

## Broker-Dealers' Standard of Care Under New Nevada Law

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### Issue

Summarize Nevada's new law that imposes a fiduciary duty on broker-dealers.

### Summary

The Nevada legislature recently passed a law that, effective July 1, 2017, amends certain statutes that govern broker-dealers. Among other things, the new law:

1. classifies them as financial planners, thus imposing on them a fiduciary duty (i.e., a duty to act in their clients' best interest);
2. explicitly prohibits them from violating the fiduciary duty;
3. authorizes the Administrator of the Securities Division of the Office of the Secretary of State to adopt regulations pertaining to such fiduciary duty, including providing penalties for any violation; and
4. exempts them from the requirement to maintain certain insurance and surety bonds, as is the case under existing law for other financial planners (2017 Nev. Laws Ch. 322 (S.B. 383)).

*“Broker-Dealer,” under both Nevada and federal law, is generally defined as a person engaged in the business of effecting transactions in securities for the account of others (Nev. Rev. Stat. § 90.220; 15 U.S.C. § 78c(a)(4)).*

*OLR Report [2017-R-0033](#) summarizes the common law in other state's that hold broker-dealers' to a fiduciary standard.*

(The new law also makes similar changes to statutes governing sales representatives and investment advisers.)

## **Standard of Care**

Under Nevada law, a “financial planner” is a person who (1) for compensation, advises others on the (a) investment of money or (b) provision for future income or (2) holds himself or herself out as qualified to perform either of these functions (Nev. Rev. Stat. § 628A.010). The law explicitly states that a financial planner has the duty of a fiduciary toward a client (Nev. Rev. Stat. § 628A.020).

Under prior law, broker-dealers were excluded from the definition of “financial planners” and were therefore held to the lower “suitability standard,” which required them to provide suitable investments to customers but did not require that they act in the client’s best interest. The new law removes the exemption of broker-dealers (2017 Nev. Laws ch. 322 (S.B. 383) § 1). In so doing, effective July 1, 2017, the law now holds broker-dealers to a higher standard of care, imposing on them the duty of a fiduciary to their clients, as is the case for other financial planners under Nevada law (Nev. Rev. Stat. § 628A.010).

## ***Fiduciary Duty***

Under the new law, broker-dealers now have the duty, as fiduciaries, to act in their clients’ best interest, including the duty to:

1. disclose to a client, at the time advice is given, any gain they may receive, such as profit or commission, if the advice is followed and
2. make diligent inquiry of each client to ascertain initially, and keep currently informed concerning, the client's financial circumstances and obligations and the client's present and anticipated obligations to, and goals for, his or her family (Nev. Rev. Stat. § 628A.020).

The new law explicitly prohibits broker-dealers from violating the fiduciary duty owed to their clients (2017 Nev. Laws ch. 322 (S.B. 383) § 1.7).

## **Regulations and Penalties**

Existing law generally provides that the administrator of the Securities Division of the Office of the Secretary of State licenses and regulates broker-dealers, sales representatives, and investment advisers and their representatives. Under the law, the administrator may impose sanctions for violations, including a civil penalty up to \$25,000 for a willful violation of a law under the administrator’s jurisdiction (Nev. Rev. Stat. §§ 90.630 & 90.640).

The new law authorizes the administrator of the Securities Division of the Office of the Secretary of State to:

1. enforce the fiduciary duty imposed on broker-dealers, sales representatives, and investment advisers and their representatives;
2. adopt regulations defining or excluding acts, practices, or courses of business that are as violations of that fiduciary duty; and
3. prescribe means reasonably designed to prevent such violations (2017 Nev. Laws. ch. 322 (S.B. 383) § 1.7).

## **Insurance or Surety Bond**

Nevada law requires financial planners, but not broker-dealers, sales representatives, and investment advisers, to (1) maintain (a) insurance covering liability for errors or omissions or (b) a surety bond, to compensate clients for losses of \$1,000,000 or more (Nev. Rev. Stat. § 628A.040) and (2) be licensed as insurance consultants for purposes relating to viatical settlements (NRS 688C.212). The new law maintains the exemption from this requirement for broker-dealers (2017 Nev. Laws. ch. 322 (S.B. 383) §§ 1.3 & 2). (A “viatical settlement” is generally an arrangement whereby a person with a terminal illness sells his or her life insurance policy to a third party for less than its mature value, in order to benefit from the proceeds while alive.)

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