



The Board's Right to Inspect Documents of a Corporation

Do corporate board members have a right to inspect the documents, minutes, and notes of a corporation? The short answer is yes, and the right to inspect is not waivable by contract or bylaws.¹ But to better understand this question we need to understand the role of the bylaws in a corporation. Whereas LLCs have an operating agreement, corporations, including nonprofits, have something called bylaws. The corporate bylaws are an important document that is too often overlooked.

What are corporate bylaws? In short, the bylaws are a set of legally binding rules that guide corporate management. They include the purpose of the corporation, dictate the frequency of corporate meetings, describe corporate policies, and outline the powers and responsibilities of its directors, shareholders (if any), and officers, among other important inclusions.

Bylaws are useful in vague or conflicting situations. Directors can sometimes find themselves in vague or confrontational moments where they will have to look to the bylaws for guidance. For example, a director who wants to inspect the documents of a corporation may be denied access by the CEO on the premise that such documents are confidential.

What do the bylaws say about inspection of documents? Every California corporation should have a set of bylaws that states, "Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation

of which such person is a director."² The right to inspect cannot be limited or waived by contract or the bylaws.³

What if a board member is denied the right to inspect the books of a corporation? A denial to inspect the corporate books or documents will usually result in a derivative suit on behalf of either the corporation or the public. A director could file a petition for a writ of mandate pursuant Cal. Corp. Code § 6334 and even seek attorney's fees pursuant to Cal. Corp Code § 6337 or Cal. Civ. Code § 1021.5.

Does the director need a legitimate reason to inspect the books? No, this is an absolute right of every director. The rule is based on the policy that every board member has the fiduciary duties of care and loyalty, which includes "proper governance" of the board.⁴ Take a public benefit corporation, for example. A PBC is defined as one having a "material positive impact on society and the environment, taken as a whole..."⁵ A "positive impact on society" and "proper governance" are admittedly vague, but they leave room for reasonable interpretation. If inspection of the books and documents will help the director fulfill their duties to run the

corporation well and in-turn do well by society then it stands to reason the right should be respected.



Written by:
Anuar Ramirez-Medina
Seven Hills Law Firm

¹ See Cal. Corp Code §§ 6313, 6334, and 8334.

² Cal. Corp. Code § 6334.

³ Cal. Corp. Code § 6313.

⁴ See *Choi v. Orange County Great Park Corp.*, 175 Cal.App.4th 524, 531 (2009).

⁵ Cal. Corp. Code § 14601(c).