

What is a Board of Directors?

by Jeff Mendel, Left Hand Brewing Co.

What is a Board of Directors? Do You Need One? How Does a Board Function?

Note: The Author is not an attorney, and is sharing knowledge based upon experience.

Starting a brewery, or any business for that matter, is usually a bit more complicated than one might first think. You think you just want to make and sell some beer, but before you get to that point, you need to decide what type of company you are putting together. Will your company be a sole proprietorship, a closely held family business or a corporation (public or private), comprised of several investors, some of whom may have significant investment stakes in the business?

Deciding how you will form your company is an important decision that will have long-term impacts on how you operate your business. A Board of Directors will be necessary if you are forming a corporation (C Corp, S Corp). This Board would represent the interests of the entire shareholder group, and has certain legal and fiduciary obligations. Most often the Board is made up of the company's most significant shareholders and/or close associates with expertise in key functions such as legal, sales/marketing, retail operations, finance. If the company is an LLC or partnership, a Board of Directors is not required...a Board of Advisors, which doesn't carry the legal and fiduciary obligations of a Board of Directors, may suffice.

The role and duties of the Board of Directors must be outlined in the corporate documents, oftentimes in the Articles of Incorporation and the Bylaws. It is important to note that a Board of Directors is a very different animal than an Advisory Board. The most important characteristics of a Board of Directors are that its members are elected annually by the company's shareholders, and members of the Board assume a fiduciary responsibility.

A fiduciary responsibility is defined as:

"Fiduciary duty is a legal **obligation** of the highest degree for one party to act in the best interest of another. The party charged with the **obligation** is the **fiduciary**, or one entrusted with the care of property or money."
(Investopedia.com)

What is a Board of Directors?

(page 2)

The fiduciary responsibility carries with it certain legal exposures, which one must be aware of and willing to accept in order to serve in a Director capacity. There are insurance protections for the company's Board and the individual Directors, such as D & O (Directors and Officers) insurance and umbrella (personal liability) policies. It is important to educate yourself on these policies if your company will have a Board of Directors, or if you are asked to serve as a Director.

[For additional information about insurance protection, look for "Directors and Officers Liability" by Matt Hughes in the Start A Brewery Library.]



Contributing Author

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Co-founder of Tabernash Brewing Company and the Colorado Brewers Guild, Jeff has been a partner/director at Left Hand Brewing Company, leads Beer Appreciation classes, hosts beer and food pairing classes and has led personalized tours of GABF. His previous leadership roles in the industry include Director of the Institute for Brewing Studies, and Director of the National Microbrewers Conference and Trade Show.

What is a Board of Directors? (page 2)

A Board of Directors is not involved in the day-to-day management of the business, but rather oversees the performance of senior management while providing long-range strategic and financial expertise. The Board has the responsibility of monitoring the performance of the chief executive, and if necessary enacting a change in leadership. The Board also can be involved in approving annual budgets, executive compensation, financing issues such as taking on major debt obligations or mortgages, transactions and appraisals of the company's value.

As a matter of fulfilling its obligations, a Board of Directors must have regularly scheduled meetings with accurate minutes recorded by an elected Board Secretary (a serving member of the Board) and maintained by the company in a secure file. These may be referred to for internal use, or may need to be produced for certain legal purposes. The election and term of service of the Board Secretary should be defined in the company Bylaws.

A Board of Directors can be a great asset to a small business, providing expertise to the management team while overseeing and protecting the interests of the shareholders. It is an important and often overlooked function that needs to be seriously considered by anyone planning to start an investor-funded business. There is a wealth of information on the internet covering the need for and function of a Board of Directors. I suggest researching the subject if you are considering the possibility of a Board for your company.



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