



Update on Nevada Licensed Family Trust Companies

Robert E. Armstrong, McDonald Carano LLP
April 25, 2023

What is a Family Trust Company?

A **Family Trust Company** (“**FTC**”) is a privately owned company that may act as a fiduciary (trustee, executor, personal representative) under state law and provide related services for a single family.

NRS 669A.080

“Family trust company” means a corporation or limited-liability company that:

1. Acts or proposes to act as a fiduciary;
2. Is organized or qualified to do business in this State to serve family members; and
3. Does not:
 - (a) Transact trust company business with;
 - (b) Propose to act as a fiduciary for; or
 - (c) Solicit trust company business from a person who is not a family member.

Advantages

- Continuity for generations of family wealth management
- Formal and cohesive management structure for numerous family trusts holding significant wealth
- Alternative to individual trustee
- Access to investment opportunities
- Privacy and security
- Limited liability
- Greater insurability
- Long-term cost and tax savings

Advantages of a *licensed* Family Trust Company

An FTC may be **licensed or unlicensed**. A **licensed Family Trust Company (“LFTC”)** offers numerous advantages over an unlicensed FTC:

- A more substantive Nevada nexus for state tax, trust situs, and trust-administration issues
- Greater legitimacy before courts
- Vendors, investment advisers, and insurance companies may be more comfortable dealing with a LFTC
- Independent third parties controlling the management and organization, which may be helpful when a family is less engaged
- Greater coordination with the family office
- Nevada’s 365-year rule against perpetuities for trusts
- Not subject to the highly technical Family Office Rule
- Not an investment adviser under the Investment Advisers Act, avoiding registration as such with the SEC
- Excluded from the definition of “investment advisor” for Nevada Blue Sky Law purposes under NRS 90.250(7)
- May qualify as a “bank” and be generally excluded from reporting under the Corporate Transparency Act
- Can open branch offices in other FTC jurisdictions such as FL, TN, or TX, allowing greater logistical and planning flexibility

Disadvantages of a licensed Family Trust Company

An LFTC also presents certain disadvantages in comparison to an unlicensed FTC:

- Greater formation and operating costs
- Minimum capitalization requirements of \$300k (with higher capitalization recommended for many LFTCs)
- Regulatory oversight from Nevada Financial Institutions Division (“NFID”)
- Initial licensure
- Ongoing periodic examinations and annual reporting
- Compliance with AML/BSA, OFAC, CTA, and other federal regulations

Creating a licensed Family Trust Company

- A LFTC in Nevada can be formed as a corporation or an LLC
- To maintain status as a Nevada entity, the annual board meeting, committee meetings, and other important meetings, especially those involving fiduciary decisions and key investment decisions, should be held in Nevada
- Typical ownership structure is the LLC or corporation will be owned by an owner trust, which can be created by executing a new trust or decanting an existing trust
- To provide greater certainty under existing IRS Private Letter Rulings, the owner trust's trustee should be an independent person rather than the trust's grantors, and can even be the LFTC itself once it is formed

Forming a Family Trust Company

Family	Counsel
<ul style="list-style-type: none">• Choose a name	<ul style="list-style-type: none">• Draft and file charter
<ul style="list-style-type: none">• Select designated relative	<ul style="list-style-type: none">• Create owner trust
<ul style="list-style-type: none">• Fund owner trust	<ul style="list-style-type: none">• Obtain state and local licenses and TIN
<ul style="list-style-type: none">• Designate board members	<ul style="list-style-type: none">• Draft articles, bylaws, operating agreement
<ul style="list-style-type: none">• Designate officers	<ul style="list-style-type: none">• Draft policy-and-procedure manual
<ul style="list-style-type: none">• Designate committee members	<ul style="list-style-type: none">• Draft minutes and organizational consent
<ul style="list-style-type: none">• Establish bank & brokerage accounts	<ul style="list-style-type: none">• Draft onboarding documents
<ul style="list-style-type: none">• Obtain insurance and fiduciary bond	<ul style="list-style-type: none">• Review and onboard family’s trusts

Structuring a Family Trust Company

When forming an FTC, family and counsel should jointly consider:

Directors

- Two to five people
- Some should be Independent Persons

Trust Committees

- Perform designated trust-administration functions

Officers

- Should be familiar with family entity
- Responsible for day-to-day operation
- Can be outsourced to third-party provider

Service Providers

- Provide administrative, property management, and other family-office services

Committees

- Serve many of the functions of a trustee for the FTC
- Can be customized along family lines

Policy and Procedure Manual

- Governs FTC operations and workflow

Essential committees in a Family Trust Company

Trust Committee or Governing Board

- Manages the trusts under the FTC's administration

Discretionary Distribution Committee

- Reviews and approves/denies decisions on distributions from a trust
- Family members may not participate in discretionary decisions for any trust of which (i) that family member or their spouse is a grantor, or (ii) that family member, their spouse, or any person to which one or both owes an obligation of support is a beneficiary
- At least one Independent Person (under I.R.C. § 672) must serve on such committee, which is key to avoiding adverse transfer-tax consequences

Investment Committee

- Reviews all investment decisions for the trusts and investment performance
- Adopts and updates investment-policy statements for each fiduciary account

Amendment Committee

- Ensures that the tax-sensitive safeguards in the governing documents of the FTC members are enforced
- Must be Independent Persons

The LFTC licensure process

- After registration with the Secretary of State, the FTC will
 - Obtain a Nevada State business license
 - File a consumer-use-tax permit
 - Obtain a city business license
 - Obtain worker's compensation insurance
 - Open a local bank account
 - Lease an office in Nevada
 - Notify the NFID of the "designated relative"
 - Adopt a policy-and-procedure manual
- NRS 669A.140 requires that a LFTC have at least one Nevada-resident officer and a registered agent in Nevada.
- A LFTC relies on meeting the definition of a "bank" under § 202(a)(2) of the Investment Advisors Act and § 202(a)(5) of the Investment Company Act.
- Because a LFTC is supervised and examined by a state authority, namely NFID, it is exempt from investment-advisor registration requirements above.

Nevada Financial Institution Division application

The LFTC will prepare and file a Nevada Financial Institution Division (“NFID”) application requiring the following information:

- Name of applicant, principal business address
- Contact information for the agent, trust officer, and designated relative
- Capitalization information (minimum \$300k, but greater capitalization is generally recommended for further protection from liability and corporate-veil piercing)

STATE OF NEVADA
FINANCIAL INSTITUTIONS DIVISION
DEPARTMENT OF BUSINESS AND INDUSTRY
ATTN: APPLICATION PROCESSING
1800 E. COLLEGE PARKWAY, SUITE 100
CARSON CITY, NV 89706

Phone: (775) 684-2970
Fax: (775) 684-2977
http://www.fid.in.gov

**APPLICATION FOR LICENSING FAMILY TRUST COMPANY
NRS & NAC CHAPTER 669A AND CHECKLIST**

Please attach all applicable attachments listed below to apply for the initial registration as a Family Trust Company

1. Name of Applicant

Legal name of Applicant

DBA, trade or assumed name(s) (different from above)

2. Principal business address. (Do not use a P.O. Box)

Address Line 1
Address Line 2
City
State
Zip Code
Phone Number
Toll Free Phone Number

3. Name of Agent.

Agent to represent and appear for the undersigned before the Commissioner of Financial Institutions and to receive all correspondence and documents, in respect to this application, in accordance with annexed Appointment of Agent.

REPRESENTATIONS

THE UNDERSIGNED, in seeking approval to organize a trust company hereby jointly and severally represent and warrant to the Commissioner of Financial Institutions Division as follows:

Full Name (Last Name, First Name MI)
Address Line 1
Address Line 2
City
State
Zip Code
Phone Number
Fax Number

Documents Received On

669A - Application & Checklist Rev. 05/24/2016

Page 1 of 5

Personal-history record

Each director, officer, and person with at least a 25% ownership stake in the LFTC will need to submit a personal-history record with extensive disclosures to NFID for a background check. The requiring information includes:

- Name, address, contact information, and physical characteristics of the applicant
- Last 10 years of occupation, including salary and reason for leaving
- Ownership of any interest in an affiliate of the applicant
- Professional credentials
- Business disclosures (e.g., bankruptcies, business-license revocations)
- Criminal disclosures
- Outstanding child-support obligations
- Financial statement of all assets/liabilities broken down by type/value
- Expenses of the applicant

NFID processes the application

- Once all application materials have been submitted, NFID will follow up for any additional information it may need to make its determination.
- The Commissioner of NFID has 60 days to investigate the FTC and determine whether to issue a license.
- No public hearing requirement for licensing, but, if the license is denied, the FTC can request a hearing within 30 days of receiving the denial.
- The FTC's administrative is confidential and is not subject to public inspection.

First-year examination

- The LFTC undergoes a confidential examination in its first year
- The examination process is comprises 4 stages:

(1) Notice of Examination

Sent on Nov. 15th of the first year of licensure,

(2) Preliminary planning

- (1) The examiner will send their Request List and Internal Control Questionnaire along with a letter explaining the process
 - (2) Examined either onsite, offsite (via secured portal), or by independent review (if there is an audited financial statement on record), and
- A report of the examination is generated within 45 days and delivered to the LFTC; or, the independent review is submitted by September 30th
 - The report of examination requires board acknowledgment
 - If any deficiencies are found, the management of the LFTC will have 30 days to correct
 - The LFTC will be rated as “satisfactory”, “needs improvement”, or “unsatisfactory”
 - A “satisfactory” rating will require re-examination only every *three* years

Ongoing maintenance

Renewal application

- NFID requires a LFTC to submit a renewal application each year due April 1
- Includes submitting financial and bank statement to assure compliance with minimum-capitalization requirements

Reporting changes

- Organizational changes with respect to owners, officers, directors, managers, and key employees should be reported promptly, or as part of the annual renewal application

Internal review

- It is also advisable to review organization documents, policy and procedural manual, regulatory compliance, and performance
- Annual board action regarding financial-institution bond and other insurance

Business-license renewal

- State and local business licenses must be renewed annually
- State and local filings include Consumer Use Tax Return (January 31), Business Personal Property Declaration (July 31), and Holder Reporting (October 31)
- Commerce tax return (August 14 of the year following the tax year starting July 1 to June 30)

Structure of a Family Trust Company

