

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

LCB File No. R080-14

December 4, 2014

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

AUTHORITY: §§1-20 and 25-29, NRS 669A.270; §§21 and 24, NRS 658.101, 669A.260 and 669A.270; §§22 and 23, NRS 669A.270 and 669A.290.

A REGULATION relating to family trust companies; establishing requirements for the periodic examination of licensed family trust companies; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Commissioner of Financial Institutions to adopt such regulations as may be necessary to carry out the provisions of NRS relating to family trust companies and to charge and collect from a licensed family trust company a fee for the supervision and examination of the licensed family trust company. (NRS 658.101, 669A.260, 669A.270)

Section 21 of this regulation requires each licensed family trust company to undergo an off-site examination or independent review more than 1 year but not more than 2 years after the date on which its license was issued and to undergo subsequent examinations based on the results of the immediately preceding examination. **Sections 22-24** of this regulation establish, respectively, the methods for conducting an off-site examination, an on-site examination and an independent review. **Section 25** of this regulation sets forth the examination guidance for an examination of a licensed family trust company. **Section 26** of this regulation authorizes the Commissioner to issue a clarification or modification of the examination guidance to a licensed family trust company in response to a written request by the licensed family trust company. **Section 27** of this regulation requires the Division of Financial Institutions of the Department of Business and Industry to provide a report of examination to a licensed family trust company after the completion of an examination. **Section 27** also sets forth the contents of a report of examination and establishes the standards to be used for rating a licensed family trust company in a report of examination.

Section 29 of this regulation provides that this regulation becomes effective on January 1, 2016. **Section 28** of this regulation requires a licensed family trust company whose license was issued on or before December 31, 2014, to undergo an examination on or before December 31, 2016.

Section 1. Chapter 669A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 27, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 20, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Board” means the body of designated, elected or appointed persons that jointly govern and oversee the activities of the committees, officers and managers of a licensed family trust company.*

Sec. 4. *“Client” means a family member who has engaged a licensed family trust company to provide services pursuant to NRS 669A.220.*

Sec. 5. *“Client complaint” means a written, verified complaint regarding the actions or omissions of a licensed family trust company made by one or more clients which has been filed with the Division and furnished to the management of the licensed family trust company by the Division for a response.*

Sec. 6. *“Committee” means a body of designated, elected or appointed persons formed by a board pursuant to its governing instruments and applicable law and charged with the oversight of a particular area or function of a licensed family trust company.*

Sec. 7. *“Corrective action” means any action, plan or other undertaking by a licensed family trust company or the management of the licensed family trust company reasonably required to address a deficiency or material weakness identified in a report of examination prepared pursuant to section 27 of this regulation or subsequent correspondence from the Division.*

Sec. 8. *“Deficiency” means an item, matter or condition relating to a licensed family trust company or its organization and operation which does not meet the requirements imposed by this chapter and chapter 669A of NRS.*

Sec. 9. *“Division” means the Division of Financial Institutions of the Department of Business and Industry.*

Sec. 10. *“Examination” means an on-site examination, off-site examination or independent review of a licensed family trust company.*

Sec. 11. *“Examination guidance” means the examination procedures described in section 25 of this regulation.*

Sec. 12. *“Examination period” means the period of time since a license was issued to a licensed family trust company or since the most recent examination of a licensed family trust company, whichever is later, or such other period specified by the Commissioner.*

Sec. 13. *“Independent review” means a review of a licensed family trust company conducted by a qualified firm pursuant to section 24 of this regulation.*

Sec. 14. *“Independent review report” means a written report prepared by a qualified firm setting forth the results of an independent review.*

Sec. 15. *“Licensed family trust company office” means the physical office maintained in this State pursuant to subsection 2 of NRS 669A.140.*

Sec. 16. *“Management of the licensed family trust company” means the committees, officers and managers of a licensed family trust company.*

Sec. 17. *“Off-site examination” means an examination conducted by the Division in accordance with the procedures established in section 22 of this regulation.*

Sec. 18. *“On-site examination” means an examination conducted by the Division in accordance with the procedures established in section 23 of this regulation.*

Sec. 19. *“Qualified firm” means a person who meets the standards set forth in subsection 2 of section 24 of this regulation.*

Sec. 20. *“Report of examination” means a written report prepared by the Division pursuant to section 27 of this regulation describing the results of an examination.*

Sec. 21. 1. *Except as otherwise provided in subsection 2, each licensed family trust company shall undergo an off-site examination or an independent review more than 1 year but not more than 2 years after the date on which its license was issued and shall subsequently undergo:*

(a) An on-site examination or, if the Commissioner determines an off-site examination would be appropriate, an off-site examination, within 1 year after the date on which the Division delivers to the licensed family trust company a report of examination which rates the licensed family trust company as “unsatisfactory” or “needs improvement”; and

(b) An off-site examination or an independent review within 3 years after the date on which the Division delivers to the licensed family trust company a report of examination which rates the licensed family trust company as “satisfactory.”

2. *The Commissioner may require an on-site examination of a licensed family trust company at a time other than those specified in subsection 1 if the Commissioner determines that such an examination is necessary or appropriate under the circumstances to ensure that the licensed family trust company is complying with the provisions of this chapter and chapter 669A of NRS.*

3. *Each examination must determine whether the licensed family trust company has complied with the provisions of this chapter and chapter 669A of NRS during the examination period.*

4. *The Division will provide a notice of examination to a licensed family trust company by certified mail, return receipt requested, indicating that the licensed family trust company is subject to an examination, setting forth the examination period, setting the date by which all information and documentation required for the examination must be provided and including the examination guidance:*

(a) Not more than 1 year after a licensed family trust company is initially issued a license or 30 days after the close of the first fiscal year for financial reporting purposes of a licensed family trust company, whichever is earlier;

(b) On or before November 15 of the year before the year in which an examination is required pursuant to paragraph (b) of subsection 1;

(c) At least 30 days before an examination is required pursuant to paragraph (a) of subsection 1; and

(d) At the time an examination is commenced pursuant to subsection 2.

5. *The Commissioner will charge a fee at the rate of \$60 per hour for each hour spent by the staff of the Division to conduct an examination, and collect the fee from the licensed family trust company being examined, for each on-site examination or off-site examination conducted pursuant to this chapter. The Commissioner will bill the licensed family trust company upon the completion of the examination for the fee established in this subsection. The fee must be paid within 30 days after the date on which 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. The failure of a licensed family trust company to pay the fee required in this subsection constitutes grounds for the revocation of its license.

6. In addition to the fee required by subsection 6 of section 24 of this regulation for the administrative review of an independent review report by the Division, a licensed family trust company shall pay the fees and costs incurred by the qualified firm it retains to perform the independent review.

Sec. 22. 1. A licensed family trust company undergoing an off-site examination shall submit, within the time period set forth in the notice of examination provided pursuant to section 21 of this regulation, all information and documentation required for the examination.

2. If the Division determines that incorrect or incomplete information or documentation has been submitted pursuant to subsection 1, the Division will notify the licensed family trust company of the information or documentation that must be provided to complete or correct the initial submission. The licensed family trust company shall provide the information required by the Division pursuant to this subsection within 45 days after the Division issues a notice pursuant to this subsection unless the Commissioner extends the time period for a response for good cause.

3. If a licensed family trust company fails to submit the information and documentation required pursuant to subsection 1 within the time period set forth in the notice of examination or fails to comply with the provisions of subsection 2, the Commissioner may:

(a) Impose a fee of \$25 per day for each day after the time period set forth in the notice of examination or in subsection 2, as appropriate, that the licensed family trust company has failed to provide the required information or documentation; or

(b) Require the licensed family trust company to undergo an on-site examination.

Sec. 23. 1. A licensed family trust company undergoing an on-site examination shall provide to the Division reasonable access, as determined by the Commissioner, to its licensed family trust company office during the examination and provide, at the time of the examination and at the location of its licensed family trust company office, all information and documentation required for the examination.

2. If the Division determines that incorrect or incomplete information or documentation has been submitted pursuant to subsection 1, the Division will notify the licensed family trust company of the information or documentation that must be provided to complete or correct the initial submission. The licensed family trust company shall provide the information required by the Division pursuant to this subsection within 45 days after the Division issues a notice pursuant to this subsection unless the Commissioner extends the time period for a response for good cause.

3. If a licensed family trust company fails to submit the information and documentation required pursuant to subsection 1 at the time of the on-site examination or fails to comply with the provisions of subsection 2, the Commissioner may impose a fee of \$25 per day for each day after the on-site examination or the time period set forth in subsection 2, as appropriate, that the licensed family trust company has failed to provide the required information or documentation.

Sec. 24. 1. A licensed family trust company which received a rating of “satisfactory” on its most recent examination or which has not yet undergone an examination may elect to undergo an independent review. A licensed family trust company that elects to undergo an independent review must provide notification of such an election to the Division within 30 days after receipt of its notice of examination provided pursuant to section 21 of this regulation. The Division will provide written confirmation to the licensed family trust company that its examination will be conducted by means of independent review within 30 days after receiving the licensed family trust company’s notification of election.

2. An independent review must be conducted by a person who:

(a) Uses professional standards for conducting the independent review which are promulgated by the American Institute of Certified Public Accountants, the Institute of Internal Auditors or the Bank Administration Institute;

(b) Is independent from the licensed family trust company and is not owned or controlled by any stockholder, member, owner, affiliate, family affiliate, family member, client or employee of the licensed family trust company;

(c) Does not share a material business or financial interest with the licensed family trust company;

(d) Ensures that the independent review is supervised by a certified public accountant in good standing with the American Institute of Certified Public Accountants and in each state in which the accountant is licensed to practice, a certified internal auditor or certified financial services auditor in good standing with the Institute of Internal Auditors or a certified bank auditor in good standing with the Bank Administration Institute; and

(e) Maintains in good standing all licenses necessary to perform the services included in an independent review.

3. A qualified firm performing an independent review shall comply with the professional standards promulgated by the American Institute of Certified Public Accountants, the Institute of Internal Auditors or the Bank Administration Institute, as appropriate, and the provisions of this chapter and chapter 669A of NRS. The qualified firm must ensure that the scope of the independent review meets or exceeds the provisions of the examination guidance and any written clarification or modification of the examination guidance issued by the Commissioner to the licensed family trust company pursuant to subsection 1 of section 26 of this regulation.

4. Upon the completion of an independent review, the qualified firm shall prepare a written independent review report. The independent review report must:

(a) Confirm that the qualified firm performed the independent review using the policies and procedures adopted by the licensed family trust company relating to the management, operation and administration of its trust business and the information and documentation provided in response to the notice of examination;

(b) Identify any deficiency noted during the independent review;

(c) Identify any client complaints;

(d) Identify any failure by the licensed family trust company to respond to the notice of examination;

(e) Comment on the cooperation of the management of the licensed family trust company during the independent review;

(f) Review the compliance of the licensed family trust company with the provisions of this chapter and chapter 669A of NRS; and

(g) Include the written response by the management of the licensed family trust company to any deficiency, corrective action or client complaint, if applicable.

5. A licensed family trust company that undergoes an examination by means of independent review shall file with the Division, on or before September 30 of the year in which the independent review is conducted:

(a) The independent review report prepared by the qualified firm conducting the independent review; and

(b) The audited financial statements of the licensed family trust company for the examination period prepared by a certified public accountant, including, without limitation, a description of the accounting method in use by the licensed family trust company.

6. Upon the filing of an independent review report, the Division will:

(a) Perform an administrative review of the independent review report to ensure that:

(1) The person engaged by the licensed family trust company to perform the independent review satisfies the requirements of subsection 2;

(2) The independent review and the independent review report comply with the provisions of this chapter;

(3) Each deficiency, client complaint and corrective action identified in the independent review report were reported to the management of the licensed family trust company;

(4) The written response of the management of the licensed family trust company to each deficiency, client complaint or corrective action is reasonably adequate to ensure the compliance of the licensed family trust company with this chapter and chapter 669A of NRS; and

(5) The licensed family trust company complies with the requirements of this chapter and chapter 669A of NRS; and

(b) Assess the licensed family trust company which is the subject of the independent review report a fee of \$1,000 for its administrative review of the independent review report.

Sec. 25. *The Division will, and a qualified firm shall, perform the examination in accordance with the examination procedures as follows:*

1. If applicable, review the results of the most recent examination and confirm with the management of the licensed family trust company that all corrective action has been completed.

2. Confirm the submission of the required financial information to the Division, including any supplementary information requested by the Division.

3. Review the licensed family trust company's compliance with the provisions of this chapter and chapter 669A of NRS.

4. Review the board and the committee structure of the licensed family trust company for compliance with the governing instruments of the licensed family trust company.

5. Review the minutes of the board and any committees and determine whether the minutes are retained permanently at the licensed family trust company office in physical or electronic form and in compliance with the governing instruments of the licensed family trust company.

6. If the licensed family trust company has elected to undergo an independent review pursuant to section 24 of this regulation, determine whether previous matters in the management letter for external financial audits of the financial statements of the licensed family trust company have been resolved, are being addressed by the management of the

licensed family trust company in a response to the external auditor or do not require response or action.

7. If the licensed family trust company does not submit audited financial statements to the Division as part of its examination:

(a) Ensure that the licensed family trust company provides an annual report, if required pursuant to NRS 669A.255;

(b) Make not more than five selections from licensed family trust company accounts and client accounts and test transactions in the accounts to determine whether the transactions are properly authorized and properly recorded;

(c) Confirm through documentation and review that procedures have been established to address periodic and timely reconciliations of general ledger accounts and subsidiary ledgers of the licensed family trust company, as appropriate; and

(d) Test through documentation and review that:

(1) Controls are in place over suspense accounts;

(2) The accounts are periodically reconciled;

(3) The accounts reflect appropriate items; and

(4) The accounts are promptly cleared.

Sec. 26. 1. A licensed family trust company may seek written clarification or modification of the examination guidance by submitting a written request to the Commissioner. The Commissioner may issue written clarification or modification of the examination guidance applicable to a licensed family trust company for good cause.

2. A licensed family trust company and a qualified firm engaged by a licensed family trust company to perform an independent review may rely upon the examination guidance in effect

at the time that a notice of examination is provided pursuant to section 21 of this regulation, as clarified or modified by the response of the Commissioner to a written request submitted by the licensed family trust company pursuant to subsection 1, as the official statement of the Division of the scope of the examination.

Sec. 27. 1. Within 60 days after the completion of an on-site examination or off-site examination of a licensed family trust company or the filing of an independent review report, the Division will prepare and deliver to the licensed family trust company a report of examination that:

(a) Identifies any deficiency or weakness which requires corrective action;

(b) Identifies any client complaint which requires further response by the management of the licensed family trust company; and

(c) Assigns a rating of “satisfactory,” “needs improvement” or “unsatisfactory” to the licensed family trust company based on the results of the examination, the compliance of the licensed family trust company with the provisions of this chapter and chapter 669A of NRS and the capability and willingness of the board and the management of the licensed family trust company to take corrective action.

2. The Division will assign a rating of:

(a) “Satisfactory” to a licensed family trust company that is fundamentally sound, complies with the provisions of this chapter and chapter 669A of NRS in all substantial respects and exhibits only moderate deficiencies or minor weaknesses which are within the capability and willingness of the management of the licensed family trust company to correct.

(b) “Needs improvement” to a licensed family trust company that generally complies with the provisions of this chapter and chapter 669A of NRS and exhibits some degree of

supervisory concern in one or more areas where moderate deficiencies or weaknesses are present which are within the capability and willingness of the board and the management of the licensed family trust company to correct.

(c) “Unsatisfactory” to a licensed family trust company that does not generally comply with the provisions of this chapter and chapter 669A of NRS and exhibits some degree of supervisory concern in one or more areas where a combination of deficiencies or material weakness exists which may range from moderate to severe.

3. The Commissioner may, on the basis of an “unsatisfactory” rating:

(a) Revoke the license of the licensed family trust company pursuant to NRS 669A.280;

(b) Order the removal of any number of persons from the management of the licensed family trust company pursuant to NRS 669A.300;

(c) Impose and collect an administrative fine pursuant to NRS 669A.320; and

(d) Take any other enforcement action authorized by law.

4. The Commissioner may require a licensed family trust company that is assigned a rating of “unsatisfactory” to submit to a compliance and periodic reporting plan administered by the licensed family trust company or a third party to enforce any corrective action identified in the examination. The Commissioner may establish such terms and conditions for a compliance and periodic reporting plan as he or she deems advisable and require the licensed family trust company to pay all costs relating to the compliance and periodic reporting plan.

5. The management of a licensed family trust company shall provide the report of examination and the management’s written response to any corrective action required by the Division to the board. If the report of examination rates the licensed family trust company as “needs improvement” or “unsatisfactory,” the management of the licensed family trust

company must comply with this subsection within 30 days after receiving the report of examination.

6. If no action is pending against a licensed family trust company as a result of an examination, the Division will securely and confidentially maintain or destroy all documentation submitted in the course of an examination, other than the documents required to be filed with the Division, in accordance with the policies of the Division for the retention and destruction of records.

7. A report of examination and an independent review report are confidential and subject to the provisions of NRS 669A.310.

Sec. 28. 1. Notwithstanding the provisions of section 21 of this regulation, a licensed family trust company whose license was issued on or before December 31, 2014, must undergo an examination, as defined in section 10 of this regulation, on or before December 31, 2016.

2. Notwithstanding the provisions of subsection 2 of section 29 of this regulation, the Division of Financial Institutions of the Department of Business and Industry will provide a notice of examination as described in section 21 of this regulation on or before November 15, 2015, to a licensed family trust company required to undergo an examination pursuant to subsection 1.

Sec. 29. 1. This section and section 28 of this regulation become effective on October 1, 2015.

2. Sections 1 to 27, inclusive, of this regulation become effective on January 1, 2016.