

**ADOPTED REGULATION OF THE
SECRETARY OF STATE**

LCB File No. R074-11

Effective May 30, 2012

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

AUTHORITY: §§1-5, NRS 225.140.

A REGULATION relating to the Secretary of State; adopting provisions governing checks or other negotiable instruments returned to the Secretary of State because of insufficient funds; and providing other matters properly relating thereto.

Section 1. Chapter 225 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 5, inclusive, of this regulation, unless the context otherwise requires, “returned check or other negotiable instrument” means a check or other negotiable instrument returned to the Office of the Secretary of State because the person had insufficient money or credit with the drawee to pay the check or other instrument or because the person stopped payment on the check or other instrument.*

Sec. 3. 1. *The Secretary of State may reverse or cancel any filing associated with a returned check or negotiable instrument if the person who submitted the check or other negotiable instrument which was returned to the Office of the Secretary of State does not:*

(a) Notify the Secretary of State that the person intends to pay all fees and penalties required by statute and sections 2 to 5, inclusive, of this regulation for a returned check or negotiable instrument; and

(b) Pay all fees and penalties required by law for a returned check or negotiable instrument.

2. If the Secretary of State reverses or cancels a filing associated with a returned check or negotiable instrument, the filing is deemed to have never been filed with the Secretary of State. The Secretary of State may cancel any subsequent filing that depends upon or references the reversed or cancelled filing.

3. If the Secretary of State reverses or cancels any filing associated with a returned check or negotiable instrument, any certificate fee, certified copy fee, copy fee or expedite fee associated with the reversed or cancelled filing remains due to the Secretary of State.

4. As used in this section:

(a) "Certificate fee" means a fee required by title 7 of NRS for providing a certificate of good standing or other similar certificate concerning the status of an entity on file with the Secretary of State.

(b) "Certified copy fee" means a fee required by title 7 of NRS for certifying a copy of a document on file with the Secretary of State.

(c) "Copy fee" means a fee required by title 7 of NRS for a copy of a document on file with the Secretary of State.

(d) "Expedite fee" means the fee which the Secretary of State may charge pursuant to paragraph (d) of subsection 2 of NRS 225.140.

Sec. 4. 1. The additional fee for a returned check or negotiable instrument which is authorized by subparagraph (2) of paragraph (e) of subsection 2 of NRS 225.140 is \$25 for each hour of staff time necessary to take the actions set forth in subparagraph (2) of paragraph (e) of subsection 2 of NRS 225.140.

2. For each returned check or negotiable instrument, the Secretary of State will charge:

(a) A fee of \$25; and

(b) If the returned check or negotiable instrument has been presented for the payment of a filing fee for more than one entity, the additional fee described in subsection 1.

Sec. 5. 1. The Secretary of State may refuse to accept any filing submitted by a person who has not paid all fees and penalties for a returned check or other negotiable instrument associated with a previous filing.

2. The Secretary of State may require a person to pay any fee or penalty in cash or by credit card if the person:

(a) Has not paid all fees and penalties for a returned check or other negotiable instrument associated with a previous filing with the Secretary of State; or

(b) Within the immediately preceding 12 months, has submitted to the Secretary of State one or more checks or other negotiable instruments which have been returned to the Office of the Secretary of State because the person had insufficient money or credit with the drawee to pay the check or other instrument or because the person stopped payment on the check or other instrument.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB File No. R074-11**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 225.

1) Public comments were solicited at the May 8, 2012 public workshop to solicit comments on proposed regulations and the May 17, 2012 hearing for the adoption of regulations. Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulations were sent via fax and email to persons known to have an interest in the subject of returned check and negotiable instrument processes. These documents were also made available on the Secretary of State website, **www.NVSOS.gov** and posted at the following locations:

- The Capitol Building, 101 North Carson Street, Carson City, Nevada 89701
- The State Library, 100 North Stewart Street, Carson City, Nevada 89701
- The Secretary of State-Reno, 500 Damonte Ranch Pkwy, Suite 657-A, Reno, Nevada 89521
- The Grant Sawyer Building, 555 East Washington Avenue, Las Vegas, Nevada 89101
- Nevada State Legislative Building, 401 South Carson Street, Carson City, Nevada 89701

The minutes of the May 8, 2012 public workshop to solicit comments on proposed regulations and the May 17, 2012 hearing for the adoption of regulations are attached hereto and contain a summary of the brief discussion held regarding the proposed amendments. A copy of the workshop and hearing minutes may be obtained from the office of the Secretary of State, 101 N. Carson Street, Suite 3, Carson City, Nevada 89701, 775-684-5720 or via email sent to **scotta@sos.nv.gov**.

2) The number persons who:

- (a) **Attended the May 8, 2012 public workshop:** 4
- (b) **Testified at the may 8, 2012 public workshop:** 1
- (c) **Submitted to the agency written comments:** 3
- (d) **Attended the May 17, 2012 hearing for the adoption of regulations:** 2

3) Comments were solicited from affected businesses in the same manner as they were solicited from the public.

4) The permanent regulation was adopted on May 17, 2012 and included no changes from the LCB draft as there were no comments made at the May 8, 2012 public workshop to solicit comments on proposed regulations.

5) There is no estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public.

6) There is no additional cost to the agency for enforcement of this regulation.

7) There are no other state or government agency regulations that the proposed amendments duplicate.

8) The proposed regulation does not include provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

9) The proposed regulation does not involve a new fee or increases an existing fee.

10) The proposed regulation is not likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business.

MEETING MINUTES
Public Workshop for
LCB File Nos. R-067-11, R070-11, R072-11 & R074-11
Regulations Relating to Commercial Recordings and the annual State Business License

Date of meeting: May 8, 2012 public workshop to solicit comments on proposed regulations R067-11, R070 -11, R072-11 and R074-11.

Location(s): Nevada State Legislative Building, 401 South Carson Street, Room 2134, Carson City, Nevada and live videoconference - Room 4412E of the Grant Sawyer Building, 555 East Washington Avenue, Suite 4400, Las Vegas, Nevada

Staff in attendance: Scott Anderson, Deputy Secretary of State for Commercial Recordings; Robert Walsh, Deputy Secretary of State for Southern Nevada, Delaina Marzullo, Administrative Assistant 4 (Las Vegas CR Supervisor); Kevin Benson, Deputy Attorney General; Jeff Landerfelt, Management Analyst 4, Jason Hataway, Administrative Assistant 3 (Carson City CR)

Members of the public in attendance: 5 Total: 4 in Carson City, Matthew Taylor, representing the Nevada Registered Agents' Association, J. Dunbar representing My Nevada LLC and 2 that did not sign in; and 1 in Las Vegas, Kim Stein representing Howard and Howard.

The workshop was called to order at 8:40 a.m. by Scott Anderson.

Mr. Anderson began the workshop by welcoming those in attendance and introducing Secretary of State Staff and DAG in attendance. He announced the delay in meeting due to the room change necessary due to LCB scheduling conflict. He stated that today we are conducting a workshop on the following proposed regulations:

- R067-11: Relating to Registered Agents; adopting certain requirements for entities that act as registered agents; adopting provisions relating to service of process, governing written materials produced by registered agents, demands for information under certain circumstances, and setting forth certain actions which the Secretary of State will take when a registered agent is enjoined from acting as a registered agent and other matters properly relating thereto.
- R070-11: Adopting procedures for the imposition of penalties on persons purporting to transact business in this State as a business entity without complying with certain requirements concerning filings with the Secretary of State.
- R072-11: Provisions relating to the names of specific forms required by the Secretary of State for certain Uniform Commercial Code Filings.
- R074-11: Provisions governing checks or other negotiable instruments returned to the Secretary of State because of insufficient funds.

He explained the purpose of this workshop is to solicit comment and information for consideration when adopting regulation.

He stated how the workshop would be conducted: that we would present each proposed regulation separately and at the end of each presentation, ask for public comment. Public comment would be limited to 3 minutes if necessary and should be related to the proposed regulation being discussed at that time. Public comment would be closed before moving to the next regulation. A copy of the regulations in their entirety was provided to workshop attendees and the draft as produced by Legislative Counsel Bureau was submitted into the record.

Mr. Anderson further indicated that for some of the regulations there are changes to these regulations from those posted for the meeting. The proposed regulations and revisions are available on the back table.

It was requested that anyone offering public comment, sign in on the sign in sheet located at the table and then called to speak, giving your full name and spelling of your last name. It was also noted that written comments would be accepted for the record.

Mr. Anderson indicated that he had received and will be asking that written comments to be given to Mr. Hataway after speaking.

Mr. Anderson asked if there was any public comment before beginning the individual workshops. Being none, Mr. Anderson opened the workshop on the first regulation; R067-11.

R067-11 is a regulation relating to Registered Agents; adopting certain requirements for entities that act as registered agents; adopting provisions relating to service of process, governing written materials produced by registered agents, demands for information under certain circumstances, and setting forth certain actions which the Secretary of State will take when a registered agent is enjoined from acting as a registered agent and other matters properly relating thereto.

The regulation defines when an entity may not act as a registered agent. An entity may not be in a revoked or other terminated status and act as a registered agent. An entity that is not authorized to do business in the state is prohibited from acting as a registered agent. It also clarifies the provisions of NRS 14.020 regarding the location at which all legal process and any demand or notice authorized by law may be served and includes provisions relating to the posting and the maintaining of normal working hours so that legal process may be served.

The regulation enables the Secretary of State to demand information in the course of an investigation into an alleged violation of NRS 77.400, 77.410 or 77.420 or of section 3 of this regulation.

The regulation provides for official notification by the Secretary of State when a registered agent is enjoined from serving as a registered agent. It also provides certain prohibitions and requirements regarding publications and solicitations of entities relating to filing of documents with the Secretary of State

Mr. Anderson noted that there are 2 proposed amendments offered by the Secretary of State at this time relating to Section 3 of the regulation.

In response to comments received, we are clarifying that the hours during which the RA will be available for service be posted in a conspicuous place outside the registered agent's location. This is so the hours may be seen by those approaching the office or attempting service outside normal working hours.

Additionally, we have proposed striking section 3(5) in its entirety.

Mr. Anderson asked for public comment.

Matthew Taylor, representing the Nevada Registered Agents Association presented oral testimony, withdrawing their concerns with section 3(5) as the Secretary of State amendment addresses their concerns. Expressed several concerns regarding section 6 and the language therein. Section 6(1) concern is that the language is to pass in regulation something that is already in statute and under the purview of the AG. Same concern expressed for section 6(2). Express concern in Section 6(3) that section should not apply to entities the RA has an existing relationship with and that the provisions regarding use of the Great Seal of the State of Nevada specify that this does not include official state forms sent with RA correspondence. Agreed with the intent Section 6(4), and believes that goal is better served by changing the language on the registered agent change form to allow Secretary of state to determine the language contained in the cautionary warning, font and location and place near the signature line and not buried on page 4 of solicitations. Has concerns about Section 7(1) and (2) mainly that appears to be vague and subjective in nature as far as they unsure of the threshold of the standards used to determine and if it is deceptive, there are already statutes in place to address deceptive practices. Concerns with section 8 because there are no exceptions for clients RA might have an existing relationship with. Concerns that this applies to websites that cater to national markets and that they have no control. Suggest that this apply to direct correspondence and only to those they do not have a relationship with. He stated that they had a problem with line 2 of the disclaimer and that there may be unintended consequences that a client may be confused that they may not be obligated to respond to a correspondence that is containing a renewal notice. Remove that concern if there was an exemption for existing clients that would cover renewal notices. Concern that have number of registered agents are not attorneys and that this statement might traipse into the unauthorized practice of law. Mr. Taylor said he had these written comments Mr. Anderson stated that the written comments would be entered into the record for consideration. Mr. Anderson asked for additional comments. Mr. Anderson reiterated that these comments and those received prior to the workshop would be included in the record.

Hearing no additional comments the workshop on R067-11 was closed.

Mr. Anderson opened the workshop on R070-11.

R070-11 - Is a regulation adopting procedures for the imposition of penalties on persons purporting to transact business in this State as a business entity without complying with certain requirements concerning filings with the Secretary of State.

The Nevada Revised Statutes authorize the Secretary of State to adopt regulations to administer to provisions of statute relating to corporations, LLCs and other entities purporting to transact business in Nevada when they are not authorized to transact business in this state.

While this regulation is rather lengthy, there are 4 sections that are replicated in other chapters of the NAC relating to different entity types.

Is there any public comment relating to any section of this regulation or to the regulation as a whole?

Are there any comments from Las Vegas?

Hearing none, Mr. Anderson closed the workshop on R070-11

Next, the workshop on R072-11 was opened.

R072-11: Is a regulation relating to the names of specific forms required by the Secretary of State for certain Uniform Commercial Code Filings.

Mr. Anderson explained the proposed amendment specifying the punctuation marks acceptable in the name of a secured party or debtor when filing any UCC document or making any request for information.

Is there any public comment relating to any section of this regulation or to the regulation as a whole?

Are there any comments from Las Vegas?

Hearing no comments relating to R072-11, Mr. Anderson closed the workshop on R072-11.

Next, the workshop on R074-11 was opened.

R074-11: Is a regulation governing checks or other negotiable instruments returned to the Secretary of State because of insufficient funds.

This regulation contains the provisions of the temporary regulation adopted in 2005 that was made not made permanent that has been a matter of policy.

Is there any public comment relating to any section of this regulation or to the regulation as a whole?

Are there any comments from Las Vegas?

If there are no comments relating to R074-11, we will close the workshop on R074-11.

Mr. Anderson asked for additional public comment. Hearing none Mr. Anderson thanked those who participated in this workshop. He reminded the audience to submit any written comments you might have with you today before you leave and that the Office of the Secretary of State would be accepting additional written comments until close of business (5:00 pm) on Friday May 11, 2012.

He noted the adoption hearing for these regulations will be held at 8:30 am, on Thursday May 17, 2012.

Mr. Anderson closed the hearing at approximately 9:00 am.

MEETING MINUTES
Public Hearing for the Adoption of
LCB File Nos. R-067-11, R070-11, R072-11 & R074-11
Regulations Relating to Commercial Recordings

Date of Hearing: May 17, 2012 public hearing for the adoption of proposed regulations R067-11, R070 -11, R072-11 and R074-11.

Location(s): Nevada State Legislative Building, 401 South Carson Street, Room 3137, Carson City, Nevada and live videoconference - Room 4412E of the Grant Sawyer Building, 555 East Washington Avenue, Suite 4400, Las Vegas, Nevada

Staff in attendance: Scott Anderson, Deputy Secretary of State for Commercial Recordings; Delaina Marzullo, Administrative Assistant 4 (Las Vegas CR Supervisor); Jeff Landerfelt, Management Analyst IV; Jason Hataway, Administrative Assistant 3 (Carson City CR)

Members of the public in attendance: 2 Total: 1 in Carson City, Matthew Taylor, representing the Nevada Registered Agents' Association; and 1 in Las Vegas, Patricia Amunategui representing M.F. Corporate Services.

The hearing was opened at approximately 8:30 a.m. by Scott Anderson.

Began the hearing and explained the purpose of this hearing is to solicit comment and information for consideration when adopting the following proposed regulations:

Mr. Anderson began the hearing and stated that the purpose of the hearing we are conducting today is for the adoption of the following proposed regulations:

- R067-11: Relating to Registered Agents; adopting certain requirements for entities that act as registered agents; adopting provisions relating to service of process, governing written materials produced by registered agents, demands for information under certain circumstances, and setting forth certain actions which the Secretary of State will take when a registered agent is enjoined from acting as a registered agent and other matters properly relating thereto.
- R070-11: Adopting procedures for the imposition of penalties on persons purporting to transact business in this State as a business entity without complying with certain requirements concerning filings with the Secretary of State.
- R072-11: Provisions relating to the names of specific forms required by the Secretary of State for certain Uniform Commercial Code Filings.
- R074-11: Provisions governing checks or other negotiable instruments returned to the Secretary of State because of insufficient funds.

Mr. Anderson explained that we had taken into consideration the comments made at the May 8, 2011 workshop. He noted that there were no additional comments received by our office by 5:00 p.m. on May 11, 2012. There was one additional comment received after this date that was similar in nature to those previously received and therefore it is taken into consideration.

He stated how the hearing would be conducted: that we would present each proposed regulation separately and at the end of each presentation, ask for public comment. Public comment would be limited to 3 minutes if necessary and should be related to the proposed regulation being discussed at that time. Public comment would be closed before moving to the next regulation. A copy of the regulations in their entirety was provided to hearing attendees and the draft as produced by Legislative Counsel Bureau and as appropriate, as amended, was submitted into the record.

Mr. Anderson further indicated that the proposed regulations and amendments are available on the back table.

It was requested that anyone offering public comment, sign in on the sign in sheet located at the table and then called to speak, giving your full name and spelling of your last name. It was also noted that written comments would be accepted for the record.

Mr. Anderson asked that written comments to be given to staff after speaking.

Mr. Anderson Asked for any public comments before the individual regulation hearings.

Being none, Mr. Anderson opened the hearing on the first regulation; R067-11.

R067-11 is a regulation relating to Registered Agents; adopting certain requirements for entities that act as registered agents; adopting provisions relating to service of process, governing written materials produced by registered agents, demands for information under certain circumstances, and setting forth certain actions which the Secretary of State will take when a registered agent is enjoined from acting as a registered agent and other matters properly relating thereto.

The regulation defines when an entity may not act as a registered agent. An entity may not be in a revoked or other terminated status and act as a registered agent. An entity that is not authorized to do business in the state is prohibited from acting as a registered agent. It also clarifies the provisions of NRS 14.020 regarding the location at which all legal process and any demand or notice authorized by law may be served and includes provisions relating to the posting and the maintaining of normal working hours so that legal process may be served.

The regulation enables the Secretary of State to demand information in the course of an investigation into an alleged violation of NRS 77.400, 77.410 or 77.420 or of section 3 of this regulation.

The regulation provides for official notification by the Secretary of State when a registered agent is enjoined from serving as a registered agent. It also provides certain prohibitions and

requirements regarding publications and solicitations of entities relating to filing of documents with the Secretary of State

Please note that there are 2 proposed amendments offered by the Secretary of State at this time relating to Section 3 of the regulation that were offered at the workshop.

In response to comments received at the workshop, we have amendments in addition to those we offered at the workshop. To address the concerns raised regarding the use of the Great Seal of the State of Nevada, we have amended Section 6 to include the language that “subsection 3 of this section does not apply to the official forms and correspondence prepared by the Secretary of State that accompany correspondence from the registered agent to a represented entity.”

To address the concerns with the disclaimer language in section 8, we have amended as shown in the Adoption Hearing Document to clarify that this applies to those in Nevada and that this section does not apply to any communication between a registered agent and an entity in which there is an existing business relationship.

Mr. Anderson noted that there was a change to the language in the amendment to Section 8. the language of the last sentence(paragraph) was to read *This section does not apply to any communications between a registered agent and an entity in which the registered agent serves in the capacity as the entity’s registered agent.*

We have considered the concerns raised by Matt Taylor and Tom Connolly regarding deceptive practices and the possible duplication or overlap of authority already in statute. In discussion with Kevin Benson of the Attorney General’s office and with Legislative Counsel Bureau staff, including Brenda Erdoes, Brad Wilkinson and Bryan Fernley-Gonzales, it was determined that there is no overlap or duplication and that the sections in question are appropriate and within the regulatory authority of the Secretary of State.

Mr. Anderson asked for public comment in Carson City.

Matthew Taylor, President of the Nevada Registered Agents Association thanked the Secretary of State for addressing their concerns. Main concern was that they would like to continue to address the concern that they would like to see an exemption for websites. All the other information lend to correspondence sent to individuals, where websites are passive, take a proactive approach on a client that would have to go visit a website. Have concerns that there may be unintended consequences for having an RA change their website. Other concern voiced that language added to section 8 be considered for sections 6 and 7.

Mr. Anderson asked for additional public comments from Carson city and Las Vegas.

Hearing no additional public comment, the hearing on R067-11 was closed and the regulation adopted as amended with amendments offered by the Secretary of State at the hearing..

Mr. Anderson opened the hearing on R070-11.

R070-11 - Is a regulation adopting procedures for the imposition of penalties on persons purporting to transact business in this State as a business entity without complying with certain requirements concerning filings with the Secretary of State.

The Nevada Revised Statutes authorize the Secretary of State to adopt regulations to administer to provisions of statute relating to corporations, LLCs and other entities purporting to transact business in Nevada when they are not authorized to transact business in this state.

While this regulation is rather lengthy, there are 4 sections that are replicated in other chapters of the NAC relating to different entity types.

We have received no public comments for or subsequent to the public workshop in advance of this adoption hearing.

Is there any public comment relating to any section of this regulation or to the regulation as a whole?

Are there any comments from Las Vegas?

Hearing no comments, the hearing on R0070-11 was closed and regulation adopted.

Next, the hearing on R072-11 was opened.

R072-11: Is a regulation relating to the names of specific forms required by the Secretary of State for certain Uniform Commercial Code Filings.

There is a proposed amendment specifying the punctuation marks acceptable in the name of a secured party or debtor when filing any UCC document or making any request for information.

We have received no public comments for or subsequent to the public workshop in advance of this adoption hearing.

Is there any public comment relating to any section of this regulation or to the regulation as a whole?

Are there any comments from Las Vegas?

Hearing no comments relating to R072-11, R072-11 was adopted and the hearing closed.

We will now open the hearing on R074-11.

Hearing no further comments, the hearing on R071-11 was closed and the regulation adopted.

Mr. Anderson opened the hearing on regulation R074-11.

R074-11: Is a regulation governing checks or other negotiable instruments returned to the Secretary of State because of insufficient funds.

This contains the provisions of the temporary regulation adopted in 2005 that was made not made permanent.

We have received no public comments for or subsequent to the public workshop in advance of this adoption hearing.

Mr. Anderson asked for any public comment relating to any section of this regulation or to the regulation as a whole from Carson City or from Las Vegas.

Hearing none, regulation R074-11 was adopted and the hearing closed.

Mr. Anderson asked if there was any further public comment from Carson City or Las Vegas before the hearing was closed.

Mr. Anderson thanked those who participated in this hearing. He reminded the audience to submit any written comments you might have with you today before you leave.

The hearing was concluded at approximately 8:45 am.