

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

**LCB File No. R134-08**

September 13, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1, 7-11, 13, 17 and 19-22, NRS 669.270; §2, NRS 669.087 and 669.270; §3, NRS 661.145 and 669.260; §4, NRS 669.115 and 669.270; §5, NRS 669.160 and 669.270; §6, NRS 669.270, 669.2846 and 669.2847; §12, NRS 658.101, 669.250 and 669.270; §14, NRS 669.150; §§15 and 16, NRS 669.190; §18, NRS 658.055, 658.098, 669.270 and 669.2847; §§23, 27-29, 31 and 33-39, NRS 669A.270; §24, NRS 658.101, 669A.260 and 669A.270; §§25 and 30, NRS 669A.190 and 669A.270; §26, NRS 658.055, 658.098 and 669A.270; §32, NRS 233B.110 and 669A.270.

A REGULATION relating to trust companies; providing restrictions on the transfer and assignment of licenses as a retail trust company and as a family trust company; requiring retail trust companies and licensed family trust companies to satisfy certain conditions before conducting business as a trust company; providing eligibility requirements for serving as a director or manager of a retail trust company; establishing requirements pertaining to certain reviews of the records and books of a retail trust company; providing requirements for hearings on applications for licenses; providing procedures for cease and desist orders and hearings concerning retail trust companies and licensed family trust companies; establishing provisions concerning assessments to cover the costs of certain audits and examinations and the costs of certain legal services; providing requirements concerning the fees and assessments paid by licensed family trust companies; establishing provisions concerning the licensing of branch offices of a licensed family trust company; establishing provisions concerning audits and examinations of licensed family trust companies; providing procedures for requests by licensed family trust companies for advisory opinions and declaratory orders; and providing other matters properly relating thereto.

**Section 1.** Chapter 669 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

**Sec. 2. 1.** *For the purposes of NRS 669.087, the Commissioner will consider a license as a retail trust company to be transferred or assigned if a person who does not hold 50*

*percent or more of the ownership interest in a retail trust company obtains or acquires 50 percent or more of the ownership interest in the retail trust company.*

*2. The nonrefundable fee for the cost of an investigation conducted pursuant to subsection 4 of NRS 669.087 is \$1,000.*

**Sec. 3.** *1. No person is eligible to serve as a director or manager of a retail trust company unless the person:*

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

- (a) Which directly or indirectly owns or controls 25 percent or more of the voting stock of a retail trust company;*
- (b) Which controls the election of a majority of the directors of a retail trust company; or*
- (c) For the benefit of whose stockholders 25 percent or more of the voting stock of a retail trust company is held by one or more trustees.*

**Sec. 4.** *If, pursuant to NRS 669.115, the Commissioner directs the board of directors or managers of a retail trust company to meet to review the books, records, funds and securities held by the retail trust company in its individual and fiduciary capacities, the Commissioner*

*may allow the retail trust company to satisfy the requirement by obtaining an independent audit of the books, records, funds and securities held by the retail trust company in its individual and fiduciary capacities.*

**Sec. 5.** *1. If an application for a license is denied, the Commissioner will serve a written order upon the applicant personally or by certified mail.*

*2. Not later than 30 days after the date an order is served upon an applicant pursuant to subsection 1, the applicant may submit to the Commissioner a request for a hearing. If an applicant submits a request for a hearing not later than 30 days after the date the order is served, the Commissioner or the designee of the Commissioner will conduct a hearing. If an applicant does not submit a request for a hearing within 30 days after the date the order is mailed, the Commissioner will enter a final order denying the application.*

*3. If an applicant submits a request for a hearing pursuant to subsection 2 and the Commissioner or the designee of the Commissioner finds that substantial evidence supports the denial of the application, the Commissioner or the designee of the Commissioner will affirm the denial of the application and enter a final order denying the application. The decision of the Commissioner or the designee of the Commissioner is a final decision for the purpose of judicial review.*

**Sec. 6.** *1. If, pursuant to NRS 669.2846, the Commissioner issues an order directing a person to cease and desist from engaging in an activity, the Commissioner may include in the order a provision imposing an administrative fine of not more than \$10,000 for each violation of this chapter or chapter 669 of NRS committed by the person.*

*2. An order issued pursuant to subsection 1 must:*

*(a) Be in writing.*

*(b) Be served by certified mail on the person to whom the order is issued. For the purposes of this paragraph, proof of attempted service by certified mail to the last known address of the person is sufficient to establish that service was complete.*

*(c) State that the person has 30 days from the date of the order to request an administrative hearing and that the order shall be deemed final if the Division does not receive a verified petition for a hearing within the prescribed time.*

*(d) State that, in the opinion of the Commissioner, the person has engaged in an activity:*

*(1) For which the person has not received a license as required by chapter 669 of NRS;*  
*or*

*(2) In a manner that violates the provisions of this chapter or chapter 669 of NRS.*

*3. A person who is served with an order to cease and desist pursuant to this section shall not engage in any activity governed by this chapter or chapter 669 of NRS after the person receives the order unless the order is suspended or rescinded.*

*4. If a verified petition for a hearing is received by the Division within the prescribed time, the Commissioner or the designee of the Commissioner will hold a contested hearing.*

*5. An order issued pursuant to this section may be amended or rescinded at any time before or during the contested hearing. Subject to the discretion of the Commissioner or the designee of the Commissioner, the hearing may be continued if an amendment to the order materially alters the facts or legal issues relating to the order or the respondent demonstrates an inability to prepare for the hearing as a result of the amendment.*

*6. The decision of the Commissioner or the designee of the Commissioner is final for the purposes of judicial review.*

**Sec. 7. 1.** *A party to a hearing may compel the attendance of witnesses in the party's behalf at the hearing upon making a request to the Commissioner or the designee of the Commissioner and designating the name and address of the person to be served with a subpoena.*

*2. A witness required to appear at a hearing before the Commissioner or the designee of the Commissioner is entitled to receive from the party calling the witness the fees and reimbursement for mileage provided to witnesses in civil cases pursuant to NRS 50.225.*

**Sec. 8. 1.** *At a contested hearing, the person contesting an order of the Commissioner or the designee of the Commissioner has the burden of showing that the order was not based upon substantial evidence.*

*2. The Commissioner or the designee of the Commissioner is not bound by strict rules of procedure or rules of evidence when conducting the hearing, except that the hearing must be conducted pursuant to the provisions of chapter 233B of NRS.*

*3. A record of the alleged acts which constitute grounds for issuing the order and a copy of any evidence introduced before or during the hearing must be filed with the Division.*

**Sec. 9.** *The Commissioner or the designee of the Commissioner may:*

- 1. Conduct hearings;*
- 2. Question witnesses;*
- 3. Make rulings on motions and objections; and*
- 4. Issue findings of fact or conclusions of law at the conclusion of the case.*

**Sec. 10.** *If a party fails to appear at a hearing scheduled by the Commissioner or the designee of the Commissioner and a continuance has not been requested or granted, upon an offer of proof by the Division that the absent party was given proper notice and upon a*

*determination by the Commissioner or the designee of the Commissioner that proper notice was given, the Commissioner or the designee of the Commissioner 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 the Commissioner or the designee of the Commissioner. If the respondent fails to appear at the hearing or fails to reply to the notice, the charges specified in the order may be considered as true.*

**Sec. 11.** *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 the party's behalf, may question the witness as if conducting a cross-examination.*

**Sec. 12.** NAC 669.010 is hereby amended to read as follows:

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

2. The Commissioner will bill each *retail* 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 *retail* trust company to pay the fee required in subsection 1 ~~[as provided in this section]~~ constitutes grounds for revocation of its license.

**Sec. 13.** NAC 669.020 is hereby amended to read as follows:

669.020 If a *retail* trust company deposits money held by the *retail* trust company as a fiduciary or agent with an affiliate depository institution pursuant to subsection 3 of NRS 669.225 and the money deposited exceeds the amount of federal deposit insurance applicable to the money, the affiliate depository institution shall deliver to the *retail* trust company or put under the control of the *retail* trust company collateral security in accordance with ~~[12 C.F.R. § 9.10 or § 550.8, whichever is]~~ applicable ~~[.]~~ *federal regulations*.

**Sec. 14.** NAC 669.030 is hereby amended to read as follows:

669.030 1. An application for a license ~~[to transact]~~ *as a retail* trust company ~~[business]~~ submitted pursuant to NRS 669.150 must be accompanied by:

- (a) A nonrefundable fee of \$1,500; and
- (b) A fee of \$300, prorated by the Commissioner . ~~[of Financial Institutions.]~~

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

- (a) A nonrefundable fee of \$375 for each request; and
- (b) A fee of \$200, prorated by the Commissioner . ~~[of Financial Institutions.]~~

**Sec. 15.** NAC 669.040 is hereby amended to read as follows:

669.040 1. The initial fee ~~[for]~~ *to be paid by a retail* trust company ~~[with an initial stockholder's equity of:~~

~~—(a) Not less than \$300,000 but not more than \$500,000, is \$750.~~

~~—(b) More than \$500,000 but not more than \$1,000,000, is \$1,125.~~

~~—(c) More than \$1,000,000,]~~ *pursuant to NRS 669.190* is \$1,500.

2. In addition, each *retail* trust company must pay an initial fee of \$150 for each branch office that is authorized by the Commissioner . ~~[of Financial Institutions.]~~

**Sec. 16.** NAC 669.050 is hereby amended to read as follows:

669.050 On or before April 1 of each year, each ~~[licensed]~~ *retail* 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.~~
- ~~—2. More than \$500,000 but not more than \$1,000,000, a fee of \$1,125.~~
- ~~—3. More than \$1,000,000,] a fee of \$1,500.~~

**Sec. 17.** NAC 669.060 is hereby amended to read as follows:

669.060 A ~~[licensed]~~ *retail* trust company shall pay a fee of \$10 for each day that any report required pursuant to this chapter or chapter 669 of NRS is overdue.

**Sec. 18.** NAC 669.070 is hereby amended to read as follows:

669.070 1. Except as otherwise provided in NAC 658.030, each ~~[licensed]~~ *retail* trust company shall pay to the Division ~~[of Financial Institutions of the Department of Business and Industry]~~ an annual assessment of \$300 to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division.

2. *Each retail trust company shall pay to the Division the assessment to cover the costs of legal services provided by the Attorney General to the Commissioner and the Division which is imposed pursuant to NRS 658.098.*

3. The Division ~~[of Financial Institutions of the Department of Business and Industry]~~ will bill each ~~[licensed]~~ *retail* trust company for the ~~[assessment.]~~ *assessments described in subsections 1 and 2.* The ~~[assessment]~~ *assessments* must be paid within 30 days after the date the bill is received.



~~[3.]~~ 4. A charge of 10 percent of the assessment will be imposed on any ~~[licensed]~~ retail trust company ~~[whose]~~ if an assessment *described in subsection 1 or 2* is received by the Division ~~[of Financial Institutions of the Department of Business and Industry]~~ after the date on which the assessment is due.

*5. The failure of a retail trust company to pay an assessment described in subsection 1 or 2 constitutes grounds for the revocation of the license of the retail trust company.*

Sec. 19. NAC 669.080 is hereby amended to read as follows:

669.080 A ~~[person]~~ retail trust company shall not ~~[engage in the]~~ conduct any business ~~[of a trust company in this State]~~ under its license unless:

1. ~~[He]~~ The retail trust company possesses ~~[any]~~ each license, certificate ~~[or]~~ and permit required by this ~~[chapter, chapter 669 of NRS]~~ State or a local ~~[governmental entity;]~~ *government of this State as a condition to conducting business;* and

2. The *business* location of the retail trust company complies with ~~[any]~~ the provisions of *all* applicable planning and zoning ordinance.

Sec. 20. NAC 669.090 is hereby amended to read as follows:

669.090 The Commissioner ~~[of Financial Institutions]~~ may revoke or suspend the license of a retail trust company pursuant to the procedures provided in chapter 669 of NRS if the retail trust company violates any provision of this chapter or chapter 669 of NRS, including, without limitation, a provision that imposes a fee or assessment on a ~~[licensee.]~~ retail trust company.

Sec. 21. NAC 669.100 is hereby amended to read as follows:

669.100 Except as otherwise provided in NAC 669.110 or by specific statute, all papers, documents, reports and other written instruments filed with the Division ~~[of Financial Institutions of the Department of Business and Industry]~~ pursuant to this chapter and chapter 669

of NRS are open to public inspection unless the Commissioner ~~[of Financial Institutions]~~ determines that the information is required to be withheld to protect the public welfare or the welfare of a ~~[licensee,]~~ *retail trust company*.

**Sec. 22.** NAC 669.110 is hereby amended to read as follows:

669.110 1. If a ~~[licensed]~~ *retail* trust company, or an authorized representative of that ~~[licensee,]~~ *retail trust company*, fails to respond to the Commissioner ~~[of Financial Institutions]~~ within 20 business days after receipt of a written notice that a complaint has been filed against the ~~[licensee, the licensee]~~ *retail trust company, the retail trust company* is deemed to have admitted to the allegations contained in the complaint.

2. Subject to the discretion of the Commissioner ~~[of Financial Institutions]~~ and except as otherwise provided by specific statute, a complaint filed with the Division , ~~[of Financial Institutions of the Department of Business and Industry,]~~ any documents filed with the complaint, and any report or information resulting from an investigation of a complaint are confidential.

**Sec. 23.** Chapter 669A of NAC is hereby amended by adding thereto the provisions set forth as sections 24 to 39, inclusive, of this regulation.

**Sec. 24.** *1. The Commissioner will charge and collect a fee of \$60 per hour from each licensed family trust company for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 669A of NRS.*

*2. The Commissioner will bill each licensed family 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.*

**Sec. 25.** *1. An application for a license to act as a licensed family trust company submitted pursuant to NRS 669A.190 must be accompanied by:*

*(a) A nonrefundable fee of \$1,500; and*

*(b) A fee of \$300, prorated by the Commissioner .*

*2. A request for the licensing of a branch location submitted by a family trust company pursuant to NRS 669A.190 must be accompanied by:*

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

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

**Sec. 26.** *1. Except as otherwise provided in NAC 658.030, each licensed family trust company shall pay to the Division an annual assessment of \$300 to cover the costs related to the employment of a certified public accountant and the performance of audits and examinations conducted by the Division.*

*2. Each licensed family trust company shall pay to the Division the assessment to cover the costs of legal services provided by the Attorney General to the Commissioner and the Division which is imposed pursuant to NRS 658.098.*

*3. The Division will bill each licensed family trust company for the assessments described in subsections 1 and 2. The assessments must be paid within 30 days after the date the bill is received.*

*4. A charge of 10 percent of the assessment will be imposed on any licensed family trust company if an assessment described in subsection 1 or 2 is received by the Division after the date on which the assessment is due.*

*5. The failure of a licensed family trust company to pay an assessment described in subsection 1 or 2 constitutes grounds for the revocation of the license of the licensed family trust company.*

*Sec. 27. A license issued pursuant to this chapter and chapter 669A of NRS is not transferable or assignable.*

*Sec. 28. A licensed family trust company shall not conduct any business under its license unless:*

*1. The licensed family trust company 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 of the licensed family trust company complies with the provisions of all applicable planning and zoning ordinances.*

*Sec. 29. 1. A licensed family trust company shall not engage in trust company business at any location outside of this State unless approved by the Commissioner.*

*2. Before the Commissioner will approve a branch to be located in another state, the licensed family trust company must:*

*(a) Obtain from that state a license as a trust company; or*

*(b) Meet all the requirements to operate a trust company in that state.*

*Sec. 30. 1. The Commissioner may require a licensed family trust company to furnish the Commissioner with an audited financial statement prepared by an independent certified public accountant licensed to do business in this State.*

*2. On the fourth Monday in January of each year, each licensed family trust company shall submit to the Commissioner 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, as appropriate.*

*3. The list of members required to be maintained pursuant to paragraph (a) of subsection 1 of NRS 86.241 must include the percentage of each member's interest in the company, in addition to the requirements set forth in that section.*

*4. Any document submitted pursuant to this section is confidential.*

*Sec. 31. The Commissioner may direct a licensed family trust company to conduct a thorough examination of the books, records, funds and securities held by the licensed family trust company. At the Commissioner's discretion, the licensed family trust company may satisfy this examination requirement by obtaining an independent audit of the books, records, funds and securities.*

*Sec. 32. 1. A person may petition the Division for an advisory opinion or declaratory order regarding the applicability of this chapter or chapter 669A of NRS.*

*2. A petition for an advisory opinion or declaratory order submitted to the Division pursuant to this section must:*

- (a) Be accompanied by a nonrefundable fee of \$1,000;*
- (b) Identify the name and address of the person seeking the advisory opinion or declaratory order;*
- (c) Clearly state the question for which the person submitting the petition requests an answer;*
- (d) Provide a statement of facts and supporting documents relevant to the question; and*
- (e) Provide a statement of the applicable law.*

*3. The Division may reject a petition submitted pursuant to this section if:*

*(a) The petition does not satisfy the requirements of subsection 2; or*

*(b) The person submitting the request does not adequately identify himself or herself or, in the case of a petition submitted by an attorney, the petition does not state the true identity of the client or include an affidavit stating that the attorney is not receiving compensation from a third party for submitting the petition and that the attorney is not submitting the petition at the direction or request of a third party.*

*4. An advisory opinion or declaratory order is a public record.*

*Sec. 33. The Commissioner may revoke or suspend the license of a licensed family trust company pursuant to the procedures provided in this chapter and chapter 669A of NRS if the licensed family trust company violates any provision of this chapter, chapter 669A of NRS or chapter 658 of NRS, including, without limitation, the failure to pay any fee or assessment imposed on the licensed family trust company.*

*Sec. 34. 1. If a person engages in an activity in violation of the provisions of this chapter or chapter 669A of NRS, the Commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity. Pursuant to NRS 669A.320, the Commissioner may include in the order a provision imposing an administrative fine of not more than \$10,000 for each violation of this chapter or chapter 669A of NRS committed by the person.*

*2. An order issued pursuant to subsection 1 must:*

*(a) Be in writing.*

*(b) Be served by certified mail on the person to whom the order is issued. For the purposes of this paragraph, proof of attempted service by certified mail to the last known address of the person is sufficient to establish that service was complete.*

*(c) State that the person has 30 days from the date of the order to request an administrative hearing and that the order shall be deemed final if the Division does not receive a verified petition for a hearing within the prescribed time.*

*(d) State that, in the opinion of the Commissioner, the person has engaged in an activity:*

*(1) For which the person has not received a license as required by chapter 669A of NRS; or*

*(2) In a manner that violates the provisions of this chapter or chapter 669A of NRS.*

*3. A person who is served with an order to cease and desist pursuant to this section shall not engage in any activity governed by this chapter or chapter 669A of NRS after the person receives the order unless the order is suspended or rescinded.*

*4. If a verified petition for a hearing is received by the Division within the prescribed time, the Commissioner or the designee of the Commissioner will hold a contested hearing.*

*5. An order issued pursuant to this section may be amended or rescinded at any time before or during the contested hearing. Subject to the discretion of the Commissioner or the designee of the Commissioner, the hearing may be continued if an amendment to the order materially alters the facts or legal issues relating to the order or the respondent demonstrates an inability to prepare for the hearing as a result of the amendment.*

*6. The decision of the Commissioner or the designee of the Commissioner is final for the purposes of judicial review.*

**Sec. 35. 1.** *A party to a hearing may compel the attendance of witnesses in the party's behalf at the hearing upon making a request to the Commissioner or the designee of the Commissioner and designating the name and address of the person to be served with a subpoena.*

*2. A witness required to appear at a hearing before the Commissioner or the designee of the Commissioner is entitled to receive from the party calling the witness the fees and reimbursement for mileage provided to witnesses in civil cases pursuant to NRS 50.225.*

**Sec. 36. 1.** *At a contested hearing, the person contesting an order of the Commissioner or the designee of the Commissioner has the burden of showing that the order was not based upon substantial evidence.*

*2. The Commissioner or the designee of the Commissioner is not bound by strict rules of procedure or rules of evidence when conducting the hearing, except that the hearing must be conducted pursuant to the provisions of chapter 233B of NRS.*

*3. A record of the alleged acts which constitute grounds for issuing the order and a copy of any evidence introduced before or during the hearing must be filed with the Division.*

**Sec. 37.** *The Commissioner or the designee of the Commissioner may:*

- 1. Conduct hearings;*
- 2. Question witnesses;*
- 3. Make rulings on motions and objections; and*
- 4. Issue findings of fact or conclusions of law at the conclusion of the case.*

**Sec. 38.** *If a party fails to appear at a hearing scheduled by the Commissioner or the designee of the Commissioner and a continuance has not been requested or granted, upon an offer of proof by the Division that the absent party was given proper notice and upon a*



*determination by the Commissioner or the designee of the Commissioner that proper notice was given, the Commissioner or the designee of the Commissioner 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 Commissioner or the designee of the Commissioner. If the respondent fails to appear at the hearing or fails to reply to the notice, the charges specified in the order may be considered as true.*

**Sec. 39. 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 the party's behalf, may question the witness as if conducting a cross-examination.*