

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

LCB File No. R147-12

January 30, 2013

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

AUTHORITY: §§1-4, 9, 13-18, 20-27, 29 and 32-48, NRS 645H.290; §§5 and 6, NRS 645H.290 and 645H.320; §7, NRS 645H.290 645H.480, 645H.490, 645H.530 and 645H.540; §8, NRS 645H.290, 645H.500 and 645H.540; §10, NRS 645H.290 , 645H.480 and 645H.560; §11, NRS 645H.290, 645H.500, 645H.540 and 645H.560; §12, NRS 645H.290, 645H.530 and 645H.560; §19, NRS 645H.290 and 645H.300; §28, NRS 645H.290 and 645H.700; §§30 and 31, NRS 645H.290 and 645H.310.

A REGULATION relating to asset management; establishing provisions governing the issuance or renewal of a certificate of registration as an asset management company or a permit to engage in asset management; requiring the submission of certain information by applicants for such a certificate or permit; establishing provisions governing the conduct of business as an asset management company or asset manager; establishing ethical standards for asset managers; establishing provisions governing the conduct of disciplinary and other proceedings concerning an asset management company or asset manager; requiring an asset management company or asset manager to establish certain processes concerning its use of independent contractors; 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 2 to 48, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 48, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Certificate of registration” or “certificate” means a certificate of registration as an asset management company issued by the Division pursuant to this chapter and chapter 645H of NRS.*

Sec. 4. *“Permit” means a permit to engage in asset management issued by the Division pursuant to this chapter and chapter 645H of NRS.*

Sec. 5. *Except as otherwise provided in NRS 239.0115 and 645H.320, the Division will, unless otherwise ordered by a court, keep confidential the criminal and financial records, social security number and photograph of each person who holds or applies for a certificate of registration or permit or who will have an interest in an asset management company as a principal, partner, officer, director or trustee.*

Sec. 6. *The Division may post on its Internet website:*

- 1. Any disciplinary action it takes against an asset management company or asset manager; and*
- 2. Any denial of an application for a certificate of registration or permit.*

Sec. 7. *1. The Division may deny any application for a certificate of registration or permit 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 does not possess the qualifications for the issuance of a certificate of registration set forth in NRS 645H.480 and 645H.490 or for a permit set forth in NRS 645H.530 and 645H.540, as applicable;

(g) The applicant has willfully acted or attempted to act in violation of any provision of this chapter or chapter 645H of NRS or has willfully aided and abetted another person to act or attempt to act in violation of any provision of those chapters or regulations;

(h) The applicant has had a professional license, registration or permit suspended or revoked in another state; or

(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 petition the Division for reconsideration of its denial in accordance with section 38 of this regulation. If the Division reverses the original decision and determines that the petitioner qualifies for a certificate or permit, the application will be accepted as of the date of its original submission and no additional fee will be charged.

Sec. 8. 1. *The Division may refuse to renew a certificate of registration or permit if:*

(a) The applicant has been convicted of, or entered a plea of guilty, guilty but mentally ill 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.

2. If the Division refuses to renew a certificate of registration or 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 may subsequently renew the permit if the Division receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 stating that the applicant has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

3. If the Division, after an application to renew a certificate of registration or permit in proper form has been filed, accompanied by the proper fees, refuses to renew the certificate or permit, the Division will give notice of this fact to the applicant within 15 days after its ruling, order or decision. The applicant may petition the Division for reconsideration of its refusal in accordance with section 38 of this regulation.

Sec. 9. 1. *If a person submits a check or draft to the Division to obtain a certificate of registration or permit 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 certificate or permit obtained by the person from the Division is automatically invalidated; or

(b) If the person has not obtained the certificate or permit, the Division may refuse to issue or reinstate the certificate or permit.

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. 10. *An application for registration as an asset management company filed with the Division pursuant to NRS 645H.480 must be accompanied by:*

1. The social security number of the applicant or, if the applicant is not a natural person, the social security number of each natural person identified in the application as a person who will have an interest in the asset management company as a principal, partner, director, officer or trustee;

2. A recent photograph of the applicant or, if the applicant is not a natural person, a recent photograph of each natural person who will have an interest in the asset management company as a principal, partner, director, officer or trustee;

3. The statement required by NRS 645H.550;

4. The fees required by NRS 645H.560;

5. If the applicant is not a natural person, the name of the qualified employee designated by the applicant to act on behalf of the asset management company; and

6. Such other pertinent information as the Division may require.

Sec. 11. *1. An application for the renewal of a certificate of registration submitted by a natural person or for a permit must be accompanied by the statement required by NRS 645H.550.*

2. The holder of a certificate of registration or permit who fails to renew the certificate or permit before its expiration may not engage in any conduct for which the certificate or permit is required until the asset management company or asset manager satisfies the requirements for issuance of a new certificate or permit.

Sec. 12. An application for a permit to engage in asset management submitted to the Division pursuant to NRS 645H.530 must be submitted on a form provided by the Division and accompanied by:

- 1. The social security number of the applicant;*
- 2. A photograph of the applicant, measuring approximately 2 inches by 2 inches, taken within the 2 years immediately preceding the date of the application;*
- 3. A cashier's check or money order payable to the Department of Public Safety in the amount required for payment of the fees to submit the applicant's fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation or, if the fingerprints of the applicant were taken and directly forwarded to the Central Repository, evidence of such payment;*
- 4. A statement declaring whether the applicant has been convicted of, or entered a plea of guilty, guilty but mentally ill 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;*
- 5. The statement required by NRS 645H.550; and*
- 6. Such other pertinent information as the Division may require.*

Sec. 13. 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. *The fee for an application for a certificate of registration or permit is nonrefundable.*

Sec. 15. 1. *Each application for a certificate of registration or permit must be completed personally by the applicant.*

2. *An employee of the Division shall not help a person to prepare an application for a certificate of registration or permit.*

Sec. 16. *The Administrator shall not:*

1. *Accept an application for a certificate of registration or permit from a person under 17 years of age; or*

2. *Issue a certificate of registration or permit to a person under 18 years of age.*

Sec. 17. *A person who has applied to the Division for a certificate of registration, permit or other authorization to engage in an activity for which the certificate, permit or other authorization is required pursuant to this chapter or chapter 645H of NRS shall not engage in any such activity until the person receives from the Division the required certificate, permit or other authorization.*

Sec. 18. 1. *The Division will issue a certificate of registration or permit to each eligible person in the form and size prescribed by the Division. A certificate or permit will:*

(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 an asset management company or asset manager; and

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

2. *A certificate of registration or permit does not give authority to do or perform any act specified in this chapter or chapter 645H of NRS to any person other than the person to whom the certificate or permit is issued, or from any place of business other than that specified therein.*

Sec. 19. *The Division may:*

1. *Create and maintain a secure Internet website through which a certificate of registration or permit may be renewed; and*

2. *Charge a fee for each certificate of registration or permit renewed through the use of the Internet website. The fee is in addition to any other fee provided for pursuant to this chapter or chapter 645H of NRS and must not exceed the actual cost to the Division for providing that service.*

Sec. 20. *Each asset management company or asset manager shall conspicuously display the original or a duplicate of its certificate of registration or permit conspicuously at each office at which the asset management company or asset manager conducts business in this State.*

Sec. 21. *If an asset manager chooses to establish an office in a private home or in conjunction with another business, his or her business location must comply with local zoning and business licensing requirements.*

Sec. 22. *1. The holder of a permit may request a change in his or her name, employer or business address by completing and submitting the appropriate form supplied by the Division and paying the fees required pursuant to NRS 645H.560.*

2. If the 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. 23. *If the certificate of 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 surrender the certificate or permit to the Division. No refund will be given when a certificate or permit is cancelled, suspended or revoked.*

Sec. 24. *If a certificate of registration or permit must be surrendered pursuant to section 23 of this regulation and it is not, the holder of the certificate or permit shall file an affidavit with the Division showing that the certificate or permit has been lost, destroyed or stolen. The affidavit must contain the holder's promise to surrender the certificate or permit if it is recovered.*

Sec. 25. *If the Division determines that an asset management company or an asset manager has discontinued business at the address for which he or she holds a certificate of registration or permit and this fact has not been reported to the Division, the certificate or permit may be cancelled by the Division.*

Sec. 26. *An asset manager shall:*

- 1. Perform his or her 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 or her business in a manner that will assure his or her clients of independence from outside influence and interest.*

Sec. 27. *An asset manager shall not, while engaging in 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 or she does not have a license, including, without limitation:*
 - (a) Any service for which a license is required pursuant to chapter 624 of NRS;*
 - (b) Inspecting for or determining the presence or absence of any suspected adverse environmental condition or hazardous substance, including, without limitation, toxins, molds and other fungi, carcinogens, radon, noise or contaminants;*
 - (c) Determining the effectiveness of any system installed to control or remove suspected hazardous substances; and*
 - (d) Predicting the future condition of any system or component, including, without limitation, the failure of a component.*
- 4. Accept compensation, financial or otherwise, from more than one interested party for the same service on the same real property .*

Sec. 28. *In determining whether an asset manager is guilty of gross negligence or incompetence as set forth in paragraph (h) of subsection 1 of NRS 645H.700, the Division will consider, among other things, whether the asset manager has:*

- 1. Done his or her utmost to protect the public against fraud, misrepresentation or unethical practices relative to asset management;*
- 2. Performed any work on real property outside of his or her field of experience or competence or licensure;*
- 3. Performed or arranged to have performed any work on real property without using properly licensed persons;*
- 4. Adequately documented any required disclosures of his or her interest in any real property with which he or she is dealing; or*
- 5. Provided a service report to each client for which the asset manager has provided asset management services.*

Sec. 29. *Any advertisement through which an asset management company or asset manager offers to provide asset management services for real property located in this State, must disclose:*

- 1. The name under which the asset management company or asset manager does business as that name is given on the certificate of registration or permit issued by the Division; and*
- 2. The number of the certificate of registration or permit.*

Sec. 30. 1. *An asset management company or asset manager shall keep at the place of business, or other location approved by the Division, for at least 3 years after the termination of asset management services to the real property:*

(a) Any contractual agreement, power of attorney or other legal authorization entered into by the asset management company or asset manager and a client concerning the provision of asset management services to real property; and

(b) A copy of the work file for each such property.

2. The work file must contain:

(a) The service report for the real property;

(b) Identification of each asset manager or other employee or independent contractor who performed services on the real property, including the permit number of the asset manager and, if the other employee or independent contractor provided services for which a license, permit or other authorization is required, the number of the license, permit or authorization; and

(c) Any other pertinent information prescribed by the Division.

3. All records in the work file must be filed in an orderly fashion, including, without limitation, numerically, chronologically by date or alphabetically, to allow an audit by a representative of the Division.

4. The records required by this section 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 management company or asset manager regularly conducts business.

5. The asset management company or asset manager shall give written notice to the Division of the exact location of the records required by this section and shall not remove those records until after providing notice to the Division of the new location.

Sec. 31. 1. *The Division may use a form of its design to conduct any examination or audit of the office of an asset management company or asset manager and require the qualified employee or asset manager or other employee in charge of the office to sign such a form.*

2. An examination will include, without limitation:

- (a) Verification of the address of the office;*
- (b) The system used in filing records;*
- (c) Organization and completeness of work files;*
- (d) Advertising; and*
- (e) The availability of current statutes and regulations at the office.*

3. An asset management company or asset manager shall, upon demand, provide the Division with the documents and the permission necessary to complete fully the office examination or audit.

Sec. 32. 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 this chapter or chapter 645H of NRS 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 real property 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. 33. *1. The Division may grant an asset management company or asset manager not more than 10 calendar days to correct any deficiency involving advertising, business location 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, as appropriate. Failure to comply with the request may be grounds for the suspension or revocation of a certificate of 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. 34. *1. Any person may, by petition, request the Division 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 Division 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 Division will notify the petitioner in writing of its decision with regard to the petition within 30 days after the petition is received.

Sec. 35. *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 hearing officer.

3. The Division will give the respondent at least 20 days' notice in writing of the date, time and place of the hearing, which notice will contain a copy of the complaint, including, without limitation:

(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 or her 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 or her control. The Division may take depositions and obtain materials by subpoena.*

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

Sec. 36. 1. *The Administrator or 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. 37. *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. *The informal meeting will be held by the Administrator or his or her designee at a time and place prescribed by the Administrator;*

3. *The Administrator, his or her 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. 38. 1. *Any person aggrieved by an action of the Division, except the revocation or suspension of a certificate of registration or permit, 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 or her petition, oral argument must be requested in writing at the time the petition is submitted to the Division. 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 the oral argument, the Division will render a decision in writing to the petitioner.*

Sec. 39. 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. 40. 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 Administrator or hearing officer 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. 41. 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 or her position. The respondent shall promptly supplement and update any such documents.*

2. The respondent shall provide, at the time of the hearing, four copies of each document the respondent 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. 42. 1. *In conducting any investigation, inquiry or hearing, the Division, Administrator or hearing officer is not bound by the technical rules of evidence. 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 the courts of this State will be followed generally, but may be relaxed at the discretion of the Administrator or hearing 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. 43. 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 or she 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 designated 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 presiding 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 or her behalf.*

7. *The Division may cross-examine witnesses in the order that the respondent presents them.*

8. *When the respondent has completed his or her 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 the 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 section 35 of this regulation, the respondent's 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. 44. 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 received. 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. 45. 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 the holder of a certificate of registration or permit issued pursuant to this chapter and chapter 645H of NRS:

1. The holder of a certificate or permit may, within 15 calendar days after 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 holder of the certificate or permit, the Administrator or hearing officer has overlooked or misconstrued and must contain every argument in support of the application that the holder of the certificate or permit 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 holder of the certificate or 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 holder of the certificate or permit could not with reasonable diligence have discovered and produced at the original hearing.

(d) Error in law occurring at the original hearing and objected to by the holder of the certificate or permit during that hearing.

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

Sec. 46. 1. *The time of a hearing may be continued by the Administrator or hearing officer upon the written petition of either party to the hearing, 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. 47. *An asset management company or asset manager shall:*

1. Establish, rules, policies, procedures and systems to minimize the risk that asset management services are performed on real property other than the real property in

foreclosure identified in the contractual agreement, power of attorney or other legal authorization entered into by the asset management company or asset manager.

2. Ascertain all pertinent facts that may be reasonably ascertained concerning any real property for which asset management services are provided.

3. Document in the service report the specific asset management services performed on real property for a client.

4. Supervise the activities of all employees and the operation of the business. This supervision must include, without limitation, the establishment of rules, policies, procedures and systems that allow an asset management company or asset manager to review, oversee and manage:

(a) The hiring of employees, including the use of comprehensive applications, performance of background checks and obtaining proof that the employee holds all local, state and federal licenses or permits required to perform the services for which the asset management company or asset manager uses the employee; and

(b) The performance of field services work by an employee.

5. Provide all employees with ongoing training regarding the rules, policies and procedures related to asset management established by the asset management company or asset manager.

6. Keep informed of all current statutes and regulations governing asset managers and asset management companies and properly apply applicable federal, state and local laws governing the protection of homeowners and real property.

7. Maintain a compliance and audit system to monitor internal and external performance of the business to ensure the protection of homeowners and real property.

8. *Cooperate in a timely and reasonable manner with any investigations by the Division.*

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

Sec. 48. *1. An asset management company or asset manager that retains the services of an independent contractor to perform asset management services shall establish auditable rules, policies, procedures and systems for the hiring of independent contractors. These rules, policies, procedures and systems must include, without limitation:*

(a) Verification that the independent contractor and his or her subcontractors maintain all applicable local, state and federal licenses or permits required to perform the services for which the asset management company or asset manager uses the independent contractor and his or her subcontractors;

(b) Verification that the independent contractor and his or her subcontractors have satisfied all applicable bonding and insurance requirements; and

(c) Periodic inspection of any work performed by the independent contractor and his or her subcontractors.

2. An asset management company or asset manager shall provide the Division with an annual report that describes how the asset management company or asset manager has complied with the requirements set forth in subsection 1. The report must be submitted with the application for renewal of the certificate of registration or permit.

3. Except as otherwise provided in NRS 645H.730, the Division will not take disciplinary action against an asset management company or asset manager for the actions of an independent contractor or his or subcontractors that perform services on behalf of the asset

management company or asset manager if the Division determines that the asset management company or asset manager has complied with subsections 1 and 2.