



Understanding an Owner's Right to Information and Records in Private Companies

By Janel M. Dressen

I continue to be surprised by the number of clients that inquire about a shareholder or owner's right to information and thus, this article is intended to answer questions about an owner's basic rights to information. Private Minnesota corporations and limited liability companies have a statutory obligation to provide certain information to its shareholders or members *upon request* and that right is deemed an important right that can cause negative consequences to a company if denied or limited unnecessarily, such as unwanted shareholder litigation.

A shareholder in a private Minnesota corporation has an "absolute right, upon written demand, to examine and copy" the share register and all documents corporations are required to maintain. Minn. Stat. § 302A.461. Thus, a shareholder is always entitled, upon a written demand, to inspect and copy:

- (a) records of all proceedings of shareholders for the last three years;
- (b) records of all proceedings of the board for the last three years;
- (c) the corporation's articles and all amendments currently in effect;
- (d) the corporation's bylaws and all amendments currently in effect;
- (e) certain financial statements;
- (f) reports made to shareholders generally within the last three years;
- (g) a statement of the names and usual business addresses of its directors and principal officers;
- (h) voting trust agreements;
- (i) shareholder control agreements;
- (j) the share register; and
- (k) a copy of agreements, contracts, or other arrangements or portions of them incorporated in the Articles of

Incorporation. Minn. Stat. § 302A.461, subds. 2, 4.

In addition to the absolute right to inspect and receive copies of the statutorily identified documents, upon a showing of "proper purpose," a shareholder of a private corporation is entitled to inspect and copy other documents as well. Minn. Stat. § 302A.461, subd. 4. A "proper purpose" is "one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation." Minn. Stat. § 302A.461, subd. 4.

A "proper purpose" may include determining an "accurate value on their shares of stock, and to evaluate the conduct and affairs of the corporation's officers and majority shareholders so as to determine the effects on the financial condition [of the

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company].” See *Fownes v. Hubbard Broadcasting, Inc.*, 225 N.W.2d 534, 536 (Minn. 1975); *Uldrich v. Datasport Inc.*, 349 N.W.2d 286, 289 (Minn. Ct. App. 1984).

Nonetheless, where the “stated” purpose is not the “actual” purpose, a shareholder’s request may be properly denied. See *Bergmann v. Lee Data Corp.*, 467 N.W.2d 636, 640 (Minn. Ct. App. 1991). Using a request

to improve the shareholder’s position in a pending lawsuit against the company, for example, is a “purely personal purpose” and is “improper.” *Id.* A proper purpose cannot be one that is adverse to the best interests of the corporation. “Where the purpose of the inspection is to cause injury to the corporation, an inspection will be denied.” See *State ex rel. G.M. Gustafson Co. v. Crookston Trust Co.*, 222 Minn. 17, 22 N.W.2d 911, 918 (1946); see also *Sanders v. Pac. Gamble Robinson Co.*, 84 N.W.2d 919, 922 (Minn. 1957).

Minnesota law considers the legitimate concerns of corporations in avoiding disclosure of confidential information. Thus, if the parties cannot agree to acceptable confidentiality agreements, a corporation may apply to a court to seek a protective order permitting the corporation to withhold portions of corporate records or prevent premature disclosure of competitively sensitive information. A protective order can also impose other reasonable restrictions on the production of corporate information. Minn. Stat. § 302A.461, subd. 4a. Additional requirements relating to the handling of shareholder records requests, including costs of copies, location of production, timing of production and dealing with electronic records are dealt with by the statute and should be reviewed and carefully followed.

Minnesota Statute § 322B.373 governs the rights of members of an existing limited liability company (LLC) to information and those rights are very similar to the rights of shareholders in a corporation described above. However, all LLCs formed under Minnesota law on and after Aug. 1, 2015, are governed by Minnesota’s new LLC Act, Chapter 322C. On Jan. 1, 2018, all Minnesota LLCs, regardless of formation date, will be governed by this new act.

In contrast to a shareholder’s and member’s right to information under Chapter 322B, in manager-managed and board-managed LLCs under this new act, no specific records must be maintained by the LLC and a member is not entitled to any documents or information as a matter of right. A manager-managed or board-managed LLC shall make information available to a member *only* “as is just and reasonable if: (1) the member seeks the information for a purpose material to the member’s interest as a member; (2) the member makes

a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and (3) the information sought is directly connected to the member’s purpose.” Minn. Stat. § 322C.0410, subd. 2(2). In addition, the LLC may charge the member the “reasonable costs of copying, limited to the costs of labor and material” for the information requested. *Id.* at subd. 4. If the LLC decides not to provide any of the demanded information, the LLC must inform the member of its reasons for declining to provide the information. *Id.* at subd. 2(3)(ii).

Whether a shareholder or a member in a Minnesota company, the individual is almost always entitled to information to evaluate the operations and management of the business, particularly if the shareholder or member is not involved in the affairs of the company and to assist in the determination of the value of their ownership interest. Thus, unless the records request is harassing, extremely burdensome, or for a purpose which would clearly harm the company, provide the information subject to appropriate and needed confidentiality protections.



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