the house and moved in only as a last resort. *Source: Kiplinger Tax Letter Vol. 87, No. 9, April 27, 2012*



Employment Corner

Social Media Policies

Social media is a large part of the daily lives of many employees. Because of this, many employers now have social media policies in place.

The National Labor Relations Board (NLRB) recently released a report on social media policies. In particular, these policies are found to be unlawful if they interfere with the rights of employees under the National Labor Relations Act to discuss concerted activities such as wages or working conditions with co-workers.

Employers should avoid overbroad and ambiguous prohibitions that could be considered to prohibit such conduct. Consider including examples in your company policy so that employees can clearly understand the type of conduct that is prohibited. In addition, most social media policies should clearly indicate that any prohibition is not meant to interfere with employee rights under the National Labor Relations Act.





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Dates To Remember

Parents' Day	July 22
Friendship Day	August 5
Labor Day (Courts and government offices closed)	September 3
Grandparents' Day	September 9
International Day of Peace	September 21
First Day of Autumn	September 22



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Did You Know?

- Coca-Cola was originally colored green.
- The cost of raising a medium-size dog to the age of eleven is \$16,400.00.
- The average number of people airborne over the U.S. in any given hour is 61,000.
- It is impossible to lick your elbow.
- The San Francisco Cable Cars are the only mobile National Monuments.
- The first novel ever written on a typewriter: Tom Sawyer.



Robert V. Hawn, Esq.



Jack W. Easterbrook, Esq.

We appreciate your referrals!

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