

Ideas for wealth managers, trust advisors and consultants concerned with marketing and offering trust services, from Scott Martin Senior Editor

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Nevada Banking Regulator Proposes Tighter Rules for Trust Firms – Update

Posted by [Scott Martin](#) in [News](#) on October 31, 2010

After sweeping “loophole closing” overhaul last year, banking chief proposes more “business unfriendly” rules designed, experts say, to thwart newcomers and choke local firms with costly compliance.

BREAKING NEWS – November 3rd – 5:00 pm

The Trust Advisor Blog has been notified that the full regulatory hearing scheduled for Thursday, November 4th has been cancelled due to lack of advance notice to Nevada's trust firms.

George E. Burns and his banking agency, the [Nevada Financial Institutions Division](#), intend to strike trust firms once again with new rules that go beyond federal trust requirements.

Only a year after Nevada's legislature effectively took away the low capital entry rules for trust companies looking to do business in the state — which we reported [here](#) — the FID is gearing up to tighten the rules even further.

On the surface, [NAC 669](#) — which just passed its workshop October 21 and is now slated for a full regulatory hearing on Thursday, November 4 — reads like a fairly straightforward clean-up of some of the points that last year's rules left vague . . . and then some.

The distinction between “retail” and “family” trust companies gets pinned down, and so do the requirements for creating a branch office out of state.

However, even the clarifications are making local FID watchers scratch their heads.

I spoke to officials from several Nevada trust companies, but no one would go on the record for fear of retaliation. But outspoken Matthew Saltzman, an attorney at Las Vegas law firm [Kolesar & Leatham](#), gave us plenty to talk about.

“They accomplished the dramatic stuff with the legislation enacted in the last session, so this seems to be more in the line of housekeeping,” says Saltzman.

“But some of the new rules are troubling and perhaps legally problematic,” he adds.

Shoot first, ask questions later

One of the issues that worries Saltzman is that under NAC 669, the FID can shut down a state-licensed trust company immediately and unilaterally if it suspects something goes wrong — but there's no firm timetable for letting the trust company defend itself.

If the new rule passes, trust officers served with a cease and desist order have the right to ask for a hearing, but Saltzman notes that there's nothing specifying when that hearing will happen.

“It could be months,” he explains. “And in the meantime, your business is shut down. This is a fundamental denial of rights to due process.”

The fact is, mistakes happen. The FID made [headlines](#) early last year by slapping a cease and desist order on celebrity Las Vegas pawnbroker ‘Pawnstar’ Rick Harrison for looking like an unlicensed lender, only to withdraw the order when it turned out he wasn't technically lending money after all.

But, Saltzman adds, unless there's a system in place for catching mistakes like that fast, a trust company that's unfairly accused could bleed to death before clearing its name.

NAC 669 also mandates that trust companies seeking an opinion from the FID have to pay its legal costs plus \$1,000. Insiders warn that this only makes it more expensive for people who need to deal with the regulator, while discouraging everyone else.

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"This appears to be a way for the FID to cover themselves while making things more difficult for the public to do business with them," says a veteran of the process who talked to The Trust Advisor on condition of anonymity.

July 2009 (1)

Doesn't like phone calls from other regulators

Officials from one trust company told the Trust Advisor that Burns kept getting phone calls from a [unnamed] banking regulator in a southern U.S. state. The regulator complained that this Nevada trust company was operating in his state without supervision.

Each time the Nevada FID examined the firm, it found it 100% in compliance.

But to squelch the phone calls, the Nevada FID is proposing a provision to the regulations that would require the firm to obtain a trust license in the southern state with a huge regulatory capital burden, thus effectively exiting Nevada in the process making the supervision of the trust firm the complaining regulators problem.

Kangaroo Court?

The proposed regs also make would-be trust companies who get their application for a Nevada license denied appeal their case back to the commissioner who denied the application in the first place.

"That doesn't appear to make much sense and probably wastes everyone's time," Saltzman says.

In theory, the commissioner could simply replace himself in an appeal or other application hearing. But in practice, unless the applicant had something new to put on the table, it looks like NAC 669 means the first decision is final.

This raises questions of potential conflicts of interest down the road and may even be unconstitutional, Saltzman says.

"We may have a great commissioner now, but we don't know who the commissioners will be in the future," he explains. "We don't want to have laws and rules that depend on the unchecked judgment of a single person. You have to make them work forever, no matter who's in charge."

There are mixed views on the Burns administration. Industry observers say that Commissioner Burns promoted reforms to deal with allegations of wrongdoing by several Nevada trust companies in 2008. The view, at the time when SB-310 was introduced he did not want to see Nevada become a "Tijuana of Trust Companies" where trust companies establish themselves under Nevada's relatively low capital requirements and then operate in other states. Saltzman's firm represented many Nevada trust companies, including several that have been the subject of the regulators compliance actions.

Burns may be out soon

Another confidential source tells us that if Brian Sandoval wins the gubernatorial election on Tuesday, November 2nd, as expected, the current FID commissioner may be replaced in any event.

He added, "We have compelling evidence that Burns issued bogus C&D orders that FID wound up recinding and wasted agency resources with baseless fishing expeditions."

The campaign to "[modernize](#)" the then-booming Nevada trust industry only choked off applications from firms looking to do business in the state — leading one of the oldest Nevada trust companies to [abandon its charter](#) — and there are calls for a more business-friendly hand on the wheel.

Encouraging trust companies has translated into plenty of jobs and revenue for [South Dakota](#), for example, and over the last year, locals from Reno to Henderson have told The Trust Advisor they'd love their state's [favorable statutes](#) to open up similar opportunities for Nevadans.

Saltzman concluded that unless there is a change, newcomers seeking trust charters are likely to continue to launch somewhere else.

[Scott Martin](#), contributing editor, The Trust Advisor Blog. Jerry Cooper and Steven Maimes contributed to the research and reporting.

Permalink: <http://thetrustadvisor.com/news/fid>

[FID](#), [George E. Burns](#), [Kolesar & Leatham](#), [Matthew Saltzman](#), [NAC 669](#), [Nevada](#), [Nevada FID](#), [pawn stars](#), [Rick Harrison](#), [state regulation for trust companies](#), [state trust charter](#), [trust regulation](#)

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