Business Associations and Professions

Business Associations and Professions; close corporations

**Nev. Rev. Stat. § 11-11 (new); §§ 14.020, 78.019, 78.030, 78.050, 78.090, 78.097, 78.110, 78.160, 80.010, 80.070, 80.130, 273.010, 273.030 (amended).**

SB 389 (Committee on Judiciary); 1989 Stat. Ch. 440

**Creation of a Close Corporation**

Chapter 440 authorizes the creation of statutory close corporations.¹ The party organizing the close corporation must comply with the requirements of existing law for the creation of private corporations;² in addition, all stock issued by the close corporation must be represented by stock certificates, and no more than thirty persons may be record holders of the shares.³

The transfer of stock in a close corporation must be limited by restrictions contained in the articles of incorporation, the corporate bylaws, a stockholder's agreement, or a voting trust agreement.⁴ Chapter 440 prohibits a close corporation from making a public offering of its stock.⁵

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². Id. sec. 3, at 941 (incorporating Nev. Rev. Stat. §§ 78.030-.055) (requiring filing, and specifying the contents of articles of incorporation, and prohibiting the use of certain corporate names).


The articles of incorporation of a close corporation must carry a heading stating the corporate name and indicating the corporation's status as a close corporation. An existing corporation may become a close corporation by amending its articles of incorporation to include a statement that the corporation elects to become a close corporation. The amendment must be approved by the holders of at least two-thirds of each voting class of stock.

CLOSE CORPORATION SHARES

Chapter 440 requires all stock certificates of a close corporation to include a specified notice concerning the rights of stockholders. If a close corporation has included the notice regarding shareholders' rights on its stock certificates, any person with an interest in the shares of the corporation is bound by all the documents mentioned in that notice.

Transfer restrictions on shares in a close corporation are valid if they are contained in the articles or certificate of incorporation, the bylaws, or in a shareholders' or voting trust agreement.
transferee of stock in a close corporation has knowledge that the transfer violates a transfer restriction, the corporation may deny the transfer; however, if all the stockholders consent to the transfer, it is effective in spite of any restrictions. A court may enjoin any transfer of stock that is contrary to a lawful restriction on transfer, and may enjoin any public offering of stock of the close corporation.

**TERMINATION OF CLOSE CORPORATION STATUS**

Corporations may end their close corporation status by amending their articles or certificate of incorporation to remove the close corporation designation. A close corporation which violates or fails to maintain compliance with any of the provisions of Chapter 440 will lose its status, unless the corporation files a certificate with the Secretary of State indicating the requirement is presently inapplicable. The corporation must also act to remedy the situation that threatens its close corporation status. If a suit is brought against a close corporation, the court may issue orders designed to prevent the loss of status, or may enjoin any act by the corporation or by a stockholder that would terminate the close corporation status.

Terms that the transferee purchased the shares. This language is similar to the provisions of the RMBCA. Compare id. with REV. MODEL BUSINESS CORP. ACT, STATUTORY CLOSE CORP. SUPP. § 13(a)-(b) (1984).

14. 1989 Nev. Stat. ch. 440, sec. 6, at 941-42 (enacting Nev. Rev. Stat. § ______). The corporation must notify the transferee, and give reasons for its refusal to register the transfer. Id. Restrictions on stock transfers contained in the articles or certificate of incorporation, bylaws, shareholders' agreements, or voting trust agreements do not apply to transfers to the corporation or other shareholders of the same class of shares. Id. sec. 7, at 942 (enacting Nev. Rev. Stat. § ______). Transfer restrictions do not apply to transfers incident to death, transfers to bankruptcy trustees, transfers by merger or exchange, or to transfers by a pledge serving as collateral for a loan when voting rights are not included in the transfer. Id.

15. Id. sec. 10, at 943-44 (enacting Nev. Rev. Stat. § ______).

16. Id. sec. 9, at 943 (enacting Nev. Rev. Stat. § ______). The close corporation status may also be terminated by removing the transfer restrictions from the shares and the restrictions on record ownership contained in the articles or certificate of incorporation. Id. Any amendment of the certificate or articles of incorporation must be by at least two-thirds of the voting shares of each class of stock. Id. If the certificate or articles require more than two-thirds of the votes to discontinue the status, that provision must be met. Id. A corporation that terminates its status as a close corporation is subject to the provisions governing private corporations. Id. sec. 17, at 946 (enacting Nev. Rev. Stat. § ______).

17. A copy of the certificate must also be provided to each shareholder. Id. sec. 10, at 943-944 (enacting Nev. Rev. Stat. § ______).

18. Id. The certificate must be filed within 30 days after the provision is violated or ceases to be in effect, or within 30 days after the discovery of the violation by the corporation, whichever is later. Id.

19. Id.

20. Id.
Goveriance of Close Corporations

Chapter 440 allows all the voting shareholders, upon their unanimous written agreement, to realign the powers of the corporation and directly manage its business affairs. Shareholders may agree to eliminate the board of directors. When operating without a board of directors, the shareholders assume, and may delegate, all corporate powers. The shareholders may vote to reconvene a board of directors, but only by a two-thirds vote of each class of shares.

The shareholders of a close corporation may agree to restrict the power of the board of directors, or agree to terms that create a quasi-partnership relationship among themselves. An agreement restricting the powers of the board of directors will exempt the directors from liability, and shift the liability to those who have assumed the board's responsibilities.

The failure of a close corporation to follow normal corporate formalities is not a ground for piercing the corporate veil.

The articles of incorporation of a close corporation may grant individual shareholders the right to dissolve the corporation. If a

21. Id. sec. 11, at 944 (enacting Nev. Rev. Stat. § ___). See Zion v. Kurtz, 50 N.Y.2d 92, 405 N.E.2d 681, 428 N.Y.S.2d 199 (1980) (upholding a shareholder agreement limiting the directors' powers even though the agreement was not mentioned in the articles of incorporation). A close corporation is required to hold an annual meeting only if a shareholder requests the meeting in writing. Id. sec. 13, at 945 (enacting Nev. Rev. Stat. § ___). The meeting must be held within 30 days. Id.

22. 1989 Nev. Stat. ch. 440, sec. 11, at 944 (enacting Nev. Rev. Stat. § __). Agreements eliminating the board of directors are not valid unless the articles of incorporation reflect the agreement. Id. In order for the corporation to act without a board of directors, the certificate of incorporation must be amended by a unanimous vote of all shareholders (including those not entitled to vote) or by all subscribers if no shares have been issued. Id. sec. 12, at 944-45 (enacting Nev. Rev. Stat. § ___).

23. Id. The shareholders have the power to approve actions which formerly required the approval of the directors, but any actions which formerly required a particular majority vote of the directors may only be approved by the same vote of the shareholders. Id. The shareholders may also appoint one or more shareholders as designated directors to sign documents. Id. See infra note 25-26 and accompanying text (discussing corporate liability).

24. Id. Shareholders may vote to reconvene the Board of Directors, whether or not the shareholders have voting rights. Id.


28. 1989 Nev. Stat. ch. 440, sec. 11, at 944 (enacting Nev. Rev. Stat. § __). The dissolution may be at will or may be triggered by certain events, depending upon the provisions
close corporation grants the right to dissolution, then all stock certificates must clearly state that the holder may exercise an option to dissolve the corporation, or the provision is without effect.29

**JUDICIAL SUPERVISION**

If the shareholders of a close corporation operating without a board of directors are caught in a deadlock that threatens irreparable harm to the corporation, a stockholder may apply to a court for the appointment of a custodian or receiver.30 A custodian may also be appointed by the court if the petitioning stockholder has the right to order the dissolution of the corporation.31 The court may appoint a provisional corporate director,32 instead of a custodian, if doing so is in the best interests of the corporation.33 The court may also appoint a provisional director if the directors or those in control of the close corporation are so deadlocked in the management of the corporation’s affairs that it is impossible to obtain the votes necessary to decide an issue, and the interests of the shareholders are being compromised by the deadlock.34