

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB FILE R097-14**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapters 116 and 116A.

1. A clear and concise explanation of the need for the adopted regulation.

The purpose and need for LCB File R097-14 Section 1 is due to applicants having difficulty receiving experience verification from a broker for various reasons. This amendment would allow for a designated supervising manager of an office to verify the experience of an applicant/licensee.

The purpose and need for amendments to Section 2 assures that the Real Estate Division is provided with proper information from an individual who wants to hold an out-of-state cooperative broker certificate in Nevada. Proof that the individual is licensed and in good standings in another state because the Nevada broker cooperating with the out-of-state broker is responsible for the out-of-state broker's activities.

Section 3 eliminates the misuse of out-of-state cooperative broker certificates. Out-of-state cooperative broker certificates have been used to set up franchise offices outside of Nevada to conduct brokerages in other states which are not the intended use for a cooperative certificate. Limiting the certificate to a single and particular transaction and timeframe would correspond with other temporary licenses under the jurisdiction of the Real Estate Division.

The need for Sections 5-7 and 9 addresses a loop hole for distance education providers who claim reciprocity for their approval in another state.

Section 8 clarifies conflicting language in existing law regarding broker management pre-licensing education.

Section 10 clarifies that student evaluations and an investigation conducted by the Division are grounds for the Administrator to withdraw approval of a course.

Section 11 clarifies that a course will not be automatically approved if there is material change to the course.

Section 12 clarifies that a sponsor must only electronically submit the roster of students who met the requirements to have completed a course.

Section 13 contains corrections to address the electronic submittal of course rosters.

Section 14 expands topics reflecting the changes in the real estate market and broadens areas that were not previously included.

Section 15 give the Division authority to approve continuing education courses lessening the time that it takes an education sponsor to receive approval. Section 15 also sets forth an appeal process if a course is denied by the Division. Section 15 changes the number of hours that a continuing education course in a classroom must consist of from 3 hours to 1 hour.

Section 16 clarifies to licensees that a continuing education course can only be taken once during a single licensing period.

Section 17 adds and increases penalties. NAC 645.4442 requires first time licensees to submit post-licensing education within the first year immediately after initial licensing. The amendment would increase the administrative fine for failing to submit post-licensing education from \$100 to \$250. NAC 645.448 requires a licensee to submit 24 hours of continuing education before the end of each 2 year period. The amendment would increase the administrative fine for failing to submit 24 hours of continuing education before the 2 year period from \$100 to \$250. NAC 645.455 is regarding the records of completion that sponsors have to provide to licensees and what is required to be on the certificate. Incorrect or deficient certificates can cause a delay or hinder a licensee to renew their license. NAC 645.806(2) requires brokers who engage in property management to submit trust account reconciliation to the Division. The proposed amendment would allow the Division to issue an administrative fine of \$1,000 for not submitting their trust account reconciliation to the Division. NAC 645.806(3) requires a broker engaged in property management or associated with a property manager to maintain complete accounting records of each trust account related to property management for at least 5 years. The proposed amendment would allow the Division to issue an administrative sanction of \$250 for non-compliance.

Section 18 is needed to address property management, management of trust accounts and embezzlement. This amendment will assist in monitoring compliance and averting commingling and embezzlement of funds held in trusts.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Real Estate Division posted proposed changes to NAC 645.805, NAC 645.695 and NAC 645.141 on the Division's website for the public to review and comment. The Real Estate Commission held a public meeting on March 25-26, 2014 in which there was an agenda item regarding discussion and decision concerning Commission's consideration of proposed regulation changes, additions and deletions to NAC 645. There were no comments from the public regarding the proposed regulation changes.

The Division posted a notice of workshop for LCB File No. R097-14 scheduled for April 22, 2015. Notice of this workshop was posted on the Division's website and distributed through the Division's posting list. Educators commented on section 14 subsection 2(b) regarding writing and instructing a course on only most recently passed legislation. It was expressed that recent legislation includes local, state and federal legislation. Several sponsors spoke in

opposition to section 17 regarding the \$1,000 administrative sanction for violations of NAC 645.455 stating that it was too punitive.

The Division posted a notice of adoption for LCB File No. R097-14 scheduled for December 15, 2015. Notice of this adoption hearing was posted on the Division's website and distributed through the Division's posting list. Educators commented on section 14 subsection 2(b) again expressing that recent legislation include local, state and federal legislation. Also, several sponsors spoke in opposition to section 17 regarding the administrative sanction of \$1,000 for violations of NAC 645.455.

Interested persons may obtain a summary from:
Teralyn Thompson, Administration Section Manager
Nevada Real Estate Division
2501 East Sahara Avenue, Suite 303
Las Vegas, NV 89104
tlthompson@red.nv.gov
702-486-4036

3. The number of persons who:

(a) Attended each hearing:

April 22, 2015: 10
December 15, 2015: 29

(b) Testified at each hearing:

April 22, 2015: 5
December 15, 2015: 6

(c) Submitted to the agency written comments: 2

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit A.

Please see attached.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary may be obtained as instructed in the response to question #2.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The proposed regulation was adopted on December 15, 2015, and included changes suggested at workshops and the adoption hearing conducted.

7. **The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**

Business which it is to regulate

(a) Both adverse and beneficial effects.

Adverse effects:

Section 3 adversely affects brokers from other states who have grown use to obtaining a cooperative certificate in Nevada and being able to utilize for 12 months in several transaction. The amendment would limit the certificate to one transaction within a 12 month period.

Section 17 fine for violation of NAC 645.4442 adversely affects licensees who do not submit mid-term continuing education certificates on time. The proposed regulation would increase the administrative sanction for failure to comply from \$100 to \$250.

Section 17 fine for violation of NAC 645.455 would adversely affect education sponsors who habitual provide licensees with incorrect certificates of completion.

Beneficial effects:

Section 1 benefits licensees whose previous brokers are unavailable, deceased or not willing to communicate with the licensee. This would reduce the burden on licensees who need their experienced verified to obtain a broker license.

Section 11 benefits licensees and sponsors of educational courses of law and legislative update courses. The Division approving law and legislative update courses will ensure that these courses are approved and available to licensees in a timelier manner than having to wait until the Commission's next scheduled meeting.

Section 14 broadens the subjects in which a course for continuing education must contain. Real estate licensees could possibly receive continuing education in subject matters that are currently trending in the market place. Education sponsors can create courses based on trending topics.

Section 14 allows the Division to approve a course for continuing education on behalf of the Commission. As stated for section 11, this will ensure that courses are approved and available to licensees in a timelier manner than having to wait until the Commission's next scheduled meeting.

Section 15 amends the number of hours of instruction in a classroom for a continuing education course from at least 3 hours to at least 1 hour. This is beneficial to sponsors who would like to teach topic specific courses that do not have 3 hours of information.

(b) Both immediate and long-term effects.

Immediate effects:

Section 11 and 14 which gives the Division authority to approve a course for continuing education on behalf of the Commission would allow for timelier approval and availability of courses instead of sponsors having to wait 2 to 3 months for the next scheduled Commission meeting.

Long-term effects:

Long term effects due to amendments in section 15 regarding changing the hours of instruction in a classroom from at least 3 hours to at least 1 hour will create different topic specific courses for the Division to review and possibly approve. This will mean a wide array of course for continuing education for real estate licensees to choose from.

Public

(a) Both adverse and beneficial effects.

Adverse effects:

None.

Beneficial effects:

Section 14 broadens the education that a licensee receives which will benefit the licensee and public when conducting real estate transactions.

Proposed amendments to section 18 would protect homeowners who use property managers and renters who pay monies and security deposits to property managers. The proposed amendment would require brokers to submit annual trust account reconciliation to the Division or a declaration stating that the broker is not engaging in property management.

(b) Both immediate and long-term effects.

Immediate effects:

None.

Long-term effects:

Section 14 will long term make for a more educated licensee who will be equipped to educate clients while conducting real estate transactions.

The long term effect of section 18 would be a deterrent against misconduct, comingling of monies or embezzlement regarding trust accounts and would assist the Division in finding and investigating misconduct, comingling of monies and embezzlement regarding trust accounts.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for the implementation of LCB File No. R097-14.

- 9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

There are no other state or government agency regulations that the proposed regulation duplicates.

- 10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

There are no federal regulations that apply.

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

Section 17 of the proposed regulation increases administrative fines for violations of NAC 645.4442 and NAC 645.448 from \$100 to \$250. In 2014 the Division issued approximately 770 administrative fines due to violations of these two regulations.

The total annual amount that the Division expects to collect would be approximately \$192,500.

Section 17 of the proposed regulation adds a new administrative fine of \$500 for violations of NAC 645.455. January 2014 through November 2014 the Division received at least 22 incorrect certificates of completion provided to licensees from course sponsors violating NAC 645.455(4). The total annual amount that the Division expects to collect is difficult to determine at this time because the fine for this violation would be at the discretion of the Division and would not be administered per certificate.

Section 17 of the proposed regulation which adds new administrative fines for violations of NAC 645.806(2) and (3) are sanctions that the Division currently administers but has been placed into this portion of the proposed regulation.

Administrative sanctions go into the State's General Fund.