

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

LCB File No. R011-04

Effective April 6, 2004

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

AUTHORITY: §§1, 2, 5 and 6, NRS 119A.190; §§3 and 4, NRS 119A.190 and 119A.360.

A REGULATION relating to time shares; establishing remedies if a person submits a check or draft to the Real Estate Division of the Department of Business and Industry under certain circumstances and that check or draft is dishonored by the drawee; establishing a fee for an investigation of the background of any person who applies for a license as a sales agent; requiring an applicant for a license as a sales agent to take and pass an examination; establishing a fee for such an examination; and providing other matters properly relating thereto.

Section 1. Chapter 119A of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. 1. *If a person submits a check or draft to the Division to obtain a license, permit, certificate, registration, approval, accreditation or other type of authorization to engage in an activity for which authorization is required pursuant to this chapter or chapter 119A of NRS, and the check or draft is returned to the Division because the person had insufficient money or credit with the drawee to pay the check or draft or because the person stopped payment on the check or draft:*

(a) The license, permit, certificate, registration, approval, accreditation or other type of authorization obtained by the person from the Division is automatically invalidated; or

(b) If the person has not obtained the license, permit, certificate, registration, approval, accreditation or other type of authorization from the Division, the Division may refuse to issue or reinstate the authorization.

2. In accordance with NRS 353C.115 and section 1 of LCB File No. R121-03, which was adopted by the State Controller pursuant thereto and filed with the Secretary of State on February 4, 2004, the Division will charge a person, for each check or draft returned to the Division because the person had insufficient money or credit with the drawee to pay the check or draft or because the person stopped payment on the check or draft, a fee of \$25 or such other amount as may subsequently be required by NRS 353C.115 and section 1 of LCB File No. R121-03.

Sec. 3. 1. *The Division will charge and collect, from each person who applies for a license as a sales agent, a fee for any investigation of the person's background undertaken pursuant to NRS 119A.210.*

2. The fee will not exceed the actual cost to conduct the investigation.

Sec. 4. 1. *An applicant for a license as a sales agent must, not earlier than 1 year before he submits his application to the Division, take and pass an examination administered by the Division.*

2. An applicant must pay a fee of \$100 each time he takes the examination.

Sec. 5. NAC 119A.085 is hereby amended to read as follows:

119A.085 The Division will deny any application for a license if:

1. The application is not in proper form;

2. The proper fees are not enclosed;
3. The accompanying forms are incomplete or otherwise unsatisfactory;
4. The application contains a false statement;
5. The application is otherwise deficient;
6. The applicant has been convicted of, or pleaded guilty or nolo contendere to, a felony or a misdemeanor involving moral turpitude, dishonesty or untrustworthiness, or has aided and abetted another to act or attempt to act in violation of chapter 119, 119A, 645 or 645A of NRS or the regulations adopted pursuant to those chapters;
7. The application fails to meet the requirements of NRS 119A.210;
8. An investigation fails to show affirmatively that the applicant possesses the necessary qualifications;
9. The applicant has willfully acted or attempted to act in violation of chapter 119, 119A, 645 or 645A of NRS or the regulations adopted pursuant to those chapters, or has aided and abetted another to act or attempt to act in violation of those statutes or regulations;
10. The applicant has had a license suspended or revoked in another state; *or*
11. ~~{The check to the Division for payment of the fee is dishonored; or~~
- ~~—12.]~~ The applicant holds a valid license issued pursuant to chapter 645 of NRS.

Sec. 6. NAC 119A.145 is hereby repealed.

TEXT OF REPEALED SECTION

119A.145 Dishonored checks. The Administrator will deny, decline to reinstate, revoke or suspend a license if the licensee delivers a check to the Administrator which is not honored by the financial institution upon which it is drawn.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R011-04**

The Real Estate Division of the Department of Business and Industry adopted regulations assigned LCB File No. R011-04 which pertain to chapter 119A of the Nevada Administrative Code on February 24, 2004.

Notice date: 1/20/2004
Hearing date: 2/24/2004

Date of adoption by agency: 2/24/2004
Filing date: 4/6/2004

INFORMATIONAL STATEMENT

- 1. 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.**

Notice of the proposed regulations were posted on the Real Estate Division website and in various other public locations where both the public and other interested persons would have access to that information. The Division conducted a public workshop on February 6, 2004, which was video-linked between our Carson City office and our Las Vegas office. Public comment was also solicited at the public hearing on February 24, 2004.

- 2. The number of persons who:**

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|-----------------------------|---|
| Attended workshops: | 0 |
| Attended hearing: | 6 |
| Submitted written comments: | 0 |

- 3. 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.**

Affected businesses were able to comment in the public workshop and hearing or in writing, a summary of the oral comments are attached hereto.

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

In spite of the opposition raised by the public in attendance at the hearing, the Division did not see a need to make any changes to the regulations. The reasons for not changing the regulations are as follows:

- 1) Timeshare exam is state specific, which makes the examination development more difficult and unique from the real estate examinations, which have a large portion of questions on national issues.
- 2) The most recent contract, which was entered into in 2002, included provisions for several new tests to be developed, so that when the fees were established by regulation those tests could then be administered by the examination service.
- 3) The examination service is currently working on developing the timeshare agent test. This process will establish a databank of questions that will be updated and changed on a regular basis and will provide for protection of the integrity of the examination process.
- 4) The use of the computer based examination service should make the examination process much more streamlined and will provide immediate results and easier access for the licensee.
- 5) Purpose of the examination is to screen for a knowledgeable and qualified group of licensees, therefore, protection of the integrity of the examination is essential.
- 6) Employees in the Division that have been administering the timeshare exam are paid for out of a self-funded budget that is established solely from a fee charged to real estate licensees under chapter 645. Therefore, once the exam has been outsourced they can resume duties that relate to the licensees that fund their salaries.
- 7) By maintaining consistency throughout all of the chapters and keeping the fee higher than the actual cost, the Division does not have to change the fees as the contracts are re-negotiated. The examination fee of \$100 has been charged to real estate licensees and appraisal licensees for many years and over those years the actual cost has varied a great deal, depending upon the contract. The current contract is the lowest in years, and it would be unlikely that it would remain as low in the future.

5. The estimated economic effect of the adopted regulation on the business 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:

(1) Both adverse and beneficial effects:

and Adverse effects: A person seeking to obtain a license under this chapter will have some additional fees to pay for background investigation and for the examination.

Beneficial effects: The fact that the examination will be given by an examination service will provide better availability of the exam and flexibility in scheduling an exam.

(2) Both immediate and long-term effects.

Immediate effects: The immediate effect will be that the applicants will have some additional fees to pay.

Long-term effects: The long-term effect should be better flexibility for the applicant to take the examination and should allow for protection of the integrity of the examination. The long-term effect of the background investigation fee will mean that the Division will be able to process a background check on every applicant and therefore will not license individuals that do not qualify due to prior criminal records.

Public:

(1) Both adverse and beneficial effects: and

Adverse effects: There are no known adverse effects to the public by the adoption of this regulation.

Beneficial effects: Due to the fact that persons with criminal records are less likely to become licensed, the public should be better protected by these regulations. Additionally, due to the added protection of the integrity of the examination, there should be a better educated and qualified licensees for the public to deal with.

(2) Both immediate and long-term effects:

Immediate effects: There are no known immediate effects to the public.

Long-term effects: The anticipation is that the long-term effects will result in more qualified licensees and the public should not be harmed by the work of under-educated timeshare agents. Additionally, there will be a lesser likelihood that an individual with a criminal history would be licensed.

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

Cost of handbook production. Cost of educating the public and regulated licensees regarding the new regulation. Cost of regulation review.

7. 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 is no other state, federal or other governmental agency's regulations, which the proposed regulations duplicate or overlap.

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

N/A

9. 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 2 establishes the authority for the Division to charge a fee for every check returned for insufficient funds. The fee proposed is \$25.00. It is estimated that the Division receives 75 returned checks per year, thereby resulting in revenue in the amount of \$1,875.00 for the entire agency, not specifically from licensees of this chapter.

Section 3 proposes that the Division may charge the fee for the investigation of the background of an applicant or licensee in the amount of the actual cost. This fee will be collected from the applicant or licensee and will be payable directly to the agency conducting the investigation. Currently the Division receives a general fund appropriation to conduct random investigations on applicants or licensees. By allowing the Division the ability to collect a fee for this investigation from each applicant or licensee the Division will be able to conduct an investigation on every applicant or licensee and will not longer need the general fund appropriation.

Section 4 establishes a fee for the examination required to become licensed. This \$100 fee will be charged to each applicant when they register for the examination. By charging this fee the Division may utilize the services of an examination service that it has already contracted with. At this time the examination service charges \$49.00 for every examination administered. Therefore, revenue of \$51 per examination will be generated and forwarded to the general fund. The estimate of examinations per year is 1346 therefore resulting in an annual revenue of \$68,646.00.