

**PROPOSED REGULATION OF THE ADMINISTRATOR  
OF THE HOUSING DIVISION OF THE DEPARTMENT  
OF BUSINESS AND INDUSTRY**

**LCB File No. R103-05**

September 8, 2005

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

AUTHORITY: §§1 and 3-6, NRS 319.140 and 319.145; §§2, NRS 319.140 and 319.173.

A REGULATION relating to affordable housing; revising provisions relating to tax credits for low income housing; revising provisions relating to the members of the Advisory Committee on Housing; and providing other matters properly relating thereto.

**Section 1.** Chapter 319 of NAC is hereby amended by adding thereto a new section to read as follows:

*The total amount of a developer's fee for a project for which an application for tax credits is submitted or a project that is financed by 50 percent or more of the proceeds of tax-exempt bonds, including any profit or overhead of the developer and any fees for consultants or processing agents, must not exceed 15 percent of the eligible basis of the project, excluding the developer's fee.*

**Sec. 2.** NAC 319.034 is hereby amended to read as follows:

319.034 1. The Director of the Department of Business and Industry shall appoint:

- (a) The eight members of the Committee that he is authorized to appoint pursuant to NRS 319.173 from a list of names submitted to him by the organizations represented;
- (b) A member within 90 days after a vacancy occurs; and
- (c) A Chairman *and Vice Chairman* from among the members of the Committee.

2. The term of office of each appointed member is 3 years, and each appointed member ~~[serves without compensation.]~~ *shall continue to serve until a person who is qualified to serve as his replacement is appointed as his successor.*

3. The terms of office of appointed members must be staggered.

4. Each appointed member may serve for only two full terms. If a person was appointed to fill an unexpired term, he shall be deemed to have served a full term. ~~[No]~~ *Except as otherwise provided in subsection 2, an* appointed member may *not* serve more than a total of 6 years on the Committee.

*5. The Director may remove an appointed member for unexcused absence from two consecutive meetings of the Committee.*

**Sec. 3.** NAC 319.951 is hereby amended to read as follows:

319.951 As used in NAC 319.951 to 319.998, inclusive, *and section 1 of this regulation,* unless the context otherwise requires, the words and terms defined in NAC 319.953 to 319.965, inclusive, have the meanings ascribed to them in those sections.

**Sec. 4.** NAC 319.981 is hereby amended to read as follows:

319.981 1. Except as otherwise provided in this section, each project that receives a reservation of tax credits must be closed within 270 days after the date the Division provides written notification to the applicant of the reservation. If a project is not closed within that period, the Division will terminate the reservation of tax credits. Before the expiration of the period, the applicant must demonstrate to the Division that he has closed the project within that period by providing proof satisfactory to the Division that he has:

(a) Purchased and holds title in fee simple to the project site in his name.

(b) Entered into a written agreement with a contractor who is licensed in this state to begin construction before the expiration of the period.

(c) Obtained adequate financing for the construction of the project. The applicant must provide written commitments or contracts from third parties.

(d) Executed a written commitment for a loan for permanent financing for the construction of the project in an amount that ensures the financial feasibility of the project. The commitment may be subject to the condition that the construction is completed and the project is appraised for an amount sufficient to justify the loan in accordance with the requirements of the lender for credit. If the project is a rural development project that receives loans or grants from the United States Department of Agriculture, the applicant must provide a form approved by the Division that indicates that money has been obligated for the construction of the project before the expiration of the period. An advance of that money is not required before the expiration of the period.

2. A project that is not closed within the period and in the manner specified in subsection 1 will lose its reservation of tax credits unless the Division receives from the applicant a written request for an extension of 45 days and the fee as provided in the annual plan. The request must be accompanied by proof satisfactory to the Division indicating that:

(a) The requirements for financing the project have been substantially completed;

(b) The delay in closing was the result of circumstances that could not have been anticipated by and were outside the control of the applicant at the time the application was filed by the applicant; and

(c) The project will be closed within the 45-day period.

↪ Only one extension may be granted pursuant to this subsection. If the project is not closed before the expiration of the extension period, the reservation of tax credits will terminate.

3. The Division may terminate a reservation of tax credits at any time if, as determined by the Division:

(a) The applicant fails to pay the fee for the reservation of tax credits within 30 days after he receives the notice of the reservation from the Division;

(b) The applicant or project sponsor fails to pursue diligently the construction and completion of the project;

(c) Any event or other circumstance occurs or is discovered by the Division that is likely to cause the project to fail to comply with any of the requirements for the project or is likely to cause the project to fail to qualify for any tax credits that have been set aside, preference point award or rule for breaking ties for which the tax credits were reserved;

(d) Any statement or representation made to the Division by the applicant or project sponsor was inaccurate or misleading at the time it was made and that statement or representation is material to any determination by the Division to make or continue the reservation of tax credits;

(e) The applicant fails to provide any required reports or otherwise comply during the reservation period with the provisions of the Code or any regulations adopted pursuant to the Code, the annual plan or NAC 319.951 to 319.998, inclusive ~~[; or]~~, *and section 1 of this regulation;*

(f) *The applicant or project sponsor has, for any other project for affordable housing for which the applicant or project sponsor received a tax credit or financing for the project from the proceeds of tax-exempt bonds, failed to comply with the provisions of NAC 319.951 to*

*319.998, inclusive, and section 1 of this regulation, during the compliance period for that project and failed to correct the failure to comply in a timely and reasonable manner; or*

(g) Any other event, circumstance or condition occurs for which a reservation of tax credits may be terminated as provided in the annual plan.

4. If the Division terminates a reservation of tax credits:

(a) No fees paid by the applicant will be returned to him by the Division.

(b) The applicant may submit a new application for tax credits during any subsequent allocation round conducted during the plan year if the Division accepts new applications for that round. The application must be accompanied by a new application fee. If the applicant receives a reservation of tax credits, the applicant must pay an additional reservation fee in an amount specified in the annual plan.

**Sec. 5.** NAC 319.984 is hereby amended to read as follows:

319.984 1. The following determinations or actions by the Division are, upon the request of an applicant, subject to review by the Administrator:

(a) The rejection of an application;

(b) The refusal to accept a document or other information from the applicant;

(c) A tentative award or the denial of a reservation of tax credits and any determination or action upon which the tentative award or denial of the reservation was based;

(d) A termination of a reservation of tax credits;

(e) A decision to deny an award of tax credits or the determination of the final award of tax credits;

(f) A determination or action taken during the compliance period; and

(g) Any other determination or action for which review by the Administrator is provided for in the annual plan or approved by the Administrator.

2. To request a review pursuant to this section, the applicant must submit a written request to the Administrator within 7 days after the applicant receives notice of the determination or action for which the review is requested. The request must indicate the nature of the determination or action to be reviewed. The request may specify the reason why the applicant believes the determination or action by the Division was improper. The Division may submit a written response to the Administrator concerning the request.

3. The Administrator will schedule a hearing on the matter. Before the hearing is conducted, the applicant may inspect any document or other information included in the file of the applicant maintained by the Division regarding the determination or action of the Division, other than confidential communications between an attorney and his client. The applicant and his attorney, if any, may interview any officer or employee of the Division who participated in the determination or action. The attorney for the Division may be present at the interview.

4. At the hearing, the members of the staff of the Division may discuss the reasons for the determination or action and present documents or other information relating to the determination or action. After the discussion, the applicant may present his arguments and any evidence supporting those arguments. After the applicant has presented his arguments and evidence, the members of the staff of the Division may respond to the arguments of the applicant. The Administrator may allow closing comments, ask questions at any time during the hearing or require written briefs for the hearing.

5. Each document in the file of the applicant maintained by the Division shall be deemed admitted in any review conducted pursuant to this section and may be reviewed by the

Administrator regardless of whether those documents are marked as exhibits. To create a record of the hearing, a document or any other information that is not included in the file of the applicant maintained by the Division may be submitted at the hearing and considered by the Administrator. Before the document or other information is included in the file, the Administrator must specifically state in his written decision that the document or other information is included in the file. If the Administrator does not make such a statement, the Division will not include the document or other information in the file of the applicant maintained by the Division.

6. The Administrator will record on audiotape any hearing conducted pursuant to this section. The applicant may, at the expense of the Division, request a copy of the audiotape. If requested by the applicant, the Division will, at the expense of the applicant, provide a transcript of the audiotape to him.

7. The applicant may be represented by an attorney who is licensed to practice law in this state. ~~[A deputy attorney general]~~ *An attorney* who represents the Division may, at the request of the Administrator, be present at any hearing conducted pursuant to this section and may comment on the presentations by the Division and the applicant. If the ~~[deputy attorney general]~~ *attorney* was involved in the determination or action that is the subject of the review, he shall disclose that fact, but is not required to disclose any confidential communications he had with an officer or employee of the Division or the Administrator. The Administrator may exclude any other person from the hearing. If a person testifies on behalf of a party at the hearing, the opposing party may cross-examine that person. A review conducted pursuant to this section is not subject to the rules of evidence provided for civil actions. The Administrator will make all procedural and evidentiary decisions.

8. After a review is conducted pursuant to this section, the Administrator may conduct further proceedings and investigations if any information or arguments presented at the hearing were insufficient. The Administrator may communicate ex parte with the applicant or his attorney, the staff of the Division and any ~~[deputy attorney general]~~ attorney representing the Division. If the Administrator:

(a) Communicates ex parte with ~~[a deputy attorney general]~~ any attorney representing the Division, the communication is confidential.

(b) Discovers a document or other information that is not included in the file of the applicant maintained by the Division or was not submitted at the hearing, and that document or other information is the basis for an adverse decision by the Administrator against the applicant, the applicant may review and comment on the document or other information.

9. The Administrator will issue his decision in writing. The decision is a final decision for the purposes of judicial review.

10. If an applicant files a petition for judicial review of a final decision of the Administrator pursuant to chapter 233B of NRS, the Division will, unless enjoined or otherwise ordered by the court in which the petition is filed:

(a) Reserve and award tax credits for applicants other than the applicant who filed the petition for the plan year in which the petition is filed; and

(b) Consider the applicant for a reservation or final award of tax credits for the plan year immediately after the plan year in which the petition is filed.

**Sec. 6.** NAC 319.987 is hereby amended to read as follows:

319.987 1. To meet the requirements of financial feasibility of a project for which an application for tax credits is submitted, the applicant must demonstrate to the satisfaction of the



Division that the project will be financially feasible based on the amount of rent charged for units in the project as stated by the applicant in his application.

2. In evaluating the financial feasibility of each project, the Division will, in addition to any criteria set forth in the annual plan, consider:

(a) The reasonableness of construction costs, using the maximum amount of costs established in the annual plan;

(b) The cost of the project;

(c) The cost per unit of the project;

(d) The projected income, expenses and cash flow for the period specified in the annual plan;

(e) The reasonableness of the projections of income and expenses and the assumptions upon which those projections are based;

(f) The fees for developers or contractors;

(g) The sources and uses of money for the project;

(h) The projected proceeds from the sale of tax credits;

(i) The plan for financing the project;

(j) The percentage of the housing credits used for the cost of the project;

(k) The demonstrated stability of the project sponsor, including an analysis of the financial statements of the project sponsor; and

(l) Any other criteria set forth in the annual plan or required by the Code.

3. Unless otherwise provided in the annual plan or in the instructions included in an application, the Division will use the following assumptions and limitations to analyze a pro forma included with each application:

(a) A minimum debt service coverage ratio of 1.15 on all combined debt based upon the mortgage rates at the time the Division considers the application. In determining the ratio, the Division will not consider any notes that do not require payment until the sale of the property. Developer or deferred notes will be included by the Division in the determination at the beginning of the repayment period. If a project receives money or any other assistance from the Rural Development Program of the United States Department of Agriculture, the ratio of debt service coverage established by that department for that program shall be deemed acceptable to the Division. If the applicant demonstrates to the satisfaction of the Division that a permanent lender has agreed to provide all of the permanent financing for the project at a ratio of debt service coverage other than 1.15, the Division will consider the ratio of that lender. To be considered by the Division, the commitment must be:

- (1) In writing;
- (2) Specifically limited to that project; and
- (3) Unconditional unless the commitment is conditioned upon the successful completion of the construction of the project and the award of tax credits for that project.

(b) Tax credits will not be reserved to finance or capitalize any type of reserve account including, but not limited to, operating reserves or replacement reserves.

(c) Annual increases in income and expenses that are less than 3 percent.

(d) A vacancy factor of not more than 7 percent after each unit in the project is rented.

(e) An operating ratio of at least 35 percent but not more than 45 percent.

(f) Replacement reserves must be funded at a level of not less than \$150 per unit per year for projects for older persons that received preference points pursuant to NAC 319.989 and at a level of not less than \$200 per unit per year for any other project.

4. ~~{The total amount of a developer's fee for the project, including any profit or overhead of the developer and any fees for consultants or processing agents, must not exceed 15 percent of the eligible basis of the project, excluding the developer's fee.~~

~~—5.}~~ The Division will consider an amount that is more than 14 percent of the construction costs for the total of builder's profit, builder's overhead and general requirements to be excessive. General requirements include the cost to:

- (a) Install temporary fencing at the site of the project;
- (b) Provide services of a public utility to the site during the construction of the project; and
- (c) Provide an office or supervisor at the site of the project.

~~{6.}~~ 5. Additional criteria, assumptions and limitations may be required in the annual plan and instructions for an application.