



CORPORATE · GUIDE

Shareholder agreement vs. unanimous shareholder agreement

They sound almost the same, but one of them changes who actually runs the company, and who is on the hook.

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If you own a corporation with other people, you have probably heard of a shareholder agreement. You may also have heard the term "unanimous shareholder agreement," sometimes shortened to USA, and assumed it just means a shareholder agreement that everyone signed. It is more than that. A unanimous shareholder agreement is a specific kind of document with a special power under corporate law: it can actually shift control of the company away from the directors and to the shareholders, and it shifts legal responsibility along with that control. That difference is not a technicality. It changes who runs the corporation and who is liable for those decisions. Here is the plain-language version.

Start with the ordinary shareholder agreement

We cover the ordinary shareholder agreement in its own article, so briefly: it is a contract among the shareholders of a corporation that sets the rules of their relationship. It deals with how decisions get made, what happens when an owner wants to leave or dies, how shares can be sold, how disputes get broken, and so on. It is enormously valuable, and most companies with more than one owner should have one.

But notice what an ordinary shareholder agreement is at its core: a contract between the owners. It governs how the shareholders deal with each other. It does not, by itself, change the basic structure of the corporation, in which the directors are responsible for managing or supervising the management of the business.

What the "unanimous" version adds

A unanimous shareholder agreement is different because corporate law gives it a power an ordinary contract does not have. When it is properly made and agreed to by all the shareholders, a USA can restrict, in whole or in part, the powers of the directors to manage the corporation, and hand those powers to the shareholders instead.

In plain terms: a USA lets the owners take some or all of the steering wheel out of the directors' hands and hold it themselves. The shareholders can reserve decisions to themselves that would normally belong to the board. This is a real, legally recognized reallocation of power within the corporation, not just a private promise between owners.

This is why the "unanimous" part matters and is not just a label. Because the document changes the fundamental governance of the corporation and affects the directors' role, the law requires that all the shareholders be party to it. You cannot strip powers from the directors with an agreement that only some owners signed.

The part that really matters: power and liability move together

Here is the consequence that is the whole point. Directors carry legal duties and personal liabilities that come with their power to manage the company. When a USA takes a power away from the directors and gives it to the shareholders, it generally takes the matching liability with it. To the extent the shareholders have taken on a director's powers, they also take on the director's duties and potential liabilities for exercising them, and the directors are correspondingly relieved of responsibility for the decisions they no longer control.

So a USA is not just a way for owners to keep control. It is also a way of moving responsibility. That can be useful, for example where the people who really run the business want both the authority and the accountability to sit with them rather than with a nominal board. But it is also a warning: a shareholder who signs a USA that hands them director-level powers may be taking on director-level exposure they did not fully appreciate, without the buffer of the ordinary board structure between them and the decision.

It binds people who come later

Another feature that sets a USA apart: it generally binds future shareholders too. Someone who buys or receives shares in a corporation that has a USA in place is generally bound by it, even if they did not personally negotiate or sign it. The law treats the USA as attaching to the shares.

There is a practical flag in this for anyone buying into a private corporation: you need to know whether a USA exists before you become a shareholder, because you may be stepping into its restrictions and obligations whether or not anyone waved it in front of you. This is one of the things a careful buyer of shares, and their lawyer, should check.

So which one do you need?

This is the real question, and the honest answer is that it depends on what you are trying to accomplish.

- An ordinary shareholder agreement is the right tool for most owner groups. If your goal is to set fair rules among the owners, govern share transfers, plan for exits and disputes, and protect everyone's interests, an ordinary shareholder agreement does that, and it leaves the normal director-managed structure in place. Most small and mid-sized companies are well served by a strong ordinary shareholder agreement.

- A unanimous shareholder agreement is the right tool when you specifically want to change who holds the directors' powers. Common reasons include a shareholder who wants direct control over certain decisions rather than leaving them to the board, structures where it suits the owners to reallocate director responsibility and liability, and certain tax or corporate planning arrangements where shifting control matters. These are deliberate, structural choices.

A point of confusion worth clearing up: an agreement does not become a unanimous shareholder agreement just because every shareholder happened to sign it. It is a USA only if it actually does the statutory job of restricting the directors' powers and is intended to operate as one. Many agreements signed by all the owners are still just ordinary shareholder agreements. Whether you have, or want, a true USA is a question of substance, not of how many signatures are on the page.

Why this is not a do-it-yourself decision

Because a unanimous shareholder agreement reallocates director power, moves liability with it, and binds present and future shareholders, getting it wrong has real consequences. Draft it carelessly and you can leave gaps about who is actually responsible for what, or saddle a shareholder with exposure they did not understand, or fail to achieve the control shift you wanted. There can also be tax and structuring dimensions that need an accountant or tax advisor alongside the legal work. The stakes and the moving parts are why a USA is worth getting properly drafted rather than adapted from a template.

Bottom line

An ordinary shareholder agreement is a contract among the owners about how they deal with each other, and it leaves the directors running the company. A unanimous shareholder agreement goes further: it can lawfully take powers away from the directors and give them to the shareholders, and the matching liability moves with the power. It must include all the shareholders, and it binds people who acquire shares later. Most owner groups need a strong ordinary shareholder agreement; a unanimous shareholder agreement is for the specific situation where you actually want to change who controls and answers for the company's decisions. If you are not sure which one fits your situation, that is exactly the conversation to have before anything gets signed. Talk to us.

This is general information about shareholder agreements and unanimous shareholder agreements in Ontario, not legal or tax advice for your corporation. Which document is right, and how it should be drafted, depends on your specific situation. Talk to us, and where needed your accountant, before you put either in place.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

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