

LCB File No. R103-05

**PROPOSED REGULATION OF THE HOUSING DIVISION
OF THE DEPARTMENT OF BUSINESS AND INDUSTRY**

NAC 319.034 is hereby amended by adding the following language:

NAC 319.034 Appointment of members, chairman *and vice charman*; terms of office; service without compensation *and cause for removal*.

1. The Director of the Department of Business and Industry shall appoint:
 - (a) The eight members of the Committee that he is authorized to appoint pursuant to NRS 319.173 from a list of names submitted to him by the organizations represented;
 - (b) A member within 90 days after a vacancy occurs; and
 - (c) A Chairman *and vice chairman* from among the members of the Committee.
2. The term of office of each appointed member is 3 years, and each appointed member serves without compensation.
3. The terms of office of appointed members must be staggered.
4. Each appointed member may serve for only two full terms. If a person was appointed to fill an unexpired term, he shall be deemed to have served a full term. No appointed member may serve more than a total of 6 years on the Committee, *however a member shall continue to serve on the committee until his replacement on the committee is appointed*.
5. *Absence from two consecutive meetings, without just cause, may constitute good and sufficient cause for removal of a member of the committee by the director.*

NAC 319.981 is hereby amended as follows:

NAC 319.981 Closure of project after receiving reservation of tax credits; extension of time; termination of reservation; reapplication; fees.

1. Except as otherwise provided in this section, each project that receives a reservation of tax credits must be closed within 270 days after the date the Division provides written notification to the applicant of the reservation. If a project is not closed within that period, the Division will terminate the reservation of tax credits. Before the expiration of the period, the applicant must demonstrate to the Division that he has closed the project within that period by providing proof satisfactory to the Division that he has:
 - (a) Purchased and holds title in fee simple to the project site in his name.
 - (b) Entered into a written agreement with a contractor who is licensed in this state to begin construction before the expiration of the period.
 - (c) Obtained adequate financing for the construction of the project. The applicant must provide written commitments or contracts from third parties.
 - (d) Executed a written commitment for a loan for permanent financing for the construction of the project in an amount that ensures the financial feasibility of the project. The commitment may be subject to the condition that the construction is completed and the project is appraised for an amount sufficient to justify the loan in accordance with the requirements of the lender for credit. If the project is a rural development project that receives loans or grants from the United

States Department of Agriculture, the applicant must provide a form approved by the Division that indicates that money has been obligated for the construction of the project before the expiration of the period. An advance of that money is not required before the expiration of the period.

2. A project that is not closed within the period and in the manner specified in subsection 1 will lose its reservation of tax credits unless the Division receives from the applicant a written request for an extension of 45 days and the fee as provided in the annual plan. The request must be accompanied by proof satisfactory to the Division indicating that:

(a) The requirements for financing the project have been substantially completed;

(b) The delay in closing was the result of circumstances that could not have been anticipated by and were outside the control of the applicant at the time the application was filed by the applicant; and

(c) The project will be closed within the 45-day period.

↳ Only one extension may be granted pursuant to this subsection. If the project is not closed before the expiration of the extension period, the reservation of tax credits will terminate.

3. The Division may terminate a reservation of tax credits at any time if, as determined by the Division:

(a) The applicant fails to pay the fee for the reservation of tax credits within 30 days after he receives the notice of the reservation from the Division;

(b) The applicant or project sponsor fails to pursue diligently the construction and completion of the project;

(c) Any event or other circumstance occurs or is discovered by the Division that is likely to cause the project to fail to comply with any of the requirements for the project or is likely to cause the project to fail to qualify for any tax credits that have been set aside, preference point award or rule for breaking ties for which the tax credits were reserved;

(d) Any statement or representation made to the Division by the applicant or project sponsor was inaccurate or misleading at the time it was made and that statement or representation is material to any determination by the Division to make or continue the reservation of tax credits;

(e) The applicant fails to provide any required reports or otherwise comply during the reservation period with the provisions of the Code or any regulations adopted pursuant to the Code, the annual plan or NAC 319.951 to 319.998, inclusive; ~~or~~

(f) Any other event, circumstance or condition occurs for which a reservation of tax credits may be terminated as provided in the annual plan~~;~~ **or**

(g) The applicant or project sponsor is found by the Division, or any other housing finance authority, to be in default or non-compliant during the compliance period with respect to any other tax credit or tax-exempt bond financed affordable housing project, and has failed to correct the default or compliance issue in a timely and reasonable manner.

4. If the Division terminates a reservation of tax credits:

(a) No fees paid by the applicant will be returned to him by the Division.

(b) The applicant may submit a new application for tax credits during any subsequent allocation round conducted during the plan year if the Division accepts new applications for that round. The application must be accompanied by a new application fee. If the applicant receives a reservation of tax credits, the applicant must pay an additional reservation fee in an amount specified in the annual plan.

NAC 319.984 is hereby amended to read as follows:

319.984 Administrative review of certain determinations and actions; written request for review; procedure for hearing; transcript of hearing; representation of parties; further proceedings and investigation; final decision; judicial review.

1. The following determinations or actions by the Division are, upon the request of an applicant, subject to review by the Administrator:
 - (a) The rejection of an application;
 - (b) The refusal to accept a document or other information from the applicant;
 - (c) A tentative award or the denial of a reservation of tax credits and any determination or action upon which the tentative award or denial of the reservation was based;
 - (d) A termination of a reservation of tax credits;
 - (e) A decision to deny an award of tax credits or the determination of the final award of tax credits;
 - (f) A determination or action taken during the compliance period; and
 - (g) Any other determination or action for which review by the Administrator is provided for in the annual plan or approved by the Administrator.
2. To request a review pursuant to this section, the applicant must submit a written request to the Administrator within 7 days after the applicant receives notice of the determination or action for which the review is requested. The request must indicate the nature of the determination or action to be reviewed. The request may specify the reason why the applicant believes the determination or action by the Division was improper. The Division may submit a written response to the Administrator concerning the request.
3. The Administrator will schedule a hearing on the matter. Before the hearing is conducted, the applicant may inspect any document or other information included in the file of the applicant maintained by the Division regarding the determination or action of the Division, other than confidential communications between an attorney and his client. The applicant and his attorney, if any, may interview any officer or employee of the Division who participated in the determination or action. The attorney for the Division may be present at the interview.
4. At the hearing, the members of the staff of the Division may discuss the reasons for the determination or action and present documents or other information relating to the determination or action. After the discussion, the applicant may present his arguments and any evidence supporting those arguments. After the applicant has presented his arguments and evidence, the members of the staff of the Division may respond to the arguments of the applicant. The Administrator may allow closing comments, ask questions at any time during the hearing or require written briefs for the hearing.
5. Each document in the file of the applicant maintained by the Division shall be deemed admitted in any review conducted pursuant to this section and may be reviewed by the Administrator regardless of whether those documents are marked as exhibits. To create a record of the hearing, a document or any other information that is not included in the file of the applicant maintained by the Division may be submitted at the hearing and considered by the Administrator. Before the document or other information is included in the file, the Administrator must specifically state in his written decision that the document or other information is included in the file. If the Administrator does not make such a statement, the

Division will not include the document or other information in the file of the applicant maintained by the Division.

6. The Administrator will record on audiotape any hearing conducted pursuant to this section. The applicant may, at the expense of the Division, request a copy of the audiotape. If requested by the applicant, the Division will, at the expense of the applicant, provide a transcript of the audiotape to him.

7. The applicant may be represented by an attorney who is licensed to practice law in this state. An ~~an~~ ~~deputy~~ attorney ~~general~~ who represents the Division may, at the request of the Administrator, be present at any hearing conducted pursuant to this section and may comment on the presentations by the Division and the applicant. If the ~~deputy~~ attorney ~~general~~ was involved in the determination or action that is the subject of the review, he shall disclose that fact, but is not required to disclose any confidential communications he had with an officer or employee of the Division or the Administrator. The Administrator may exclude any other person from the hearing. If a person testifies on behalf of a party at the hearing, the opposing party may cross-examine that person. A review conducted pursuant to this section is not subject to the rules of evidence provided for civil actions. The Administrator will make all procedural and evidentiary decisions.

8. After a review is conducted pursuant to this section, the Administrator may conduct further proceedings and investigations if any information or arguments presented at the hearing were insufficient. The Administrator may communicate ex parte with the applicant or his attorney, the staff of the Division and any deputy attorney general representing the Division. If the Administrator:

(a) Communicates ex parte with an ~~an~~ ~~deputy~~ attorney ~~general~~ representing the Division, the communication is confidential.

(b) Discovers a document or other information that is not included in the file of the applicant maintained by the Division or was not submitted at the hearing, and that document or other information is the basis for an adverse decision by the Administrator against the applicant, the applicant may review and comment on the document or other information.

9. The Administrator will issue his decision in writing. The decision is a final decision for the purposes of judicial review.

10. If an applicant files a petition for judicial review of a final decision of the Administrator pursuant to chapter 233B of NRS, the Division will, unless enjoined or otherwise ordered by the court in which the petition is filed:

(a) Reserve and award tax credits for applicants other than the applicant who filed the petition for the plan year in which the petition is filed; and

(b) Consider the applicant for a reservation or final award of tax credits for the plan year immediately after the plan year in which the petition is filed.

NAC 319.996 shall be amended by adding the following language:

NAC 319.996 Projects financed by tax-exempt bonds: Applicability of certain provisions; submission of application for tax credits; limitation on developer's fees.

1. Except as otherwise provided in this section, tax credits awarded to a project that is financed by 50 percent or more of the proceeds of tax-exempt bonds are governed by the provisions of NAC 319.951 to 319.998, inclusive.

2. The provisions of NAC 319.972 to 319.978, inclusive, 319.980, 319.981, 319.988, 319.990, 319.991 and 319.992 do not apply to tax credits awarded to a project specified in subsection 1.

3. An application for tax credits for a project specified in subsection 1 must be completed and will be evaluated in connection with the application for the financing of any bonds for that project.

4. The developer's fee shall not exceed 15% of the eligible basis of the project, including the actual cost of the land, if applicable, and shall be calculated pursuant to NAC 319.951 to 319.998. The developer's fee is not included in eligible basis.