

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

LCB File No. R134-08

August 20, 2008

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

AUTHORITY: §§1-7, 9-12, 15, 17-24, and 30-32, NRS 669.270; §8, NRS 669.100 and 669.270; §13, NRS 661.135, 669.260 and 669.270; §14, NRS 661.145, 669.260 and 669.270; §16, NRS 661.165, 669.260 and 669.270; §25, NRS 658.101, 669.250 and 669.270; §26, NRS 669.150 and 669.270; §§27 and 28, NRS 669.190 and 669.270; §29, NRS 658.055, 669.260 and 669.270.

A REGULATION relating to trust companies; providing restrictions on the transfer and assignment of licenses; providing requirements for the operation of a trust company; requiring submission of an audited financial statement and list of shareholders; requiring quarterly meetings and examinations of books; providing requirements for hearings on applications for licenses; providing requirements for the confidentiality of financial records; providing requirements for directors; providing procedures for cease and desist orders and hearings; revising certain fees; 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 24, 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 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Commissioner” means the Commissioner of Financial Institutions.*

Sec. 4. *“Division” means the Division of Financial Institutions of the Department of Business and Industry.*

Sec. 5. 1. *“Family trust company” means a nondepository trust company that is organized and licensed under this chapter by a designated relative to engage in trust company business with one or more family members and does not transact business with the general public.*

2. *As used in this section:*

(a) *“Designated relative” means the individual who is so designated in the application for a license under NRS 669.150.*

(b) *“Family member” means the designated relative and:*

(1) *Any individual within the fifth degree of lineal kinship to the designated relative;*

(2) *Any individual within the ninth degree of collateral kinship to the designated relative;*

(3) *The spouse of the designated relative;*

(4) *A spouse of any individual qualifying as a family member under subparagraph (1) or (2);*

(5) *An individual who is a relative of the spouse identified under subparagraph (3) who is in the fifth degree of lineal kinship of the spouse;*

(6) *A company controlled by one or more family members, who shall possess, directly or indirectly, the power to direct or cause the direction of the management and policies of such company, whether through the ownership of voting securities, by contract or otherwise;*

(7) *A trust established by a family member or by an individual who is not a family member if noncharitable beneficiaries who are family members represent a majority interest in the trust;*

(8) *The estate of a family member; or*

(9) A charitable foundation or charitable entity created by a family member.

Sec. 6. *“Retail trust company” means a trust company which conducts the business of a trust company for customers other than members of a family trust.*

Sec. 7. *As used in NRS 669.045, “administrator” means any and all forms of administrators, including, but not limited to, servicers of trust accounts and qualified retirement accounts, where the administrator holds or maintains an ownership in the servicing rights of such accounts.*

Sec. 8. *No retail trust company may be organized or operated with stockholder equity of less than \$2,000,000 cash without the approval of the Commissioner.*

Sec. 9. 1. *A trust company licensed in this State shall:*

(a) Establish a physical presence in this State; and

(b) Conduct its principal business operations in this State.

2. *The conditions for a trust company to fulfill the requirements of subsection 1 include, but are not limited to:*

(a) A verifiable physical office in this State;

(b) The presence of executive-level management on a full-time basis in an office in this State;

(c) Maintenance of the business records of the trust company, readily available for examination by the Division, in an office in this State; and

(d) Evidence that a majority of the operations of the trust company serve residents of this State.

3. *As used in this section, “executive-level management” means the president, chief executive officer, chief financial officer, chief operating officer, and other officers, directors and managers, or members who act in a managerial capacity.*

Sec. 10. 1. *A license issued pursuant to this chapter is not transferable or assignable. Upon approval of the Commissioner, a licensee may merge or consolidate with, or transfer its assets and control to, another entity that has been issued a license under this chapter.*

2. *If there is a change in ownership of 5 percent or more of the outstanding voting stock or of members’ interests in a retail trust company, the president or other chief executive officer or managing member of the retail trust company shall report the facts to the Commissioner within 3 business days after obtaining knowledge of the change.*

3. *A retail trust company shall, within 24 hours after there is a change in the chief executive officer, managing member or director of the retail trust company, report the change to the Commissioner. The retail trust company shall include in its report a statement of the past and current business and professional affiliations of each new chief executive officer, managing member or director. A new chief executive officer, managing member or director shall furnish to the Commissioner a complete financial statement on a form prescribed by the Commissioner.*

4. *A person who acquires stock or members’ interests resulting in a change of control of a retail trust company shall submit an application to the Commissioner. The application must be submitted on a form prescribed by the Commissioner. The Commissioner shall conduct an investigation to determine whether the individual has a good reputation for honesty, trustworthiness and integrity and is competent to transact the business of a trust company in a manner which protects the interest of the general public.*

5. *The retail trust company with which the applicant described in subsection 4 is affiliated shall pay the cost of the investigation as the Commissioner requires. All money received by the Commissioner pursuant to this subsection must be placed in the Investigative Account for Financial Institutions created by NRS 232.545. If the Commissioner denies the application, he may forbid the applicant from participating in the business of the trust company.*

6. *As used in this section, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of a retail trust company, or a change in the ownership of at least 5 percent of the outstanding voting stock of, or participating members’ interests in, a retail trust company.*

Sec. 11. *A licensee shall not conduct any business under his license unless:*

1. *The licensee 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 licensee complies with the provisions of all applicable planning and zoning ordinances.*

Sec. 12. 1. *It is unlawful for any trust company licensed in this State to 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 licensee 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. 13. 1. *The affairs and business of a trust company organized as a corporation under the laws of this State must be managed or controlled by a board of directors of not less*

than five in number, who must be selected from the stockholders at the annual meeting of stockholders in such manner as may be provided by the bylaws of the corporation.

2. The affairs and business of a trust company organized as a limited-liability company under the laws of this State must be managed or controlled by no fewer than three managers selected from the members as provided in the operating agreement.

Sec. 14. *1. No person is eligible to serve as a director or manager of any trust company unless he:*

- (a) Is a bona fide owner of stock of the trust company or its holding company;*
- (b) Holds stock of the trust company or its holding company in a revocable trust; or*
- (c) Has a member's interest in the 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" has the meaning ascribed to it in NRS 666.005.

Sec. 15. *1. The Commissioner may require a licensee to furnish him 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 licensee 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. 16. *The Commissioner may direct that the board of directors or managers of a trust company meet at least quarterly in regular meetings to conduct a thorough examination of the books, records, funds and securities held by the trust company. At the Commissioner's discretion, this examination requirement may be satisfied by obtaining an independent audit of the books, records, funds and securities.*

Sec. 17. 1. *If an application for a license is denied, the Commissioner shall issue a written order to the applicant by certified mail or by telegram.*

2. The applicant shall have 30 days from the date the order is mailed to submit a request for hearing.

3. The presiding hearing officer shall apply the substantial evidence standard of review upon any order by the Commissioner pursuant to this section.

4. The presiding hearing officer shall either affirm or remand the order of the Commissioner.

Sec. 18. *Any application and financial records submitted by a person pursuant to the provisions of this chapter or chapter 669 of NRS and any financial records or other documents submitted by a licensee pursuant to an audit conducted by the Division are confidential and may be disclosed only to:*

1. *The Division;*
2. *An authorized employee of the Division who needs the records for purposes relating to the administration of this chapter or chapter 669 of NRS; or*
3. *A person or governmental entity that is authorized to obtain the records pursuant to an order issued by a court of competent jurisdiction.*

Sec. 19. *The Commissioner may issue an order to cease and desist or to pay an administrative fine upon a person pursuant to this chapter and chapter 669 of NRS. The Commissioner shall:*

1. *Provide a copy of the order by certified mail to the person; and*
2. *Provide notification that the person has 30 days to request an administrative hearing, and if no written application for a hearing is received by the Division, the order shall become final.*

Sec. 20. *1. If a person engages in an activity in violation of the provisions of this chapter or chapter 669 of NRS, the Commissioner may issue an order to the person directing him to cease and desist from engaging in the activity.*

2. The order to cease and desist must be in writing and must state that, in the opinion of the Commissioner, the person has engaged in an activity:

- (a) For which the person has not been issued a license as required by this chapter; or*
- (b) In a manner that violates the provisions of this chapter or any applicable law.*

3. A person who receives 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 he receives the order unless the order is suspended or rescinded.

4. *An order imposing an administrative fine or restricting the practices of the person may be amended at any time before or during the hearing.*

5. *If a timely application for a hearing is received by the Division, the presiding hearing officer shall conduct a contested hearing.*

6. *The presiding hearing officer assigned to the matter may grant a continuance if:*

(a) *An amendment to an order materially alters the facts or legal issues related to the order; or*

(b) *The respondent demonstrates an inability to prepare for the case in a timely manner.*

7. *An order may be withdrawn at any time before the hearing begins.*

8. *Each party may request that the presiding hearing officer issue a subpoena to compel the attendance of witnesses. The party making the request shall be responsible for paying mileage for the witness.*

9. *The petitioner has the burden of proof in a contested case.*

10. *The decision of the presiding hearing officer shall be final for the purposes of judicial review.*

Sec. 21. 1. *The presiding hearing officer will not be bound by strict rules of procedure or the Nevada Rules of Evidence in the conduct of the proceedings.*

2. *A record of the charges and a record of all evidence produced will be filed in the office of the Division.*

3. *A hearing held pursuant to the provisions of this chapter will be conducted pursuant to the provisions of chapter 233B of NRS.*

Sec. 22. 1. *The presiding hearing officer may:*

(a) *Conduct hearings;*

(b) Question witnesses;

(c) Make rulings on motions and objections; and

(d) Submit findings of fact or conclusions of law at the conclusion of the case.

2. The findings of fact and conclusions of law issued by the hearing officer constitute the final decision for the purpose of judicial review.

Sec. 23. *If a party fails to appear at a hearing scheduled by the presiding hearing officer and a continuance has not been requested or granted, upon an offer of proof by the other party that the absent party was given proper notice and upon a determination by the presiding hearing officer that proper notice was given, the presiding hearing officer 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 him. If the respondent fails to appear at the hearing or fails to reply to the notice, the charges specified in the complaint may be considered as true.*

Sec. 24. *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 his behalf, may question the witness as if conducting a cross-examination.

Sec. 25. 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]~~ **\$100** per hour from each trust company for any supervision, examination, audit, investigation or hearing conducted pursuant to chapter 669 of NRS.

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

Sec. 26. NAC 669.030 is hereby amended to read as follows:

669.030 1. An application for a license to transact trust company business submitted pursuant to NRS 669.150 must be accompanied by:

- (a) A nonrefundable fee of ~~[\$1,500;]~~ **\$2,000;** and
- (b) A fee of ~~[\$300;]~~ **\$500,** prorated by the Commissioner. ~~[of Financial Institutions.]~~

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

- (a) A nonrefundable fee of ~~[\$375]~~ **\$500** for each request; and
- (b) A fee of \$200, prorated by the Commissioner. ~~[of Financial Institutions.]~~

Sec. 27. NAC 669.040 is hereby amended to read as follows:

669.040 1. The initial fee for a trust company with an initial stockholder's equity of:

- (a) Not less than \$300,000 but not more than \$500,000, is ~~[\$750;]~~ **\$1,000.**
- (b) More than \$500,000 but not more than \$1,000,000, is ~~[\$1,125;]~~ **\$1,500.**
- (c) More than \$1,000,000, is ~~[\$1,500;]~~ **\$2,000.**

2. In addition, each trust company must pay an initial fee of ~~[\$150]~~ **\$200** for each branch office that is authorized by the Commissioner. ~~[of Financial Institutions.]~~

Sec. 28. NAC 669.050 is hereby amended to read as follows:

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

Sec. 29. NAC 669.070 is hereby amended to read as follows:

669.070 1. Except as otherwise provided in NAC 658.030, each licensed 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. The Division ~~[of Financial Institutions of the Department of Business and Industry]~~ will bill each licensed trust company for the assessment. The assessment must be paid within 30 days after the date the bill is received.

3. A charge of 10 percent of the assessment will be imposed on any licensed trust company whose assessment is received by the Division ~~[of Financial Institutions of the Department of Business and Industry]~~ after the date on which the assessment is due.

Sec. 30. 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 trust company pursuant to the procedures provided in chapter 669 of NRS if the 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.

Sec. 31. NAC 669.100 is hereby amended to read as follows:

669.100 Except as otherwise provided in NAC 669.110, *sections 15 or 18 of this regulation*, 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.

Sec. 32. NAC 669.110 is hereby amended to read as follows:

669.110 1. If a licensed trust company, or an authorized representative of that licensee, 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 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.