

section 228 of the delaware general corporation law

section 228 of the delaware general corporation law is a critical provision governing the inspection rights of stockholders in Delaware corporations. This section outlines the circumstances under which stockholders may inspect corporate records and the limitations and procedures associated with such inspections. Given Delaware's prominence as a corporate domicile, understanding section 228 of the Delaware General Corporation Law is essential for corporate officers, directors, investors, and legal practitioners. This article provides a comprehensive overview of the statute, including its purpose, scope, procedural requirements, and practical implications for corporate governance. Additionally, it explores how section 228 interacts with other provisions of Delaware corporate law and recent judicial interpretations that impact stockholder rights. The discussion will also highlight best practices for corporations to comply with these inspection demands while protecting sensitive information. The following sections will offer a detailed examination of these topics to inform and guide stakeholders effectively.

- Overview and Purpose of Section 228
- Stockholder Inspection Rights Under Section 228
- Procedural Requirements for Inspection Requests
- Limitations and Restrictions on Inspection
- Corporate Governance Implications
- Judicial Interpretations and Case Law
- Best Practices for Compliance

Overview and Purpose of Section 228

Section 228 of the Delaware General Corporation Law (DGCL) establishes the statutory framework that governs stockholder inspection rights. Its primary purpose is to balance the stockholders' right to access corporate records with the corporation's interest in maintaining confidentiality and operational efficiency. The statute enables stockholders to review certain books and records, which fosters transparency and accountability within Delaware corporations. This provision reflects Delaware's commitment to a flexible yet protective corporate governance regime that supports investor confidence while allowing boards to manage corporate affairs effectively.

Historical Context and Legislative Intent

The enactment of section 228 was driven by the need to formalize and clarify stockholder inspection

rights, which traditionally had been subject to common law and varied judicial interpretations. By codifying these rights, Delaware sought to provide a predictable legal standard that corporations and stockholders could rely upon. The statute aims to prevent abuses of inspection rights while ensuring that legitimate inquiries related to stockholder interests are honored. This dual objective supports Delaware's reputation as the leading jurisdiction for corporate law.

Stockholder Inspection Rights Under Section 228

Section 228 grants stockholders the right to inspect and copy specific corporate records, subject to certain conditions. These rights are crucial for stockholders to monitor management performance, investigate potential mismanagement, and make informed voting decisions. The statute delineates which stockholders can exercise these rights and the types of documents accessible.

Who May Inspect Corporate Records?

Under section 228, stockholders who have been holders of record for at least six months, or who own at least 5% of the outstanding shares, are eligible to request inspections. This eligibility criterion helps ensure that inspection rights are exercised by individuals with a legitimate interest in the corporation. Additionally, the statute accommodates stockholders who have held shares for a shorter period if they can demonstrate a proper purpose related to their stockholder status.

Types of Records Available for Inspection

The provision specifies that stockholders may inspect the corporation's stock ledger, a list of stockholders, and other books and records, including minutes of meetings and accounting records. This broad access enables stockholders to conduct due diligence and verify corporate actions. However, access to certain sensitive materials may be restricted, depending on the context and the corporation's justifications.

Procedural Requirements for Inspection Requests

Section 228 outlines detailed procedural steps that stockholders must follow to exercise their inspection rights. Compliance with these requirements ensures a structured and legally effective approach to obtaining corporate records.

Written Demand and Statement of Purpose

Stockholders must submit a written demand to the corporation, which includes a statement of the purpose for the inspection. This statement must align with the stockholder's interests and cannot be for a purpose unrelated to their status or rights as stockholders. The corporation may challenge demands that appear to be made for improper purposes.

Timing and Delivery of Demand

The statute requires that the demand be delivered to the corporation's registered office or principal place of business during regular business hours. The timing of the request is also significant, as the corporation must respond within a reasonable period. Proper delivery and timing help avoid disputes over the validity of the inspection demand.

Limitations and Restrictions on Inspection

While section 228 provides robust rights for stockholders, it also includes important limitations to protect corporate interests and prevent abuse.

Proper Purpose Requirement

The inspection must be for a proper purpose related to the stockholder's interest as an owner. Requests motivated by competitive harm, harassment, or personal curiosity may be denied. Courts often scrutinize the stated purpose to ensure it aligns with legitimate stockholder interests.

Protection of Confidential Information

Corporations may withhold inspection of records containing trade secrets, confidential business information, or documents protected by attorney-client privilege. This safeguard prevents the misuse of sensitive corporate data that could harm the corporation's competitive position or violate privacy obligations.

Judicial Remedies and Enforcement

If a corporation unlawfully denies inspection rights, stockholders may seek judicial intervention. Courts in Delaware have the authority to compel inspection and award remedies to ensure compliance with section 228. This enforcement mechanism reinforces the statute's effectiveness.

Corporate Governance Implications

The rights and limitations established by section 228 play a significant role in Delaware corporate governance. They influence the transparency of corporate operations and the accountability of directors and officers to stockholders.

Enhancing Stockholder Oversight

Access to corporate records under section 228 empowers stockholders to monitor management conduct and board decisions. This oversight function supports informed decision-making at annual meetings and during proxy contests.

Balancing Transparency and Confidentiality

Corporations must balance the transparency obligations imposed by section 228 with the need to protect sensitive information. Effective governance policies often include protocols for handling inspection requests and safeguarding confidential data.

Judicial Interpretations and Case Law

Delaware courts have developed a substantial body of case law interpreting section 228, clarifying its application and scope. These decisions provide guidance on the proper purpose requirement, the scope of accessible records, and the procedural aspects of inspection demands.

Key Court Decisions

Several landmark rulings have defined the boundaries of stockholder inspection rights under section 228. Courts have emphasized the importance of a proper purpose and the need for good faith in inspection requests. Additionally, judicial opinions have elaborated on the types of records subject to inspection and the extent to which corporations must comply.

Impact on Corporate Practices

Judicial interpretations influence how corporations draft bylaws, manage corporate records, and respond to inspection demands. These precedents help legal counsel advise clients on compliance and risk management related to section 228 requests.

Best Practices for Compliance

Corporations subject to section 228 should adopt best practices to ensure compliance while protecting their interests. These practices facilitate a smooth inspection process and minimize legal disputes.

Developing Clear Inspection Policies

Establishing internal procedures for handling inspection requests helps corporations respond consistently and promptly. Policies should address the verification of stockholder status, evaluation of the stated purpose, and protection of confidential information.

Maintaining Accurate and Accessible Records

Corporations should maintain organized and up-to-date corporate records to comply efficiently with inspection demands. Proper recordkeeping reduces delays and the risk of incomplete disclosures.

Consulting Legal Counsel

Engaging experienced Delaware corporate law attorneys ensures that inspection requests are managed in accordance with section 228 and relevant case law. Legal guidance can assist in assessing the legitimacy of demands and formulating appropriate responses.

- Verify stockholder eligibility and purpose of inspection
- Respond to written demands in a timely manner
- Protect sensitive and confidential corporate information
- Document all communications regarding inspection requests
- Train corporate officers and staff on inspection rights and procedures

Frequently Asked Questions

What is Section 228 of the Delaware General Corporation Law?

Section 228 of the Delaware General Corporation Law governs the use of electronic transmission for shareholder meetings and consents, allowing corporations to hold meetings and obtain consents through electronic means if permitted by their certificate of incorporation or bylaws.

Can Delaware corporations use electronic voting under Section 228?

Yes, Section 228 permits Delaware corporations to allow shareholders to vote electronically at meetings, provided the corporation's certificate of incorporation or bylaws authorize electronic transmission methods.

Does Section 228 apply to all types of shareholder meetings?

Section 228 applies to both annual and special shareholder meetings, allowing corporations to hold these meetings via electronic transmission or permit electronic consents.

What requirements must be met to hold a shareholder meeting electronically under Section 228?

The corporation's certificate of incorporation or bylaws must expressly authorize electronic transmissions, and the electronic system used must allow shareholders to participate and vote effectively and provide a record of the proceedings.

How does Section 228 impact shareholder consents in Delaware corporations?

Section 228 allows shareholders to give consents in writing or by electronic transmission, streamlining the process for corporate approvals without requiring physical meetings.

Are there any limitations on the use of electronic transmissions under Section 228?

Yes, while Section 228 permits electronic transmissions, the corporation must ensure that the system used provides reasonable measures to verify shareholder identity and allows shareholders to participate and vote, maintaining the integrity of the meeting process.

Additional Resources

1. Understanding Section 228: Shareholder Inspection Rights in Delaware Corporations

This book provides a comprehensive analysis of Section 228 of the Delaware General Corporation Law, focusing on shareholders' rights to inspect corporate books and records. It explores the legal standards, procedural requirements, and practical implications for both corporations and shareholders. Case studies highlight how courts have interpreted and applied Section 228 in various scenarios.

2. Delaware Corporate Law: A Guide to Section 228 and Shareholder Access

Designed for practitioners and students, this guide offers an in-depth look at shareholder access rights under Delaware law, with a particular emphasis on Section 228. It covers statutory language, legislative history, and relevant judicial decisions. The book also discusses strategies for corporations to manage inspection requests while maintaining compliance.

3. Shareholder Inspection Rights and the Delaware General Corporation Law

This title examines the evolution of shareholder inspection rights in Delaware, focusing on Section 228's provisions. It provides practical advice for shareholders seeking information and outlines the limitations and protections available to corporations. The book also compares Delaware's approach with that of other jurisdictions.

4. Corporate Governance and Section 228: Balancing Transparency and Confidentiality

This book explores the tension between shareholder transparency and corporate confidentiality under Section 228 of the Delaware General Corporation Law. It discusses how corporations can navigate inspection demands while protecting sensitive information. The author provides recommendations for drafting corporate policies aligned with legal requirements.

5. Delaware Law and Shareholder Rights: Navigating Section 228 Requests

Focused on the procedural aspects, this book guides readers through the process of making and responding to inspection requests under Section 228. It includes sample demand letters, corporate responses, and an overview of enforcement mechanisms. Legal practitioners will find useful templates and checklists to aid compliance.

6. The Impact of Section 228 on Corporate Transparency in Delaware

This scholarly work analyzes how Section 228 has influenced corporate transparency practices in

Delaware corporations. It reviews empirical data and legal trends to assess the statute's effectiveness in promoting shareholder oversight. The book also considers recent amendments and potential future reforms.

7. Practical Applications of Section 228 in Delaware Corporate Law

Aimed at legal professionals, this book offers practical insights into applying Section 228 during corporate governance disputes. It discusses common challenges, such as defining proper purpose for inspection and handling confidential information requests. Real-world examples illustrate successful and unsuccessful inspection efforts.

8. Section 228 and Shareholder Activism: Legal Tools for Accountability

This book investigates the role of Section 228 in facilitating shareholder activism in Delaware corporations. It explains how activists use inspection rights to gather information and influence corporate decision-making. The author also highlights landmark cases that have shaped the scope of inspection rights.

9. Delaware General Corporation Law: Commentary on Section 228

This legal commentary offers a detailed line-by-line analysis of Section 228, contextualizing each provision within Delaware corporate law. It serves as a reference for attorneys, judges, and scholars seeking a thorough understanding of the statute. The book includes cross-references to related sections and interpretive guidance.

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