

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

LCB File No. R049-13

Effective June 26, 2015

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

AUTHORITY: §1, NRS 116A.400.

A REGULATION relating to community managers; prohibiting a management agreement from providing for the compensation of a community manager or his or her employer based on the fines imposed against or collected from units' owners or tenants or guests of units' owners; and providing other matters properly relating thereto.

Legislative Counsel's Digest

Existing law and existing regulations require the management agreement entered into by a homeowners' association and a community manager to set forth a payment schedule and a schedule of all fees, costs, expenses and charges to be imposed by the community manager. (NRS 116A.620; NAC 116A.325) Existing law authorizes the Commission for Common-Interest Communities and Condominium Hotels to adopt additional standards of practice for community managers. (NRS 116A.400)

Existing law prohibits the community manager of a common-interest community from soliciting or accepting any form of compensation that is based, in whole or in part, on: (1) the number or amount of fines imposed against or collected from units' owners or tenants or guests of units' owners for violations of the governing documents of the common-interest community; or (2) any percentage or proportion of those fines. (NRS 116.31185) This regulation prohibits the management agreement from providing for the payment of compensation in violation of this provision. This regulation further prohibits the management agreement from providing for the payment of compensation to a community manager or his or her employer based on any percentage or proportion of the late charges which have been imposed but not collected for the late payment of fines.

This regulation also: (1) requires the management agreement to include a provision requiring the community manager, or his or her employer, and the association to maintain certain insurance required by existing law; and (2) prohibits the management agreement from providing for the indemnification of the community manager or his or her employer for intentional misconduct, gross negligence or criminal misconduct.

Section 1. NAC 116A.325 is hereby amended to read as follows:

116A.325 1. A management agreement must:

(a) Be in writing and signed by all parties;

(b) Be entered into between the client and the community manager or the employer of the community manager if the community manager is acting on behalf of a corporation, partnership, limited partnership, limited-liability company or other entity;

(c) State the term of the management agreement;

(d) State the basic consideration for the services to be provided and the payment schedule;

(e) Include a complete schedule of all fees, costs, expenses and charges to be imposed by the community manager, whether direct or indirect, including, without limitation:

(1) The costs for any new association or start-up costs;

(2) The fees for special or nonroutine services such as the mailing of collection letters, the recording of liens and foreclosing of property;

(3) Reimbursable expenses;

(4) The fees for the sale or resale of a unit or for setting up the account of a new member;

and

(5) The portion of fees that are to be retained by the client and the portion to be retained by the community manager;

(f) *Not provide for the payment of any form of compensation, fee or other remuneration to the community manager or the employer of the community manager that is based, in whole or in part, on:*

(1) The number or amount of fines imposed against or collected from units' owners or tenants or guests of units' owners pursuant to NRS 116.31031 for violations of the governing documents of the association;

(2) Any percentage or proportion of those fines; or

(3) Any percentage or proportion of the late charges which have been imposed for the late payment of those fines but which have not been collected;

(g) State the identity and the legal status of the contracting parties;

~~(g)~~ *(h)* State any limitations on the liability of each contracting party, including any provisions for indemnification of the community manager;

~~(h)~~ *(i)* Include a statement of the scope of work of the community manager;

~~(i)~~ *(j)* State the spending limits of the community manager;

~~(j)~~ *(k)* Include provisions relating to the grounds and procedure for termination of the community manager;

~~(k)~~ *(l)* Identify the types and amounts of insurance coverage to be carried by each contracting party, including:

(1) ~~Whether~~ *A requirement that* the community manager ~~will~~ *or his or her employer* maintain *insurance covering liability for* errors ~~and~~ *or* omissions, ~~or~~ *professional liability* ~~insurance;~~ *or a surety bond to compensate for losses actionable pursuant to this chapter and chapter 116A of NRS in an amount of \$1,000,000 or more;*

(2) Which contracting party will maintain fidelity bond coverage;

(3) *A requirement that the client maintain crime insurance in accordance with NRS 116.3113;*

(4) Whether the association will maintain directors and officers liability coverage for the executive board; and

~~(4)~~ (5) Whether either contracting party must be named as an additional insured under any required insurance;

~~(m)~~ (m) Include provisions for dispute resolution;

~~(n)~~ (n) Acknowledge that all records and books of the client are the property of the client, with the exception of any proprietary information and software belonging to the community manager;

~~(o)~~ (o) State the physical location, including the street address, of the records of the client, which must be within 60 miles from the physical location of the common-interest community;

~~(p)~~ (p) State the frequency and extent of regular inspections of the common-interest community; and

~~(q)~~ (q) State the extent, if any, of the authority of the community manager to sign checks on behalf of the client in an operating account.

2. A management agreement may:

(a) Provide for mandatory binding arbitration;

(b) Provide for indemnification of the community manager *or his or her employer* in accordance with and subject to the *governing documents and the* appropriate provisions of title 7 of NRS ~~(h)~~, *except that indemnification may not be provided for intentional misconduct, gross negligence or criminal misconduct;* and

(c) Allow the provisions of the management agreement to apply month to month following the end of the term of the management agreement but the management agreement may not contain an automatic renewal of the management agreement.

3. Not later than 10 days after the effective date of a management agreement, the community manager shall provide each member of the executive board evidence of the existence of the required insurance which must include:

- (a) The names and addresses of all insurance companies;
- (b) The total amount of coverage; and
- (c) The amount of any deductible.

4. After signing a management agreement, the community manager shall provide a copy of the management agreement to each member of the executive board. Within 30 days after an election or appointment of a new member to the executive board, the community manager shall provide the new member with a copy of the management agreement.

5. Any changes to a management agreement must be initialed by the contracting parties. If there are any changes after the execution of a management agreement, those changes must be in writing and signed by the contracting parties.

6. Except as otherwise provided in a management agreement, upon the termination or assignment of a management agreement, the community manager shall, within 30 days after such termination or assignment, transfer possession of all books, records and other papers of the client to the succeeding community manager, or to the client if there is no succeeding community manager, regardless of any unpaid fees or charges to the community manager or management company.

7. Notwithstanding any provision in a management agreement to the contrary, a management agreement may be terminated by the client without penalty upon 30 days' notice following a violation by the community manager of any provision of this chapter or chapter 116 of NRS.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
LCB FILE R049-13**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 116A.325.

1. A clear and concise explanation of the need for the adopted regulation.

Proposed regulation LCB File No. R049-13 impacts community managers licensed by the Real Estate Division (Division) pursuant to Chapter 116A. It also impacts homeowners' association boards of directors by prohibiting a particular payment to a community manager. The regulation proposes changes to the management agreement to prohibit payment of any form of compensation to a community manager that is based on the number or amount of fines imposed against or collected from units' owner or tenants or guests of tenants. The proposed regulation requires that a community manager or his or her employer maintain liability insurance coverage for errors or omissions, professional liability or a surety bond in an amount of \$1,000,000 or more. The regulation would prohibit a management agreement from indemnifying a community manager for intentional misconduct, gross negligence or criminal misconduct.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Commission for Common-Interest Communities and Condominiums Hotels (Commission) determined at its June 11-12, 2013 meeting to move forward with a regulation that would amend NAC 116A.325(1) regarding management agreements. The proposed change states that a management agreement may not provide for the payment of compensation to a community manager that is based in whole or in part on the number or amount of fines imposed against or collected from units' owners or tenants or guests of tenants.

A Small Business Impact Statement was posted on the Division's website dated August 8, 2013 along with a Notice of Workshop for August 27, 2013. The Commission considered public comment submitted during the workshop. Comments received by the public during the workshop were regarding clarification of the proposed regulation changes and possible additions.

A Small Business Impact Statement was posted on the Division's website dated February 10, 2014 along with a Notice of Workshop for February 26, 2014. The Commission considered public comment submitted during the workshop. There was a comment from an owner of a collection company and board member in Las Vegas asking if notices, pictures and mechanics of imposing a fine are going to be included because these fees would have to be paid by the association. He was in favor of the proposed amendment to the regulation. A homeowner in Las Vegas testified in favor of the concept of the proposed regulation.

Interested persons may obtain a copy of the Small Business Impact Statement or submit statements of impact to:

Teralyn Thompson, Administration Section Manager
Nevada Real Estate Division
2501 East Sahara Avenue
Las Vegas, NV 89104
tlthompson@red.state.nv.us
702-486-4036

3. The number of persons who:

(a) Attended each hearing:

August 27, 2013: 30

February 26, 2014: 24

March 3, 2015: 37

(b) Testified at each hearing:

August 27, 2013: 2

February 26, 2014: 2

March 3, 2015: 2

(c) Submitted to the agency written comments: 1

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency, is attached as Exhibit A.

Please see attached.

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. The summary may be obtained as instructed in the response to question #2.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The proposed regulation was adopted on March 3, 2015, and included changes suggested at the workshop conducted.

7. **The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**

Business which it is to regulate

(a) Both adverse and beneficial effects; and

Adverse effects: Licensed community managers who had been receiving compensation or other remuneration based on the number or amount of fines imposed on units' owners will experience a reduction compensation or consideration they receive from a homeowners' association. There will be a cost associated with the requirement for a community manager or an employer of a community manager to maintain insurance covering liability for errors or omissions, professional liability or to carry a surety bond of \$1,000,000 or more.

Beneficial effects: No beneficial effects for regulated businesses.

(b) Both immediate and long-term effects.

Immediate effects: The immediate effect of the proposed regulation which would cease a practice by community managers of receiving compensation or remuneration based upon the number or amount of fines imposed against or collected from units' owners or tenants or guests of units' owners will result in reduced revenue to association operating accounts for associations which have, in the past, followed the practice. Community managers' compensation would be reduced if they had been receiving compensation or remuneration based upon fines imposed.

Long-term effects: The long term effect is that the proposed regulation will ensure fairness and consistency in the application of governing documents rules.

Public

(a) Both adverse and beneficial effects:

Adverse effects: No anticipated adverse economic effect to the public.

Beneficial effects: The prohibition of community managers from earning compensation tied to the number or amount of fines imposed against or collected from units' owners or tenants or guests of units' owners will ensure fair treatment of units' owners. The requirement for a community manager or employer of a community manager to carry insurance or bonding will protect homeowners' associations and compensate for losses incurred by a licensee while performing duties under the management agreement. The practice of a management agreement crafted to indemnify a community manager even when found in violation of intentional misconduct, gross negligence or criminal misconduct will end. The homeowners' association should not bear the cost of these proven actions by a licensed community manager.

(b) Both immediate and long-term effects:

Immediate effects: Homeowners' associations will not incur losses through indemnification clauses in a management agreement with a community manager.

Long-term effects: The long-term effect is to ensure fairness and consistency in the application of governing document rules and reduce potential self-serving conflicts by a community manager or a board.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There is no additional cost to the agency for the implementation of LCB File No. R049-13.

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed regulation duplicates.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that apply.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulation does not provide a new fee or increase an existing fee.