

**PROPOSED REGULATION OF THE
DIVISION OF FINANCIAL INSTITUTIONS**

LCB File No. R002-16

February 5, 2016

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

AUTHORITY: §§1-17, section 14 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2345; §18, sections 14, 18, 29, 32, 37 and 40 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at pages 2345, 2346, 2352, 2353, 2356 and 2358.

A REGULATION relating to private professional guardians; establishing provisions relating to the licensing of persons engaging in the business of a private professional guardian; establishing certain fees; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Assembly Bill No. 325 of the 78th Legislative Session requires the licensing of certain persons engaging in the business of a private professional guardian. (Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2343) Assembly Bill No. 325 also authorizes the Commissioner of Financial Institutions to adopt regulations to carry out the provisions concerning the licensing of such persons. (Section 14 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2345)

Section 6 of this regulation requires each natural person who applies for the issuance of a license to engage in the business of a private professional guardian to submit proof satisfactory to the Commissioner that the applicant is: (1) a citizen of the United States or lawfully entitled to remain and work in the United States; and (2) a resident of this State, unless a nonresident applicant otherwise obtains the approval of the Commissioner. **Section 7** of this regulation prohibits a licensee from engaging in the business of a private professional guardian unless, in addition to satisfying all other applicable requirements, the licensee possesses all applicable state and local government licenses, registrations and permits and the place of business of the licensee complies with all applicable planning and zoning ordinances. **Section 8** of this regulation requires a licensee or an applicant for the issuance of a license to engage in the business of a private professional guardian to notify the Commissioner within 10 days of a change in certain information.

Section 9 of this regulation: (1) requires that the place of business of a licensee be nonresidential unless an exemption is granted by the Commissioner; and (2) prohibits a licensee from engaging in the business of a private professional guardian in certain locations unless the licensee receives written approval from the Commissioner. **Section 10** of this regulation

prohibits a licensee from moving the place of business of the licensee without obtaining the approval of the Commissioner.

Section 11 of this regulation requires a licensee to display a copy of the license on each of the licensee's business websites, and **section 12** of this regulation requires a licensee to post in each location at which the licensee engages in the business of a private professional guardian and on each of the licensee's business websites a notice providing the toll-free telephone number of the Office of the Commissioner for the purpose of handling concerns or complaints regarding licensees. **Section 13** of this regulation requires a licensee to maintain certain records and documentation for a certain period, and **section 14** of this regulation requires a licensee that uses a form or standard document written in a language other than English to have the document translated into English.

Section 15 of this regulation establishes certain requirements concerning a request for approval and licensing to operate a branch office outside this State.

Section 16 of this regulation prohibits a private professional guardian company from having a private professional guardian or certified guardian involved in the day-to-day operation or management of the company if the private professional guardian or certified guardian is serving in that capacity for another private professional guardian company, unless the private professional guardian company obtains approval from the Commissioner. **Section 16** also authorizes the Commissioner to revoke any such approval at any time if the Commissioner makes certain determinations.

Section 17 of this regulation establishes provisions concerning the situation in which an unlicensed person engaged in the business of a private professional guardian fails to appear at a hearing provided to the person without obtaining a waiver of appearance or requesting or being granted a continuance.

Assembly Bill No. 325 authorizes the imposition of certain fees and requires the Commissioner to adopt regulations establishing the amounts of certain fees. (Sections 18, 29, 32, 37 and 40 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at pages 2346, 2352, 2353, 2356 and 2358) **Section 18** of this regulation establishes such fees.

Section 1. Chapter 628B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Certified guardian” has the meaning ascribed to it in subsection 4 of NRS 159.0595.*

Sec. 4. *“Licensee” means a person licensed to engage in the business of a private professional guardian pursuant to chapter 628B of NRS, created by Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2343.*

Sec. 5. *“Place of business” means the physical location used by a licensee to engage in the business of a private professional guardian as designated in the license issued to the licensee pursuant to chapter 628B of NRS, created by Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2343.*

Sec. 6. *Each natural person who applies for the issuance of a license to engage in the business of a private professional guardian pursuant to chapter 628B of NRS, created by Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2343, shall submit proof satisfactory to the Commissioner that he or she is:*

1. A citizen of the United States or lawfully entitled to remain and work in the United States; and

2. A resident of this State, unless the applicant, if a nonresident, has obtained the prior approval of the Commissioner to apply for the issuance of a license to engage in the business of a private professional guardian.

Sec. 7. *A licensee shall not engage in any business of a private professional guardian unless, in addition to satisfying all the requirements set forth in this chapter and chapter 628B of NRS, created by Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2343:*

1. The licensee possesses each license, registration and permit required by this State or a local governmental entity as a condition to conducting business; and

2. The place of business of the licensee complies with the provisions of all applicable planning and zoning ordinances.

Sec. 8. 1. *A licensee or an applicant for the issuance of a license to engage in the business of a private professional guardian shall notify the Commissioner within 10 days of:*

(a) Any change concerning the:

(1) Information provided pursuant to subsections 3 to 6, inclusive, of section 18 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2346;

(2) Financial status of the licensee or applicant, including, without limitation, any new filing for bankruptcy, change in the solvency of the business of the licensee or applicant, or lien taken on any real property in the name of the licensee or applicant; or

(3) Equity, fidelity and surety bonds required pursuant to section 33 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2353; or

(b) Being convicted of, or entering a plea of guilty or nolo contendere to, a felony or any crime involving fraud, misrepresentation, material omission, misappropriation, conversion or moral turpitude.

2. In addition to the requirements set forth in subsection 1, a licensee shall notify the Commissioner within 10 days of any change in employment.

Sec. 9. 1. *The place of business of a licensee must be nonresidential unless an exemption is granted by the Commissioner.*

2. If the Commissioner grants an exemption pursuant to subsection 1, any meeting that may be required during any licensing or examination process must be conducted at the closest office of the Division.

3. A licensee shall not engage in the business of a private professional guardian within any office, suite, room or business location in which any other business of a private professional guardian is solicited or engaged, or in association or conjunction with any other business of a private professional guardian, unless the licensee receives prior written approval from the Commissioner.

Sec. 10. 1. *A licensee shall not move the place of business of the licensee without first requesting approval from the Commissioner in writing, on a form prescribed by the Commissioner, and obtaining the approval of the Commissioner.*

2. If the Commissioner approves a change in the place of business of a licensee, the Commissioner will note the change on the face of the license of the licensee and enter a notation of the change in the record maintained pursuant to section 26 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2351.

Sec. 11. *In addition to the requirement set forth in section 27 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2351, that the license of a licensee must be conspicuously displayed in the place of business designated in the license, a licensee shall display a copy of the license of the licensee on each website that the licensee uses for the purpose of soliciting new business or providing general information about the business services of the licensee.*

Sec. 12. 1. *A licensee shall post in a conspicuous place in each location at which the licensee engages in the business of a private professional guardian and on each website the licensee uses for the purpose of soliciting new business or providing general information about the business services of the licensee a notice that states the toll-free telephone number of*

the Office of the Commissioner for the purpose of handling concerns or complaints regarding licensees. The notice must 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 licensee with whom you are dealing by calling the following toll-free telephone number in Nevada: (866) 858-8951.

2. If the notice required by subsection 1 is printed, it must 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 the notice required by subsection 1 is handwritten or displayed digitally or by other electronic means, it must be in characters that are equivalent in intensity, legibility and size to the characters required for printed matter.

Sec. 13. *A licensee shall maintain all records concerning each of the wards of the licensee and all documentation concerning the license of the licensee for at least 6 years after the completion of the last transaction concerning a guardianship account maintained for a ward or the licensee's service as a private professional guardian, whichever is later.*

Sec. 14. 1. *A licensee that 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

(2) Approved in writing by the Division.

(b) Accompanied by a certificate issued by the interpreter. The certificate must:

(1) Declare that the translated document is a true and complete translation of the document written in the language other than English;

(2) Identify the document written in a language other than English and its English translation;

(3) Include the date of the translation; and

(4) Include the name, address, telephone number and electronic mail address, if any, of the interpreter.

3. The Commissioner may require a licensee to provide a translation of any nonstandard document that is written in a language other than English.

4. The Commissioner may assess a licensee for all costs incurred by the Commissioner to verify the licensee's compliance with this section.

Sec. 15. 1. *A request for approval and licensing to operate a branch office outside this State that is filed with the Commissioner pursuant to subsection 3 of section 32 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2353, must contain:*

(a) The applicable information required by section 18 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2346, for the application for a license to engage in the business of a private professional guardian in this State; and

(b) Proof satisfactory to the Commissioner that each branch office located outside this State will have a private professional guardian or a certified guardian involved in the day-to-day operation or management of the branch office.

2. The Commissioner will not approve a request for approval and licensing to operate a branch office outside this State that is filed pursuant to subsection 3 of section 32 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2353, unless the Commissioner is satisfied that the applicant has:

(a) Complied with all applicable provisions of this chapter and chapter 628B of NRS, created by Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2343, including, without limitation, the requirements set forth in section 32 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2353; and

(b) Made appropriate arrangements for the:

(1) Storage, maintenance and retention in this State of all records regarding the collection of claims for or from residents of this State; and

(2) Maintenance of a guardianship account for each ward pursuant to section 37 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2356.

Sec. 16. 1. Except as otherwise provided in subsection 2, a private professional guardian company shall not have a private professional guardian or a certified guardian involved in the day-to-day operation or management of the company if the private professional guardian or certified guardian is serving in that capacity for another private professional guardian company.

2. A private professional guardian company is exempt from the provisions of subsection 1 if the private professional guardian company submits a written request to the Commissioner and the Commissioner approves the request.

3. The Commissioner may revoke the approval given pursuant to subsection 2 at any time if the Commissioner determines that:

(a) Confusion exists in the general public with regard to dealing with different private professional guardian companies that have the same private professional guardian or certified guardian involved in the day-to-day operation or management of each company;

(b) The various business functions of different private professional guardian companies that have the same private professional guardian or certified guardian involved in the day-to-day operation or management of each company are likely to be or are being merged or commingled or, in the opinion of the Commissioner, are otherwise being conducted in a manner that may be deleterious to the best interests of the public or the industry of private professional guardians;

(c) Improper or abusive methods are being used by a private professional guardian company that has the same private professional guardian or certified guardian involved in the day-to-day operation or management of the company as another private professional guardian company; or

(d) A private professional guardian company that has the same private professional guardian or certified guardian involved in the day-to-day operation or management of the company as another private professional guardian company is not conducting its affairs in compliance with this chapter and chapter 628B of NRS, created by Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2343.

Sec. 17. *If an opportunity for a hearing is provided to a person pursuant to subsection 3 of section 17 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2346, and the person fails to appear at the hearing without obtaining a waiver of appearance or requesting or being granted a continuance:*

1. Such failure shall be deemed to be:

(a) An admission of all matters and facts contained in the verified complaint received by the Commissioner pursuant to subsection 1 of section 17 of Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2346; and

(b) A waiver of the right to an evidentiary hearing.

2. The Commissioner or his or her designee may:

(a) Proceed to consider the matter without the participation of the person and may dispose of the matter on the basis of the evidence before it; or

(b) Upon good cause shown, recess the hearing to a future date to be set by the Commissioner or his or her designee to enable the person to attend.

Sec. 18. *1. The Commissioner will charge and collect the following fees:*

Application fee for a license to engage in the business of

a private professional guardian.....\$500

Initial fee for a license to engage in the business of

a private professional guardian.....750

Renewal fee for a license to engage in the business of

a private professional guardian.....500

Fee for a request for approval and licensing to operate a branch office

outside this State.....500

Fee for each branch office authorized by the Commissioner.....250

Renewal fee for each branch office authorized by the Commissioner.....250

*Hourly fee for the examination of the books, papers, records and effects of
a private professional guardian company required pursuant to chapter
628B of NRS, created by Assembly Bill No. 325, chapter 409, Statutes of
Nevada 2015, at page 2343, and the preparation of a report of the examination.....75*

*Fee for each day a report is late pursuant to subsection 4 of section 40 of
Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2358.....10*

2. The Commissioner will bill each licensee for any fee or assessment imposed pursuant to the provisions of this chapter or chapter 628B of NRS, created by Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2343. The licensee shall pay the fee within 30 days after the date the licensee receives the bill.

3. Any fee authorized by this chapter or chapter 628B of NRS, created by Assembly Bill No. 325, chapter 409, Statutes of Nevada 2015, at page 2343, must not be assessed directly to the estate of any ward.