

How Nevada Is Climbing to the Top for Incorporation



a **TRIFORCE** company

Why is Nevada considered the most business-friendly state in the U.S.?

Turns out there are several reasons why:

#1: Tax-Free State

Nevada doesn't tax the income of its corporations. Unlike most states, Nevada has taken a 'pro-business' stance. Its legislature has consistently recognized that taxing the income of its businesses or its citizens would be the wrong approach for maintaining a healthy state economy. Another reason you should consider Nevada not only as your corporate home but also as your personal residence... is that it only takes six weeks to establish residency and escape the state income taxes so prevalent across the country.

Beyond paying no income tax, your Nevada corporation will have very few other taxes to contend with. You will be required to pay payroll tax if you have employees and may be required to pay sales tax if your Nevada corporation is selling products in Nevada. And in 2015, the Nevada legislature enacted the Nevada Revenue Plan, which includes a quarterly Commerce Tax.

But don't take our word for it – here's a list from the Nevada Secretary of State's Web site, emphasizing the key benefits of incorporating here:

- No Corporate Income Tax
- No Taxes on Corporate Shares
- No Franchise Tax
- No Personal Income Tax
- Nominal Annual Fees
- Nevada corporations may purchase, hold, sell or transfer shares of its own stock.
- Nevada corporations may issue stock for capital, services, personal property, or real estate, including leases and options. The directors may determine the value of any of these transactions, and their decision is final.
- No Franchise Tax on Income
- No Inheritance or Gift Tax
- No Unitary Tax
- No Estate Tax
- Competitive Sales and Property Tax Rates
- Minimal Employer Payroll Tax - 0.7% of gross wages with deductions for employer paid health insurance
- Nevada's Business Court
- Developed on the Delaware model, the Business Court in Nevada minimizes the time, cost and risks of commercial litigation by:
 - o Early, comprehensive case management
 - o Active judicial participation in settlement
 - o Priority for hearing settings to avoid business disruption
 - o Predictability of legal decisions in commercial matters

Additional advantages:

- Stockholders, directors, and officers don't have to live or hold meetings in Nevada, or even be U.S. citizens.
- Directors don't have to be stockholders.
- Officers and directors of a Nevada corporation can be protected from personal liability for lawful acts of the corporation.
- Nevada corporations may purchase, hold, sell, or transfer shares of its own stock.
- Nevada corporations may issue stock for capital, services, personal property, or real estate, including leases and options. The directors may determine the value of any of these transactions, and their decision is final

#2: Asset Protection over Other States

Most states in the U.S. have adopted corporate statutes that limit the liability of corporate representatives, including the officers, directors, and stockholders. Today, however, many states are allowing lawsuits to penetrate a corporation's veil of protection. California, for example, views corporate structuring quite differently than Nevada. Whereas C corporations separate the individuals controlling the corporations from the entities themselves, California courts often make people responsible for corporate misfortunes.

Unlike Nevada's stance, more times than not, California courts will 'pierce the corporate veil,' making the individuals vulnerable and scrutinizing people for corporate matters. Outside of Nevada, more and more directors and officers of corporations are being sued for the corporation's actions. This means that an officer's personal assets could be attacked, leaving his/ her home, savings and assets completely at risk. If that's not reason enough to make Nevada your corporate base, I don't know what is.

Unlike other states, Nevada doesn't believe that the individuals controlling corporations should be in danger of losing their personal assets because of corporate matters. Nevada also doesn't believe that corporations should be responsible for the personal liabilities of its controllers. Nevada's courts have taken a firm stand to prevent lawsuits against a corporation from personally affecting the corporation's representatives.

Corporate officers and members are only in danger of personal liability if fraud has been perpetrated. Barring this, corporations can be sued, file bankruptcy or be involved in any other unfortunate activity and its owners or representatives are still protected.

The main thing to remember here is that, if your corporation does get sued, the initiator of the suit must bring the action against the corporation in its state of domicile. This is why it's important to consider where you set up your corporation before you set it up. Nevada has taken a strong stand to protect the personal liability of a corporation's participants and as such, is one of the best places to incorporate.

Nevada laws provide protection for the corporate officers and directors in specific ways, as opposed to protecting at-large shareholders. For example, under NRS 78.7502, a corporation may indemnify officers and directors for any action, whether, "...civil, criminal, administrative, or investigative..." if they are a "...director, officer, employee or agent..." "...against expenses, including attorney's fees, judgments, fines and amounts paid in settlement..." Similarly, under NRS 78.752, "A corporation may purchase and maintain insurance or make other financial arrangements on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise for any liability asserted against him, and liability and expenses incurred by him, in his capacity as a director, officer, employee or agent, or arising out of his status as such, whether or not the corporation has the authority to indemnify him against such liability and expenses."

Except in the instance of fraud by a corporate principle, the decision by a Board of Directors to indemnify a principal is final and may not be set aside judicially. This kind of protection is afforded to Nevada corporate principals even if they were negligent in the performance of their duties as corporate officers and directors. It's these types of things that attest to the determination of the Nevada Legislature to continue along a course that is favorable to the tradition of protection of corporate principals in Nevada.

What Nevada Case Law Says

Since 1957, the only time Nevada courts will even consider pierce the corporate veil, is when there's been a perpetration of fraud by a corporate principal that has damaged another party. What's significant about this rule is that, while the courts have heard cases in which corporations have been accused of many things (like responsibility for personal injuries, the failure to maintain corporate formalities, breaches of contract, non-issuance of stock, failing to select officers and directors, or even not having meetings), none of these things in and of themselves have caused a Nevada court to set aside the corporate veil.

Conversely, courts in other states consistently pierce the corporate veil for any one or more of the infractions listed above, as well as for undercapitalization, poor record-keeping, commingling of personal and business funds, signing contracts without designating corporate title, and business bankruptcy. The essential difference is that, in other states, it's been the intention of the legislatures to forcefully protect the interests of non-principal, at-large shareholders.

In contrast, it's always been the intention of the Nevada legislature, since its first session in 1864, to allow businesses to operate freely and with the assurance that, so long as they were not breaking the law to the detriment or harm of another party, they could rely on the protections afforded corporate principals by that form of business entity.

A review of Nevada case law also reveals that, while corporations have existed in Nevada since before

it was even admitted as a state to the Union, it wasn't until the 1950s that Nevada's Supreme Court began to seriously consider setting aside the corporate veil as a means of compensating someone that had been damaged by the acts of a corporation's principals. (See **Nevada Tax Commission v. Hicks, 73 Nev. 115, 310 P.2d 852 (2957)**)

Even so, Nevada courts have traditionally been unwilling to pierce the corporate veil, except in those various instances in which fraud has been perpetrated to the damage of another and the circumstances are particularly deplorable. 1987 marked the first and only time a Nevada court has actually pierced the corporate veil, since 1978. (See **Polaris Industries Corp v. Kaplan, 103 Nev. 598, 747 P.2d 884 (1987)** and **Mosa v. Wilson- Bates Furniture Co., 94 Nev. 521, 583 P.2d 453 (1978)**)

To illustrate just how important it is that you incorporate in Nevada, consider the following information about piercing the corporate veil in Nevada, as opposed to other states. This court case clearly demonstrates the value inherent in Nevada statutes.

In 1983, the Supreme Court of Nevada rejected an attempt to pierce the corporate veil in **Rowland vs. Lepire (99 NV 308, 662 p. 2d 1332 (1983))**. The defendant corporation was capitalized with a mere \$1,100 (but was entering into contracts worth tens of thousands of dollars), had no directors or shareholders, had held no organizational meetings of any kind, kept no formal minutes or records of corporate transactions, and drove the net worth of the corporation into negative numbers. No dividends were paid out to shareholders. No officers received salaries. No corporate record book even existed. Despite all of this, the court ruled that, "Although the evidence does show that the corporation was undercapitalized and that there was little existence separate and apart from (the two key shareholders) . . . the evidence was insufficient to support a finding that appellants were the alter ego of the corporation."

What the court basically found was that, because the corporation did have a contractor's license (which allowed it to legally contract to perform such services), had a checking account not commingled with those of its principals, and transacted business with the State's Employment Security Division, the corporation was not a sham or merely the alter ego of the principals. The evidence was thus considered insufficient to prove that the individuals were the 'alter ego' of the corporation or, in other words, that the officers should be considered the same as the corporation.

This is because Nevada has a stringent three-prong test to prove that one is an alter ego of the corporation. According to Nevada Revised Statute Section 78.747:

Except as otherwise provided by specific statute, no stockholder, director, or officer of a corporation is individually liable for a debt or liability of the corporation unless said person acts as the alter ego of the corporation. A stockholder, director or officer is considered the alter ego of a corporation only if all of the following are true:

1. The corporation is influenced and governed by the person asserted to be the alter ego.
2. There is such unity of interest and ownership that the corporation and the individual are inseparable from the other.
3. Adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote a manifest injustice.

Also, according to this section of the statute, the question of whether a stockholder, director, or officer acts as the alter ego of a corporation must be determined by the court as a matter of law. With this test, the burden of proof rests entirely upon the plaintiff(s). All three parts of the test must be proven to pierce the corporate veil; failure to prove any one of the three requirements will result in failure to pierce the veil. Faced with such a huge task, lawyers often abandon efforts before they even begin.

Regardless of this, it's not recommended that you ignore corporate record-keeping. The need to maintain corporate records goes beyond the possibility of having the corporate veil pierced. There are various instances in which someone will want to look at the records of the corporation, such as tax agency audits, investors looking into the viability of the corporation, or a principal needing to see history on how the company has dealt with specific situations in the past.

#3: Charging Order Protection on Corporate Ownership

As you've seen so far, Nevada is a very unique state and the laws that protect the owners of businesses in Nevada just keep getting better. In the 2007 legislature, a new statute was passed that made owning a Nevada corporation even more desirable. Nevada included a provision that adds charging protection for the stock of closely held corporation, between two and 75 shareholders. Closely held corporations are companies that are not publicly traded on a national stock exchange but held privately, which is the most common form of ownership. Charging order protection for stock of closely held corporation protects innocent shareholders from judgments against their fellow shareholders. Nevada is the only state to offer this protection!

Here's how the law works in your favor:

If one of your partners in business gets sued personally and there's a judgment against them, their creditor will not be able to take over the ownership of your partners shares of stock, thereby keeping the current ownership structure intact. Imagine if your partner had 51% ownership of your business and they lost their stock to a creditor. You may be out of business before you know it.

13 Facts That Make A Nevada Corporation's Asset Protection Ultra-Strong

- 1.** There's never been a case in which a Nevada corporation's veil has been pierced when the corporation has been properly run.
- 2.** Nevada courts have pierced a corporate veil only one time in the last 25 years, and that was because of fraud resulting in harm to another party.
- 3.** Nevada courts have developed a strong record of case law that protects the corporate veil, making it one of the most difficult in the country to pierce.
- 4.** Nevada is the only state that can indemnify corporate principals and protect their privacy. Officers and directors are only required to list their names in public records.
- 5.** Nevada requires that only a corporation's president, secretary, treasurer, and one director be listed on the Initial List of Officers, as well as on the annual list to renew the corporation's filings with the state.
- 6.** Nevada's indemnification laws vary from those of other states in that they can limit the personal liability of corporate principals by not requiring an officer or director to prevail in a lawsuit as a defendant before the corporation can indemnify him or her. Most states follow Delaware in requiring an officer or director to prevail in a lawsuit before the corporation is even allowed to indemnify that person.
- 7.** Nevada requires only minimal disclosure of personal information at the time of start-up and at the time of annual filings. This ensures the privacy of individuals.
- 8.** Nevada is the only state that does not share information with the Internal Revenue Service by means of a formal agreement.
- 9.** Nevada does not require the immediate filing of an amended list of officers or directors if new officers or directors are elected or appointed after filing and during the year.
- 10.** A Nevada corporation may be formed for the express purpose of limiting a person's liability in a lawful business venture.
- 11.** Unlike many states, and as an added dimension to the indemnification of corporate principals, Nevada law allows for the establishment of alternate financial arrangements to protect corporate officers and directors. These include but are not limited to the creation of a trust fund for such eventuality, self-insurance, securing the obligation through the granting of a lien on corporate assets, or placing a letter of credit, surety or guarantee, to be drawn on in time of need. The value of this is in giving the corporation additional resources to draw upon to protect its officers and directors in the event of a lawsuit.
- 12.** Nevada law requires no statutory minimum capitalization at the time of start-up, thereby removing this as a means of piercing a corporation's protective shield. Capitalization can be done with tangible or intangible property, including services to be rendered to the corporation in the future.
- 13.** Through broad empowerment allowances, Nevada law specifically provides for a corporation's principals to be given control over such things as the establishment of stock privileges, voting rights, the issuance of shares, etc., through provisions in the articles. These infuse the directors with tremendous flexibility and control over the affairs of the corporation since major changes in policy and procedure can be accomplished through an amendment to the articles rather than relying solely on the statutes.

#4: Financial Privacy

Another significant way in which Nevada's statutes protect corporate principals lies more in what isn't required, rather than in what is required. In many states, annual corporate filings require the inclusion of significant financial information about both the corporation and its principals. Nevada, however, takes corporate privacy very seriously. Nevada statutes outline only minimal filing requirements, so the Secretary of State's office (which is responsible for corporations) does not ask for detailed information.

The fact that the State of Nevada collects such limited information at the time of filing means there's little to share with anyone, and that includes anyone trying to make a claim against you. For example, with a subpoena from a court of proper jurisdiction, any investigative agency or attorney could access any files held by a state agency as a matter of executing the court's power. But if you incorporate in Nevada, they won't find out much.

Minimal filing requirements cannot be overlooked as contributing to a powerful corporate haven. It's a rather simple solution to one of the most potentially invasive aspects of corporate ownership.

#5: Flexibility in Controlling Corporate Operations and Functions

Another attractive aspect of Nevada corporate law is the tremendous flexibility afforded to corporate principals, especially directors, in controlling the operations and functions of the corporation. In addition to specific protection through indemnification, there is also great flexibility in determining just how much control the directors will have in directing the business of the corporation. This is accomplished through statutory allowances regarding the primary authority of what's stated in the Articles of Incorporation or the by-laws of a corporation in determining how a corporation will function.

These allowances are stated to give these primary documents more direct authority over that specific corporation than even the statutes, so long as these issues are directly addressed in the by-laws or articles and are not contrary to public policy.

This is in direct contrast to many other states whose laws set out specific guidelines and limitations for director actions in many areas of corporate activity, such as voting and the formalization of corporate decisions. The degree of autonomy with which Nevada imbues directors and shareholders makes direct control of the corporation much more subject to the desires and intentions of those principals than in many other states

#6: No Minimum Capital Requirements

Comparison of state statutes between Nevada and other key incorporation states:

	Nevada	NY	CA	TX	DE
State laws allow for piercing the corporate veil	Yes (fraud only)	Yes	Yes	Yes	Yes
Courts regularly uphold piercing statutes	No	Yes	Yes	Yes	Yes
Statutes provide for the permissible indemnification of officers and directors	Yes	No	No	No	Yes
State laws provide for minimal capitalization of corporations	Yes	No	No	No	No
State laws provide for ease of incorporation through minimal filing requirements	Yes	No	No	No	Yes

A Nevada corporation can be organized with little capital if desired. Many states require that a corporation have at least \$1,000 in capital

#7: One-Person Requirement

One person can hold the offices of president, secretary, and treasurer, and be the sole director. Many states require at least three officers and/or directors. Thus, there is no need to bring other persons into a Nevada corporation if the owner does not desire it.

#8: Low Cost

Nevada is one of the lowest cost states in which to incorporate, charging a fee of only \$150 per year to file the List of Officers with the Secretary of State as public record. This is the only document that indicates the president, secretary, treasurer and director(s) of the company and must be filed annually. Beyond that, you may need a state business license which costs \$200 per year for an LLC and \$500 per year for a corporation, along with any business license required by the municipality in which your business is located. (Note that these fees are subject to change.)

If you don't have a physical location in Nevada, Nevada statutes require that you use the services of a registered agent, available for an annual fee. The registered agent can file your Articles of Incorporation and List of Officers with the Secretary of State for you as well.

Once you're established, it will cost \$350 a year for an LLC and \$650 a year for a corporation (plus registered agent fees and/or local business licenses, if needed) in future years for the right to all the benefits of a Nevada corporation.

#9: No Need to Come to Nevada

In the U.S., you can incorporate your business in any state you choose. By doing so, if you're brought into a court of law, you'll be governed under the laws of the state of incorporation. You can use and maintain a Nevada corporation even if you're not a resident of Nevada and can establish one without ever visiting Nevada.

A corporation can be formed by mail, fax, or phone, and the person incorporating never has to visit the state, even to conduct annual meetings. Meetings can be held anywhere in the world at the option of the director(s). You will however need to set up business operations in Nevada if you attain tax benefits from using a Nevada corporation.

Working in conjunction with a competent registered agent can make this process much simpler. Your registered agent assists by providing your corporation with the services necessary to allow you to establish a base in Nevada. They'll also save you time and the expense of traveling to the state to acquire an office for your corporation. By providing you with the use of their facilities and staff, the registered agent provides your Nevada office the presence it needs, while also completing all necessary corporate paperwork for you.

One point of note – if you incorporate in Nevada and choose to do business in another state, you may need to file as a foreign corporation in the new state. Since every state has different requirements for filing, you'll need to contact the Secretary of State's office =. You'll also be held to the state tax code if you decide to do business there.

How do you know if you need to file in another state as a foreign corporation? As a rule, if you have a storefront or a license (such as a contractor) in that state, you must file in order to be authorized to do business there. Some businesses, such as Internet marketing, network marketing or a consulting business operating in several states, can set up their base of operation anywhere.

For instance, if you're sitting on a beach in Tahiti and have a network marketing business and someone calls you, can you conduct business there? Absolutely. This means no matter where you are, you can be making money, and don't need to foreign file in every state where you do business. The same is true of a web site business. This differs from a restaurant located in Seattle, Washington, for example. If the restaurant isn't open, you don't make money, no matter where you are.

#10: Beneficial Nevada Laws that Carry Across State Borders

When you're operating a business in your home state, you still have the choice of deciding in which state to incorporate. Although it would be nice to take advantage of the tax benefits of other states rather than your own, you're subject to local and state tax in the state in which you're doing business. That's, why it's best to incorporate in Nevada. You'd have the advantage of Nevada law with you wherever you go!

One of the best things about a corporation, is its durability. Not only in terms of time but, in terms of weathering the storms of litigation.. What advantages does this afford the owners of a Nevada corporation who live in and do business through that corporation in another state?

First, and most importantly, if a Nevada corporation is sued in another state and is properly registered to do business in that state, that state's courts will use Nevada law to adjudicate certain issues. Second, when you incorporate in Nevada, which has powerful laws protecting its corporations, you can take those protections with you across state lines. This dramatically enhances the protection (limitation of liability) your corporation can give you as a corporate principal.

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When Nevada Law Applies Outside Its Own Borders

Remember that a Nevada corporation can conduct its internal business according to the laws of Nevada, no matter where its owners decide to live, work, or conduct the business of their corporation.

This includes matters such as:

1. When and where to have corporate meetings
2. The issuance of dividends
3. Purchase, lease, or acquisition of property by the corporation
4. Entering into contracts for and on behalf of the corporation
5. Election of officers
6. Appointment of directors

Choice-of-law doctrines are widely accepted and understood across the country. These doctrines require that if a 'foreign' corporation is registered to do business in the home state of a corporation's principals, the home state's courts use the laws of the foreign corporation's state to adjudicate various aspects of a case if that foreign corporation is sued in the home state. The choice-of-law doctrine is most often augmented through decisions made by the courts, as opposed to specific statutes. When does it apply?

The Nevada Supreme Court has said that, "... a crucial function of choice-of-law rules is that their application should further harmonious relations between states and facilitate commercial interaction between them. If we disregard this important conflict function...we would perhaps rarely find another state's laws controlling. Consequently, the clear intentions of the parties would be defeated."

Do Your Homework

With so many asset and liability protection challenges facing us today, we must remain sharp and creative. Don't take others' advice blindly. Do your homework with respect to managing the affairs of the corporation you'll control. If you're not properly informed, even your accountants or lawyers can end up giving you the wrong advice on corporations.

Nevada corporate statutes differ from most states in the country, and these professionals may be unaware of the unique advantages Nevada offers. Again, while your counsel may have the best of intentions, a lack of familiarity with the specifics can be dangerous.

Registered Agent Requirements

According to Nevada Revised Statute 78.030, corporations are required to have a registered agent at the time of formation and throughout the duration of the corporation's existence.

NRS 78.030 Filing of Articles of Incorporation and certificate of acceptance of appointment of registered agent.

1. One or more persons may establish a corporation for the transaction of any lawful business, or to promote or conduct any legitimate object or purpose, pursuant and subject to the requirements of this chapter, by:
 - a. Executing and filing in the office of the Secretary of State Articles of Incorporation; and
 - b. Filing a certificate of acceptance of appointment, executed by the registered agent of the corporation, in the office of the Secretary of State.

The registered agent's location is where any government correspondence or legal documentation is sent. As part of their responsibilities to the state, registered agents are required to have regular business hours five days a week and to have a location accessible to the general public. Just as registered agents have responsibilities to the state, corporations are required to supply certain information to their registered agent.

The specific documentation that must remain in the corporation's file at the registered agent includes a copy of the Articles of Incorporation, the bylaws signed by an officer, and the stock ledger statement. The stock ledger statement indicates where the stock ledger (which lists the owners of the corporation) is located.

Your registered agent serves as your corporation's 'public face' by solidifying a presence at your location. They should draw attention to your corporation's 'headquarters' as much as possible. To firmly establish your registered agent as a legitimate headquarters, your corporation will need to communicate the agent's address as the corporation's physical address.

Remember, your registered agent is a buffer between the corporation and yourself. Anyone trying to locate you or the corporation must first start with your registered agent. Documents held with your registered agent can be inspected by a shareholder of the corporation with valid identification or by anyone with a court order. If a corporation neglects to use a registered agent, the state of Nevada imposes a fine of \$100 to \$500, according to state code NRS 78.090. Nevada Revised Statutes Sections 78.090 through 78.110 spell out the requirements and the functions of your registered agent. Section 78.105 goes into the maintenance of records held at the registered agent's office. This section states that a corporation must maintain the required records, as discussed earlier, in written form or in another form capable of conversion into written form within a 'reasonable' time.

Although there are no penalties placed on the registered agent, corporations are subject to fines and penalties by the state if they choose to be negligent. Sub-section 5 of Sec. 78.105 states that every corporation that refuses or neglects to keep the stock ledger or duplicate copy open for inspection during business hours will have to pay the State \$25 for every day of such neglect or refusal.

Corporate Advantage

Isn't it time for you to take advantage of the favorable tax laws and friendly business structures afforded to such Nevada corporations as Intuit®, Amazon.com®, Porsche®, Starbucks®, Microsoft Licensing®, Harley Davidson Finance® and Home Shopping Network®? Even major celebrities like Madonna, Elon Musk and Tony Robbins have incorporated in Nevada.

Incorporate today and put your business in the same league as the Fortune 500! Incorporating gives sole proprietors and small business owners the same benefits that major corporations enjoy. From limited liability to tax savings and asset protection, these benefits can help any entrepreneur save money and limit exposure.

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Dream Tank USA.

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(833) DREAM-12

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