

A Comparison of Nevada and Delaware Corporate Laws

✓ = this state's laws are preferable

Issue	Nevada	Delaware
Personal Liability Protection To Officers And Directors	✓ Business Judgment Rule; higher level of liability protection.	Business Judgment Rule; not as much personal liability protection.
Fiduciary Duty And Business Judgment Rule (“BJR”)	✓ Officers/Directors (“O/D”) must act and are presumed to act in good faith. NRS 78.138(1), (3). BJR allows reliance on data “prepared or presented by professionals, corporate directors, officers, or employees who are reasonably believed to be reliable and competent” unless they have reason to know it is unreliable. NRS 78.138(2), 78.125.	BJR available to Directors and members of any committee designated by the board, but not to corporate officers. Del. Code Ann. tit. viii, § 141(e).
Director Immunity From Lawsuits	✓ O/D are insulated from personal liability except for acts or failure to act which constitute a breach of fiduciary duty or breach of the duty of loyalty, and which was a result of intentional conduct, fraud, or knowing violation of the law. NRS 78.138(7).	Directors have no liability protection with respect to the corporation’s creditors. Limitations on a director’s liability for monetary damages must be included in the corporation’s certificate of incorporation to be effective. Del. Code Ann. tit. viii, § 102(b)(7). Delaware statutes do not protect corporate officers.
Taxes	<p>✓</p> <ul style="list-style-type: none"> • No Corporate Income Tax • No Taxes on Corporate Shares • No Franchise Tax • No Personal Income Tax • 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 of gross wages with deductions for employer paid health insurance • Nominal Annual Fees 	
Judiciary	Less experienced judiciary and less developed caselaw. Adoption of a Business Court model has taken great strides in providing a more experienced judiciary dedicated to business matters only.	✓ Very experienced judiciary and developed corporate caselaw.

Quorum And Required Vote	A majority of the shareholders with voting power (present in person or by proxy) constitutes a quorum. NRS 78.320(1)(a).	✓Corporate governance documents may specify what constitutes a quorum. Del. Code Ann. tit. viii, § 216. A quorum may not be less than 1/3 of the shares entitled to vote at the meeting. Del. Code Ann. tit. viii, § 216. If governance documents are silent, a majority of the shares entitled to vote constitutes a quorum. Del. Code Ann. tit. viii, § 216.
Cumulative Voting	=Cumulative voting in the election of directors is permitted only where provided for in the articles of incorporation, and certain notice procedures are followed. NRS 78.360.	=Cumulative voting may be provided for in the corporation's certificate of incorporation. Del. Code Ann. tit. viii, § 214.
Vacancies On The Board Of Directors	=Vacancies on the board of directors of a Nevada corporation may be filled by vote of a majority of the remaining directors, though less than a quorum, unless the articles of incorporation provide otherwise.	=Same. Del. Code Ann. tit. viii, § 223.
Removal Of Directors	Any director may be removed, with or without cause, upon the vote of the shares entitled to vote in the election of directors. Generally, 2/3 of the voting power of the issued and outstanding stock entitled to vote. NRS 78.335(1).	✓A majority vote is required to remove a director with or without cause, subject to two exceptions under which a director may be removed only for cause. Del. Code Ann. tit. viii, § 141(k)(1-2).
Indemnification And Duty To Defend O/D	✓Provides for indemnification by a corporation of its officers, directors, employees, and agents, with increased indemnification for derivative suits. NRS 78.7502, 78.751, 78.752.	Provides for indemnification by a corporation of its officers, directors, employees, and agents. Del. Code Ann. tit. viii, § 145.
Dividends	✓No dividends may be paid if doing so would render the company unable to pay its debts as they come due. NRS 78.288.	Corporation may pay dividends from surplus or, otherwise from net profits for the fiscal year in which the dividend is declared (provided that the amount of capital of the corporation following the declaration and payment of the dividend is not less than the aggregate amount of the capital represented by the issued and outstanding stock of all classes having a preference upon the distribution of assets). Del. Code Ann. tit. viii, § 170.

Actions By Written Consent	✓Unless the governing documents provide otherwise, any action requiring a vote may be taken in writing in the same percentage as otherwise required to take the action if a meeting were held. NRS 78.320.	✓Same. Del. Code Ann. tit. viii, § 228(a). Additionally, if less than unanimous consent given, the corporation must give prompt notice of the action taken. Del. Code Ann. tit. viii, § 228(e).
Special Meetings	The entire board of directors, any two directors, or the president may call special meetings unless the governing documents provide otherwise. NRS 78.310(2).	The entire board of directors or by any other one or more persons authorized in the certificate of incorporation or bylaws may call a special meeting. Del. Code Ann. tit. viii, § 211(d).
Derivative Suits	=Any shareholder may bring a derivative action if he/she was a shareholder at the time of the transaction in question or acquired the stock thereafter by operation of law. NRCP 23.1 .	=Same. Del. Code Ann. tit. viii, § 327.
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