

**LCB File No. R134-08**

**PROPOSED REGULATION OF THE  
COMMISSIONER OF FINANCIAL INSTITUTIONS**

**Explanation:** Material in *bold italics* is new material; material lined out within ~~bold brackets~~ is material to be omitted.

**Purpose:** To adopt regulations under chapter 669 of the Nevada Administrative Code relating to trust companies by establishing the amount of certain fees; providing for certain definitions and policies; and providing other matters properly relating thereto.

**General Authority:** NRS 669.015, 669.010, 669.030. 669.040

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**Sec. 1.** Chapter 669 of the NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 25, inclusive, of this regulation.

**Sec. 2. *State residency of Trust Companies. (NRS 669.010; 669.270, 669.280)*** *A trust company licensed in this State is to establish a physical presence in the State of Nevada and conduct its principal business operations in this State to provide trust services to the citizens of Nevada, unless otherwise prohibited by law. This understanding includes but is not limited to, a verifiable physical office in Nevada, the presences of executive level management located in said office on a full-time basis, the maintenance of the business's records in said office readily available for examination by the Financial Institutions Division, and evidence that a substantial amount of the trust company's operations serves citizens of the State of Nevada.*

**Sec. 3. “Retail Trust Company” defined. (NRS 669.270) “Retail trust company” means a trust company which conducts the business of a trust company to customers other than members of family relationship.**

**Sec. 4. “Family Trust Company” defined. (NRS 669.270) “Family trust company” means a trust company which conducts the business of a trust company only for members of a family trust.**

**Sec 5. “Administrator” defined. (NRS 669.045) “Administrator” means any and all forms of administrators and shall include servicers of trust accounts and qualified retirement accounts, where the administrator holds or maintains an ownership in the servicing rights of such accounts.**

**Sec. 6. Minimum Stockholders equity required for organization and operation (NRS 669.100)**  
**No retail trust company may be organized or operated with stockholder equity of less than \$2,000,000 cash with out the approval of the Commissioner of Financial Institutions Division. The full amount of initial stockholder’s equity must be verified, exclusive of all organization expenses, before the trust company is authorized to commence business**

**Sec. 7. NAC 669.010 is hereby amended as follows:**

**NAC 669.010 Fee for supervision and related activities: Amount; collection; failure to pay. (NRS 658.101, 669.250, 669.270)**

1. The Commissioner of Financial Institutions will charge and collect a fee of ~~[\$60]~~ **\$100** per hour from each trust company for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 669 of NRS.

2. The Commissioner will bill each trust company upon the completion of the activity for the fee established in subsection 1. The fee must be paid within 30 days after the date the bill is received. Except as otherwise provided in this subsection, any payment received after that date must include a penalty of 10 percent of the fee plus an additional 1 percent of the fee for each month, or portion of a month, that the fee is not paid. The Commissioner may waive the penalty for good cause.

3. Failure of a trust company to pay the fee required in subsection 1 as provided in this section constitutes grounds for revocation of its license.

**Sec. 8. NAC 669.030 is hereby amended as follows:**

**NAC 669.030 Fees: Application for license to transact trust company business; request for licensing of branch location. (NRS 669.150, 669.270)**

1. An application for a license to transact trust company business submitted pursuant to NRS 669.150 must be accompanied by:

(a) A nonrefundable fee of ~~[\$1,500]~~ **\$2,000**; and

(b) A fee of ~~[\$300]~~ **500**, prorated by the Commissioner of Financial Institutions.

2. A request for the licensing of a branch location submitted by a trust company pursuant to NRS 669.150 must be accompanied by:

(a) A nonrefundable fee of ~~[\$375]~~ **\$500** for each request; and

(b) A fee of \$200, prorated by the Commissioner of Financial Institutions.

**Sec. 9.** NAC 669.040 is hereby amended as follows:

**NAC 669.040 Initial licensing fees.** (NRS 669.190, 669.270)

1. The initial fee for a trust company with an initial stockholder's equity of:
  - (a) Not less than \$300,000 but not more than \$500,000, is ~~[\$750]~~ **\$1,000**.
  - (b) More than \$500,000 but not more than \$1,000,000, is ~~[\$1,125]~~ **\$1,500**.
  - (c) More than \$1,000,000, is ~~[\$1,500]~~ **\$2,000**.
2. In addition, each trust company must pay an initial fee of ~~[\$150]~~ **\$200** for each branch office that is authorized by the Commissioner of Financial Institutions.

**Sec. 10.** NAC 669.050 is hereby amended as follows:

**NAC 669.050 Annual licensing fees.** (NRS 669.190, 669.270) On or before April 1 of each year, each licensed trust company shall pay to the Division of Financial Institutions of the Department of Business and Industry, for a trust company with an existing stockholder's equity of:

1. Not less than \$300,000 but not more than \$500,000, a fee of ~~[\$750]~~ **\$1,000**.
2. More than \$500,000 but not more than \$1,000,000, a fee of ~~[\$1,125]~~ **\$1,500**.
3. More than \$1,000,000, a fee of ~~[\$1,500]~~ **\$2,000**.

**Sec. 11. *Transfer and assignment of license.*** (NRS 669.270)

*1. Licenses pursuant to this chapter shall not be transferable or assignable. Only upon approval of the Commissioner, a licensee may merge or consolidate with, or transfer its assets and control with another duly authorized entity.*

*2. As used in this section, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of the trust company, or a change in the ownership of as much as 5 percent of the outstanding voting stock of, or participating members' interests in, any retail trust company.*

*3. If there is a change in ownership of 5 percent or more of the outstanding voting stock of or members' interests in any trust company, the president or other chief executive officer or managing member of a retail trust company shall report the facts to the Commissioner within 3 business days after obtaining knowledge of the change.*

*4. Each trust company shall, within 24 hours after there is a change in the chief executive officer, managing member or director of a retail trust company, report the change to the Commissioner. The retail trust company shall include in its report a statement of the past and current business and professional affiliations of new chief executive officers, managing member or directors. A new chief executive officer, managing member or director shall furnish to the Commissioner a complete financial statement on a form prescribed by the Commissioner.*

*5. An application must be submitted to the Commissioner by the person who acquires stock or members' interests resulting in a change of control of the trust company. The application must be submitted on a form prescribed by the Commissioner of Financial Institutions Division. The Commissioner shall conduct an investigation to determine whether the individual has a good reputation for honesty, trustworthiness and integrity and is competent to transact the business of a trust company in a manner which protects the interest of the general public.*

*6. The retail trust company with which the applicant is affiliated shall pay the cost of the investigation as the Commissioner requires. All money received by the Commissioner*

*pursuant to this subsection must be placed in the Investigative Account created by NRS 232.545. If the Commissioner denies the application, he may forbid the applicant from participating in the business of the trust company.*

**Sec. 12. *Prohibited acts. (NRS 669.270) A licensee shall not conduct any business under his license unless:***

- 1. He possesses each license, certificate and permit required by this State or a local government of this state as a condition to conducting business; and*
- 2. The business location complies with the provisions of all applicable planning and zoning ordinances in this state.*

**Sec. 13. *Requirements for branch operation outside of this State. (NRS 669.150)***

- 1. It is unlawful for any trust company licensed in this state to engage in trust company business at any location outside this state unless approved by the Commissioner.*
- 2. Prior to approval for a branch located outside this State, the licensee must obtain a license as a trust company or meet all the requirements to operate a trust company in that state.*

**Sec. 14. *Confidential audited financial statement and list of shareholders and members. (NRS 669.270) The Commissioner:***

- 1. May require a licensee to furnish him with an audited financial statement prepared by an independent certified public accountant licensed to do business in Nevada.*
- 2. On the fourth Monday in January of each year, each licensee must submit a list of stockholders required to be maintained pursuant to paragraph (c) of subsection 1 of NRS 78.105 or the list of members required to be maintained pursuant to paragraph (a) of subsection 1 of NRS 86.241, verified by the president or a manager, and must be transmitted to the Commissioner.*
- 3. The list of members required to be maintained pursuant to paragraph (a) of subsection 1 of NRS 86.241 must, in addition to the requirements set forth in that section, include the percentage of each member's interest in the company.*
- 4. Any document submitted pursuant to this section is confidential.*

**Sec. 15. *Quarterly meetings and examination of books required; exemption. (NRS 669.260 and 661.165)***

*The Commissioner may direct that the board of directors shall meet at least quarterly in regular meeting to conduct a thorough examination of the books, records, funds and securities held by the trust company. At the Commissioner's discretion, this examination requirement may be satisfied by obtaining an independent audit of the books, records, funds and securities.*

**Sec. 16. *License application process and hearing. (NRS 669.160)***

*1. The Commissioner shall initiate the investigation of the application for license within 60 days of the filing of the application and shall complete the investigation within a reasonable time.*

*2. If the application is denied, the Commissioner shall issue a written order to the applicant by certified mail or by telegram.*

*3. The applicant shall have 30 days from the date the order is mailed to submit a request for hearing.*

*4. The presiding hearing officer shall apply the substantial evidence standard of review upon any order by the Commissioner pursuant to this section.*

*5. The presiding hearing officer shall either affirm or remand the Commissioners order.*

**Sec. 17. Confidentiality of Financial Records, Applications and Examinations. (NRS 669.250 and 669.270)**

*The application and financial records submitted by a person pursuant to the provision of this chapter and any financial records or other documents submitted by a licensee pursuant to an audit conducted by the Division are confidential and may be disclosed only to:*

- 1. The Division;*
- 2. An authorized employee of the Division who needs the records for purposes relating to the administration of this chapter; or*
- 3. A person or governmental entity that is authorized to obtain the records pursuant to an order issued by a court of competent jurisdiction.*

**Sec. 18. Required Number of Directors and Members. (NRS 669.260 and NRS 661.135)**

*1. The affairs and business of a trust company organized under the laws of this State must be managed or controlled by a board of directors of not less than five in number, who must be selected from the stockholders at the annual meeting of stockholders in such manner as may be provided by the bylaws of the corporation.*

*2. The affairs and business of a trust company so organized must be managed or controlled by no fewer than three managers selected from the members as provided in the operating agreement.*

**Sec. 19. Directors or managers: Qualifications. (NRS 669.260 and 661.145)**

*1. No person is eligible to serve as a director or manager of any trust company, organized or existing under the laws of this State, unless he:*

- (a) Is a bona fide owner of stock of the trust company or its holding company;*
- (b) Holds stock of the trust company or its holding company in a revocable trust; or*
- (c) Has a member's interest in the trust company.*

*2. The stock or interest owned or held pursuant to subsection 1 must have a total fair market value of at least \$1,000. A determination of the value of the stock or interest must be based on its value on the date it was purchased or on its value on the date the owner or holder of the stock or interest became a director, whichever is greater. The stock or the member's contribution must be fully paid and not pledged.*

*3. For the purposes of this section, "holding company" has the meaning ascribed to it in NRS 666.005.*

**Sec. 20. Contested Hearings. (NRS 669.270)**

*1. The Commissioner may issue an order to cease and desist and/or to pay an administrative fine upon a person pursuant to this chapter. The Commissioner shall:*

- a. Provide a copy of the order by certified mail to the person;*
- b. Provide the person notification that he has 30 days to request an administrative hearing, and if no written application for a hearing is received by the Division, the order shall become final.*

**Sec. 21. *Order: Amendment; continuance; withdrawal. (NRS 669.270 and 669.280)***

*1. If a person engages in an activity in violation of the provisions of this chapter of NRS, the Commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity.*

*2. The order to cease and desist must be in writing and must state that, in the opinion of the Commissioner, the person has engaged in an activity:*

*(a) For which the person has not received a license or certificate of exemption as required by this chapter; or*

*(b) In a manner that violates the provisions of this chapter or any applicable law.*

*3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by this chapter after he receives the order unless the order is suspended or rescinded.*

*4. The order imposing the administrative fine or restricting the practices of the licensee may be amended at any time before and during the hearing.*

*5. The hearing officer assigned to the matter may grant a continuance if the amendment materially alters the facts or the legal issues related to the order or a respondent demonstrates an inability to prepare for the case in a timely manner.*

*6. An order may be withdrawn at any time before the hearing begins.*

*2. If a timely application for a hearing is received by the Division, a presiding hearing officer shall conduct a contested hearing.*

*7. Each party may request that the presiding hearing officer issue a subpoena to compel the attendance of witnesses. The party making the request shall be responsible for paying mileage for the witness.*

*8. The petitioner has the burden of proof in a contested case.*

*9. The decision of the presiding hearing shall be final for the purposes of judicial review.*

**Sec. 22. *The hearing officer is not bound by strict rules of procedure and evidence. (NRS 669.270)***

*1. The hearing officer will not be bound by strict rules of procedure or the Nevada Rules of Evidence in the conduct of its proceedings.*

*2. A record of the charges and a record of all evidence produced will be filed in the office of the Financial Institutions Division.*

*3. A hearing held pursuant to the provisions of this chapter, will be conducted pursuant to the provisions of chapter 233B of NRS.*

**Sec. 23. *Hearing officer: Duties; authority. (NRS 669.270)***



- 1. The hearing officer may:*
  - (a) Conduct hearings;*
  - (b) Question witnesses;*
  - (c) Make rulings on motions and objections; and*
  - (d) Submit findings of fact or conclusions of law at the conclusion of the case.*
- 2. The findings of fact and conclusions of law issued by the hearing officer is the final decision for purposes of judicial review.*

**Sec. 24. Failure to appear. (NRS 669.270)** *If a party fails to appear at a hearing scheduled by the hearing officer and a continuance has not been requested or granted, upon an offer of proof by the other party that the absent party was given proper notice and upon a determination by the Board that proper notice was given, the hearing officer may proceed to consider the case without the participation of the absent party and may dispose of the matter on the basis of the evidence before it. If the respondent fails to appear at the hearing or fails to reply to the notice, the charges specified in the complaint may be considered as true.*

**Sec. 25. Examination of witnesses. (NRS 669.270)**

- 1. A party may call any other party or witness as an adverse witness. The party may question such a witness as if conducting a cross-examination.*
- 2. Any party who is surprised by the testimony of a witness, called in good faith as a witness on his behalf, may question the witness as if conducting a cross-examination.*