

TITLE 15 GAMBLING AND LIQUOR CONTROL
CHAPTER 1 GAMES AND GAMING GENERAL PROVISIONS
PART 21 ENFORCEMENT OF SECURITY INTERESTS UNDER THE GAMING CONTROL ACT

15.1.21.1 ISSUING AGENCY: New Mexico Gaming Control Board.
[N, 4/30/99; 15.1.21.1 NMAC – Rn, 15 NMAC 1.21.1, 2/14/02]

15.1.21.2 SCOPE: This rule applies to all licensees under the Gaming Control Act and persons in a position to enforce a security interest in gaming property collateral.
[N, 4/30/99; 15.1.21.2 NMAC – Rn, 15 NMAC 1.21.2, 2/14/02]

15.1.21.3 STATUTORY AUTHORITY: Section 60-2E-7(B)(3) of the Gaming Control Act authorizes the board to develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act.
[N, 4/30/99; 15.1.21.3 NMAC – Rn, 15 NMAC 1.21.3, 2/14/02]

15.1.21.4 DURATION: Permanent.
[N, 4/30/99; 15.1.21.4 NMAC – Rn, 15 NMAC 1.21.4, 2/14/02]

15.1.21.5 EFFECTIVE DATE: April 30, 1999, unless a later date is cited at the end of a section.
[N, 4/30/99; 15.1.21.5 NMAC – Rn & A, 15 NMAC 1.21.5, 2/14/02]

15.1.21.6 OBJECTIVE: The objective of this rule is to establish standards for the taking and enforcement of a security interest in gaming property collateral.
[N, 4/30/99; 15.1.21.6 NMAC – Rn, 15 NMAC 1.21.6, 2/14/02]

15.1.21.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

A. “control,” when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the applicant or licensee; when used as a verb, “control” means to exert, directly or indirectly, such power, or to be in a position to exert such power.

B. “enforce a security interest” means to transfer possession of ownership or title pursuant to a security interest.

C. “gaming property collateral” means property subject to a security interest; gaming property collateral may include a security issued by a company licensee, a security issued by a holding company that is not a publicly traded corporation, or a security issued by a holding company that is a publicly traded corporation, if the enforcement of the security interest will result in the secured party’s acquiring control over the holding company.

D. “license” means an authorization required by the board for engaging in gaming activities but does not include work permits or certifications of findings of suitability.

E. “secured party” means a person who is a lender, seller, or other person who holds a valid security interest.

F. “security” means any ownership right or creditor relationship; “security” includes: (i) stock; (ii) bonds; (iii) membership in an incorporated association; (iv) partnership interest in a general or limited partnership; (v) debenture or other evidence of indebtedness; (vi) investment contract; (vii) voting trust certificate; (viii) certificate of deposit for a security; (ix) any other interest or instrument commonly known as a security; (x) any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase any of the foregoing.

G. “security agreement” means an agreement that creates or provides a security interest.

H. “security interest” means an interest in property that secures the payment or performance of an obligation or judgment.

I. “State” means the State of New Mexico.

J. “this title” means Chapter 15, Part 1 of the New Mexico Administrative Code.
[N, 4/30/99; 15.1.21.7 NMAC – Rn, 15 NMAC 1.21.7, 2/14/02]

15.1.21.8 APPROVALS REQUIRED; APPLICABILITY; SCOPE OF APPROVAL:

A. A person may not enforce a security interest in gaming property collateral except as set forth in this rule. Any attempt to enforce a security interest is void if the secured party has not complied with the requirements of this rule.

B. This rule does not apply to the enforcement of a security interest in property other than gaming property collateral.

C. Notwithstanding any other provision of this rule, approval is not required under this rule to enforce a security interest in a security issued by a company licensee if the licensee has ceased all gaming activities and has surrendered the license to the board before enforcement of the security interest.

D. The granting of an approval pursuant to this rule does not constitute any of the following:

(1) determination by the board as to the validity or enforceability of a security interest;

(2) licensing, registration, or finding of suitability of the secured party; or

(3) approval of any further sale, transfer, or other disposition of the gaming property collateral after the enforcement of the security interest.

[N, 4/30/99; 15.1.21.8 NMAC – Rn, 15 NMAC 1.21.8, 2/14/02]

15.1.21.9 APPLICATION FOR APPROVAL TO ENFORCE SECURITY INTEREST:

A. Except as otherwise provided in this rule, a secured party must apply for approval to enforce a security interest in gaming property collateral using such forms as the board may require or approve. The application for approval must include:

(1) a complete description of the gaming property collateral that is the subject of the security interest;

(2) copies of the security agreement and documents evidencing the obligation secured by the gaming property collateral;

(3) a statement by the secured party identifying the act of default by the licensee that is the basis for seeking to enforce the security interest, including notice of default sent to the licensee; and

(4) any other information requested by the board.

B. The board will investigate the facts and circumstances related to the application for approval to enforce a security interest. The investigation may include:

(1) review of all pertinent documents;

(2) analysis of the impact on the licensee if the board approves enforcement of the security interest, including an evaluation of the effect of enforcement of the security interest upon the continued operation of the licensed gaming establishment;

(3) review of the transaction to determine whether the security interest was given in violation of the Act or this title, or an attempt to evade the requirements of the Act or this title regarding the sale, assignment, transfer or other disposition of an interest in a gaming operation or in the type of property subject to this rule; and

(4) any other data or information the board deems relevant to the application.

[N, 4/30/99; 15.1.21.9 NMAC – Rn, 15 NMAC 1.21.9, 2/14/02]

15.1.21.10 PRIOR LICENSING REQUIREMENT:

A. Where applicable, prior licensing of the secured party seeking to enforce a security interest is required. The board will not approve the enforcement of any security interest in gaming property collateral unless all persons have been licensed, registered, or found suitable by the board, as applicable.

B. The board may grant a temporary or permanent waiver of the requirement of prior licensing, registration, or finding of suitability upon written request by the secured party and recommendation by the Executive Director. The board may grant such temporary or permanent waiver only if the board makes a written finding that the waiver of licensing, registration or finding of suitability is consistent with the Act and State policy.

[N, 4/30/99; 15.1.21.10 NMAC – Rn, 15 NMAC 1.21.10, 2/14/02]

HISTORY OF 15.1.21 NMAC: [RESERVED]