

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

LCB File No. R050-13

August 26, 2013

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

AUTHORITY: §1, NRS 116.615; §2, NRS 116.3103 and 116.615; §3, NRS 116.31151 and 116.615; §§4-6, NRS 116.31152 and 116.615; §7, NRS 116.31142 and 116.615; §§8, 9 and 12, NRS 116A.430; §§10 and 11, NRS 116A.420.

A REGULATION relating to common-interest communities; revising provisions governing reserve studies; amending provisions governing the preparation of financial statements by an association; revising provisions governing the qualifications and duties of a person who conducts reserve studies; and providing other matters properly relating thereto.

Section 1. NAC 116.046 is hereby amended to read as follows:

116.046 “Major components” means the major components of the common elements, whether real or personal property, which the association is responsible for *maintaining*, repairing, replacing or restoring, including, without limitation, amenities, improvements, furnishings, fixtures, finishes, systems and equipment.

Sec. 2. NAC 116.405 is hereby amended to read as follows:

116.405 In determining whether a member of the executive board has performed his or her duties pursuant to NRS 116.3103, the Commission may consider whether the member of the executive board has:

1. Acted outside the scope of the authority granted in the governing documents;
2. Acted for reasons of self-interest, gain, prejudice or revenge;

3. Committed an act or omission which amounts to incompetence, negligence or gross negligence;

4. Except as otherwise required by law or court order, disclosed confidential information relating to a unit's owner, a member of the executive board or an officer, employee or authorized agent of the association unless the disclosure is consented to by the person to whom the information relates;

5. Impeded or otherwise interfered with an investigation of the Division by:

(a) Failing to comply with a request by the Division to provide information or documents;

(b) Supplying false or misleading information to an investigator, auditor or any other officer or agent of the Division; or

(c) Concealing any facts or documents relating to the business of the association;

6. Kept informed of laws, regulations and developments relating to common-interest communities;

7. Cooperated with the Division in resolving complaints filed with the Division; and

8. Caused the association to:

(a) Comply with all applicable federal, state and local laws and regulations and the governing documents of the association;

(b) Uniformly enforce the governing documents of the association;

(c) Hold meetings of the executive board with such frequency as to properly and efficiently address the affairs of the association;

(d) Obtain, when practicable, at least three bids from reputable service providers who possess the proper licensing before purchasing any such service for use by the association;

(e) Consult with appropriate professionals as necessary before making any major decision affecting the association or the common elements ~~H~~, *including, without limitation, consulting with a reserve study specialist who is registered pursuant to chapters 116A of NRS and 116A of NAC when conducting the reserve study, as required by subsection 2 of NRS 116.31152 and NRS 116A.420;*

(f) Deposit all funds of the association for investment in government securities that are backed by the full faith and credit of the United States or in a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, the Securities Investor Protection Corporation or a private insurer approved pursuant to NRS 678.755;

(g) Maintain current, accurate and properly documented financial records;

(h) Establish policies and procedures for the disclosure of potential conflicts of interest and the appropriate manner by which to resolve such conflicts;

(i) Establish policies and procedures that are designed to provide reasonable assurances in the reliability of financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in making business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;

(j) Prepare interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of the association is fairly presented in accordance with the provisions of NAC 116.451 to 116.461, inclusive;

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

(l) Cooperate with the Division in resolving complaints filed with the Division; and

(m) Adopt and fairly enforce the collection policies of the association.

Sec. 3. NAC 116.415 is hereby amended to read as follows:

116.415 An executive board shall, in addition to the requirements set forth in paragraph (b) of subsection 1 of NRS 116.31151, include in the budget to maintain the reserve:

1. An estimate of the amount of reserve funds necessary in the projected fiscal year, based on ~~comparative bids or~~ industry standards, to complete the *maintenance*, repairs, replacement or restoration of the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore as recommended in the study of reserves conducted pursuant to NRS 116.31152; and

2. If the projected balance of the reserve account at the end of the budgeted fiscal year is less than the amount required to adequately fund the reserves on a reasonable basis at the end of the budgeted fiscal year, as determined by the study of reserves conducted pursuant to NRS 116.31152:

(a) The reason for the difference; and

(b) How this difference is proposed to be resolved by the executive board.

Sec. 4. NAC 116.425 is hereby amended to read as follows:

116.425 1. A reserve study must, in addition to the requirements set forth in NRS 116.31152, include:

(a) ~~A copy of the component inventory from the previous reserve study if such copy was provided by the executive board to the person conducting the reserve study;~~

~~—(b)~~ A 30-year schedule which shows:

(1) The projected increase in ~~{assessments}~~ *contributions to the reserves* that will be required in any given year to provide ~~{an}~~ adequately funded ~~{reserve;}~~ *reserves;*

(2) The projected inflation and estimated interest income from the reserve fund ~~{}~~ and *the projected income tax rate for income from the reserve fund; and*

(3) The projected ending balance of the reserve fund;

~~{(e)}~~ *(b)* The names and credentials of any consultants and other persons with expertise used to assist in the preparation of the reserve study;

~~{(d)}~~ *(c)* Any written reports prepared by consultants and other persons with expertise;

~~{(e)}~~ *(d)* If there are any conflicting recommendations of the consultants or other persons with expertise while preparing the reserve study, a written explanation as to which recommendations ~~{are}~~ *were* selected and the reasons for their selection;

~~{(f)}~~ *(e)* The number of units in the association;

~~{(g)}~~ *(f)* A general statement describing the current status of the reserve fund;

~~{(h)}~~ *(g)* A general statement describing the ~~{objectives of the reserve study and the methods used in computing and evaluating the current}~~ *overall* status of the ~~{reserve fund;}~~

~~—(i)~~ *reserves of the association;*

(h) A statement of the beginning and ~~{the end of the fiscal year}~~ *ending date of the period* for which the reserve study is prepared;

~~{(j)}~~ *A projection of the initial balance of the reserve fund;*

~~—(k)~~ *(i)* A general statement describing the *reconciliation*, development or computation of the initial balance of the reserve fund;

~~{(j)}~~ (j) A ~~{tabular statement}~~ *table* showing the remaining useful life of each major component of the common elements from the time of each component's initial *or last* installation

~~{f}~~

~~{(m)}~~ , *maintenance, repair, replacement or restoration;*

(k) A general statement ~~{prepared in accordance with generally accepted accounting principles}~~ describing the objectives of the funding plan that is designed to allocate the costs for the *maintenance*, repair, replacement and restoration of the major components of the common elements and the methods used in ~~{carrying out}~~ *projecting* the *30-year* funding plan, *using the following terms* and discussing, where applicable:

(1) ~~{Cash flow;}~~

~~{(2)}~~ Full funding;

~~{(3)}~~ (2) Threshold funding; and

~~{(4)}~~ (3) Baseline funding;

~~{(n)}~~ (l) A statement identifying the sources relied upon to obtain an estimate for the cost to *maintain*, repair, replace or restore a major component of the common elements;

~~{(o)}~~ (m) A detailed description of the type of reserve study that was performed and the level of service accorded to the reserve study, including whether the reserve study was:

(1) A full reserve study ~~{f}~~ *in which the following tasks were performed:*

(I) An inventory and measurement of the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(II) An assessment of the condition of the major components of the common elements and any other portion of the common-interest community that the association is

obligated to maintain, repair, replace or restore, which is based upon on-site visual observations if such components and portions are reasonably accessible for such observation;

(III) Estimates of the remaining useful life and valuation of the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(IV) Financial analysis of data and the status of the reserve fund; and

(V) Development of a funding plan;

(2) An update to a previous reserve study made pursuant to a visit to the site of the common-interest community ~~§~~ *in which the following tasks were performed:*

(I) A verification of a previous inventory of the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(II) An assessment of the condition of the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore, which is based upon on-site visual observations if such components and portions are reasonably accessible for such observation;

(III) Estimates of the remaining useful life and valuation of the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(IV) Financial analysis of data and the status of the reserve fund; and

(V) Development of a funding plan; or

(3) An update to a previous reserve study made without a visit to the site of the common-interest community ~~§~~

~~(p)~~ in which the following tasks were performed:

(I) Estimates of the remaining useful life and valuation of the major components of the common elements and any other portion of the common-interest community that the association is obligated to maintain, repair, replace or restore;

(II) Financial analysis of data and the status of the reserve fund; and

(III) Development of a funding plan.

(n) The disclosures set forth in NAC 116.430; ~~and~~

~~(q)~~ (o) A statement, prominently displayed, which reads substantially as follows:

The projected life expectancy of the major components and the funding needs of the reserves of the association are based upon the association performing appropriate routine and preventative maintenance for each major component. Failure to perform such maintenance can negatively impact the remaining useful life of the major components and dramatically increase the funding needs of the reserves of the association.

Any material issues which are not disclosed to the person conducting the study of the reserves may cause the condition of the association to be misrepresented.

2. As used in this section, “adequately funded ~~[reserve²]~~ reserves” means the funds sufficient to maintain the common elements:

- (a) At the level described in the governing documents and in a reserve study; and
- (b) Without using the funds from the operating ~~[budget]~~ accounts or without special *or reserve* assessments, except for occurrences that are a result of unforeseen catastrophic events.

Sec. 5. NAC 116.430 is hereby amended to read as follows:

116.430 A person conducting a reserve study and any consultant assisting in the preparation of a reserve study shall include in the reserve study the following disclosures:

1. The background, training, qualifications and references that would qualify the person conducting or assisting in the preparation of the reserve study as competent to conduct or assist in the preparation of the reserve study.
2. Any relationship which could result in actual or perceived conflicts of interest.
3. Whether the person conducting or assisting in the preparation of the reserve study is bonded or has professional liability insurance ~~+~~ *with a minimum coverage of \$1,000,000.*
4. The method *or methods* for determining the common area components based on:
 - (a) An actual ~~field~~ *on-site* inspection of the common elements with representative sampling;
 - (b) An inventory and material information provided by the client; ~~or~~
 - (c) A previous reserve study and the date of that study ~~+~~; *or*
 - (d) Plats, governing documents or any other additional industry resources used by the person conducting or assisting in the preparation of the reserve study.*
5. Industry sources used for determining:
 - (a) The life of a major component ~~+~~ *of the common elements;* and
 - (b) The cost of *maintaining*, repairing, replacing or restoring a major component ~~+~~ *of the common elements.*
6. Any guarantees, express or implied, that are ~~given~~ *provided by any component manufacturer or service provider*, with the predictions ~~for~~ *that would affect* the cost or life expectancy of any of the major components.

7. The source of the ~~information regarding the~~ initial reserve fund balance presented in the reserve study.

8. Whether a ~~special~~ *reserve* assessment is anticipated during the ~~time of the contracted~~ *current 30-year life of the* reserve study.

9. A statement, prominently displayed, which reads substantially as follows:

Information provided to the preparer of a reserve study by an official representative of the association regarding financial, historical, physical, quantitative or reserve project issues will be deemed reliable by the preparer. A reserve study will be a reflection of information provided to the preparer of the reserve study. The total of actual or projected reserves required as presented in the reserve study is based upon information provided that was not audited.

A reserve study is not intended to be used to perform an audit, an analysis of quality, a forensic study or a background check of historical records. An on-site inspection conducted in conjunction with a reserve study should not be deemed to be a project audit or quality inspection.

10. ~~Material issues which, if not disclosed, would cause the condition of the association to be misrepresented.~~

~~11.~~ For updated reserve studies, a statement, prominently displayed, which reads substantially as follows:

Quantities of major components as reported in previous reserve studies are deemed to be accurate and reliable. The reserve study relies upon the validity of previous reserve studies.

Sec. 6. NAC 116.435 is hereby amended to read as follows:

116.435 ~~{An}~~ *Not later than 210 days after the executive board receives a draft of the reserve study, the* executive board shall submit a summary of the results of the reserve study to the ~~{Commission}~~ *Division* pursuant to subsection 4 of NRS 116.31152 by filing, electronically if possible, on ~~{a form}~~ *Form 609 as* prescribed by the Division, the summary of the results of the reserve study with the Division. The Division may post the summary of the results of the reserve studies filed with the Division on its website.

Sec. 7. NAC 116.451 is hereby amended to read as follows:

116.451 The interim financial statements of an association may be prepared using fund accounting or a single-column presentation and must:

1. ~~{Include, at a minimum, a month-to-date and year-to-date presentation of:~~
~~—(a) The}~~ *Present a* balance sheet, including operating and reserve for future repairs and ~~{replacement}~~ *replacements and any other funds of the association.*
2. *List the* assets, liabilities and fund balances or members' equity if a single-column format is used. ~~{~~
- ~~—(b)}~~ 3. *Include, at a minimum, a month-to-date and year-to-date presentation of:*
 - (a) The statement of revenues and expenses for all operating, ~~{and}~~ reserve *and other* activities, presenting information about all assessments, revenues and expenses;
 - ~~{(e)}~~ (b) A schedule comparing the details of the actual expenses of the association with the expenses budgeted for the association;

~~{(d)}~~ (c) Any changes in the fund balances to be presented on the *balance sheet or* statement of revenues and expenses ; ~~{if fund accounting is used;}~~ and

~~{(e)}~~ (d) A footnote which states that the association is in compliance with paragraph (b) of subsection 2 of NRS 116.3115 and that reserve funds have not been used for daily maintenance.

~~{2.}~~ 4. Be prepared ~~{on a full}~~ *using* accrual basis ~~{~~
~~—3.}~~ *accounting in accordance with generally accepted accounting principles.*

5. Be prepared by, or the preparation of the interim financial statements must be supervised by, a person with accounting knowledge and experience in the preparation of financial statements.

~~{4.}~~ 6. Be distributed monthly, promptly upon completion, to the treasurer of the association, the community manager *if the association is professionally managed* and each member of the executive board.

Sec. 8. NAC 116A.415 is hereby amended to read as follows:

116A.415 1. To register with the Division as a reserve study specialist, a person must submit:

(a) A registration on a form prescribed by the Division which includes the name and business address of the person registering as a reserve study specialist; and

(b) A fee in an amount to be established annually by the Division to cover the administrative cost of registering the person.

2. A registration as a reserve study specialist ~~{expires}~~ *is valid for* 2 years after the date on which the registration ~~{and fee required by subsection 1 are submitted to}~~ *is issued by* the Division, unless , *before the expiration date stated on the registration card*, the reserve study

specialist ~~{submits to the Division another}~~ *renews his or her registration. To renew a registration as a reserve study specialist, the registrant must:*

(a) Successfully complete at least 6 hours of continuing education in courses approved by the Commission, which must consist of instruction relating to chapters 116, 116A and 116B of NRS and the regulations adopted pursuant thereto, with an emphasis on recent changes to those chapters and regulations; and

(b) Submit to the Division:

(1) Another registration and fee required by subsection 1 ~~{before that date.}~~; and

(2) Documentation of the successful completion of the continuing education required by paragraph (a).

Sec. 9. NAC 116A.420 is hereby amended to read as follows:

116A.420 1. A person is qualified by training and experience to register as a reserve study specialist if the person has:

(a) A good reputation for honesty, trustworthiness and integrity;

(b) The ability to evaluate the items on the component inventory with regard to normal and accelerated deterioration, deferred maintenance, remaining years of useful life and the current cost to *maintain*, repair, replace or restore;

(c) The ability to perform *necessary* financial analysis, cost estimates and 30-year projections, as applicable;

(d) The ability to review improvement plans and specifications, maintenance histories, recorded plats and governing documents of the association in order to compile a complete component inventory and to consult with the executive board to ascertain and confirm that the component inventory is complete;

(e) The ability to gather and analyze *relevant* financial data, including, without limitation, monthly assessment fees per unit, the current ~~balance of reserves,~~ *reserve accounts*, the anticipated *tax rates on earnings, the anticipated* interest rate on reserves, and the anticipated inflation and maximum increases in assessment fees; and

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

2. If the Division finds that a person who has submitted a registration to the Division is not qualified by training and experience to register as a reserve study specialist, the Division shall:

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

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

Sec. 10. NAC 116A.425 is hereby amended to read as follows:

116A.425 1. A reserve study specialist who prepares a reserve study shall:

(a) Comply with the applicable provisions of chapter 116, 116A or 116B of NRS or any regulations adopted pursuant thereto;

(b) Comply with the relevant lawful provisions of the governing documents of each client;

(c) Agree to perform only those reserve studies which the person can reasonably expect to perform with professional competence;

(d) Exercise due care and exhibit adequate planning and supervision of conduct relating to the performance of a reserve study;

(e) Disclose in writing to the client any actual, potential or perceived conflict of interest if the client has dealings with another person who:

(1) Has a financial interest in the business relationship between the reserve study specialist and the client; or

- (2) Is an employee of or otherwise affiliated with the association;
- (f) Maintain an inventory of reserve study records of each client for at least 6 years;
- (g) Keep informed of new developments in the field of reserve studies through continuing education, including, without limitation, new developments in the law, methods of funding and other topics necessary for the proper preparation of reserve studies;
- (h) Ensure that the information used to prepare a reserve study is complete based upon information provided by the client , *the reserve study specialist's experience and background* and from data reasonably available from industry sources; and
- (i) Cooperate with the Division in any investigation conducted pursuant to the provisions of chapter 116, 116A or 116B of NRS or any regulations adopted pursuant thereto.

2. A reserve study specialist who prepares ~~a~~ reserve ~~study~~ *studies* shall not ~~+~~ *knowingly*:

- (a) Make inaccurate or misleading representations or statements to a prospective client; or
- (b) Misrepresent facts for his or her own benefit.

Sec. 11. NAC 116A.430 is hereby amended to read as follows:

116A.430 Before entering into a contract to perform a reserve study, a reserve study specialist shall disclose in writing to the prospective client any material and relevant information that the reserve study specialist knows or should know relates to the performance of the contract for the reserve study, including, without limitation, any matters which may affect his or her ability to comply with the provisions of chapter 116, 116A or 116B of NRS or any regulations adopted pursuant thereto. Such disclosure must include, without limitation:

1. Whether the reserve study specialist expects to receive any direct or indirect compensation or profits from any person who will perform services for the client and, if so, the identity of the person;

2. His or her affiliation with or financial interest in any person who furnishes any goods or services to the association for which the reserve study specialist will prepare the reserve study; and

3. His or her personal relationship with any ~~unit's owner,~~ member of the executive board or officer of the association for which the reserve study specialist will prepare the reserve study.

Sec. 12. NAC 116A.435 is hereby amended to read as follows:

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

(a) Commits any of the following:

(1) Unprofessional conduct;

(2) Professional incompetence;

(3) ~~Negligence or gross~~ **Gross** negligence; or

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

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

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

(a) Violates the provisions of:

(1) An order of the Commission;

- (2) An agreement with the Division; or
 - (3) Chapter 116, 116A or 116B of NRS or any regulation adopted pursuant thereto;
- (b) Engages in deceitful, fraudulent or dishonest conduct, including, without limitation, knowingly communicating false, misleading or fraudulent information to a client;
 - (c) Submits a registration which contains a false statement of material fact;
 - (d) Fails to cooperate with the Division in the investigation of a complaint, including, without limitation, failure to produce any document, book or record in the possession or control of the reserve study specialist after the Division requests the production of such document, book or record in the course of investigating a complaint;
 - (e) Fails to perform impartially and consistently an activity that is lawful and properly authorized on behalf of a client or fails to perform a duty or obligation owed to a client because of the age, race, color, religion, national origin, disability, marital status, familial status, sex , *sexual orientation* or ethnicity of any person, including, without limitation, a member of the executive board, an officer of the association ~~};~~ *or* a unit's owner ; ~~}; a tenant of the common-interest community or a visitor of the common-interest community;}~~ or
 - (f) Exceeds the authority granted to him or her by the client.
3. A reserve study specialist commits an act of professional incompetence if, without limitation, the reserve study specialist:
- (a) Demonstrates a significant lack of ability, knowledge or fitness to perform a duty or obligation owed to a client; or
 - (b) Fails to exercise reasonable skill and care with respect to a duty or obligation owed to a client.

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

(a) Done his or her utmost to protect the public against misrepresentation or unethical practices relating to the ~~{business affairs of the client;}~~ *reserve study*;

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

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

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

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

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

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

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

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