



Obtaining a Non-Restricted Gaming License in Nevada

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1. An Overview Of Licensing In Nevada

In Nevada, four tiers of licensing capture almost everyone involved in the gaming industry. The first tier is gaming employees who must register with the gaming regulators. This process is fairly simple and involves a two page form, fingerprint cards and a modest fee. 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. Lewis and Roca also has a guide to obtaining a restricted license, which can be ordered online at www.lewisandroca.com.

The most extensive background investigation is for a non-restricted gaming license. These are reserved for people holding the highest level positions in the gaming industry, such as ownership or top management.

Beside 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).

This guide concentrates on what it takes to obtain a non-restricted license in Nevada.

2. Who Must Obtain Non-Restricted Gaming License?

The most obvious persons that must obtain a non-restricted license are owners of casinos or manufacturers and distributors of gaming equipment; however, not all owners must be licensed. For example, a person can buy a



small fortune in shares in MGM Grand 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. A publicly traded corporation is a corporation that

- Has one or more classes of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended.
- Is an issuer subject to Section 15(d) of the Securities Exchange Act.
- Has one or more classes of securities exempted from registration requirements solely by reason of certain exemptions.

Only persons owning more than 10 percent of a public company must be licensed. These include shareholders who, individually or in association with others, directly or indirectly, acquired the beneficial ownership of more than 10 percent of any class of voting securities and who must report or voluntarily report the acquisition pursuant to Sections 13(d)(1), 13(g), or 16(a) of the Securities Exchange Act of 1934, as amended. This is further relaxed for institutional investors that can go up to 15 percent with the requisite approvals. Institutional investors, who beneficially own more than 10 percent but not more than 15 percent of the common stock of a registered publicly traded corporation, may apply for a waiver of the mandatory licensing requirements if the shares are held for investment purposes only.

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 the state policies.

An institutional investor will not be deemed to hold the shares for investment purposes only 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, 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 on all matters voted on by stockholders.
- Participating in certain activities related to debt restructuring.
- 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 management, policies, or operations.

In contrast to public companies, generally every shareholder of a private company must be licensed. A notable exception to this rule is institutional investors, who again avoid licensing under substantially similar rules as set forth above.

Beside shareholders, certain officers and directors of public companies must be licensed. Officers subject to mandatory licensing include:

- Those involved in gaming who are also a director of the company.
- The president.
- Any person performing the function of chief operating officer or chief executive officer.
- The chief financial officer or other principal accounting officer.
- The secretary.



Directors normally subject to findings of suitability reviews are:

- The chairman of the board of directors.
- Directors beneficially owning more than 1 percent of any class of voting securities.
- Directors voting on the executive committee or any comparable committee with the authority of the board of directors to govern the activities of a corporate licensee.
- Directors who are also gaming employees.

Besides the individuals that must undergo the background investigation, the company itself must undergo a corporate investigation.

3. What Is The Purpose Of The Background Investigation For A Non-Restricted Gaming License?

The background investigation gives 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, honesty and integrity, and adequate business experience.

A gaming investigation is always more revealing than criminal investigations because the gaming applicant must cooperate by providing requested information and files. By requiring the applicant to complete a personal history and financial disclosure forms, the gaming regulators are provided with a wealth of useful information that can build a framework on which to conduct the investigation.

4. How Does A Non-Restricted Application Begin?

Applicants must file voluminous 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 and contains 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 about 20 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.



Beside the Personal History Disclosure, 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, the Financial Disclosure and the other documents are kept confidential.

An applicant in Nevada also 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.
- An affidavit attesting that the applicant has made full disclosure on the forms.

Each individual application must be accompanied by a check for \$500.

The applicant's gaming attorney is actively involved in the preparation of the application. His primary responsibility is to assure that the information contained in the application is accurate and complete. The gaming attorney needs to carefully review the document to make sure that all the questions are answered and have internal consistency. 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 on the application and assure 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, the gaming attorney may conduct or engage a private investigator to conduct an investigation to assure that the documents are accurate, complete and present the applicant's best case.

The value of a properly prepared application can not be understated. Incomplete applications can lead to delays in processing the application and inaccurate or missing information can create different perceptions by the regulators such as evasiveness, dishonesty, and incompetence; none of which are positive in assessing the person's suitability for a gaming license.



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

The application is first routed through a section of the Gaming Control Board's 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. Complete applications are forwarded for assignment to the chief or deputy chief of investigations division and, in the case of public companies, to the corporate securities division. The corporate securities division of the Gaming Control Board conducts the corporate investigations of public companies. Personal and private company applications are routed to the investigations division. Once there, the applications await the availability of the investigators, known as agents, to conduct the investigation. This is generally referred to as being in the "queue."

Once agents are available and assigned, their first task is to review the application and estimate what the cost of the investigation will be considering the agents' 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 of each applicant can be very high and range from \$30,000 for a very simple investigation to over a million dollars for a complex investigation involving foreign citizens. In addition, the costs of investigating the corporation often exceed \$50,000 to \$100,000. 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.

6. What Happens After The Fees Are Paid?

The investigative team initiates the formal investigations of each individual applicant. The team can have as few as one 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. The supervisor provides guidance to the agents in his charge, and formulates the investigative strategy. Depending on experience, an agent can have the title of agent, senior agent or special agent.



The team typically has two types of agents—financial and background. Financial agents often hold degrees in accounting. They are responsible for investigating the applicant's current financial status, past financial activities, general business probity, and the financial status of the proposed gaming operation. Background agents typically have law enforcement experience and are responsible for investigating the applicant's background, general reputation, and personal and business associates.

An applicant often becomes aware that the agents have commenced work on the application when asked 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 and to uncover any unexplained gaps in the records. Any area that raises questions is the proper subject for the opening interview. The agents will 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. The interview gives the agents an opportunity to explain procedures and demystify the process. The agents also review the initial application forms line by line with the applicant to assure that no unintentional omissions, mistakes, or typographical errors exist. This is a tedious process that can take two to three hours. A major purpose of this exercise is to fix the applicant's responses so that if the investigation develops contrary information, the applicant will be deprived of the excuse that it was simply overlooked. In other words, the opening interview provides 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 serious undisclosed matter during the investigation, a relevant consideration in determining the suitability of the applicant is that he failed to reveal the matter both in the application and upon direct questioning in the opening interview.

In the opening and subsequent interviews, gaming counsel has several roles. The first role is to listen well. The gaming attorney can then assure that the applicant understood the question and is responsive. The attorney can also often deduce the areas that the agents may have an extraordinary interest in and assist the client in determining the potential concern and how to address



it. The second role of the gaming attorney is to provide information that may be in the attorney's realm of expertise, such as why an application was filed in a particular way or to explain a contract or corporate structuring. Finally, the attorney can assist the agents in making certain that the decorum of the interview is maintained and that the applicant fully understands the obligation to cooperate with the investigation even if the information being solicited is embarrassing or personal.

7. What Documents Are Typically Requested From Applicant?

At or around the time of the opening interview, the agents make a written request for documentation that typically includes:

- Copy of the applicant's birth certificate.
- Current and previous passports. These items should be provided at the time of the applicant's initial interview. At that time, the agents will likely review the passports, make copies, and immediately return them to the applicant.
- Copy of the applicant's 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). The applicant will likely have to provide a list of the applicant's duties and responsibilities for the applicant's position(s) relative to this application.
- Copies of any federal, state, county or city licenses held by the applicant individually or as a representative of a business.
- Detailed narrative of any questioning by any governmental agencies including dates, circumstances, and dispositions.
- 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. Involvement can be as either a plaintiff/defendant or defendant/respondent. Requested documentation typically includes the following:
 - Original complaint
 - Amended complaint(s)
 - Cross complaint(s)



- Disposition, Summary Judgment, Settlement Agreement
- Written narrative describing the circumstances that led to the lawsuit or arbitration
- Federal, State and Local individual income tax returns for past five years (minimum), including all supporting schedules (W-2's, 1099's and K-1's). If the most current tax return has not been prepared, the applicant will need to provide a copy of the filed extension form, and a copy of the income tax returns for the previous five years. The applicant can request duplicate copies of missing returns from the applicant's local Internal Revenue Service office.
- Complete bank and brokerage account records for a five year period. This includes the following documents:
 - Bank account/savings account/brokerage account statements
 - Canceled checks
 - Savings passbooks
 - Deposit slips
 - Check registers
 - Information requested above should be provided in its entirety for the period requested. Documentation must clearly show the source of deposits, the payee of checks, and the source and recipient of transfer of funds.
 - If canceled checks and deposit slips are not returned by the applicant's bank, copies of specific items may be requested from the financial institution upon board agent review of check registers and bank statements.
 - The financial information requested applies to all bank and brokerage accounts (opened and closed) held by the applicant, the applicant's spouse, or jointly, during the specified period.
- Copies of original note receivable agreements for a five year period and a written explanation regarding the purpose of the note. If the note receivable is from an individual(s), the applicant should provide the social security number, date of birth, and define the applicant's relationship with the individual(s).



- Escrow documents for the purchase of all real estate currently owned. Escrow documents include mortgage loan statements or notes, trust deeds, and settlement statements (showing down payment and closing costs). If the property is co-owned with another person or persons (excluding the applicant's current spouse), the applicant typically must provide the social security number, date of birth, and define the applicant's relationship with the other owner(s).
- Appraisals on all real estate owned or a written explanation of the method used to determine market value.
- Copies of statements pertaining to any pension or retirement funds, IRAs, and annuities for a five year period.
- Copies of life insurance policies and statements confirming current cash surrender values.
- Copies of current license registration on all vehicles owned or leased.
- Copies of notes payable and credit line agreements incurred for a five year period. The applicant should provide term sheets, if not included in the agreements, and loan amortization schedules. If the applicant's liability is owed to any individual(s), provide their social security number, date of birth, and define the applicant's relationship with the individual(s).

Later supplemental requests may include other financial records such as 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); and business investments.

Besides personal financial records, the financial agents also may review the applicant's businesses. Typically, the applicant must provide a list of all business investments for a five year period. The applicant is asked to indicate on the list those investments in which the applicant actively participates and those in which the applicant is a passive investor.

To this extent, the agents may request business records for all personal business investments in which the applicant is involved or actively participates, exclusive of normal buy/sell activities on the stock market. This document request may include but is not necessarily limited to:

- General and limited partnership agreements for partnerships.
- Articles of organization and operating agreements for limited liability companies.



- Articles of incorporation of corporations.
- Minutes of meetings.
- List of all partners, shareholders, officers, directors, members, managers and percentage of ownership held by each:
 - stock / membership certificates, if applicable
 - social security number and date of birth of all parties
- Stock certificate books.
- General ledgers.
- Cash receipts and disbursement journals.
- 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.
- Accountant's work papers.

The applicant is best served by meeting with his gaming attorney shortly after the application is filed to consider what documentation should be collected. If the applicant waits until receiving the document request letter, the investigation may experience delays while the documents are being collected. In some cases, such as missing bank records or government records, this can cause substantial delays as the banks and the government are notoriously slow in processing requests for documentation. If the applicant has collected a majority of the documentation in advance of the request, it is more likely to be timely, complete and better organized.



8. What Is The Background Investigation All About?

Two primary purposes of the background investigation 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 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 and interview witnesses. They review civil lawsuits and criminal charges. Background agents have even been known to request and copy company and individual computer hard drives to review files and email correspondence. Anything written down or memorialized in electronic or any other form may be the subject of a request from a background agent regardless of whether it is personal or business related. For instance, agents have requested electronic copies of an applicant's business and personal emails and have copied and reviewed content on hard drives found in both personal and business computers.

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 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 (or the ex-spouse) can be valuable sources for 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. Agents may discover that the applicant failed to reveal a criminal record by checking court records. The major sources of information, 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 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 also may reveal corporations not listed on an application.

Corporate books also 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 is done for many reasons including establishing the person's experience in a particular area and exploring 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.

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, agents may review a transgression that occurred twenty years ago.

9. 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.

Financial agents are the beneficiaries of most documentation supplied by an applicant and use the documentation 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:

- Source of funds analysis.
- Tracing primary holdings to their original sources.
- Verifying personal income information to confirm that 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 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, 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 learn 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 exclusive place into which funds can be deposited. 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 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.

10. What Is The Role Of Counsel During The Investigation?

Legal counsel plays three important roles during the investigation. First, counsel serves as the "point man" for coordinating the agents' requests for documents or information. Requests are usually made by letter to the applicant with copies to his 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 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 ahead of time any necessary rebuttal for the Board and Commission hearings.

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

11. 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 primary purposes. The first is to get answers to any remaining questions that arose during the course of the investigation. The second 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 an explanation for any explained matters 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.

The time period between the closing conference and the Board hearing is often only a few weeks and can be quite hectic. During this time the applicant and gaming counsel should address and evaluate the issues raised during the closing conference.. This process may include interviewing and preparing witnesses and gathering documentation for introduction as exhibits. Also, the applicant and his counsel need to anticipate any other issues that may be raised during the Board hearing. Finally, the strategy for the Board hearing, including the substance of any presentation, is developed and refined.



12. What Happens at the Board Hearing?

The Board licensing hearing is on the Board's monthly meeting agenda. The agenda is divided into sections based upon the types of items. For example, hearings on applications for restricted licenses start at a certain time, usually 8:30 a.m. Individual agenda items are not heard at set times; rather the items are taken in order according to item number. Although applicants are given a time to be present for their hearing, they should be prepared to wait, sometimes for several hours, for their hearing.

Once the agenda item is called, the applicant and legal counsel take their places at the podium. All applicants must attend unless the Board Chairman has waived their appearance. The Executive Secretary of the Board reads the agenda item as to who or what is properly before the Board for determination.

Where possible, counsel should work with the agents before the submission of the agenda item to assure its accuracy. An error in the agenda item may cause the Board to delay the hearing until the next regularly scheduled meeting to allow for the correction. This delay may be mandated by the Nevada Open Meeting Law, which prohibits the consideration of matters in a public meeting that are not accurately described in the posted agenda.

Once the agenda item is read, counsel and the applicant identify themselves for the record. Each applicant and witness is then sworn.

Ordinarily, the Board allows the applicant to affirmatively prove his suitability. Gaming counsel often organizes a complete presentation that may be accompanied by a PowerPoint presentation or the offering of witnesses. The presentation often starts with an opening statement. To better prepare the Board and avoid any delays, the applicant may submit briefs and exhibits. All briefs and exhibits should be submitted to the Board at least three days before the hearing to give Board members and the agents an opportunity to review them.

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 witnesses may be subject to intense examination by the Board members.

After the applicant presents his case, the Board has the prerogative to question the applicant about any aspect of his personal or business life that impacts on his suitability. Although Board members generally use the investigative summary as a guide for their questioning, they are not constrained to the summary.



Gaming counsel's job is challenging because the applicant cannot examine evidence contained in the written summary prepared by the agents. The applicant is unable to investigate or verify either the source or the accuracy of any information contained in the summary. Moreover, the case presented against the applicant need not conform to any of the traditional rules of evidence. For example, unlike a typical court case, weight can be given to hearsay (statements by persons who do not have personal knowledge of the stated information but who learned of it from another person).

After the presentation and questioning, the applicant's gaming counsel is offered an opportunity to give a closing statement. After that, the Board begins an open deliberation followed by one of the Board members making a motion. The most common motions are:

- To continue the matter.
- To refer the matter back to the Staff.
- To recommend that the application be denied.
- To recommend that the application be approved with or without conditions or for a limited or unlimited duration.

13. What Happens at the Commission Hearing?

Although the Commission has the final authority to deny or approve a license, its hearings are generally shorter in duration than the Board's. Commission members receive a full transcript of the Board's hearings before their meeting. They need only to ask about matters not covered in the agents' summary or in the transcript.

The Commission hearing, which is typically scheduled two weeks after the Board hearing, is similar to the Board hearing. Items are heard in order as listed on the Commission's agenda but may be taken out of order at the chairman's discretion. The Executive Secretary reads into the record the title of the matter, and the applicant and witnesses are identified and sworn.

The applicant ordinarily is given the opportunity to prove his suitability and, like the Board hearing can offer an opening statement and give an affirmative presentation. The applicant may call witnesses and present documentary evidence. The Commission will not generally consider documents unless the applicant files the original and eight copies of the document with the Executive Secretary at least eight calendar days before the hearing. The failure to file documents timely may result in the deferral of an application.



The Commission also can ask questions or seek clarification of any point. Once discussion is over, the applicant may make a closing statement. Thereafter, the Commission will close the hearing to further comments from the applicants. Commission members may then 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. The most common motions are:

- To continue the matter.
- To refer the matter back to the Board.
- To deny the application.
- To approve the application with or without conditions or for a limited or unlimited duration.
- A combination of the foregoing.

The Commission's voting rules are different from those of the Board, where a simple majority determines the action taken. If the Board has given a favorable recommendation on an application or had a tie vote, a simple majority of votes by the Commission will determine the action of the Commission. If the Board has recommended denial of the application, the Commission must have a unanimous vote to approve the application.

The Commission must take action on the application within 120 days after the Board's recommendation. If it fails to do so, the application is deemed approved. The Commission routinely requires applicants to waive the 120-day rule if a continuance is necessary.

If it denies an application, the Commission must prepare and file a written decision setting forth the reasons for its action. No written decision is necessary after approval of an application.

14. Judicial Review

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.



15. What Are The Reasons Why an Application May be Denied?

In essence, the regulators are attempting to decide who is not suitable to be licensed because either the person's involvement in the industry would create a poor public perception, e.g., the person's poor reputation or that the person's involvement in the gaming industry is likely to result in regulatory violations. Because of this, regulatory licensing issues typically concern either the applicant's character, experience, cooperation, regulatory compliance or financial viability.

Denials based on character issues may include:

- Arrest or conviction of a crime involving violence, gambling or moral turpitude.
- An unexplained pattern of arrests.
- Arrest for cause for a gaming crime.
- Association with organized crime or unsuitable persons.
- Failure to list negative information on the application.
- Poor business ethics as demonstrated by civil cases, such as for fraud, and government action, such as for 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 and complete answers to the gaming agents.

Denials based on regulatory compliance may include:

- Prior unsuitable operation of a casino or other gaming business.
- Poor, absent or incorrect recordkeeping.
- A pattern of regulatory violations, whether intentional or not.
- Lack of diligence in completing the gaming application.
- Failure to timely respond to the agents during the course of the investigation.

Lewis and Roca's gaming practice group is a national practice that supports casino operators, suppliers, state and local governments, communities, businesses, non-profit organizations, tribal governments and others in addressing casino gaming law including Native American and riverboat casinos, racinos, interactive and mobile gaming, poker, and interstate horse racing.

Our gaming lawyers represent everyone from individuals to multinational companies in the application process for casino operator and supplier licenses. We focus on the preparation of the application before it is filed and proactively representing the applicant from the first investigative interview to the issuance of the desired license.



Practice Group Leader Anthony Cabot has played a strategic and integral role in the development of gaming laws and regulations for the past quarter century. In addition to representing several major casino companies and suppliers; he has authored or edited eight books on gaming law including *Nevada Gaming Law*, *Federal Gaming Law*, *International Casino Law* and *The Internet Gambling Report*. He is a founder and the current president of the International Masters of Gaming Law. Chambers Global, Gaming 2008 recently noted "One of the doyens of the field, recognized worldwide, is Anthony Cabot. ... Peers tells us that Cabot is 'widely regarded as the most reputable gaming attorney in the US and has practically written the entire library of the subject'."

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