

Nevada Gaming Licensing: A Primer

Who must obtain a license?

In Nevada, four tiers of licensing capture almost everyone involved in the gaming industry. The first tier is gaming employees who must register. This process is fairly simple and involves a two page form, fingerprint cards and a modest fee of \$75. Here the gaming regulators focus on criminal history. The second tier is certain gaming employees and others associated with the gaming industry who, because of their positions, must register and undergo a more extensive review. For example, independent agents that bring high rollers to Nevada casinos must file more extensive forms and pay a \$750 fee, which is reflective of a more substantial investigation.

Registrations, however, pale in comparison to licensing. The third tier is for the simplest form of licensing, which is for "restricted" locations. These are places like taverns, where a person wants to place 15 or fewer slot machines that are incidental to the main business. An applicant for a restricted license must complete an exhaustive application that covers his personal history and limited financial information. Because the license is for restricted gaming, the investigation is generally less expensive and less intrusive than an investigation for a non-restricted license. Nevertheless, the Board agents still conduct a thorough criminal background on all restricted applicants.

The epitome of background investigations is for a non-restricted gaming license. These are reserved to those persons with key positions in the gaming industry, such as ownership or top management. This article will concentrate on what it takes to obtain a non-restricted license in Nevada.

Who must obtain non-restricted gaming license?

The most obvious persons that must obtain a non-restricted license are owners of casinos. But, not all owners must be licensed. For example, a person can buy a small fortune in shares in MGM Grand or Harrah's without having to obtain license. This is because Nevada law recognizes that if every shareholder of a public casino company had to be licensed, no public company would invest in the state. Therefore, only persons owning more than 10% of a public company must be licensed. This is further relaxed for institutional investors like

pension plans that can go up to 15% with the requisite approvals. In contrast to public companies, generally every shareholder of a private company must be licensed.

Besides shareholders, certain officers and directors of the public companies must be licensed. On the officer-side, this generally includes the president, the principal executive or operating officer, the principal accounting officer, and the secretary. On the director-side, it includes the chairman of the board, any director that is also an employee, and any director that owns over 1 percent of any class of voting stock.

Besides casino operators, a host of others need to obtain non-restricted gaming licenses. These include manufacturers and distributors of gaming equipment, persons who share in gaming revenues, and slot route operators (persons that operate slot machines in other person's businesses like taverns and convenience stores).

What is the purpose of the background investigation for a non-restricted gaming license?

The purpose of the background investigation is to give the gaming regulators the information necessary to decide whether a person is suitable to hold a gaming license. Typically, the gaming regulators are looking into matters such as associations with organized crime, honest and integrity, and adequate business experience. To do this, most gaming regulatory agencies have well trained agents that are assigned to each applicant.

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In some respects, a gaming investigation is easier than criminal investigations because the gaming applicant must cooperate by providing information and files. Because of this, requiring the applicant to complete well-drafted forms can provide the agents with a wealth of useful information that can build a framework on which to conduct the investigation.

How does a non-restricted Application begin?

A person must have a reason to apply for a non-restricted application. This may involve buying a casino, reaching the mandatory levels of stock ownership in a Nevada casino company or being appointed an officer or director in a Nevada casino. When this occurs, the person must file a voluminous application containing many different forms. The most substantial is the Multi Jurisdiction Personal History Disclosure Form. True to its name, this form is used in many gaming jurisdictions across the United States. It has two major parts. The first part, consisting of about 45 pages, concentrates on the applicant's personal history and elicits personal, familial, educational, marital, civil litigation, criminal, residential information, employment history, licensing background, and character references. The second part, consisting of 19 pages, 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.

In addition to the Personal History Disclosure Form, an applicant must file a simple preprinted application form stating the basis for applying for a license. This simple form is the only document that is made public. The Personal History Disclosure Form and the other documents are kept confidential. Additionally, an applicant must file a Nevada supplemental personal history disclosure form, a form releasing and indemnifying the regulators from any liability as a result of the investigation, a request to third parties such as banks or employers authorizing them to release information to the regulators, fingerprint cards and an affidavit attesting that the applicant has made full disclosure on the forms. The total package must be accompanied by a check for \$500.

What Happens To The Non-Restricted Application After It Gets Filed?

The application is first routed through a section of the investigations division called "Applicant Services." Here the application is checked to assure that it is complete. If it is not, a letter will be sent to the applicant requesting whatever information is missing. If the application is complete, it will be forwarded to the investigations division and in the case of public companies, to the corporate securities division. Once there, the application awaits the availability of agents to conduct the investigation. This is generally referred to as being in the "queue."

Once agents are available, the first task is to review the application and estimate what the cost of the investigation will be considering agent's time, travel expenses and other investigation-related costs. The Gaming Control Board currently charges the applicant \$70 per hour for its agents. Estimates to conduct an investigation can be very high and can range from \$25,000 for a very simple investigation to over a million dollars for a complex investigation involving foreign citizens. After the agents have estimated the cost, they will send a letter requesting funds from the applicant, usually in the amount of the estimate. The investigation will not begin until the investigative fees have been paid.

What Happens After The Fees Are Paid?

This is when the investigative team takes over. The team can have as few as one investigator, known as an agent, or as many as a dozen. The size of the team depends on the complexity of the investigation, time requirements, and other considerations.

The highest-ranking member of the team is usually an experienced investigator and typically holds the title of supervisor. This person has direct responsibility for the daily activities of the agents involved in the investigation. Depending on experience, an agent can have the title of agent, senior agent or special agent. The supervisor provides guidance to the agents in his charge, and formulates the investigative strategy. The team may have financial agents that hold degrees in accounting. Financial agents are responsible for investigating the applicant's current financial status, past financial activities,

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general business probity, and the financial status of the proposed gaming operation. Background agents have responsibility for investigating the applicant's background, general reputation, and personal and business associates. An applicant often becomes aware that the agents have begun work on the application when asking to appear at an opening interview. Usually, however, the agents have begun the investigative process well before the opening interview.

The agents will have reviewed the application and accessed easily available information, such as that contained in the agency's files. Another primary responsibility is to reconcile the information in the application. For example, agents review whether the past addresses provided by the applicant reconcile with where the applicant listed as having been employed. Another area is to uncover any unexplained gaps in the records. Any area that raises questions is the proper subject for the opening interview. The agents should attempt to assure that all the information that they are working with is accurate and complete.

An opening interview is the first opportunity for the applicant to meet with the agents who will be handling the investigation. It gives the agents an opportunity to explain procedures and demystify the process. The agents may review the initial application forms line by line with the applicant to assure that no unintentional omissions, mistakes, or typographical errors exist.

The opening interview may provide a second opportunity for the applicant to reveal previously undisclosed matters before the failure to reveal them is held against the applicant. If the agents later uncover a major item during the investigation, a relevant consideration is that the applicant failed to reveal it both in the application and upon direct questioning in the opening interview.

What Is The Background Investigation All About?

Background agents have very broad powers. They should be able to inspect premises and demand access to inspect, examine, and photocopy records and interview witnesses.

They may review civil lawsuits and criminal charges. No set rules exist about how far back in the applicant's past the agents may search. Although the focus may be on the last ten years, if pertinent, they may review a transgression that occurred twenty years ago.

The two primary purposes of fieldwork are to verify the information provided by the applicant and to uncover information that the applicant may not have revealed. Because of the nature of fieldwork, an applicant may not have much contact with the background agents. They are often working with other law enforcement agencies and conducting extensive interviews to learn the character 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 decide the types and nature of all civil litigation involving the applicant, and to ensure that the applicant has fully revealed 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 attention on any disciplinary or other derogatory information. Marital information is reviewed with attention to divorces. This is important because divorces often are acrimonious and the files contain allegations of wrongdoing.

Background agents also verify criminal information on the applicant. Most important are the circumstances of all arrests or detentions and whether the applicant revealed all of them. Many law enforcement agencies keep extensive records. While agents may discover that the applicant failed to reveal a criminal record by checking court records. The major sources, however, 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

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license agencies. Other sources of law enforcement information are computer databases maintained by different law enforcement 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, regulatory agencies are not burdened by the same rules about what can be considered.

Records of civil court proceedings 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.

Besides criminal and civil court records, governments keep information on people much of which may be relevant to the person's suitability as a gaming licensee. For example, the consumer affairs division of a state government 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. These may involve prior and contemporaneous businesses. Reviewing corporate information from these businesses may 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 reveal corporations not listed on an application.

Corporate books contain a wealth of information. Incorporation papers show the date of incorporation and number of authorized shares. Subsequent filings usually show the list of initial officers and directors and any changes to them, 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 also is done for many reasons. It establishes the person's experience in a particular area. Verification also is a vehicle to explore the applicant's honesty. Here the agents often go 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.

What Is The Financial Background Investigation All About?

The background investigation is usually less of a daily burden on the applicant than the financial investigation. This is because the applicant is likely to have more contact with the financial agents than with the background agents, as the production of financial documentation plays a major part in the investigation.

The investigation of an applicant usually begins with the request for basic documents that provide the back up for the information contained in the application. Most initial documentation requests concern the applicant's finances. This documentation is necessary to conduct a cash flow analysis and to verify net worth. These requests may include income tax returns; savings passbooks, bank statements, canceled checks, deposits slips, and check registers; escrow documents for real estate; and other records that substantiate or verify sources of income. Agents use these basic documents to begin their investigation. Initial review of these documents may evoke questions requiring the agent to make further requests.

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Later supplemental requests may include other financial records that document certificates of deposit; cashier's checks purchased; notes and loans receivable or payable, financial statements; accountant's work papers; brokerage accounts; contingent liabilities (i.e., guarantees); business investments; and appraisals of real estate holdings.

Business records requested may include general ledgers; cash receipts and disbursement journals; minute book; stock certificate book; canceled checks and bank statements; accounts payable and receivable ledgers; payroll records; state revenue reports; financial statements; loan agreements; notes and loans payable and loans receivable; partnership agreements; savings accounts, passbooks, and deposit records; copies of federal and state income tax returns and audit adjustments; and accountant's work papers.

Financial agents use these documents for many reasons. If the applicant provides part or all of the financing for the gaming establishment, these records reveal the adequacy of the applicant's resources and the suitability of his sources. Financial records often reveal identities and financial arrangements with the applicant's associates. Financial agents also scrutinize sources of income and records of payments through these documents.

Tasks that financial agents can perform during their investigation include (1) source of funds analysis; (2) tracing primary holdings to their original sources; (3) verifying personal income information to confirm that current holdings are consistent with income reported to the tax authorities; (4) preparing a cash-flow analysis; and (5) verifying the applicant's net worth.

A source of funds analysis traces where the applicant receives income and the source of funds from which assets are purchased. The regulatory goal is to assure 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 source of funds, provided all accounts are revealed. Bank statements are the beginning points

because they contain both deposits and withdrawals. Deposits often reveal sources of income. All deposits are reviewed to learn if they are ordinary, such as biweekly salary deposits, or extraordinary, such as the one-time sale of an automobile. Large extraordinary deposits should 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 exclusive place into which funds can be deposited. Other possible depositories include brokerage accounts and savings and loans associations. An agent should 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 other taxes, such as federal income tax, may be unqualified to hold a gaming license. 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. Beyond this, tax returns provide information on sources of income, verify businesses, and provide information on associations.

What Happens After the Investigation is Complete?

After the investigation is completed, the agents typically will have a final or "closing" conference with each individual applicant. This closing conference has three purposes. The first is to get answers to any remaining questions that the agents may have that arose during the course of the investigation. The sec-

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ond is to inform the applicant of any areas of interest or concern that the investigation may have uncovered. An area of interest is something that will be highlighted in the investigative report that is unusual, but alone will not typically result in a denial of an application. An area of concern is an issue that alone could result in denial of the application. The third purpose of the closing conference is for the applicant or his or her counsel to provide any explanations for the areas uncovered by the investigation before the final report is written.

The investigative report, which is not made available to the applicant, is then forwarded to the State Gaming Control Board and the Nevada Gaming Commission for their consideration in deciding whether to grant a license. ■