

Digest for Adopted Regulation R_147-12

Senate Bill No. 314 of the 2011 Session of the Nevada Legislature provided for the registration, permitting and regulation of asset management companies and asset managers. Asset management companies provide asset management services for real property which is in foreclosure and which is owned by a bank, mortgage broker, mortgage banker, credit union, thrift company or savings and loan association, or any subsidiary thereof, a mortgage holding entity chartered by Congress or a federal, state or local governmental entity. Such companies and persons manage the property, performing services such as securing the property by changing locks, removing trash and debris, cleaning the home and surrounding property, performing maintenance and repairs of homes and disposing of the personal property of homeowners left in homes which are in foreclosure and which the legal owner has deemed abandoned. (Chapter 456 of Statutes of Nevada 2011, at page 2817; chapter 645H of NRS) Existing law requires the Real Estate Division of the Department of Business and Industry to adopt regulations to govern the practice of asset management in this State. (NRS 645H.290) This regulation complies with that requirement.

Sections 5-9 and 14-19 of this regulation establish various requirements and procedures applicable to the process for obtaining and maintaining a certificate of registration as an asset management company or a permit as an asset manager. **Section 5** provides that the Division will keep confidential certain information about the applicants and holders of such certificates or permits, while **section 6** provides that information concerning disciplinary action or the denial of an application will be posted on the Division's website. **Section 7** prescribes the grounds for the denial of an application, and **Section 8** prescribes the grounds for the Division's refusal to renew a certificate or permit. **Section 9** provides for the invalidation of a certificate or permit and the

assessment of a fee of \$25 if the application fee is paid by a check or draft which is returned for insufficient funds. **Section 14** provides that application fees are nonrefundable. **Section 15** requires that each application be completed by the applicant and prohibits employees of the Division from assisting in the preparation of an application. **Section 16** provides that the Division will not accept an application from a person under the age of 17 years and will not issue a certificate or permit to a person under the age of 18 years. **Section 17** prohibits an applicant for a certificate or permit from engaging in asset management services before actually obtaining the certificate or permit. **Section 18** specifies the contents and the scope of certificates and permits. Finally, **section 19** provides that if the Division maintains a website to enable the renewal of certificates of registration and permits, the Division may impose an additional fee for renewals made using the website, but the fee will not exceed the Division's actual costs for providing that service.

Section 10 of this regulation prescribes certain information that must accompany an application for a certificate of registration as an asset management company. **Section 12** of this regulation prescribes certain information that must accompany an application for a permit as an asset manager. **Section 11** of this regulation prescribes certain information that must accompany an application for the renewal of a certificate or permit.

Section 13 of this regulation requires asset management companies to notify the Division of changes in its address and provides that the Division will cancel the certificate of an asset management company that fails to notify the Division of a change in the address at which it does business.

Sections 20, 23-25, 29, 30 and 47 of this regulation establish various requirements applicable to the conduct of business by asset management companies and asset managers.

Section 20 requires the conspicuous display of certificates and permits in the place of business. **Section 23** requires the surrender of a certificate or permit that is cancelled, suspended or revoked. **Section 24** establishes the procedure if a certificate or permit that must be surrendered has been lost, destroyed or stolen. **Section 25** provides for the cancellation of a certificate or permit for a business location if the holder fails to disclose that business has been discontinued at that location. **Section 29** requires certain information to be included in each advertisement that offers to provide asset management services. **Section 30** requires records to be stored for 3 years after the termination of asset management services and specifies the content of the records subject to that requirement. **Section 47** requires asset management companies and asset managers to establish, rules, policies, procedures and systems to minimize the risk that asset management services are performed on the incorrect property and establishes various other requirements for the conduct of business.

Sections 21, 22 and 26-28 of this regulation establish various requirements applicable to the conduct of business by an asset manager. **Section 21** requires an asset manager to comply with local laws concerning zoning and business licenses. **Section 22** establishes the procedures to make a change of name, employer or business addresses on an asset manager's permit. **Section 26** prescribes certain ethical duties of an asset manager, while **section 27** prohibits certain unethical conduct. Existing law specifies various acts or kinds of conduct for which an asset management company or asset manager may be subject to discipline. Such conduct includes gross negligence or incompetence in the performance of certain duties. (NRS 645H.700) **Section 28** details various factors that the Division will consider in determining whether an asset manager is guilty of gross negligence or incompetence.

Section 31 of this regulation provides for the conduct by the Division of office examinations and audits of the records of asset management companies and asset managers.

Section 33 of this regulation governs the Division's issuance of notices of deficiencies and their correction by asset management companies and asset managers.

Section 34 of this regulation establishes the procedures for submitting a petition to request the Administrator to adopt, file, amend or repeal a regulation.

Sections 32 and 35-46 of this regulation establish procedures for the conduct of disciplinary and other proceedings before the Administrator or designated hearing officers. Those provisions govern: (1) citizens' complaints; (2) formal complaints; (3) decisions; (4) informal meetings in lieu of hearings; (5) motions for reconsideration; (6) the amendment of complaints; (7) motions; (8) the use of documents in hearings; (9) rules of evidence; (10) the conduct of hearings; (11) a party's failure to appear; (12) rehearings; and (13) continuances.

Section 48 of this regulation requires an asset management company or asset manager that uses independent contractors to establish a process for hiring of its independent contractors which provides for verification that the independent contractor and his or her subcontractors maintain all necessary licenses or permits and have satisfied all applicable bonding and insurance requirements and the performance of periodic inspection of any work performed. **Section 48** also requires the asset management company or asset manager to annually submit a report that describes its compliance with those requirements. Finally, **section 48** provides that the Division will not take disciplinary action against an asset management company asset manager for the actions of an independent contractor or his or her subcontractors if the asset management company or asset manager complies with the hiring and reporting requirements of that section.