

*Steve O'Rourke's*

# *Counselor's Corner*

## *Corporate Law Issues and Answers*

*In this article, corporate governance attorney Steve O'Rourke gives practical advice on the good, bad and ugly of being a minority shareholder.*

You invested \$150,000 for a one-quarter share in RiskyTech, Inc., your cousin's great idea. But RiskyTech hasn't "gone public", been acquired, paid dividends, offered you a job, or even sent a birthday card. What have you gotten into and what do you do about it?

Experts can see opportunities that you will not. Much depends on the law of the state in which RiskyTech was formed, on the state in which you live, and on the wording of the formative documents, such as the corporate articles, the bylaws and any shareholders agreements. For discussion purposes, I'll assume California law applies and no documents change that effect.

1. Getting Advice. Don't expect the corporation's representatives to give you advice. They owe duties to the corporation and all shareholders. Telling you your particular rights in detail might be a conflict of interest. Ask your corporate attorney.
2. Getting Out. You can't just sell your shares. Securities sales are highly restricted by law, which can impose liability on you. The corporate documents often restrict sales. Your stock certificate should refer to any binding agreements restricting sale (but don't depend on the corporate to have properly placed that reference). You might have rights under securities law.
3. Getting Information. An "S" corporation must send you annually a "K-1" report of your share of income, credit and deductions. You can inspect and copy certain corporate documents for "shareholder" reasons. Your attorney can do that for you or with you, as can your accountant. A director has much broader powers of inspection. Most California corporations must send you annual financial statements.
4. Getting Heard. Shareholders meetings must occur every 15 months

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*This article first appeared in a guest-author spot in Joel Block's Growth-Logic blog. Steve O'Rourke is a frequent author, Continuing Legal Education lecturer, and guest lecturer at major MBA schools. Licensed in New York and California, his website is [www.CalCorpLaw.com](http://www.CalCorpLaw.com)*

can appoint an agent (proxy) to (Delaware says 13), but the only activity required at the meeting is a vote for directors, so don't expect to be grilling other shareholders or management. You attend and vote for you, but be careful about asking to be someone else's proxy (rules apply to that). Sometimes (let's say you own 1/5 of the shares and it's a 5-member board) the law might allow you to use a "cumulative" voting process to get one seat on the board. California assures you this right, most states don't.

5. Getting Together. You can inspect and copy a list of all the shareholders, their addresses and the number of shares each holds. Delaware even requires this to be posted at the annual meeting. If you act fast, you can plan with other shareholders to vote as a power block.

6. Getting Profits. It's extremely difficult to force a corporate board to distribute dividends. In rare cases, such a "freeze out" of the minority is a breach of "fiduciary duties" owed by the majority shareholders.

7. Getting Work. You don't have a right to a job, even if other shareholders are given jobs, and nice salaries and benefits. That can be a factor in a freeze-out complaint, but it's not enough by itself.

8. Getting Gone. Dissolving the corporation is also tough. Generally in a California corporation other than a "close corporation", one-third shareholders can force an involuntary dissolution in certain situations. For a Delaware corporation, you will usually need a majority of stockholders.

9. Getting Even. You can't sue directors and other shareholders for being nasty or evil. Or for providing company cars. Or meetings in Vegas. A corporate attorney can listen to your story and decide what can be done.

10. Getting Stuck. As the courts often say, this is business, not human rights. The time to protect yourself is BEFORE you write the check to buy those shares. After that, you are often stuck with what you asked for, or your failure to ask.

Of course, these tips are just shorthand advice to help you see that contacting an expert corporate attorney can be a smart move. An experienced expert can properly analyze your specific facts and give you a cost effective reality check, whether you are the majority holder or the minority holder.

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