



## STARTING A NEVADA FAMILY TRUST COMPANY

Creating a Private Trust Company with Fewer Formalities

Chapter 669 of the Nevada Revised Statutes (NRS) generally requires that a company that offers services as a fiduciary (e.g., trustee, personal representative, guardian of an estate, etc.) must be licensed by the Nevada Division of Financial Institutions (NDFI). As an exception to the general rule, a family trust company may operate without licensing by the NDFI, and if licensing is desired, the requirements are less stringent. This memo outlines the requirements to become a family trust company under Nevada law and the requirements for being licensed by the NDFI as a family trust company.

### A. WHAT IS A FAMILY TRUST COMPANY?

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A.1 Trust Company for Family Members. NRS 669.041 defines a family trust company as a corporation or limited-liability company that does not act as a fiduciary with respect to — or solicit business as a fiduciary from — anyone other than a family member. The definition of “family member” is complex and detailed<sup>1</sup>, but it includes a “designated relative” and: (a) anyone who is related to the designated relative within nine degrees of consanguinity (or ten degrees if a direct lineal ancestor or descendant is involved); (b) their spouses; (c) trusts and estates involving family members; and (d) family members of officers, managers, and directors.

A.2 Family Only. A family trust company cannot offer its fiduciary services to the general public. If trust company services are offered to the general public, the trust company will not be a family trust company, licensing of the trust company by the NDFI is required, and this memo will not be of any help.

A.3 Not a Financial Institution. Unlike independent banks and trust companies, a family trust company cannot accept deposits, and unless the family trust company is properly licensed, the trust company must use a licensed securities broker for all investments involving marketable securities. Family trust companies are unregulated and unsupervised except by the family itself. The family trust company is best suited to holding title to closely held companies that are already being run by family members.

### B. FORMATION OF FAMILY TRUST COMPANY

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B.1 LLC or Corporation. Applicable law requires the formation of an LLC or corporation. Forming a Nevada business entity is easy and can be done completely online. As part of the formation of the LLC or corporation, you will pay a business tax (currently \$200 annually) and receive a Nevada state business license. Unless the company will be licensed by the NDFI, the word “trust” should not appear in the company’s name. The articles of organization or articles of incorporation must adopt a name that is not similar to another trust company’s name, and they must expressly state that the purpose of the formation of the company is to create a family trust company.<sup>2</sup> As with any other Nevada business entity, a Nevada registered agent is required.

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<sup>1</sup>NRS 669.042(2)(b); NRS 669A.070.

<sup>2</sup>See NRS 669A.180.

B.2 Local Business License. Even if the family trust company will not be licensed with the NDFI, it must obtain a business license from the county or city in which each place of business is located. If the family trust company applies for licensing with the NDFI, a copy of each local business license will need to be provided.

B.3 Other Registrations. The company will be required to comply with all laws governing business entities, including laws related to workers' compensation insurance<sup>3</sup> and unemployment insurance.<sup>4</sup> For help in starting a Nevada business and links to key governmental web sites, the Nevada Secretary of State maintains a "business portal" web site called "SilverFlume".<sup>5</sup>

B.4 Tax Compliance. The company will need to comply with all federal tax laws. At a minimum, the company should apply for a tax identification number. If the company will elect to be taxed under Subchapter S, the owners should file the appropriate forms to make that election. We recommend that you consult with a qualified certified public accountant (CPA) to insure compliance with tax law. The CPA does not have to be licensed in Nevada to give advice regarding federal tax law.

## **C. LICENSING BY THE NEVADA DIVISION OF FINANCIAL INSTITUTIONS (NDFI)**

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C.1 Licensing Is Optional. As stated previously, the licensing of a family trust company by the NDFI is not required.<sup>6</sup> Nevada law gives a family trust company the option to operate with or without a license. An unlicensed trust company must provide the Commissioner of the NDFI ("the Commissioner") with the name of the "designated relative" sent by certified mail, return receipt requested.<sup>7</sup> A licensed trust company must submit a licensing application, together with other forms, as discussed in subsection C.5, below.

C.2 Advantages of Licensing. A trust company licensed by the NDFI has several advantages:

(a) A licensed trust company may include "trust" in its name, while an unlicensed trust company may not.<sup>8</sup>

(b) A licensed trust company is exempt from certain licensing and regulation requirements, including the licensing requirements normally applicable to investment

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<sup>3</sup>See <http://dir.nv.gov/WCS/Home/>.

<sup>4</sup>See <http://ui.nv.gov/ess.html>.

<sup>5</sup><https://www.nvsilverflume.gov/home>.

<sup>6</sup>NRS 669.080(1)(o); NRS 669A.100.

<sup>7</sup>NRS 669.042(a)(2); NRS 669A.050(2).

<sup>8</sup>NRS 669A.150.

brokers and advisors under NRS Chapter 90.

(c) A licensed trust company may handle more services “in house” without having to out-source those services.

**C.3 Advantages of Unlicensed Trust Company.** An unlicensed trust company is not required to complete lengthy personal and financial disclosure forms for each person who manages the company or who has an ownership interest of 10% or more, and there are no filing fees. The only requirement is the submission of a letter sent by certified mail to the Commissioner identifying the designated relative.

**C.4 Key Requirements.** A family trust company that is licensed by the NDFI must meet these minimum requirements:<sup>9</sup>

(a) At least one officer must be a resident of Nevada;

(b) The company must maintain a physical office in Nevada where its “material business records and accounts may be accessed and readily available for examination by the Division of Financial Institutions”;

(c) A bank account must be maintained with a state chartered or national bank having a principal or branch office in Nevada; and

(d) The stockholders’ equity must be \$300,000 or more.

**C.5 Process of Obtaining a License.** The web site for the Nevada Division of Financial Institutions provides the forms needed to obtain a license, which include the initial family trust company application, initial branch application, and a personal history record.<sup>10</sup> The initial application for licensing a family trust company includes a checklist of the steps required, some of which are:

(a) Submission of the initial licensing application;<sup>11</sup>

(b) Payment of \$3,000 in filing fees;

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<sup>9</sup>NRS 669A.140; 169A.169.

<sup>10</sup>To download the documents required for a licensed NFTC, point your web browser to [http://fid.nv.gov/Licensing/Trust\\_Company/TRUST\\_COMPANY/](http://fid.nv.gov/Licensing/Trust_Company/TRUST_COMPANY/), and look for the documents under the heading “Family Trust Company.”

<sup>11</sup>[http://fid.nv.gov/uploadedFiles/fidnvgov/content/Licensing/Trust\\_Company/669A\\_Initial\\_App52516\(1\).pdf](http://fid.nv.gov/uploadedFiles/fidnvgov/content/Licensing/Trust_Company/669A_Initial_App52516(1).pdf) or <http://rlklegal.info/pdf/nftc.licensing.2016-05.pdf>.

- (c) Submission of personal information forms<sup>12</sup>, an initial branch application<sup>13</sup>, and fingerprints for key persons, which will trigger an investigation of each applicant;<sup>14</sup>
- (d) Submission of documents showing that the business has been formed properly in Nevada (or qualified to do business in Nevada if formed elsewhere);
- (e) Submission of the local business license;
- (f) Submission of financial statements; and
- (g) Submission of a document appointing an agent (spokesperson) to represent the company before the Commissioner of the NDFI.

#### **D. OTHER CONCERNS**

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D.1 Operational Issues. The initial concern will be the management and operation of the company, including issues related to control and business succession. If the family trust company is to be designated as a fiduciary of estates and trusts that will exist in the future, there must be a plan to keep the company in existence and properly managed and controlled. If undisciplined, imprudent, or even dishonest family members are in a position to take control of the family trust company, the assets under management may be quickly dissipated. If the family trust company does not have the proper personnel to properly invest the assets that it holds, independent investment advisors should be considered. As with all companies, a certified public accountant should be retained to maintain financial records, perform periodic audits, and to prepare and file all appropriate tax returns and other governmentally required financial reports. It may be advisable to involve one or more third-party directors or managers to avoid having the family trust company fail because of mismanagement, disregard of financial and legal formalities, and even embezzlement.

D.2 Tax and Other Compliance Issues. If a family trust company is the trustee of an irrevocable trust and the settlor<sup>15</sup> of that trust controls the family trust company, then the trust does not have an independent trustee.

- (a) A trust controlled by a settlor-controlled family trust probably will be classified as a grantor trust for income tax purposes<sup>16</sup>, and estate-tax inclusion in the settlor's estate is

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<sup>12</sup><http://rlklegal.info/pdf/nftc.personal.2011-09.pdf>.

<sup>13</sup><http://rlklegal.info/pdf/nftc.branch.2016-04.pdf>.

<sup>14</sup>NRS 669A.200.

<sup>15</sup>“Settlor”, “trustor”, and “grantor” all refer to the creator of a trust.

<sup>16</sup>IRC § 671 et seq.

virtually assured.<sup>17</sup> Family control of a family trust company can also negate the “grandfathering” of a trust otherwise exempt from the generation-skipping transfer tax. The Internal Revenue Service attempted to address some tax issues in Notice 2008-63, and that Notice provides guidelines to prevent unintended consequences.<sup>18</sup> In some situations, the “reciprocal trust doctrine”<sup>19</sup> can create problems if various family members are the decision makers with respect to the trusts created by other family members.

(b) Under Nevada law, if the settlor of an irrevocable spendthrift trust (i.e., an asset-protection trust) is a permissive beneficiary of that trust, distributions to the settlor must be “subject to the discretion of another person”, who is frequently designated as a “distribution trustee” in many trust documents. This type of trust – which is called a self-settled spendthrift trust (“SSST”) – also requires one of the trustees to be a Nevada resident or a Nevada bank or trust company. Some families want to create a Nevada family trust company so that the family trust company can act as distribution trustee and qualify as the Nevada trustee. If the settlor can control the family trust company, then the trust will not be a spendthrift trust because the settlor can unilaterally make distributions to himself or herself. For an SSST to be valid, distributions must be approved in the discretion of someone other than the settlor, and control through a Nevada family trust company is not permitted. In other words, if a Nevada family trust company is to be the distribution trustee, it is imperative that the trust company be organized and operated so that the settlor will never be in a position to approve a distribution from an SSST.

## **E. CONCLUSION**

Nevada law gives families the option of creating an unlicensed family trust company with almost no formal requirements or the option of creating a licensed trust company with fewer formalities and a capital requirement that is less than that required for a trust company doing business with the general public. Forming an unlicensed family trust company is easy, but if the investments to be made by the family trust company will otherwise require compliance with the licensing pertinent to securities under NRS Chapter 90, a licensed family trust company will be more appropriate.

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<sup>17</sup>IRC §2036, § 2038, and/or § 2041.

<sup>18</sup>2008-2 Cum.Bul. 261 (07/11/2008).

<sup>19</sup>If a brother and sister each manage each other’s trust, the IRS may invoke the “reciprocal trust doctrine” to say that each is really managing his or her own trust because the arrangement is reciprocal.