

Board communications and records routinely address matters that are strategically significant, competitively sensitive, and legally consequential. Well-designed communication and documentation protocols serve three core purposes:

- Confidentiality and security: reducing unnecessary dissemination and cyber or operational exposure of sensitive information.
- Privilege protection: supporting the company's ability to preserve attorney–client privilege and work product protections when legal advice is sought, or litigation is anticipated.
- Accurate and defensible corporate record: ensuring the board's process and decisions are accurately reflected in the official record—particularly when later scrutinized in litigation, regulatory matters, investigations, or shareholder books-and-records demands.

This issue of the Corporate Governance Field Guide outlines some of these best practices for meeting minutes, distribution and maintenance of board materials, and director communications outside board meetings. These guidelines are intended to help directors communicate effectively while maintaining a disciplined, reliable, and defensible governance record.

### BEST PRACTICES FOR DIRECTOR COMMUNICATIONS OUTSIDE BOARD MEETINGS

- Ideally, all substantive written or electronic communication between directors should take place either through a secure board portal or through company-hosted email accounts.
- Alternatively, directors can maintain a secure personal email account used exclusively for communications related to their board service.
- Directors should avoid engaging in substantive company-related communications through personal email accounts or accounts provided by other entities. Such communications potentially expose those accounts to discovery requests in litigation. And in some cases parties may argue that the use of such accounts undermines confidentiality and jeopardizes privilege.
- Directors should avoid communication through informal methods such as text or chats. Communications through such methods may fail to reflect directors' considered thinking or be taken out of context. They can also risk exposing these accounts to discovery in litigation.

### BEST PRACTICES FOR DISTRIBUTION AND MAINTENANCE OF BOARD MATERIALS

- Each director should have a *secure* and *confidential* method for receiving board materials.
  - Board portals are a common method and considered best practice.
  - If necessary, board materials may be transmitted to directors through company-provided email address or secure, dedicated personal email address.
  - Directors should be familiar with and follow company data security policy.

- Directors' retention of board materials.
  - Directors should follow company document retention policies, including any instructions related to the preservation of documents.
  - The company should maintain official records of documents that formally evidence the directors' deliberations and decisions, including board meeting minutes, presentations, resolutions, and written consents. Those materials should remain accessible to active directors through the board portal. Individual directors need not maintain board materials and should not do so unnecessarily.
  - Directors who find it useful to print copies of board materials should discard those copies promptly when no longer needed, typically when the meeting concludes.
  - Directors generally should not maintain personal notes of board meetings. If directors find it useful to take notes during meeting, those notes should generally be discarded at the meeting's conclusion; if there is a specific need to maintain personal notes after meeting concludes, directors should ensure notes are discarded promptly when no longer needed.
  - All materials should be discarded in a *secure* manner; directors who have questions about securely discarding materials should consult corporate secretary or general counsel.

## BEST PRACTICES FOR MEETING MINUTES

- Board minutes are the official record of board meetings and can provide critical evidence that a board acted in good faith and with due care. In some cases, courts have found breaches of fiduciary duties that may have been avoided had the minutes more fully captured the board's activities.
- Minutes should reflect basic facts about the meeting, including date, time, and location; minutes should also identify attendees, note any absences, and note the presence of a quorum.
- Minutes should formally document all official board actions, including motions, and resolutions.
- Minutes should reflect the board's fully informed decision-making, including reflecting discussions with independent advisors, reasonable inquiry, and deliberations.
- Minutes should reflect the board's exercise of its oversight responsibilities, documenting management reporting and the board's discussion of management reports.
- Minutes should include sufficient detail to document the board's exercise of its responsibilities without excessive or unnecessary detail. Board minutes are not a transcript or play-by-play.
- Minutes should be drafted with an awareness that they may be viewed by shareholders and other parties through books-and-records demands or litigation.
- Directors should not create unofficial records of meetings. As discussed above, directors should generally avoid creating or retaining personal notes, texts, or emails discussing board business.

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*The Corporate Governance Field Guide offers concise, practical insights on the issues that matter most to directors, officers, stockholders, and other stakeholders. Each installment delivers actionable perspectives and highlights best practices from our [Board Governance and Fiduciary Duty team](#) on the risks and trends impacting today's boardroom. Please reach out to any member of our team to learn more.*

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