

Improving Corporate Record
Inspection Practices:

STARTING *with* STATUTES



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Overview

Shareholders of a corporation have the right to inspect corporate records, albeit to limited degrees. Across the US, state statutes clearly articulate the existence of this right to inspection, typically noting both the types of records required to be made available and the circumstances in which they must be produced. The types of records required tend to be similar across states, commonly including accounting records, corporate charters, bylaws, amendments, and meeting minutes. The circumstances in which records must be produced, however, vary significantly from state to state.

Requirements for general accessibility—such as whether corporations are required to keep records readily available for inspection during business hours or to produce records upon request within a set time frame—are fairly standard. However, other key details are frequently vague or unstated, such as the location where records must be kept and the form in which they can be transmitted. While a lack of specificity gives corporations more autonomy to select the most convenient processes, it can also impede or complicate accessibility for shareholders, as well as hinder potential state and federal oversight.

To address issues such as these, California recently approved AB 2237, amending the state's Corporations Code to specify that certain corporate records must be kept in state, must be available at specific offices on record with the state, and must be made available to the shareholder electronically or by mail upon request. This paper will examine how California's recent amendment is a shift towards best practices and serves as a model for other states to consider.

The Old Way

Prior to 2019, California's Corporations Code only required corporate records to “be open to inspection [...] at any reasonable time during usual business hours.”¹ The code did not specifically require records or inspections to be in California and made no mention of any alternative means of inspection to be provided to shareholders. At the time, the only location requirements for records were that a copy of the corporation's bylaws be available in the principal executive office in the state² and a record of shareholders be available at either the principal executive office or the office of transfer agent or registrar.³

1. Cal. Corp. Code § 1601 (2017).

2. Cal. Corp. Code § 213.

3. Cal. Corp. Code § 1500.

Example Case

Innes v. Diablo Controls, Inc.

The problems inherent in the old statute were brought into the spotlight in 2016 as the focus of *Innes v. Diablo Controls, Inc.*⁴ Diablo Controls, a California corporation, maintained corporate records in its Illinois office. When shareholders in California requested inspection of a variety of records, Diablo Controls shipped records to the office of the corporation's counsel in California. Declaring the records incomplete, the shareholders filed a petition for a writ of mandate. In response, Diablo Controls shipped additional records, both to shareholders and to its counsel's office in California. Again, shareholders declared the records incomplete and filed another petition. Diablo Controls this time opposed the petition, citing Section 1601 of the Corporations Code, which it argued only required the corporation to make the records available during business hours—and that the corporation could do so at its Illinois office.

The shareholders appealed in *Innes v. Diablo Controls, Inc.* and lost as the California statute at the time only required that records be made available during business hours, without specifying other details. While the discussion on the appeal noted that the practice of keeping corporate records in remote locations could be used to “intentionally impede inspection,” the court found no evidence of deliberate obstruction.

Innes v. Diablo Controls, Inc. highlights the issues that corporations and shareholders may face when the state code lacks specificity and fails to consider issues such as accessibility. Fortunately, California soon sought to eliminate these shortcomings with AB 2237.

Understanding California's Amendment

Two years after *Innes v. Diablo Controls, Inc.*, California State Assembly member Brian Maienschein authored AB 2237,⁵ which was signed into law by California Governor Jerry Brown. Effective January 1, 2019, the bill amended Section 1601 of the Corporations Code⁶ and included the following key changes:



Location of Records

The corporate records required to be made available must now be located in California in one of two specific locations: “at the corporation's principal office in this state, or if none, at the physical location for the corporation's registered agent for service of process in this state.”

4. *Innes v. Diablo Controls, Inc.*, 248 Cal. App. 4th 139 (Cal: Court of Appeal, 1st Appellate Dist., 5th Div. 2016).

5. AB 2237 . Assemb. Reg. Sess. 2017-18 (2018).

6. Cal. Corp. Code § 1601.



Alternative Procedures

Shareholders who cannot or choose not to inspect records at the designated California location can now, at their own expense, “request that the corporation produce the books, records, and minutes by mail or electronically.”

These changes apply to all domestic corporations and any foreign corporations with a principal executive office in California or which otherwise keep any records in the state.

A Model to Follow

California’s amendment to Section 1601 successfully counters many of the problems of the previous statute. The amendment addresses some of the most important issues for corporations, shareholders and authorities, including the following:

ACCESSIBILITY

In-state physical locations for records and alternative inspection methods help to ensure shareholders do not encounter the impediments seen in *Innes v. Diablo Controls, Inc.* Not only were *Diablo Controls’* records located far outside the charter state, but the Court of Appeals determined that California statutes at that time did not require the corporation to make the records available in any other way. In this case, the only option left to shareholders was to travel from California to Illinois for records inspection.

By requiring records be kept in state and giving shareholders mailing and electronic alternatives, California’s amendment ensures shareholders can more easily access corporate records without hindrances such as extensive travel.

COMPLIANCE COST SAVINGS

Under California’s new amendment, costs of copying and converting materials for mail or electronic transfer are assumed by the requesting shareholder. In this way, providing alternate means of accessibility does not cause the corporation an undue financial burden, as experienced in *Innes v. Diablo Controls, Inc.*

Before heading to court, *Diablo Controls* had initially attempted to satisfy the inspection requests by shipping documents to California at the corporation’s expense. Because corporations are already required to keep physical records available for inspection, these additional costs placed extra financial burden on the corporation, which likely fueled the *Diablo Controls’* eventual opposition to the shareholders’ petitions.

TRANSPARENCY

California’s amendment not only requires certain corporate records to be kept in state; the amendment requires the records to be kept in one of two specific physical locations. These locations—the principal office and the registered agent’s office—are both addresses of record for the corporation in the state, ensuring shareholders, directors and authorities know where to find appropriate records when necessary. This amendment prevents corporations from using obscure locations, intentionally or unintentionally, to impede inspection or suppress record content.

GROWING ROLE OF REGISTERED AGENTS

California's amendment takes into consideration the growing significance of the role of registered agents. While the core role of a [registered agent](#) is to accept service of process on behalf of a corporation, on a more general level, a registered agent is the corporation's point of contact with the state. Registered agents are commonly responsible for receiving and managing a wide variety of state notifications, from annual report reminders to changes in business laws. Registered agents commonly provide additional corporate compliance as well, such as annual report filings.

California's choice to assign the registered agent's office as an optional location for storing and inspecting corporate records shows an understanding of how the role of registered agents has greatly expanded in recent years.

SHIFT TO ELECTRONIC COMPLIANCE

California's amendment also takes into consideration the shift towards electronic compliance in all areas of business. State business records, for instance, can be filed and accessed online in the vast majority of states.

However, California is leading the way when it comes to the right to electronic access to corporate records. Even states that have recently moved all state business filings online, such as Colorado and Montana, have yet to update statutes to extend required electronic access for shareholder requests of corporate records.⁷⁸

Conclusion

Shareholder rights to the inspection of corporate records are a relatively overlooked part of any state's corporate statutes. Many states are behind the times, particularly for ensuring records are easily accessible. California, however, has demonstrated that updating these statutes can significantly improve inspection processes and provide a better overall experience for shareholders and corporations alike.

7. Colo. Rev. Stat § 7-116-102.

8. Mont. Code Ann. § 35-1-1107.

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