

Virginia

Regulatory Hot Tip 2014 – 1

Professional Insurance Agents Association of Virginia and DC, Inc.

CORPORATE ANNUAL CHECK UP

Just like you take the time to schedule your annual physical for your health, I recommend that you consider an annual check up for your corporate records.

When you set up your corporation, hopefully, you also adopted bylaws which are the governance documents for your company¹. However, since you incorporated, have you reviewed your bylaws side-by-side with the new corporate statutes that have been implemented over time in Virginia? You need to make sure that your governance documents provide the ease of running your business, as well as the protections you envisioned including when you set up your business.

Additionally, do you have annual minutes for annual shareholders' meetings or validly adopted annual Consents in Lieu of Meeting for shareholders (electing directors) and Board of Directors (electing officers)? If not, you may want to clean up your minute books a bit, making sure that all important decisions, contracts, purchases, etc. are documented as being authorized.

¹ If you are set up as a limited liability company, your governance documents are called your Operating Agreement.

The author of this Regulatory Hot Tip endeavors to provide accurate and authoritative information about the subject matter covered as of the date of publication. However, the substantive information and any statutory authority contained in this Hot Tip should be verified as they are subject to change with the passage of time. The author provides this Hot Tip with the understanding that she is not rendering legal, accounting, or other professional advice or counsel. If legal advice or other expert assistance is required, the services of a competent professional should be sought. This publication is authored by JoAnne L. Nolte, JD, CIC, CPCU, FLMI, CLU, who practices at The Nolte Law Firm, P.C., 1427 W. Main Street, Richmond, VA 23220. NolteLaw offers [Solutions for Business—Large and Small](#); just call (804) 658-4518. NolteLaw's practice focuses on general business matters (such as business formation, acquisitions, dissolutions and employment questions) and administrative law issues (such as rulemaking and compliance) affecting regulated entities. Our diverse client base includes restaurants, healthcare providers, contractors, fiber-optic and conduit installers, business entrepreneurs, telecommunications companies, insurance entities, financial institutions, mortgage loan originators, water & sewer providers, and insurance receiverships. Jo has served as attorney for the Virginia State Corporation Commission and as in-house counsel to a privately owned national corporation. She also owned and operated an insurance surplus lines brokerage agency and an insurance consulting business.

Moreover, have you received and executed your Annual Report and Fee Assessment documents from the SCC? Take time to review these documents, don't merely sign and return. Then, do you follow up to make sure that your check has been processed and your online corporate information at the SCC has been updated?

Have you been using a creative nickname for your company for marketing purposes, for example? If so, you need to register your fictitious name² in the city or county in which your business is being conducted. It also needs to be registered with the Clerk of the State Corporation Commission. Lastly, once you have registered your fictitious name in a proper fashion, both locally and with the SCC, you need to alert the Bureau of Insurance of your fictitious name. The initial forms for you to start the process should be available from the clerk of your local court. Failure to do so (upon conviction) will subject you to a monetary penalty of up to \$2,500.00 and/or confinement in jail for not more than one year.³ I highlight this provision because the monetary fine has increased over time.

As part of your annual review, don't forget to review and update as necessary your Agency's "information security program,"⁴ particularly if you have altered the manner in which you maintain customer information during the prior year. Likewise, review and update, again as necessary, your Agency's Business Continuity Plan also known as your Disaster Recovery Plan. These should be maintained and available in an updated version at your Agency.

If you conduct business in another state, do you have the appropriate certificates of authority in those jurisdictions, when necessary? Is the information on file in those particular jurisdictions updated and current? With the many winter storms that have passed through in 2014, make sure that documents you mailed were actually received in the jurisdictions in which you are doing business.

Does your business rely on non-compete agreements? Are they up to date and still factually accurate? For example, does the non-compete, non-solicitation agreement that you executed with a star producer who is now the Vice President in charge of customer service need to be amended?

² Fictitious names may also be referred to as: trade names (t/a), assumed names or doing business as names (d/b/a).

³ See, VA Code § 59.1-75.

⁴ See, VA Code § 38.2-613.2 for information relative to what needs to be included in the written Information Security Program.

Have you looked on line at the SCC website to make sure that your company is still in good standing? Again, this kind of review should be done annually.

Next consider your various certifications, insurance, SWaM and otherwise. Are they all in order; do you need to update them this year?

Though this hot tip just highlights the tip of the iceberg concerning what you should consider annually; don't forget your contracts with your vendors and your insurers. Are any of these contracts scheduled to amend this year? Are there any commissions or pricing differentials that you should consider?

As you move forward with your 2014 business year, make sure your health check up is up to date, but also that your business check up is up to date.