

PROPOSED REGULATION OF THE SECRETARY OF STATE

LCB File No. R070-11

September 23, 2011

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

AUTHORITY: NRS 78.047(3), 80.055(6), 82.5234(6), 86.213(3), 86.548(6), 87A.237(3), 87A.610(7), 87A.632(3), 87A.652(7), 88.352(3), 88.600(7), 88.6062(3), 88.6087(7), 88A.215(3), 88A.750(6), 89.215(3)

A REGULATION relating to persons purporting to be Nevada entities pursuant to NRS Title 7 and doing business in Nevada without filing and maintaining articles of incorporation or other formation documents with the Secretary of State as required by law.

Section 1. Chapters 78, 80, 82, 86, 87A, 88, 88A and 89 of NAC are hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 15, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 - 6 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Entity” means any corporation, limited liability company, limited partnership or other entity required to have a registered agent and be on file with the Secretary of State pursuant to Title 7 of the Nevada Revised Statutes.*

Sec. 4. *“Other terminated status” means any status on the records of the Secretary of State other than “revoked” or “permanently revoked” status that indicates that an entity no longer has the right to conduct business in Nevada, including, but not limited to, dissolved, cancelled, terminated or withdrawn.*

Sec. 5. *“Person” means a natural person, any form of business or social organization, a corporation, partnership, association, trust, unincorporated organization, government, governmental agency or political subdivision of a government.*

Sec. 6. *“Registering” means:*

- 1. For entities required to be formed or qualified pursuant to Title 7 of NRS, to file the formation or qualification documents, maintaining the annual lists and apply for and maintain a State Business License or Notice of Exemption with the Secretary of State as required by Title 7 of the Nevada Revised Statutes.*
- 2. For a sole proprietor or partnership or other business not required to file formation or qualification documents, applying for and maintaining a State Business License or notice of exemption with the Secretary of State.*

Sec. 7. *Actions subject to complaint and possible administrative action pursuant to sections 2 to 13, inclusive, of this regulation, include, without limitation:*

- 1. Doing business in Nevada without properly registering with the Secretary of State by filing and maintaining formation documents and annual lists as required by NRS Title 7;*
- 2. Purporting to be a Nevada entity without properly registering with the Secretary of State by filing and maintaining formation documents and annual lists as required by NRS Title 7;*
- 3. Doing business in Nevada while in a revoked, permanently revoked or other terminated status with the Secretary of State; or*
- 4. Doing business in Nevada and not maintaining a State business license or proper Notice of Exemption from the State Business License.*

Sec. 8. 1. *A person may report to the Secretary of State any entity, sole proprietor, partnership or other business that may be doing business in Nevada without registering by submitting a complaint to:*

Secretary of State

Commercial Recordings Division

Attn: Business Compliance

202 North Carson Street

Carson City, Nevada 89701

Email option: blcompliance@sos.nv.gov

2. A complaint submitted pursuant to subsection 1 may be on a form prescribed by the Secretary of State and may include, but is not limited to, the following information:

(a) The name, street address, telephone number and, if applicable, the electronic mail address and any additional contact information of the reporting person.

(b) The name, street address, telephone number and, if applicable, the electronic mail address and any additional contact information of the person, if any, authorized by the reporting person to submit the complaint on behalf of the reporting person.

(c) The name, street address, telephone number and, if applicable, the electronic mail address and any additional contact information of the person doing business in Nevada in violation of this section.

(d) Information, if known, identifying all persons involved in the alleged violation of this section, including, without limitation, names, street addresses, business locations, telephone numbers, and website and electronic mail addresses.

(g) Information identifying the nature of any business in the alleged violation of this section.

(h) Information identifying other regulatory entities or agencies, and courts, arbitrators or other tribunals, with which the reporting person has filed other complaints or reports regarding the same filing, including, without limitation, the names and addresses of such other regulatory entities, agencies, courts, arbitrators and tribunals, the dates upon which those other complaints or reports were submitted, and the case numbers assigned to those complaints or reports, if any.

(i) Any additional information which the reporting person believes may assist in investigating the allegations in the complaint.

(j) Photocopies of any documents which the reporting person believes may be useful in investigating the allegations in the complaint.

(k) A statement indicating whether the reporting person is willing to testify regarding the complaint in a court of law or administrative proceeding.

(l) A statement that to the best of the complainant's knowledge, the information is true and correct.

Sec. 9. *Upon receipt of a complaint submitted pursuant to section 8 of this regulation, the Secretary of State will review the complaint and determine whether the complaint may be resolved through the administrative process and if the complaint should be referred to another regulatory or enforcement agency for further investigation.*

Sec. 10. *The Secretary of State may refer the information obtained in a complaint or through the associated investigation to other agencies for further investigation.*

Sec. 11. *If the information provided in a complaint is insufficient for further process or investigation, the Secretary of State will communicate in writing the deficiencies to the reporting person at the address provided on the complaint form, if available.*

Sec. 12. *The Secretary of State may request of a reporting person or demand of a person alleged to be in violation of this section any information necessary to validate the alleged violation.*

Sec. 13. 1. *If the information provided in a complaint or received as a result of an investigation of another matter is sufficient for further process or investigation, the Secretary of State may demand information substantiating the accuracy of a filing alleged to be in violation of NRS XXX.XXXX. The demand shall be made in writing to the entity referenced in the record, through the registered agent of the entity, and a copy will be provided to the person who submitted the record alleged to be in violation of NRS XXX.XXXX.*

2. A response to a demand for information by the Secretary of State must be returned completed within the time requested and must be signed by a responsible party and in accordance with the provisions of NRS 239.330.

3. The person responding to the demand may include in his response photocopies of any documents which he believes may be useful in an investigation of the complaint or alleged violation of NRS XXX.XXXX.

4. If the Secretary of State receives information in response to his demand, he will evaluate the information received in response to the demand. If the Secretary of State deems that the information received in response to his demand sustains the complaint, he may demand that the person file the proper registration documents and pay all fees and penalties

that would have been required from the date the violation commenced and any associated fines.

5. If the Secretary of State does not receive the proper registration documents and related fees, penalties and associated fines or a completed response to his original demand, he may refer the complaint to the District Attorney or Attorney General or both to institute proceedings to recover fees, penalties and fines pursuant to NRS Title 7 and to require compliance with filing requirements, and any other appropriate relief.

6. The Secretary of State may communicate his finding:

(a) To the reporting person at the address provided on the complaint form; and

(b) To the person who has violated or allegedly violated this section at the last known address or to through the registered agent of record.