

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

LCB File No. R147-12

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

AUTHORITY: NRS 645H.290

A REGULATION relating to asset management companies and asset managers;

- Providing information on the Division website concerning courses which satisfy educational requirements for the issuance of a certificate of registration and permits pursuant to chapter 645H of NRS and NAC;
- Providing Confidentiality of records of the Division;
- Providing grounds for denial of application and appeal of denial;
- Providing information related to renewal of registration or permit;
- Providing application information for the initial registration of an asset management company;
- Providing permit application requirements; and
- Providing other matters properly relating thereto.

Section 1. Chapter 645H of NAC is hereby amended by adding thereto the provisions set forth as sections two to forty-eight, inclusive, of this regulation.

Sec. 2. *“Person” defined. (NRS 645H.039) Except as otherwise expressly provided in a particular statute or required by the context, “person” means a natural person, any form of business or social organization and any other nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or unincorporated organization. The term does not include a government, governmental agency or political subdivision of a government.*

Sec. 3. *Inspections by Division.*

1. The Division may use a form of its design to conduct any inspection and require the asset management company principal in charge of the office being inspected or the asset manager to sign such a form.

2. An inspection must include, but need not be limited to:

- (a) The address of the office;***
- (b) The indexing or numbering system used in filing records;***
- (c) Work file for inspections and audits performed;***
- (d) Advertising; and***
- (e) The availability of current statutes and regulations at the place of business.***

Sec. 4. Confidentiality of records of Division. *The Division will, unless otherwise ordered by a court, keep confidential:*

- 1. The criminal or financial records of an asset management company or asset manager; and*
- 2. The social security number of an asset manager or an applicant for registration as an asset manager.*
- 3. The photograph(s) of an applicant for a registration or permit.*

Sec. 5. Disclosure of disciplinary action or denial of application for certificate or license. *The Division may post to its website any disciplinary action taken against an asset management company or asset manager or any denial of an application for a registration or permit.*

Sec. 6. Grounds for denial of application; appeal of denial.

1. In addition to the qualifications for issuance and grounds for denial of a registration pursuant to NRS 645H.480 and NRS 645H.500 or a permit pursuant to NRS 645H.530 and NRS 645H.540, the Division may deny any application for a registration or certificate when one or more of the following conditions exist:

- (a) The application is not in the proper form.*
- (b) The proper fees are not enclosed.*
- (c) The accompanying forms are incomplete or otherwise unsatisfactory.*
- (d) The application contains a false statement.*
- (e) Any other deficiencies appear in the application.*
- (f) The applicant has willfully acted or attempted to act in violation of any provision of chapter 645H of NRS or the regulations adopted pursuant thereto, or has willfully aided and abetted another person to act or attempt to act in violation of any provision of those chapters or regulations.*
- (g) The applicant has had a license, registration or permit suspended or revoked in another state.*
- (i) The check or other negotiable instrument used in paying a fee to the Division is not honored by the financial institution upon which it was drawn.*

2. An applicant whose application is denied by the Division may appeal the denial to the Administrator as provided in Section ____ . If the Administrator reverses the original decision and determines that the petitioner qualifies for a registration or permit, the application may be accepted as of the date of its original submission and no additional fee will be charged.

Sec. 7. Renewal of registration or permit.

- 1. A registration or permit must be renewed annually before the expiration of the registration or permit.*
- 2. The Division shall renew a license if the application submits to the Division before the expiration of the license:*
 - a. A completed application for renewal on a form prescribed by the Division;*
 - b. The statement described in NRS 645H.550;*
 - c. The fee required by NRS 645H.560;*
 - d. Proof of maintenance of insurance or adequacy of self insurance as required by NRS 645H.490.*
- 3. The renewal of a registration or permit is effective on the date on which the renewal is issued.*

4. *If the holder of a registration or permit fails to file an application for renewal of the registration or permit before it expires, the holder may not engage in activity which requires a registration as an asset management company or permit as an asset manager.*
5. *The Division may refuse to renew a permit 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 645H.550; or*
 - (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;*
6. *If the Division, after an application to renew a registration or permit 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 pursuant to the procedures set forth in Section ____.*
7. *If the Division refuses to renew a permit 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 permit if the Division receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose permit was suspended stating that the person has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

Sec. 8. Check or draft returned for lack of payment.

1. *If a person submits a check or draft to the Division to obtain a registration, permit or other type of authorization to engage in an activity for which authorization is required pursuant to this chapter, or chapter 645H 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 registration, permit or other type of authorization obtained by the person from the Division is automatically invalidated; or*
 - (b) *If the person has not obtained the registration, permit 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 NAC 353C.400, 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 NAC 353C.400.*

Sec. 9. Application of Asset Management Company.

1. *An application for the initial registration of an asset management company provided by the Division must include the following information:*

- (a) The name, residence address and business address of the applicant.*
- (b) The name under which the applicant will conduct business as an asset management company.*
- (c) The address of the principal office of the applicant.*
- (d) The address of each branch office of the applicant.*
- (e) If the applicant is a natural person, the social security number of the applicant.*
- (f) If the applicant is not a natural person:
 - (1) The name, residence address, business address and social security number of each person who will have an interest in the applicant as a principal, general partner, director, officer or trustee; and*
 - (2) The name of the qualified employee designated by the applicant to act on behalf of the asset management company; and*
 - (g) Such other pertinent information as the Division may require.**

2. The application must be accompanied by:

- (a) A complete set of the fingerprints of the applicant or, if the applicant is not a natural person, a complete set of the fingerprints of each person who will have an interest in the applicant as a principal, partner, officer, director or trustee, and written permission authorizing the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; or*
- (b) Written verification, on a form prescribed by the Division, stating that the fingerprints of the applicant were taken and directly forwarded electronically or by another means to the Central Repository and that the applicant has given written permission to the law enforcement agency or other authorized entity taking the fingerprints to submit the fingerprints to the Central Repository for submission to the Federal Bureau of Investigation for a report on the applicant's background.*

3. In addition to the information required by subsection 2, the application must be accompanied by the following:

- (a) A recent photograph of the applicant or, if the applicant is not a natural person, a recent photograph of each person who will have an interest in the applicant as a principal, partner, director, officer or trustee.*
- (b) The statement required by NRS 645H.550.*
- (c) The fees required by NRS 645H.560.*
- (d) Payment of the fees charged by a local law enforcement agency or, if the fingerprints of the applicant were taken and directly forwarded electronically or by another means to the Central Repository pursuant to subsection 2, evidence of such payment.*

Sec. 10. *Registration of Branch office of Asset Management Company. The registration of a branch office of an asset management company expires on the same day as the registration of the appraisal management company.*

Sec. 11. *Renewal of Registration of Asset Management Company.*

1. To renew a registration as an asset management company, a registrant must submit to the Division:

- (a) An application for renewal furnished by the Division;*
- (b) The information required by NRS 645H.500;*

- (c) The statement required by NRS 645C.550; and*
- (d) The renewal fee required by NRS 645H.560.*

2. An application for renewal and the renewal fee must be received by the Division on or before the expiration date of the registration. If the application for renewal and renewal fee are not received by the Division on or before the expiration date of the registration, the registration expires and the person who held the registration must comply with the provisions of section _____ [re: application asset management company] of this regulation and the fees for the issuance of an initial certificate of registration in order to obtain a registration.

Sec. 12. Application for permit: Requirements; action by Division; burden of proof.

1. A person who wishes to obtain a permit must submit an application to the Division on a form prescribed by the Division.

2. Each applicant, must, as part of the application and at his or her own expense:

(a) Arrange to have a complete set of his or her fingerprints taken by a law enforcement agency or other authorized entity acceptable to the Division; and

(b) Submit to the Division:

(1) A completed fingerprint card and written permission authorizing the Division to submit the applicant's fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for a report on the applicant's background and to such other law enforcement agencies as the Division deems necessary; or

(2) Written verification, on a form prescribed by the Division, stating that the fingerprints of the applicant were taken and directly forwarded electronically or by another means to the Central Repository and that the applicant has given written permission to the law enforcement agency or other authorized entity taking the fingerprints to submit the fingerprints to the Central Repository for submission to the Federal Bureau of Investigation for a report on the applicant's background and to such other law enforcement agencies as the Division deems necessary.

3. In addition to the requirements set forth in subsection 2, the applicant must submit to the Division:

(a) A photograph of the applicant, measuring approximately 2 inches by 2 inches, taken within the 2 years immediately preceding the date of the application;

(b) Payment of the fees charged by a local law enforcement agency or, if the fingerprints of the applicant were taken and directly forwarded electronically or by another means to the Central Repository pursuant to subsection 2, evidence of such payment;

(c) The social security number of the applicant;

(d) A statement concerning whether 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;

(e) The statement described in NAC 645H.550;

(h) The fee required by NAC 645H.540;

(i) Such other pertinent information as the Division may require.

Sec. 13. Change of address of principal office or any branch office of asset management company.

- 1. An asset management company shall notify the Division in writing of any change in the address of its principal office or any branch office within 10 days after the change.*
- 2. If the Division determines that an asset management company has discontinued business at its principal office or any branch office, and the discontinuation has not been reported to the Division by the asset management company, the Division may cancel the registration of the asset management company.*

Sec. 14. *Fee for application nonrefundable. The fee for an application for a registration or permit is nonrefundable.*

Sec. 15. *Personal completion required. Each application for a permit as an asset manager must be completed personally by the applicant. Employees of the Division shall not help a person prepare his application.*

Sec. 16. *Minimum age. The Administrator shall not:*

- 1. Accept an application for a permit as an asset manager from a person under 17 years of age; or*
- 2. Issue a permit as an asset manager to a person under 18 years of age.*

Sec. 17. *Issuance of registration or permit by Division.*

- 1. The Division will grant a registration or permit to each applicant who complies with all provisions of this chapter and chapter 645H of NRS governing registration as an asset management company and the issuance of a permit to form asset management.*
- 2. Upon receiving the registration or permit, the asset management company or asset manager may conduct the business of asset management in this state.*

Sec. 18. *Authority of permit limited to person to whom issued or place of business specified.*

A permit issued pursuant to this chapter must not give authority to do or perform any act specified in this chapter to any person other than the person to whom the permit is issued, or from any place of business other than that specified therein.

Sec. 19. *Form of registration or permit.*

1. The Division shall issue a registration or permit to each eligible person in the form and size prescribed by the Division. A certificate or license must:

(a) Indicate the name and address of the asset management company or asset manager and the location of each place where he or she transacts business as asset management company or asset manager; and

(b) Contain any additional matter prescribed by the Division.

2. A registration or permit is valid for 1 year on the date of its issuance.

3. If an asset management company or asset manager fails to apply for the renewal of his or her registration or permit and pay the fee for renewal before the registration or permit he must reapply as if applying for an original registration or permit.

4. The Division may:

(a) Create and maintain a secure website on the Internet through which each registration or permit issued pursuant to the provisions of this chapter may be renewed; and

(b) For each registration or permit renewed through the use of a website created and maintained pursuant to paragraph (a), charge a fee in addition to any other fee provided for pursuant to this chapter which must not exceed the actual cost to the Division for providing that service.

Sec. 20. Location of Records.

1. An asset management company shall give written notice to the Division of the exact location of the records of the asset management company and may not remove the records until the asset management company has delivered a notice which informs the Division of the new location of the records.

2. An asset management company shall maintain a detailed record of each request for asset management services it receives and the asset manager who fulfills the request. The record must include the license or certificate number of the asset manager who fulfills the request for asset management services.

Sec. 21. Display of registration or permit.

Each asset management company or asset manager shall display his registration or permit conspicuously in his place of business.

Sec. 22. Insurance: Failure to maintain; proof.

The registration of an asset management company which fails to maintain a policy of insurance or sufficient means to act as a self-insurer required by NRS 645H.490 expires by operation of law on the 60th day after the asset management company ceases to be covered by the policy or ceases to possess sufficient means to act as a self-insurer.

Sec. 23. Compliance with local zoning requirements for location of certain offices.

If an asset manager chooses to establish an office in a private home or in conjunction with another business, his business location must comply with local zoning requirements.

Sec. 24. Change of employer, name or status.

1. A holder of a permit may request a change of employer, name or status by completing and submitting the appropriate form supplied by the Division and paying the required fees.

2. If a holder of a permit requests such a change and pays the required fee, the receipt issued by the Division constitutes a temporary working permit pending receipt of the requested permit.

Sec. 25. Delivery of registration or permit to Division.

If the registration of an asset management company or the permit of an asset manager is cancelled, suspended or revoked, the asset management company or the asset manager shall deliver his registration or permit to the Division. No refund will be given when a registration or permit is cancelled, suspended or revoked.

Sec. 26. Filing of affidavit for lost, destroyed or stolen registration or permit that must be surrendered. *If a registration or permit must be surrendered and it is not, the holder of the registration or permit shall file an affidavit with the Division showing that the registration or*

permit has been lost, destroyed or stolen. The affidavit must contain the holder's promise to surrender the registration or permit if it is recovered.

Sec. 27. *Cancellation of registration or permit for failure to report change of address. If the Division determines that an asset management company or an asset manager has discontinued business at the address at which he holds a registration or permit and this fact has not been reported to the Division, the registration or permit may be cancelled by the Division.*

Sec. 28. *Professional conduct. An asset manager shall:*

- 1. Perform his duties with the highest standard of integrity and professionalism.*
- 2. Avoid association with any person or enterprise of questionable character or any endeavor that creates an apparent conflict of interest.*
- 3. Conduct his business in a manner that will assure his client of independence from outside influence and interest.*
- 4. Not accept compensation, financial or otherwise, from more than one interested party for the same service on the same property.*

Sec. 29. *Prohibited acts. An asset manager shall not, while performing asset management:*

- 1. Offer to perform or perform any act or service that is unlawful.*
- 2. Offer warranties or guaranties of any kind.*
- 3. Offer to perform or perform any job function for which he does not have a license, including, but not limited to, the services of a general contractor or any license issued pursuant to NRS or NAC 624.*
- 4. Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including, but not limited to, toxins, molds and other fungi, carcinogens, radon, noise or contaminants, unless he is licensed or certified to make such inspections and determinations.*
- 5. Determine the effectiveness of any system installed to control or remove suspected hazardous substances unless he is licensed to make such determinations.*
- 6. Predict the future condition of any system or component, including, but not limited to, the failure of a component unless he is licensed to make such determinations.*

Sec. 30. *Determination of unprofessional conduct or professional incompetence.*

In determining whether an asset manager is guilty of unprofessional conduct or professional incompetence, the Division will consider, among other things, whether the asset manager has:

- 1. Done his utmost to protect the public against fraud, misrepresentation or unethical practices relative to his profession;*
- 2. Performed any work on a property outside of his field of experience or competence or licensure;*
- 3. Performed or arranged to have performed any work on a property without using properly licensed persons;*
- 4. Adequately documented any required disclosures of his interest in any property with which he is dealing;*
- 5. Provided the service report required pursuant to NRS 645H.150.*

Sec. 31. *Disclosures required in advertisement. In any advertisement through which a asset management company or asset manager offers to perform services for property located in this state for which a registration or permit is required pursuant to this chapter, he shall disclose the name under which he does business and the registration or permit number issued by the Nevada Real Estate Division.*

Sec. 32. *Maintenance of records; inspection and audit by Division.*

- 1. *An asset management company and asset manager shall keep at his place of business, or other location approved by the Division, a copy of the work file for each property located in this state for at least 3 years.***
- 2. *The work file must contain***
 - a. *A record of all actions taken to maintain, preserve, restore or improve the value of the property;***
 - b. *A record of all individuals and their licensed information who performed work on the property; and***
 - c. *A copy of the service report.***
- 3. *All records in the work file must be filed in an orderly fashion, including, but not limited to, numerically, chronologically by date or alphabetically, to permit an audit by a representative of the Division.***
- 4. *The work file, service report, and other pertinent information relating to an inspection or energy audit must be open to inspection and audit by the Division upon its request during its usual business hours, as well as other hours during which the asset manager regularly conducts his business.***
- 5. *The asset manager shall give written notice to the Division of the exact location of his records and may not remove them until he has delivered a notice that informs the Division of the new location.***

Sec. 33. *Examination of office; form.*

- 1. *The Division may use a form of its design to conduct any office examination and require the asset manager or his office manager to sign such a form.***
- 2. *An examination must include, without limitation:***
 - (a) *The address of the office;***
 - (b) *The system used in filing records;***
 - (c) *Organization and completeness of work files;***
 - (c) *Advertising; and***
 - (d) *The availability of current statutes and regulations at the place of business.***

Sec. 34. *Cooperation in examination of office and audits. An asset manager shall, upon demand, provide the Division with the documents and the permission necessary to complete fully an office examination and audit of his records.*

Sec. 35. *Complaint; investigation.*

- 1. *The Division will prepare and require a standard form or affidavit for use in making a citizen's complaint. This form may require any information the Division considers pertinent.***

2. *Except as otherwise provided in subsection 3, if a citizen's complaint is made, the Division will investigate any action that appears to violate a provision of chapter 645H of NRS or this chapter and need not be limited to the matter in the complaint.*
3. *If a citizen's complaint or a formal complaint is made against an asset management company or asset manager, the Division will:*
 - (a) *Not investigate the complaint unless the complaint:*
 - (1) *Is in writing, signed and dated;*
 - (2) *Contains the mailing address and daytime telephone number of the person making the complaint; and*
 - (3) *Contains the complete address of the structure that is the subject of the complaint, as applicable.*
 - (b) *Require an asset management company or asset manager to maintain all records relating to the complaint until the issue is resolved.*
4. *An asset management company or asset manager shall disclose all facts and documents pertinent to an investigation to members of the Division's staff conducting the investigation.*
5. *If the Division determines that sufficient evidence exists to establish a violation, it will prepare and file a formal complaint. If insufficient evidence exists, the Division may dismiss the matter without prejudice at any time.*

Sec. 36. Correction of deficiencies.

1. *The Division may grant any asset management company or asset manager not more than 10 calendar days to correct any deficiency involving advertising, the location of his business or office operation. A notice of the deficiency and a request to correct the deficiency must be mailed to the asset management company or asset manager. Failure to comply with the request may be grounds for the suspension or revocation of a registration or permit. The notice must be sent on a form provided by the Division and set forth the deficiencies or violations, the recommended action and the date by which the deficiencies must be corrected.*
2. *The Division may grant an extension for a definite time to correct the deficiency whenever the correction requires additional time.*

Sec. 37. Petitions to adopt, file, amend or repeal regulations.

1. *Any person may by petition request the Administrator to adopt, file, amend or repeal a regulation. The petition must include:*
 - (a) *The name and address of the petitioner;*
 - (b) *A clear and concise statement of the proposed language of the regulation to be adopted, filed, amended or repealed, as applicable;*
 - (c) *The reason for the petition; and*
 - (d) *The statutory authority for the adoption, filing, amendment or repeal of the regulation.*
2. *The Administrator may refuse to act upon a petition for the adoption, filing, amendment or repeal of a regulation if the petition does not contain the information required by subsection 1.*
3. *The Administrator will notify the petitioner in writing of its decision with regard to the petition within 30 days after the petition is received.*

Sec. 38. Procedure for hearing.

1. Upon the filing of a formal complaint by the Division, the Administrator shall set the matter for a hearing within 90 days before a hearing officer appointed by the Administrator from the staff of the Department of Business and Industry. The hearing officer must be a person who has not investigated or prosecuted the complaint.

2. The time of the hearing may be continued by the Division or upon motion of the respondent with the approval of the Administrator or his designated hearing officer.

3. The Division will give the respondent at least 20 days' prior notice in writing of the date, time and place of the hearing, which notice will contain a copy of the complaint, including, but not limited to:

(a) An exact statement of the charges; and

(b) Copies of all reports, affidavits and depositions in possession of the Division which may be used in evidence against the respondent.

4. Notice of the hearing may be served by personal delivery to the respondent or by certified mail to his last known business or home address.

5. The respondent shall file an answer within 30 days after service of the notice. The answer must contain an admission or denial of each of the averments contained in the complaint and any defenses upon which the respondent will rely.

6. The answer may be served by personal delivery to the Division at its office in Las Vegas or Carson City or by mail to the principal office of the Division.

7. Before the hearing, the Division may request, and the respondent may produce upon request, documents and other materials that are under his control. The Division may take depositions and obtain materials by subpoena.

8. All witnesses at the hearing must be sworn by the Administrator or his designated hearing officer, and an audio recording of the proceedings must be made and included as a part of the record in the case.

Sec. 39. Notice of decision.

1. The Administrator or the hearing officer shall render a decision within 30 days after the date of the hearing and immediately give notice in writing of the decision to the respondent.

2. If the decision is adverse to the respondent, the Administrator or hearing officer shall also state in the notice of decision the date upon which the decision becomes effective, which will be not less than 30 days after the date of the notice.

Sec. 40. Informal meeting. The Division will schedule an informal meeting rather than a formal hearing for matters that may be settled or otherwise do not require a formal hearing, in accordance with the following procedures:

1. The Division will initiate the procedure for an informal meeting by giving notice which must include a concise statement of all the facts necessary to understand the possible violation and a brief statement of the relief desired by the Division, if appropriate;

2. Informal meetings will be held by the Administrator or his designee at a time and place prescribed by the Administrator;

3. The Administrator, his designee or any other party may require a tape recording to be made of the informal meeting;

4. The initiation of an informal meeting by the Division is without prejudice to its right to initiate a complaint and formal proceedings covering the same subject matter; and

5. All matters discussed and all material presented in an informal meeting may be used in a subsequent formal hearing, and the Division will inform all parties of that fact at the beginning of the informal meeting.

Sec. 41. *Petition for reconsideration of action of Division.*

1. Any person aggrieved by an action of the Division, except the revocation or suspension of a certificate issued pursuant to this chapter, may petition the Division for reconsideration of its action within 15 days after its order.

2. The petition must be in writing and state in detail the grounds on which the petitioner relies.

3. If the petitioner desires to present oral argument with his petition, oral argument must be requested in writing at the time the petition is submitted to the Administrator. If oral argument is requested, the Division will set a time for a hearing to occur not later than 20 days after receipt of the petition. The Division will give at least 15 days' notice of the hearing.

4. Not later than 15 days after receiving the petition or hearing of oral argument, the Division will render a decision in writing to the petitioner.

Sec. 42. *Amendment and withdrawal of complaints.*

1. A complaint may be amended at any time.

2. The Administrator or hearing officer will grant a continuance if the amendment materially alters the complaint or a respondent demonstrates an inability to prepare for the case in a timely manner.

3. A complaint may be withdrawn by the Division at any time before the hearing begins.

Sec. 43. *Motions.*

1. All motions, unless made during a hearing, must be in writing.

2. A written motion must be served on the opposing party and the Division at least 10 working days before the time set for the hearing on the motion.

3. An opposing party may file a written response to a motion within 7 working days after the receipt of the motion by serving the written response on all parties and the Division, except that a written response may be filed less than 3 working days before the time set for the hearing on the motion only with the permission of the Administrator or hearing officer upon good cause shown.

4. The Commission may require oral argument or the submission of additional information or evidence to decide the motion.

5. The Administrator or hearing officer may decide a motion submitted to the Division before the hearing begins.

Sec. 44. *Submission or exclusion of documentary evidence of respondent.*

1. Not less than 5 working days before a hearing before the Administrator or hearing officer, the respondent must provide to the Division a copy of all documents that are reasonably available to the respondent which the respondent reasonably anticipates will be used in support of his position. The respondent shall promptly supplement and update any such documents.

2. The respondent shall provide, at the time of the hearing, 4 copies of each document he wishes to have admitted into evidence at the hearing.

3. If the respondent fails to provide any document required to be provided by the provisions of this section, the Administrator or hearing officer may exclude the document.

Sec. 45. Rules of evidence.

1. In conducting any investigation, inquiry or hearing, the Division, Administrator or hearing officer is not bound by the technical rules of evidence, and any informality in any proceeding or in the manner of taking testimony will not invalidate any order or decision of the Administrator or hearing officer. The rules of evidence of courts of this State will be followed generally but may be relaxed at the discretion of the presiding officer if deviation from the technical rules of evidence will aid in determining the facts.

2. Any evidence offered at the hearing must be material and relevant to the issues of the hearing.

3. The Administrator or hearing officer may exclude inadmissible, incompetent, repetitious or irrelevant evidence or order that the presentation of that evidence be discontinued.

4. A party who objects to the introduction of evidence shall briefly state the grounds of the objection at the time the evidence is offered. The party who offers the evidence may present rebuttal evidence.

5. If an objection is made to the admissibility of evidence, the Administrator or hearing officer may:

(a) Note the objection and admit the evidence;

(b) Sustain the objection and refuse to admit the evidence; or

(c) Receive the evidence which is subject to a subsequent ruling by the Administrator or hearing officer.

Sec. 46. Hearings: Procedure; date of decision; default.

1. The presiding officer of a hearing shall:

(a) Ascertain whether all persons ordered to appear under subpoena are present, and whether all documents, books, records and other evidence under subpoena are present in the hearing room.

(b) Administer the oath to the reporter as follows:

Do you solemnly swear or affirm that you will report this hearing to the best of your stenographic ability?

(c) Administer the oath to all persons whose testimony will be taken as follows:

Do you and each of you solemnly swear or affirm to tell the truth and nothing but the truth in these proceedings?

(d) Ascertain whether either party desires to have a witness excluded from the hearing room until he is called. A witness may be excluded upon the motion of either party.

(e) Ascertain whether a copy of the formal complaint or decision to deny has been filed and whether an answer has been filed as part of the record in the proceedings.

(f) Request the Division to proceed with the presentation of its case.

2. The Division may not submit any evidence to the Administrator or hearing officer before the hearing except for the formal complaint and answer.

3. *The respondent may cross-examine witnesses in the order that the Division presents them.*
4. *Witnesses or counsel may be questioned by the Administrator or hearing officer at any time during the proceeding.*
5. *Evidence which will be introduced must first be marked for identification.*
6. *When the Division has completed its presentation, the presiding officer shall request the respondent to proceed with the introduction of evidence and calling of witnesses on his behalf.*
7. *The Division may cross-examine witnesses in the order that the respondent presents them.*
8. *When the respondent has completed his presentation, the Division may call any rebuttal witnesses.*
9. *When all testimony for the Division and respondent has been given and all evidence submitted, the presiding officer may request the Division and the respondent to summarize their presentations.*
10. *The presiding officer shall indicate for the record that the hearing is terminated, and that the Administrator or hearing officer will issue a decision after considering all the evidence. After presentation of the case by the Division and the respondent and closing arguments by either party, if any, a recess may be ordered.*
11. *The date of decision is the date the written decision is signed by Administrator or hearing officer.*
12. *Any matter which must be acted upon may be submitted to the Administrator or hearing officer.*
13. *Upon the presentation of evidence that the respondent received notice of the hearing and has not filed an answer within the time prescribed pursuant to NRS 645H.____, his default may be entered and a decision may be issued based upon the allegations of the complaint.*
14. *The formal complaint and the notice of hearing will be placed in evidence.*

Sec. 47. Hearings: Failure of party to appear. *If a party fails to appear at a hearing scheduled by the Administrator or hearing officer and a continuance has not been requested or granted, upon an offer of proof by the Division that the absent party was given proper notice and upon a determination by the Administrator or hearing officer that proper notice was given, the Administrator or hearing officer may proceed to consider the case without the participation of the absent party and may dispose of the matter on the basis of the evidence before it. If the respondent fails to appear at the hearing or fails to reply to the notice, the charges specified in the complaint may be considered as true.*

Sec. 48. Hearings: Procedures for rehearings. *The following procedures will be used for a rehearing in a case where a ruling or decision of the Administrator or hearing officer is against a licensee or holder of a certificate:*

1. *The licensee or holder of a certificate may, within 15 calendar days after his receipt of the decision, petition the Administrator for a rehearing.*
2. *The petition does not stay any decision of the Administrator or hearing officer unless the Administrator so orders.*
3. *The petition must state with particularity the point of law or fact which, in the opinion of the licensee or holder of a certificate, the Administrator or hearing officer has overlooked or misconstrued and must contain every argument in support of the application that the licensee or holder of a certificate desires to present.*

4. *Oral argument in support of the petition is not permitted.*

5. *The Division may file and serve an answer to a petition for a rehearing within 10 calendar days after it has received service of the petition.*

6. *If a petition for rehearing is filed, the Administrator may stay enforcement of the decision being appealed. When determining whether a stay is to be granted, the Administrator shall determine whether the petition was filed in a timely manner and whether it alleges a cause or ground which may entitle the registrant or holder of a permit to a rehearing.*

7. *A rehearing may be granted by the Administrator for any of the following causes or grounds:*

(a) *Irregularity in the proceedings in the original hearing.*

(b) *Accident or surprise which ordinary prudence could not have guarded against.*

(c) *Newly discovered evidence of a material nature which the applicant could not with reasonable diligence have discovered and produced at the original hearing.*

(d) *Error in law occurring at the hearing and objected to by the applicant during the earlier hearing.*

8. *A petition for a rehearing may not exceed 10 pages of standard printing.*

Sec. 49. Hearings: Continuances.

1. *The time of a hearing may be continued by the Administrator or hearing officer upon the written petition of the registrant or holder of a permit or upon the written petition of the Division, for good cause shown, or by stipulation of the parties to the hearing.*

2. *A continuance will not be granted unless it is made in good faith and not merely for delay.*

Sec. 50. Petition for reconsideration of action of Division.

1. *Any person aggrieved by an action of the Division, except the revocation or suspension of a certificate or license issued pursuant to this chapter, may petition the Division for reconsideration of its action within 15 days after its order.*

2. *The petition must be in writing and state in detail the grounds on which the petitioner relies.*

3. *If the petitioner desires to present oral argument with his petition, oral argument must be requested in writing at the time the petition is submitted to the Administrator. If oral argument is requested, the Division will set a time for a hearing to occur not later than 20 days after receipt of the petition. The Division will give at least 15 days' notice of the hearing.*

4. *Not later than 15 days after receiving the petition or hearing of oral argument, the Division will render a decision in writing to the petitioner.*

STANDARDS OF PRACTICE

Sec. 51. *In determining whether the Division takes disciplinary action against an asset manager or asset management company, the Division will consider, among other things, whether the asset manager or asset management company:*

1. *Has established rules, policies, procedures and systems to minimize the risk that asset management services are performed on the incorrect real property and how those rules, policies procedures and systems are conveyed, trained and monitored for compliance.*

2. *Has ascertained all pertinent facts that may be reasonably ascertained concerning any real property for which it provides asset management services.*

3. *Has adequately documented the specific asset management services performed on any real property for a client in a service report.*

4. *Has properly supervised the activities of its employees and the operation of the business. This supervision includes, without limitation, the establishment of rules, policies, procedures and systems that allow an asset manager or asset management company to review, oversee and manage:*

(a) *The hiring of employees, including comprehensive applications, background checks and proof of all required local, state and federal licenses or permits;*

(b) *The confirmation of all requisite bonds and/or insurance;*

(c) *The performance of field services work by an employee; and*

(d) *Whether employees obtain ongoing education regarding rules, policies and procedures related to asset management established by the asset management company.*

5. *Has kept informed of all current statutes and regulations governing asset managers and asset management companies and properly applies applicable federal, state and local laws governing the protection of homeowners and real property.*

6. *Has maintained a compliance and audit system to monitor internal and external performance of its business to ensure the protection of homeowners and real property.*

7. *Has cooperated in a timely and reasonable manner with any investigations by the Division.*

8. *Has policies and procedures in place to verify and respond to any complaints made by a homeowner, the Division or a related party.*

USE OF INDEPENDENT CONTRACTORS

Sec. 52. 1. *The Division shall not take disciplinary action against an asset manager or asset management company for the actions of its independent contractors if the asset manager or asset management company has established auditable rules, policies, procedures and systems for the hiring of its independent contractors. These rules, policies, procedures and systems shall include:*

(a) *Verification that the independent contractor and their subcontractors have all applicable local, state and federal licenses or permits to legally perform the work;*

(b) *Verification that the independent contractor and their subcontractors have satisfied all applicable bonding and insurance requirements; and*

(c) *Periodic inspection of any work performed by the independent contractor and their subcontractors.*

2. *The asset manager or asset management company shall provide the Division with an annual report that describes how the asset manager or asset management company has complied with the requirements set forth in Section 1. The report shall be due concurrently with the required annual registration form.*