



A GUIDE TO OBTAINING A NON-RESTRICTED  
GAMING LICENSE IN NEVADA



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# Overview

In Nevada, four tiers of registration or licensing capture almost all individuals and companies involved in the gaming industry. The overall policy for registration and licensing is to protect the public's confidence and trust in the gaming industry through strict regulation of all persons, locations, practices, associations and activities related to the operation of gaming in Nevada. See NRS 463.0129. All recommendations and decisions of the Nevada Gaming Control Board (the Board) and Nevada Gaming Commission (the Commission) are meant to support this policy and instill confidence in the integrity of the industry. This guide will focus on the process for obtaining a non-restricted license in Nevada; however, we have also included a brief description of the other tiers of licensing in the Nevada gaming industry.

## **A. FIRST TIER – GAMING EMPLOYEES**

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The first tier includes all gaming employees who must register with the Board. This process is fairly straightforward and focuses on whether the employee has a criminal history or anything else in their background that would reflect poorly on the industry. Each non-restricted licensee has an online account with the Board and is responsible for registering gaming employees in the system. Once registered, the Board will conduct a background check and identify any problematic issues in the employee's past. If such issues are identified, the Board may object to such registration within 120 days for any reasonable cause, which includes any specific criteria for denial pursuant to NRS 463.335(12). If the Board does not object, the employee is registered and is eligible for employment with any non-restricted licensee until such registration expires, is suspended or revoked.

## **B. SECOND TIER – INDEPENDENT AGENTS AND CERTAIN EMPLOYEES**

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The second tier includes certain gaming employees and independent contractors who, because of their positions, must register and undergo a more extensive review. For example, independent agents who bring high rollers to Nevada casinos must file more detailed information and pay a \$2,500 fee for the application and investigation.

### **C. THIRD TIER – RESTRICTED LICENSEES AND SERVICE PROVIDERS**

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The third tier includes restricted locations (15 or fewer gaming devices incidental to the main business), manufacturers and distributors of associated equipment, hosting centers, and service providers who provide certain cash access and wagering instrument, information technology, and cloud computing services.

These investigations, while more comprehensive than the first and second tiers, pale in comparison to the complexity of the fourth tier. Such applicants must provide personal background information and financial information for the companies, as well as certain individuals.

### **D. FOURTH TIER – NON-RESTRICTED GAMING LICENSES**

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The fourth tier of licensing, which is the focus of this guide, captures those individuals and entities that control or influence the gaming operation. As this guide will explain, the application process for a non-restricted license includes an extensive background investigation that can take nine months to more than a year and requires the applicant to produce hundreds (and often thousands) of pages of personal background and financial documents.

# Who Must Obtain a Non-restricted Gaming License

The categories of non-restricted licenses include:

- Gaming operators with more than 15 slot machines or any live games
- Manufacturers and distributors of gaming equipment
- Operators of mobile gaming systems
- Operators of slot routes
- Operators of inter-casino linked systems
- Race books and sports pools:
  - Operators
  - Disseminators
  - Pari-mutuel systems operators
  - Information service providers
- Operators, manufacturers and distributors of interactive gaming systems
- Interactive gaming service providers
- Manufacturers/distributors of cashless wagering systems

The entity conducting these activities must obtain a license and certain shareholders (including holding companies), officers, directors and key employees must also file an application and be licensed. Generally, the type of entity and corporate structure will govern who undergo licensing. The most liberal rules apply to publicly traded companies that are also under the jurisdictions of other financial regulatory bodies.

The most stringent rules apply to those companies that are privately owned. In addition to the company application, there may also be applications required for certain holding companies, affiliates or otherwise and also certain individuals (addressed below).

Although unusual, the Commission may call lenders or landlords forward who lease their property to gaming licensees and others that the Commission determines may affect the gaming operations. While lenders are typically not subject to licensing, they should be aware of the requirements and issues that may arise in the gaming industry.

## A. PUBLIC COMPANY LICENSING – SHAREHOLDERS

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While the Commission retains broad discretion in calling individuals or entities forward for licensing, there are ownership thresholds that trigger mandatory licensing. In a publicly traded corporation (PTC), persons who acquire less than five percent of any class of voting securities are not subject to mandatory licensing. Persons who acquire more than five percent, but less than 10 percent of any class of voting securities, must notify the Commission within 10 days of filing notice of the acquisition with the Securities and Exchange Commission. Any person who acquires more than 10 percent of any class of voting securities must apply for licensing by the Commission within 30 days. Please see Section III of this Guide for additional information on the licensing process.

Institutional investors who beneficially own more than 10 percent, but not more than 25 percent, of the common stock of a registered PTC may apply for a waiver of the mandatory licensing requirements if the shares are held for investment purposes only. An institutional investor is allowed to beneficially own more than 25 percent, but not more than 29 percent, of any class of a PTC's voting securities if such additional ownership resulted from a stock repurchase program conducted by the PTC. In such situations, an institutional investor cannot purchase or otherwise acquire any additional voting securities of the PTC that would result in an increase in an investor's ownership percentage. An institutional investor can include any of the following:

- A bank under Section 3(a)(6) of the Federal Securities Exchange Act
- An insurance company under Section 2(a)(17) of the Investment Company Act of 1940
- An investment company under Section 8 of the Investment Company Act of 1940
- An investment advisor under Section 203 of the Investment Advisors Act of 1940
- Collective trust funds under Section 3(c)(11) of the Investment Company Act of 1940
- An employee benefit plan or pension fund under Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the Commission
- A state or federal government pension plan
- A group comprised entirely of persons specified above
- Such other persons as the Commission may determine for reasons consistent with state policies



An institutional investor will not be deemed to hold the shares for investment purposes unless such shares were acquired and are held in the ordinary course of business as an institutional investor. The shares should not be held for the purpose of causing, either directly or indirectly:

- The election of a majority of the members of the board of directors
- Any change in the corporate charter, bylaws, management, policies or operations of it or any of its gaming affiliates
- Any other action that the Commission finds to be inconsistent with holding shares for investment purposes only

The Nevada regulators have not deemed the following activities, among others, to be inconsistent with holding shares for investment purposes only:

- Voting, directly or indirectly through the delivery of a proxy furnished by the board of directors, on all matters voted on by the holders of such voting securities;
- Serving as a member of any committee of creditors or security holders formed in connection with a debt restructuring;
- Nominating any candidate for election or appointment to the board of directors in connection with a debt restructuring;
- Accepting appointment or election as a member of the board of directors in connection with a debt restructuring and serving in that capacity until the conclusion of the member's term;
- Making financial and other inquiries of management of the type normally made by securities analysts for informational purposes and not to cause a change in its management, policies or operations

## **B. PUBLIC COMPANY LICENSING – OFFICERS AND DIRECTORS**

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Certain officers and directors of public companies and their holding companies must also be licensed. Officers subject to mandatory licensing include:

- Those involved in gaming who are also directors of a company
- The president
- Any person performing the function of chief operating officer, chief executive officer, chief financial officer, and chief technical/information officer

Directors normally subject to findings of suitability reviews are:

- A chairman of the board of directors
- Directors beneficially owning more than five percent of any class of voting securities



- Directors voting on an executive committee or any comparable committee with the authority of the board of directors to govern the activities of a corporate licensee
- Directors who serve as the chairman of the audit committee
- Directors who serve in the capacity of a lead director
- Directors who are also gaming employee

The Commission also requires applications for any officer or employee who administers or supervises gaming activities. The Commission may also require an application from any employee or officer if said application would serve the policies of the state regarding gaming. Please see Section III of this Guide for additional information on the licensing process.

## **C. PRIVATE COMPANIES – SHAREHOLDERS**

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### **Registration**

Shareholders who own five percent or less of a privately owned gaming licensee (Minority Shareholders) must register with and submit to the Board's jurisdiction.

Additionally, certain managers, directors and officers of such Minority Shareholders who have no control over the operations of a subsidiary licensee, may only be required to register with the Board. Registration is a much less stringent process than licensing, with the policy being that the individuals subject to registration do not have the ability to control gaming operations.

### **Registration Process**

Registration must be made before obtaining an ownership interest in a licensee. When no ownership interest is obtained, such as when a registrant is an officer or director of a corporation, registration must be made within 30 days after the person assumes office.

If the Commission subsequently finds a registrant unsuitable, denies an application for registration or subsequently revokes the registration, the registrant's ownership interest must be immediately returned to the licensee and the licensee must refund the amount of money the registrant paid for its ownership interest. Additionally, the Board Chairman has the discretion to require a registrant to file for licensure at any time.

To register with the Board, a registrant must file: (1) a completed application for registration as prescribed by the Board; (2) fully executed waivers and authorizations as determined necessary by the Board Chairman to investigate the registrant; (3) an affirmative statement that the registrant submits to the jurisdiction of the Board; (4) his/her certified fingerprints; and (5) an investigative fee in the amount of \$2,500 for all registrations.

Once a completed application for registration has been filed, the Board will consider the application no later than 120 days after the first regular monthly meeting following the filing. During the meeting in which the Board considers the application, the Board will: (1) register the applicant; (2) decline to register the applicant; (3) refer the application back to staff; or (4) recommend the applicant be required to apply for licensure. Where an applicant's registration has been denied or referred back to staff, the applicant may apply for licensure even if not required to do so.

### **Mandatory Licensing**

In contrast, shareholders who own more than five percent must be licensed and found suitable by the Commission.

Similar to PTCs, private companies also have provisions for institutional investors to request a waiver from the licensing process. However, the rules governing privately held companies are more restrictive than those for PTCs. In particular, unlike institutional investors in PTCs, an institutional investor in a private company may not hold more than a 15 percent ownership interest.

Prior to acquiring an ownership interest in a licensee, a shareholder must first be registered, licensed or waived, as the case may be. Please see Section III of this Guide for additional information on the licensing process.

## **D. PRIVATE COMPANIES – OFFICERS AND DIRECTORS**

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Every officer and director of a privately owned gaming licensee must undergo licensing. A person who is required to be licensed by this section shall apply for a license within 30 days after the person becomes an officer or director. Please see Section III of this Guide for additional information on the licensing process.

## E. PRIVATE INVESTMENT COMPANIES

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In March 2016, the Commission adopted Regulation 15C in an effort to mitigate the licensing requirements for Private Investment Companies (“PICS”), which are defined as “any privately held legal entity except a natural person which holds or applies for a license, or owns, directly or indirectly, a beneficial interest in any corporation, firm, partnership, limited partnership, limited-liability company, trust or other form of business organization which holds or applies for a license, and which has the following characteristics:

- a. 100% of the economic securities of the company are held, directly or indirectly, by (i) one or more private investment funds that are managed by an investment manager or managers, which investment manager or managers collectively have more than one billion dollars in assets under management or (ii) one or more institutional investors as defined in Regulation 16.010(14) that each has assets of more than one billion dollars;
- b. 100% of the voting securities of the company are held by one or more legal entities that is controlled by one or more controlling persons or key executives of the investment managers or institutional investors; and
- c. The company is not a “publicly traded corporation” as defined in NRS 463.487 or has received Commission approval to convert its registration from a publicly traded corporation to a private investment company.

The Commission may waive or modify one or more of the characteristics above for reasons consistent with NRS 463.0129 and 463.489.”

Pursuant to Regulation 15C, PICS can avoid undergoing the full licensing requirements (as detailed in Section III of the Guide) by providing the Board and Commission, on a confidential basis, with certain proprietary information regarding the PICS structure, finances and employees.

# Licensing

Typically, the background investigation for a non-restricted gaming license will focus on the overall suitability of the company or individual. Although the Board and the Commission have broad discretion, the investigation typically focuses on honesty, integrity, business experience, feasibility and any relevant factor that could or would affect the integrity of the gaming industry.

Unlike a criminal investigation, a gaming applicant must be completely transparent about their past and associations and provide all requested information and documents. The personal history and financial disclosure forms are a jumping-off point. The investigators will use those forms to identify ancillary issues that need further explanation.

## A. FILING THE APPLICATION

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The application includes several forms and disclosures, many of which are signed under penalty of perjury. The Multi-Jurisdiction Personal History Disclosure Form (MJP HDF) constitutes the bulk of a personal application. This form delves into virtually every aspect of one's life—family members, education, marital status, litigation, criminal history, residences, employment, character references, comprehensive financial disclosures, business interests and several other topics. Importantly, the application materials and any subsequent materials filed with the Board as part of the investigation, are treated as confidential.

The MJP HDF is used in several gaming jurisdictions throughout the United States and contains two major parts. The first part consists of about 45 pages and concentrates on the applicant's personal history.

The form requires in-depth information, including familial background, education, marital status, civil litigation involvement, criminal charges, residential data, employment history, licensing background, associations with the marijuana industry (which remains an unlawful drug under federal law), and character references be provided. The second part consists of about 20 pages and asks for financial information, including the amount and source of investment in the gaming establishment, tax information, bankruptcy disclosures, salary information and a detailed statement of assets and liabilities.

An applicant's gaming attorney should be involved in every aspect of the application process. If there are issues with an applicant, the gaming attorney is the first line of defense. The attorney will assess the nature of the issues and how to best proceed while addressing potential pitfalls.

The attorney will review each application form in detail to ensure every topic is addressed truthfully and is consistent with the other application forms, as well as what the applicant has told the attorney. For example, places of employment should correspond to places of residence. Gaps in employment need to be explained. Experienced gaming counsel can help spot potential regulatory concerns and ensure that they are adequately explained. This may entail filing a detailed description of the issue in a document known generally as a white paper. In some circumstances, a gaming attorney may engage a private investigator to ensure the documents are accurate and complete, thus presenting the applicant's best case.

The value of a properly prepared application cannot be understated. Incomplete applications can lead to delays in processing. Inaccurate or missing information can create unfavorable perceptions by the regulators, such as evasiveness, dishonesty and incompetence, none of which are seen as desirable characteristics by a regulator who is assessing a person's suitability for a gaming license.

## **B. APPLICATION PROCESSING**

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The application is filed with the Board's Applicant Services Division. Applicant Services reviews each application to ensure it includes all the required information and filing fees. After this initial process, the application will be assigned to an agent in the Board's Investigation Division. The responsible agent will review the application and provide an estimate of the investigation cost, which is sent to the applicant and their attorney. The Board charges on an hourly fee and the investigation fee can vary widely. Estimates may range from \$70,000 for an applicant with a simple ownership structure, to well over \$1 million for an applicant with multiple principals and shareholders and complex holdings. The investigation will not begin until the fees are deposited with the Board.

## **C. THE INVESTIGATION**

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An investigative team will be assigned to the company and individual principal. Depending on the complexity of the investigation, this may be just one agent or may be as many as half a dozen. The team typically includes a supervisor and one or more agents (including senior agents and special agents). The supervisor will develop a strategy for the investigation and assign the agents with their specific roles and responsibilities. Usually, the agents will focus on their areas of expertise, which include financial and background information.

The agents will review the application and access information that already exists in the Board's records. They will then begin to go into further detail and request information from independent sources. Relatively early in the process, the agents will schedule an opening interview with the applicant to review their application materials, ask clarifying questions and to explore certain items in further detail. During the opening interview, the agents will do a page flip of the application and provide the opportunity for the applicant to offer clarifications or make further disclosures.

A major purpose of the opening interview is to confirm the applicant's responses and to clarify potential inconsistencies so that if the investigation reveals inaccurate information, the applicant cannot assert that it was simply overlooked. In other words, the opening interview provides a second opportunity for the applicant to reveal previously undisclosed matters before a failure to reveal is held against the applicant. If the agents later uncover a serious undisclosed matter during the investigation, a relevant consideration in determining the suitability of the applicant will be that the applicant failed to reveal the matter both in the application and upon direct questioning during the opening interview.

The gaming attorney wears several hats in this process. The attorney must listen intently and identify any unclear or inconsistent statements or information. The attorney should also help the applicant navigate issues in the attorney's realm of expertise, such as the legal structure of the company, why an application was filed a certain way or other areas uniquely within the attorney's experience. The attorney can also assist their client, as well as the Board agents, in keeping the decorum of the process productive and emphasizing the importance of clarity and transparency in the process.

#### **D. REQUIRED DOCUMENTS**

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At or around the time of the opening interview, the agents will make a formal written request for documentation from the applicant. This request will include:

- The applicant's birth certificate
- Current and previous passports
- Last will and testament
- Copies of any trust agreements, trust tax returns and a list and valuation of assets held by the trusts of which the applicant is a party
- Copy of any current employment and/or stock option agreement(s)
- Copies of any federal, state, county or city licenses
- Detailed narrative of any questioning by any governmental agencies

- Explanation of any litigation in either an individual or business capacity, including a copy of all pleadings and material filings
- Tax returns for the past five years
- Bank and brokerage statements and account records for a five-year period
- Copies of any litigation and arbitration for the applicant as an individual, member of a partnership, member/manager of a limited liability company or shareholder, director or officer of a corporation
- Escrow documents and valuations for all real estate currently owned
- Backup documentation for debts (notes, mortgages, credit cards, credit lines)
- Pension/retirement account statements
- DMV records for vehicles

The agents will also review the applicant's business interests—whether or not the interests are related to gaming, including business partners and co-owners. This includes all organizational documents (partnership agreements, operating agreements, stock certificates), business investments, litigation information and financial statements and records.

The applicant should begin assembling this information early in the process in order to avoid delays or complications. If the applicant has collected a majority of the documentation in advance of the request, it is more likely to be timely, complete and organized.

## **E. FOCUS OF BACKGROUND INVESTIGATION**

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The primary purpose of the background investigation is to verify the information provided by the applicant and to uncover information that the applicant may not have revealed. An applicant may not have much contact with the background agents, as they often work with other law enforcement agencies and conduct extensive interviews to learn the character of the applicant.

Background agents have very broad powers. They can inspect premises and demand access to inspect, examine and photocopy records in addition to interviewing witnesses. The scope of the investigation is nearly unlimited. Agents may review an applicant's business and personal emails, content of personal and business computers and information stored on smartphones.

The agents also have access to records that have been sealed or expunged and they are entitled to investigate without the rules and protections afforded in court proceedings. They may explore anything they deem relevant to the suitability of the applicant.



A full background investigation starts with, but goes beyond, a check of the applicant's police record. The investigation delves into the applicant's business and personal associates and methods of doing business. The agents review civil court records to learn the types and nature of all civil litigation involving the applicant and to ensure that the applicant has fully revealed the nature of the litigation.

All investigations involve standard checks of court and agency files. Schools and universities are contacted to verify education. Military information is verified with the respective branch with a focus on any disciplinary or other derogatory information. Marital information is reviewed with attention to divorces. This is important because divorces are often acrimonious and the files (or the ex-spouse) are often sources for allegations of wrongdoing.

Background agents also verify the applicant's criminal information. Most important are the circumstances of all arrests or detentions and whether the applicant revealed all of them. By checking court records, agents may discover that the applicant failed to reveal a criminal record. The major sources of information are police records and law enforcement information systems. These include local sheriffs, local police, the Federal Bureau of Investigation, the Drug Enforcement Administration, customs and immigration, organized crime task forces, other gaming regulatory agencies and liquor and other privileged license agencies.

Among the types of law enforcement information available are arrest reports, incident reports, field interrogation reports and intelligence reports. Police records often have information that was not presented to the court because the witness could not be found or the police failed to follow constitutional guidelines in obtaining it. Unlike criminal actions, gaming regulatory agencies are not burdened by the same rules about what can be considered.

Records of civil court proceedings also often provide information that proves relevant to a background or financial investigation. These lawsuits may contain allegations of unscrupulous business practices and the identity of persons who have had unsatisfactory business experiences with the applicant. Evidence of disposition of the civil cases is also important.

Beyond the nature or omission of civil lawsuits, a review of litigation may reveal that an applicant abuses the civil court system to gain economic advantages. The existence of many lawsuits may show a pattern of using the judicial system to avoid or compromise legitimate debts, to harass or damage competitors or to create unlawful competitive advantages.

Besides criminal and civil court records, governments maintain substantial information on people, much of which may be relevant to the person's suitability as a gaming licensee. For example, a state's consumer affairs division may have complaints filed by customers of the applicant's business that contain allegations of fraud or deceptive trade practices. Similarly, the equal opportunity employment offices may have complaints alleging sexual or racial discrimination in the workplace.

Governments usually have a considerable amount of public information on corporations and partnerships. Individual applicants for casino licenses often have extensive business backgrounds, which may involve prior and contemporaneous businesses. The review of corporate information about these businesses may further reveal the applicant's associations. Often whether a person acted as an incorporator, director or officer is public information that can be found through government offices, such as a corporate register or secretary of state. These searches may also reveal corporations not listed on an application.

Corporate books also contain a wealth of information. Incorporation papers show the date of incorporation and the number of authorized shares. Subsequent filings usually show the list of initial officers and directors and any changes along with dates of each change. The corporate minutes contain information on significant events, such as major acquisitions or loans and the hiring or firing of key personnel.

Verification of employment history is done for many reasons, including establishing the applicant's experience in a particular area and exploring the applicant's honesty. Here the agents often look beyond the stated reasons for changing employment and decide if other reasons exist. An agent may take advantage of the applicant's release of all liability to convince the employer to detail the facts leading to the applicant's firing or resignation.

No set rules exist that dictate how far back in the applicant's past the agents may search. Although the focus may be on the last 10 years, agents may review a transgression that occurred 20 years ago.

## F. FOCUS OF FINANCIAL INVESTIGATION

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The applicant is likely to have more contact with the Board agents conducting the financial investigation because the financial documentation usually comes directly from the applicant and plays a major part in the investigation.

If the applicant is involved in financing the gaming operation, the agents will focus on the adequacy of the applicant's resources and the suitability of his/her sources. Financial records often reveal identities and financial arrangements with associates. Financial agents also scrutinize sources of income and records of payments and will trace funds to their source, confirm the suitability of that source, analyze tax returns and identify any issues, along with all of the other voluminous financial information provided by the applicant. Tasks that financial agents may perform during their investigation include:

- Analyzing the source of funds
- Tracing primary holdings to their original sources
- Verifying personal income information to confirm current holdings are consistent with income reported to the tax authorities
- Preparing a cash-flow analysis
- Verifying the applicant's net worth

A source of funds analysis is used to trace where the applicant receives income or funds from and the source of funds from which assets are purchased. The regulatory goal is to ensure that the applicant is not a front for unsuitable individuals who are financing the acquisition of a casino. It also provides insight into the applicant's business and associations. Bank records are the most common vehicles for establishing a source of funds, provided all accounts are revealed.

Bank statements, in particular, are the beginning points because they contain both deposits and withdrawals. Deposits often reveal sources of income. As such, all deposits are reviewed to determine if they are ordinary, such as biweekly salary deposits, or extraordinary, such as the one-time sale of an automobile. Large, extraordinary deposits will be verified by reviewing source documents. Standard bank records that agents may review include: (1) signature cards showing who is authorized to use the bank account; (2) monthly statements showing all activity on the account, including deposits, withdrawals and checks paid; (3) canceled checks; and (4) deposit tickets showing a breakdown of checks, cash deposited and identification of the checks. The applicant may have other documentation that will greatly help in the investigation, such as check registers, copies of all checks deposited and the canceled checks.

Bank accounts are the usual, but not the exclusive, location for deposited funds. Other possible depositories include brokerage accounts and savings and loans associations. An agent will often review all accounts before conducting a cash-flow analysis or reconciling income to expenses.

A principal concern of many regulators is the protection of tax revenues. Applicants who intentionally fail to pay taxes, such as federal income tax, may be unsuitable. A primary method of investigating whether a person fully pays federal income tax is to compare cash flow with reported income. If a substantial difference exists, the agent may confront the applicant for explanation of the difference.

## **G. THE ROLE OF COUNSEL DURING THE INVESTIGATION**

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Legal counsel plays three important roles during the investigation. First, counsel serves as the “point person” for coordinating the agents’ requests for documents or information. Requests are usually made by letter to the applicant with copies to his/her counsel or by telephone call to counsel. The speed and accuracy of the assembly and transmission of requested information has a direct impact upon the length and cost of the investigation. By coordinating the production of documents and information, counsel can review the materials for responsiveness, clarity, accuracy and completeness. The applicant’s level of preparation and cooperation largely determines the length and expense of the investigation.

Counsel’s second role is that of an “observer.” If requests are made without notice to the applicant’s counsel, the applicant should inform counsel of the request. By analyzing the nature of the information requested and observing the direction of the investigation, counsel can make educated guesses about the agents’ concerns or areas of interest. With this knowledge, the applicant has the ability to dispel any misconceptions and to prepare any necessary rebuttal ahead of time for the Board and the Commission hearings.

Counsel’s third role is “presenter.” An applicant’s counsel, being familiar with the Board and the Commission hearings, will be presenting and introducing the applicant in front of the Board and the Commission.

This also provides counsel the opportunity to control the narrative (to the extent possible) and avoid having embarrassing details revealed in a public forum.

## **H. WHAT HAPPENS AFTER THE INVESTIGATION IS COMPLETE?**

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After the investigation is complete, the agents will typically have a final or “closing” conference with each applicant. This closing conference provides the agents with the opportunity to (a) obtain

answers to any outstanding questions; (b) inform the applicant of any areas of interest or concern that the investigation may have uncovered; and (c) have the applicant or his/her counsel provide an explanation for any unexplained matters uncovered by the investigation before the final report is written.

The final investigative report is provided to the Board members and the Commission, but not the applicant. During the time between the closing conference and the Board and the Commission hearings, the applicant and gaming counsel should address any issues raised during the closing conference and anticipate any other issues that may be raised during the hearings. Counsel and the applicant will also develop and finalize any presentation materials that will be provided at the hearings.

## **I. THE BOARD HEARING**

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The Board will consider licensing, along with other matters, on their monthly meeting agenda. The hearing is public and a court reporter is present to transcribe the proceedings and to ensure that every word is preserved in the public records. Therefore, it is vital that any areas of concern or issues are addressed prior to the hearing—otherwise the applicant runs the risk of sensitive and embarrassing details becoming part of the public record.

Matters are scheduled and heard in numerical order. Once the agenda item is called, the applicant and legal counsel appear at a podium. The attorney and applicant will then make an affirmative presentation and answer any questions that the Board members may have. It is important for counsel to confirm the agenda item and information prior to the hearing. Otherwise, inaccurate information can cause the hearing to be delayed to the next month, as the Board hearing is subject to the Nevada Open Meeting Law.

Once the agenda item is read, counsel and the applicant identify themselves for the record. Ordinarily, the Board allows the applicant to affirmatively prove his/her suitability. Gaming counsel often organizes a complete presentation that may be accompanied by a confidential PowerPoint presentation or the offering of witnesses. The presentation often starts with an opening statement.

During the presentation, the applicant may affirmatively address areas of concern raised by the agents. At any time during the presentation, the applicant and his/her witnesses may be subject to intense examination by the Board members.

After the applicant presents his/her case, the Board has the prerogative to question the applicant about any aspect of his/her personal or business life that impacts his/her suitability. If there are known issues, it is best for the applicant and their gaming counsel to address the issues affirmatively and control the narrative. Although Board members generally use the investigative summary as a guide for their questioning, they are not constrained to contents of the summary. This also makes the gaming counsel's job challenging because they are not privy to the final investigation report and the typical rules of evidence most lawyers are comfortable with do not apply.

After the presentation and questioning, the applicant's gaming counsel is offered the opportunity to give a closing statement. After that, the Board begins an open deliberation and a Board member will make a motion. The most common motions are:

- To recommend that the application be approved—this may include conditions and/or durational limitations
- To continue the matter
- To refer the matter back to the staff
- To recommend that the application be rejected
  - A rejection acts neither as a determination of suitability or denial. This will allow the applicant to work on any deficient issues and apply again, usually after a mandatory waiting period imposed by the Commission. This provides the Board and the Commission more flexibility in cases having serious issues, but also hope that the applicant can resolve them to move forward
- To recommend that the application be denied
  - A denial is an “economic death sentence” in the gaming industry and usually prohibits the person from working in any capacity, in any regulated gaming jurisdiction

## J. THE COMMISSION HEARING

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The Commission hearing is typically scheduled two weeks after the Board hearing. Like the Board hearing, the Commission hearing is public and items are heard in the order listed on the agenda, although the Chairman does have the discretion to take items out of order. The Commission hearings are generally more streamlined as the Commission members receive a full transcript of the Board's hearing. Thus, there is not a lot of repetition.

The Commission, rather than the Board, has the final authority to deny or approve a license. In most circumstances the Commission will follow the recommendation of the Board.

Like the Board hearing, the applicant and their attorney will typically offer an opening statement and provide a brief affirmative presentation. The Commission can also ask questions or seek clarification at any point. Once the discussion is over, the applicant may make a closing statement. Thereafter, the Commission members may discuss, in the open meeting, the merits of the applicant's suitability or possible conditions to the license. After the discussion, one of the Commission members will make a motion to:

- Approve the application, which may include conditions and/or durational limitations
- To refer the matter back to the staff
- To deny the application
- To reject the application

Typically, this will fall in line with the recommendation of the Board. However, the Commission is not bound to follow the recommendation of the Board and may impose its own conditions or other stipulations.

While generally the Commission's action can be taken by a majority—if the Board has recommended denial—the vote must be unanimous. A denial also requires that the Commission file a written decision setting forth the reasons for its action. This policy means a denial bars an applicant from working in the gaming industry in any capacity or in any jurisdiction.

## K. JUDICIAL REVIEW

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A denied applicant for a Nevada gaming license has no recourse against the Commission to seek a reversal of the adverse decision. This is contrary to the practice before most administrative bodies where the courts can review a decision to determine whether the agency acted arbitrarily.



## L. REASONS FOR DENIAL

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Harkening back to the fundamental public policy of NRS 463.0129, a denial means that the regulators have serious concerns that a person's involvement could undercut the integrity and the public's confidence in the gaming industry. Accordingly, regulatory licensing issues typically concern the applicant's character, transparency, experience, cooperation, regulatory compliance or financial viability.

Generally, an applicant may be denied due to:

- An arrest or conviction for a crime involving violence, gambling or moral turpitude
- An association with organized crime or unsuitable persons
- Certain associations with the marijuana industry (which remains an unlawful drug under federal law)
- Omission of negative information on the application
- Poor business ethics as demonstrated by civil cases, such as for fraud and government action or securities violations
- Sustained or current illegal drug use
- Discovery of unsuitable business practices such as bribes, tax evasion and the like
- Failure to provide truthful, complete or timely answers to the gaming agents
- Prior regulatory violations, whether intentional or not

## Meet the Team



**Jason C. Hicks**

Partner, Charlottesville

[READ PROFILE](#)

202.857.4536

[jason.hicks@wbd-us.com](mailto:jason.hicks@wbd-us.com)

In addition to helping clients navigate day-to-day business disputes, Jason advises clients on gaming law, antitrust compliance, pricing policies, distribution and franchise law, industry specific trade regulations, advertising law, and intellectual property. Jason regularly advises clients in regulated and non-regulated gaming industries and litigates disputes involving gaming law. Jason helps his clients navigate legal issues and avoid pitfalls in all aspects of their business, including regulatory compliance, research and development, supply chain management, distribution channels, pricing strategy, advertising and promotion, retail sales, and e-commerce. Jason is a member of the International Masters of Gaming Law and Co-Chair of Womble's Gaming Law Practice Group.



**Glenn Light**

Partner, Nevada

[READ PROFILE](#)

702.949.8276

[glenn.light@wbd-us.com](mailto:glenn.light@wbd-us.com)

Glenn Light is Co-Chair of the firm's Gaming Law Practice Group. He provides counsel on nearly every aspect of commercial gaming transactions, including corporate structure, financing, and due diligence. He represents all stakeholders in the industry, including individuals, operators, manufacturers, distributors, and service providers.

Glenn serves as lead counsel to a client who, in the span of approximately two years, has purchased four hotel/casino properties in Nevada, a publicly traded gaming company, and numerous public card room operations in Washington State. Glenn provides counsel on nearly every aspect of these complex transactions, including the ownership and management structure, licensing, financing, and drafting numerous ancillary agreements relating to hotel and casino operations, staffing, and vendors. He also played key roles in the opening of two casino resorts in Las Vegas, both of which received a significant amount of funding through the federal EB-5 Program. Prior to these transactions, the EB-5 Program was seldom-used in the gaming industry.

**Jed M. Nosal**

Partner, Boston

READ PROFILE 

857.287.3175

jed.nosal@wbd-us.com

Jed Nosal is a partner in the Firm's Business Litigation Practice Group and focuses his practice on state regulatory oversight, investigations, compliance, and related litigation. Jed draws from over sixteen years of representing the government at the most senior levels, including as an Assistant Attorney General and Bureau Chief in the Office of the Attorney General, General Counsel to the Department of Telecommunications and Energy and Deputy Legal Counsel to the Governor. Jed regularly advises and represents gaming interests including commercial licensees, mobile sports platforms and vendors in regulatory and litigation matters including initial licensure and qualification, transfers of interest, regulatory enforcement actions and defending gaming companies in civil litigation including defense of unfair and deceptive trade practice claims.

**Karl Rutledge**

Partner, Nevada

READ PROFILE 

702.949.8317

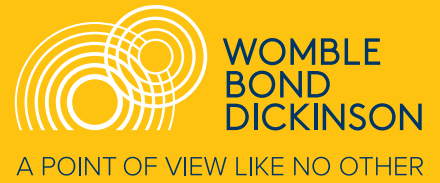
karl.rutledge@wbd-us.com

Karl Rutledge focuses on land-based and Internet gaming as well as promotional marketing, with a particular emphasis on eSports, skill-based contests, sports betting, social gaming, sweepstakes, official rules, and terms and conditions.

Risk analysis and creative business structuring are keys to pursuing new offerings. Karl helps established and emerging companies operate legally in the U.S. under state and federal gaming and sweepstakes laws. Karl also serves as an ongoing advocate for his clients and their gaming interests. He often interfaces with gaming regulators, social media platforms, advertisers, and payment processors to present his clients' positions as to why they constitute a lawful operation.



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