

# Daily Journal

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## Have your shareholder rights been abridged?

By Robert M. Heller

The answer, of course, depends on the facts and circumstances of each case. But if the corporation engages in wrongful acts, and a shareholder is unable to amicably resolve the problem, that shareholder may wish to consider enforcing his or her rights including filing a lawsuit.

Here are 10 examples to consider:

*Have directors engaged in fraud or dishonesty?* Since shareholders elect the directors, the board ordinarily has no power to expel one of its members. However, shareholders holding at least 10 percent of the outstanding shares may sue to remove one or more directors on grounds of "fraudulent or dishonest acts or gross abuse of authority."

*Have directors engaged in wrongful self-dealing with the corporation?* Any contract or transaction directly between the corporation and one of more of its directors must be fully disclosed and approved by a disinterested majority of the board of directors. Failure to follow compliance requirements may result in the contract being deemed void or voidable.

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*Have directors issued stock to themselves to shift control of the corporation?* Officers and directors may not use their positions for their own personal advantage, to discriminate between stockholders, to cause stock to be issued so as to make a profit for themselves or to obtain or retain control of the corporation.

*Have directors improperly refused to declare a dividend?* A board's discretion as to whether to pay dividends, and how much, must be exercised in good faith. Directors who vote excessive "salaries" to themselves or controlling shareholders, while refusing to declare dividends, may be personally liable to the other shareholders.

*Have directors or officers seized corporate opportunities for themselves?* Directors and officers may not seize a corporate opportunity for themselves without first offering it to the corporation on the same terms as available to them. In fact, they owe a *right of first refusal* to the corporation as to any such "opportunity."

*Have the controlling shareholders manipulated the corporation for their own self-interest?* Control shareholders may not manipulate the corporation for their own self-interest, without regard to the interests of the other shareholders. If they cause corporate action that disadvantages the minority, they may be held personally liable for the losses sustained.

*Have the controlling shareholders breached their fiduciary duties to the minority in transferring control shares?* Controlling shareholders have a fiduciary duty to act with "good faith and inherent fairness" when transferring control of the corporation. The duty to the minority may require a reasonable investigation of the buyer, particularly when the control shareholder has reason to know that the buyer intends changes that will be detrimental to the minority shareholders.

*Have insiders engaged in prohibited trading in the corporation's securities?* Broadly speaking, officers, directors and other "insiders" may not purchase or sell shares without disclosing material inside information. This rule applies whether the corporation is large or small, and whether the securities are privately held or publicly traded.

*Has management breached a shareholder agreement?* Shareholders of private corporations often enter into shareholder agreements to restrict the sale or other disposition of their shares, and to provide for purchase of such shares upon death, withdrawal from the business or other specified events. It serves numerous functions including preventing unwanted outsiders from acquiring an ownership interest and getting involved in the company's affairs.

*Has management refused or restricted your right to inspect the corporation's books and records?* Stockholders have rights of access to corporate records and no formal action by the shareholder is required to enforce those rights. Rather, inspection rights exist as a matter of law. Those rights are not absolute, but instead depend on the *type* of records sought to be inspected and, in certain circumstances, the *purpose* of the inspection.



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