


NEVADA ENACTS IMPORTANT AMENDMENTS TO ITS CORPORATION AND LLC LAWS



“Anyone with an interest in Nevada’s business entity laws will want to read A.B. 207 and S.B. 427 in their entirety.”

Nevada is an important and popular home state for corporations and LLCs and there’s always interest when amendments are made to its corporation and LLC laws. Below is a look at some of the changes made to those laws in 2019.

ASSEMBLY BILL 207 ADDS FOUR NEW SECTIONS

A.B. 207 amends Ch. 78 (governing private corporations), Ch. 92A (governing publicly-traded corporations) and Ch. 86 (governing LLCs). All amendments are effective October 1, 2019. Included in A.B. 207 are the following new sections which may be of interest to any person who owns, manages, or advises Nevada corporations or LLCs:

Forum Selection Clause

A new section is added to Ch. 78 authorizing corporations to provide in their articles of incorporation or [bylaws](#) that internal actions must be brought in the court(s) specified in the articles or bylaws, at least one of which must be a court in Nevada. Thus, Nevada joins a growing number of states that statutorily provide for forum selection clauses.

Intermediate Form Merger

A new section is added to Ch. 92A under which the stockholders of a Nevada [publicly-traded corporation](#) do not have to approve a merger where the voting power of the corporation’s shares held by the other party to the merger is sufficient to [approve the merger](#). The plan of merger must expressly require or permit the merger to be effected under this section and certain other requirements must be met. With this addition, Nevada joins several other states in authorizing a so-called “intermediate form merger”, which was first authorized by Delaware in Sec. 251(h) of the Delaware General Corporation Law. However, the Nevada procedure differs from Delaware’s in some respects including that it can be used even where the ownership threshold is not met via an exchange or tender offer.

Alter-Ego for LLCs

A new section is added to the LLC law stating that unless otherwise provided in the statute or operating agreement, no person other than the LLC is individually liable for a debt or liability of the LLC unless the person acts as the LLC’s alter ego. A person acts as an alter ego if the LLC is governed and influenced by the person, there is such unity of interest and ownership that the LLC and person are inseparable, and the adherence to the separation of person and LLC would sanction fraud or promote manifest injustice. With this new section, Nevada codifies the alter ego doctrine for LLCs. The corporation law already codified the alter ego doctrine and the LLC provision is based on the corporation law provision.

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This information is not intended to provide legal advice or serve as a substitute for legal research to address specific situations.

Fiduciary Duties for LLC Managers and Managing Members

A new section is added to the LLC law to address for the first time the issue of whether **fiduciary duties** are owed in LLCs. The section provides that the only duties a manager or managing member owe to the LLC, a member, or other person party to or bound by the operating agreement are the implied contractual covenant of good faith and fair dealing and any other duties, including fiduciary duties, expressly prescribed by the articles of organization or operating agreement.

Some Other Changes Made by A.B. 207

A.B. 207 amends numerous other sections of the corporation and LLC laws. Here are a few of particular interest:

- Sec. 78.320 is amended to clarify the treatment of broker non-votes. The section now provides that shares represented at a meeting by proxy count toward a quorum even if the proxy does not have authority to vote on a matter.
- Sec. 78.390 is amended to remove language regarding an amendment having to be considered and voted on at a meeting, thereby clarifying that stockholders may approve an amendment by written consent.
- Sec. 78.580 is amended to require that if dissolution is approved by written consent the corporation must notify each stockholder whose consent was not solicited of the dissolution within 10 days of the effective date of the dissolution.

SENATE BILL 427 ALSO AMENDS THE CORPORATION AND LLC LAWS

Nevada also enacted Senate Bill 427. This bill, which also is effective October 1, amends Ch. 78 on such issues as recordkeeping and demands for inspections, removal of directors when required by a court or government agency or entity, setting record dates for determining stockholders entitled to distributions, quorums, and the appointment of receivers. S.B. 427 also adds new sections to the LLC law to provide for the appointment of receivers.



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Here is the [link to AB 207](#).

Here is the [link to SB 427](#).