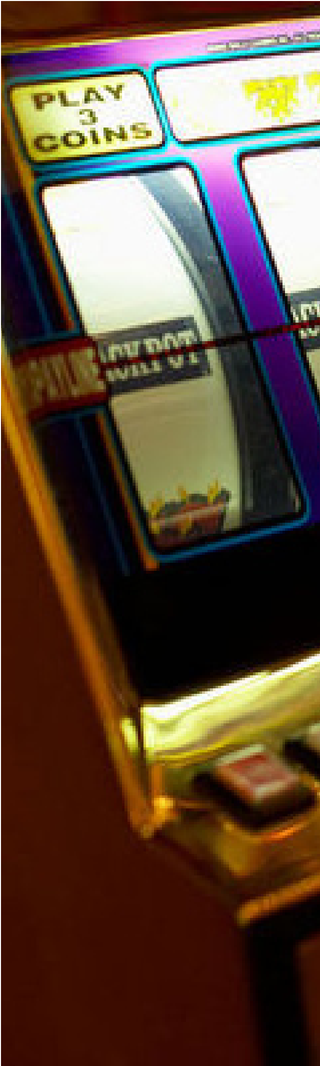

Obtaining a Restricted Gaming License in Nevada

Prepared and Presented by

The Gaming Law Practice Group

Lewis and Roca LLP

702-949-8280

ACabot@LRLaw.com

LEWIS AND ROCA LLP LAWYERS

First-time visitors to Nevada often are 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 the 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 "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 applicant, and expressly waives any claim for damages as a result thereof".

The purpose of this booklet is to provide a guide to explain and demystify the restricted gaming license application process.

1. 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.

2. When are slot machines incidental to the primary purpose of the 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 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; and
- other factors, including but not limited to the establishment's name, the establishment's marketing practices, the public's perception of the business, and the relationship of the slot machines to the primary business.

In practice, obtaining a restricted license for locations other than for bars, taverns, saloons, restaurants with a separate bar area, liquor stores, grocery 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 likely were "grandfathered" in years before the adoption of the newer location suitability standards.

Bars, taverns, saloons, restaurants with a separate bar area, liquor stores, grocery stores and drug stores generally are suitable locations for a restricted license but the type of location may dictate the maximum number of devices allowed. Convenience stores and liquor 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 types of facilities are unsuitable by either type or location. Fast food restaurants and brothels are typical examples of businesses 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 place or 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 clientele under 21 years old;
- lacks adequate supervision or surveillance; or
- is difficult to police.

3. *Who needs a restricted license?*

Either the business operator or a licensed slot route operator must obtain the 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.

4. *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 individual owner or shareholder must apply for a license. Likewise, each officer and director of a private corporation must apply for a restricted 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 also can require anyone associated with the business to obtain a license. In essence, the Commission is not restricted by the title of the job performed but may consider the functions and responsibilities of the individual.

5. *What needs to be filed?*

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 full casino license, nevertheless, Board agents still conduct a thorough criminal background 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 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; as well as 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 10-page personal history questionnaire and a 10-page personal finance questionnaire. All individual applicants must file the personal history questionnaire. This questionnaire requires five character references and requests information regarding the applicant's general profile, such as name, age, address, citizenship, prior residences and physical description; family information; military record; arrests, detentions, litigations and arbitrations and employment history for the past 25 years.

Only equity holders, such as individual owners, patrons or shareholders, must file the personal finance questionnaire. This form concentrates on the applicant's financial standing and can be read in conjunction with *Form 20: Source and Application of Funds*. These two 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 also 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.

Finally, the application package must include three fingerprint cards, to be completed at any certified printing facility, as well as the following standard

notarized documents: *Form 10: Affidavit of Full Disclosure, Form 17: Release and Indemnity of All Claims and Form 18: Request to Release Information*.

Most applicants retain a gaming attorney who is actively involved in the preparation of the application. The attorney's primary responsibility is to ensure that all the information provided is accurate and complete. The gaming attorney should carefully review the documents to make sure that all the questions have been answered and have internal consistency. For example, places of employment should correspond to places of residence; gaps in employment need to be explained and the application must be filed on forms furnished or approved by the Board. Any untrue or incomplete statement is grounds for denial, and may also result in disciplinary action. An experienced gaming attorney also can determine if any information provided requires further explanation in a supplemental exhibit to the application. Experienced gaming counsel can therefore ensure potential regulatory concerns are avoided.

6. *What type of investigation is conducted?*

Restricted investigations include exhaustive criminal background checks but the financial investigations typically are limited to reviewing 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 and Roca *Guide to Obtaining a Non-restricted Gaming License in Nevada* for more details on the nonrestricted application process.

7. 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 pubic hearing. Notice by letter will be given to all restricted applicants of the time and place of the hearing. The Board holds monthly meetings. The meeting agenda is divided into sections based upon the types of items. For example, hearings on applications for restricted licenses start at a certain time, usually 8:30 a.m. Most frequently, the investigation for the restricted license goes smoothly and the Board will not require the applicants to appear at the hearings where the application is being considered. 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, the applicant and his or her attorney should be present at the beginning of the hearings. 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. Each applicant and witness may then be sworn-in. 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 impacts on 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 attorney. Unlike the typical court case, where the attorney contends with opposing counsel before a neutral judge or jury, the applicant's counsel presents his 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 may refer the case back to staff for additional investigation. An applicant also can request a withdrawal of the application in cases where 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 the applicant and witnesses are identified and sworn.

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

The Commission 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; or
- a combination of the foregoing.

The Commission's voting rules are different from those of the Board, where a simple majority determines the action taken. If the Board has given a favorable recommendation on an application or had a tie vote, a simple

majority of votes by the Commission will determine the action of the Commission. If the Board has recommended denial of the application, the Commission must have a unanimous vote to approve the application.

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. All such orders and reasons will be made public. Any person whose application has been denied is not eligible to apply again for licensing or approval for up to one year from the date of such denial, unless the commission advises that the denial is without prejudice as to delay in reapplication.

8. How much does the process cost?

Each application for a restricted license must be accompanied by a nonrefundable application fee in the amount of $150 for each individual requiring investigation and an investigation fee of $400 for each individual, partnership or other entity seeking licensing. The Board also may 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.

9. 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 timing can be impacted by many factors such as the completeness of the application, the diligence of the applicant in providing additional information, the workload at the Gaming Control Board, the number and nature of issues posed by the application, and the complexity of the business deal.

10. What are typical reasons why an application may be denied?

A common question is what are the reasons why an applicant may 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.

Denials based on character issues may include:

- arrest or conviction of a crime involving violence; gambling or moral turpitude;
- an unexplained pattern of arrests;
- arrest for cause for a gaming crime;
- association with organized crime or unsuitable persons;
- failure to list negative information on the application;
- poor business ethics as demonstrated by civil cases, such as fraud or securities violations;
- sustained or current illegal drug use;
- discovery of unsuitable business practices such as bribes, tax evasion and the like; and
- failure to provide truthful and complete answers to the gaming agents.

Denials based on regulatory compliance may 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; and
- failure to timely respond to the agents during the course of the investigation.

Denials based on financial issues may 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 or disqualified to hold a gaming license.

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

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

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

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Las Vegas • Reno • Phoenix • Tucson • Albuquerque • Silicon Valley

3993 Howard Hughes Parkway • Suite 600 • Las Vegas, Nevada 89169

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