

A GUIDE TO
OBTAINING A
RESTRICTED GAMING
LICENSE IN NEVADA



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I. Overview

First-time visitors to Nevada are often amazed by the rows of slot machines adorning the entrances to supermarkets. Nevada is unique in that it allows business owners to supplement the income from their primary business with revenues from gaming devices. However, only certain businesses are eligible to have gaming devices. In order to place up to 15 slot machines at a business location, the business owner or company that places the devices must first obtain a restricted gaming license.

The application procedure for a restricted gaming license appears complex and intimidating. Indeed, each application package begins with the ominous warning “each applicant needs to complete and sign a checklist attesting the information being provided to the Board is accurate and complete, agrees to cooperate with all requests, inquiries, or investigations of the Board and Commission. An applicant for a state gaming license is seeking the granting of a privilege, and the burden of proving his/her qualifications to receive such a license is at all times on the applicant. An applicant must accept any risk of adverse public notice, embarrassment, criticism, or other action, or financial loss which may result from action with respect to an application, and expressly waives any claim for damages as a result thereof.”

This booklet explains and demystifies the restricted gaming license application process.

II. What Does a Restricted Gaming License Allow a Business to Do?

A restricted gaming license permits the operation of a maximum of 15 slot machines in an establishment where the operation of such slot machines is incidental to the primary purpose of the business.

III. When Are Slot Machines Incidental to the Primary Purpose of a Business?

In determining whether the applicant’s proposed operation of slot machines is incidental to the primary business at a particular location, the Gaming Control Board (“Board”) and the Nevada Gaming Commission (“Commission”) may consider a variety of factors. These include:

- The amount of floor space used for the slot machines as compared to the floor space used for the primary business.
- The amount of investment in the operation of the slot machines as compared to the amount of investment in the primary business.
- The amount of time required to manage or operate the slot machines as compared to the amount of time required to manage or operate the primary business.
- The revenue generated by the slot machines as compared to the revenue generated by the primary business.
- Whether a substantial portion of the financing for the creation of the business has been provided in exchange for the right to operate slot machines on the premises.
- Other factors, including but not limited to the establishment’s name, the establishment’s marketing practices, the public’s perception of the business, the relationship of the slot machines to the primary business, and
- What other amenities the applicant offers to its customers.

It is important to note that any business licensed to sell alcoholic beverages at retail by the drink to the general public, that is located in a county whose population is 100,000 or more (i.e., Clark County), must satisfy the following requirements in order for it to be granted a license to operate 15 or fewer slot machines:

- The business occupies an area comprised of at least 2,500 square feet which is open and available for use by patrons.
- The business contains a permanent physical bar.
- The business contains a restaurant which:
 - 1) Serves food ordered by patrons from tables or booths.
 - 2) Includes a dining area with seating for at least 25 persons in a room separate from the on premise kitchen.
 - 3) Includes a kitchen which is operated not less than 12 hours each day the establishment is open for business to the public, or the entire time the establishment is open for business to the public if it is open for business 12 Hours or less each day.

In practice, obtaining a restricted license for locations other than for bars, taverns, saloons, liquor stores, grocery stores, convenience stores, and drug stores typically poses a challenge. While you may occasionally find slot machines in other locations around the state (such as laundromats, gas stations and donut shops), these locations were likely “grandfathered” in years before the adoption of the newer location suitability standards.

Bars, taverns, saloons, liquor stores, grocery stores, convenience stores, and drug stores are generally considered suitable locations for a restricted license, but the type of location may dictate the maximum number of devices allowed. Convenience stores are presumed suitable provided that no more than seven slot machines are operated at a convenience store, and no more than four slot machines are operated at any individual liquor store. Slot machines in grocery stores and drug stores also must be within a separate gaming area or alcove having not fewer than three sides formed by contiguous or partial walls.

Some facilities are unsuitable regardless of either type or location. Fast food restaurants, for example, are a type of business often considered to be unsuitable for gaming operations. By regulation, the Board and Commission may deny an application for a state gaming license if the location is deemed unsuitable because it:

- Is near a church, school or children’s public playground.
- Is in a place where gaming is contrary to a valid zoning ordinance of any county or city.
- Has a substantial minor clientele.
- Lacks adequate supervision or surveillance.
- Is difficult to police.
- Is a brothel.

IV. Who Needs a Restricted License?

Either the business operator or a licensed slot route operator must obtain a restricted gaming license. A slot route operator is a person who engages in the business of placing and operating slot machines upon the business premises owned and operated by another person. These operators maintain the machines, pay major jackpots and provide all accounting services.

Where a slot route operator pays a flat rate per machine, only the slot route operator needs to obtain a restricted license. In instances where the business owner shares in revenues (revenue share) or operates the slot machines, the business owner must obtain a license.

A person that owns multiple restricted gaming locations will generally be required to undergo a more comprehensive non-restricted background investigation for his/her third restricted gaming location.

Lewis Roca has a Guide to Obtaining a Non-Restricted Gaming License, which can be downloaded from our website at www.lewisroca.com.

V. Which Individuals Associated With the Business Owner Need to File Applications and Be Licensed?

Nevada has different criteria for determining who needs to file an application and be licensed depending on the type of entity that owns the business where the slot machines are located. In the rare case where the owner is a public company, only shareholders owning more than 10% of any class of voting stock must apply. In most small businesses that apply for restricted licenses, the owner is either an individual or a private corporation. In these cases, each manager, officer and director of a private corporation must apply for a restricted license. Likewise, each individual owner or shareholder who holds more than 5% of the beneficial ownership of the private corporation must apply for a license.

In certain circumstances, the general manager of a restricted location who is not otherwise subject to licensing must be licensed as a “key” employee. The most obvious circumstances would be when the owner of the business is not actively engaged in managing the business or resides outside of Nevada.

Gaming regulators can also require anyone associated with the business to obtain a license. In essence, the Board is not restricted by the title of the job performed and may consider the functions and responsibilities of the individual.

VI. Which Individuals Associated With the Business Owner Need to File Applications and Be Registered?

Shareholders who hold 5% or less of the beneficial ownership of the privately-held corporation must apply for a license.

VII. What Needs to Be Filed?

a. Licensing

Applicants for a restricted license must complete and submit to the Board an exhaustive application that covers their personal history and, in certain circumstances, limited financial information. The investigation for a restricted license is generally less expensive and intrusive than an investigation for a full casino license. Nevertheless, Board agents still conduct a thorough criminal background check on all restricted applicants.

Form 1: Application For Nevada Gaming License is a two-page document that asks for the identity of the individual applicant and the type of approval being sought. This form requests such information as the name of the applicant, mailing address, and a breakdown of the gaming devices to be offered for play at the proposed premise.

If the applicant is a corporation, partnership or limited liability company, it must file Form 2: Application For Approval by Corporation/Partnership/Limited Liability Company. This form requests the names of all partners, directors, officers and shareholders, a breakdown of the percentage of ownership, notification of any bonus or profit sharing arrangements and a certified copy of either the Articles of Incorporation, Articles of Organization or a true copy of the Partnership Agreement. An application for registration by a holding or intermediary company is made on Form 3: Application For Registration by Holding Company/ Intermediary Company.

The two most substantial forms found within the application submission package are the (i) Form 7: Multi-Jurisdiction Personal History Disclosure Form (MJPHDF) which constitutes the bulk of a personal application, and (ii) Form 7A: the Nevada Supplemental Personal History Disclosure Form. These form delves into virtually every aspect of the applicant'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 MJPHDF 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.

The financial schedules within the MJPHDF concentrate on the applicant's financial standing and can be read in conjunction with Form 20: Source and Application of Funds. These documents examine the applicant's financial status; the amount of revenue to be invested into the proposed gaming establishment; the source of the revenue; and whether the applicant anticipates active participation in the management and operation of the gaming establishment.

Each applicant must file documentation relating to the premises of the proposed gaming establishment. Form 15: Landlord/ Location Information Sheet requires the applicant to provide a meaningful narrative of the primary business; maximum occupancy allowed in the establishment; the business hours; whether or not minors will be patrons; and the location of the premises. An original floor plan also must be submitted with a minimum of three photographs of the premises, as well as a copy of the deed, lease, sublease, or other document evidencing the right of the applicant to occupy the premises for which licensing is sought. Additionally, Form 27 provides information relevant to whether the proposed operation of slot machines is incidental to the applicant's primary business.

Finally, each applicant must file:

- Form 10: Affidavit of Full Disclosure.
- Form 17: Release and Indemnity of All Claims.
- Form 18: Request to Release Information.
- Form 28: Fingerprint Receipt.
- Form 28A: Fingerprint Civil Applicant Waiver.

These forms authorize the Board to conduct a review of the applicant's criminal history and financial records and release the state from any liability resulting from said review.

b. Registrants

Persons undergoing registration have to file a streamlined application with the Board. In particular, the MJPHDF is replaced with a (i) Personal history Record that is only 11 pages in length, and (ii) a Personal Financial Questionnaire that is only 5 pages in length.

c. Use of a Gaming Attorney

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.

VIII. What Type of Investigation Is Conducted?

Restricted investigations include exhaustive criminal background checks, but the financial investigations are typically limited to reviewing the source of funds, ownership structure, and limited corporate records.

Investigations rarely involve examination of personal financial records. The agents, however, do enjoy a great deal of discretion. For instance, an agent may decide to investigate the source of funds depending on whether the funds appear to come from a regular lending agency or from a source that appears suspicious.

Whenever questionable circumstances exist, or where a licensee owns three or more restricted locations, the agents will conduct a full financial investigation equivalent to that under a non-restricted gaming license. You can refer to the Lewis Roca Guide to Obtaining a Non-Restricted Gaming License in Nevada for more details on the non-restricted application process.

IX. What Happens After the Investigation?

After completing the investigation, the gaming agent completes a report and submits it to the Board. At that time, the Board will schedule the application for consideration at a public hearing and send notice of the scheduled hearing to the applicant by letter. The Board holds monthly meetings. About two weeks after the Board hearing, the Commission will hold a separate hearing for final consideration of the license.

Applicants may be requested to attend these meetings and to testify as to matters of interest to the Board or Commission. Simply because an applicant must appear does not necessarily signal that the application has problems. In many cases, the regulators simply need additional information that may be relevant to their consideration of the application. Still, an applicant would be wise to be well prepared and ready to answer any questions that may be posed. Failure to appear and testify, unless excused, constitutes grounds for denial of the application.

If the applicant is asked to appear before the Board, the applicant and his/her lawyer should be present at the beginning of the hearing. Although applicants are given a specific 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 a podium facing the members of the Board or Commission. The Executive Secretary of the Board reads the agenda item as to who or what is properly before the Board for determination. Counsel and the applicant then identify themselves for the record.

Ordinarily, the Board allows the applicant to affirmatively prove his suitability. To this end, the applicant's counsel may proceed with an opening statement, and call witnesses on behalf of the applicant. During the presentation, the applicant may affirmatively address areas of concern raised by the agents. The applicant and his witnesses may be subject to intense examination by the Board members.

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

The procedure may seem strange to a non-gaming lawyer. Unlike a typical court case, where the lawyer contends with opposing counsel before a neutral judge or jury, the applicant's counsel presents his/her case to the same agency serving as both investigator and decision maker. Moreover, the applicant cannot examine evidence contained in the written summary prepared by the agents and cannot investigate or verify either the source or the accuracy of any information contained in the summary.

After completion of the proceedings, the Board will issue to the Commission an order recommending the approval or denial of the application. In rare cases, the Board will refer the case back to staff for additional investigation. An applicant can also request a withdrawal of the application when the Board is unlikely to recommend approval.

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 accompanied by written reasons upon which the order is based. In turn, the Commission need only to ask about matters not covered in the agents' summary or in the transcript.

The Commission hearing is similar to the Board hearing. The Chairman conducts the Commission hearing. Items are typically heard as listed on the Commission's agenda. The Executive Secretary reads into the record the title of the matter, and counsel and the applicant then identify themselves for the record.

The applicant is ordinarily given the opportunity to prove his suitability. The applicant may call witnesses and present documentary evidence. The Commission can ask questions or seek clarification of any point. The Commission Chairman has the authority to rule on all procedural and evidentiary matters that arise either in or between meetings. The Chairman's authority can be temporarily abrogated by a simple majority of the Commission. At least one member of the Board will be present at the hearing to respond to questions from the Commission.

The applicant may make a closing statement at the end of all discussion. Thereafter, the Commission will close the public hearing. 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 in order to approve the application.

If the Commission 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.

X. How Much Does the Process Cost?

Each person, corporation, partnership, or other entity seeking licensing must pay an application fee of \$500 and an investigation fee of \$550. Registrants of a restricted licensee with two or less restricted locations pay a registration fee of \$550. These fees are non-refundable. The Board may also require an applicant to pay supplementary investigative fees and costs, and require a deposit to be paid by the applicant in advance as a condition precedent to beginning or continuing an investigation. After all supplementary investigative fees and costs have been paid by an applicant, the Board shall refund to the person who made the required deposit any balance remaining in the investigative account of the applicant together with an itemized accounting of the investigative fees and costs incurred.

XI. How Long Does the Process Take?

Because each licensing application is unique, the length of each investigation varies according to the individual facts. As such, no specific time frame for the investigative procedure is provided within either the Nevada Gaming Control Act or Regulation 4, which concentrates on the application procedure for restricted licensing.

Within a reasonable amount of time after the filing of an application and such supplemental information as the Board may require, the Board commences its investigation. Typically, the process from filing to hearing will take about six to eight months, but this timeframe can be influenced by many factors, such as the completeness of the application, the diligence of the applicant in providing additional information, the workload at the Board, the number and nature of issues posed by the application, and the complexity of the business deal.

XII. What Are The Typical Reasons an Application Might Be Denied?

A common question is what are the reasons an applicant might be denied? In essence, the regulators are attempting to decide how to best serve Nevada public policy. The regulators will not permit a person to engage in the gaming industry when their involvement is likely to result in regulatory violations or create a poor public perception because of the person's poor reputation. Because of this, regulatory licensing issues typically concern either the applicant's character, experience, cooperation, regulatory compliance or financial viability.

Character issues on which a denial may be based 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 fraud 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 and complete answers to the gaming agents. Regulatory compliance issues on which a denial may be based include:

- Prior unsuitable operation of incidental gaming operations.
- Poor, absent, or incorrect record keeping.
- A pattern of regulatory violations, whether intentional or not.
- Lack of diligence in completing the gaming application.
- Failure to respond in a timely manner to the agents during the course of an investigation.

Financial issues on which a denial may be based include:

- Failure to demonstrate financial viability regarding maintaining gaming operations within your premises.
- Failure to show a legitimate source of funds.
- Ownership of any interest whatsoever in such premises by a person who is unqualified to or disqualified from holding a gaming license.

COMMERCIAL GAMING INDUSTRY GROUP

Our group has been at the forefront of all major gaming trends for the past quarter-century. We have proudly served the gaming industry as trusted legal counsellors, as well as internet gaming pioneers, authors, educators and influencers addressing issues in the sports betting, esports, social gaming and fantasy sports industries.

Our team counsels clients on the intricate state, tribal and federal regulations that govern casinos, sports betting, fantasy sports operators, payment processors as well as advertisers and marketing affiliates across the U.S. We help clients operate legally in the U.S. under state and federal gambling and sweepstakes laws and provide guidance through the licensing process from advice on how to best structure operations from a licensing angle to working with regulators to obtain necessary licenses.



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Glenn provides counsel on nearly every aspect of commercial gaming transactions, including corporate structure, financing and due diligence. He also advises individuals, operators, manufacturers, distributors and service providers through the multi-jurisdictional licensing process – from advising clients on how to best structure operations from a licensing standpoint to working with the regulators to obtain the necessary licences. Glenn is a prolific author and speaker on gaming-related matters and has served as an adjunct professor at the University of Nevada, Las Vegas, William F. Harrah College of Hotel Administration, where he lectured on gaming industry regulation. He has been listed in The Best Lawyers in America® in the category of Gaming Law since 2019 and was recognized as “Lawyer of the Year” in the area of gaming law for 2022. He has been recognized by Chambers USA for Gaming & Licensing since 2020 and has been recognized as a Mountain States Super Lawyer in gaming since 2012. In 2023, Glenn was named to Vegas Inc.’s “40 Under 40”.



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