

Nevada

Introduction.....	NV-1
Establishment of Enterprises.....	NV-1
Forms of Enterprises.....	NV-1
Limited-Liability Company.....	NV-1
Corporations.....	NV-3
Acquisition of Enterprises.....	NV-6
In General.....	NV-6
Merger.....	NV-6
Share Exchange.....	NV-7
Asset Purchase.....	NV-7
Stock Purchase.....	NV-7
Corporate Anti-Takeover Protections.....	NV-8
Dissenters' Rights.....	NV-8
Acquisition of Realty.....	NV-8
Purchases.....	NV-8
Closing Documents.....	NV-10
Taxation.....	NV-11
Business Tax and State Business License Fee.....	NV-11
Bank Excise Tax.....	NV-11
Live Entertainment Tax.....	NV-12
Personal Income Tax.....	NV-12
Property Tax.....	NV-12
Real Property Transfer Tax.....	NV-13
Sales and Use Tax.....	NV-14
Customs Regulation.....	NV-14
Currency Regulation, Capital and Profit Transfer, and Investment Incentives.....	NV-15
Competition Law.....	NV-15
Legislative Framework.....	NV-15
Exemptions.....	NV-15
Prohibited Acts.....	NV-15
Enforcement.....	NV-16
Liability.....	NV-16
Intellectual Property Protection.....	NV-16
Trade Marks.....	NV-16
Trade Secrets.....	NV-17
Right of Publicity.....	NV-18

Copyright and Works of Art	NV-19
Patent	NV-19
Employment Law	NV-19
At-Will Employment and Right to Work.....	NV-19
Wages and Hours	NV-20
Non-Compete Agreements	NV-20
Civil Rights.....	NV-21
Nevada Occupational Safety and Health Act.....	NV-21
Worker’s Compensation	NV-21
Unemployment Compensation Law	NV-22
Employee Privacy and Other Rights.....	NV-22
Banking Law	NV-22
Regulatory Body.....	NV-22
Bank Formation	NV-23
Interstate Regulation of Out-of-State and Foreign Banks.....	NV-24
Other Forms of Financial Institutions	NV-24

Nevada

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Introduction

Certain laws, regulations, and other legal requirements must be met in Nevada to start, operate, and maintain a successful business in Nevada. This chapter discusses how to start a business, comply regulations and find sources of assistance.

Establishment of Enterprises

Forms of Enterprises

There are several types of business organizations that can be set up in Nevada, such as corporation, limited liability company, limited liability partnership, limited partnership, closed corporation, and business trust. This section discusses two of the most commonly used business organizations in Nevada: the corporation and the limited liability company.

Limited-Liability Company

Organization

One or more persons may establish a limited-liability company under Nevada law by executing and filing articles of organization with the Nevada Secretary of State.¹ The organizers also must file a certificate of acceptance of appointment executed by the registered agent for the company. Nevada law does not give the organizers the power to adopt an operating agreement for the company. The articles of organization must include:

- The name of company, which must contain words indicating that it is a limited liability company;
- The names and addresses of the organizers signing the articles; and
- The name of the registered agent and, in case of a non-commercial agent, the address of the registered agent.

¹ Nevada revised Statutes, ss 86.141–86.226.

The articles also must indicate whether the company is to be manager-managed or member-managed. If the company is manager-managed, then the articles must include the names and addresses of each of the initial managers. If the company is member-managed, then the articles must include the names and addresses of each of the initial members.

Operating Agreement

Nevada law does not require the adoption of an operating agreement for the company. As a practical matter, however, an operating agreement is an important component of a limited liability company. An operating agreement must be in writing and it must be adopted by the unanimous vote or written consent of all the members. An operating agreement is fundamentally a contract.²

Thus, every operating agreement must meet all the legal requirements for a binding contract, and members generally have wide latitude in structuring the operating agreement so long as the agreement is related to the affairs of the company and the conduct of its business.

Unless the operating agreement provides otherwise, the unanimous vote or written consent of the members is required to make any amendments to the operating agreement.

Initial and Annual Lists

On or before the last day of the first month after the filing of its articles, the company must file an 'initial list' containing:

- The name and file number of the company;
- The names, titles, and addresses of the managers (if the company is manager-managed) or the managing members (if the company is member managed);
- The name of the registered agent and, in cases of a non-commercial agent, the address of the registered agent; and
- The signature of a manager or managing member of the company certifying that the list is true, complete, and accurate.³

From then on, the company must file an annual list, containing all the information required to be included in the initial list, on or before the last day of the month in which the anniversary date of organization occurs in each year. All businesses required to file an initial or annual list with the Nevada Secretary of State are required to obtain a state business license from the Nevada Secretary of State. The business license application and the lists are submitted on a consolidated form furnished by the Nevada Secretary of State.

² Nevada Revised Statutes, s 86.286.

³ Nevada Revised Statutes, s 86.263.

Corporations

Incorporation

One or more persons may establish a corporation under Nevada law by executing and filing articles of incorporation with the Nevada Secretary of State. The incorporators also must file a certificate of acceptance of appointment executed by the registered agent for the corporation.

Although two-thirds of the incorporators may amend the articles before the issuance of voting stock, Nevada law does not give the incorporators the power to adopt bylaws or elect officers. The articles of incorporation must include:

- The name of corporation, which must be distinguishable and contain words indicating that it is not a natural person;
- The names and addresses of each of the initial members of the board of directors;
- The name of the registered agent and, in cases of a non-commercial agent, the address of the registered agent;
- The number of shares that the corporation is authorized to issue;
- If more than one class of shares is to be issued, specific provisions on the authority vested in the board of directors to prescribe the classes, series, and the number of each class or series of stock and the voting powers, designations, preferences, limitations, restrictions, and relative rights of each class of stock; and
- The names and addresses of the incorporators signing the articles.⁴

Initial and Annual Lists

On or before the last day of the first month after the filing of its articles, the corporation must file an 'initial list' containing:

- The name and file number of the corporation;
- The names, titles, and addresses of the president, secretary, treasurer, and all the directors;
- The name of the registered agent and, in cases of a non-commercial agent, the address of the registered agent; and
- The signature of an officer of the corporation certifying that the list is true, complete, and accurate.⁵

From then on, the corporation must file an annual list, containing all the information required to be included in the initial list, on or before the last day of the month in which the anniversary date of incorporation occurs in each year.

⁴ Nevada Revised Statutes, ss 78.030–78.055.

⁵ Nevada Revised Statutes, s 78.150.

All businesses required to file an initial or annual list with the Nevada Secretary of State are required to obtain a state business license from the Nevada Secretary of State. The business license application and the lists must be submitted in a consolidated form furnished by the Nevada Secretary of State.

A corporation also is required to keep the following documents at its registered office:

- A copy of the corporation's articles of incorporation as certified by the Nevada Secretary of State;
- A copy of the corporation's bylaws as certified by an officer of the corporation; and
- A stock ledger or duplicate stock ledger, revised annually, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, if known, and the number of shares held by them respectively.⁶

In place of the stock ledger or a duplicate ledger, the corporation may keep a statement setting out the name of the custodian of the ledger, and the present address where the ledger is kept. If a corporation that is not a publicly traded, it must maintain at its registered office or principal place of business in Nevada a current list of the owners of record or a statement where such list is maintained.⁷

Board of Directors

Management of a corporation is vested in its board of directors.⁸ Generally, there is no limit to the number of directors that a corporation may have, but each director must be an individual. The board of directors elects officers, and the officers may then appoint one or more assistant officers, if authorized by the bylaws or the board of directors.

By statute, directors are presumed to act in good faith, on an informed basis, and with a view to the interests of the corporation. The Nevada statutory standard differs markedly from the standard codified by most other states, which require a director to act with at least some objective standard of care (e.g., the care of an ordinarily prudent person in a like position).⁹

⁶ Nevada Revised Statutes, s 78.150.

⁷ Nevada Revised Statutes, s 78.152.

⁸ Nevada Revised Statutes, ss 78.115–78.140.

⁹ For example, California Corporations Code, s 309(a) ('A director shall perform the duties of a director . . . in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances'); New York Business Corporation Law, s 717(a) ('A director shall perform his duties . . . in good faith and with that degree of care which an ordinarily prudent person in a like position would use under similar circumstances').

Meetings of the board of directors may be held within or outside Nevada and may be held via electronic communications, videoconferencing, teleconferencing, or other available technology that allows the members to communicate simultaneously or sequentially.

The directors also may take action by unanimous written consent without holding a meeting. Unless the articles of incorporation or the bylaws provide for a greater or lesser proportion, a majority of directors constitutes a quorum (a sufficient number of directors necessary for the transaction of business at a meeting of the board).

Stockholders

Unless otherwise provided in the bylaws, the directors have the authority to fix the date, time, and place of the annual stockholders' meeting. Annual stockholders' meetings may be held within or outside of Nevada. Special meetings also may be called. Each stockholder required or authorized to take action at such meeting is entitled to notice of the meeting, and the directors may fix the record date.

Unless the articles of incorporation or bylaws provide otherwise, the stockholders may participate in a meeting of stockholders via electronic communications, videoconferencing, teleconferencing, or other available technology that allows the stockholders to communicate simultaneously or sequentially. Participation in a meeting in this manner constitutes presence in person at the meeting.

At the annual meeting of stockholders the corporation's stockholders may, among other things, elect the directors. Stockholders may vote in person or by proxy.

The articles of incorporation may provide that, at all elections of directors, each stockholder is entitled to as many votes as the number of his shares of stock multiplied by the number of directors to be elected, and that the holder of stock may cast all of his votes for a single director or may distribute them among the number to be voted for or any two or more of them.

Under this system of 'cumulative' voting, stockholders may elect directors in rough proportion to the percentage of shares they own.

If stockholders fail to elect directors within 18 months after the last election of directors, then the state trial court has jurisdiction in equity to order the election of directors.

Unless otherwise provided in the articles of incorporation or the bylaws, any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if, before or after the action, a written consent to the action is signed by stockholders holding the proportion of voting power that is required for such action at a meeting.

Acquisition of Enterprises

In General

Enterprises have developed a number of methods to acquire the business of another entity. Mergers and share exchanges are governed by Nevada statutes, while asset and equity (stock) purchases are two non-statutory methods to acquire an enterprise under Nevada law.

The acquisition of another enterprise will be subject to non-business organizations law considerations, including federal and state securities laws, competition (antitrust) laws, licensing requirements, dissenters' rights statutes (in case of corporations), and tax and accounting considerations. Generally, foreign enterprises may acquire a Nevada entity subject to the laws of both jurisdictions.

Merger

A merger is a combination of two or more entities by which, most commonly, only one entity survives and succeeds to all the assets and liabilities of the constituent entities that do not survive the merger. Mergers cannot occur without complying with the statutory procedures under Nevada law.

A plan of merger must meet statutory requirements. The plan must be prepared and approved by the owners of the enterprise.¹⁰ In the case of a corporation, the board of directors must first adopt the plan, then recommend the plan to the stockholders and submit the plan for approval by the stockholders.¹¹ The plan may be made dependent on extrinsic facts and amended, abandoned, terminated, or cancelled as provided in the statutes.¹² Articles of merger must be filed with the Nevada Secretary of State.¹³ A merger is effective at the time of filing or upon a later date and time specified in the articles, which date must not be more than 90 days after the date the articles are filed.¹⁴

Nevada, along with other jurisdictions, has recognized the *de facto* merger doctrine to protect creditors and stockholders when the reorganization of a corporation has the effect of a merger without having been effected in compliance with procedural formalities required for mergers. The application of this doctrine commonly arises in asset sales when income-producing assets are sold to another person and the liabilities are retained by the selling enterprise without the resources to transact business or pay for such liabilities. When considering whether to apply the doctrine, a Nevada court will consider whether there is a mere continuation of the enterprise, whether there is a continuity of

10 Nevada Revised Statutes, s 92A.120 (corporations) and 92A.150 (limited liability companies).

11 Nevada Revised Statutes, s 92A.120.

12 Nevada Revised Statutes, ss 92A.170, 92A.175, and 92A.200.

13 Nevada Revised Statutes, s 92A.200.

14 Nevada Revised Statutes, s 92A.240.

stockholders, whether the seller corporation ceased its ordinary business operations, and whether the acquiring corporation assumed the seller's obligations.¹⁵

Share Exchange

A share exchange is an acquisition by one entity of all of the outstanding owner's interests (equity) of one or more classes of equity in another entity, in an exchange under which both entities continue to exist after the exchange. The procedures for statutory share exchanges are the same as for mergers.

A share exchange, however, may be accomplished voluntarily by the stockholders of the exchanging entities without the use of the statutory procedures. A voluntary exchange differs from a statutory exchange in two key respects: a statutory exchange requires that all owners' interests of a particular class be acquired; and a statutory exchange is binding upon all owners of a particular class after the plan of exchange has been adopted and approved.

Asset Purchase

An asset purchase is the acquisition of the assets of one entity by another person, usually another entity. Buyers generally prefer asset purchases over mergers, share exchanges, or stock purchases because buyers are presumed to not assume the liabilities associated with acquired assets unless such liabilities are specifically undertaken in the purchase agreement.

The required procedures for an asset purchase differ depending on the type of entities involved. The Nevada Revised Statutes do not restrict the authority of a limited-liability company to sell its assets. The members and managers therefore have wide latitude to structure the procedures for such sales in the operating agreement. The sale of all assets by a corporation, however, must be approved by the board of directors and the affirmative vote or consent of the stockholders exercising at least a majority of the voting power.¹⁶

Stock Purchase

A stock purchase or, in the case of limited liability companies, a membership purchase, is the acquisition of all the outstanding shares of stock of another entity on a voluntary basis. Unlike mergers, exchanges, or asset purchases, a stock purchase may occur without any official corporate action by the board of directors or the stockholders. However, the sale of stock or membership interests may be subject to transfer restrictions set forth in a stockholders' agreement or operating agreement.

¹⁵ *Village Builders 96, L.P. v U.S. Laboratories, Inc.*, 121 Nev. 261, 268, 112 P.3d 1082, 1087 (Nev. 2005).

¹⁶ Nevada Revised Statutes, s 78.565.

Corporate Anti-Takeover Protections

In certain cases, Nevada law provides wide latitude to existing management (both directors and officers) to avoid the effects of hostile takeovers.¹⁷ For example, the voting rights of shares of issuing corporations that are acquired in an acquisition of control shares may be limited.¹⁸

In addition, subject to certain conditions, a resident domestic corporation may be prohibited from engaging in any business combination (such as a merger or share exchange) with any interested shareholder (or affiliate) for a period of two years after the date on which the interested shareholder acquired its shares in the corporation.¹⁹ Nevada law also grants boards of directors broad discretion to take action when confronted with a change or potential change in control of the corporation.²⁰

Dissenters' Rights

If a stockholder disagrees with (or dissents from), among other things, a merger of the corporation with another corporation, subject to certain limitations, the stockholder may, by complying with certain notice and other statutory requirements, require the corporation to purchase the dissenting shareholder's shares.

If the corporation and the dissenting stockholder cannot agree on a value for the shares, the corporation must petition the court to determine their value. These dissenters' rights do not extend to holders of shares of a Nevada corporation registered on a national securities exchange (e.g., NYSE or NASDAQ).

Dissenters' rights also do not extend to a class or series of shares that are traded in an organized market and are held by 2,000 or more stockholders of record and that have a market value of at least US \$20,000,000, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, and beneficial stockholders owning more than 10 per cent of such shares, unless the corporation's articles of incorporation provide otherwise.²¹

Acquisition of Realty

Purchases

The purchase of fee simple ownership of Nevada real estate is best accomplished through a written purchase agreement, because an oral agreement

17 Nevada Revised Statutes, ss 78.138 and 78.139.

18 Nevada Revised Statutes, ss 78.378–78.3793.

19 Nevada Revised Statutes, ss 78.411–78.444.

20 Nevada Revised Statutes, s 78.139.

21 Nevada Revised Statutes, s 92A.390.

to purchase or sell Nevada real estate is generally not enforceable.²² The written purchase agreement must state the amount of the consideration to be paid for the real estate,²³ and it will usually cover basic matters such as the identity of the property, the timing of the transaction, and the allocation between the potential buyer and seller of ongoing income and expense (e.g., rents and utilities).

There are other statutes and regulations that may affect a real estate acquisition, particularly if the transaction involves residential property.²⁴ Nevada law, however, generally gives the parties wide latitude to structure their transactions, and there are no required procedures under the statutes. As a result, a written purchase agreement for Nevada real estate is often lengthy and detailed.

Most real estate purchases also require an investigation of the property by the potential buyer, a process that can involve substantial expenditures of time and money. Most written purchase agreements, therefore, provide for a period of time during which the buyer may investigate the property for defects or problems.

Matters of concern to the buyer include title, physical condition and state of repair of any improvements to the property, soil and subsurface conditions, zoning and land use regulations, environmental matters, availability of financing, availability of water and other utilities, financial history of the property, and economic feasibility of the particular investment. The buyer's satisfaction as to such matters may be made an explicit condition of the buyer's obligation to purchase the property.

The importance of such investigations and of the prospective buyer making a thorough analysis of all aspects of the transaction are critical if the seller is unwilling to make representations and warranties with respect to the property. Without seller representations and warranties, the buyer may be left without legal recourse against a creditworthy party for problems discovered after the property is purchased.

Purchase agreements commonly provide for the condition of title at closing, the issuance of title insurance, and the allocation of responsibility between buyer and seller for the payment of the insurance premiums. A title company will prepare a preliminary title report showing all matters of record affecting the property, including taxes, liens, monetary encumbrances, easements, and declarations of covenants, conditions, and restrictions. The title company will provide copies of the documents identified in the title report.

An owner's policy of title insurance insures that title is vested in the buyer and that there are no encumbrances to title except for those shown on the policy. A lender's policy will insure that a lender holds a valid lien on the property subject to priority liens and other encumbrances shown on the policy.

22 Nevada Revised Statutes, s 111.210.

23 Nevada Revised Statutes, s 111. 210.

24 Nevada Revised Statutes, ss 113.060–113.150.

It is customary for a purchase agreement to provide for an escrow. In this arrangement, an independent third party (such as a title insurance company) holds documents and money until the parties are prepared to complete the transaction. When the transfer of title and payment of the purchase price finally take place (called the ‘closing’), the escrow agent disburses the purchase money deposited by the buyer to the seller, issues a title insurance policy to the buyer, and records the deed to the property in the land records, thereby completing the purchase. The escrow agent also will distribute a final ‘settlement statement’ showing the actual amounts that were deposited in escrow and distributed at closing.

Closing Documents

Deeds

It is customary to transfer real estate by ‘a grant, bargain, and sale deed’. This is a form of limited warranty deed which warrants that, prior to the time of the execution of the conveyance, the grantor has not conveyed the same real property, or any right, title, or interest therein, to any person other than the grantee; and that the real property is, at the time of the execution of the conveyance, free from encumbrances, done, made, or suffered by the grantor or any person claiming under him.²⁵ ‘Quitclaim deeds’, by which a seller transfers its rights in the real property without any warranties, are less common.

The deed should be recorded in the county where the real property is located to put third parties on notice regarding the conveyance. A deed submitted for recording must be accompanied by a declaration of value and will be subject to payment of Nevada’s real property transfer tax (discussed in the subsection ‘Real Property Transfer Tax’, below).

Failure to record a deed promptly may permit third parties, such as innocent purchasers or lien holders, to acquire rights superior to the rights of the buyer.

Financing Instruments

It is common that the acquisition of real property is financed by the seller or a third party lender and the borrower grants the creditor a security interest in the property. The borrower will sign and deliver a promissory note to the creditor to evidence the indebtedness and sign a deed of trust that will be recorded against the property to secure the payment of the promissory note.

The parties may use other financing documents, including a loan agreement, assignment of leases and rents, UCC financing statements,²⁶ payment guarantee, and an environmental indemnity agreement.

²⁵ Nevada Revised Statutes, s 111.170.

²⁶ A Uniform Commercial Code-1 (UCC-1) financing statement is used when personal property (equipment, inventory, and other tangible assets of a business) is used as

Taxation

Business Tax and State Business License Fee

Nevada imposes an excise tax on employers at a rate of 1.17 per cent of the amount by which the sum of all the gross wages paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer exceeds US \$62,500.²⁷

The business tax is imposed on every enterprise that is subject to the Nevada unemployment compensation laws. Financial institutions, Indian tribes, non-profit organizations which are recognized as tax exempt under federal law, and political subdivisions are exempt from the business tax.²⁸ Although the business tax may not be deducted from any employee wages, an employer may deduct the amount that is paid by the employer for health insurance or a health benefit plan.²⁹

Nevada requires that most enterprises obtain a state business license before conducting business in the State of Nevada and imposes a fee of US \$200 in connection with the license application.³⁰ Enterprises that are exempted from the license and license fee requirement are:

- Governmental entities;
- Non-profit organizations that are recognized as tax exempt under federal law;
- Natural persons operating a business from their home and whose net earnings from that business are not more than 66.23 per cent of the average annual wage, as computed for the preceding calendar year in connection with unemployment compensation;
- Natural persons whose sole business is the rental of four or fewer dwelling units to others;
- Businesses whose primary purpose is to create or produce motion pictures; and
- Non-profit organizations.³¹

Bank Excise Tax

Nevada imposes an excise tax on each bank at a rate of US \$1,750 for each branch office maintained by the bank in the State of Nevada in excess of one

collateral for borrowing. This form of secured loan is part of the process of perfecting the security interest in the property.

27 Nevada Revised Statutes, s 363B.110(1). Gross wages include income from tips reported by an employee that are collectively reportable for the purposes of unemployment compensation. Nevada Revised Statutes, s 612.190(1).

28 Nevada Revised Statutes, ss 363B.030 and 363B.110(1).

29 Nevada Revised Statutes, ss 363B.110(2) and 363B.115(1).

30 Nevada Revised Statutes, s 76.100.

31 Nevada Revised Statutes, s 76.020.

branch in each county in Nevada on the first day of each calendar quarter.³² The tax does not apply to credit unions or thrift companies.³³ Branch locations subject to the tax include ‘brick-and-mortar’ locations where deposit accounts are opened, deposits are accepted, checks are paid, and loans are granted, but excludes automated teller machines and other specified locations.³⁴

Live Entertainment Tax

Nevada imposes an excise tax on admission to any facility in Nevada where live entertainment is provided, except for specified events.³⁵ The rate of tax depends on the maximum occupancy of the facility. A facility with an occupancy of less than 7,500 persons pays 10 per cent of the admission charge plus 10 per cent of any amounts paid for food, refreshments, and merchandise purchased; a facility with an occupancy of at least 7,500 persons pays 10 per cent of the admission charged.³⁶

Admission charges collected and retained by a non-profit organization which is recognized as tax exempt under federal law are exempt from the tax. Gratuities, service charges, and credit card processing fees also are exempt from the tax.

Any ticket for live entertainment must state whether the tax is included in the price of the ticket. If the ticket does not include such a statement, the entity collecting and retaining the admission charge must pay the tax based on the face amount of the ticket.³⁷

Personal Income Tax

Personal income taxes are prohibited under the Nevada State Constitution.³⁸

Property Tax

Except as otherwise exempted, all real and personal property located within Nevada is subject to taxation.³⁹ Chapter 361 of the Nevada Revised Statutes sets forth numerous real and personal property tax exemptions.⁴⁰ Real property means land, improvements on land, and any right to possession of land.⁴¹ Personal property means all property which is not real property or a vehicle.⁴²

32 Nevada Revised Statutes, s 363A.120(1).

33 Nevada Revised Statutes, s 363A.120(3).

34 Nevada Revised Statutes, s 363A.120(3).

35 Nevada Revised Statutes, s 368A.200.

36 Nevada Revised Statutes, s 368A.200(1).

37 Nevada Revised Statutes, s 368A.200(4).

38 Nevada Constitution, art 10, s 1, cl 9.

39 Nevada Revised Statutes, s 361.045.

40 Nevada Revised Statutes, ss 361.050–361.187.

41 Nevada Revised Statutes, s 361.035.

42 Nevada Revised Statutes, s 361.030.

The total amount of the *ad valorem* property tax may not exceed US \$3.64 on each US \$100 of assessed valuation, except in specified situations.⁴³

All property must be assessed at 35 per cent of its taxable value.⁴⁴ Taxable value is the full cash value of:

- Vacant land (by considering the uses to which it may lawfully be put, any legal or physical restrictions upon those uses, the character of the terrain, and the uses of other land in the vicinity) or improved land consistent with the actual use; and
- Any improvements made on the land by subtracting from the cost of replacement of the improvements all applicable depreciation and obsolescence at 1.5 per cent per year for up to 50 years.⁴⁵

Generally, property taxes are paid to the county in which the real and personal property is located. Property taxes can vary from county to county as a result of the various types of taxes in each tax district (county, city, school, fire, water, sewer, and so on). Local governments in Nevada propose a budget each year, which is subject to public notice and hearing.⁴⁶ After a budget setting forth a combined tax rate is adopted, the budget is submitted to the Nevada Tax Commission for approval. The county commission will levy the tax rate after the Nevada Tax Commission has certified the combined tax rate.

Annual property tax increases are capped at 3 per cent for a primary residence and 8 per cent for all other property, excluding any increase in the assessed valuation resulting from any improvement to the property or change in the actual or authorized use of the property.⁴⁷

Real Property Transfer Tax

Nevada imposes a transfer tax on each deed that conveys real property with a fair market value in excess of US \$100.⁴⁸ Buyer and seller are jointly and severally liable for payment of the tax.⁴⁹ The county collects the tax at the time a deed is presented for recording in the land records.⁵⁰

The deed must be submitted with a form of declaration of value in which the amount of the tax is calculated.⁵¹ The basis for the tax is the sale price of the real property or its estimated fair market value. The rate of the tax varies from

43 Nevada Revised Statutes, s 361.453.

44 Nevada Revised Statutes, s 361.225.

45 Nevada Revised Statutes, s 361.227.

46 Nevada Revised Statutes, ss 361.445–361.470.

47 Nevada Revised Statutes, ss 361.4722 and 361.4723.

48 Nevada Revised Statutes, s 375.020.

49 Nevada Revised Statutes, s 375.030(2).

50 Nevada Revised Statutes, s 375.030.

51 Nevada Revised Statutes, s 375.060.

county to county.⁵² There are several important exemptions from the transfer tax. Transfer tax does not apply to:

- A mere change in identity, form, or place of organization, such as a transfer between a business entity and its parent, its subsidiary, or an affiliated business entity, if the affiliated business entity has identical common ownership;
- A transfer of title without consideration from one joint tenant or tenant in common to one or more remaining joint tenants or tenants in common; and
- A conveyance of real property to a business organization if the person conveying the property owns 100 per cent of the organization to which the conveyance is made.⁵³

Sales and Use Tax

In General

Nevada taxes the sale, storage, use, and consumption of tangible personal property in Nevada. Although sales and use taxes are separate forms of taxation, they are complimentary and any particular transaction will be subject to only one form of tax.⁵⁴

The effective rate of sales/use taxation is the sum of several taxes, which vary from county to county.⁵⁵ Chapter 372 of the Nevada Revised Statutes sets forth numerous exemptions from sales and use taxes.⁵⁶

Payment

Sales/use taxes are payable to the Nevada Department of Taxation on a monthly basis, unless the taxable sales do not exceed US \$10,000 per month and the retailer files quarterly reports.

If no tax is due or sales are less than US \$1,500, then only an annual report is required.⁵⁷

Customs Regulation

This subject is governed by laws of the United States of America, and not by state law.

⁵² Nevada Revised Statutes, s 375.020.

⁵³ Nevada Revised Statutes, s 375.090; Nevada Administrative Code, s 375.170.

⁵⁴ Nevada Revised Statutes, s 372.345.

⁵⁵ Nevada Revised Statutes, ss 372.105 (sales tax), 372.185 (use tax), 374.110 (local school support tax), 377.020(1) (basic county relief tax), 377.020(4) (supplemental city council relief tax), and 377A.030 (county optional sales taxes).

⁵⁶ Nevada Revised Statutes, ss 372.260–372.350.

⁵⁷ Nevada Revised Statutes, ss 372.355 and 372.380.

Currency Regulation, Capital and Profit Transfer, and Investment Incentives

These matters are generally restricted by federal tax and securities laws, which are very fact-specific in their application.

Competition Law

Legislative Framework

Nevada competition law is known as the Nevada Unfair Trade Practice Act (NUTPA) and is codified in Chapter 598A of the Nevada Revised Statutes. The NUTPA supplements federal competition (or antitrust) law with similar proscriptions of anti-competitive conduct. Nevada law also regulates monopolistic activities by enterprises in the bidding for public contracts and in the motor vehicle finance and sales industry.

Exemptions

Certain organizations, acts, and contractual restrictions are exempt from the coverage of the NUTPA.⁵⁸ Some non-profit organizations, such as labor unions and religious and charitable organizations, are exempt from the NUTPA. Conduct that is authorized, regulated, or approved by federal, state, or local statute, ordinance, or regulation, or by a federal, state, or local administrative agency, is exempt from the NUTPA.

The NUTPA exempts non-compete covenants that restrict the seller from competing with the buyer within a reasonable market area for a reasonable period of time when they are part of a contract of sale for a business. The NUTPA also exempts non-compete covenants which are part of a commercial shopping center lease that restrict the parties from permitting or engaging in the furnishing of certain services or the sale of certain goods within the shopping center where the leased premises is located.

Prohibited Acts

The NUTPA enumerates prohibited acts, including price fixing, division of markets, tying arrangements, monopolies, and acquisitions of enterprises which may result in a monopoly, may substantially lessen competition, or may be in restraint of trade.⁵⁹

Any agreement or collusion among bidders or prospective bidders for public contracts to bid a fixed price (or otherwise) is void.⁶⁰ In addition, no governing

⁵⁸ Nevada Revised Statutes, s 598A.040.

⁵⁹ Nevada Revised Statutes, s 598A.060.

⁶⁰ Nevada Revised Statutes, s 332.820(1).

body or its employees or representative may disclose proprietary information or any other information to any particular bidder which would give such bidder any advantage over any other bidder in advance of the opening of bids. Such disclosure renders void all bids received by the government body.⁶¹

Monopolistic financing practices in the motor vehicle sales and financing industry are void and against the public policy of the State of Nevada.⁶² Nevada law prohibits certain conduct by a manufacturer or distributor of motor vehicles, or by a person financing the sale of such vehicles, when that conduct has the effect of lessening or restricting competition or creates or tends to create a monopoly.

Enforcement

The Bureau of Consumer Protection, Antitrust Unit, under the direction of the Nevada Attorney General, enforces state and federal competition laws through investigations of suspected violations and the commencement of judicial proceedings (whether civil or criminal) on behalf of the state and its residents.⁶³

The Nevada Attorney General is authorized to cooperate with and coordinate the enforcement of the NUTPA with federal authorities and other states.⁶⁴ Any person that is injured or damaged, or threatened with such injury or damage, by a violation of the NUTPA may commence a civil judicial proceeding.⁶⁵

Liability

An enterprise is liable for the acts of its officers, directors, representatives, or agents acting within the scope of their actual or apparent authority.⁶⁶ An enterprise may be subject to criminal and civil liabilities such as fines, penalties, treble damages, and reasonable attorneys' fees and costs.

Intellectual Property Protection

Trade Marks

Nevada law provides for the state registration of trade marks, trade names, and service marks, all of which are 'marks'.⁶⁷ Registration at the state level provides protection limited to the laws of Nevada and only if there is no prior registration with the United States Patent and Trade Mark Office.

61 Nevada Revised Statutes, s 332.820(2).

62 Nevada Revised Statutes, s 482.3645.

63 Nevada Revised Statutes, s 598A.070.

64 Nevada Revised Statutes, s 598A.080.

65 Nevada Revised Statutes, s 598A.210.

66 Nevada Revised Statutes, s 598A.230.

67 Nevada Revised Statutes, s 600.260.

Under Nevada law, a ‘service mark’ is a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.⁶⁸ Nevada law considers a ‘trade mark’ as any word, name, symbol, or device, or any combination of these, adopted and used by a person to identify goods made or sold by that person and to distinguish them from goods made or sold by others.⁶⁹

A ‘trade name’ under Nevada law is a word, symbol, device, or any combination of these, used by a person to identify the business, vocation, or occupation of that person and distinguish it from the business, vocation, or occupation of others.⁷⁰ Under Nevada law, therefore, trade marks are used to distinguish products, service marks are used to distinguish services, and trade names are used to distinguish businesses, vocations, or occupations.

Common law trade mark infringement has been recognized by the Nevada Supreme Court as a form of unfair competition.⁷¹ Under common law, the first user of a trade mark in commerce is protected against later competing uses that are likely to cause confusion as to the source or affiliation of goods and services.

A mark may be registered in Nevada by a person who has adopted and is using the mark in Nevada.⁷² A trade mark is ‘used’ on goods when it is placed on the goods, their containers, the displays associated with them, or on the tags or labels affixed to them, and the goods are sold or otherwise distributed in Nevada.⁷³ A service mark is ‘used’ on services when it is used or displayed in the sale or advertising of services and the services are rendered in Nevada.⁷⁴ A mark may be registered by filing a form with the Nevada Secretary of State and providing the requested information. A registration is good for five years and may be renewed, subject to certain requirements.⁷⁵

The Nevada Secretary of State will cancel a registration under certain circumstances, including expiration of the mark, abandonment of the mark, and when the registered mark is likely to cause confusion, mistake, or to deceive because of its similarity to a mark registered with the United States Patent and Trade Mark Office before the date of the Nevada registration.⁷⁶

Trade Secrets

Trade secret law promotes the development of commercial intangible property by protecting such intangibles from misappropriation. Trade secret law, unlike

68 Nevada Revised Statutes, s 600.290.

69 Nevada Revised Statutes, s 600.300.

70 Nevada Revised Statutes, s 600.310.

71 *A.L.M.N., Inc. v Rosoff*, 104 Nev. 274, 757 P.2d 1319 (1988).

72 Nevada Revised Statutes, s 600.340.

73 Nevada Revised Statutes, s 600.320(1).

74 Nevada Revised Statutes, s 600.320(2).

75 Nevada Revised Statutes, s 600.360.

76 Nevada Revised Statutes, s 600.390.

copyrights and patents (and, in the modern era, trade marks), is primarily a product of state law. Nevada adopted the Uniform Trade Secrets Act in 1987.⁷⁷ A ‘trade secret’ is defined as information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction, or code that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, the public or any other persons who can obtain commercial or economic value from its disclosure or use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.⁷⁸

It is a question of fact whether company information such as customer lists or price information is a trade secret. There are four relevant factors to consider: first, the extent to which the information is known outside of the business and the ease or difficulty with which the acquired information could be properly acquired by others; second, whether the information was confidential or secret; third, the extent and manner in which the employer guarded the secrecy of the information; and, fourth, the former employee’s knowledge of customers’ buying habits and other customer data and whether this information is known by the employer’s competitors.⁷⁹

The owner of a trade secret is presumed to have made a reasonable effort to maintain secrecy if the word ‘Confidential’ or ‘Private’ is placed in a reasonably noticeable manner on any medium or container that describes or includes any portion of the trade secret.⁸⁰ This presumption may be rebutted only by clear and convincing evidence that the owner did not make reasonable efforts to maintain secrecy.⁸¹

Right of Publicity

Under Nevada law, a person has a right of publicity in his name, voice, signature, photograph, or likeness.⁸² The right of publicity lasts during the life of the person and 50 years after his death, regardless of whether the person commercially exploits the right during his lifetime.⁸³ The right of publicity is freely transferable, in whole or in part, by contract, license, gift, conveyance,

77 Nevada Revised Statutes, ss 600A.010–600A.100.

78 Nevada Revised Statutes, s 600A.030(5).

79 *Finkel v Cashman Prof'l, Inc.*, 128 Nev. Adv. Op. No. 6, 270 P.3d 1259 (2012) (quoting *Frantz v Johnson*, 116 Nev. 455, 466, 999 P.2d 351, 358 (2000)).

80 Nevada Revised Statutes, s 600A.032.

81 Nevada Revised Statutes, s 600A.032.

82 Nevada Revised Statutes, s 597.790(1).

83 Nevada Revised Statutes, s 597.790(1).

assignment, devise, or testamentary trust by a person or his successor in interest.⁸⁴

The commercial use of a person's name, voice, signature, photograph, or likeness requires the written consent of the person, or his successor in interest, except in specified circumstances, including use in news, public affairs, or sports broadcast or publication or use in or an attempt to portray, imitate, simulate, or impersonate a person in live performances, written materials, film, radio, television, or other audio or visual programs.⁸⁵ If a deceased person has not transferred his rights and has no surviving beneficiary or successor in interest upon his death, the commercial use of his name, voice, signature, photograph, or likeness does not require consent.⁸⁶

Copyright and Works of Art

Although Nevada has no copyright statutes, the Nevada Revised Statutes provide for the protection of certain limited edition, original visual, and graphic works of art.⁸⁷ The term 'work of art' means any original creation of visual or graphic art in any medium (including paintings, drawings, photographic prints, or sculptures) that is part of a limited edition of not more than 300 copies.

Works that are excluded from the scope of the term 'work of art' are sequential imagery such as motion pictures, work prepared by contract for commercial use by the purchaser, work prepared by the employee of a publisher during the course of his employment, and work submitted for publication at no charge.⁸⁸

Patent

An employer is the sole owner of any patentable invention or trade secret developed by his employee during the course and scope of the employment that relates directly to work performed during the course and scope of the employment, unless otherwise modified by an express written agreement.⁸⁹

Employment Law

At-Will Employment and Right to Work

All employment not otherwise governed by a statute or an agreement (whether express or implied) is presumed to be at-will, which means that an employer

84 Nevada Revised Statutes, s 597.800(1).

85 Nevada Revised Statutes, s 597.790(2).

86 Nevada Revised Statutes, s 597.800(2).

87 Nevada Revised Statutes, ss 597.720–597.760.

88 Nevada Revised Statutes, s 597.720.

89 Nevada Revised Statutes, s 600.500.

may terminate employees at any time, with or without cause.⁹⁰ An employee may rebut the presumption by proving by a preponderance of evidence that there was an express or implied contract term limiting the authority of the employer.⁹¹ An employer's authority to terminate an employee also may be limited by the terms of a collective bargaining agreement entered into with a labor organization.

Nevada is a 'right to work' state, which means that employees may not be denied employment for refusing to join a labor organization or pay dues to such a union.⁹² Agreements requiring membership in a labor organization as a condition to employment are prohibited.⁹³

Wages and Hours

Nevada has a two-tier minimum wage system. The Nevada minimum wage rates are required to be analyzed and updated annually by the Nevada Labor Commissioner.⁹⁴ Employees must be paid at least US \$7.25 per hour if they have been provided with qualifying healthcare benefits by their employer. All other employees must be paid no less than US \$8.25 per hour.

Discharged employees are entitled to earned and unpaid wages and compensation immediately.⁹⁵ Employees who resign are entitled to earned and unpaid wages and compensation no later than the day the employee would have been regularly paid or seven days after resignation, whichever is the earlier date.⁹⁶ If the employer fails to pay a discharged employee within three days after wages become due, or a resigning employee on the day the wages are due, the wages continue to accrue at the same rate until paid or for 30 days, whichever is less.⁹⁷

Non-Compete Agreements

Generally, no employer may intentionally restrict a terminated employee from obtaining employment elsewhere in the state.⁹⁸ An employer, however, can enforce a voluntary non-competition agreement with an employee by which the employee agrees not to work in the same business as the employer in a specified geographic area for a certain amount of time after the separation of the employee from the employer.

90 *Am. Bank Stationary v Farmer*, 106 Nev. 698, 701, 799 P.2d 1100, 1101 (1990);
Vancheri v GNLV Corp., 105 Nev. 417, 421, 777 P.2d 366, 369 (1989).

91 *Am. Bank Stationary v Farmer*, 106 Nev. 698, 701, 799 P.2d 1100, 1101-1102 (1990).

92 Nevada Revised Statutes, ss 613.250-613.270.

93 Nevada Revised Statutes, ss 613.250-613.270.

94 Nevada Revised Statutes, s 608.250.

95 Nevada Revised Statutes, s 608.020.

96 Nevada Revised Statutes, s 608.060.

97 Nevada Revised Statutes, s 608.040.

98 Nevada Revised Statutes, s 613.200.

An employer also may enter into an agreement with an employee that restricts the employee's post-separation disclosure of trade secrets and other confidential information learned or obtained during the course of employment.⁹⁹

Independent consideration is not necessary to support such restrictive covenants in the context of an at-will relationship; however, the covenants must be otherwise reasonable in scope and duration.¹⁰⁰

Civil Rights

Nevada law prohibits employment discrimination and generally tracks Title VII of the United States Civil Rights Act; however, Nevada prohibits discrimination based on sexual orientation and gender identity or expression in addition to discrimination on the basis of race, color, religion, sex, age, disability, or national origin.¹⁰¹

Nevada Occupational Safety and Health Act

The Nevada Occupational Safety and Health Act requires employers to provide safe and healthful working conditions for employees.¹⁰² An employer may self-insure or obtain workers' compensation insurance from a private insurer.¹⁰³

Among various responsibilities, employers must post notices and information provided by the Nevada State Department of Industrial Relations informing employees of their rights and obligations, assign at least one person to be in charge of occupational safety and health, adopt a safety program, and 'do every other thing reasonably necessary to protect the lives, safety, and health of employees.'¹⁰⁴

Worker's Compensation

The Nevada Industrial Insurance Act requires that employers carry workers' compensation insurance for all employees to ensure the quick and efficient payment of compensation to employees who are injured or disabled in the course of employment.

Except as otherwise expressly provided, the workers' compensation system provides the exclusive remedy for work-related injuries.¹⁰⁵

99 Nevada Revised Statutes, s 613.200(4)

100 *Camco v Baker*, 113 Nev. 512, 936 P.2d 829 (1997); Nevada Revised Statutes, s 613.200(4).

101 Nevada Revised Statutes, ss 613.310–613.435.

102 Nevada Revised Statutes, ss 618.005–618.900.

103 Nevada Revised Statutes, ss 616B.300 and 616B.460.

104 Nevada Revised Statutes, ss 618.375 and 618.383.

105 Nevada Revised Statutes, s 616A.020.

Unemployment Compensation Law

Employers in Nevada are subject to unemployment taxes to fund benefits for persons who are separated from employment.¹⁰⁶ The Nevada Unemployment Compensation Law specifies procedures to determine the eligibility (or ineligibility) of a person to receive unemployment benefits.

The Law specifies that persons who leave employment without good cause or who are terminated for certain crimes or misconduct related to employment are not eligible for benefits.¹⁰⁷

Employee Privacy and Other Rights

The Nevada statutes set forth certain particular employment practices affecting employee rights to privacy and non-discrimination. Employers in Nevada may not refuse to hire, discharge, or otherwise discriminate against an employee or prospective employee for the lawful use of substances outside of work during non-working hours if such use does not adversely impact the person's ability to do his job or the safety of other employees.¹⁰⁸

Employers in Nevada are prohibited from 'blacklisting' or otherwise publishing an employee's name to prevent the employee from securing similar employment.¹⁰⁹ Employers in Nevada may not require an employee or prospective employee to submit to a lie detector test as a condition of employment.¹¹⁰

An employer may, however, require an employee to submit to a lie detector test in connection with an ongoing investigation into theft, embezzlement, misappropriation, or industrial espionage if the employee had access to the property that is the subject of the investigation and the employer has a reasonable suspicion that that employee was involved in the incident or activity under investigation.¹¹¹

Banking Law

Regulatory Body

The Nevada Department of Business and Industry, Division of Financial Institutions (DFI) supervises and controls enterprises providing financial services in the State of Nevada by regulating the formation, operation, and dissolution of such institutions.

106 Nevada Revised Statutes, ss 612.010–612.760.

107 Nevada Revised Statutes, ss 612.375 and 612.380–612.448.

108 Nevada Revised Statutes, s 613.333.

109 Nevada Revised Statutes, s 613.210.

110 Nevada Revised Statutes, s 613.480.

111 Nevada Revised Statutes, s 613.510.

Bank Formation

A bank organized under Nevada law may provide a range of financial services, including negotiating promissory notes, drafts, bills of exchange, and other evidences of indebtedness; receiving deposits; and loaning money, with or without personal security or real and personal property.¹¹² A Nevada bank may exercise any authority and perform all acts that a national bank may exercise or perform, with the consent and written approval of the Commissioner of Financial Institutions (the Commissioner).

Subject to certain limitations, a Nevada bank may purchase, hold, and convey real property as is necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and for future site expansion; as an investment in real property development; and as is mortgaged to it in good faith by way of security for loans made or money due to the bank.

However, real property acquired through the collection of debts due may not be held for longer than five years, unless the Commissioner grants an extension of time.¹¹³

Persons desiring to form a bank must apply for approval from the Commissioner, who will examine all of the facts connected with the formation of the proposed bank, including its location and proposed stockholders or members. The Commissioner will consider various other factors during its evaluation of the application. One such factor is whether the establishment of the bank will meet the needs and promote the convenience of the community to be served by the bank.

The Commissioner also will evaluate whether or not the character, general fitness, and responsibility of the persons proposed as stockholders, directors, officers, members, or managers of the bank are such as to command the confidence of the community in which the bank is proposed to be located.

Finally, the Commissioner will consider whether the probable volume of business and reasonable public demand in the community is sufficient to assure and maintain the solvency of the new bank and of other banks existing in the community at that time.¹¹⁴

The proposed bank also must file proof with the Commissioner that it is a member of the Federal Deposit Insurance Corporation.¹¹⁵ A Nevada bank must maintain its principal office within the State of Nevada, although branch offices may be established from time to time with the written consent of the Commissioner.¹¹⁶

112 Nevada Revised Statutes, s 662.015.

113 Nevada Revised Statutes, ss 662.015 and 662.103.

114 Nevada Revised Statutes, s 659.045.

115 Nevada Revised Statutes, s 659.085.

116 Nevada Revised Statutes, s 660.015.

Interstate Regulation of Out-of-State and Foreign Banks

The acquisition of a Nevada depository institution or holding company must be approved by the Commissioner.¹¹⁷ A depository institution may act as an agent of any other depository institution that is a subsidiary of the same holding company in conducting authorized activities, regardless of whether the affiliated depository institutions have the same home state.¹¹⁸

Out-of-state and foreign¹¹⁹ banks must be licensed and chartered by the DFI before opening a branch or acquiring a Nevada bank, unless, in the case of a foreign bank, the bank transacts business authorized under federal law or regulation and does not make loans in Nevada which are secured by real property located in Nevada.¹²⁰ A foreign bank organized under the laws of a United States territory, however, may operate an interstate branch in Nevada as if it were a Nevada bank.¹²¹

Other Forms of Financial Institutions

Savings and Loan Association

Nevada law provides for the incorporation of associations whose principal and primary business is to borrow, loan, and invest money but that are not formed as banks, credit unions, thrift companies, trust companies, or other specified enterprises.¹²² A savings and loan association is organized primarily to accept deposits and make real estate loans; however, Nevada law authorizes such associations to engage in a wide range of investment and borrowing activities.¹²³

An applicant to conduct the business of a savings and loan association must satisfy certain statutory criteria, including the character and responsibility of the applicant, reasonable probability of success, and sufficiency of capital.¹²⁴ Savings and loan associations must comply with requirements for the maintenance of adequate reserves, capitalization, and bonding.¹²⁵

Thrift Company

The Nevada Thrift Companies Act provides for the formation of thrift companies, which are authorized to accept deposits; to purchase, sell, discount, or make specified secured loans; and to enter into leases and purchase

117 Nevada Revised Statutes, s 666.305.

118 Nevada Revised Statutes, s 666.390.

119 'Foreign' means organized under the laws of a foreign country or a territory of the United States. Nevada Revised Statutes, s 666A.050.

120 Nevada Revised Statutes, s 666A.080.

121 Nevada Revised Statutes, s 666A.080.

122 Nevada Revised Statutes, s 673.070

123 Nevada Revised Statutes, ss 673.276–673.316.

124 For example, Nevada Revised Statutes, s 673.080.

125 Nevada Revised Statutes, ss 673.113, 673.2758, and 673.377.

equipment for such leases.¹²⁶ The DFI regulates thrift companies in Nevada. An applicant to conduct the business of a thrift company must satisfy certain statutory criteria, including qualifications for the president and managers, stockholder equity, public convenience, and ‘reasonable and adequate’ reserves in an amount determined by the Commissioner.¹²⁷ With the approval of the Commissioner, a thrift company may exercise any authority, right, power, and privilege, and may perform any act and enjoy the same immunities as licensed banks.¹²⁸ Thrift company deposits may be insured either by the Federal Deposit Insurance Corporation (FDIC) or by a ‘private deposit insurer’ that has been approved by the Commissioner.¹²⁹

Trust Company

A trust company engages as a trustee, fiduciary, or agent for individuals or enterprises in the administration of funds or property received from another, including trust, estates, receiverships, and stock transfer and registration.¹³⁰ The DFI regulates trust companies in Nevada.

An applicant to conduct the business of a trust company must satisfy certain statutory criteria, including director qualifications and capital sufficiency, and other factors as may be reasonably required by the Commissioner.¹³¹ Trust companies are prohibited from engaging in banking business by granting loans or accepting deposits and must maintain a fidelity bond on all officers and employees.¹³²

126 Nevada Revised Statutes, s 677.790.

127 For example, Nevada Revised Statutes, ss 667.190, 667.200, 667.210, and 667.230.

128 Nevada Revised Statutes, s 677.795.

129 Nevada Revised Statutes, s 677.247.

130 Nevada Revised Statutes, ss 669.070 and 669.029.

131 For example, Nevada Revised Statutes, ss 669.085, 669.100, and 669.117.

132 Nevada Revised Statutes, ss 669.210 and 669.240.

