

# PROPOSED REGULATION OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS

LCB File No. R002-16

## Chapter 628B of NAC

### Proposed Regulations for Assembly Bill 325 (Business of Private Professional Guardians)

#### **1. Citation of Authority:**

##### **Legislative Counsel's Digest:**

Existing law provides for the court appointment of a private professional guardian to act as a fiduciary for a person or estate, but does not require the private professional guardian to be licensed. (NRS 159.0595) This bill requires the licensing of certain persons engaging in the business of a private professional guardian and authorizes the Commissioner of the Financial Institutions to adopt regulations relating to the licensing of those persons.

**AB-325 Section 14:** The Commissioner may adopt regulations to carry out the provisions of this chapter.

#### **2. Address:**

Office of the Commissioner  
Financial Institutions Division  
2785 E. Desert Inn Road, Suite 180  
Las Vegas, NV 89121

#### **3. The procedures for obtaining clarification of the regulation or relief from the strict application of its terms:**

The Financial Institutions Division will review any and all requests for exceptions and clarification on case by case basis.

#### **4. Proposed Regulations:**

##### **AB-325 SECTION 14**

*Translation of documents written in language other than English.*

- 1. A licensee who uses a form or standard document written in a language other than English shall have the document translated into English and maintain together a copy of the document and its English translation.*
- 2. A document translated pursuant to this section must be:*
  - (a) Translated by an interpreter who is:*
    - (1) Certified by the Court Administrator in accordance with the provisions of NRS 1.510 and regulations adopted pursuant thereto; or*



## **AB-325 SECTION 18**

*Proof of certain qualifications of applicant required.*

*1. Every applicant for licensure as a private professional guardian must submit proof satisfactory to the Commissioner that the natural person:*

*(a) Is a citizen of the United States or lawfully entitled to remain and work in the United States, and*

*(b) Is a resident of this State, unless prior approval has been granted from the Commissioner.*

*2. A private professional guardian, if a person, must be qualified to serve as a guardian pursuant to NRS 159.059 and must be a certified guardian.*

*3. A private professional guardian, if an entity, must be qualified to serve as a guardian pursuant to NRS 159.059 and must have a certified guardian involved in the day-to-day operation or management of the entity.*

*4. As used in this section:*

*(a) "Certified guardian" means an individual who is certified by the Center for Guardianship Certification or any successor organization.*

*(b) "Entity" includes, without limitation, a corporation, whether or not for profit, a limited-liability company, sole proprietorship, and a partnership.*

*(c) "Person" means a natural person.*

*Fees and assessments.*

*1. An application for licensure as a private professional guardian must be accompanied by a nonrefundable application fee of \$500.*

*2. A private professional guardian shall pay a fee of \$750 for the initial license issued pursuant to Section 25 and \$250 for each additional license for a branch location at which the applicant proposes to operate under its license.*

*3. A private professional guardian shall pay a fee of \$500 to renew a license for the principal office, plus \$250 for each branch location which the licensee is authorized to operate under the license.*

*4. If the Commissioner reinstates an expired license, the licensee shall pay a reinstatement fee of \$500 in addition to the renewal fee prescribed in paragraph 3.*

*5. The hourly fee authorized in Section 37, Para 9 for supervision, audit, examination, investigation or hearing is \$75.*

*6. The late fee for each day a licensee fails to submit a report required pursuant to the provisions of Section 40, Para 4, is \$10.*

*7. The Commissioner shall bill each licensee for any fee or assessment imposed pursuant to the provisions of this chapter and chapter XXX of NRS. The licensee shall pay the fee within 30 days after the date the licensee receives the bill. Except as otherwise provided in this subsection, any payment received after the date due 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.*

*Duty to report changes in information.*

*An applicant or registered provider shall notify the Commissioner within 10 days after a change in the information specified in Section 18, paragraphs 3 through 6.*

- 1. An applicant or licensed guardian shall report after any changes in the information specified in paragraph 3, subsection (a), (e) or (f) and paragraph 6, subsection (a) of Section 18, and paragraph 1, subsection a (2) of Section 22.*
- 2. An applicant or licensed guardian shall report any changes to the financial condition including any new filings for bankruptcy, changes in the solvency of the business, or new liens taken on any real property in the applicant's or licensee's name to the Commissioner within 10 days of the change.*
- 3. An applicant or licensed guardian shall notify the Commissioner within 10 days of a change in the fidelity and surety bonds required in this chapter pursuant to paragraph 1, subsection d of Section 22 and paragraph 2 of Section 33.*
- 4. An applicant or licensed private professional guardian company shall notify the Commissioner within 5 days after obtaining knowledge of any change in control, officer or director. Prior approval shall be obtained by the Commissioner on a form prescribed by the Commissioner.*
- 5. A private professional guardian shall notify the Commissioner, in writing, within 10 days of change in employment.*

*Change of location of business.*

- 1. A guardian licensed pursuant to this chapter shall not move the business location from the place of business as stated in the license except upon prior approval by the Commissioner in writing on a form prescribed by the Commissioner.*
- 2. If the move is approved, the Commissioner shall note the change upon the face of the license and enter in his or her records a notation of that change.*

*Restrictions on service for multiple private professional guardian companies.*

- 1. A guardian may not serve as the certified private professional guardian of more than one entity at the same time.*
- 2. At the discretion of the Commissioner, upon written request from the private professional guardian, the Commissioner may approve a certified private professional guardian to serve for more than one entity at the same time.*
- 3. The approval may be revoked by the Commissioner at any time if he or she finds that:*
  - (a) Confusion may exist in the mind of the public in dealing with the private professional guardian companies having common management.*
  - (b) The various business functions of the private professional guardian companies operating under common management are likely to be or are being merged or commingled, or are otherwise being conducted, in the Commissioner's opinion, in a manner which may be deleterious or damaging to the best interests of the public or the private professional guardian industry.*
  - (c) Improper or abusive methods are being used by either or both of the private professional guardian companies operating under common management.*
  - (d) Either or both of the private professional guardian companies operating under common management are not conducting their affairs in compliance with this chapter and chapter xxx of NRS or any of the regulations the Commissioner adopted under that chapter.*

### **AB-325 SECTION 19**

*Prerequisites to conduct business under license.*

*A licensee shall not conduct any business under a license pursuant to this chapter unless:*

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

### **AB-325 SECTION 27**

*Display of license.*

*“License” interpreted. For the purposes of this chapter the Commissioner interprets:*

- 1. “License” to mean an original license.*
- 2. The license must be conspicuously displayed at the place of business and a copy thereof on any website used by the licensee for the purposes of soliciting new business or providing general information about the services of the business.*

*Place of Business. “Place of Business or Office” interpreted.*

*For the purposes of this chapter the Commissioner interprets:*

- 1. The physical location that is used in the conduct of the business of a private professional guardian as listed on the license issued pursuant to this chapter.*
- 2. The location must be non-residential unless an exemption is granted by the Commissioner.*
- 3. If an exemption is granted, all meetings that may be required during the licensing or examination process will be conducted at the closest office of the Financial Institutions Division in the State of Nevada.*
- 4. A licensee may not conduct the business of a private professional guardian under this chapter or chapter xxx of NRS within any office, suite, room or place of business in which any other private professional guardian business is solicited or engaged in, or in association or conjunction with any other business, unless prior written approval has been granted from the Commissioner.*

### **AB-325 SECTION 29**

*Renewals and reinstatement of expired or revoked license.*

- 1. A private professional guardian company wishing to renew a license shall file in the Office of the Commissioner, on or before June 1 of the year after the year of the original issuance of the license.*
- 2. The application for renewal must be accompanied by a renewal fee of \$500 and all information required to complete the application.*
- 3. The license must not be reinstated after the expiration date of July 1 or has been revoked by the Commissioner.*
- 4. All requirements of this chapter and chapter xxx of NRS with respect to original licensing and bonds apply to all renewal licenses and bonds.*
- 5. Suspension and reinstatement of license from a court order regarding child support:  
(a) If the Commissioner receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional, occupational and recreational licenses, certificates and permits issued to a person who is the holder of a license to engage in the business of a private professional guardian, the Commissioner shall deem the license issued to*

*that person to be suspended at the end of the 30th day after the date on which the court order was issued unless the Commissioner receives a letter issued to the holder of the license by the district attorney or other public agency pursuant to NRS 425.550 stating that the holder of the license has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

*(b) The Commissioner shall reinstate a license that has been suspended by a district court pursuant to NRS 425.540 if the Commissioner receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose license was suspended stating that the person whose license was suspended has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

### **AB-325 SECTION 32**

*Branch Offices: Outside this State.*

*An application for a license to operate a branch office outside the State of Nevada must be filed with the Commissioner of the Financial Institutions Division on a form prescribed by the Commissioner. The application must contain:*

- 1. The information required by Section 18 and Section 32 for an application for a license and must comply with the provisions of this chapter and chapter xxx of NRS;*
- 2. Proof that the location has a certified private professional guardian to oversee the day-to-day operations of the licensed location; and*
- 3. A non-refundable application fee of \$500 must accompany each request for a branch outside the state, and \$200 for the original license if granted.*

*Branch Offices: Arrangements required for maintenance of records and guardianship account. The Commissioner of Financial Institutions will not issue a license to operate a branch office in a state other than Nevada until the Commissioner is satisfied that the applicant has made appropriate arrangements for:*

- 1. The storage, maintenance and retention in this State of all records regarding the collection of claims for or from residents of this State; and*
- 2. The maintenance of a guardianship account pursuant to chapter xxxx of NRS of all money received for the benefit of each ward.*

### **AB-325 SECTION 37**

*Retention and examinations of records and accounts.*

*Every guardian licensed pursuant to this chapter shall keep all records concerning each of its wards and all documentation concerning its license for at least 6 years following the completion of the last transaction concerning the account or the completion of its service as a guardian, whichever is later, and the prescriptions of NRS 159.*

*Certain fees not to be assessed to wards.*

*Fees required by this chapter shall not be assessed directly to the estate of any ward.*

### **AB-325 SECTION 44**

*Revocation or Suspension of License.*

*The Commissioner of the Financial Institutions Division may revoke or suspend the license of a private professional guardian, an entity, or person as defined in Section 18, if any provision*

*of this chapter or chapter xxx of NRS is violated, including without limitation a provision that imposes a fee or assessment. A revocation or suspension of a license must be made in accordance with the procedures set forth in chapter xxx of NRS, to include an administrative fine of \$10,000 for each violation by the licensee of any provision of this chapter or chapter xxx of NRS.*

**AB-325 SECTION 47**

*Notice of toll-free telephone number for concerns and complaints.*

*1. A licensee shall post in a conspicuous place in every location at which the licensee conducts business under his or her license:*

*(a) A notice that states a toll-free telephone number to the Office of the Commissioner to handle concerns or complaints of customers and be in substantially the following form:*

***NOTICE OF RIGHT TO CONTACT THE OFFICE OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS REGARDING CONCERNS OR COMPLAINTS***

*You may contact the Office of the Commissioner of Financial Institutions regarding concerns or complaints about the service provider with whom you are dealing by calling the following toll-free telephone number in Nevada: 1 (866) 858-8951.*

*2. If printed, be in boldface type. Information that must be printed in all upper case letters, and the telephone number, must be printed in at least 18-point type. All other information must be printed in at least 16-point type.*

*3. If handwritten or displayed digitally or by other electronic means, be in characters that are equivalent in intensity, legibility and size to the characters required for printed matter.*

*4. The notice must also be displayed on any website which is used in the business of the private professional guardian.*