

**PROPOSED REGULATION OF THE
COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS**

LCB File No. R108-08

October 15, 2009

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-3, 6 and 7, NRS 116.615 and 116A.200; §§4 and 5, NRS 116.615, 116A.200 and 116A.400.

A REGULATION relating to common-interest communities; requiring the executive board of an association to provide certain information to the Real Estate Division of the Department of Business and Industry; revising provisions concerning a declarant's provision of audited financial statements; revising various provisions governing community managers; revising provisions governing members of an executive board of an association; and providing other matters properly relating thereto.

Section 1. Chapter 116 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *1. An executive board shall provide to the Division the names, mailing addresses and telephone numbers of the members of the executive board in accordance with NRS 116.625. The information required pursuant to this subsection must be kept confidential by the Ombudsman and may only be used by the Division for purposes of notifying a member of the executive board of any action or proceeding involving the association.*

2. The executive board shall:

(a) Indicate on a form prescribed by the Division any change in the contact information of a member of the executive board; and

(b) Submit the form to the Division within 30 days of any such change.

Sec. 3. *The obligation of a declarant to deliver the audited financial statements pursuant to subsection 2 of NRS 116.31038 may be satisfied by the declarant if, within 30 days after units' owners other than the declarant may elect a majority of the members of the executive board, the declarant delivers to the association:*

- 1. All financial records of the association;*
- 2. All records relating to audits that were completed during the period of the declarant's control, including, without limitation, applicable signed audit management and representation letters; and*
- 3. Payment for the cost of the required ancillary audit for the ancillary period from the date of the last audit of the association to the date the period of the declarant's control ends, as required by subsection 2 of NRS 116.31038. The ancillary audit representation letter for the period described in this subsection must be signed by the declarant.*

Sec. 4. NAC 116.300 is hereby amended to read as follows:

116.300 ~~[1.]~~ A community manager shall ~~[1.]~~

- ~~—(a) Comply with the lawful provisions of the governing documents of each client;~~
- ~~—(b) Maintain an inventory of all records of each client;~~
- ~~—(c) Keep informed of new developments in the management of a common interest community through continuing education, including, without limitation, new developments in law, insurance coverage and accounting principles;~~
- ~~—(d) Advise a client to obtain advice from an expert relating to matters that are beyond the expertise of the community manager;~~
- ~~—(e) Under the direction of a client, uniformly enforce the provisions of the governing documents of the association;~~

~~—(f) At all times ensure that the financial transactions of a client are current, accurate and properly documented and that there are established policies and procedures surrounding the financial transactions that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;~~

~~—(g) Prepare or cause to be prepared interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of an association is fairly presented in accordance with the provisions of NAC 116.451 to 116.461, inclusive;~~

~~—(h) Make the financial records of an association available for inspection by the Division in accordance with the applicable laws of this State;~~

~~—(i) Cooperate with the Division in resolving complaints filed with the Division;~~

~~—(j) Upon written request, make the financial records of an association available to the units' owners during regular business hours for inspection at a reasonably convenient location which must be within 60 miles from the physical location of the common interest community and provide copies of such records in accordance with the applicable laws of this State;~~

~~—(k) Deposit all money of an association that is in the possession or control of the community manager in a financial institution that is federally insured or insured by a private insurer approved pursuant to NRS 678.755;~~

- ~~—(l) Recommend in writing to each client that the association register with the Division, maintain its registration and file all papers with the Division and the Secretary of State as required by law;~~
 - ~~—(m) Comply with the directions of a client, unless the directions conflict with the governing documents of the association, this chapter or other applicable laws of this State;~~
 - ~~—(n) Recommend in writing to each client that the association be in compliance with all applicable federal, state and local laws and the governing documents of the association;~~
 - ~~—(o) Obtain, when practicable, at least three bids for any capital improvement project for the association; and~~
 - ~~—(p) Fairly enforce the collection policies of a client and comply with all applicable federal, state and local laws relating to the collection of debt.~~
- ~~—2. As used in this section, “regular business hours” means Monday through Friday, 9 a.m. to 5 p.m., excluding state and federal holidays.]~~ *comply with the standards of practice set forth in section 19.5 of chapter 485, Statutes of Nevada 2009, at page 2814.*

Sec. 5. NAC 116.351 is hereby amended to read as follows:

116.351 1. If a person who alleges that a community manager is guilty of misconduct sends the allegations of misconduct in writing to the community manager in an attempt to resolve the issue without filing a complaint with the Division, the community manager shall, in good faith, acknowledge and respond in writing to the person making the allegations within 12 working days after he receives the allegations.

2. A complaint about a community manager must:

- (a) Be submitted to the Division on a form provided by the Division;
- (b) Be signed by the person submitting the complaint; and

(c) Include, without limitation:

(1) The identity of the community manager who is alleged to have violated a provision of this chapter or chapter 116 of NRS, and the nature of the alleged violation;

(2) All evidence supporting the allegations, including, without limitation, as appropriate, corroborating statements by other persons or specific information as to persons who may be contacted to provide such corroboration;

(3) The name, address and telephone number of the person submitting the complaint;

(4) Documents that evidence an attempt by the person submitting the complaint to resolve the issue with the executive board or the community manager, including, without limitation, any written response of the executive board or the community manager to the allegations of the person submitting the complaint; and

(5) If filed by a tenant of a unit's owner, ratification of the complaint by the unit's owner without the use of a power of attorney by the tenant.

3. Upon receipt of a complaint that complies with subsection 2, the Division shall forward the complaint to an investigator. The investigator:

(a) Shall send a copy of the complaint to the community manager and the executive board of any association which relates to the subject of the complaint;

(b) Within 12 working days after the receipt of the allegations, shall attempt to obtain a response in writing from the person who is the subject of the complaint;

(c) May make such inquiries and investigation into matters relating to the allegations in the complaint as the investigator deems appropriate; and

(d) Shall submit to the Administrator a written report that summarizes the findings and conclusions of the investigator.

4. Upon review of the written report of the investigator, if the Administrator determines that grounds for disciplinary action against the community manager exist, the Administrator may take one or more of the following actions as he deems appropriate:

- (a) Issue a letter of censure to the community manager who is the subject of the complaint;
- (b) Levy an administrative fine of:
 - (1) For the first offense, ~~[\$500;]~~ *not more than \$1,000;* and
 - (2) For the second offense, ~~[\$1,000;]~~ *not more than \$5,000;*
- (c) Require the community manager to obtain additional education relating to the management of a common-interest community;
- (d) Refer the matter to the Commission;
- (e) Refer the matter to the Real Estate Commission; or
- (f) Refer the matter to the Attorney General of this State.

5. The Administrator may initiate an investigation, audit or inspection of the records of any community manager or any person who performs the duties of a community manager in this State.

6. Any action taken by the Administrator pursuant to subsection 4 may be appealed by the community manager upon written request to the Commission within 30 days after the Administrator takes such action.

7. As used in this section, “investigator” means a person whom the Division deems to be impartial and qualified with respect to the matter in a complaint and who is designated by the Division to investigate a complaint pursuant to this section.

Sec. 6. NAC 116.405 is hereby amended to read as follows:

116.405 In ~~[performing the duties set forth in NRS 116.3103, a]~~ *determining whether a member of the executive board has performed his or her duties pursuant to NRS 116.3101, the Commission may consider whether the* member of ~~[an]~~ *the* executive board ~~[shall not:]~~ *has:*

1. ~~[Act]~~ *Acted* outside the scope of the authority granted in the governing documents;

2. ~~[Act]~~ *Acted* for reasons of self-interest, gain, prejudice or revenge;

3. ~~[Commit]~~ *Committed* an act or omission which amounts to incompetence, negligence or gross negligence;

4. Except as otherwise required by law or court order, ~~[disclose]~~ *disclosed* confidential information relating to a unit's owner, a member of the executive board or an officer, employee or authorized agent of the association unless the disclosure is consented to by the person to whom the information relates; ~~[or]~~

5. ~~[Impede]~~ *Impeded* or otherwise ~~[interfere]~~ *interfered* with an investigation of the Division by:

(a) Failing to comply with a request by the Division to provide *information or* documents;

(b) Supplying false or misleading information to an investigator, auditor or any other officer or agent of the Division; or

(c) Concealing any facts or documents relating to the business of the association ~~[.]~~ ;

6. *Kept informed of laws, regulations and developments relating to common-interest communities;*

7. *Cooperated with the Division in resolving complaints filed with the Division; and*

8. *Caused the association to:*

(a) *Comply with all applicable federal, state and local laws and regulations and the governing documents of the association;*

- (b) Uniformly enforce the governing documents of the association;*
- (c) Hold meetings of the executive board with such frequency as to properly and efficiently address the affairs of the association;*
- (d) Obtain, when practicable, at least three bids from reputable service providers who possess the proper licensing before purchasing any such service for use by the association;*
- (e) Consult with appropriate professionals as necessary before making any major decision affecting the association or the common elements;*
- (f) Deposit all funds of the association for investment in government securities that are backed by the full faith and clause of the United States or in a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, the Securities Investor Protection Corporation or a private insurer approved pursuant to NRS 678.755;*
- (g) Maintain current, accurate and properly documented financial records;*
- (h) Establish policies and procedures for the disclosure of potential conflicts of interest and the appropriate manner by which to resolve such conflicts;*
- (i) Establish policies and procedures that are designed to provide reasonable assurances in the reliability of financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in making business decisions, facilitation of fraud detection and prevention and compliance with the applicable laws and regulations governing financial records;*
- (j) Prepare interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the*

financial position of the association is fairly presented in accordance with the provisions of NAC 116.451 to 116.461, inclusive;

(k) Make the financial records of the association available for inspection by the Division in accordance with the applicable laws and regulations of this State;

(l) Cooperate with the Division in resolving complaints filed with the Division; and

(m) Adopt and fairly enforce the collection policies of the association.

Sec. 7. NAC 116.400 is hereby repealed.

TEXT OF REPEALED SECTION

116.400 Members of executive board: Responsibilities. (NRS 116.3103, 116.615) In performing the duties set forth in NRS 116.3103, a member of an executive board shall:

1. Comply with all applicable federal, state and local laws and the governing documents of the association;
2. Uniformly enforce the provisions of the governing documents of the association;
3. Ensure that meetings of the executive board are held with such frequency as to properly and efficiently address the affairs of the association;
4. Keep informed of new developments in the management of a common-interest community through educational courses;

5. Ensure that the executive board obtains, when practicable, at least three bids from reputable service providers who possess the proper licensing for any service used by the association;

6. Ensure that the executive board consults with the appropriate professionals as necessary before making major decisions affecting the association;

7. Deposit all money of the association in a financial institution that is federally insured or insured by a private insurer approved pursuant to NRS 678.755; and

8. If the association does not employ a community manager:

(a) Maintain an inventory of all records of the association;

(b) At all times ensure that the financial transactions of the association are current, accurate and properly documented and that there are established policies and procedures surrounding the financial transactions that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;

(c) Prepare or cause to be prepared interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of the association is fairly presented in accordance with the provisions of NAC 116.451 to 116.461, inclusive;

(d) Make the financial records of the association available for inspection by the Division in accordance with the applicable laws of this State;

(e) Cooperate with the Division in resolving complaints filed with the Division;

- (f) Upon written request, make the financial records of the association available to the units' owners during regular business hours for inspection at a reasonably convenient location which must be within 60 miles from the physical location of the common-interest community and provide copies of such records in accordance with the applicable laws of this State; and
- (g) Fairly enforce the collection policies of the association and comply with all applicable federal, state and local laws relating to the collection of debt.