



Legal Guide: *Shareholder Agreement*

A Beginners Step-by-Step Guide for
Business Owners, Beginners, and
Non-Lawyers

Updated: March 1, 2010

NOTICE TO READER: The information in this article is a brief summary for informational purposes only. It is not meant to be legal advice. If you require information or advice as it relates to your individual circumstances you are advised to consult with a lawyer.

Download Legal Forms:

- [USA: Shareholder Agreement](#)
- [Canada: Shareholder Agreement](#)



Introduction

This article is intended for anyone who either:

Download Legal Forms:

- [USA: Shareholder Agreement](#)
- [Canada: Shareholder Agreement](#)

- owns shares in a private corporation;
- is contemplating buying shares in a private corporation;
- in contemplating selling a portion of their shares in a private corporation;
- is starting a private corporation.

This article does not apply to public corporations, that is, corporations whose shares are traded publicly on a stock market.

This article will be of interest to shareholders of small private corporations and where often some shareholders also act as directors or officers of the corporation. In such a case, the co-operation of all the shareholders is crucial to the success of the business. Although the responsibility of making decisions for a corporation normally is with the directors of the corporation, a shareholder may wish that certain decision making powers be removed from the discretion of the directors and be given to all of the shareholders. This article discusses how a written shareholders' agreement can protect your monetary investment and thereby work for your business and



potentially save you money, aggravation, disappointment, and business failure.

How Shareholders are at Risk

Although most shareholders believe that they were meant for each other and they'll always get along, situations will almost always arise that the shareholders never contemplated. For example, if the corporation requires additional capital there may be disagreement as to where the additional capital is to come from; or some shareholders may desire a first right of refusal if another shareholder desires to sell his/her shares to a third unknown party. If the shareholders get into a disagreement with each other and there is no written shareholders' agreement it may be extremely difficult if not impossible to require another shareholder to sell his/her shares. It is possible and legal for shareholders to enjoy the profits of the corporation by way of dividends without having to do any work. As such, the success of your business may be in jeopardy when disagreements between the shareholders or unexpected events occur which cannot be resolved.

Your business requires co-operation of all shareholders in order to be successful and if you do not adequately protect yourself, you may discover that your fellow shareholders have a different philosophy than you with respect to the business. Alternatively, unforeseen events may occur that



the shareholders cannot agree on how to resolve. Therefore, unless you have a written shareholders' agreement in place that deals with these concerns it will be very difficult and very expensive to resolve any disagreements between shareholders. Each party thinks that he/she is right and the other party is wrong.

How to Protect Yourself (and Your Business)

You should hope for the best, but plan for the worst scenarios to occur. If you are conducting business using a corporation a written agreement among the shareholders (called a "shareholders' agreement") should be prepared and signed by all the shareholders to help protect your interest as a shareholder and thereby help ensure the success of your business. Certain jurisdictions permit shareholders' to enter into a shareholders' agreement and remove decision making powers from the directors. The use of a shareholders' agreement can save you money, time, aggravation, and most importantly your business. The result is a greater trust and harmony among the shareholders which is fundamental to every successful small private corporation.

If there is a dispute or uncertainty on how to proceed in a particular situation, the shareholders can refer to the shareholders' agreement for guidance. In the event that the agreement does not cover the circumstance and the situation cannot be resolved by the shareholders, an



arbitration clause can be inserted in the agreement that requires the dispute to be referred to an independent third party.

Although some shareholders believe that asking fellow shareholders to sign a written shareholders' agreement will spoil the relationship, smart business people know that a good shareholders' agreement helps to protect their business and all shareholders will feel more comfortable knowing that their respective investment, duties & obligations as shareholders, rights, and benefits are in writing. The agreement should be tailored to the specific requirements of your business and should be written in plain English.

What Your Shareholders' Agreement Should Include

Your shareholders' agreement should describe the duties and responsibilities of the shareholders, methods of making shareholder decisions, and ownership of shares. In addition to any specific wishes of the shareholders, it is recommended that your shareholders' agreement also include provisions addressing the following issues:

- Date of the agreement
- The parties (shareholders and others)
- Definitions to clarify terms
- Recitals including purpose and background information



- Business and affairs of the corporation
- Control of the corporation; election of directors
- Signing authority
- Decision making procedures; where shareholder approval required
- Financing and additional capital contributions to the corporation
- Issuance of new shares
- Ownership of shares
- Transfer of shares: procedure, right of first refusal, conditional on signing agreement
- Retirement, divorce, bankruptcy, incompetency, or death of a shareholder
- Insurance
- Non-competition
- Confidentiality
- Non-solicitation
- Dispute resolution between shareholders (arbitration and “shot-gun” clauses)
- Legend to be printed on face of all share certificates
- General contract provisions
- Relevant schedules (if any)



To prepare a “Shareholder Agreement” legal document, consult with your attorney/lawyer or obtain one online at LawDepot by clicking below on your country to get started:

Download: *Shareholder Agreement:*

- [USA: Shareholder Agreement](#)
- [Canada: Shareholder Agreement](#)

You can obtain other business legal forms online:

- [USA: Business legal forms](#)
- [Canada: Business legal forms](#)
- [UK: Business legal forms](#)
- [Australia: Business legal forms](#)