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## **A Comparison Of Nevada, Delaware And Florida Corporate Statutes**

The following is written by Laura Anthony, Esq., a going public attorney focused on OTC listing requirements, direct public offerings, going public transactions, reverse mergers, Form 10 and Form S-1 registration statements, SEC compliance and OTC Market reporting requirements.

When forming a new entity, I am often asked the best state of domicile. Following a July 1, 2014 increase in Delaware franchise taxes, I am also often asked the best state to re-domicile or move to following an exit from Delaware. Delaware remains the gold standard; however, there has been a definite shift and Delaware is now not the “only standard.”

Part of the reason for the shift away from Delaware has been the increase in fees. Delaware calculates annual fees based on one of two methods: (i) the authorized share method; and (ii) the assume par value capital (asset value) method. For either method the annual fee is capped at \$180,000.00. Even for small- and micro-cap business issuers, the annual fee often reaches the tens of thousands. For example, a company with 300,000,000 common shares authorized with a \$.001 par value per share and 30,000,000 shares issued and outstanding and \$20,000,000 in gross assets would pay \$180,000.00 per year using the authorized share method and \$70,350.00 per year using the assumed par value method. This is a very significant expense for a small company and, as you can see, the assumptions I have made reflect a very small business.

A second reason for the shift away has been that over the years, the Delaware General Corporation Law (DGCL) has become more aligned with the Model Business Corporation Act (MBCA), which in turn has become the standard followed by many states. In other words, the differences between, for example, Delaware and Nevada have narrowed.

Delaware originally established itself as the best state of incorporation for several reasons including that the Delaware Court of Chancery hears all matters in Delaware courts involving business and corporate disputes and has done so since its formation in 1792. Accordingly the judges are well informed on business matters and corporate law in general, and there is a large body of precedence from which corporate management and their advisors can garner and use when planning transactions and other corporate actions, and determining related risk management.

For instance, in today's active merger and acquisition marketplace, Delaware courts have led the way in deciding cases involving appraisal and dissenters' rights and directors' duties and responsibilities. See my blog [HERE](#) for more information on appraisal rights and [HERE](#) on directors' duties.

Moreover, oftentimes institutions prefer to invest in Delaware domiciled corporations in making their own risk assessments. The reason is not always because Delaware is better but rather the funds' insiders or counsel may be familiar with Delaware law and, in making a relatively quick investment decision, do not want to expend the time or resources researching a different state's body of law.

The two most popular states for incorporation by business entities remain Nevada and Delaware, both of which offer corporations a degree of flexibility from a menu of reasonable alternatives that can be tailored to the companies' business sectors, markets and corporate culture. Other states have also gained popularity for various reasons. For example, Florida has gained popularity due to the rise in Florida businesses and Florida-based public companies. Wisconsin and Colorado have also become popular due to low fees and management-friendly provisions.

For my clients I am very comfortable recommending states outside of Delaware as a preferred choice for domicile or re-domicile. This blog provides a summary and comparison of the most relevant provisions of the Delaware, Nevada and Florida corporate laws.

	NEVADA  Nevada Revised Statutes (NRS)	DELAWARE  Delaware General Corporation Law (DGCL)	FLORIDA  Florida Business Corporation Act (FBCA)
General Observations	Similar to Delaware, Nevada has a business court that is designed to minimize the time and costs associated with commercial litigation. Nevada's body of case law, while not as extensive as Delaware, is growing.	Delaware has a highly developed body of case law primarily through its Chancery, which focuses solely on business law.	Florida's body of case law, while also not as extensive as Delaware, also is growing.
Power to Call Meeting of Stockholders	Nevada law provides that unless otherwise set forth in a corporation's articles of incorporation or bylaws, the entire board of directors, any two directors, or the president of the corporation may call a special meeting of the stockholders. NRS 78.310.	Delaware law permits special meetings of stockholders to be called by the board of directors or by any other person authorized in the certificate of incorporation or bylaws to call a special stockholders' meeting. DGCL Section 211.	The FBCA provides that special meetings of the shareholders may be called by the board of directors or by such persons as may be authorized by the articles of incorporation

			<p>or the bylaws. In addition, the FBCA permits the holders of not less than 10% of all votes entitled to be cast on any issue to be considered at the special meeting (unless a greater percentage, not to exceed 50%, is specified in the articles of incorporation) to call a special meeting. FBCA 607.0702</p>
<p>Failure to Hold an Annual Meeting</p>	<p>Nevada law provides that if a corporation fails to elect directors within 18 months after the last election, a Nevada district court may order an election upon the petition of one or more stockholders holding at least</p>	<p>Delaware law provides that if the annual meeting for election of directors is not held on the date designated or</p>	<p>617.0701 Meetings of members, generally; failure to hold annual meeting;</p>

	<p>15% of the corporation's voting power. NRS 78.345.</p>	<p>action by written consent to elect directors in lieu of an annual meeting has not been taken, the directors shall cause the meeting to be held as soon as is convenient, and that if a corporation fails to hold an annual meeting for the election of directors within 30 days of the date designated for the annual meeting, or within 13 months of the most recent annual meeting, a director or stockholder of the corporation may apply to the Court of Chancery of the State of Delaware to order an annual meeting for the election of directors. DGCL Section 211.</p>	<p>special meeting; consent to corporate actions without meetings; waiver of notice of meetings.</p> <p>(1) The frequency of all meetings of members, the time and manner of notice of such meetings, the conduct and adjournment of such meetings, the determination of members entitled to notice or to vote at such meetings, and the number or voting power of members necessary to constitute a</p>
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			<p>quorum, shall be determined by or in accordance with the articles of incorporation or the bylaws. The place and time of all meetings may be determined by the board of directors.</p> <p>(2) Failure to hold an annual meeting does not cause a forfeiture or give cause for dissolution of the corporation, nor does such failure affect otherwise valid corporate acts, except as provided in s. 617.1430 in the case of a deadlock</p>
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			among the directors or the members.
Stockholder Action by Written Consent and Notice to Other Stockholders	Nevada law provides that, unless the articles of incorporation or bylaws provide otherwise, any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if the holders of outstanding stock having at least the minimum number of votes that would be necessary to authorize or take such action at a meeting consent to the action in writing. NRS 78.320.	Delaware law provides that, unless the certificate of incorporation provides otherwise, any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if the holders of outstanding stock having at least the minimum number of votes that would be necessary to authorize such action at a meeting provide written consent. In addition, Delaware law requires the corporation to give prompt notice of	Florida law provides that, unless otherwise provided in the articles of incorporation, action required or permitted by this act to be taken at an annual or special meeting of shareholders may be taken without a meeting, without prior notice, and without a vote if the action is taken by the holders of outstanding stock of each voting group entitled to vote

		<p>the taking of corporate action without a meeting by less than unanimous written consent to those stockholders who did not consent in writing. DGCL Section 228.</p>	<p>thereon having not less than the minimum number of votes with respect to each voting group that would be necessary to authorize or take such action at a meeting at which all voting groups and shares entitled to vote thereon were present and voted. FBCA 607.0704.</p> <p>607.0704(3) Within 10 days after obtaining such authorization by written consent, notice must be given to those shareholders</p>
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			<p>who have not consented in writing or who are not entitled to vote on the action.</p>
<p>Certificati on of Shares</p>	<p>Under NRS 78.235, the shares of a corporation shall be represented by certificates; however, unless otherwise provided in the articles of incorporation or bylaws, the board of directors may authorize the issuance of uncertificated shares of some or all of the shares of any or all of its classes or series.</p>	<p>Under Section 158 of the DGCL, the shares of a corporation shall be represented by certificates, provided that the board of directors of a corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares.</p>	<p>Under Section 607.0626 of the FBCA, shares may but need not be represented by certificates. Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without</p>

			certificates.
Blank Check Preferred	The NRS permits, if authorized by the certificate of incorporation, the issuance of Blank Check Preferred Stock with preferences, limitations and relative rights determined by a corporation's board of directors without stockholder approval.	The DGCL permits, if authorized by the certificate of incorporation, the issuance of Blank Check Preferred Stock with preferences, limitations and relative rights determined by a corporation's board of directors without stockholder approval.	The FBCA permits, if authorized by the articles of incorporation, the issuance of Blank Check Preferred Stock with preferences, limitations and relative rights determined by a corporation's board of directors without shareholder approval.
Classified Board	Nevada law allows corporations to classify their boards of directors. At least one-fourth of the total number of directors of a Nevada corporation must be elected annually. NRS 78.330.	Delaware law permits corporations to classify its board of directors into as many as three	Under the FBCA, the terms of directors expire at the next annual

		<p>classes divided as equally as possible with staggered terms of office. DGCL Section 141.</p>	<p>shareholders' meeting following their election unless their terms are staggered/classified. If provided for by the articles of incorporation or a bylaw adopted by a vote of shareholders, the terms of directors may be staggered/classified. The terms of directors are staggered/classified by dividing into one, two or three classes with the number of directors in each class being as nearly equal as possible. FBCA</p>
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			607.0806.
Number of Directors	Nevada law provides that a corporation must have at least one director and may provide in its articles of incorporation or in its bylaws for a fixed number of directors or a variable number of directors, and for the manner in which the number of directors may be increased or decreased. NRS 78.115.	Delaware law provides that a corporation must have at least one director and that the number of directors shall be fixed by or in the manner provided in the bylaws unless the certificate of incorporation fixes the number of directors. DGCL Section 141.	Under the FBCA, a board of directors must consist of one or more individuals, with the number specified in accordance with the articles of incorporation or bylaws. The number of directors may be increased or decreased from time to time by amendment to the articles of incorporation or bylaws
Cumulative Voting	Nevada law permits cumulative voting in the election of directors	A Delaware corporation may	The FBCA provides that

	<p>only if the articles of incorporation provide for cumulative voting and certain procedures for the exercise of cumulative voting are followed. NRS 78.360.</p>	<p>provide for cumulative voting in the corporation's certificate of incorporation. DGCL Section 214.</p>	<p>the articles of incorporation may provide for cumulative voting. Under the FCBA, directors shall be elected by a plurality of the votes cast by the shareholders entitled to vote at a shareholders' meeting at which a quorum is present, unless otherwise provided by the articles of incorporation or in a bylaw that fixes a greater voting requirement for election of directors which has been adopted by the board</p>
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			of directors.
Removal of Directors	Under Nevada law, any one or all of the directors of a corporation may be removed by the holders of not less than two-thirds of the voting power of a corporation's issued and outstanding stock. Nevada does not distinguish between removal of directors with or without cause. NRS 78.335.	Under Delaware law, although stockholders may generally remove directors with or without cause by a majority vote, stockholders may remove members of classified boards only for cause unless the certificate of incorporation provides otherwise. Similarly, if holders of a class or series have a right to elect one or more directors pursuant to the certificate of incorporation, those directors may not be removed without cause by stockholders other than those entitled	The FBCA provides that shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that the directors may be removed only for cause. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against his removal. If cumulative

		to elect them. DGCL Section 141.	voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove him.
Vacancies	All vacancies on the board of directors of a Nevada corporation may be filled by a majority of the remaining directors, though less than a quorum, unless the articles of incorporation provide otherwise. NRS 78.335.	All vacancies on the board of directors of a Delaware corporation may be filled by a majority of the remaining directors, though less than a quorum, unless the certificate of incorporation or bylaws provide otherwise. DGCL Section 142.	Under Florida law, unless the articles of incorporation provide otherwise, all vacancies, including a vacancy from an increase in the number of directors, may be filled by the affirmative vote of a majority of the remaining directors,

			though less than a quorum of the board of directors, or by the shareholders.
Action without a Meeting	Nevada law provides that, unless the articles of incorporation or bylaws provide otherwise, any action required or permitted to be taken at a meeting of the board of directors or of a committee thereof may be taken without a meeting if, before or after the action, a written consent thereto is signed by all the members of the board or committee. NRS 78.315.	Delaware law provides that, unless the certificate of incorporation or bylaws provide otherwise, any action required or permitted to be taken at a meeting of the board of directors or of any committee thereof may be taken without a meeting if all members of the board or committee consent thereto in writing or by electronic transmission and the writing or writings or electronic	607.0821 Action by directors without a meeting.  (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this act to be taken at a board of directors' meeting or committee meeting may be taken without a meeting if the action is taken



		<p>transmission or transmissions are filed with the minutes of proceedings of the board or committee. DGCL Section 141.</p>	<p>by all members of the board or of the committee. The action must be evidenced by one or more written consents describing the action taken and signed by each director or committee member.</p>
<p>Amendment of Certificate of Incorporation</p>	<p>Under the NRS, a proposed amendment to the articles of incorporation requires a resolution adopted by the board of directors and the affirmative vote of the stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, or as may be required by the articles of incorporation.</p>	<p>Under the DGCL, a proposed amendment to the certificate of incorporation requires a resolution adopted by the board of directors and, unless otherwise provided in the certificate of incorporation or by statute, the affirmative vote of</p>	<p>Section 607.1003 of the FBCA provides that, subject to provisions in the articles of incorporation or the board of directors requiring a greater vote or a vote by voting groups, the</p>

	<p>Section 78.390 of the NRS provides that an amendment of the articles of incorporation requires the affirmative vote of the majority of the outstanding stock entitled to vote.</p> <p>NRS 78.2055 allows the Board of Directors to decrease the number of issued and outstanding shares of a class of stock, while concurrently decreasing the total authorized shares of the same class of stock in the same percentages, without the necessity of shareholder approval.</p>	<p>the holders of a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class.</p> <p>The DGCL allows the Board of Directors to amend the certificate of incorporation to effect a name change without the necessity of shareholder approval.</p> <p>Shareholder approval is necessary to effectuate a stock split, such as a reverse split, even where the number of authorized</p>	<p>amendment must be approved by a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights, and the votes required by Sections 607.0725 (quorum and voting requirements for voting group) and Sections 607.0726 (action by single and multiple voting groups) by every other voting group entitled to vote on the</p>
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		<p>shares will be adjusted in the same ratio as the split.</p> <p>DGCL Section 242.</p>	<p>amendment.</p> <p>FBCA Section 607.10025 allows the Board of Directors to decrease the number of issued and outstanding shares of a class of stock, while concurrently decreasing the total authorized shares of the same class of stock in the same percentages, without the necessity of shareholder approval.</p>
Amendments to the	Nevada law provides that, unless otherwise prohibited by any	Delaware law provides that the	Under Florida law, a

<p>Bylaws</p>	<p>bylaws adopted by the stockholders, the board of directors may amend any bylaw, including any bylaw adopted by the stockholders. The articles of incorporation may grant the authority to adopt, amend or repeal bylaws exclusively to the directors. NRS 78.120.</p>	<p>power to adopt, amend, or repeal the bylaws shall be vested in the stockholders entitled to Delaware law provides that the power to adopt, amend, or repeal the bylaws shall be vested in the stockholders entitled to vote, provided that the certificate of incorporation may confer such power on the board of directors, although the power vested in the stockholders is not divested or limited where the board of directors also has such power. DGCL Section 109.</p>	<p>corporation's bylaws may be amended or repealed by the board of directors unless: (i) the articles of incorporation or Florida law reserves the power to amend the bylaws generally or a particular bylaw provision exclusively to the shareholders; or (ii) the shareholders, in amending or repealing the bylaws generally or a particular bylaw provision, provide expressly that the board of directors may</p>
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			<p>not amend or repeal the bylaws or that bylaw provision. In addition, under Florida law, a corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by the corporation's board of directors.</p>
Interested Party	<p>Under Nevada law, a contract or transaction between a corporation and one or more of its directors or officers, or between a corporation and any other corporation, firm or association in which one or more of its directors or officers are directors or officers, or have a</p>	<p>Under Delaware law, a contract or transaction between a corporation and one or more of its directors or officers, or between a</p>	<p>Under Section 607.0832 of the FBCA, a contract or other transactions between a Florida corporation</p>

<p>Transactions/Conflict of Interest</p>	<p>financial interest, is not void or voidable solely for that reason, or solely because of such relationship or interest, or solely because the interested director or officer was present, participates or votes at the meeting of the board or committee that authorizes the contract or transaction, if (i) the director's or officer's interest in the contract or transaction is known to the board of directors (or committee) or stockholders and the transaction is approved or ratified by the board (or committee) or stockholders in good faith, without counting the vote(s) of the common or interested director(s) in the former case and counting such vote(s) in the latter case; (ii) the fact of the common interest is not known to the director(s) or officer(s) at the time the transaction is brought before the board; or (iii) the contract or transaction is fair to the corporation at the time it is authorized or approved. NRS 78.140, 78.423.</p>	<p>corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, is not void or voidable solely because of such relationship or interest, or solely because the director or officer is present at or participates or votes at the meeting of the board or committee that authorizes the contract or transaction, if one or more of the following is true: (i) the material facts of the contract or transaction and</p>	<p>and any of its directors or any entity in which one of its directors or officers is a director or officer are financially interested shall not be either void or voidable because of such relationship or interest or because that director was present at the meeting of directors which authorizes, approves, or ratifies such contract or transaction, or because his or her or their votes are counted for such purpose.</p>
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		<p>the director's or officer's relationship or interest are disclosed to or known by the board or committee, and the board or the committee in good faith authorizes the contract or transaction by an affirmative vote of the majority of the disinterested directors; (ii) the material facts of the contract or transaction and the director's or officer's relationship or interest are disclosed to or known by the stockholders entitled to vote on the matter and they specifically approve in good faith the contract or transaction; or (iii) the contract or</p>	<p>607.0832  Director conflicts of interest.  (1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable because of such relationship or interest, because such</p>
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		<p>transaction is fair to the corporation as of the time it was authorized, approved or ratified. DGCL Section 144, 203</p>	<p>director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because his or her or their votes are counted for such purpose, if:</p> <p>(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or</p>
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			<p>transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors;</p> <p>(b) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent; or</p> <p>(c) The contract or transaction is fair and reasonable as</p>
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			<p>to the corporation at the time it is authorized by the board, a committee, or the shareholders.</p>
<p>State Anti-takeover Statutes</p>	<p>Section 78.411 et seq. of the NRS generally provides that a Nevada corporation which has not “opted out” of coverage by this section in the prescribed manner may not engage in any “combination” with an “interested stockholder” for a period of two years following the date that the stockholder became an “interested stockholder” unless prior to that time the Board of Directors of the corporation approved either the “combination” or the transaction which resulted in the stockholder becoming an “interested stockholder.”</p>	<p>Under the Delaware business combination statute, a corporation is generally prohibited from engaging in any business combination with an interested stockholder who, together with its affiliates or associates, owns, or who is an affiliate or associate of the corporation and within a three-year period did own, 15% or more of</p>	<p>FBCA does not have a business combination statute like Delaware, but instead has an affiliated transactions statute, described below.</p> <p>Section 607.0901 defines an “affiliated transaction” as a merger by a Florida corporation</p>

		<p>the corporation's voting stock for a three year period following the time the stockholder became an interested stockholder. Section 203.</p>	<p>with an "interested shareholder," a sale, lease or other disposition to the interested shareholder of assets of the corporation above a certain threshold including 5% or more of the fair market value of all of the assets of the corporation, or the issuance or transfer by the corporation of shares of its capital stock having a fair market value equal to 5% of the fair market value of all of the outstanding shares of the</p>
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			<p>corporation to the interested shareholder, adoption of any plan for liquidation or dissolution involving the interested shareholder, any reclassification of securities, or any receipt by the interested shareholder of any loans, guarantees or other financial assistance.</p>
<p>Control Share Acquisitions</p>	<p>Nevada’s “Acquisition of Controlling Interest” statute applies to Nevada corporations that do business in the State of Nevada directly or through an affiliate and which have 200 or more stockholders of record (at least 100 of which have record addresses in Nevada), unless the articles of incorporation or</p>	<p>Delaware law has no provision comparable to Nevada’s “Acquisition of Controlling Interest” statute. DGCL does not have an affiliated transactions</p>	<p>FBCA does not have a business combination statute like Delaware, but instead has an affiliated transactions statute,</p>

	<p>bylaws specifically provide otherwise. If applicable, this statute generally provides that any person acquiring certain statutorily defined "control" percentages (20%, 33.3% or a majority) of a corporation's outstanding shares in the secondary market is not entitled to vote those "control shares" unless a majority of the other stockholders elects to restore such voting rights in whole or in part. NRS 78.379.</p>	<p>statute but has a business combination statute, described above. Section 203.</p>	<p>described below.</p> <p>Section 607.0901 defines an "affiliated transaction" as a merger by a Florida corporation with an "interested shareholder," a sale, lease or other disposition to the interested shareholder of assets of the corporation above a certain threshold including 5% or more of the fair market value of all of the assets of the corporation, or the issuance or transfer by</p>
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			<p>the corporation of shares of its capital stock having a fair market value equal to 5% of the fair market value of all of the outstanding shares of the corporation to the interested shareholder, adoption of any plan for liquidation or dissolution involving the interested shareholder, any reclassification of securities, or any receipt by the interested shareholder of any loans, guarantees or other financial assistance.</p>
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<p>Inspection of Books and Records</p>	<p>Under the NRS, any person who has been a stockholder of record of a Nevada corporation for at least six months immediately preceding a demand, or any person holding or authorized in writing by the holders of, at least 5% of all of its outstanding shares, upon at least 5 days' written demand is entitled to inspect and copy the corporation's records. NRS 78.257.</p>	<p>Under the DGCL, any stockholder of a Delaware corporation may examine the list of stockholders and any stockholder making a written demand may inspect any other corporate books and records for any purpose reasonably related to the stockholder's interest as a stockholder. DGCL 220.</p>	<p>Under the FCBA 607.0602, any shareholder, during regular business hours, at the corporation's principal office, is entitled to inspect and copy the corporation's books and records, including minutes of meetings, certain written board and shareholder resolutions, certain written communications to shareholders, articles of incorporation, bylaws, accounting</p>

			<p>records and the list of the names and business addresses of the corporation's directors and officers, provided that such shareholder makes written demand at least five (5) business days before the date on which the shareholder wishes to inspect and copy and such shareholder (i) makes the demand "in good faith and for a proper purpose," and (ii) describes the purpose with reasonable particularity</p>
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			<p>and describes the records he desires to inspect. In addition, the records must be directly connected with the shareholder's purpose.</p>
<p>Vote Required for Mergers</p>	<p>Unless otherwise provided in a corporation's articles of incorporation or any resolutions of the board of directors establishing a class or series of stock or the board conditions its submission of a proposed merger to require a greater vote, the NRS generally requires the affirmative vote of the holders of a majority of the outstanding shares of each class entitled to vote to approve a merger.</p>	<p>Unless a corporation's certificate of incorporation or its board of directors requires a greater vote, the DGCL generally requires the affirmative vote of the holders of a majority of the shares in each class entitled to vote to approve a merger.</p>	<p>FBCA provides that a merger, consolidation or sale of all or substantially all of the assets of a corporation requires (a) approval by the board and (b) the affirmative vote of a majority of the outstanding stock of the corporation entitled to</p>

			<p>vote. The FCBA allows the board of directors or the articles of incorporation to establish a higher vote requirement.</p>
<p>Limitation of Personal Liability of Directors</p>	<p>Under the NRS, unless a corporation's articles of incorporation provide for greater individual liability, a director or an officer of a Nevada corporation is not individually liable to the corporation, its stockholders or its creditors for damages as a result of any act or failure to act unless it is proven that the director or officer committed a breach of fiduciary duty and such breach involved intentional misconduct, fraud, or knowing violation of law. NRS 78.138.</p>	<p>The DGCL provides that a corporation's charter may include a provision eliminating director liability except for cases of a breach of the director's duty of loyalty, instances where the director has received an improper personal benefit, acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, and improper payment</p>	<p>Section 607.0831 of the FBCA generally provides that a director of a corporation is not personally liable for monetary damages to the corporation or other person unless the director breached or failed to perform his or her duties as a director, and such breach of, or failure to</p>

		<p>of dividends. DGCL Section 102.</p>	<p>perform, these duties constitutes a violation of criminal law.</p>
<p>Indemnification of Directors and Officers</p>	<p>A Nevada corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or</p>	<p>Through, among other means, a majority vote of disinterested directors, a corporation may indemnify any director, officer, employee or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding (other than an action by or in the right of the corporation), by reason of service in that capacity, against expenses</p>	<p>Section 607.0850 of the FBCA provides that a corporation shall have power to indemnify any director, officer, employee or agent of the corporation or against liability incurred in connection with such proceeding, including any appeal thereof, if such person acted in good faith and in a</p>

	<p>proceeding, if he is not liable under the codification of the business judgment rule set forth in NRS 78.138 or acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. However, with respect to actions by or in the right of the corporation, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent a court determines that, despite the adjudication of liability, such person is fairly and reasonably entitled to indemnity. A director or officer who is successful, on the merits or otherwise, in defense of any proceeding subject to the Nevada corporate statutes' indemnification provisions must be indemnified by the corporation for reasonable expenses incurred in connection therewith, including attorneys' fees. NRS</p>	<p>(including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. However, with respect to actions by or in the right of the corporation, no indemnification may be made with</p>	<p>manner he or she reasonably believed to be in, or not opposed to, the best interest of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.</p>
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	78.7502.	respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent a court determines upon application that, despite the adjudication of liability, such person is fairly and reasonably entitled to indemnity. A director or officer who is successful, on the merits or otherwise, in defense of any proceeding subject to the DGCL's indemnification provisions must be indemnified by the corporation for reasonable expenses incurred in connection	
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		therewith, including attorneys' fees. DGCL Section 145.	
Standard of Conduct for Directors	Under Nevada law, directors and officers must exercise their powers in good faith and with a view to the interests of the corporation.	Under the DGCL, the standards of conduct for directors have developed through written opinions of the Delaware courts. Generally, directors of Delaware corporations are subject to fiduciary duties of care, loyalty and good faith.	Under Section 607.0830 of the FBCA, a director has a fiduciary relationship to the corporation and its shareholders and is required to discharge his or her duties as a director, including his or her duties as a member of a committee.
Consideration of Non-	The NRS expressly authorizes directors, when taking action on behalf of a corporation, to	Delaware case law limits the ability of a board	The FBCA expressly authorizes

<p>stockholder Interests</p>	<p>consider the interests of constituencies other than stockholders, including employees, suppliers, creditors, customers and the community and society as a whole. NRS 78.138(4). “Directors and officers, in exercising their respective powers with a view to the interests of the corporation, may consider: (a) The interests of the corporation’s employees, suppliers, creditors and customers; (b) The economy of the State and Nation; (c) The interests of the community and of society; and (d) The long-term as well as short-term interests of the corporation and its stockholders, including the possibility that these interests may be best served by the continued independence of the corporation.”</p>	<p>of directors to consider the interests of non-stockholders when taking action on behalf of the corporation in some circumstances. This aspect of Delaware law could limit the discretion of the Board in responding to unsolicited takeover proposals or similar events in some circumstances.</p>	<p>directors, when taking action on behalf of a corporation, to consider the interests of constituencies other than stockholders, including employees, suppliers, creditors, customers and the community and society as a whole. FBCA 607.0830(3). “In discharging his or her duties, a director may consider such factors as the director deems relevant, including the long-term prospects and interests of the corporation and its</p>
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			<p>shareholders, and the social, economic, legal, or other effects of any action on the employees, suppliers, customers of the corporation or its subsidiaries, the communities and society in which the corporation or its subsidiaries operate, and the economy of the state and the nation.”</p>
<p>Advance ment of Expenses</p>	<p>Under Nevada law, the articles of incorporation, bylaws or an agreement made by the corporation, a person may require a corporation to advance expenses incurred by a director or officer relating to an action,</p>	<p>Delaware law provides that expenses incurred by an officer or director in defending any civil, criminal,</p>	<p>Under Florida law, expenses incurred by a director or officer in defending a civil or criminal</p>



	<p>suit or proceeding as to which indemnification may be obtained upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined that he or she is not entitled to be indemnified by the corporation. NRS 78.751.</p>	<p>administrative or investigative action, suit or proceeding may be paid by the corporation in advance of the final disposition of the action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined that he or she is not entitled to be indemnified by the corporation. A Delaware corporation has the discretion to decide whether or not to advance expenses, unless its certificate of incorporation or bylaws provides for mandatory advancement. DGCL Section</p>	<p>proceeding may be paid by the corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he or she is ultimately found not to be entitled to indemnification by the corporation. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the board of directors</p>
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		145.	deems appropriate.
Appraisal or Dissenter s' Rights	Under the NRS, except as otherwise provided by the NRS, stockholders have the right to demand and receive payment in cash of the fair value of their stock in the event of a merger or exchange in lieu of the consideration such stockholder would otherwise receive in such transaction. However, stockholders do not have such appraisal rights if they hold shares that are listed, or authorized for listing, on a national securities exchange. In addition, no right of dissent exists for any holders of the surviving domestic corporation if the plan of merger does not require action of the stockholders of the surviving domestic corporation under the NRS. Sections 92A.300 to 92A.500.	Section 262 of the DGCL provides that stockholders may have the appraisal rights in connection with a statutory merger or consolidation in specified situations and may, in some circumstances, to dissent from certain corporate action and to instead demand payment of the fair value of their shares. However, except as provided in section 262(b)(1), no such rights are available if such shares are publicly traded.	Sections 607.1301-607.1333 provide that stockholders have the right, in some circumstances, to dissent from certain corporate actions and demand cash payment of, the fair value of their shares in the event of a number of corporate actions. However, as provided in FBCA 607.1302, no such rights are available if such shares are publicly traded.

<p>Fees</p>	<p>The following link is to the Nevada website setting forth all corporate fees:</p> <p><a href="http://nvsos.gov/Modules/ShowDocument.aspx?documentid=1050">http://nvsos.gov/Modules/ShowDocument.aspx?documentid=1050</a></p> <p>Nevada fees are based on the capitalization of the company. Depending on capitalization, formation filing fees start at \$75 and top out at a maximum fee of \$35,000. For example, a corporation that has authorized 1,000,000 shares at a par value of \$0.001 would pay \$75 to incorporate, where one that has authorized 1,000,000,000 at a par value of \$0.001 would pay \$375 to incorporate.</p> <p>Annual fees in Nevada include an annual list filing and a \$200 business license fee. The annual list filing fee is also based on the capitalization of the company.</p>	<p>The following link is to the Delaware website setting forth all corporate fees:</p> <p><a href="https://corp.delaware.gov/Julyfee.pdf">https://corp.delaware.gov/Julyfee.pdf</a>.</p> <p>In Delaware, corporate formation costs also are based on the corporation's capitalization (the number of shares the corporation authorizes for issuance and the par value of those shares). Depending on capitalization, filing fees start at \$89 and can go upwards of</p>	<p>The following link is to the Florida website setting forth all corporate fees:</p> <p><a href="http://sunbiz.org/feecorp.html">http://sunbiz.org/feecorp.html</a>.</p> <p>The initial filling fee for a Florida corporation is a \$78.75. The Annual Report fee is \$150.</p>

	<p>Fees range from \$150 to a maximum annual fee of \$11,125. Further, additional filings in Nevada, such as amending the articles of incorporation or merging entities, also tend to be more expensive than they would be in other jurisdictions.</p>	<p>\$9,000.</p> <p>Delaware also charges annual franchise tax fees. These taxes are calculated via two methods. The first, like the formation documents, is based on the corporation's authorized capitalization. Alternately, franchise tax can be calculated based on the "Assumed Par Value Capital Method." This divides the total assets of the company by the total shares issued (as opposed to authorized) to determine the assumed par value. The assumed par value is then multiplied by the</p>	
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		<p>total authorized shares to determine the assumed par value capital. These fees can be as high as \$180,000.</p>	
<p>Taxes</p>	<p>Nevada has no state corporate income tax and imposes no fees on corporate shares. There is neither personal income tax nor franchise tax for corporations.</p>	<p>Every domestic or foreign corporation doing business in Delaware is required to pay a tax of 8.7% on its federal taxable income allocated and apportioned to Delaware.</p>	<p>Every domestic or foreign corporation doing business in Florida is required to pay a tax of 5.5% on its federal taxable income allocated and apportioned to Florida.</p>

## The Author

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Securities Law Blog is written by Laura Anthony, Esq., a going public lawyer focused on OTC Listing Requirements, Direct Public Offerings, Going Public Transactions, Reverse Mergers, Form 10 Registration Statements, and Form S-1 Registration Statements. Securities Law Blog covers topics ranging from SEC Compliance, FINRA Compliance, DTC Chills, Going Public on the OTC, and OTCQX and OTCQB Reporting Requirements. Ms. Anthony is also the host of LawCast.com, the securities law network.

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