

**PROPOSED REGULATION OF THE COMMISSION
FOR COMMON-INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS**

LCB File No. R164-09

September 15, 2010

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

AUTHORITY: §§1-4, NRS 116A.430.

A REGULATION relating to reserve study specialists; repealing certain requirements for the issuance of a permit to act as a reserve study specialist; establishing requirements for the registration of a reserve study specialist; revising certain provisions relating to the required qualifications of a reserve study specialist; and providing other matters properly relating thereto.

Section 1. NAC 116A.410 is hereby amended to read as follows:

116A.410 The Division shall maintain a list of all persons who have ~~[obtained a permit to act]~~ *registered with the Division* as a reserve study specialist ~~[from the Division]~~ and make the list available to the public.

Sec. 2. NAC 116A.415 is hereby amended to read as follows:

116A.415 1. To ~~[obtain or renew a permit to act]~~ *register with the Division* as a reserve study specialist, ~~[an applicant]~~ *a person* must submit:

(a) ~~[An application]~~ *A registration* on a form prescribed by the Division which includes ~~[information establishing that the applicant has the qualifications required pursuant to NAC 116A.420;]~~ *the name and business address of the person registering as a reserve study specialist;* and

(b) A fee in an amount to be established annually by the Division to cover the administrative cost of ~~issuing the permit, not to exceed \$250.~~ *registering the person.*

2. A ~~permit to act~~ *registration* as a reserve study specialist ~~issued by the Division~~ expires 2 years after the date ~~of issuance~~ *on which the registration and fee required by subsection 1 are submitted to the Division*, unless ~~renewed~~ *the reserve study specialist submits to the Division another registration and fee required by subsection 1* before that date.

Sec. 3. NAC 116A.420 is hereby amended to read as follows:

116A.420 **1.** A person is qualified by training and experience to ~~obtain a permit to act~~ *register* as a reserve study specialist if ~~;~~

~~1. The~~ *the* person has:

- (a) A good reputation for honesty, trustworthiness and integrity;
- (b) The ability to evaluate the items on the component inventory with regard to normal and accelerated deterioration, deferred maintenance, remaining years of useful life and the current cost to repair, replace or restore;
- (c) The ability to perform financial analysis, cost estimates and 30-year projections, as applicable;
- (d) The ability to review improvement plans and specifications, maintenance histories, recorded plats and governing documents of the association in order to compile a complete component inventory and to consult with the executive board to ascertain and confirm that the component inventory is complete;
- (e) The ability to gather and analyze financial data, including, without limitation, monthly assessment fees per unit, the current balance of reserves, the anticipated interest rate on reserves, and the anticipated inflation and maximum increases in assessment fees; *and*

(f) The background and knowledge pertinent to all areas to be addressed by the reserve study

~~. [, and~~

~~—(g) Certification in a course of training from a nationally recognized professional organization that provides educational courses and national accreditation of reserve study specialists; or]~~

2. ~~{The person:~~

~~—(a) Has a good reputation for honesty, trustworthiness and integrity; and~~

~~—(b) Uses consultants and other persons with expertise having the knowledge and abilities set forth in subsection 1 to assist in preparing the reserve study.}]~~ *If the Division finds that a person*

who has submitted a registration to the Division is not qualified by training and experience to register as a reserve study specialist, the Division shall:

(a) If the Division has not yet registered the person, refuse to register the person as a reserve study specialist.

(b) If the Division has registered the person, revoke the registration.

Sec. 4. NAC 116A.435 is hereby amended to read as follows:

116A.435 1. A reserve study specialist is subject to disciplinary action if the reserve study specialist:

(a) Commits any of the following:

(1) Unprofessional conduct;

(2) Professional incompetence;

(3) Negligence or gross negligence; or

(4) A felony or any offense involving moral turpitude; or

(b) Has ever had a permit, license or designation from a nationally recognized professional organization that authorizes him or her to act as a reserve study specialist in another jurisdiction revoked or suspended.

2. A reserve study specialist commits an act of unprofessional conduct if the reserve study specialist:

(a) Violates the provisions of:

(1) An order of the Commission;

(2) An agreement with the Division; or

(3) Chapter 116, 116A or 116B of NRS or any regulation adopted pursuant thereto;

(b) Engages in deceitful, fraudulent or dishonest conduct, including, without limitation, knowingly communicating false, misleading or fraudulent information to a client;

(c) ~~[Applies for a permit by submitting an application]~~ *Submits a registration* which contains a false statement of material fact;

(d) Fails to cooperate with the Division in the investigation of a complaint, including, without limitation, failure to produce any document, book or record in the possession or control of the reserve study specialist after the Division requests the production of such document, book or record in the course of investigating a complaint;

(e) Fails to perform impartially and consistently an activity that is lawful and properly authorized on behalf of a client or fails to perform a duty or obligation owed to a client because of the age, race, color, religion, national origin, disability, marital status, familial status, sex or ethnicity of any person, including, without limitation, a member of the executive board, an officer of the association, a unit's owner, a tenant of the common-interest community or a visitor of the common-interest community; or

(f) Exceeds the authority granted to him or her by the client.

3. A reserve study specialist commits an act of professional incompetence if, without limitation, the reserve study specialist:

(a) Demonstrates a significant lack of ability, knowledge or fitness to perform a duty or obligation owed to a client; or

(b) Fails to exercise reasonable skill and care with respect to a duty or obligation owed to a client.

4. In determining whether a reserve study specialist has committed unprofessional conduct or professional incompetence, the Commission and the Administrator may consider, without limitation, whether the reserve study specialist has:

(a) Done his or her utmost to protect the public against misrepresentation or unethical practices relating to the business affairs of the client;

(b) Made reasonable efforts to acquire knowledge of all pertinent facts concerning a client, including, without limitation, all material facts regarding the reserve study that are reasonably ascertainable and are of customary or express concern to the client, and conveyed that knowledge to the client;

(c) Provided or attempted to provide to a client services for which the reserve study specialist does not have the appropriate knowledge or experience;

(d) Complied with the disclosure requirements of NAC 116A.430;

(e) Complied with the client's applicable governing documents, policies and procedures as they relate to a reserve study;

(f) Kept informed of current statutes and regulations relating to common-interest communities;

(g) Acted in the best interest of the client;

(h) Ensured that each agreement for services of the reserve study specialist was in writing;

and

(i) Obtained all changes of contractual terms in writing and ensured that such changes are signed or initialed by the parties concerned.