

LCB File No. R114-99

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

NOTICE OF INTENT TO ACT UPON A REGULATION

**NOTICE OF HEARING FOR THE ADOPTION, AMENDMENT
AND REPEAL OF REGULATIONS OF THE
NEVADA REAL ESTATE DIVISION**

The Nevada Real Estate Division of the Department of Business & Industry of the State of Nevada (the "Division") will hold a public hearing at 9:30 AM on September 27, 1999, at the City of Las Vegas Council Chambers, 400 Stewart Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations that pertain to Chapters 116 and 645 of the Nevada Administrative Code.

Las Vegas

September 27, 1999

9:30 AM

City of Las Vegas Council Chambers

400 Stewart Avenue

Las Vegas, NV

LCB File No. 114-99

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

The regulations to be adopted are stated as follows:

Authority: SB 451, Sections 4(3), 16(5) and 26(3)(c-e)

Note: SB 451, Sections 4(3) and 16(5) are to be adopted by the Administrator of the Real Estate Division.

Note: Matter italicized is new; matter in brackets [] is material to be omitted.

Section 1. Chapter 116 of NAC is hereby amended by adding thereto sections two through seventeen, inclusive of these proposed regulations.

Sec. 2. *DEFINITIONS:*

Sec. 3. *“Advisory Review Committee” means a Committee of management peers qualified and approved by the Real Estate Commission and appointed by the Administrator to review certain, but not all, Complaints on Community Managers.*

Sec. 4. *“Complaint” means a form, with all accompanying documentation, completed by a Complainant alleging misconduct, fraud, failing to maintain records, mishandling of funds or any other activities detailed in this regulation by a Community Manager.*

Sec. 5. *“Complainant” means the owner or Board member who resides in an association managed by a COMMUNITY MANAGER who completes a written Complaint, along with all required documentation, and files the form with the Real Estate Division.*

Sec. 6. *“Fiduciary Duty of a Community Association Manager” means a duty to act for the association, while subordinating one’s personal interests to that of the association.*

Sec. 7. *“Investigator” means the individual within the Real Estate Division assigned to review any allegation against a COMMUNITY MANAGER.*

Sec. 8. *“COMMUNITY MANAGER” means an individual that posses a Community Association Mangers Certificate from the Real Estate Division as well as any property management permitee as licensed under NRS & NAC 645, who is engaged in the management of an Association.*

Sec. 9. *“Standards of Practice” means the standards established by regulation set forth by the Real Estate Commission which must be met by each COMMUNITY MANAGER to meet*

the minimum standard required to manage a common-interest community in the State of Nevada.

Sec. 10. *“Reserve study” a projection of the long-term homeowner associations expenses and the necessary funds (or reserves) to be set aside for these future expenditures. Reserve studies are to be used by the association board to use as a management tool to in order to plan that major repairs and replacement costs are adequately funded in the future.*

Sec. 11. *“Reserve study preparer” means an individual who is qualified by training and experience to properly prepare a common-interest association reserve study and whose qualifications have been approved by the association’s executive board.*

Sec. 12. *“Component inventory” means the task of selecting and quantifying reserve components through review of association design and organizational documents, a review of established association precedents and in communication with association board.*

Sec. 13. *“Component” the individual line items in a reserve study, developed or updated by physical analysis. A component is an item for which association is responsible to maintain.*

Sec. 14. RESERVE STUDY PREPARER QUALIFICATIONS

A reserve study preparer must be qualified to conduct a study and prepare a reserve study for a common interest community association by training and experience as follows:

1. Must have a good reputation for honesty, trustworthiness and integrity and who offers proof of qualifications satisfactory to the association board.

2. Must be qualified to conduct a reserve study and prepare report by being competent, experienced and trained in the disciplines which the study addresses and has the ability to perform fiscal analysis, cost estimates and 30 year projections as required:

a. Must have ability to review association documents to ascertain and establish a the component inventory.

b. Must have the technical background for any component which will be studied, which may include but not be limited to:

1. Structures: water intrusion, structural, mechanical, plumbing, and electrical and fire assemblies; and

2. On-Site/facilities: pool, club house, fences , and gates; and

3. On-site/civil engineering: drainage, streets, sidewalks, gutter, curbs, walls , grounds and lighting; and

4. Off-site: sidewalk, curbs, gutters and drainage.

Each common area components must be evaluated as to any accelerated deterioration, remaining useful life, by year, and current cost to repair or replace.

3. Must have the ability to gather and analyze financial data including monthly assessment fee per unit, current reserve fund balance, interest rate anticipated on reserves and anticipated inflation and maximum allowable fee increases.

Sec. 15. *An association shall be exempt from NRS Chapter 116, if the association has been created for the sole purpose of maintaining common-interest landscape areas which the common area is the total of no more than 10% of the total community. If the community has*

any common elements of structures, they must be passive verses active. Enforcement of covenants must be by deed restriction and not enforceable by an association. A Landscape Maintenance Association may not adopt rules and regulations pursuant to chapter 116 of NRS.

Sec. 16. *For the purposes of NRS 116.1201(2)(a)(2), an association shall be exempt from NRS Chapter 116, if the association has been created exclusively for the purpose of maintaining facilities for flood control. The Administrator shall exempt such associations where the official plat creating the common areas, areas owned in common or parcels restricted as non-buildable were created for the purpose of collecting, retaining, detaining or channeling storm water drainage from the residential properties of the association or perpetuating storm water drainage, floodways, natural drainageways, or spillways of upgradient properties. The Administrator shall not exempt any association where the common areas, areas owned by common or parcel restricted as non-buildable have been landscaped and are irrigated by a privately or publicly owned water delivery system, whereby the landscaping and irrigation system are maintained by the association.*

Sec. 17. *A rural or agricultural common-interest community is a community which is zoned for agricultural purposes by the county in which the community is located, the parcels are a minimum of one (1) acre, on which a resident can conduct farming or raise livestock animals as allowed in the governing documents. The community maintains their own roads and may not be continuous to an urban area or belong to a city or town or be within the city limits. Associations within these agricultural elements may be exempted from NRS 116 by the Administrator.*

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

INFORMATIONAL STATEMENT

The following information is provided pursuant to the requirements of NRS 233B.060:

Information Regarding Adoption

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

Information about Proposed Regulations

1. Purpose and need of the Proposed Regulations.
Establish Reserve Study Preparer qualifications;
Establish criteria for determining of whether an association is created for the limited purpose of maintaining the landscape of the common elements of a common-interest community, maintaining facilities for flood control or maintaining rural agricultural residential common interest common interest community;
Establish Standards of Practice for persons engaged in property management for a common-interest community.
Establish grounds for initiating disciplinary action against a person(s) to whom a certificate has been issued, including specified disciplinary sanctions.
Establish rules of practice and procedure for conducting a disciplinary hearing;
Revise NAC 116.120(1)(a) current certification education hours required.
2. Terms of the proposed regulations. Provided on previous pages.
3. Estimated Economic Effect. None.
4. Estimated Cost to the Agency. Increased cost of hearings and investigative costs. Will create necessity for investigative staffing. Cost of handbook production. Cost of regulation review.
5. Duplication with other Agencies. None.
6. Federal Law. These regulations are not required pursuant to any federal law.
7. Federal Regulation. These regulations do not include provisions, which are more stringent than a federal regulation.

8. New Fee Established. The proposed regulations do not establish a new fee or increase an existing fee beyond the fees required pursuant to NRS chapter 116.

Comments and Written Submissions

Persons wishing to comment on the proposed action of the Division may appear at the scheduled public hearings or may address their comments, data, views or arguments, in written form to:

Nevada Real Estate Division
Bradley Building
2501 E. Sahara Avenue, Room 101
Las Vegas, NV 89104-4137
Attn: Tami DeVries, Legal Administrative Officer

Written submissions must be received by the Division by SEPTEMBER 13, 1999. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

Copies of Proposed Regulation

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation will be available at the following Division offices:

Nevada Real Estate Division
1665 Hot Spring Road, Suite 155
Carson City, NV 89710

Nevada Real Estate Division
Bradley Building
2501 East Sahara, Suite 100
Las Vegas, NV 89104-4137

and in all counties in which an office of the Division is not maintained, at the main public library, for inspection and copying by members of the public during business hours. The text of each regulation will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

List for Posting Regulation Workshop & Hearing Notices

Carson City Library

900 North Roop Street
Carson City, NV 89701

Clark County/LV Library

833 Las Vegas Blvd., North
Las Vegas, NV 89101

Elko County Library

720 Court Street
Elko, NV 89801

Eureka Branch Library

10190 Monroe Street/POB 293
Eureka, NV 89316

Battle Mountain Branch Library

(Lander County)
625 Broad Street/PO Box 161
Battle Mountain NV 89820

Lyon County Library

20 Nevin Way
Yerington, NV 89447

Tonopah Public Library

(Nye County)
171 Central Street/PO Box 449
Tonopah, NV 89049

Storey County Library

95 South R Street
PO Box 14
Virginia City, NV 89440

White Pine County Library

950 Campton Street
Ely, NV 89301

Churchill County Library

553 South Maine Street
Fallon, NV 89406

Douglas County Library

1625 Library Lane, POB 337
Minden, NV 89423

Goldfield Public Library/Esmerelda Co.

Fourth & Crook St./POB 40
Goldfield, NV 89013

Humboldt County Library

85 East 5th Street
Winnemucca, NV 89445

Lincoln County Library

93 Main Street
POBox 330
Pioche NV 89043

Mineral County Library

First & A Street/PO Box 1390
Hawthorne, NV 89415

Pershing County Library

1125 Central Avenue
PO Box 781
Lovelock, NV 89419

Washoe County Library

301 South Center Street
PO Box 2151
Reno, NV 89505

Nevada State Library & Archives

Capitol Complex
Carson City, NV 89710