

## **New Nevada Corporate Laws You Need to Know**

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### **Bearer Shares Outlawed**

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### **Ownership Disclosure Procedure Instituted**

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### **Stronger Asset Protection for Corporations**

The Nevada legislature made some significant changes to Nevada's Corporation Code in its most recent session. You need to know these new rules.

The biggest changes, which are effective July 1, 2007, will be discussed in this article. As is often the case, the rules and regulations used to carry out the new laws will be implemented over time, and we will keep you informed of them as they arise. (If you or your friends would like a free subscription to the Corporate Direct Report please [click here](#).)

For now, there are three important changes and several miscellaneous new rules you need to know about immediately.

#### **1. Bearer Shares Outlawed**

Bearer shares are stock certificates which, instead of listing the owner by name, list the owner only as "The Bearer." The supposed advantage of this was to maintain privacy of ownership. The Bearer was whoever held the certificate, so shares could be transferred from one person to the next without notice to anyone or recordation anywhere.

I have never really liked the whole notion of bearer shares. If someone comes to me with the bearer certificate, how do I know if the certificate wasn't stolen or forged? The idea of simply handing a certificate from one person to the next may sound nice and easy (and a bit crafty) but such a transfer can create all sorts of tax problems. If you hand a certificate representing a million dollar business over to your friend you've made a significant gift, for which gift taxes are due. And when by prearrangement he hands the certificate back to you there's another taxable event. Worse yet, what if your 'friend' wouldn't give you the certificate back?

The big reason bearer shares were outlawed has to do with fraud. Less than ethical corporate promoters would sell their less than ethical corporate clients on the idea that by simply handing the bearer certificate over to a friend they could deny a judgment creditor (one with a court awarded judgment) access to the business or other asset. Of course, such a transfer is a fraudulent conveyance, meaning that a court could overturn the transfer if anyone ever found out about it. The problem was that it could be very difficult to find out about it. As a result, bearer shares enabled a certain class of people to commit fraud. The Nevada Legislature was right in outlawing bearer shares.

## 2. New Ownership Disclosure Procedures

The use of Nevada corporations and other entities to commit fraud is also the reason for this next big change. It is unfortunate that privacy of entity ownership is now somewhat compromised, but when people continually abuse the system something will usually give.

Apparently the federal and law enforcement authorities pushing for these changes played the terrorist card—that insanely bad people were using the privacy of Nevada entities to ultimately greatly harm us. While it is my opinion that this red hot card gets played a little too often these days, there can be no denying that domestic bad guys, your average American scam artist, used Nevada privacy for nefarious purposes.

But the new law for corporations, LLC's, LP's, business trusts and the like is not as bad as you may expect. Here is the rule for corporations:

1. In addition to any records required to be kept at the registered office pursuant to NRS 78.105, a corporation that is not a publicly traded corporation shall maintain at its registered office or principal place of business in this State:
  - a. A current list of its owners of record; or
  - b. A statement indicating where such a list is maintained.
2. The corporation shall:
  - a. Provide the Secretary of State with the name and contact information of the custodian of the list described in subsection 1. The information required pursuant to this paragraph shall be kept confidential by the Secretary of State.
  - b. Provide written notice to the Secretary of State within 10 days after any change in the information contained in the list described in subsection 1.
3. Upon the request of any law enforcement agency in the course of a criminal investigation, the Secretary of State may require a corporation to:
  - a. Submit to the Secretary of State, within 3 business days, a copy of the list required to be maintained pursuant to subsection 1; or
  - b. Answer any interrogatory submitted by the Secretary of State that will assist in the criminal investigation.
4. If a corporation fails to comply with any requirement pursuant to subsection 3, the Secretary of State may take any action necessary, including, without limitation, the suspension or revocation of the corporate charter
5. The Secretary of State shall not reinstate or revive a charter that was revoked or suspended pursuant to subsection 4 unless:
  - a. The corporation complies with the requirements of subsection 3; or
  - b. The law enforcement agency conducting the investigation advises the Secretary of State to reinstate or revive the corporate charter.
6. The Secretary of State may adopt regulations to administer the provisions of this section.

It is important to note that Nevada is not asking for the owners of the entity up front. The requirement is that the registered agent either keeps a list of the owners or the name of a contact person who has a list of the owners. The Secretary of State will request the ownership list only

when a law enforcement agency needs it for a criminal investigation. Not for a civil case mind you, but only for a criminal case.

What this means is that if your business and asset protection plans are on the up and up, your privacy will be protected. Or, to put it another way, if you are engaged in fraud and other crimes, our firm will be happy to comply with these new rules. You may even want to take your bad business somewhere else to begin with. But for the good guys, you will still maintain your privacy.

Two points are worthy of further note. First, for limited partnerships the only owners the new legislation aims for are the general partners. While the generals do indeed control a limited partnership, frequently they only own 2% or less of the entity, and are usually just a management corporation or LLC. The limited partners will own 98% of the limited partnership and, except for management, are the economic beneficiaries of the entity.

Whether the new law intentionally just wanted information only on the general partners or will be corrected to include the limited partners' identities remains to be seen. But for now, people very concerned about privacy may want to use Nevada limited partnerships.

The second point has to do with Wyoming. The corporate law of Wyoming does not have such an ownership disclosure procedure. Yet.

Apparently the federal authorities are working to get similar legislation approved in other states, including Wyoming. We will keep you informed of such developments. Until then, once again, those very concerned about privacy may want to use Wyoming entities.

### 3. Stronger Asset Protection for Nevada Corporation Shares

One of the strongest asset protection laws on the books is the charging order. This law holds that a judgment creditor of a member of an LLC or a partner of a limited partnership can't acquire those interests directly and use that control to force a sale of the assets. Instead, they only obtain the rights of an assignee of the membership or partnership interest, meaning they are only entitled to distributions from the entity. They can't vote to sell the assets to satisfy their claim. They can't even vote to increase distributions. They are stuck waiting for future distributions, which may or may not come. The charging order is a very effective deterrent to frivolous litigation, especially in Nevada and Wyoming LLC's and LP's where the charging order is the exclusive remedy.

Up until now, the charging order had never applied to shares of corporate stock. So, for example, if John got in a car wreck and his insurance did not cover him, the victim could proceed against all of his assets. If John owes 75% of a profitable corporation the victim could get control of the shares and vote to sell the business to satisfy the claim. This certainly is not fair to Jane, the 25% owner of the business, who worked hard to build it up only to see it sold out from under her.

With Nevada's new law the charging order now applies to shares of corporations. This is an excellent development.

There are several important rules to point out. The charging order protection only applies to corporations that have more than one and fewer than 75 shareholders. If you own 100% of a profitable corporation you may well want to consider issuing a nominal amount of shares to a relative or friend in order to gain the better protection. As well, the new law does not apply to subsidiaries of publically traded companies or to professional corporations.

The charging order protection for corporate shares does not apply to any litigation filed before July 1, 2007, and it does not supersede any private agreement between a stockholder and a

creditor. This new law puts Nevada at the forefront of asset protection states. While Wyoming will most probably follow suit, until they do Nevada is the state in which to incorporate. Even though Nevada's initial and annual filing fees are somewhat higher than Wyoming's fees, the better protection is well worth the extra cost.

#### 4. Miscellaneous New Rules

The new law dealt extensively with the conduct of restricted agents. A new category was created that of the commercial registered agent, which shall be registered with state. Registered agents that don't comply with rules to be established by the Secretary of State's office can be banned from the business. In keeping with the new disclosure rules, registered agents must keep a company's stock ledger for three years following the registration or termination of the agent or dissolution of the company.

The new law allows for professional LLCs. Many doctors, lawyers, CPAs and the like have wanted the flexibility of operating their practices as an LLC but were prohibited from doing so. The new law follows the trend of many states of now allowing for professional LLCs.

The importance of the corporate election of directors was underscored in the new law. Companies that fail to elect directors within 18 months beware. The owners of 15% of the corporate stock can go to court to force such an election.

The reinstatement of entities was made more effective. A corporation, LLC or LP that fails to pay its annual fees to the state can lose its right to do business. Reinstatement involves paying back fees to bring the entity current with the state. The new law provides that reinstatement reinstates the entity's right to do business as if the entity had been current all along.

As we have noticed before, the law is a dynamic and ever changing area. Nevada's new laws prove the point. Once again, if you or a friend would like to continue receiving these updates please [click here](#).

We will keep you informed.