



# READY REFERENCE PAGE

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## Preparing Minutes of Board Meetings Is Usually More Art Than Science

*Minutes document formal Board actions  
and provide collective journal of corporate history*

Minutes of nonprofit Board meetings can vary widely in format, and in the level of detail they capture. In some regards, this is fine; there is no one correct style. Each Board should adopt a style of record-keeping that suits its own particular needs.

However, minutes serve several vital managerial and legal functions. It's important to understand those functions, in order to understand the types of material that should be recorded.

Minutes are a Board's collective journal. They provide all members of the Board, including brand new ones, with a common baseline of information about what the Board has seen and done. They are a critical tool for efficient, continuing, sound governance.

Minutes are also the primary record of a corporation's actions. Approvals of transactions, adoption of policies in compliance with regulatory requirements, and allocations of corporate assets are just a few examples of corporate actions that various parties inside and outside of the organization may need to see recorded in writing.

Finally, minutes are a vital tool when disputes arise as to a Board's actions or responsibilities.

The first function of minutes is to help demonstrate that the meeting was properly called. Minutes should recite the date, time and location of the meeting, as well as the form of the meeting (e.g. annual, regular or special). The full procedural significance of these details will largely depend on the organization's bylaws, but in most cases these facts will at least help a reader determine what type of notice, if any, was required for the meeting. If notice was required, a copy of the notice actually given might be attached to the minutes, along with an explanation of how and when the notice was disseminated.

### Attendance

Minutes should include a clear account of who attended, and in what capacity. Minutes should also identify any directors or officers who did not attend. (Some bylaws distinguish between "excused" and "unexcused" absence in determining whether a Board member can be terminated for non-participation. If so, the minutes should record whether the absence was excused.)

A record of attendance serves at least two purposes. First, it allows a reader to determine whether a quorum was established. Second, it provides a relevant record in case some

dispute arises as to a particular individual's participation—or failure to participate—in some corporate decision.

If any director joins or leaves a meeting in progress, the minutes should include a note to that effect, inserted at the appropriate point. Unlike a meeting of members, a Board usually cannot act without a quorum being actually present.

### Recording Discussion

A meeting often includes several discussions, scheduled and impromptu, on which no action is taken. The person preparing the minutes often has a difficult time deciding how and to what extent these discussions should be reflected in the minutes. There are no rigid rules on this. While there's much to be said for "lean and mean" minutes, there are several types of discussions that should be acknowledged, if not actually recounted.

First, the minutes should indicate whether an order of business that appeared on the notice of the meeting, or in any printed agenda, was actually addressed.

Second, the minutes should record any conclusive discussion regarding future actions or activities, such as an informal agreement that a committee will meet to further discuss a certain topic, or a request to a staff

member to provide certain information at a future date.

Finally, the minutes should record new information being presented to the Board in the course of a discussion. Perhaps someone may mention that a new program is underway, or that a licensing body has expressed a reservation about the organization's operations. These types of facts may emerge in a casual way, but may later become quite important. If and when they do, it will be helpful if the minutes show exactly when the information was first shared with the Board.

Beyond these categories, the only rule is that the minutes should record the gist of each substantive discussion. There is usually no need to record exactly who said what. A transcript of the meeting is not appropriate, just a brief summary of discussion points. If the person preparing the minutes isn't sure whether an item was "substantive," the safest strategy is a simple note that the discussion occurred.

### **Recording Corporate Action**

Perhaps the single most important function of minutes is to provide a definitive record of corporate actions.

If written resolutions were prepared prior to the meeting, their adoption can be recorded within the minutes, and the resolutions themselves can be attached. Alternatively, and more commonly, the minute-taker can record a resolution or other action within the minutes. To make sure that all participants agree on exactly what is to be approved, consider having

the minute-taker read back any motion *before* a vote is taken. It is equally important to record resolutions or Board actions that were considered but did not get approved.

In addition to recording the action taken, the minutes must record exactly how the action was taken, and by whom. Was it unanimous? If not, what was the vote? If there were dissenters or abstainers, who were they?

This information can be important to individual directors. For example, in many states a director who is present at a meeting is presumed to have assented to any action taken at that meeting, unless the minutes specifically record that director's dissent. If a director wants to avoid responsibility for an action he or she deems improper, the director must make sure the minutes specifically record the dissent.

Recording abstentions is especially important in cases where a Board member has a conflict of interest. In dealing with a potential excess benefit transaction, the minutes should record enough information to assure that the conflicted director has the benefit of the rebuttable presumption that the transaction is fair and reasonable.

### **Special Action Requirements**

Some bylaws, and some provisions of state law, require special procedures for approval of certain types of action. For example, a "super-majority" (typically 2/3 of all the Directors then serving) is sometimes required to approve a sale of real estate, or an amend-

ment to articles of incorporation or bylaws. Whenever a Board takes an action that triggers special procedural requirements, the minutes should include sufficient information to demonstrate that the requirements were met.

Special procedural requirements will also arise if the organization has members or affiliates that must approve an action. If so, the action of the other body should not be incorporated into the minutes themselves; instead, the minutes should acknowledge that the other body has taken appropriate action, and evidence of that action should be filed with the minutes.

Minutes should be formally approved, as written or as corrected, by the Board at its first meeting following the one which has been recorded.

Under most bylaws, the Secretary of the corporation has a special duty to assure that appropriate minutes are prepared. Whether the Secretary prepares the minutes or oversees their preparation by others, it is appropriate for all of the other directors and officers to hold the Secretary to a high standard of performance. And they should—because ultimately, if the minutes are insufficient to prove some corporate action, to demonstrate due deliberation of some question, or to demonstrate who did or did not participate in some decision, any or all directors and officers might suffer serious consequences.

—**Eric Vieland**

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