

	<b>Land Trust (FL)</b>	<b>LLC (DE)</b>	<b>LLC (NEVADA)</b>
<b>Formation</b>	<ul style="list-style-type: none"> <li>- Created by recorded instrument (e.g. deed, mortgage, lease assignment) into trustee (person, bank, trust company or other legal entity) reciting power and authority of trustee to protect, conserve, sell, lease, encumber or otherwise manage or dispose of property. FS. 689.071(3).</li> </ul>	<ul style="list-style-type: none"> <li>- File certificate of formation with name, name and address of the registered agent. 6 <u>Del. C.</u> § 18-201(a). LLC formed when filed or at later time if elected by LLC. 6 <u>Del.C.</u> § 18-201(b).</li> <li>- Enter into LLC agreement either before, after or at the time of the filing of a certificate of formation; may be made effective as of the formation of the LLC or at such other time or date as provided in the LLC Agreement. 6 <u>Del. C.</u> § 18-201(d).</li> </ul>	<ul style="list-style-type: none"> <li>- NRS 86.151 – Filing of Articles of Organization (signed), when filed and fees paid, LLC begins organizational existence per 86.201.</li> <li>- NRS 86.161 – contents of Articles of Organization (list of members, in member-managed LLCs).</li> <li>- NRS 86.201 – Commencement of existence (see above).</li> </ul>
<p><b>Privacy/Implication of SB 2956 &amp; NCCUSL Proposed Legislation</b></p> <p><b>Proposed Senate Bill 2956 would:</b>  <b>(1) establish uniform requirements for filing for formation with the states relating to the disclosure of beneficial owners of corporations and LLCs (potentially reaching trusts, partnerships or other entities), formed in such states; (2) require states to maintain beneficial ownership disclosure information for five years after a corporation or LLC is terminated; (3) impose additional identification requirements for the beneficial owners of corporations or LLCs who are not U.S. citizens or lawful permanent residents of the United States; and (4) provide for</b></p>	<ul style="list-style-type: none"> <li>- No state filing; no disclosure of beneficial interests.</li> </ul>	<ul style="list-style-type: none"> <li>- No DE requirement that a LLC release or divulge to any party outside the LLC the names of its members or managers.</li> <li>- It would be up to each state to determine whether the information required to be collected by this legislation is included in publicly available “public records,” or would be isolated in a separate, non-public, database. Penalties and fines exist for filing false beneficial ownership information. Coverage exists for all listed entities, even for larger, publicly, traded entities.</li> </ul>	<ul style="list-style-type: none"> <li>- Unless “member managed,” the identity of the owners of “equity” type interests in a Nevada LLC is not available to the public.</li> <li>- Per NRS 239 allows for certain disclosures, but with no public record of identity of members, unless member managed, any disclosure of member identity by the Secretary of State’s office would be impossible.</li> <li>- It would be up to each state to determine whether the information required to be collected by this legislation is included in publicly available “public records,” or would be isolated in a separate, non-public, database. Penalties and fines exist for filing false beneficial ownership information. Coverage exists for all listed entities, even for larger, publicly, traded entities.</li> </ul>

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<p><b>additional civil and criminal penalties for individuals who provide false beneficial ownership information to a state. “Beneficial ownership” reaches individuals with control over, or an entitlement to, the funds or assets of an entity, and which as a practical matter, enables such individual to control, manage or direct the entity (directly or indirectly).</b></p>			
<p><b>Taxation</b></p>	<p>- Tax consequences are defined by nature of the beneficiaries (trusts, LLCs, corporations, individuals).</p>	<p>- \$250 annual state tax. 6 <u>Del. C.</u> § 18-1107(b)-(c). \$100 penalty for failure to pay state tax at required time, with loss of good standing or cancellation of certificate of formation possible for continued non-payment for a period of 3 years. 6 <u>Del. C.</u> § 18-1107(e), (h)-(i), § 18-1108(a).</p>	<p>- Nevada has no business income tax, no personal income tax, no franchise tax.</p> <p>- Nevada LLC’s may be subject to Federal income tax, if taxed as certain corporations.</p> <p>- Nevada’s Modified Business Tax imposes an excise tax on wages, due quarterly (see NRS Chapter 363B). This tax is in addition to the unemployment compensation tax (under NRS Chapter 612), the tax is not capped, and currently applied at a rate of .63% of gross wages. There is a deduction for employer-paid health insurance and health benefit plans.</p>
<p><b>Transferability of Interests/Beneficial Ownership</b></p>	<p>- Interests of beneficiaries are deemed personal property and are freely transferable absent restrictions in beneficiary agreement.</p> <p>- Note, the assignment of beneficial interest</p>	<p>- LLC interest is considered personal property and is assignable in whole or in part, except as provided in the LLC Agreement. 6 <u>Del. C.</u> §§ 18-701; 18-702(a). The assignee of a member’s LLC interest shall have no right to participate in the</p>	<p>- NRS 86.351A – Membership interest is personal property, whose transfer may be limited or regulated in the Articles of Organization, or in an Operating Agreement.</p>

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	<p>in a Florida land trust is subject to the documentary stamp tax even though it is deemed personal property under the Statute.</p>	<p>management of the business and affairs of a LLC except as provided in a LLC Agreement and upon (1) the approval of all of the members of the LLC other than the member assigning the LLC interest or (2) compliance with any procedure provided for in the LLC Agreement. 6 <u>Del. C.</u> § 18-702(a).</p> <p>- Unless otherwise provided in a LLC Agreement and except to the extent assumed by such agreement, until an assignee of a LLC interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment. 6 <u>Del. C.</u> § 18-702(d).</p> <p>- An assignee of a LLC interest may become a member as provided in a LLC Agreement and upon the approval of all of the members of the LLC other than the member assigning the LLC interest or upon compliance with any procedure provided for in the LLC Agreement. 6 <u>Del. C.</u> § 18-704(a).</p>	<p>- Unless otherwise provided in Articles of Organization, a transferee acquires no right to participate in management of the LLC.</p>
<b>Authority to Act</b>	<p>- Trustee has authority granted in the recorded instrument; no duty on part of third parties dealing with trusts to inquire as to authority provided the deed confers the powers to the Trustee in accordance with the statute.</p>	<p>- A LLC shall possess and may exercise all the powers and privileges granted by the Delaware LLC Act or by any other law or by its LLC Agreement, together with any powers incidental thereto, including such powers and privileges as are necessary or convenient to the conduct, promotion or attainment of the business, purposes or activities of the LLC. 6 <u>Del. C.</u> § 18-106(b).</p> <p>- Individual authority to act based on status as a “manager” in manager-managed LLC, or a</p>	<p>- Linked to status as a “manager”, in a manager-managed LLC, or status as a “member,” in a member-managed LLC (NRS 86.301).</p>

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		“member” in member-managed LLC. 6 <u>Del. C.</u> § 18-402.	
<b>Management</b>	- Power to direct the trustee resides with beneficiaries but may be expanded, restricted or delegated in a trust agreement or beneficiary agreement.	- Unless otherwise provided in a LLC Agreement, the management of a LLC shall be vested in its members; provided however, that if a LLC Agreement provides for the management, in whole or in part, of a LLC by a manager, the management of the LLC, to the extent so provided, shall be vested in the manager who shall be chosen in the manner provided in the LLC Agreement. 6 <u>Del. C.</u> § 18-402.  - Except as limited by a LLC agreement, a member or manager may delegate to 1 or more persons the rights and powers to manage and control vested in such member or manager. 6 <u>Del. C.</u> § 18-407.	- NRS 86.291 – Management is vested in the members, in proportion to their unreturned capital, except as otherwise stated in Articles of Organization. However, the Articles of Organization or Operating Agreement can vest management or one or more managers.
<b>Conversion</b>	- Not applicable. Recorded instrument does not create an entity, regardless of whether the relationship between the beneficiaries and the trustee is deemed to be an entity under applicable law.	- Any corporation, statutory trust, business trust, association, real estate investment trust, common-law trust or any other unincorporated business or entity, including a partnership or foreign LLC, may convert to a domestic (Delaware) LLC. 6 <u>Del. C.</u> § 18-214(a), (b).  - A Delaware LLC may convert to a corporation, statutory trust, business trust, real estate investment trust, or any other unincorporated business or entity, including a partnership or a foreign LLC. 6 <u>Del. C.</u> § 18-216(a).	- Permissible, conversion of domestic entities into LLCs, or otherwise see 92A.100.  - Under 92A.195, a foreign LLC may also domesticate under 92A.270.

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<b>Transfer</b>	<ul style="list-style-type: none"> <li>- Legal and equitable title to trust property conveyed by written instrument from trustee.</li> <li>- Beneficial interests of beneficiaries transferred by assignment.</li> <li>- Note, the assignment of beneficial interest in a Florida land trust is subject to the documentary stamp tax even though it is deemed personal property under the Statute.</li> </ul>	<ul style="list-style-type: none"> <li>- A LLC may transfer and discontinue as a Delaware LLC, or may may transfer to or domesticate or continue in any jurisdiction, other than any state, and, in connection therewith, may elect to continue its existence as an LLC in the State of Delaware. 6 <u>Del. C.</u> § 18-213(a).</li> </ul>	<ul style="list-style-type: none"> <li>- See conversion above.</li> </ul>
<b>Dissolution</b>	<ul style="list-style-type: none"> <li>- Not susceptible to partition.</li> <li>- Terminated by conveyance of all property held in trust.</li> </ul>	<ul style="list-style-type: none"> <li>- A LLC is dissolved and its affairs shall be wound up upon the first to occur at the time specified in an LLC Agreement; unless otherwise provided in an LLC Agreement, upon the affirmative vote or written consent of the members of the LLC; if at any time there are no members, unless certain conditions are met; or the entry of a decree of judicial dissolution. 6 <u>Del. C.</u> § 18-801(a); 6 <u>Del. C.</u> § 18-802.</li> <li>- Unless otherwise provided in an LLC Agreement, the death, retirement, resignation, expulsion, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the LLC to be dissolved or its affairs to be wound up. 6 <u>Del. C.</u> § 18-801(b).</li> </ul>	<ul style="list-style-type: none"> <li>- For NRS 86.491, dissolution is mandated at the time specified in its Articles of Organization, at the happening of an event specified in its Operating Agreement; entry of a decree of juridical dissolution; or at the happening of a vote in favor of dissolution or written agreement of all the members (unless a different arrangement is provided in the Operating Agreement). Perpetual unless otherwise specified.</li> </ul>