

LCB File No. 136-99

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

The regulations to be adopted are stated as follows:

Authority: SB 451, Sections 16(5) and 26(3)(c-e)

Note: SB 451, Sections 26(3)(c-e) are to be adopted by the Real Estate Commission.

Note: Matter italicized is new; matter in brackets **[H]** is material to be omitted.

Section 1. Chapter 116 of NAC is hereby amended by adding thereto sections two through ten, inclusive of these proposed regulations.

Sec. 2. *STANDARDS OF PRACTICE FOR MANAGING A COMMON INTEREST COMMUNITY* In order to promote and enhance a high level of professional and ethical conduct among *COMMUNITY MANAGER* certificate holders, the Real Estate Division has determined that the following Standards of Practice must be met:

1. A *COMMUNITY MANAGER* shall comply with all lawful provisions of the clients governing documents and with all lawful provisions of the written contracts to which the *COMMUNITY MANAGER* is a party.

2. A *COMMUNITY MANAGER* shall refuse to accept any form of gratuity or other remuneration from individuals or companies, which could be viewed as an improper inducement to influence the manager or that may be, or appear to be, a conflict of interest.

3. An inventory of all records of each association will be maintained and made available to members as required by NRS 116.3119, Section and SB 451, Section 9, and must be turned over to any subsequent management company within no more than 30 days of the end of any contract unless otherwise mutually agreed upon in writing by both parties.

4. A *COMMUNITY MANAGER* shall have sufficient staff and administrative personnel, or a formal arrangement with necessary consultants, to ensure the capable handling of the client's interests.

5. A *COMMUNITY MANAGER* shall keep informed of new developments in common interest community management, including but not limited to, legal and accounting principles of management.

6. A *COMMUNITY MANAGER* shall complete at least six (6) hours of continuing education in courses approved by the commission within two (2) years immediately preceding the date on which the certificate expires in accordance with NRS 116.31139.

7. A *COMMUNITY MANAGER* shall honor all client confidences and shall treat the business affairs and records of the client as confidential unless directed or authorized otherwise by competent authority. (SB 451, Section 9 to be referenced in this section)

8. All representations made to a community association, which has engaged the *COMMUNITY MANAGER*, must be made with the best interest of the common interest community in mind.

9. Any Management Agreement effective after October 1, 1999, including renewals, shall have the following provisions:

- (a) Appointment of COMMUNITY MANAGER as agent
- (b) Schedule of any New Association or Startup Costs
- (c) Status of COMMUNITY MANAGER as independent contractor or employee
- (d) role of the COMMUNITY MANAGER
- (e) Job Description of COMMUNITY MANAGER
- (f) Spending Limits of COMMUNITY MANAGER
- (g) Liability of COMMUNITY MANAGER
- (h) Termination rights of both parties
- (i) Requirements of COMMUNITY MANAGER for inspection and audit of books and records
- (j) Insurance provisions (Liability, Fidelity, Workers Compensation, Errors & Omissions)
- (k) Bankruptcy provisions of COMMUNITY MANAGER
- (l) Attorney fees and arbitration provisions
- (m) Statement identifying all records and books of association as association property
- (n) Who is appointed as the principle point of contact between both parties
- (o) The frequency and extent of regular inspections mutually agreed upon with the client.
- (p) Where management contract provides for specific charges or a specific mark-up for goods or services, the requirement for disclosure is met in the contract.
- (q) Scope of Authority of the COMMUNITY MANAGER
- (r) Responsibilities of each party
- (s) Terms of the contract
- (t) Schedule of Routine Services
- (u) Schedule of charges for Special or Non-routine services.
- (v) Schedule of Reimbursed Expenses
- (w) Location of Records
- (x) Check Signing Authority for Operating Accounts
- (y) Reasonable transfer and document fees to be disclosed
- (z) Association records will be turned over within no more than thirty (30) days to the new management company.

10. The COMMUNITY MANAGER shall recommend that a reserve study be prepared in accordance to NRS 116 in a professional manner and who can demonstrate to the board that the reserve study preparer has the qualifications, training and experience as set out by Administrator.

11. The COMMUNITY MANAGER shall not engage in the unlicensed practice of law. This provision, however, does not prevent a COMMUNITY MANAGER from rendering a business judgement nor does this provision prevent COMMUNITY MANAGER from appearing on behalf of a client where authorized to do so by law.

12. The COMMUNITY MANAGER shall advise clients when the COMMUNITY MANAGER believes legal counsel should be retained and assist the client in retaining qualified counsel.

13. The COMMUNITY MANAGER shall recommend that written rules and fine schedules be established published to the community association membership and that the publication and implementation of a consistent enforcement policy be based upon federal, state and local laws and regulations, the association's covenants, conditions and restrictions;

and the association's articles of incorporation and by laws. The COMMUNITY MANAGER shall make all reasonable effort to assure that the adopted policies are in full compliance with these documents.

14. The COMMUNITY MANAGER shall at all times cause to be kept and maintained current and accurate records of all financial transactions, properly marked for identification, concerning the association and assets managed for a client, and cause to be prepared financial statements in sufficient detail to allow the client's Board and auditor to determine the status of the association's accounts and financial operations. Such records shall be made available for inspection by the client and the Real Estate Division in accordance with the governing documents and applicable Nevada laws.

15. The COMMUNITY MANAGER shall make financial records available for inspection and copying by an authorized representative of the community association upon reasonable notice during regular business hours.

16. The COMMUNITY MANAGER shall not commingle the money or other property of his clients with his own or other client's or covert the money or other property of others to his own use. The COMMUNITY MANAGER shall deposit all such funds in an FDIC insured financial institution in the State of Nevada as required by the governing documents and Nevada law.

17. The COMMUNITY MANAGER shall act as a fiduciary on behalf of the client in handling the client's affairs and shall put the client's interest above the COMMUNITY MANAGER's own in handling the client's financial affairs.

18. The COMMUNITY MANAGER shall comply with NRS 116 requirements to register the association with the Real Estate Division and file the appropriate papers with the Secretary of State. The COMMUNITY MANAGER will ensure that the client maintains a current status with the Secretary of State.

19. The COMMUNITY MANAGER shall recommend that the common interest community comply with the fiscal requirements of Nevada laws and the common interest community's legal documents.

20. The COMMUNITY MANAGER shall recommend that the common interest community file, in a timely manner, applicable quarterly and fiscal year-end tax returns and reports and make required periodic deposits with the IRS and with other applicable federal, state and local agencies.

21. The COMMUNITY MANAGER shall recommend that the community association invest association funds in accordance with the association's legal documents and recommend that the primary objectives in investing should be safety first, liquidity second, then yield and then other considerations.

22. The COMMUNITY MANAGER shall never be a signor on a reserve account withdrawal unless serving as a member of the executive board or as an officer of the association.

23. The COMMUNITY MANAGER, unless qualified to do so by education or professional experience, shall refrain from giving investment advice to common interest community clients and, when such advice is requested, recommend qualified investment professionals.

24. The COMMUNITY MANAGER shall advise the clients of the need to obtain insurance as consistent with the requirements established by Nevada law, the community

association governing documents, and ensure an annual review of those requirements and coverage.

25. *If the COMMUNITY MANAGER is an independent agent rather than an employee of the common interest community, the COMMUNITY MANAGER shall recommend that the management entity be named as an additional insured under the association insurance contracts.*

26. *The COMMUNITY MANAGER shall cooperate with the Real Estate Division when dealing with any complaints filed with the Real Estate Divisions.*

27. *Upon transfer of property to another management company, an inventory of records and assets will be prepared and signed by both parties.*

Sec. 3. DISCIPLINARY PROCESS: ALLEGATIONS

1. *Written complaints regarding alleged violations of a COMMUNITY MANAGER must be submitted to the Real Estate Division, signed by the Complainant, specifying and including the following:*

(a) the identity of the certificate holder and/or COMMUNITY MANAGER who is alleged to have violated NRS 116.31139 or NRS 645.240 and the nature of the alleged violation;

(b) evidence (which may include corroborating statements by other persons or specific information as to persons who may be contacted to provide such corroboration) supporting the allegation;

(c) complainant's name, address and telephone number; and

(d) written response from association Board of Directors and COMMUNITY MANAGER.

2. *The evidence and information set forth in the Complaint, together with any additional information subsequently coming to the attention of the Real Estate Division, to constitute sufficient grounds for the Administrator to cause an inquiry.*

3. *Upon receipt of any Complaint, the Investigator may make such inquiries and preliminary investigations as to the matters covered by or related to the Complaint, the Investigator may make such inquiries and preliminary investigations as to the matters covered by or related to the Complaint and submit a written report to the Administrator.*

4. *Upon review of the written report from the Investigator and at the discretion of the Administrator, the following actions may be taken:*

(a) issue a letter of censure;

(b) levy an administrative fine of \$50 for the 1st fine, \$100 for the second offense and may fine up to \$1,000 for the 3rd and subsequent offense;

(c) referral to an Advisory Review Committee; and/or (645 ARC Regulations to be attached).

(d) refer to Commission for hearing, sanctions or other disciplinary action.

5. *If the Administrator determines there is a violation, the Complaint may be forwarded to the Attorney General to prepare a Complaint for a disciplinary hearing.*

6. *No anonymous Complaints will be acted upon and no response stating the same will be sent from the Real Estate Division.*

Sec. 4. CONSIDERATIONS IN DETERMINING MISCONDUCT BY A COMMUNITY MANAGER

1. *Has done his utmost to protect the public against fraud, misrepresentation or unethical practices related to the associations business affairs;*

2. *Has ascertained all pertinent facts concerning any association for which he accepts a contract;*
3. *Has attempted to provide specialized professional services concerning a type of property or service that is outside of his field of experience or competence without the assistance of a qualified authority unless the facts of such lack of experience or competence are fully disclosed to the Board of Directors;*
4. *Has disclosed in writing, his interest or contemplated interest in any association with which he is dealing. The disclosure must include, but is not limited to, a statement of :*
 - (a) *Whether he expects to receive any direct and indirect compensation and profits from any person or company who will perform services related tot he property and if so, the identity of the person or company;*
 - (b) *His affiliation with or financial interest in any person or company who furnishes services related to the association;*
 - (c) *His interest in or financial arrangement with any person or company who provides maintenance or other services to the association.*
 - (d) *If COMMUNITY MANAGER receives compensation from more than one party in a transaction, full disclosure to and consent from each party to the transaction. A COMMUNITY MANAGER shall not accept compensation from more than one party in a transaction, even if otherwise permitted by law, without full disclosure to all parties.*
5. *Has complied with the applicable governing documents, policies and procedures of the Client Association(s) to the extent permitted by that client;*
6. *Has kept informed of current statutes and regulations governing common interest communities and related fields in which he attempts to provide guidance;*
7. *Has breached his obligation of absolute fidelity to the association's interest or his obligation to deal fairly with all parties to a transaction;*
8. *Has ensured that each agreement for the management of an association is contained in a written agreement and that each director authorized by the association has received a copy of the written agreement;*
9. *Has obtained all changes of contractual terms in writing and whether such changes are signed or initialed by the parties concerned; and*
10. *Has acquired knowledge of all material facts that are reasonably ascertainable and are of customary or express concern and has conveyed that knowledge to the parties to the transaction.*

Sec. 5. PENALTIES

Penalties for disciplinary action against an COMMUNITY MANAGER: Acts relating to fraud, failing to maintain proper records for review and/or audit and mishandling of association funds. For each violation, the Commission may:

1. *Require a COMMUNITY MANAGER to pay and administrative fine of not more than \$5,000.00 for each violation he commits.*
2. *Require a COMMUNITY MANAGER to obtain additional education in any or all areas of common interest management to maintain the certificate.*
3. *Revoke, suspend or place conditions upon his certificate.*
4. *Refuse to renew or reinstate a certificate.*

Sec. 6. Availability of disciplinary records and proceedings. Any complaint or record maintained by the Division pursuant to the discipline of a Community Manager and any proceeding held by the Division shall remain open and available to the public 30 days after the effective date of any decision or action. However, if a decision is appealed, the records will not be available until any proceeding has been concluded.

Sec. 7. ADVISORY REVIEW COMMITTEE

1. The commission will, when appropriate, establish an advisory committee of at least three members to:

- (a) Provide assistance in an area that the commission considers necessary; or
- (b) Assist the commission in the review of complaints which have been filed pursuant to NRS and NAC 116 or other matters under investigation if the respondent agrees to participate in an informal review of the complaint or other matter by an advisory committee.

2. The administrator shall appoint members to an advisory committee from a list of volunteers. The list of volunteers must consist of persons as qualified and approved by the commission. The administrator shall designate one member of the advisory committee to serve as the chairman of the committee.

3. Members of an advisory committee:

- (a) Serve at the pleasure of the commission;
- (b) Are prohibited from participating in a proceeding in which a member of the commission would be required to abstain under similar circumstances; and
- (c) Serve without compensation, but are entitled to travel expenses and subsistence allowances from the division.

Sec. 8. 1. An advisory committee established to assist the commission in the review of a complaint may:

(a) Review the complaint or other matter under investigation and the written report submitted by an investigator pursuant to NAC 116 to determine whether probable cause exists that the respondent has violated a provision of chapter 116 of NRS or the regulations promulgated thereunder;

(b) Hold an informal conference in accordance with the provisions of section 4 of these regulations; and

(c) Work with the respondent to arrive at a resolution of the complaint.

2. If the respondent and the administrator accept the recommendations of the advisory committee regarding resolution of the complaint or other matter under investigation, the administrator may enter into a written agreement with the respondent setting forth the resolution recommended by the advisory committee. If the agreement provides for the imposition of any discipline authorized by NRS and NAC 116, the administrator is authorized to impose such discipline on behalf of the commission. If discipline is imposed pursuant to this section, the administrator shall file with the commission a written summary of the matter and discipline imposed for discussion at the next regularly scheduled meeting of the commission.

3. If the respondent or the administrator do not accept the recommendations of the advisory committee, the administrator may:

- (a) Dismiss the complaint or other matter under investigation;
- (b) Schedule a formal hearing; or

(c) Take any other appropriate action regarding the complaint or other matter under investigation.

Sec. 9. *1. If an advisory committee is established to assist the commission in the review of a complaint, the administrator shall schedule an informal conference between the advisory committee and the respondent. The administrator shall provide written notice of the time and place of the conference to:*

(a) Each member of the advisory committee;

(b) The respondent; and

(c) Each witness whose appearance has been requested at the informal conference.

2. In conducting an informal conference, an advisory committee is not bound by the technical rules of evidence. The chairman of an advisory committee shall rule on the admissibility of evidence and accept all evidence, which is relevant to the complaint. All evidence admitted is confidential.

3. The chairman shall report in writing to the administrator the results of the informal conference within 30 days after the conclusion of the informal conference. The report is confidential.

Sec. 10. NAC 116.120 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 2, an applicant must:

(a) Have successfully completed at least ~~30~~ 24 hours of instruction in courses in property management as it relates to the management of a common-interest community that have been approved by the commission, including, without limitation:

(I) At least ~~14~~ 8 hours of instruction relating to federal, state and local laws applicable to property management as it relates to the management of a common-interest community, including, without limitation, instruction relating to:

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

INFORMATIONAL STATEMENT

The following information is provided pursuant to the requirements of NRS 233B.060:

Information Regarding Adoption

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

Information about Proposed Regulations

1. Purpose and need of the Proposed Regulations.
Establish Reserve Study Preparer qualifications;
Establish criteria for determining of whether an association is created for the limited purpose of maintaining the landscape of the common elements of a common-interest community, maintaining facilities for flood control or maintaining rural agricultural residential common interest common interest community;
Establish Standards of Practice for persons engaged in property management for a common-interest community.
Establish grounds for initiating disciplinary action against a person(s) to whom a certificate has been issued, including specified disciplinary sanctions.
Establish rules of practice and procedure for conducting a disciplinary hearing;
Revise NAC 116.120(1)(a) current certification education hours required.
2. Terms of the proposed regulations. Provided on previous pages.
3. Estimated Economic Effect. None.
4. Estimated Cost to the Agency. Increased cost of hearings and investigative costs. Will create necessity for investigative staffing. Cost of handbook production. Cost of regulation review.
5. Duplication with other Agencies. None.
6. Federal Law. These regulations are not required pursuant to any federal law.
7. Federal Regulation. These regulations do not include provisions, which are more stringent than a federal regulation.

8. New Fee Established. The proposed regulations do not establish a new fee or increase an existing fee beyond the fees required pursuant to NRS chapter 116.

Comments and Written Submissions

Persons wishing to comment on the proposed action of the Division may appear at the scheduled public hearings or may address their comments, data, views or arguments, in written form to:

Nevada Real Estate Division
Bradley Building
2501 E. Sahara Avenue, Room 101
Las Vegas, NV 89104-4137
Attn: Tami DeVries, Legal Administrative Officer

Written submissions must be received by the Division by SEPTEMBER 13, 1999. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Division may proceed immediately to act upon any written submissions.

Copies of Proposed Regulation

A copy of this notice and the proposed regulation will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the proposed regulation will be available at the following Division offices:

Nevada Real Estate Division
1665 Hot Spring Road, Suite 155
Carson City, NV 89710

Nevada Real Estate Division
Bradley Building
2501 East Sahara, Suite 100
Las Vegas, NV 89104-4137

and in all counties in which an office of the Division is not maintained, at the main public library, for inspection and copying by members of the public during business hours. The text of each regulation will include the entire text of any section of the Nevada Administrative Code, which is proposed for amendment or repeal. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

List for Posting Regulation Workshop & Hearing Notices

Carson City Library

900 North Roop Street
Carson City, NV 89701

Clark County/LV Library

833 Las Vegas Blvd., North
Las Vegas, NV 89101

Elko County Library

720 Court Street
Elko, NV 89801

Eureka Branch Library

10190 Monroe Street/POB 293
Eureka, NV 89316

Battle Mountain Branch Library

(Lander County)
625 Broad Street/PO Box 161
Battle Mountain NV 89820

Lyon County Library

20 Nevin Way
Yerington, NV 89447

Tonopah Public Library

(Nye County)
171 Central Street/PO Box 449
Tonopah, NV 89049

Storey County Library

95 South R Street
PO Box 14
Virginia City, NV 89440

White Pine County Library

950 Campton Street
Ely, NV 89301

Churchill County Library

553 South Maine Street
Fallon, NV 89406

Douglas County Library

1625 Library Lane, POB 337
Minden, NV 89423

Goldfield Public Library/Esmerelda Co.

Fourth & Crook St./POB 40
Goldfield, NV 89013

Humboldt County Library

85 East 5th Street
Winnemucca, NV 89445

Lincoln County Library

93 Main Street
POBox 330
Pioche NV 89043

Mineral County Library

First & A Street/PO Box 1390
Hawthorne, NV 89415

Pershing County Library

1125 Central Avenue
PO Box 781
Lovelock, NV 89419

Washoe County Library

301 South Center Street
PO Box 2151
Reno, NV 89505

Nevada State Library & Archives

Capitol Complex
Carson City, NV 89710