

Nevada Corporation And LLC Myths

by Shawn Christopher

There is much misinformation that is often spread regarding Nevada corporations and LLC's. When deciding whether you should form a Nevada Corporation or LLC, you should understand precisely what a Nevada corporation or LLC can provide. With this in mind, you need to be aware of the myths and half-truths that are commonly (and incorrectly) taken as facts.

MYTH # 1:

Having a Nevada corporation will provide me with complete asset protection.

TRUTH: This simply is not true. While having a Nevada corporation can provide some asset protection benefits, the extent of these benefits depends on each unique situation. (You should consult with a lawyer to find out if a Nevada corporation is right for you.) Further, it is common that the principal shareholder(s) of a corporation will have to provide a personal guaranty for many obligations of the corporation, such as leases, credit accounts, etc... As such, when a personal guaranty is given, the Nevada corporation does not provide any asset protection benefit for the obligation that is guaranteed.

MYTH # 2:

I can avoid taxes in my home state by having a Nevada corporation

TRUTH: NO! If a Nevada corporation is conducting business in another state, and that state has a state income tax, then the corporation will have to pay that state's income tax on the income earned in that state. Simply depositing any income into a Nevada bank account will not magically relieve you having to pay tax on the income.

MYTH # 3:

Bearer shares are a great way to provide privacy and bolster my asset protection.

TRUTH: RUN, don't walk, away from anyone who recommends bearer shares. The rationale for bearer shares is that since the laws of the State of Nevada do not prohibit them, then they must be allowed. It is true that bearer shares are not illegal under the laws of the State of Nevada. However, just because it may not be illegal, does not mean it is a good practice. The proponents of the bearer share strategy will say that you can use bearer shares to provide asset protection because, whenever you may have a potential claim/creditor try to attach your assets, you can simply hand the shares of the corporation over to a friend or family member to hold the shares. That person is now the owner (i.e.

bearer) of the shares, and thus you can tell the creditor that you have no interest in the company or stock for the creditor to attach. This strategy also assumes that the attorney trying to collect on the debt/claim is a moron. Any remotely competent attorney will ask if you ever owned any interest or stock in the corporation, and when did you transfer your interests. To which, you will either: 1) tell the attorney of the bearer share strategy, which creates all kinds of fraudulent transfer issues, as well as possible income and/or gift tax ramifications that you do not even expect; or 2) commit perjury to avoid telling the attorney who you transferred your shares to.

HINT: Any asset protection theory that relies on you committing perjury is not much of a strategy.

MYTH # 4:

Using a nominee director/officer is a good way to provide privacy and bolster my asset protection.

TRUTH: Why would you trust a total stranger to have control over your company and assets? The use of nominee directors and officers are usually recommended by self-proclaimed business and legal experts. You will be hard pressed to find a licensed attorney who recommends this strategy. While you may derive some privacy from having a nominee officer and director, this privacy will be lost once the nominee is served a subpoena and asked to provide the contact information for the owners of the company. The nominee will then be legally required to provide this information, and your privacy is gone. Further, the use of a nominee also offers no additional asset protection.

MYTH # 5:

Privacy = Asset Protection.

TRUTH: Just because something is slightly more difficult to find out does not mean you get any additional asset protection benefits.

MYTH # 6:

Nevada does not share information with the I.R.S., so I can keep my information private.

TRUTH: Just because Nevada does not share information with the I.R.S. does not mean that the I.R.S. will not have any information on the company. You will need to provide the I.R.S. with the name and social security number of someone involved with the company to obtain an EIN. Further, the company will be required to prepare tax returns (informational returns for S-corp's and most LLC's), on which the names and social security

numbers of the owners or members will be provided. Thus, the I.R.S. will end up with this information anyway.

SUMMARY:

Please do not confuse the lack of an audit with being legal and proper. It is almost comical that there are numerous corporate formation companies that are dispensing legal advice when they are not attorneys. Why would anyone take advice on protecting their assets from someone who is not legally allowed or qualified to provide such advice, much less actually had to argue in support of any of their half-true positions before a judge?

The truth is that a Nevada corporation or LLC may be useful to some, but it is not the end answer for every small businessperson, especially those who do not operate in Nevada.

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