

# AREAS TO REVIEW WHEN FORMING A CORPORATION IN COLORADO

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**THE FOLLOWING ARE AREAS THAT YOU SHOULD REVIEW WHEN FORMING A COLORADO CORPORATION AND INSERT PARAGRAPHS IN THE ARTICLES OF INCORPORATION, IN THE ORGANIZATIONAL MEETING MINUTES, IN THE BYLAWS, IN A BUY-SELL AGREEMENT OR IN OTHER AGREEMENTS AS APPROPRIATE.**

## 1. DECISIONS BY CORPORATION THAT REQUIRE SHAREHOLDER APPROVAL

Does the corporation want to include a provision in its articles of incorporation to allow all decisions to be made a majority of shareholder? \_\_\_\_\_  
Otherwise, certain important acts, such as selling substantially all of the assets, require a higher percentage approval by the shareholders.

## 2. PURPOSE OF CORPORATION

State whether the purpose of the corporation is limited or whether the purpose is all lawful activity. \_\_\_\_\_  
If the purpose is limited state the limited purpose. \_\_\_\_\_  
\_\_\_\_\_

## 3. DURATION OF THE CORPORATION

Will the corporation have a perpetual existence? \_\_\_\_\_  
If not, how long will the duration of the corporation be? \_\_\_\_\_

## 4. SHAREHOLDERS OF CORPORATION

Name(s) of shareholders, initial contribution, number of shares issued, and percentage of ownership interest:

Name of Shareholder: \_\_\_\_\_  
Initial Contribution \_\_\_\_\_  
Number of Shares \_\_\_\_\_  
Percentage of Interest \_\_\_\_\_

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Number of Shares \_\_\_\_\_  
Percentage of Interest \_\_\_\_\_

**5. BOARD OF DIRECTORS FOR CORPORATION**

State the names of all persons who will be on the board of directors

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. OFFICERS OF CORPORATION**

Offices to be held and names of persons holding offices:

President: \_\_\_\_\_  
Vice President: \_\_\_\_\_  
Secretary: \_\_\_\_\_  
Treasurer: \_\_\_\_\_

**7. BREAKDOWN OF AMOUNT FROM A SHAREHOLDER BETWEEN A CONTRIBUTION AND A LOAN**

The amount paid from a shareholder should be reviewed to determine if part will be a contribution and part will be a loan to the corporation.

**8. ADDITIONAL CONTRIBUTIONS**

Will shareholders be required to make additional capital contributions? \_\_\_\_\_  
If so, what is the process used to determine how much the additional contributions are; what percentage must vote for the additional contributions (is the unanimous written consent of the shareholders required or a majority of the shareholders); and what are the remedies and consequences if a Shareholder does not make his or her contribution (will the ownership interest be terminated or will the ownership interest be diluted if one of the other shareholders makes a contribution over and above the required cash call amount for the shareholder who does not make the capital contribution).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**9. LOANS TO THE CORPORATION BY SHAREHOLDERS**

For initial loans to the corporation by shareholders, or for loans made by shareholders at any subsequent time, proper documentation must be prepared to make sure the loan is a secured loan.

The documentation for the loan should be a promissory note; security agreement; UCC-1 which should be immediately recorded in the Colorado Secretary of State’s office; a deed of trust if real property is collateral which should be immediately recorded in the clerk and recorder’s office where the real property is located; and immediately place a lien on the face of the title of the vehicle if a vehicle is collateral.

**10. LOANS TO THE CORPORATION BY THIRD PARTIES**

If loans are necessary for the corporation, what is the process used to determine how much the loan will be; what percentage must vote for the loan (is the unanimous written consent of the shareholders required or merely a majority of the shareholders or does it depend upon the amount of the loan); and what will the collateral be for the loan?

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\_\_\_\_\_  
\_\_\_\_\_

**11. NOTICES FOR MEETINGS OF SHAREHOLDERS**

How much notice must be given for meetings of shareholders? \_\_\_\_\_  
Should certain types of meetings require more notice? \_\_\_\_\_

**12. QUORUM AND VOTING AT MEETINGS OF SHAREHOLDERS**

What constitutes a quorum for voting purposes for shareholders?  
G 51% of the shareholders  
G 75% of the shareholders  
G 100% of the shareholders

**13. NOTICES FOR MEETINGS OF BOARD OF DIRECTORS**

How much notice must be given for meetings of the board of directors? \_\_\_\_\_  
Should certain types of meetings require more notice? \_\_\_\_\_

**14. QUORUM AND VOTING AT MEETINGS OF BOARD OF DIRECTORS**

What constitutes a quorum for voting purposes for the board of directors?  
G 51% of the board of directors  
G 75% of the board of directors  
G 100% of the board of directors

**15. COMPENSATION FOR OFFICERS OF THE CORPORATION**

Will any of the officers be compensated for the work they perform for the Corporation? \_\_\_\_\_  
If so, state for what work, the amount of the compensation, and how the compensation will be paid. \_\_\_\_\_

**16. COMPENSATION FOR MEMBERS OF THE BOARD OF DIRECTORS OF THE CORPORATION**

Will any of the members of the board of directors be compensated for being on the board? If so, state for what work, the amount of the compensation, and how the compensation will be paid.  
\_\_\_\_\_

**17. RESTRICTED POWERS FOR OFFICERS OF THE CORPORATION**

Are there any restrictions on the powers of the officers of the corporation? If so, state the restrictions \_\_\_\_\_

Examples of certain important actions include borrowing money above a certain amount; selling or transferring ownership of assets other than in the ordinary course of business; and expenditures above a certain amount.

**18. BANK ACCOUNTS**

State the name of bank where the corporation will have its bank account.  
\_\_\_\_\_

Names of officers who will be authorized signatories of the corporation’s bank account  
\_\_\_\_\_

Will any shareholders be authorized signatories of the corporation’s bank account? \_\_\_\_\_  
If so, state the names \_\_\_\_\_

**19. DISTRIBUTIONS**

Will there be required distributions? \_\_\_\_\_  
If so, how will the amount of the distribution be determined? \_\_\_\_\_

Will distributions be mandatory to cover the income tax consequences for the profits that are required to be reported by each shareholder if the corporation elects to be an S corporation?  
\_\_\_\_\_

**20. PREEMPTIVE RIGHTS**

Will shareholders have a preemptive right to purchase additional shares before such shares are offered to other non-shareholders? \_\_\_\_\_

## 21. CUMULATIVE VOTING

Will there be cumulative voting when electing the board of directors? \_\_\_\_\_

## 22. SHOULD THERE BE A BUY-SELL AGREEMENT WHICH RESTRICTS THE TRANSFERABILITY OF THE SHARES

### Lifetime

Are the shares freely transferable or is the transfer restricted during a member's lifetime?

\_\_\_\_\_

If restricted, what are the restrictions? \_\_\_\_\_

If restricted, are there any carve-outs for family members? \_\_\_\_\_

### Death

Are the shares freely transferable or is the transfer restricted upon a member's death?

\_\_\_\_\_

If restricted, what are the restrictions? \_\_\_\_\_

If restricted, are there any carve-outs for family members? \_\_\_\_\_

### Other Provisions

What other provisions should be inserted in the buy-sell agreement? \_\_\_\_\_

\_\_\_\_\_

## 23. NONCOMPETITION

Should there be provisions to prevent officers and/or shareholders from competing with the corporation? \_\_\_\_\_

If so, state the proposed restrictions including the type of activity restricted, the duration of the restriction, and the geographical area of the restriction. \_\_\_\_\_

\_\_\_\_\_

## 24. TAX YEAR

Should the tax year be a fiscal year or a calendar year? \_\_\_\_\_ (A CPA should help make this decision and the options may be limited if S Corporation is elected for tax purposes)

## 25. TAX ISSUES

Are there any income tax issues that should be reviewed by a CPA? \_\_\_\_\_

If so, a CPA should be consulted. If you don't know, you should consult a CPA. \_\_\_\_\_

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**THE ABOVE LIST IS NOT COMPREHENSIVE AND SOME AREAS MAY NOT APPLY TO YOUR SITUATION. IT IS INTENDED TO PROVIDE YOU WITH A LIST OF MATTERS THAT YOU SHOULD CONSIDER.**

**YOU SHOULD CONSULT WITH AN ATTORNEY AND RECEIVE LEGAL ADVICE AS IT RELATES TO YOUR OWN BUSINESS SITUATION.**