



California Corporate & Securities Law

Do You Have The Correct Authorized Number Of Directors?

By Keith Paul Bishop on January 27, 2012

I frequently come across corporations with the wrong number of authorized directors. California, unlike other states, has some very precise rules and these frequently seem to be missed.

The Bylaws of many California corporations establish a minimum and maximum number of directors and permit the board to fix the exact number within that range. For example, the Bylaws might provide for a minimum of 3 directors and a maximum of 7. Unfortunately, this is not permitted under Corporations Code Section 212(a) which requires that the maximum number of directors not be more than two times the minimum minus one. Thus, if the minimum number is 3 then the maximum number must be no greater than 5 ($(3*2) - 1$). Interestingly, when this rule is applied to determine the maximum permissible range, the number of possible authorized directors is equal to the minimum number in each case. Thus, when there is a range of 3 to 5, there are 3 possible authorized board sizes (3, 4, or 5); when the range is 4 to 7, there are 4 possible board sizes (4, 5, 6, or 7); *ad infinitum*.

The rules are even more tricky when you want to have board comprised of 1 or 2 directors. Whether it is possible to have only one or two authorized directors will depend upon whether shares have been issued and the number of shareholders. See Corp. Code § 212(a).

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