

**PROPOSED REGULATION OF
THE REAL ESTATE DIVISION OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R099-10

August 6, 2012

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

AUTHORITY: §§1-15, NRS 38.360.

A REGULATION relating to alternative dispute resolution; establishing procedures and qualifications for a person to be included on the list of mediators and arbitrators who are eligible to mediate or arbitrate certain claims concerning residential property within a planned community; authorizing the Administrator of the Real Estate Division of the Department of Business and Industry to remove a mediator or arbitrator from the list under certain circumstances; providing procedures for the selection of mediators or arbitrators from the list of mediators and arbitrators; adopting requirements for arbitrators who arbitrate certain claims concerning residential property within a planned community; providing for the withdrawal of claims which are submitted to mediation or arbitration; limiting the fees and costs a mediator or arbitrator may charge for the mediation or arbitration of certain claims concerning residential property within a planned community; revising certain provisions governing mediation and arbitration of certain claims concerning residential property within a planned community; and providing other matters properly relating thereto.

Section 1. Chapter 38 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Administrator” means the Administrator of the Division.*

Sec. 4. *“Division” means the Real Estate Division of the Department of Business and Industry.*

Sec. 5. *“List of mediators and arbitrators” means the list of mediators and arbitrators which the Division must establish and maintain pursuant to NRS 38.340.*

Sec. 6. *The Administrator shall:*

1. Create an evaluation committee to review applications of persons to be included on the list of mediators and arbitrators which are submitted to the Division pursuant to section 7 of this regulation; and

2. Appoint to the evaluation committee two employees of the Division and one current or former member of the Commission for Common-Interest Communities and Condominium Hotels.

Sec. 7. *1. A person who wishes to be included on the list of mediators and arbitrators must submit to the Division:*

(a) A completed application on a form prescribed by the Division;

(b) Documentation indicating that the applicant has the qualifications set forth in section 8 of this regulation; and

(c) A list of the services as a mediator or arbitrator for which the applicant charges a fee and the amount of those fees.

2. Upon receipt of a complete application and the information described in subsection 1, the Division will provide the application and the information submitted with the application to the evaluation committee.

3. The evaluation committee shall:

(a) Review the application and the information submitted with the application; and

(b) Submit to the Administrator a recommendation concerning whether to include the applicant on the list of mediators and arbitrators.

4. If, based on the application and information submitted pursuant to subsection 1 and the recommendation of the evaluation committee, the Administrator determines that the applicant has the qualifications set forth in section 8 of this regulation, the Administrator may include the applicant on the list of mediators and arbitrators.

5. As used in this section, “evaluation committee” means the evaluation committee established by the Administrator pursuant to section 6 of this regulation to review applications of persons to be included on the list of mediators and arbitrators which are submitted to the Division pursuant to this section.

Sec. 8. 1. *The Administrator may include a person on the list of mediators and arbitrators if the person:*

(a) Has submitted a complete application to be included on the list and the information required by section 7 of this regulation;

(b) Provides proof satisfactory to the Administrator that he or she has a good reputation for honesty, trustworthiness and integrity;

(c) Demonstrates to the satisfaction of the Administrator that he or she has experience in any area of expertise relating to associations, including, without limitation:

(1) The interpretation, application and enforcement of covenants, conditions and restrictions pertaining to residential property;

(2) The interpretation, application and enforcement of the articles of incorporation, bylaws, rules and regulations of an association;

(3) Budgeting, accounting and reserve studies;

- (4) Liabilities associated with real property; or*
 - (5) Construction;*
 - (d) Has graduated from an accredited law school;*
 - (e) Has not been conclusively found to have engaged in any professional misconduct or to have committed a violation of a fiduciary duty within the immediately preceding 5 years;*
 - (f) Has not been, and is not currently, a party to any litigation with this State;*
 - (g) Is competent to mediate or arbitrate disputes submitted to mediation or arbitration pursuant to NRS 38.300 to 38.360, inclusive, as evidenced by:*
 - (1) Appointment as a mediator or arbitrator by the American Arbitration Association or an equivalent or successor organization;*
 - (2) Appointment as a mediator or arbitrator by the courts of this State; or*
 - (3) A certificate indicating that the applicant has completed a course of training in mediation or arbitration provided by a training program acceptable to the Administrator;*
 - (h) Has signed an attestation that he or she has read and understands the provisions of NRS 38.300 to 38.360, inclusive, chapters 116, 116A and 116B of NRS, NAC 38.350 and sections 2 to 14, inclusive, of this regulation and chapters 116, 116A and 116B of NAC; and*
 - (i) Does not charge:*
 - (1) An hourly rate for mediating or arbitrating a claim pursuant to NRS 38.300 to 38.360, inclusive, which exceeds \$150 per hour; or*
 - (2) A fee for providing copies of documents which exceeds 25 cents per page.*
- 2. As used in this section:*
- (a) "Associations" includes unit-owners' associations organized under NRS 116..3101 and unit-owners' associations for condominium hotels organized under NRS 116B.415.*

(b) *“Condominium hotel” has the meaning ascribed to it in NRS 116B.060.*

(c) *“Reserve studies” includes studies of the reserves of associations conducted pursuant to NRS 116.31152 and studies of the reserves of associations for condominium hotels conducted pursuant to NRS 116B.605.*

(d) *“Residential property” has the meaning ascribed to it in NRS 38.300.*

Sec. 9. *A person included as an arbitrator included on the list of mediators and arbitrators shall:*

1. Successfully complete, without compensation, at least once every 2 years a course of training concerning the provisions of NRS 38.300 to 38.360, inclusive, and chapters 116, 116A and 116B of NRS which is offered by the Division, the Office of the Attorney General or another instructor approved by the Division.

2. On or before March 15, June 15, September 15 and December 15 of each year, provide to the Division a written report on the status of each arbitration:

(a) For which the person was appointed as arbitrator; and

(b) Which was open at any time during the immediately preceding quarter.

Sec. 10. *The Administrator may:*

1. Require a mediator or arbitrator included on the list of mediators and arbitrators to successfully complete such additional education relating to the mediation or arbitration of claims pursuant to NRS 38.300 to 38.360, inclusive, as the Administrator deems appropriate.

2. Remove a mediator or arbitrator from the list of mediators and arbitrators if the Administrator determines that the mediator or arbitrator:

(a) Does not have the qualifications set forth in section 8 of this regulation; or

(b) Has violated a provision of this chapter or NRS 38.300 to 38.360, inclusive.

Sec. 11. 1. *If the parties to a claim submitted for mediation or arbitration pursuant to NRS 38.320 have mutually agreed on which mediator or arbitrator to select from the list of mediators and arbitrators, the parties must submit to the Division a written notice, signed by the parties, which states the name of that mediator or arbitrator.*

2. If, within 10 business days after an answer to a claim is filed with the Division pursuant to NRS 38.320, the parties to the claim have not submitted to the Division written notice that the parties have agreed upon a mediator or arbitrator pursuant to subsection 1, the Division will deem that the parties have failed to agree upon a mediator or arbitrator and the Administrator must provide to each party a list of:

- (a) Three mediators or arbitrators from the list of mediators and arbitrators; or*
- (b) Five mediators or arbitrators from the list of mediators and arbitrators.*

3. If the Administrator provides a list of three mediators or arbitrators pursuant to paragraph (a) of subsection 2, each party may remove one name from the list. If the Administrator provides a list of five mediators or arbitrators pursuant to paragraph (b) of subsection 2, each party may remove two names from the list.

4. Except as otherwise provided in subsection 5:

(a) A mediator or arbitrator who is removed from the list pursuant to subsection 3 is ineligible to serve as the mediator or arbitrator for the claim for which the mediator or arbitrator was removed.

(b) The Administrator shall appoint a mediator or arbitrator from among the mediators or arbitrators who were not removed from the list pursuant to subsection 3.

5. If all mediators or arbitrators are removed from the list pursuant to subsection 3 or each mediator or arbitrator whose name was not removed from the list is unavailable to act as the mediator or arbitrator for the claim, the Administrator may:

(a) Provide to the parties a new list of mediators or arbitrators in the manner set forth in subsection 2; or

(b) Appoint from the list of mediators or arbitrators any other mediator or arbitrator who is qualified and available to act as the mediator or arbitrator of the claim.

Sec. 12. 1. *Not later than 5 days after the selection or appointment of the arbitrator to arbitrate a claim submitted to arbitration pursuant to NRS 38.320, the arbitrator shall provide to the Division a copy of the informational statement provided by the arbitrator to the parties pursuant to subsection 2 of NRS 38.330.*

2. If an arbitrator selected or appointed to arbitrate a claim pursuant to NRS 38.300 to 38.360, inclusive, anticipates that the arbitration cannot be concluded within 20 hours of billable time, the arbitrator must provide to each party, before beginning the process of arbitration, a written notice which states:

(a) The reason for the arbitrator's belief that the arbitration cannot be concluded within 20 hours of billable time and the work that will require the additional time;

(b) The amount of time the arbitrator believes is necessary to conclude the arbitration; and

(c) The anticipated amount of the fees and costs charged by the arbitrator for the additional time.

↪ A party who receives the written notice described in this subsection must submit to the arbitrator a written response acknowledging that the party understands the cost of the

additional time to conclude the arbitration and must submit a copy of the response to the Division.

3. An arbitrator selected or appointed to arbitrate a claim pursuant to NRS 38.300 to 38.360, inclusive, shall:

(a) Conclude any binding or nonbinding arbitration not later than 120 days after the arbitrator's selection or appointment, unless the parties to the arbitration agree in writing to an extension of that time.

(b) Provide to each party to the claim detailed information concerning the work performed by the arbitrator in relation to the arbitration.

4. If an arbitrator who arbitrates a claim pursuant to NRS 38.300 to 38.360, inclusive, determines that the arbitrator will not issue an award, the arbitrator must provide to the Division notice of the conclusion of the arbitration within 15 days of that determination.

5. An arbitrator who arbitrates a claim pursuant to NRS 38.300 to 38.360, inclusive, shall not withhold a decision because of the failure of any party to pay any fees or costs owed to the arbitrator for the arbitration. To collect any fees or costs relating to an arbitration which have not been paid on or before the due date, the arbitrator must file a civil action in a court of competent jurisdiction seeking a judgment in the amount of the fees and costs due against the party owing the fees or costs.

Sec. 13. 1. *If a complaining party wishes to withdraw a claim submitted to mediation or arbitration pursuant to NRS 38.320, the complaining party must send written notice of the withdrawal of the claim by certified mail, return receipt requested, to:*

(a) The responding party;

(b) The mediator or arbitrator selected or appointed to mediate or arbitrate the claim; and

(c) The Division.

2. A mediator or arbitrator who receives the notice described in subsection 1 shall cease all work on the mediation or arbitration of the claim until the Division notifies the mediator or arbitrator of the status of the claim.

3. Not later than 15 days after receiving the notice described in subsection 1, the responding party shall send by certified mail, return receipt requested, to the complaining party and the mediator or arbitrator an itemized accounting of the costs incurred by the responding party in relation to the mediation or arbitration of the claim through the date on which the responding party received the notice described in subsection 1.

4. Not later than 30 days after receiving an itemized accounting of costs pursuant to subsection 3, the complaining party who withdrew a claim pursuant to subsection 1 shall pay all costs incurred by the responding party and the mediator or arbitrator in relation to the claim through the date on which the responding party received the notice described in subsection 1. The costs which a complaining party must pay pursuant to this subsection include, without limitation:

(a) The fee for the arbitrator's or mediator's time as evidenced by an itemized invoice;

(b) The cost of any copies made by the responding party or mediator or arbitrator in relation to the claim, as evidenced by an itemized list of those copies;

(c) Any mailing costs incurred by the responding party or the mediator or arbitrator in connection with the claim, as evidenced by receipts; and

(d) The attorney's fees incurred by the responding party in connection with the claim, as evidenced by an itemized invoice.

5. *If, within 15 days after receiving a notice pursuant to subsection 1, the responding party has not submitted the information required by subsection 3, the responding party is responsible for the costs incurred by the responding party in connection with the claim.*

6. *If, within 45 days after the date on which the Division received a notice pursuant to subsection 1, the complaining party has not complied with subsection 4, the claim will be deemed to be not withdrawn. If a claim is deemed to be not withdrawn pursuant to this subsection, the Division will provide notice of that fact to the complaining party, the responding party and the mediator or arbitrator.*

7. *For each claim, a complaining party may send only one notice to withdraw the claim pursuant to subsection 1.*

8. *As used in this section:*

(a) *“Complaining party” means the person who submits a civil action for mediation or arbitration pursuant to NRS 38.320.*

(b) *“Responding party” means a person upon whom a copy of a claim is served pursuant to NRS 38.320.*

Sec. 14. 1. *Except as otherwise provided in NRS 38.238, NAC 116.520 and section 13 of this regulation, each party to a claim submitted to mediation or arbitration pursuant to NRS 38.320 is responsible for one-half of the fees and costs charged by the mediator or arbitrator.*

2. *A mediator or arbitrator who mediates or arbitrates a claim pursuant to NRS 38.300 to 38.360, inclusive:*

(a) *May not charge a fee for services as a mediator or arbitrator which exceeds \$150 per hour.*

(b) May collect from the parties the actual costs incurred by the mediator or arbitrator for copies and mailing only if such costs are itemized in an invoice, except that a fee for providing copies of documents may not exceed 25 cents per page.

Sec. 15. NAC 38.350 is hereby amended to read as follows:

38.350 1. A person required to submit a civil action to mediation or arbitration pursuant to NRS 38.310 must serve a copy of the written claim and the statement explaining the procedures for mediation and arbitration on the opposing party within 45 days after filing the claim with the ~~[Real Estate] Division . [of the Department of Business and Industry.]~~

2. Proof of service of the documents required pursuant to subsection 1 must be filed:

- (a) With the Division within 10 days after service of the claim and statement; and
- (b) On a form provided by the Division.

3. A ~~[copy]~~ *mediator's statement* of an agreement reached through mediation must be filed with the Division within 30 days after the completion of mediation. *The mediator's statement must contain a true and correct copy of any agreement or temporary agreement entered into by the parties as a result of the mediation.*

4. A copy of an award reached through binding or nonbinding arbitration must be filed with the Division within 90 days after the completion of arbitration.

5. If the person upon whom a copy of the written claim was served fails to file a written answer with the Division within 30 days after the date of service as required by subsection 4 of NRS 38.320, that person shall be deemed to have waived the right to participate in the selection of a mediator or arbitrator, and the Division will appoint an arbitrator from the list maintained by the Division.

6. If a claim proceeds to arbitration pursuant to subsection 5, the arbitration is nonbinding.

7. The Division will issue a certificate certifying that the claim has been submitted to arbitration or mediation as required by NRS 38.310 within 30 days after receiving a copy of:

- (a) The ~~[agreement reached through mediation;]~~ *mediator's statement filed pursuant to subsection 3;*
- (b) The award reached through binding or nonbinding arbitration; or
- (c) Written verification from the arbitrator which confirms that the arbitrator served notice of the arbitration hearing on both parties and that the person upon whom a copy of the written claim was previously served failed to appear at the hearing.