

Overview of Where to Incorporate

Corporations are creations of state law. Because state laws differ, there may be advantages and disadvantages of incorporating in a particular state. If you decide to incorporate you must first decide where to incorporate. If your corporation will operate an active business in one state, then it is probably best to incorporate in the state where it will do business. An out-of-state corporation must register as a foreign corporation in your home state. This subjects the corporation to your home state laws and to some extent nullifies the advantages of incorporating elsewhere. If your corporation has flexibility as to where to incorporate, then Delaware is a good choice. America's largest corporations are Delaware corporations. More smaller corporations are Nevada corporations. Nevada has become America's incorporation capital. Nevada's corporate laws are matched by Wyoming's. Some benefits of Nevada:

- **Nevada state income** is tax-free. Other states are more costly tax-wise if you expect big profits.
- **Nevada won't share** tax information with the IRS. Other states do.
- **Nevada has no** franchise taxes.
- **Nevada requires only a current list** of officers and directors. Most states require annual disclosures. (Stockholder meeting dates, business localities, value of shares issued, etc.)
- **Nevada's corporate officers and directors** have more protection. For example, Nevada corporations can eliminate or limit the personal liability of officers and directors for breach of fiduciary duty (other than paying improper dividends). Nevada also has a shorter statute of limitations to sue officers and directors and offer more opportunities for director indemnification.
- **Nevada allows broad indemnities** to others who incur liability on behalf of the corporation. Insurance trust funds, self-insurance and granting directors a security interest or lien on corporate assets to guarantee their indemnifications are some examples. For asset protection, corporate officers and directors can lien the corporate assets to indemnify themselves. This gives them a priority claim over the corporate assets without the need to show an exchange of funds. This is a critical strategy for asset protection. Other states invalidate such self-serving legal arrangements. Absent fraud, these financial arrangements in Nevada are conclusive and cannot be voided by the courts. Nevada corporate shares are also treated as LLC memberships. The owners' creditors can only gain a charging order.
- **Many business owners set up** Nevada corporations. You can find many firms who offer incorporation and resident agent services to their nationwide clients. You can also order *How to Establish and Operate Your Own Nevada Corporation* (Garrett Publishing) to learn how to quickly and inexpensively form your own Nevada corporation. Of course, Presser Goldstein sets up corporations in every state and our corporations include those most important safeguards.