



California Corporate & Securities Law

Corporate Ownership Disclosure Again In The Crosshairs

By Keith Paul Bishop on October 3, 2011

Nevada Secretary of State Announces Task Force

Last month, Nevada Secretary of State Ross Miller announced the formation of a task force to investigate registered Nevada business entities that are suspected of being involved in illegal activities including tax evasion, money laundering, securities violations, and the marketing of shell or shelf companies for fraudulent and/or deceptive purposes.

Many people may think of Nevada as a sort of Great Basin Switzerland. But as Secretary Miller points out “We have a unique law in Nevada which allows us to demand a list of beneficial owners of any entity registered in Nevada that is suspected of illegal activities”. This statement is correct – mostly. NRS 78.152(3) authorizes the Secretary of State, upon the request of any law enforcement agency in the course of a criminal investigation, to require a corporation to provide a list of “owners of record” (not beneficial owners). The statute also requires a corporation to “answer any interrogatory submitted by the Secretary of State that will assist in the criminal investigation”. Similar statutes apply to foreign corporations (NRS 80.113), limited liability companies (86.246), and foreign limited liability companies (NRS 86.54615).

Notably, Nevada’s statute does not require a subpoena. Interestingly, it was a federal official who provided the justification to the Nevada legislature for not requiring a subpoena:

The subpoena process is sometimes not timely, which becomes an issue in investigations where we need the information in a short period of time and do not have time to go through the subpoena process. Something may be happening, and we need to provide that information to our colleagues or to another investigation somewhere else in the United States.

Testimony of John College, Resident Agent for the U.S. Immigration and Customs Enforcement, Department of Homeland Security, Senate Committee on Judiciary (May 15, 2007).

Please contact **Keith Paul Bishop** at Allen Matkins for more information kbishop@allenmatkins.com

<http://www.calcorporatelaw.com/>

U.S. Money Laundering Threat Assessment Group Points Finger At Delaware, Nevada & Wyoming

For some years, the federal government has been concerned about the use of business entities to facilitate money laundering and other crimes. In 2005, the Money Laundering Threat Assessment Group issued this report finding:

Legal jurisdictions, whether states within the United States or entities elsewhere, that offer strict secrecy laws, lax regulatory and supervisory regimes, and corporate registries that safeguard anonymity are obvious targets for money launderers. A handful of U.S. states offer company registrations with cloaking features – such as minimal information requirements and limited oversight – that rival those offered by offshore financial centers. Delaware, Nevada, and Wyoming are often cited as the most accommodating jurisdictions in the United States for the organization of these legal entities.

The following year, the U.S. [Government Accountability Office](#) (aka the GAO) issued this report to the [U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs](#). Not surprisingly, the GAO found “Most states do not require companies to provide ownership information at formation or in periodic reports.”

Federal Bill Would Require Beneficial Ownership Disclosure

In August, Sen. Carl Levin, D-Mich., chairman of the Permanent Subcommittee on Investigations, and Sen. Chuck Grassley, R-Iowa, ranking member of the Senate Judiciary Committee, introduced a bill to enact the “Incorporation Transparency and Law Enforcement Assistance Act” ([S.1483](#)). In general, this bill would require the states to obtain a list of the beneficial owners of each corporation or limited liability company formed under their laws, ensure this information is updated annually, and provide the information to civil or criminal law enforcement upon receipt of a subpoena or summons.

The Subcommittee has been working on this issue since 2000 and I’m not offering any predictions. As Yogi Berra once said, “Prediction is very hard, especially about the future”.

Please contact **[Keith Paul Bishop](#)** at Allen Matkins for more information kbishop@allenmatkins.com

<http://www.calcorporatelaw.com/>