



You Don't Know What You Have Until It's Gone – or You Inspect It

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If you are a shareholder in a corporation, or have an ownership interest in a different business organization (such as a limited liability company), you may be curious about the value of your business; or, perhaps more specifically, the value of your stock or similar interest in that business. Alternatively, you may have concerns as to possible mismanagement or whether your business is complying with local law. As a person holding an ownership interest in a business, the law may permit you to inspect and copy the business' books and records to obtain answers to these and other important questions.

In many states across the country, if you have a proper purpose and meet certain statutory criteria, the law may allow you to inspect and copy your business' books and records. While a proper purpose will frequently vary from case to case and state to state, a few generalized examples include, conducting an inspection to: (1) ascertain the true financial condition of a business in which you hold an ownership interest; (2) determine the specific value of your stock or similar interest in the business; (3) assess whether the affairs of the business have been or are being conducted in accordance with the law; and (4) investigate possible mismanagement and/or wrongdoing. If the stated purpose for conducting a books and records inspection is to investigate possible mismanagement, then the requesting party may be required to establish a credible basis from which to infer there is possible mismanagement that would warrant further investigation.

Generally, the scope of a books and records request should be tailored to and consistent with the requesting party's stated purpose. For example, if the requesting party's purpose is to ascertain the financial condition of the business, then the records request should be limited to seeking books and records relating to the financial condition of the business. If the requested books and records are not properly related to the stated purpose, then the inspection can be denied as seeking materials beyond what is need to satisfy the purpose. Similarly, if a requesting party already has sufficient information to satisfy a stated purpose, whether from other sources or as a result of a prior books and records request, then an inspection may properly be denied.

Depending upon the state where your business is incorporated, or otherwise created, the type of documentation available for inspection and copying may vary. Frequently,

however, a stockholder or person holding a similar interest can inspect and copy the following records:

1. Excerpts of minutes from meetings of the board of directors, committees acting for the board of directors, and shareholders' meetings (among others);
2. Accounting records of the business;
3. Records of shareholders; and
4. The business' most recent financial statements.

The formal procedure to initiate and successfully complete an inspection generally requires compliance with state law. Failure to comply with applicable law may result in the business recovering any fees and costs (including attorneys' fees and costs) incurred as a result of an improper inspection demand. Conversely, if the business fails to provide you with certain records after you have made a proper demand, you may be entitled to recover reasonable attorneys' fees and costs that you may incur.

Laws on this important issue vary from state to state and entity to entity. If you are interested in learning more about your business by conducting a proper books records inspection, or simply have questions, you may want to consider consulting a licensed attorney.

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