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## Business Associations and Professions; Personal Liability of Directors and Officers

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days of appointment.<sup>22</sup> Under Chapter 26, an additional certificate must be filed each time the agent for service of process changes office locations within Nevada.<sup>23</sup> Additionally, upon the resignation of an agent for service of process, a statement of resignation must be filed with the Secretary of State.<sup>24</sup> The Secretary of State must then notify the limited partnership of the resignation.<sup>25</sup> The limited partnership must designate a new agent within thirty days.<sup>26</sup> Additionally, Chapter 26 requires each limited partnership to keep a current list separately identifying the general and limited partner's in alphabetical order.<sup>27</sup>

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22. *Id.* sec. 3, at \_\_\_ (amending NEV. REV. STAT. § 88.330 3).

23. *Id.* (amending NEV. REV. STAT. § 88.330 3). The certificate must set forth the names of the limited partnerships represented by the agent, the address at which the agent has maintained an office for each of the limited partnerships, and the new address to which the office is transferred. *Id.*

24. 1987 Nev. Stat. ch. 26, sec. 28, at \_\_\_ (enacting NEV. REV. STAT. § 88.\_\_\_\_)

25. *Id.* § 88.\_\_\_\_2.

26. *Id.* § 88.\_\_\_\_3.

27. *Id.*, sec. 4, at \_\_\_ (amending NEV. REV. STAT. § 88.335 1(a)).

## **Business Associations and Professions; personal liability of directors and officers**

NEV. REV. STAT. § 78.\_\_\_\_ (new); §§ 41.480, 78.035, 78.300, 78.751 (amended).

SB 6 (Raggio); 1987 STAT. Ch 28 (*Effective March 18, 1987*)

Under existing law, articles of incorporation<sup>1</sup> may contain provisions that the incorporators<sup>2</sup> choose to insert for the regulation of the business and affairs of the corporation.<sup>3</sup> Articles of incorporation may also contain provisions creating, defining, limiting, and regulating the powers of the corporation, directors,<sup>4</sup> stockholders,<sup>5</sup> or ob-

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1. NEV. REV. STAT. § 78.010 1(a) (definition of articles of incorporation).

2. *Id.* § 78.030 1 (definition of incorporators).

3. *Id.* § 78.035 (amended by 1987 Nev. Stat. ch. 28, sec. 4, at \_\_\_). See 1987 Nev. Stat. ch. 28, sec. 2, at \_\_\_ (enacting NEV. REV. STAT. § 78.\_\_\_\_).

4. NEV. REV. STAT. § 78.115 (number and qualifications for the board of directors).

5. *Id.* § 78.195 3 (holder of preferred or special stock of any class or series is entitled to receive dividends).

ligors of the corporation, and for governing the distribution of the profits of the corporation.<sup>6</sup>

Under Chapter 28, articles of incorporation may contain a provision eliminating or limiting the personal liability of a director or officer of a corporation for the breach of the director's or officer's fiduciary duties.<sup>7</sup> The personal liability of the director or officer, however, may not be eliminated or limited for acts or omissions which involve intentional misconduct, fraud, or a knowing violation of the law, or for the payment of dividends to stockholders in a willful or grossly negligent manner.<sup>8</sup>

Chapter 28 permits a corporation to purchase insurance<sup>9</sup> on behalf of any person who has acted as a director, officer, employee or agent of the corporation<sup>10</sup> for liabilities and expenses arising out of their corporate capacity.<sup>11</sup> Chapter 28 provides that this insurance or other financial arrangements may be provided by the corporation or any other person approved by the board of directors.<sup>12</sup> In the absence of fraud, the decision of the board of directors as to the terms and the choice of the person to provide the insurance or other financial arrangement is conclusive.<sup>13</sup> Furthermore, the decision does not sub-

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6. *Id.* § 78.035 (amended by 1987 Nev. Stat. ch. 28, sec. 4, at \_\_\_\_). Those provisions must not contradict Nevada law. *Id.* See 1987 Nev. Stat. ch. 28, sec. 2, at \_\_\_\_ (enacting NEV. REV. STAT. § 78.\_\_\_\_).

7. 1987 Nev. Stat. ch. 28, sec. 2, at \_\_\_\_ (enacting NEV. REV. STAT. § 78.\_\_\_\_). NEV. REV. STAT. § 78.130 (selection, terms, and duties of officers of a corporation). See *Berman v. Riverside Casino Corp.*, 247 F. Supp. 243, 245 (D. Nev. 1964), *aff'd* 354 F.2d 43 (9th Cir. 1965) (officers have no personal liability for corporate debts). See generally *In re Western World Funding, Inc.*, 52 Bankr. 743 (Bankr. D. Nev. 1985); *In re Twin Lakes Village, Inc.*, 2 Bankr. 532 (Bankr. D. Nev. 1980); *Ecklund v. Nevada Wholesale Lumber Co.*, 93 Nev. 196, 562 P.2d 479 (1977); *O'Connell v. Cox*, 78 Nev. 40, 368 P.2d 761 (1962); *Swartout v. Grover Collins Drilling*, 75 Nev. 297, 339 P.2d 768 (1959); *State ex. rel. Garaventa v. Garaventa Land & Livestock Co.*, 61 Nev. 110, 118 P.2d 703 (1941) (discussing the personal liability of officers).

8. 1987 Nev. Stat. ch. 28, sec. 2 at \_\_\_\_ (enacting NEV. REV. STAT. § 78.\_\_\_\_). See NEV. REV. STAT. § 78.300 (amended by 1987 Nev. Stat. ch. 28, sec. 5, at \_\_\_\_).

9. The corporation may also make other financial arrangements, including the creation of a trust fund, establishment of a program of self-insurance, the securing of its obligation of indemnification by granting a security interest or other lien on any assets of the corporation, or the establishment of a letter of credit, guaranty, or surety. 1987 Nev. Stat. ch. 28, sec. 3, at \_\_\_\_ (enacting NEV. REV. STAT. § 78.\_\_\_\_).

10. Insurance may also be obtained if the person has served at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, or any other enterprise. *Id.*

11. *Id.* Cf. 1969 Nev. Stat. ch. 96, sec. 3, at 120 (enacting NEV. REV. STAT. § 78.751 7) (prior law also allowed the corporation to maintain insurance).

12. 1987 Nev. Stat. ch. 28, sec. 3, at \_\_\_\_ (enacting NEV. REV. STAT. § 78.\_\_\_\_) (even if the other person's stock is owned by the corporation).

13. *Id.* Chapter 28 further provides that a corporation or its subsidiary which provides self-insurance for itself or for another affiliated corporation is not subject to the provisions on insurance. *Id.*

ject any director approving the arrangement to personal liability for his action, even if the director is a beneficiary of the financial arrangement.<sup>14</sup>

Existing law provides that a director who makes a willful or negligent violation in the payment of dividends or other distributions to the stockholders is jointly and severally liable.<sup>15</sup> Directors who had their dissent entered upon the minutes at the time of the action,<sup>16</sup> however, are not liable for the violation.<sup>17</sup> Chapter 28 limits existing law such that non-dissenting directors are liable only for willful or grossly negligent violations.<sup>18</sup>

Under existing law, agents<sup>19</sup> of the corporation may be indemnified by the corporation for expenses incurred in connection with a good faith defense or settlement of an action,<sup>20</sup> unless such persons were found liable for negligence or misconduct in the performance of their duty.<sup>21</sup> Under Chapter 28, however, indemnification is prohibited when the agent has been found liable to the corporation.<sup>22</sup>

Under existing law, expenses incurred in defending a civil or criminal action may be paid by the corporation in advance of the final disposition of the action.<sup>23</sup> Chapter 28 provides that the articles of incorporation, the bylaws, or an agreement made by the corporation may mandate that the expenses of officers and directors in defending a civil or criminal action be paid as they are incurred.<sup>24</sup> Any rights to advancement of expenses to which other corporate

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14. *Id.*

15. NEV. REV. STAT. § 78.300 2 (amended by 1987 Nev. Stat. ch. 28, sec. 5, at \_\_\_) (the action must be brought within three years). In the event of the dissolution or insolvency of the corporation at the time of the violation, the directors are jointly and severally liable to the lesser of the full amount of the dividend made or of any loss sustained by the corporation because of the dividend or other distribution to the stockholders. *Id.*

16. Those directors not present at the meeting must have had their dissent entered on learning of the action. *Id.*

17. *Id.*

18. 1987 Nev. Stat. ch. 28, sec. 5, at \_\_\_ (amending NEV. REV. STAT. § 78.300 2) (the non-dissenting directors are jointly and severally liable at anytime within three years of each violation).

19. See NEV. REV. STAT. § 78.751 2 (amended by 1987 Nev. Stat. ch. 28, sec. 6, at \_\_\_) (agents include director, officer, employee, or agent).

20. Expenses include attorneys' fees. *Id.* (action brought by reason of the fact that person was a director, officer, employee, or agent).

21. *Id.*

22. 1987 Nev. Stat. ch. 28, sec. 6, at \_\_\_ (amending NEV. REV. STAT. § 78.751 2). If a court determines the person is fairly and reasonably entitled to such expenses, then the person is not liable to the corporation. *Id.*

23. 1969 Nev. Stat. ch. 96, sec. 3, at 120 (enacting NEV. REV. STAT. § 78.751 5) (as authorized by the board of directors).

24. 1987 Nev. Stat. ch. 28, sec. 6, at \_\_\_ (amending NEV. REV. STAT. § 78.751 5).

personnel may be entitled under any contract or otherwise by law, however, remain intact.<sup>25</sup> Unless ordered by the court, indemnification or advancement of expenses may not be made to any director or officer if a final adjudication establishes intentional misconduct, fraud, or a knowing violation of the law.<sup>26</sup>

Under existing law, a nonprofit entity<sup>27</sup> is not immune from liability for harm resulting from the negligent or wrongful acts of the nonprofit entity or its agents.<sup>28</sup> Under Chapter 28, the failure of the nonprofit agent<sup>29</sup> to exercise due care in the management or operation of the entity is not actionable unless the act or omission involves intentional misconduct, fraud, or a knowing violation of the law.<sup>30</sup>

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25. *Id.*

26. *Id.* (amending NEV. REV. STAT. § 78.751 6(b)).

27. See NEV. REV. STAT. §§ 81.060-.160 (regulation of nonprofit cooperative associations); 81.170-.280 (regulation of nonprofit corporations for educational, religious, scientific, charitable, eleemosynary activities); 81.350-.400 (regulation of nonprofit corporations for the advancement of state and local interests); 81.840-.540 (regulation of nonstock, nonprofit cooperative corporations).

28. NEV. REV. STAT. § 41.480 (enacted by 1957 Nev. Stat. ch. \_\_\_\_, sec. \_\_\_\_, at 63) (agents acting within the scope of their agency).

29. See 1987 Nev. Stat. ch. 28, sec. 7, at \_\_\_\_ (amending NEV. REV. STAT. § 41.480) (agent includes officer, director, trustee or other possessor of the corporate powers of a nonprofit entity).

30. *Id.*

## **Business Associations and Professions; mobile homes— outstanding security interest**

NEV. REV. STAT. § 489.\_\_\_\_ (new).

SB 106 (Committee on Commerce and Labor); 1987 STAT. Ch 82

Existing law requires a licensed dealer,<sup>1</sup> who sells a used manufactured home,<sup>2</sup> mobile home,<sup>3</sup> or commercial coach<sup>4</sup> to any person, to

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1. NEV. REV. STAT. § 489.076 1(c) (definition of dealer); *id.* § 489.341 (a license is required for a salesperson who sells any manufactured home, mobile home, or commercial coach).

2. *Id.* § 489.155 (definition of used manufactured home, used mobile home, used commercial coach); *id.* § 489.113 (definition of manufactured home).

3. *Id.* § 489.120 (definition of mobile home).

4. *Id.* § 489.062 (definition of commercial coach).