

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

LCB File No. R066-14

May 29, 2014

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

AUTHORITY: §1, NRS 116.615 and 116.750; §2, NRS 116.3103 and 116.615.

A REGULATION relating to common-interest communities; authorizing the Real Estate Division of the Department of Business and Industry to investigate a violation under certain circumstances; requiring the Real Estate Administrator to file a formal complaint under certain circumstances; allowing the Commission for Common-Interest Communities and Condominium Hotels to consider whether a member of the executive board of a unit-owners' association has taken or failed to take certain actions when determining whether the member has performed certain duties; and providing other matters properly relating thereto.

Legislative Counsel's Digest

Existing law gives the Real Estate Division of the Department of Business and Industry the jurisdiction to investigate, and the Commission for Common-Interest Communities and Condominium Hotels to take appropriate action against, persons who violate laws and regulations governing common-interest communities. (NRS 116.745, 116.750) **Section 1** of this regulation authorizes the Division to conduct an investigation whenever the Real Estate Administrator has reason to believe that any person is violating or has violated such regulations and requires the Administrator to file a formal complaint if the investigation results in a determination that good cause exists to proceed with a hearing on the alleged violation.

Existing law requires the executive board of a unit-owners' association to conduct meetings that are open to units' owners except in certain circumstances and provide notice of those meetings. (NRS 116.31083, 116.31085) Existing law also provides that members of the executive board are fiduciaries of the association and are required to act in good faith and in the honest belief that their actions are in the best interest of the association. (NRS 116.3103) Existing regulations provide a list of factors that the Commission may consider when determining whether a member of the executive board has performed his or her duties. (NAC 116.405) **Section 2** of this regulation authorizes the Commission to also consider when making such a determination whether a board member has: (1) taken material action on behalf of the association outside of a meeting; (2) communicated with other members of the executive board

concerning material action and failed to disclose the communication at a meeting; and (3) caused the association to establish policies and procedures for the investment of the funds of the association.

Section 1. Chapter 116 of NAC is hereby amended by adding thereto a new section to read as follows:

1. If the Administrator has reason to believe that any person is violating or has violated the provisions of this chapter or chapter 116 of NRS, the Division may conduct an investigation to determine whether good cause exists to proceed with a hearing on the alleged violation.

2. If, after investigating the alleged violation, the Division determines that good cause exists to proceed with a hearing on the alleged violation, the Administrator shall file a formal complaint with the Commission pursuant to NRS 116.770 and schedule a hearing on the complaint before the Commission or a hearing panel.

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

116.405 *1.* 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:

- ~~11.~~ *(a)* Acted outside the scope of the authority granted in the governing documents;
- ~~12.~~ *(b)* Acted for reasons of self-interest, gain, prejudice or revenge;
- ~~13.~~ *(c)* Committed an act or omission which amounts to incompetence, negligence or gross negligence;
- ~~14.~~ *(d)* 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;

~~15.1~~ (e) Impeded or otherwise interfered with an investigation of the Division by:

~~1(a)~~ (1) Failing to comply with a request by the Division to provide information or documents;

~~1(b)~~ (2) Supplying false or misleading information to an investigator, auditor or any other officer or agent of the Division; or

~~1(e)~~ (3) Concealing any facts or documents relating to the business of the association;

~~16.1~~ (f) Kept informed of laws, regulations and developments relating to common-interest communities;

~~17.1~~ (g) *Taken material action on behalf of the association outside of a meeting conducted pursuant to NRS 116.31083;*

(h) Communicated with other members of the executive board concerning material action and failed to disclose the communication at a meeting conducted pursuant to NRS 116.31083;

(i) Cooperated with the Division in resolving complaints filed with the Division; and

~~18.1~~ (j) Caused the association to:

~~1(a)~~ (1) Comply with all applicable federal, state and local laws and regulations and the governing documents of the association;

~~1(b)~~ (2) Uniformly enforce the governing documents of the association;

~~1(e)~~ (3) Hold meetings of the executive board with such frequency as to properly and efficiently address the affairs of the association;

~~1(d)~~ (4) 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)~~ (5) Consult with appropriate professionals as necessary before making any major decision affecting the association or the common elements;

~~(f)~~ (6) 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)~~ (7) *Establish policies and procedures for the investment of the funds of the association;*

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

~~(h)~~ (9) Establish policies and procedures for the disclosure of potential conflicts of interest and the appropriate manner by which to resolve such conflicts;

~~(i)~~ (10) 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)~~ (11) 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)~~ (12) Make the financial records of the association available for inspection by the Division in accordance with the applicable laws and regulations of this State;

~~(h)~~ (13) Cooperate with the Division in resolving complaints filed with the Division; and

~~(m)~~ (14) Adopt and fairly enforce the collection policies of the association.

2. As used in subsection 1, “material action” does not include a routine, clerical or ministerial action.