



CORPORATE DOCUMENTS IN PLAIN ENGLISH

Have you ever been completely overwhelmed by all the new jargon they use? Below is a quick list of common documents used when incorporating a new company and establishing relationships between the owners.

- 1. Articles of Incorporation:** Filed by the *incorporator*, this document establishes the Company's initial capitalization. By default, the and limits the liability of the Board of Directors, among other things. The Certificate of Incorporation will need to be filed with the Secretary of State's office in order to officially form your Company.
- 2. By-Laws:** This document is like the corporation's "user manual"; it sets forth the procedural rules that govern the corporation, including the rules governing the meetings of the Board of Directors and stockholders and voting requirements.
- 3. Action/Written Consent of Sole Incorporator:** After formation, the incorporator signs a document relinquishing control to the new Board of Directors appointed by the incorporator. The consent is a written memorialization of the action of the incorporator. It also may memorialize the acts of approving the bylaws and/or Company's initial (or amended) certificate of incorporation.
- 4. Action/Written Consent of Board of Directors:** This document appoints the officers of the Company, approves the sale or issuance of stock and the provisions in the purchase agreements, and authorizes the officers to open corporate bank accounts, at a minimum.
- 5. Meeting Minutes.** Meeting minutes are records of the corporation following corporate formalities, in that these documents show the corporation held required meetings, made responsible decisions by proper vote of the applicable parties (i.e. directors and shareholders), and made decisions in the name of the corporation.

Incorporator. New corporations typically have one incorporator to form the legal entity by filing the articles with the relevant state government official.

Occasionally more than one person will be the incorporator. Because the incorporator names the initial directors, if there is a concern with a single incorporator not following the wishes of the founding

Resolution/Consent.

Sometimes called a "consent," a resolution is a written record of a decision of agents of the corporation. It's called a "resolution" in the sense that the corporation *resolves* to, e.g., "appoint Mr. Johnson as chairperson of the Board of Directors." Often these must be unanimous to be effective.

"Duly organized." A corporation is said to be "duly organized" when it has held its first meeting of the board of directors, issued share capital ("stock"), and taken steps necessary to authorize the corporation to transact business.

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6. **Stock Purchase and Restriction Agreement:** This agreement is between the corporation and a shareholder that legally issues the stock to the new owner. The stock is said to be “restricted,” because it can be given or sold back to the company if the new owner fails to fulfill certain requirements. Typically those requirements are called **vesting** restrictions; the company’s rights apply to the unvested shares if the shareholder departs the company for any reason. *a/k/a Restricted Stock Purchase Agreement; Stock Issuance Agreement*
7. **Stockholders’ Agreement:** This agreement is between shareholders or a group of shareholders and is typically used if the Company has more than one founder. This is an agreement among the founders and the Company that, among other things, restricts transfers of shares by the founders, governs who will be elected to the Board of Directors, and explains what happens in the event of one founder-shareholder terminating the relationship with the business. *a/k/a Shareholders Agreement*
8. **Proprietary Information & Invention Assignment (“PIIA”) / (a.k.a. Contribution and/or Assignment Agreement):** This agreement effects the transfer by a founder to the Company of intellectual property related to the business of the Company. If anyone is contributing any material intellectual property in exchange for shares, consider consulting a tax, accounting and/or legal advisor regarding reflecting the value of this contribution and how it might be taxed.
9. **Subscription Agreement / Stock Purchase Agreement:** This document is the legal contract that sells shares of the Company to purchasers. These agreements may be in a traditional “agreement” format or styled as a letter from the company to the shareholder. A purchaser/subscriber can be an officer/ director/ advisor/ or **investor**. Often, but not always, the corporation issues a common stock certificate to show ownership of the shares.
10. **Confidentiality Agreement:** Every founder, director, officer, employee and any other service provider (including advisors and outside consultants) of the Company should sign an agreement containing some type of confidentiality obligation at the outset of their engagement with the Company. This

83(b) Election. If shares are subject to vesting restrictions, the recipient should consider making a Section 83(b) election under the Internal Revenue Code. Consult your tax, accounting, and/or legal advisor for assistance in making this election.

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agreement works very similarly to an NDA, which is something that a company typically requires with external parties. The agreement, among other things, restricts disclosure of the company's proprietary information. It may be a standalone document or it may be combined with the PIIA, above.