

Commercial Recordings Legislative Changes 2013

Several pieces of legislation passed during the 2013 Regular Session of the Nevada Legislature. SB 60 had provisions regarding filing requirements, registration compliance and commercial registered agents. AB 60 requires the disclosure of certain information by nonprofit corporations intending to solicit contributions in Nevada and AB 74 requires that certain document preparers register with the Secretary of State. SB 441, the Bar Association Bill has a few service of process issues that we need to be aware of.

SB 60

Secretary of State Bill - Effective October 1, 2013 unless otherwise noted below.

Main Provisions are as follows:

STATE BUSINESS LICENSE AND EXEMPTION REQUIREMENTS

- Sole proprietors, general partnerships and other businesses that are not required to file articles of incorporation or other organizational documents will be subject to the same penalties as Title 7 entities for failure to file and maintain their state business license or State business license exemption. These are the same provisions already in statute for Title 7 entities.
- NT7 SBL Exemption holders will be required to claim the exemption every year. Notices will be sent to exemption holders as they are with those with State Business licenses.
- NT7 Business license and Exemption holders will now be required to disclose on their SBL Application or claim of exemption, the street address in Nevada where they are conducting business.
- Law enforcement will have access to State Business License information that was previously considered confidential and privileged.

COMMERCIAL REGISTERED AGENT PROVISIONS

- Every registered agent in Nevada representing 10 or more Nevada entities or Nevada Qualified foreign entities must be registered as a Commercial Registered Agent and as such will be required to provide addition information on the Commercial Registered Registration Statement including:
 - The name and address and telephone number of the individual who has authority to act on behalf of the commercial registered agent.
 - Statement that the person registering as a commercial registered agent or that each director, officer or managing agent of a commercial registered agent has not been convicted of a felony and, if convicted of a felony, a statement that the individual has had his or her civil right restored.
 - Statement that the CRA has not had his or her ability to serve as a registered agent or a director, officer or managing agent of a CRA denied

or revoked by appropriate authority of this state or another state or enjoined by a court of competent jurisdiction from serving as a registered agent because the individual engaged in conduct as a registered agent that was intended to or likely deceive or defraud the public.

- The secretary of State may require additional information he deems appropriate in the registration statement. At this time no additional information has been determined.
 - Signed under penalty of perjury by the individual or by an individual authorized to sign the statement on behalf of the entity.
- The Secretary of State has the authority to conduct periodic or special examinations of the records required to be maintained to ensure that the registered agent has not violated provisions of state law pertaining to the duties of a registered agent. A penalty of \$500 per violation may be sought through court action. In most cases, the RA will be given opportunity to remedy any violation before action is commences.
 - A person who allegedly violated a provision of Chapter 77 is found to have engaged in conduct as an RA that was intended to deceive or defraud the public or to promote illegal activities, the Secretary of State may take action including:
 - File civil action without notification or opportunity to correct the violation
 - Deny or revoke the person's registration as a Commercial Registered Agent
 - Issue order requiring the person to comply with the provisions of NRS Chapter 77
 - Refuse to accept filings for entities for which the person serves as a registered agent
 - The Secretary of State "may" deny the registration of a Commercial Registered Agent if the person:
 - Has been convicted of a felony and has not had his or her civil rights restored
 - Has had his or her ability to serve as a registered agent denied or revoked by appropriate authority of this state or another state or enjoined by a court of competent jurisdiction from serving as a registered agent because the individual engaged in conduct as a registered agent that was intended to or likely deceive or defraud the public.
 - The District Court may enjoin a person from serving as a registered agent if:
 - The registered agent engaged in conduct in his or her capacity as an RA that was intended to deceive or defraud the public or to promote illegal activities
 - Has been convicted of a felony and has not had his or her civil rights restored
 - Has had his or her ability to serve as a registered agent denied or revoked by appropriate authority of this state or another state or enjoined by a court

of competent jurisdiction from serving as a registered agent because the individual engaged in conduct as a registered agent that was intended to or likely deceive or defraud the public.

FORMATION OF ENTITIES

- SB 60 prohibits a person from establishing a corporation or other entity for any illegal purpose or with the fraudulent intent to conceal business activity or lack thereof from another person or government agency. This provision basically prohibits the creation of aged or shelf corporations that give the false appearance of business activity.

FILING REQUIREMENTS

- **Signature Requirements** - SB 60 allows for any document other than a name consent and a change of registered agent to be signed by officer or “some other person specifically authorized by the entity” (board) to sign the document.
- **The initial and annual lists of officers and directors** (or their equivalent for other entities) will be revised to:
 - Remove the registered agent information
 - Add additional disclaimer in the signature line that “none of the officers or directors identified in the list of officers has been identified with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of an officer or director in furtherance of any unlawful conduct.”
 - A person who files a list which identifies an officer or director with the fraudulent intent of concealing the identity of any person or persons exercising the power or authority of an officer or director in furtherance of any unlawful conduct is subject to the fraudulent filing penalty in NRS 225.084
- The Secretary of State “may” allow an entity to select an **alternate due date** for the annual list of officers and state business license application. This selection will be made on a new form. Regulations will be adopted defining the rules and processes for selecting an alternate due date. As this is a “may” provision, this provision may be implemented at a later date after the implementation of the other provisions of SB 60 that must be in place by October 1, 2013. There is no fee for this election.
- **Reinstatements and Revivals** will require the submission of a new form prescribed by the Secretary of State that includes a declaration under the penalty of perjury that the reinstatement or revival has been authorized by a court of competent jurisdiction or by the duly elected board of directors of the entity or if the entity has no board of directors, its equivalent of such board. This prohibits the reinstatement or revival of entities by unauthorized persons for the purposes of business ID theft or reviving an entity for use with the appearance that the entities history is intact.
- **Foreign Qualifications** – Foreign corporations and other foreign entities will no longer be required to include a certificate of good-standing date within 90 days of filing with the Qualification documents. Instead, a declaration:

- Of the existence of the corporation and the name of the jurisdiction of its incorporation (creation) or the governmental act or other instrument of authority by which the corporation (entity) was created; and
- That the corporation (entity) is in good standing in the jurisdiction of its incorporation or creation.
- **Commercial Registered Agents** - Every registered agent in Nevada representing 10 or more Nevada entities or Nevada Qualified foreign entities must be registered as a Commercial Registered Agent and as such will be required to provide additional information on the Commercial Registered Registration Statement including:
 - The name and address and telephone number of the individual who has authority to act on behalf of the commercial registered agent.
 - Statement that the person registering as a commercial registered agent or that each director, officer or managing agent of a commercial registered agent has not been convicted of a felony and, if convicted of a felony, a statement that the individual has had his or her civil right restored.
 - Statement that the CRA has not had his or her ability to serve as a registered agent or a director, officer or managing agent of a CRA denied or revoked by appropriate authority of this state or another state or enjoined by a court of competent jurisdiction from serving as a registered agent because the individual engaged in conduct as a registered agent that was intended to or likely deceive or defraud the public.
 - The secretary of State may require additional information he deems appropriate in the registration statement. At this time no additional information has been determined.
 - Signed under penalty of perjury by the individual or by an individual authorized to sign the statement on behalf of the entity.

The initial registration fee and termination fee have been removed. The only fees are for changes to the registration statement.

REGISTRATION COMPLIANCE

- NT7 Entities are now subject to the same penalty provisions as corporations and other Title 7 entities for failing to properly register and maintain a state business license or exemption.
- In the course of an investigation into an entities compliance with registration requirements, the Secretary of State may require a person to answer any interrogatory that will assist in the investigation.

AB 60

Charitable Solicitation – Effective January 1, 2013

- AB 60 requires nonprofit corporations formed under NRS Chapter 82 that have charitable status with the IRS that intend to solicit tax deductible charitable contributions in Nevada to file a Charitable Solicitation Registration Statement. This registration gives the public information about those nonprofit corporations soliciting charitable contributions in Nevada. It does not validate the nonprofit or its activities, but does show that it has complied with filing requirements necessary to solicit charitable contributions.
 - Corporation checks box on the initial list of officers and thereafter on the annual list of officers indicating that it intends to solicit tax deductible charitable contributions in Nevada.
 - If “yes” box checked, a Charitable Solicitation Registration Statement must accompany the articles or annual list. There is no additional fee in addition to the new filing or initial/annual list fees for this registration statement.
 - The Charitable Solicitation Registration statement contains the following required information.
 - Name of the nonprofit corporation and names by which it intends to solicit
 - Web address (optional)
 - USA PATRIOT ACT certification (optional)
 - Places of Business
 - Federal Exempt Status and Federal Tax ID #
 - Names and Addresses of Executive Personnel
 - Fiscal year end
 - Financial Information from 990 or in no 990, best guess
 - Total Revenue and Expenses
 - Total Assets and Liabilities
 - Signed by officer of the nonprofit
 - AB 60 also requires those soliciting whether tax deductible or not to state:
 - The full legal name of the charitable organization or nonprofit corporation
 - The state and jurisdiction of formation
 - The purpose of the charitable organization or nonprofit corporation
 - That the contribution may be tax deductible or that it does not qualify as tax-deductible

AB 89

Benefit Corporations – Effective January 1, 2014

- Starting in January 2014, a corporation may designate itself as a benefit corporation. As compared to a “normal” “for-profit” corporation that has a fiduciary duty to its shareholders, a benefit corporation may be organized to pursue a general public benefit or a specific public benefit set forth in the articles. The fiduciary duty is not only to the shareholders but also to the benefit set forth.
- Simple designation by checking a box on the articles and adding the general or specific benefit. Can also be done through amendment.
- General public benefit means a material impact on society or the environment as assessed against a third party standard. Third party standard similar to green building certification.
- Specific public benefit includes without limitation:
 - Providing low income or underserved individuals/communities with beneficial product or services.
 - Promoting economic opportunity to individuals/communities beyond job creation
 - Protecting preserving or restoring the environment
 - Improving human health
 - Promoting arts, sciences or advancement of knowledge
 - Increasing flow of capital to entities with general public benefit purpose
 - Accomplishment of any other benefit for society o the environment.

SB 441

State Bar Association Bill

- This is the State Bar Association bill which has little effect on the Filing processes in the office of the Secretary of State. We are probably not the ones to comment on the effects of this bill on Nevada entities.