

**PROPOSED REGULATION OF THE COMMISSION
FOR COMMON-INTEREST COMMUNITIES**

LCB File No. R205-05

January 4, 2006

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

AUTHORITY: §§1, 2, 6 and 12, NRS 116.615; §§3 and 4, section 43 of Senate Bill No. 325 of the 73rd Session of the Nevada Legislature, chapter 494, Statutes of Nevada 2005, at page 2584 (NRS 116.31142); §5, section 44 of Senate Bill No. 325 of the 73rd Session of the Nevada Legislature, chapter 494, Statutes of Nevada 2005, at page 2584 (NRS 116.31144); §7, NRS 116.4109; §8, NRS 116.1201; §§9-11, NRS 116.31185 and 116.615; §13, NRS 116.1201 and 116.615; §14, section 15 of Senate Bill No. 325 of the 73rd Session of the Nevada Legislature, chapter 494, Statutes of Nevada 2005, at page 2574 (NRS 116A.200) and section 24 of Senate Bill No. 325 of the 73rd Session of the Nevada Legislature, chapter 494, Statutes of Nevada 2005, at page 2577 (NRS 116A.410); §15, section 15 of Senate Bill No. 325 of the 73rd Session of the Nevada Legislature, chapter 494, Statutes of Nevada 2005, at page 2574 (NRS 116A.200) and section 23 of Senate Bill No. 325 of the 73rd Session of the Nevada Legislature, chapter 494, Statutes of Nevada 2005, at page 2576 (NRS 116A.400); §16, section 15 of Senate Bill No. 325 of the 73rd Session of the Nevada Legislature, chapter 494, Statutes of Nevada 2005, at page 2574 (NRS 116A.200), section 23 of Senate Bill No. 325 of the 73rd Session of the Nevada Legislature, chapter 494, Statutes of Nevada 2005, at page 2576 (NRS 116A.400) and section 24 of Senate Bill No. 325 of the 73rd Session of the Nevada Legislature, chapter 494, Statutes of Nevada 2005, at page 2577 (NRS 116A.410); §17, NRS 116.3103 and 116.615.

A REGULATION relating to common-interest communities; prescribing the requirements for the preparation and presentation of financial statements of an association; allowing an executive board to create an association committee under certain circumstances; limiting the amount that an association may charge for preparing certain certificates; requiring a limited-purpose association to comply with certain requirements; limiting the amount that certain persons may receive as gifts, rewards or other items of value; requiring such persons to report such gifts; and providing other matters properly relating thereto.

Section 1. Chapter 116 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *“Financial records” means the financial or transaction records necessary to support the financial statements of an association which include, without limitation, receipts, bank statements, income tax reports, reserve studies, budgets, contracts, minutes of executive board meetings, inventories, investments, expenses, disbursements, obligations, depreciations in property or equipment, cost and fair market values, contingent liabilities and any other records deemed necessary by the Division or by the accountants or auditors of an association.*

Sec. 3. *The financial statements of an association must be presented using fund accounting and must include:*

- 1. An operating fund which reflects the accounting transactions surrounding the normal maintenance and service operations of the association; and*
- 2. A reserve fund which reflects the accounting transactions pertaining to the long-term major repair and replacement requirements of the association.*

Sec. 4. *The interim financial statements of an association must:*

- 1. Include, at a minimum, a month-to-date and year-to-date presentation of:*
 - (a) The balance sheet for the operating fund and the reserve fund, presenting assets, liabilities and fund balances, including any changes in the fund balances;*
 - (b) The statement of revenues and expenses for the operating fund and the reserve fund, presenting information about all assessments, revenues and expenses; and*
 - (c) The schedule comparing the details of the actual expenses of the association with the expenses budgeted for the association.*
- 2. Be prepared in accordance with generally accepted accounting principles.*
- 3. Be prepared and completed not later than 30 days after the end of each month.*

4. Be distributed monthly, promptly upon completion, to the treasurer of the association or, if required by the governing documents of the association, to each member of the executive board.

Sec. 5. 1. *The audited financial statement of an association must:*

(a) Include a full presentation of accrual-basis accounting prepared in accordance with generally accepted accounting principles.

(b) Be prepared and completed not later than 90 days after the end of the fiscal year for the association.

(c) Be filed annually with the Division not later than 120 days after the end of the fiscal year for the association. All audited financial statements will be made available for the public by the Division.

2. An auditor performing the annual audit for an association must:

(a) Be a certified public accountant licensed pursuant to chapter 628 of NRS.

(b) Be independent of the association.

(c) Not be a unit's owner, a member of the executive board or a certified public accountant affiliated with a community manager or unit's owner.

3. As used in this section, "audited financial statement" has the meaning ascribed to it in the Common Interest Realty Associations - AICPA Audit and Accounting Guide, as adopted by reference in NAC 116.410.

Sec. 6. 1. *Except as otherwise provided in the governing documents of an association, the executive board may create an association committee to research and recommend to the executive board a course of action on a single issue such as the production of a budget or the selection of vendor bids. An association committee may only be created during a meeting of*

the executive board held in accordance with the provisions of NRS 116.31083 if the proposal to create the committee is included in the notice as an agenda item with the purpose of the committee clearly stated in the notice.

2. An association committee created pursuant to subsection 1 may be comprised of anyone selected by the executive board but cannot consist of a majority of the members of the executive board. An association committee is exempt from the requirements of NRS 116.31083.

3. Except as otherwise provided in subsection 5, a unit's owner in good standing with the association will be permitted to attend all meetings of an association committee if he makes a request in writing to the executive board to attend such meetings. A unit's owner may be prohibited from speaking at a meeting of an association committee but may make an audio recording of the meeting if everyone in attendance at the meeting is notified of such recording.

4. At least 2 days before a meeting of an association committee, the executive board shall make a reasonable effort to provide notice to a unit's owner who has made a request pursuant to subsection 3. The notice may be provided in person or by mail, electronic mail, telephone, newsletter or other method of communication.

5. The executive board may exclude a unit's owner from a meeting of an association committee if:

(a) The subject matter of the meeting concerns a matter that may be discussed in executive session;

(b) The unit's owner fails to attend three consecutive meetings; or

(c) The unit's owner is disruptive at any meeting.

↪ *The exclusion of a unit's owner from one meeting is not grounds for excluding the unit's owner from future meetings unless the unit's owner was excluded from future meetings for being disruptive at a past meeting.*

Sec. 7. 1. *Except as otherwise provided in subsection 2, an association may not charge more than \$160 for preparing the certificate furnished pursuant to NRS 116.4109.*

2. If a unit's owner or his authorized agent requests that the certificate be furnished sooner than 3 business days, the association may charge a fee not to exceed \$125 to expedite the preparation of the certificate.

3. Nothing in this section is to be construed to prohibit an association from requiring a fee for any other copy, form or service.

Sec. 8. *A limited-purpose association must comply with all the provisions of NRS 116.4101 to 116.412, inclusive.*

Sec. 9. 1. *As used in NRS 116.31185, "gifts, incentives, gratuities, rewards or other items of value" include, without limitation:*

(a) Any prepaid tuition to attend an approved class for members of an executive board, officers of an association or community managers;

(b) The cost or value of an approved class that is offered free of charge;

(c) The cost or value of any breakfast, lunch, snack or hot or cold nonalcoholic beverage provided at an approved class or during the breaks of an approved class; and

(d) The cost or value of an approved event that is offered free of charge so long as the approved event is offered to a group and not a specific person and the cost of sponsoring the approved event is not limited to a single school or nonprofit corporation.

2. Notwithstanding the provisions of subsection 1, the attendance at or participation in an approved class or approved event by a member of the executive board, an officer of the association, a community manager or an employee of the community manager is prohibited unless:

(a) At least 15 days before the approved class or approved event, each member of the executive board and officer of the association who wishes to attend such class or event discloses that fact to the executive board and the executive board determines that the class or event is related to the training or education of the participant as a member of the executive board or an officer of the association; and

(b) The Division determines that the class or event is related to the training or education of the participant as a member of the executive board, an officer of the association, a community manager or an employee of the community manager.

3. As used in this section:

(a) “Approved class” means a course:

(1) Which has been approved pursuant to the provisions of this chapter and which at all times satisfies the requirements of this chapter; or

(2) That is offered by the Ombudsman for Owners in Common-Interest Communities.

(b) “Approved event” means an event:

(1) That is open to the public and is sponsored or offered by a school or nonprofit corporation;

(2) For which reliable attendance records are kept; and

(3) Whose main purpose is not the selling of products or services.

Sec. 10. 1. *No member of an executive board, officer of an association, community manager or employee of the community manager shall receive, in the aggregate, any gift, incentive, gratuity, reward or other item of value pursuant to subsection 2 of NRS 116.31185 in any calendar year which exceeds the sum of \$250.*

2. On or before March 1 of each year, each member of an executive board, officer of an association, community manager and employee of the community manager shall annually file with the Division, on a form provided by the Division, a statement of any gifts, incentives, gratuities, rewards or other items of value received pursuant to subsection 2 of NRS 116.31185.

Sec. 11. *Nothing in sections 9 and 10 of this regulation is to be construed as permitting a member of an executive board, an officer of an association or a community manager to solicit or accept any form of compensation, gratuity or other remuneration in violation of the provisions of subsection 1 of NRS 116.31185.*

Sec. 12. NAC 116.010 is hereby amended to read as follows:

116.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 116.013 to 116.075, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 13. NAC 116.090 is hereby amended to read as follows:

116.090 ~~[For purposes of exemption from the provisions of chapter 116 of NRS pursuant to NRS 116.1201:]~~

1. An association is ~~[exempt]~~ *a limited-purpose association* pursuant to subparagraph (1) of paragraph (a) of subsection ~~[2]~~ *6* of NRS 116.1201 if:

(a) The association has been created for the sole purpose of maintaining the common elements consisting of landscaping, public lighting or security walls, or trails, parks and open space;

(b) The declaration states that the association has been created as a landscape maintenance association; and

(c) The declaration expressly prohibits:

(1) The association, and not a unit's owner, from enforcing a use restriction against a unit's owner;

(2) The association from adopting any rules or regulations concerning the enforcement of a use restriction against a unit's owner; and

(3) The imposition of a fine or any other penalty against a unit's owner for a violation of a use restriction.

2. An association is ~~exempt~~ *a limited-purpose association* pursuant to subparagraph (2) of paragraph (a) of subsection ~~2~~ **6** of NRS 116.1201 if the association is created for the sole purpose of maintaining:

(a) Areas on an official plat that are designated as unsuitable for building;

(b) Areas required by the governing body to be designated as floodways, natural drainage or spillways; or

(c) Other areas that the governing body requires to be used for the purpose of collecting, facilitating, retaining or channeling storm water drainage of the residential property of the common-interest community.

3. An association is ~~exempt~~ *a limited-purpose association* pursuant to subparagraph (3) of paragraph (a) of subsection ~~2~~ **6** of NRS 116.1201 if:

- (a) The association has been created as a rural agricultural residential common-interest community;
- (b) The residential lots in the common-interest community are a minimum of 1 acre and are zoned for agricultural purposes by the county in which the community is located; and
- (c) The governing documents of the association authorize the residents to farm or raise livestock on the residential lots.

4. As used in this section:

- (a) “Governing body” has the meaning ascribed to it in NRS 278.015.
- (b) “Landscaping” has the meaning ascribed to it in NRS 278.4781.
- (c) “Public lighting” has the meaning ascribed to it in NRS 278.4783.
- (d) “Security wall” has the meaning ascribed to it in NRS 271.203.
- (e) “Trails, parks and open space” means trails, parks and open space that provide a substantial public benefit or are required by the governing body for the primary use of the public. The term does not include a private street or roadway, gated entry, swimming pool, gazebo, clubhouse, pond, tennis court, miniature golf course or frisbee golf course.
- (f) “Use restriction” means any provision of the governing documents of an association that restricts a unit’s owner in the use of his unit.

Sec. 14. NAC 116.160 is hereby amended to read as follows:

- 116.160 1. A certificate must be renewed biennially.
2. Except as otherwise provided by subsection 5, the Division shall renew a certificate if the applicant submits to the Division ~~{at least 30 days}~~ before the expiration of his certificate:
- (a) A completed application on a form prescribed by the Division;

(b) The statement described in ~~NRS 116.710;~~ *section 27 of chapter 494, Statutes of Nevada 2005, at page 2578 (NRS 116A.440);*

(c) The fee required by NAC 116.505 for renewal; and

(d) Documentation of the successful completion by the applicant of at least 18 hours of continuing education in courses approved by the Commission within the 2 years immediately preceding the date on which the certificate expires. At least 3 hours of the continuing education must consist of instruction relating to this chapter and chapter 116 of NRS.

3. The renewal of a certificate is effective on the date on which the renewal is issued.

4. If the holder of a certificate fails to complete the required hours of continuing education or fails to file an application for the renewal of his certificate before it expires, he may not engage in the management of a common-interest community until his certificate is reinstated.

5. The Division may refuse to renew a certificate if:

(a) The applicant has been convicted of, or entered a plea of guilty or nolo contendere to, forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or possessing for the purpose of sale any controlled substance or any crime involving moral turpitude;

(b) The applicant fails to complete, sign and submit the statement required pursuant to ~~NRS 116.710;~~ *section 27 of chapter 494, Statutes of Nevada 2005, at page 2578 (NRS 116A.440);*

(c) The Division receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional certificates and permits issued to the applicant; or

(d) The applicant has engaged in conduct which is grounds for disciplinary action pursuant to NAC 116.360 and has been disciplined by the Division or Commission.

6. If the Division, after an application to renew a certificate in proper form has been filed, accompanied by the proper fees, refuses to renew the certificate, it shall give notice of this fact to the applicant within 15 days after the ruling, order or decision. The applicant may file a written request for a hearing before the Commission pursuant to the procedures set forth in NAC 116.150.

7. If the Division refuses to renew a certificate because it receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional certificates and permits issued to the applicant, the Division shall reinstate the certificate if the Division receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose certificate was suspended stating that the person has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 15. NAC 116.300 is hereby amended to read as follows:

116.300 A community manager shall:

1. Comply with the lawful provisions of the governing documents of each client;
2. Maintain an inventory of all records of each client;
3. Keep informed of new developments in the management of a common-interest community through continuing education, including, without limitation, new developments in law, insurance coverage and accounting principles;
4. Advise a client to obtain advice from an expert relating to matters that are beyond the expertise of the community manager;
5. Under the direction of a client, uniformly enforce the provisions of the governing documents of the association;

6. At all times ensure that the financial transactions of a client are current, accurate and properly documented and that there are established policies and procedures surrounding the financial transactions that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;

7. Prepare or cause to be prepared interim and annual financial statements that will allow the Division, ~~[a client,]~~ *the executive board*, the units' owners and the accountant or auditor to determine whether the financial position of ~~[a client]~~ *an association* is fairly presented in accordance with ~~[generally accepted accounting principles as set forth in the Common Interest Realty Associations—AICPA Audit and Accounting Guide, as adopted by NAC 116.410;]~~ *the provisions of sections 3, 4 and 5 of this regulation;*

8. Make the financial records of an association available for inspection by the Division in accordance with the applicable laws of this State;

9. Cooperate with the Division in resolving complaints filed with the Division;

10. Upon written request, make the financial records of an association available to the units' owners during regular business hours for inspection at a reasonably convenient location which must be within 60 miles from the physical location of the common-interest community and shall provide copies of such records in accordance with the applicable laws of this State;

11. Deposit all money of an association that is in the possession or control of the community manager in a federally insured financial institution authorized to do business in this State;

12. Recommend in writing to each client that the association register with the Division, maintain its registration and file all papers with the Division and the Secretary of State as required by law;

13. Comply with the directions of a client, unless the directions conflict with the governing documents of the association, this chapter or other applicable laws of this State;

14. Recommend in writing to each client that the association be in compliance with all applicable federal, state and local laws and the governing documents of the association;

15. Obtain, when practicable, at least three bids for any capital improvement project for the association; and

16. Fairly enforce the collection policies of a client and comply with all applicable federal, state and local laws relating to the collection of debt.

↪ As used in this section, “regular business hours” means Monday through Friday, 9 a.m. to 5 p.m., excluding state and federal holidays.

Sec. 16. NAC 116.331 is hereby amended to read as follows:

116.331 1. A community manager shall give written notice to the Division of any change of name, address , *supervising community manager* or association within 10 business days after the change occurs and pay the appropriate fee required by NAC 116.505.

2. Failure to give notice as required by this section constitutes cause for the involuntary inactivation of the certificate.

Sec. 17. NAC 116.400 is hereby amended to read as follows:

116.400 In performing the duties set forth in NRS 116.3103, a member of an executive board shall:

1. Comply with all applicable federal, state and local laws and the governing documents of the association;
2. Uniformly enforce the provisions of the governing documents of the association;
3. Ensure that meetings of the executive board are held with such frequency as to properly and efficiently address the affairs of the association;
4. Keep informed of new developments in the management of a common-interest community through educational courses;
5. Ensure that the executive board obtains, when practicable, at least three bids from reputable service providers who possess the proper licensing for any service used by the association;
6. Ensure that the executive board consults with the appropriate professionals as necessary before making major decisions affecting the association;
7. Deposit all money of an association in a federally insured financial institution authorized to do business in this State; and
8. If the association does not employ a community manager:
 - (a) Maintain an inventory of all records of the association;
 - (b) At all times ensure that the financial transactions of the association are current, accurate and properly documented and that there are established policies and procedures surrounding the financial transactions that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;

(c) Prepare or cause to be prepared interim and annual financial statements that will allow the Division, ~~[a client,]~~ *the executive board*, the units' owners and the accountant or auditor to determine whether the financial position of the association is fairly presented in accordance with ~~[generally accepted accounting principles as set forth in the Common Interest Realty Associations—AICPA Audit and Accounting Guide, as adopted by NAC 116.410;]~~ *the provisions of sections 3, 4 and 5 of this regulation;*

(d) Make the financial records of the association available for inspection by the Division in accordance with the applicable laws of this State;

(e) Cooperate with the Division in resolving complaints filed with the Division;

(f) Upon written request, make the financial records of the association available to the units' owners during regular business hours for inspection at a reasonably convenient location which must be within 60 miles from the physical location of the common-interest community and shall provide copies of such records in accordance with the applicable laws of this State; and

(g) Fairly enforce the collection policies of the association and comply with all applicable federal, state and local laws relating to the collection of debt.