

I OWN 51%...SO I CAN DO WHAT I WANT!....NOT SO FAST

A lot can happen in the relationship of the shareholders of any corporation. This compendium provides some highlights of what this author has experienced in nearly 30 years of representing corporations and its officers, directors and shareholders.

So you think that since you own 51% of the company that you can run rough shot over the other shareholders. Not such a good idea. In fact, courts impose a fiduciary duty upon majority shareholders that is similar to the duties owed by directors and officers. For example, it is well established that majority shareholders may face liability where they fail to act in the best interest of the corporation, and that the holders of a controlling block of corporate stock are prohibited from exercising their majority rights to manipulate the business of the corporation in a manner that is unfair to the controlled corporation or minority shareholders.

However, Texas courts have generally limited the scope of fiduciary duties owed by controlling shareholders to minority shareholders by finding that most abuses of majority control involve breaches of fiduciary duties to the corporation itself, rather than to the minority shareholders.

Usually, a corporation is ruled by a majority of the shareholders unless provisions of either the Certificate of Formation or the Texas Business Corporation Act require a greater number. As a result minority shareholders are susceptible to the majority's attempts to terminate the minority's interest in the corporation or to prevent the minority shareholders from achieving a fair return on the investment.

Majority shareholder conduct of this type is termed a "freeze out" or "squeeze out." A "squeeze out" occurs when some of the strategically positioned owners or participants in a business enterprise use inside information, powers of control, or some legal device or technique to eliminate from the enterprise one or more of its other owners or participants.

The following are *just some* of the techniques used to squeeze out minority shareholders:

1. Withholding dividends from minority shareholders;
2. Sale of a control block of shares without providing a similar opportunity and terms to minority shareholders;
3. Sale of all or substantially all of the corporation's assets to majority shareholders at an inadequate price;
4. Redemption of minority shareholders' stock if it redeemable; and
5. Preventing minority shareholder access to the corporation's books, records and stock transfer book.

The determination of whether a particular fact situation constitutes oppressive conduct toward a minority shareholder is a question of law for the judge.

If payment of a dividend is withheld a shareholder may seek an action to compel payment of that dividend in court. A court, however, will not overturn a board of directors' decision not to declare a dividend unless the board acted in bad faith and abused its discretion.

A Texas statute recognizes the common law doctrine of shareholder preemption rights, which gives shareholders preemptive rights as to unissued shares, treasury shares, or convertible securities of a corporation. This right protects existing shareholders against dilution of their interest in the corporation.

Sales of corporate assets in the "usual and regular course of business" do not require a shareholder vote unless the Certificate of Formation provides otherwise. When a vote is required, a two-thirds majority of all shares voting or non-voting is required to approve the sale.

There is no requirement in the Texas Business Corporation Act that shareholders approve of a stock redemption. Article 4.08 allows the board of directors to redeem stock subject to the provision of article 2.38 and the Certificate of Formation. Even if the minority shareholder is a common stockholder, it is possible that his or her shares will be redeemed.

Furthermore, a shareholder has a statutory right to inspect the corporation's books, records and stock transfer book.

As you probably know, corporate law is voluminous. There are numerous statutes and countless case law on the subject. The above is not even the "tip of the iceberg" when dealing with a corporation and its officers, directors and shareholders..

If you have any questions about this short memo or other issues regarding corporations feel free to contact me.

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