

LCB File No. R129-04

**PROPOSED REGULATION OF THE COMMISSION FOR  
COMMON-INTEREST COMMUNITIES**

**WORKING DOCUMENT FOR PROPOSED REGULATION CHANGES TO CH. 116**

**Global changes:**

1. Change Real Estate Commission to Commission for Common-Interest Communities throughout the chapter.

Sec. 1. NAC 116 is hereby amended by adding thereto the following:

*Amount of fees.*

*1. The following fees must be charged by and paid to the division:*

*For each application for a certificate ..... \$100*

*For the issuance or renewal of a certificate..... 100*

*For each penalty for a late renewal of a certificate ..... 50*

*For each change of name or address ..... 20*

*For each change of affiliation with a supervising manager.....20*

*For each duplicate certificate where the original is lost or destroyed ..... 20*

*For each reinstatement to active status of an inactive certificate ..... 20*

*For each annual approval of a course of instruction*

*offered in preparation for an original certificate ..... 100*

*For each original accreditation of a course of continuing education ..... 100*

*For each renewal of accreditation of a course of continuing education ..... 50*

*Fee for conducting a background investigation shall not exceed the administrative cost charged to the Division, and shall be in the form of a cashier's check or money order made payable to the agency conducting the investigation.*

*For each check returned for "non-sufficient funds".....25*

Sec. 2. NAC 116 is hereby amended by adding thereto the following:

*For the purposes of NRS 116.625 annual assessment shall mean both the per unit assessments and the total budget revenues for the association.*

Sec. 3. NAC 116 is hereby amended by adding thereto the following:

*“common area major components” means those common elements or other property, real or personal, which the association is responsible to repair and maintain including, but not limited to, all common area amenities, improvements, furnishings, fixtures, finishes, systems, and equipment that: may require repair, replacement or restoration other than: (a) routine annual maintenance, repair, replacement or restoration that must be done as a result of normal wear and tear or, (b) damage resulting from casualty; and which must be done within thirty years after the original installation of the applicable common area major component.*

Sec. 4. NAC 116 is hereby amended by adding thereto the following:

*“component inventory” means a list of all common area major components.*

Sec. 5. NAC 116 is hereby amended by adding thereto the following:

*“financial records” defined. “financial records” means the financial and other transaction records necessary to support the financial, statements and other records of the client and include but are not limited to the underlying detail and supporting documentation for: cash, receipts, disbursements, bank statements, bank reconciliations, inventories and supplies, prepaid expenses and their amortization; investments, including a reconciliation of statements to the general ledger, recording of investment income, sales, purchases, gains/losses, cost and fair market values; property and equipment and associated accumulated depreciation; intangibles and associated amortization; details of operating and reserve fund expenses; maintenance and replacement fund receivables and associated allowance for uncollectible receivables; accounts payable and accrued expenses; income taxes; special assessment expenses, capital lease obligations; notes payable, short and long-term; changes in fund balances or members’/shareholders’ equity; reserve studies for future major repairs and replacements; related party transactions; budgets; contingent liabilities; litigation; board of director minutes; contracts, agreements with third parties; compliance of insurance coverage*

*with statutory requirements and other accounting and after records as deemed necessary by the client's accountants, auditors or the Division.*

Sec. 6. NAC 116 is hereby amended by adding thereto the following:

*“Regular business hours of an association” defined. “Regular business hours of an association” means Monday through Friday 9:00 a.m. to 5:00 p.m. excluding state and federal holidays.*

Sec. 7. NAC 116 is hereby amended by adding thereto the following:

*“Regular working hours of the association” defined. “Regular working hours of the association” means at least four (4) contiguous hours per week.*

Sec. 8. NAC 116 is hereby amended by adding thereto the following:

*“reserve study” means the study required pursuant to NRS 116.31152.*

Sec. 9. NAC 116 is hereby amended by adding thereto the following:

*“supervising community manager” means a certified community manager who directly supervises a person who holds a provisional certificate.*

Sec. 10. NAC 116 is hereby amended by adding thereto the following:

*“provisional community manager” means a certified community manager has passed the educational requirements for certification but not yet fulfilled the actual experience requirements.*

### *Rules of Practice*

Sec. 11. NAC 116 is hereby amended by adding thereto the following:

#### *RULES OF EVIDENCE*

*1. In conducting any intervention, investigation, inquiry or hearing, the Commission, hearing officers or the Division employees are not bound by the technical rules of evidence and any informality in a proceeding or in the manner of taking testimony does not invalidate any order, decision, rule or regulation made, approved or confirmed by the Commission.*

*2. Rules of evidence recognized by the courts of Nevada will be followed generally but may be relaxed by the Commission when deviation from the technical rules of evidence may aid in ascertaining the facts.*

*3. When an objection is made to the admissibility of evidence, the Commission may:*

*1) Note the objection and admit the evidence;*

*2) Sustain the objection and not admit the evidence; or*

*3) The evidence may be received subject to a later ruling by the Commission.*

*4. To be admitted at the hearing, evidence must be material and relevant to the issues involved.*

*5. The Commission may exclude inadmissible, incompetent, cumulative or irrelevant evidence, or order that presentation of that evidence be discontinued.*

*6. A party objecting to the introduction of evidence shall state briefly the grounds of the objection at the time the evidence is offered. The party offering the evidence will then have an opportunity for rebuttal.*

Sec. 12. NAC 116 is hereby amended by adding thereto the following:

***MOTIONS: SUBJECT MATTER; SERVICE; WRITTEN RESPONSE***

*1. A motion must be made in writing, unless otherwise authorized by the Commission during the hearing.*

*2. The Commission or a designated member of the Commission may require oral argument and/or the submission of additional facts or evidence to decide a motion.*

*3. A written motion must be served on the opposing party and the Commission at least 10 working days before the time set for the hearing.*

*4. 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 Commission, but in no case may a written response be filed less than 3 working days before the time set for the hearing except for good cause shown and with the permission of the Commission.*

Sec. 13. NAC 116 is hereby amended by adding thereto the following:

***DISCOVERY OF EVIDENCE***

*1. Not less than 5 working days prior to a hearing, a Respondent must provide to the Division, copies of all documents and list of witnesses that are reasonably available to the Respondent which the Respondent` reasonably anticipates will be used in support of his position.*

*2. A party who provides documents pursuant to this regulation shall promptly supplement and update his submission to the Division if, after initially providing documents, any additional documents are discovered or if any of the documents previously provided changes.*

*3. If a party fails to provide documents prior to the hearing, as required in this section, the Commission has the discretion to exclude the undisclosed document.*

*4. Ten (10) copies of each document sought to be admitted into evidence must be brought to the hearing.*

Sec. 14. NAC 116 is hereby amended by adding thereto the following:

***COMPLAINT: AMENDMENT; CONTINUANCE; WITHDRAWAL***

*1. A complaint may be amended at any time.*

*2. The Commission may grant a continuance if the amendment materially alters the complaint and the respondent demonstrates an inability to prepare for the case in a timely manner due to the amendment.*

*3. A complaint may be withdrawn at any time before the hearing begins.*

Sec. 15. NAC 116 is hereby amended by adding thereto the following:

***VOLUNTARY SURRENDER IN LIEU OF OTHER DISCIPLINE***

*The Commission may accept a voluntary surrender of the certificate in lieu of imposing any other disciplinary action set forth in Chapter 116.*

Sec. 16. NAC 116 is hereby amended by adding thereto the following:

***FAILURE TO APPEAR***

*If a party fails to appear at a hearing scheduled by the Commission and a continuance has not been granted, upon an offer of proof by the other party that the absent party was given proper*

*notice and upon a determination by the Commission that proper notice was given, the Commission 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 before it. If the respondent fails to appear at a hearing on a complaint or fails to reply to the notice, the charges specified in the complaint may be considered as true.*

Sec. 17. NAC 116 is hereby amended by adding thereto the following:

***REPORTING OF DISCIPLINARY ACTION OR DENIAL OF APPLICATION FOR CERTIFICATION OR REGISTRATION.***

*1. The Division may report any disciplinary action it takes against a person regulated under this chapter to:*

*(a) Any national repository which records disciplinary action taken against community managers or any other person;*

*(b) Any agency of another jurisdiction that regulates the practice of management of a common-interest community;*

*(c) Any other agency or board of the State of Nevada; or*

*(d) An association managed by that person.*

*2. The Division may report its denial of an application for certificate to:*

*(a) Any national repository that records disciplinary action taken against community managers;*

*(b) Any agency of another jurisdiction that regulates the practice of management of common-interest communities; or*

*(c) Any other agency or board of the State of Nevada.*

Sec. 18. NAC 116 is hereby amended by adding thereto the following:

**Note to LCB – we want this placed immediately preceding NAC 116.320.**

*When a certified community manager or holder of a permit is the subject of a complaint filed with the division such a complaint is not subject to the provisions of NRS 116.760, 116.765 or 116.785.*

Sec. 19. NAC 116 is hereby amended by adding thereto the following:

*discipline of a provisional community manager; requirements of supervising community manager.*

*1. The Division shall provide a copy of any complaint filed against or disciplinary or other proceeding commenced action against a provisional community manager to his supervising community manager*

*2. At any disciplinary hearing for a provisional community manager, that provisional community manager's supervising community manager must be present.*

Sec. 20. NAC 116 is hereby amended by adding thereto the following:

*Hearings.*

*1. The presiding officer of a hearing shall do the following:*

*(a) Ascertain whether all persons commanded 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:*

*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 except during the testimony of the witness. A witness may be excluded upon the motion of the commission or upon the motion of either party. If a witness is excluded, he will be instructed not to discuss the case during the pendency of the proceeding. The respondent will be allowed to remain present at the hearing. The division may designate a person who is a member of the staff of the division and who may also be a witness to act as its representative. Such a representative will be allowed to remain present at the hearing.*

*(e) Ascertain whether a copy of the complaint or decision to deny has been filed and whether an answer has been filed as part of the record in the proceedings.*

*(f) Hear any preliminary motions, stipulations or orders upon which the parties agree and address any administrative details.*

*(g) Request the division to proceed with the presentation of its case.*

*2. The division may not submit any evidence to the commission before the hearing except for the 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 members of the commission at any time during the proceeding.*

*5. Evidence which is to be introduced:*

*(a) Must first be marked for identification for the commission; and*

*(b) May be received by the commission at any point during the proceeding.*

*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 behalf.*

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

*8. When the respondent has completed his 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 commission may waive any provision of this section if necessary to expedite or ensure the fairness of the hearing.*

*11. The date of decision is the date the written decision is signed by a commissioner or filed with the commission, whichever occurs later in time.*

*12. In the absence of the chairman, vice-chairman or secretary of the commission, any matter which must be acted upon may be submitted to the vice president or to the secretary.*

*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 NRS 116.770, his default may be entered and a decision may be issued based upon the allegations of the complaint.*



Sec. 21. NAC 116 is hereby amended by adding thereto the following:

*1. The Commission hereby adopts by reference the Common Interest Realty Associations – AICPA Audit & Accounting Guide, May 2004 edition. The Common Interest Realty Associations – AICPA Audit & Accounting Guide may be obtained from the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, NY 10036-8775 or at [www.aicpa.org](http://www.aicpa.org), for the price of \$58.75 (non-member price).*

*2. If the publication adopted by reference pursuant to subsection 1 is revised, the Commission will review the revision to determine its suitability for this state. If the Commission determines that the revision is not suitable for this state, the Commission will hold a public hearing to review its determination and give notice of that hearing within 90 days after the date of the publication of the revision. If, after the hearing, the Commission does not revise its determination, the Commission will give notice that the revision is not suitable for this state within 90 days after the hearing. If the Commission does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.*

Sec. 22. NAC 116 is hereby amended by adding thereto the following:

**Note to LCB: This section should become effective on July 1, 2006.**

#### ***FINANCIAL STATEMENT REQUIREMENTS***

*Financial statements requirements for associations.*

##### *1. General method of presentation*

*a. The financial statements of an association shall be presented using “fund accounting” and will include the following funds:*

*i. An “operating fund” which reflects the accounting transactions surrounding the normal maintenance and service operations of the association;*

*ii. A “reserve fund” which reflects the accounting transactions pertaining to the association’s long-term major repair and replacement requirements.*

##### *2. Financial statement descriptions:*

*a. Interim financial statements shall include, at a minimum, month-to-date and year-to-date presentations of:*

*i. A balance sheet for the operating fund and reserve fund presenting assets, liabilities and fund balances, including changes in the fund balances; and*

*ii. A statement of revenues and expenses for the operating fund and reserve fund which presents information about all assessments, other revenues, and expenses;*

*iii. An accompanying schedule that compares details of the association's actual expenses with budgeted amounts.*

*b. Audited financial statements shall have the meaning set forth in the Guide and shall include a full presentation of accrual-basis financial statements, as set forth below, prepared in conformity with Generally Accepted Accounting Principles (GAAP);*

*i. A balance sheet for the operating fund and reserve fund presenting assets, liabilities and fund balances;*

*ii. A statement of revenues and expenses for the operating fund and reserve fund which presents information about all assessments, other revenues and expenses;*

*iii. A statement of changes in fund balances which reconciles beginning and ending fund balances with results of operations;*

*iv. A statement of cash flows;*

*v. Note disclosures and unaudited supplementary information as follows:*

*1. Reserve disclosures as required at Sec. \_\_\_\_\_; and*

*2. An accompanying schedule which compares details of the association's actual expenses to budgeted amounts.*

*3. Method of presentation:*

*a. Interim financial statements shall be prepared using generally accepted accounting principles (GAAP) which requires the use of the full accrual basis of accounting, or another comprehensive basis of accounting, i.e. modified accrual or cash basis accounting;*

*b. Audited financial statements shall be prepared using generally accepted accounting principles (GAAP) which requires the use of the full accrual basis of accounting.*

*4. Interim financial statements will be prepared monthly to be completed no later than 30 days following month end.*

*5. Audited financial statements will be required annually and are due no later than 90 days subsequent to the association's fiscal year audit only annual end.*

*6. The auditor engaged by the Association to perform the annual audit of the Association's financial statements shall be certified public accountants licensed pursuant to chapter 628 NRS. The auditor shall be independent of the association and shall not be a member of the board of directors, a unit owner, or a certified public accountant affiliated with the community manager or a unit owner.*

*7. The interim financial statements will be distributed each month, promptly upon completion, to the Treasurer of the Association at a minimum, or to the entire Board if so stipulated by the association's governing documents.*

*8. Audited financial statements shall be filed annually with the Division no later than 120 days subsequent to the association's fiscal year end and will be made available for public review.*

Sec. 23. NAC 116 is hereby amended by adding thereto the following:

*As used in this Chapter, the term "distance education" shall be understood to refer to educational programs in which instruction is accomplished through the use of media whereby teacher and student are separated by distance and sometimes by time. A person requesting approval of a distance education course must, in addition to satisfying all other requirements for elective course approval specified in this Section, demonstrate that the proposed distance education course satisfies the following criteria:*

*1. The course shall be designed to assure that students actively participate in the instructional process while completing the course by utilizing techniques that require substantial student interaction with the instructor, other students, or a computer program. If the nature of the subject matter is such that the learning objectives for the course cannot be reasonably accomplished without some direct interaction between the instructor and students, then the course design must provide for such interaction.*

*2. A course that does not provide the opportunity for continuous audio and visual communication between the instructor and all students during the course presentation shall utilize testing and remedial processes appropriate to assure student mastery of the subject material.*

*3. A course that involves students completing the course on a self-paced study basis shall be designed so that the course time does not exceed the time required for a student of average*

*ability to complete the course, and the sponsor shall utilize a system that assures that students have actually performed all tasks designed to assure student participation and mastery of the subject matter.*

*4. The proposed instructional delivery methods shall be appropriate to enable effective accomplishment of the proposed learning objectives and the scope and depth of the instructional materials must also be consistent with the proposed learning objectives.*

*5. The sponsor shall provide appropriate technical support to enable students to satisfactorily complete the course.*

*6. An approved instructor shall be reasonably available to respond in a timely manner to students questions about the subject matter of the course and to direct students to additional sources of information. Instructors shall have appropriate training in the proper use of the instructional delivery method utilized in the course, including the use of computer hardware and software or other equipment and systems. For the purposes of this subsection, timely manner shall mean that the instructor must respond to students questions within 48 hours Monday through Friday, and if a question is submitted on Saturday or Sunday the instructor must respond within 48 hours from the following Monday at 9:00 a.m..*

*7. The sponsor shall provide students an orientation or information package which contains all information required by the division to be provided to students and all necessary information about the course, including but not limited to information about course fees and refund policies, course subject matter and learning objectives, procedures and requirements for satisfactory course completion, any special requirements with regard to computer hardware and software or other equipment, and instructor and technical support.*

*8. The sponsor shall utilize procedures that provide reasonable assurance that the student receiving continuing education credit for completing the course actually performed all the work required to complete the course. For courses that involve independent study by students, such procedures must include, at a minimum, a direct contact with the student, initiated by the sponsor and directed by the student's home or business, using the telephone or electronic mail and a signed statement by the student certifying that he or she personally completed all course work. Signed student course completion statements, and records of student contacts shall be retained by the sponsor along with all other course records the sponsor is required to maintain.*

*9. An entity seeking approval of a computer-based distance education course must submit a complete copy of the course on the medium that is to be utilized and, if requested, must make available, at a date and time satisfactory to the division and at the sponsor's expense, all hardware and software necessary for the division to review the submitted course. In the case of an Internet-based course, the division must be provided access to the course via the Internet at a date and time satisfactory to the division and shall not be charged any fee for such access.*

*10. In determining whether to approve a course pursuant to this section, the commission shall consider:*

*(a) Whether the course consists of at least 3 hours;*

*(b) Whether the student will be required to complete a written examination proctored by an official approved by the division or other secure electronic method acceptable to the division; and*

*(c) Whether the course is presented by an accredited college or university that offers distance education in other disciplines; or whether the course design and delivery mechanism has been accredited by a nationally recognized distance education accrediting agency which requires the following:*

Sec. 24. Chapter 116 of NAC is hereby amended by adding thereto the following  
*Student Participation Standards*

*1. Certification of Completion in any approved course constitutes the following participation standards:*

*(a) A student shall direct his attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction; and*

*(b) A student shall refrain from engaging in activities which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class. This includes, but is not limited to, the use of voice pagers, beepers and telephones.*

*(c) Student shall arrive at the appointed time and stay for the full duration of the course; and*

*(d) Pass test administered by instructor if applicable.*

*2. Instructors may not award a certificate of completion to a student who fails to comply with the student attendance participation standards prescribed in Paragraph (1)(a) & (b).*

Sec. 25. Chapter 116 of NAC is hereby amended by adding thereto the following

*Instructor Standards of Conduct and Performance*

*1. Instructors must assure that class sessions are commenced in a timely manner and are conducted for the full amount of time that is approved. Instructors must assure that each course is taught according to the course plan and instructor guide that was approved by the Commission, including the furnishing to students of appropriate student materials.*

*2. Instructors must conduct themselves in a professional and courteous manner when performing their instructional duties and must conduct classes in a manner that demonstrates the following basic teaching skills:*

*(a) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate voice inflection, grammar and vocabulary;*

*(b) The ability to present an effective visual image to a class, including appropriate appearance and physical mannerisms;*

*(c) The ability to present instruction in a thorough, accurate, logical, orderly and understandable manner, to utilize illustrative examples as appropriate, and to respond appropriately to questions from students;*

*(d) The ability to effectively utilize varied instructional techniques in addition to lecture, such as class discussion, role playing or other techniques;*

*(e) The ability to effectively utilize varied instructional aids to enhance learning;*

*(f) The ability to maintain an appropriate learning environment and effective control of a class;*

*(g) The ability to interact with adult students in a positive manner that encourages students to learn, that demonstrates an understanding of varied student backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.*

Sec. 26. Chapter 116 of NAC is hereby amended by adding thereto the following:

*The Division shall revoke or suspend the approval for any instructor and/or school or course sponsor who:*

- 1. Is a party to any falsification of any document, verification or other information provided to the Division;*
- 2. Does an inadequate job of teaching the subject matter as evidenced by student evaluations and/or division audits;*
- 3. Publishes or causes to be published any advertising which is not in accordance with federal and state law;*
- 4. Is guilty or has been found guilty of violating or disregarding any provision of Nevada common-interest communities law or any rule, regulation or order of the Commission or Division;*
- 5. After receiving written warning from the Division, continues to make inaccurate comments to students regarding course content or continues to offer opinions represented as being the law or principles of law to students which are in conflict with any material contained in an approved course.*
- 6. Engages in conduct which constitutes or demonstrates dishonest dealings, bad faith or untrustworthiness.*
- 7. Engages in inappropriate conduct in the classroom including, but not limited to, the use of profanity, telling offensive jokes, and making inappropriate remarks unrelated to the subject matter.*
- 8. Fails to file with the Division, either by paper or electronically, accurate and complete records by the required deadlines.*
- 9. Awards credit to any student who fails to comply with the student attendance and participation standards.*
- 10. Fail to notify Division of scheduled courses.*

*A revocation or suspension of instructor or course approval shall be for a period prescribed by the Division. Any instructor whose approval has been suspended or revoked shall not be reapproved without meeting all current instructor requirements and the approval of the Commission.*

Sec. 27. NAC 116 is hereby amended by adding thereto the following:

*“School” defined.*

- 1. The University of Nevada system, or any other university or college bearing the same or an equivalent accreditation.*
- 2. Any professional school or college licensed by the Nevada commission on postsecondary education.*
- 3. Any out-of-state professional school or college licensed or accredited by a real estate commission or division, a department of education or an equivalent agency of any other state.*
- 4. Nationally recognized professional organization.*

Sec. 28. NAC 116 is hereby amended by adding thereto the following:

*Application for approval of school.*

*1. A school which desires to offer courses to meet the educational requirements for certification under chapter 116 of NRS and NAC must make its application for the commission’s approval on a form prescribed by the division and pay the appropriate fees. The application must include but not be limited to:*

- 1. The name and address of the school;*
- 2. The type of school and a description of its facilities;*
- 3. The ownership of the school (the business organization and the names and addresses of all directors, principals, officers, and others having interests as owners);*
- 4. A list of the instructors;*
- 5. A list of the courses to be offered and a topical syllabus for each;*
- 6. The allotment of time for each subject;*
- 7. A proposed schedule of courses for 1 year;*
- 8. The titles, authors, and publishers of all required textbooks;*
- 9. A copy of each examination to be used and the correct answer for each question; and*
- 10. A statement of:*
  - (a) The purpose of the school;*
  - (b) The fees to be charged;*
  - (c) The days, times, and locations of classes;*
  - (d) The number of quizzes and examinations;*



- (e) The grading systems, including the methods of testing and standards of grading;*
- (f) The requirements for attendance;*
- (g) The location of the students' records; and*
- (h) Whether or not the school or any of the instructors have ever been disciplined in this state or any other state.*

*2. The approval under Section 1 is good for 1 year and must be renewed annually to remain effective.*

Sec. 29. NAC 116 is hereby amended by adding thereto the following:

*Unacceptable courses*

*1. The division shall not accept an applicant's completion of a course of a kind which is designed to prepare students for examination, commonly known as a "cram course," as fulfillment of his educational requirements for certification.*

*2. None of the following kinds of courses will be accepted from an applicant as fulfillment of any part of the first 60 hours of education which are required by Section 54 for certification.*

*(a) Courses designed to develop or improve clerical, office or business skills that are not related to the activities described in NRS 116.061, such as typing, shorthand, operation of business machines, the use of computers, the use of computer software, improvement of memory, or writing of letters and reports; or*

*(b) Business courses in advertising or psychology.*

*(c) Primarily designed for self promotion.*

Sec. 30. NAC 116 is hereby amended by adding thereto the following:

*Notice of material changes in school; annual renewal of approval; denial.*

*1. Within 15 days after the occurrence of any material change in school which would affect its approval by the commission, the school shall give the division written notice of that change.*

*2. To qualify for annual renewal of approval by the commission, a school must submit to the commission before July 1:*

*(a) A written certification, in a form prescribed by the division, declaring that the school has met all applicable requirements of this chapter;*

*(b) A sworn statement, in a form prescribed by the division, declaring that the information contained in the original application is current or if it is not current, a list of all material changes; and*

*(c) Payment of fees for each course for which renewal is applied for.*

*3. The commission may deny renewal of approval to any school that does not meet the standards required by this chapter.*

*4. Within 60 days after a decision is made to deny renewal of approval, the commission must give written notice of the decision and the basis for that decision by certified mail to the last known address of the school.*

Sec. 31. NAC 116 is hereby amended by adding thereto the following:

*Education: Approval and accreditation of courses; certificate of attendance or completion.*

*1. An application for the approval of a course for education must be submitted to the division on a form prescribed by the division for review and presentation to the commission.*

*2. The commission may grant retroactive approval for an education course*

*3. In determining whether to approve a course pursuant to this section, the commission will consider:*

*(a) The course consists of at least 3 hours of distance education or instruction in a classroom.*

*(b) For a course of instruction in a classroom, the sponsor of the course:*

*(1) Certifies to the attendance of licensees who take the course for credit.*

*(2) Maintains for 4 years a record of attendance which contains the following information with respect to each holder of certificate who has taken the course for credit:*

*(I) The name of the holder of certificate in attendance and the number of his license.*

*(II) The title and number of the course.*

*(III) The hours of instruction attended and dates of attendance by the holder of certificate..*

*(IV) A statement that the holder of certificate has successfully completed the course, if applicable.*

*(3) Assures the commission that an approved instructor will preside throughout the course.*

*(c) For a course of distance education, the sponsor of the course:*

*(1) Requires each student to:*

*(I) Take a closed-book final examination with a proctor present at a location designated by the sponsor in its application for approval filed with the division and receive a score of at least 75 percent to pass the course;*

*(II) Prove his identity before he is allowed to take any examination;*

*(III) Complete an entire course to receive credit for taking the course; and*

*(IV) Complete each course within an established minimum and maximum time.*

*(2) Only gives credit for the number of hours for which the course has been approved by the division to a holder of certificate who has completed the course.*

*(3) Publishes a policy for retaking an examination which a holder of certificate failed.*

*(4) Maintains for 4 years a record of completion of the course which contains the following information with respect to each holder of certificate who has taken the course for credit:*

*(I) The name of the holder of certificate who completes the course and the number of his license.*

*(II) The title and number of the course.*

*(III) A statement that the holder of certificate has successfully completed the course, which includes, without limitation, the date that the course was completed and the number of hours completed.*

Sec. 32. NAC 116 is hereby amended by adding thereto the following:

*Education: Information required on course materials.*

*1. If a course has been approved and is being offered for education, the sponsor must state on all the course materials:*

*(a) That the course is approved for education in Nevada;*

*(b) The number of hours of credit for education for which the course is approved;*

*(c) The sponsor's code number assigned by the division; and*

*(d) Mode of delivery.*

*2. If a course offered by a professional organization has been approved for education, the organization shall not restrict attendance at the course to members of that organization.*

Sec. 33. NAC 116 is hereby amended by adding thereto the following:

*Education: School or Sponsor's duties; renewal; withdrawal of approval.*

*1. The sponsor of an approved course shall:*

*(a) Not allow a certificate holder to pass the course by taking an examination without having the required attendance;*

*(b) Admit authorized personnel of the division to audit and evaluate the presentation of the course;*

*(c) Notify the division within 15 days after making any material change in the course; and*

*(d) Not present a course for the main purpose of selling products or services and shall limit the announcement of products or services during the course to not more than 1 minute for each credit hour.*

*2. The commission's approval of an educational course is effective for 1 year after the original approval or a renewal.*

*3. The school or sponsor must apply for renewal on a form provided by the division and describe on that form any changes in the course. If, an application for renewal is not filed at least 2 weeks before the previous approval expires an application must be for an original approval.*

*4. The approval or renewal by the commission of any education course is subject to a condition that the division may audit the course.*

*5. The commission authorizes the division to renew a course that has been updated but has had no material change in course content.*

*6. Each of the following acts and conditions is a ground for the commission to withdraw its approval of a course:*

*(a) Poor quality of the curriculum or instruction, as shown by evaluations or audit.*

*(b) Violation of any of the provisions of this chapter governing education.*

*(c) Courses not taught within the last renewal period.*

*(d) The course sponsor has made false statements or presented false information in connection with an application of course or sponsor approval or renewal of such approval;*

*(e) The course sponsor or any official or instructor in the employ of the course sponsor has refused or failed to comply with any of the provisions of this chapter;*

*(f) The course sponsor or any official or instructor in the employ of the course sponsor has provided false or incorrect information in connection with any reports the course sponsor is required to submit to the commission;*

*(g) The course sponsor has engaged in a pattern of consistently canceling scheduled courses;*

*(h) The course sponsor has provided to the commission in payment for required fees a check which was dishonored by a bank;*

*(i) An instructor in the employ of the course sponsor fails to conduct approved courses in a manner that demonstrates possession of the teaching skills described in this chapter;*

*(j) Any court of competent jurisdiction has found the course sponsor or any official or instructor in the employ of the course sponsor to have violated, in connection with the offering of education courses, any applicable federal or state law or regulation prohibiting discrimination on the basis of disability, requiring places of public accommodation to be in compliance with prescribed accessibility standards, or requiring that courses related to licensing or certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities;*

*(k) The course sponsor or any official or instructor in the employ of the course sponsor has been disciplined by the commission or any other occupational licensing agency in Nevada or another jurisdiction; or*

*(l) The course sponsor or any official or instructor in the employ of the course sponsor has collected money for an educational course, but refuses or fails to provide the promised instruction.*

*7. If a certified manager who is an approved course sponsor or an instructor in the employ of an approved course sponsor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as a course sponsor or instructor, the certification shall be subject to disciplinary action pursuant to this chapter.*

Sec. 34. NAC 116 is hereby amended by adding thereto the following:

*1) A person who has complied with the requirements of Sections 52 through Section 55, inclusive is entitled to obtain a certificate as a provisional manager.*

*2) A provisional community manager, acting as a community manager must:*

*(a) Be affiliated with a supervising community manager for a minimum of 2 years;*

*(b) Obtain 2 years times \_\_\_\_hours active experience within 2 years after the issuance of the provisional certificate or any extension permitted by Section 35 in the following areas:*

*i) Financial management of an association;*

*ii) Property and facilities management;*

*iii) Specific duties relating to management of a common-interest community as outlined in chapter 116 of NRS and NAC;*

*iv) Governance of an association;*

*v) Insurance coverage; and*

*vi) Building communities.*

*3) While acting as a provisional community manager:*

*(a) The person must comply with the provisions of Section \_\_\_\_ to \_\_\_\_, inclusive, and all other applicable provisions of this chapter; and*

*(b) The person is subject to all the remedies and penalties provided for in this chapter applicable to the management of a common interest community.*

*4) Upon completion of the two year period discussed in Subsection 2, the provisional manager shall be entitled to act as a community manager without being affiliated with a supervisory community manager if the provisional manager?????????*

*a) Submits to the Division certificates of completion for the required 18 hours of continuing education prescribed in Section \_\_\_\_;*

*b) Submits to the Division a statement, on a form prescribed by the Division, completed and signed by his supervising community manager that verifies (1) the extent of the experience gained in each area outlined in subsection 1, and (2) that the provisional community manager has met the active experience requirement outlined in subsection 2; and*

*c) Pays the fee required in Section \_\_\_\_for renewal of a certificate.*

Sec. 35. NAC 116 is hereby amended by adding thereto the following:

*Renewal of provisional community manager who has not completed the active experience requirement, within 2 years.*

*If a provisional community manager has not completed the active experience requirements set forth in Section \_\_\_\_, within the 2 year period required by subsection \_\_\_\_ of Section \_\_\_\_ he may renew his certificate for an additional 2 year period. A provisional community manager must complete the required continuing education required in Section \_\_\_\_ and pay the fee for renewal required in Section \_\_\_\_ as a condition of his renewal of the certificate.*

Sec. 36. NAC 116 is hereby amended by adding thereto the following:

*1. In order to act as a supervising community manager, a certified manager must:*

*a. Have been actively engaged as a full-time certified community manager in this state, or actively engaged as a full-time certified community manager in another state or the District of Columbia, for at least 4 years immediately preceding his supervising a provisional community manager. At least 2 of those 4 years must have been in this state;*

*b. Be in good standing with the Division and any other state where he is licensed or certified;*

*c. Not supervise more than three provisional community managers at one time; and*

*d. File an affidavit that he has completed the education courses required pursuant to Sec.*

*\_\_\_\_\_.*

*2. While acting as a supervising community manager:*

*(a) The person must comply with the provisions of Section \_\_\_\_ to \_\_\_\_, inclusive, and all other applicable provisions of this chapter; and*

*(b) The person is subject to all the remedies and penalties provided for in this chapter applicable to the management of a common interest community.*

Sec. 37. NAC 116 is hereby amended by adding thereto the following:

*Location of office for a community manager*

*1. A community manager must be located in an office, in Nevada, which is easily accessible to the members of the public. If he chooses to establish an office in a private home or in conjunction with another business, he shall set aside a separate room or rooms for*

*conducting his management of a common-interest community activities. His office must comply with local zoning requirements.*

*2. A community manager must prominently display his certificate in his principal place of business in Nevada.*

*3. A community manager must notify the division, in writing, within 10 business days, of any change of location of his office and pay the appropriate fee.*

Sec. 38. NAC 116 is hereby amended by adding thereto the following:

*1. Notice in writing must be given by a certified manager to the Division within 10 business days of any change of name or office location or, in case of a provisional certified manager, change of affiliation with a supervising community manager*

*2. Failure to give notice as required by this section constitutes cause for involuntary inactivation of the license.*

Sec. 39. NAC 116 is hereby amended by adding thereto the following:

*Reinstatement; refusal to reinstate (NRS 116.705)*

*1. An applicant who wishes to reinstate his certificate must submit to the division:*

*(a) A completed application for reinstatement on a form prescribed by the division;*

*(b) Payment of the fees charged by the division for reinstatement to active status of an inactive certificate.*

*(c) Evidence satisfactory to the division that he has completed the applicable education requirements;*

*(d) Evidence satisfactory to the division that he has passed the examination for reinstatement;*

*(e) Current fingerprint cards that have been completed by a recognized law enforcement agency;*

*(f) An executed Law Enforcement Record Form No. 3321-SA or equivalent authorization for the release of the information contained in records of law enforcement;*

*(g) Written authorization for the division to submit the fingerprint cards to the central repository for Nevada records of criminal history for further submission to the Federal*



*Bureau of Investigation and to receive reports regarding the criminal histories of the subjects of the fingerprint cards; and*

*(h) Payment of the fees charged by any local agencies of law enforcement, the central repository for Nevada records of criminal history and the Federal Bureau of Investigation for handling of the fingerprint cards and issuance of the reports of criminal histories;*

*2. If a certificate has remained inactive and non-renewed for a period that exceeds one (1) year past his expiration date, an applicant will be required to follow the same procedures as if he had never held a certificate.*

*3. The division may refuse to reinstate a certificate 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 [ NAC 116.115] NRS 116.710;*

*(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; or*

*(d) The applicant has had disciplinary action imposed by the division or the commission.*

*3. If the division, after an application to reinstate a certificate in proper form has been filed, accompanied by the proper fees, refuses to reinstate the certificate, it shall give notice of this fact to the applicant within 15 days after the ruling, order or decision. The applicant may file a written request for a hearing before the commission pursuant to the procedures set forth in NAC 116.150.*

*4. If the division refuses to reinstate a certificate solely 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 shall reinstate the certificate if the division receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose certificate was suspended stating that the person has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.*

Sec. 40. NAC 116 is hereby amended by adding thereto the following:

*Credit for attending meeting of commission.*

*The Commission will grant credit for continuing education, not to exceed a total of 3 hours, to a certificate manager once during each certification period if the following conditions are met:*

- 1. The certificate manager attends a meeting of the Commission and holder was not a party to or a witness in a hearing conducted by the Commission; and*
- 2. The Commission certifies to the attendance of the certificate manager.*

Sec. 41. NAC 116 is hereby amended by adding thereto the following:

*Community managers: Management agreements (NRS 116.705)*

*1. A management agreement must:*

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

*(b) Be entered into between the executive board on behalf of 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-liability company or other entity. If the community manager is the employee of a corporation, partnership, limited partnership, limited-liability company or other entity, the employee shall not enter into a management agreement unless a certified manager is designated as responsible, on behalf of that employer, for compliance with the applicable provisions of this chapter and NAC 645 and chapters 116 and 645 of NRS with respect to such agreement;*

*(c) State the term of the management agreement;*

*(d) State the basic consideration for the services to be provided and the payment schedule and include a complete schedule of all fees, costs, expenses, chargebacks and other charges charged by the community manager, whether direct or indirect, including but without limitation:*

- (1) the costs for any new association or startup costs;*
- (2) fees chargeable for special or non-routine services, including collection letters, recording of liens and foreclosure fees;*
- (3) expenses that must be reimbursed;*

*(4) fees chargeable for the sale or resale of a unit or other fees charged for setting up the account of a new member; and*

*(5) a description of which part of any fees are to be retained by the community manager or by the client.*

*(e) Identify the contracting parties, including the legal status of each contracting party;*

*(f) State any limitations on the liability of each contracting party, including any provisions for indemnification of the community manager permitted by subsection 3 of this Section.*

*(g) Include a job description and statement of the scope of work of the community manager;*

*(h) State the spending limits of the community manager;*

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

*(j) Identify the types and amounts of insurance coverage to be carried by each contracting party, including whether the community manager will maintain errors and omissions or professional liability insurance, which contracting party or parties will maintain fidelity bond coverage, whether the association will maintain directors and officers liability coverage for the executive board, whether either contracting party must be named as an additional insured under any required insurance;*

*(k) Include provisions for dispute resolution and may provide for mandatory binding arbitration;*

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

*(m) State the physical location of the records of the client, which must be in the county in which the client is physically located and notice addresses (including street addresses) for each party;*

*(n) State the frequency and extent of regular inspection of the client's property; and*

*(o) 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. No later than 10 days after the effective date of the management agreement, the community manager shall provide the members of the board of the client certificates evidencing the*

*existence of the required insurance, which certificates shall include, without limitation, the name and address of the insurance companies, amounts of coverage and deductibles.*

*3. A management agreement may provide for indemnification of the community manager in accordance with, and subject to, Title 7.*

*4. Upon signing a management agreement, the community manager shall deliver a copy of the management agreement to each member of the executive board of the client. In addition, the community manager shall provide a copy to each new member of the executive board within 30 days upon such members election or appointment to the executive board.*

*5. Any changes to the form of a printed or typewritten management agreement must be initialed by the contracting parties and, after the execution of the original management agreement, any changes must be in writing and signed by the contracting parties to the agreement.*

*6. Unless otherwise agreed to in writing by the parties to the management agreement, upon a termination or assignment of a management agreement, the community manager shall transfer possession of all books, records and other papers, including the financial records, of the client to the succeeding community manager or to the client, if there is no succeeding community manager, within 30 days after such termination or assignment, regardless of any unpaid fees or charges to the management company.*

*7. Notwithstanding any contrary provisions in a management agreement, 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 NAC 645 or NRS Chapter 116 or 645.*

*8. May not contain an automatic renewal but may allow provisions to go month to month.*

Sec. 42. NAC 116 is hereby amended by adding thereto the following:

*Investigation and audit by the division of financial accounts of an association or the community manager.*

*1. The Division may investigate and audit all financial accounts relating to the association, if the Division has reasonable cause to believe that the accounts or the records have not been properly maintained as required by Sections \_\_\_ by the executive board or community manager, and the Division:*

*(a) Has reasonable cause to believe or has received a credible complaint that the association or community manager is insolvent or is in a financial condition or has engaged in any financial practice which condition or practice creates a substantial risk of insolvency; or*

*(b) Determines that the investigation and audit are reasonably necessary to assist the Division in administering or enforcing any provision of this chapter or NRS 116 or any other statute or regulation the Division is charged with administering or enforcing.*

*2. The Commission may take action pursuant to NRS 116.785, after notice and hearing, if the Division finds that a person has committed a violation.*

*3. As used in this section, “insolvent” or “insolvency” means a condition in which a association or community manager is unable to meet its liabilities as those liabilities become due in the regular course of the association’s or community managers business and which creates a substantial risk of harm to the association.*

Sec. 43. NAC 116 is hereby amended by adding thereto the following:

*Standards for subsidizing proceedings for mediation or arbitration conducted pursuant to NRS 38.300 to 38.360, inclusive.*

*1. The Division may subsidize proceedings for arbitration conducted pursuant to NRS 38.300 to 38.360, inclusive, as permitted by NRS 116.670, to the extent that funds are available in the account for common-interest communities for that purpose and the subsidy is in accordance with this section.*

*2. The Division may subsidize each party to a claim if both parties have agreed to binding arbitration. If one party is willing to agree to binding arbitration and one is not, the Division may subsidize the non-binding arbitration for the party that agreed to binding arbitration.*

*3. To be eligible for the subsidization of arbitration in described in subsection 2, an applicant must:*

*(a) submit an application to the division on a form prescribed by the division;*

*(b) file a claim for binding arbitration not more than one year from the date of discovery of the alleged violation; and;*

*(c) if the applicant is an association, that association must be registered and in good standing with the Office of the Ombudsman, pursuant to the provisions of NRS 116.31158.*

*(d) A unit owner is eligible for one subsidized arbitration per year for every unit that he owns in any given fiscal year (July 1 – June 30);*

*(e) An association is only eligible for one subsidized arbitration per year against the same unit's owner in any given fiscal year.*

*5. The subsidy described in subsection 2 shall not be used to cover the expense of the filing fee required pursuant to NRS 38.320(2) or any attorneys' cost or fees associated with the claim.*

*6. The subsidy described in subsection 2 may not exceed 50 percent of the amount of fees owed by a party to the arbitrator or \$500, whichever amount is less.*

*7. The application in subsection 4 shall be forwarded to the arbitrator assigned to the claim, as notification to the arbitrator that the claim is eligible for subsidization.*

*8. The arbitrator that is assigned to handle a claim, which has been approved for subsidization under this section shall submit to the Division, on a form prescribed by the division, an application for payment to the arbitrator of the cost of the arbitration no later than 10 business days after the final arbitration decision is rendered. A copy of the decision must be included with this form.*

*9. The payment of a subsidy pursuant to this section will be made to the arbitrator at the same time that the division issues the certificate certifying that an award has been reached through arbitration as outlined in NAC 38.350.*

Sec. 44. NAC 116 is hereby amended by adding thereto the following:

*Executive board members duties.*

*In addition to the standards found in this chapter and chapter 116 of NRS each member of an executive board shall take reasonable actions to vote to ensure that the association and/or the individual members of the executive board, when applicable, abide by the standards of practice outlined in subsections 1 and 2 herein.*

*1. A member of an executive board shall:*

*(a) complete and timely file with the office of the Ombudsman his certification required pursuant to NRS 116.31034;*

*(b) ensure that the association has registered with the Office of the Ombudsman pursuant to NRS 116.31158 and paid the required registration fee on an annual basis;*

*(c) Uphold with the governing documents of the association and all applicable federal, state and local laws;*

*(d) keep informed of laws and practices relating to common-interest communities, including without limitation, new developments in NRS Chapter 116 and this chapter, insurance coverage's and accounting principles, including (GAAP).*

*(e) if the association does not employ a community manager, the members of the executive board must comply with the standards of practice set forth in NAC 116.300;*

*(f) enforce the governing documents in a fair and uniform manner;*

*(g) maintain and provide for any necessary replacement of the common elements as required by the governing documents;*

*(h) adopt an annual budget that is not arbitrary, but based upon the proper review and considerations, including any required reserve study, necessary to determine the appropriate revenue and necessary operating and reserve expenses of the association;*

*(i) obtain, when practicable, at least three bids and quotes for the various services used by the association from reputable service providers in the related field with all the necessary licenses;*

*(j) take every reasonable action to collect all monies due to the association using fair and reasonable collection policies and procedures;*

*(k) make rational, informed decisions in good faith to ensure that his decisions would be in the best interest of the association and its membership as a whole;*

*(l) consult with or engage professionals as necessary before making major decisions;*

*(m) ensure a fair, open and well-publicized board election on an annual basis that has been conducted in accordance with the provisions set forth in this chapter and chapter 116 of NRS;*

*(n) establish the procedures necessary for an election process that is fair and equitable;*

*(o) Appoint officers and committee members as necessary and if permitted by the governing documents, board members, when vacancies may occur;*

*(p) At all times (1) ensure that the financial records of the association are current, and accurate, and complete, (2) ensure that the internal controls surrounding the financial transactions of the association are designed to provide reasonable assurance of the reliability of financial reporting, which includes the maintenance of accounting records, authorization*

*of receipts and disbursements, integrity of data used in business decisions, and facilitation of fraud detection and prevention; (3) promote the effectiveness and efficiency of operations and the safeguarding of assets, including the segregation of duties and physical security; and (4) cause all financial records to be in compliance with applicable laws and regulations;*

*(q) Prepare or cause to be prepared interim financial statements, as further described in Section \_\_\_\_, in sufficient detail to allow the Executive Board, unit owners, and accountant or an auditor of the association to determine that the financial position and results of operations of the association are fairly presented in accordance with GAAP, or on another comprehensive basis of accounting, i.e. modified accrual or cash basis;*

*(r) Annually, cause to be prepared audited financial statements of the association as further described in Section \_\_\_\_;*

*(s) Hold regular meetings in sufficient frequency to properly and efficiently handle the affairs of the association, and that meet the requirements set forth in NRS Chapter 116; and*

*(t) Ensure that the members of the association have reasonable access to the financial records and other books and records of the association in accordance with the provisions set forth in this chapter and chapter 116 of NRS.*

*2. A member of an executive board shall not:*

*(a) act out of passion or prejudice, personal self-interest or gain, or through revenge or other similar negative motivations;*

*(b) use his enforcement powers as a way to punish a units owner;*

*(c) act outside of the scope of the authority granted in the governing documents;*

*(d) disclose confidential information relating to a unit's owner, other member of the executive board, or any officer, authorized agent of the association or employee;*

*(e) fail to seek reasonable inquiry into new developments in law, insurance coverage and accounting principles; and*

*(f) Impede or attempt to impede any intervention or investigation of the division by:*

*(1) Failing to comply or delaying his compliance with a request by the division to provide documents or other information;*

*(2) Supplying false or misleading information to an investigator, auditor or any other officer of the division;*

*(3) Providing false, forged or altered documents; or*



*(4) Attempting to conceal any documents or facts relating to the business of the association.*

*(g) Abdicate the board member's statutory responsibility to a community manager.*

Sec. 45. NAC 116 is hereby amended by adding thereto the following:

*The Commission may take action pursuant to NRS 116.785 against any person subject to the jurisdiction of the Commission who is guilty of any of the following acts:*

- 1. Violating any order of the Commission, any agreement with the Division, any of the provisions of this chapter, chapter 116 of NRS or the governing documents of the association.*
- 2. Negligence, gross negligence or incompetence in performing any act for which he is required to perform in accordance with this chapter, chapter 116 of NRS and the governing documents of the association.*
- 3. Any other conduct which constitutes deceitful, fraudulent or dishonest dealing.*

Sec. 46. NAC 116 is hereby amended by adding thereto the following:

*In addition to the requirements set forth in NRS 116.31152 a reserve study must contain the following:*

- 1. A copy of the component inventory which was provided to the preparer by the association;*
- 2. The projected life expectancy for each common area major component, based upon the date that the component was installed or placed into service;*
- 3. A prominently displayed statement that the projected life expectancy and reserve funding needs are based upon the association performing appropriate routine and preventative maintenance for each common area major component and that failure to do so can negatively impact the remaining useful life of the respective component and dramatically increase the reserve funding needs of the association;*
- 4. A thirty year schedule showing the following:*
  - a. the recommended time period and estimated cost for performing the maintenance, replacement, restoration or repair being recommended in the reserve study for each item listed in the component inventory;*

*b. the projected increase in assessments that will be required in any given year in order to provide an adequately funded reserve;*

*c. estimated projected inflation and estimated reserve fund interest income; and*

*d. at least a minimal contingency allowance.*

*5. The name of the person or persons and the required credentials of those who were consulted regarding financial matters of common area major components in the preparation of the reserve study;*

*6. Any written reports prepared by the individuals described in subsection 5;*

*7. If more than one person is consulted with regard to financial matters or common area major components and there are disparities in these recommendations, a written explanation as to which recommendation is being used and why that recommendation was selected;*

*8. The following disclosures:*

Sec. 47. NAC 116 is hereby amended by adding thereto the following:

*In order to comply with the provisions of NRS 116.31152(3), each association shall file, electronically when possible, a summary of the results of any reserve study or annual review of their reserve study with the division on a form prescribed by the division within 45 days of the date the reserve study or annual review is adopted by the board. The results of such filings may be posted on the division website.*

Sec. 48. NAC 116 is hereby amended by adding thereto the following:

*NAC 116.\_\_\_\_. "Landscape maintenance association" means an association in a planned community created for the sole purpose of maintaining common elements within the common-interest community consisting of (i) landscaping, (ii) public lighting, (iii) security walls or (iv) public trails, parks and open space, and with respect to which:*

*(a) The declaration states that the association has been created as a landscape maintenance association; and*

*(b) The express terms of the declaration (i) prohibit the association (but not the unit owners) from enforcing any use restriction affecting a unit, (ii) prohibit the association from adopting any rules or regulations concerning the enforcement of use restrictions affecting units and (iii) prohibit the imposition of a fine or any other penalty against a unit's owner for*

*violation of a use restriction affecting a unit. As used in this paragraph, the term "use restriction" includes architectural restriction.*

*NAC 116.\_\_\_\_ Definitions. As used in this section:*

*(a) "Landscaping" means trees, shrubs, grass and other ornamentation, whether or not natural or artificial, located: (i) on the perimeter of a development or subdivision, or (ii) on a median strip on the perimeter of a development or subdivision, and the term includes drainage necessary for the maintenance of such landscaping.*

*(b) "Public lighting" means works or improvements useful in lighting a street, sidewalk or other place used for a public purpose.*

*(c) "Security wall" means any wall composed of stone, brick, concrete, concrete blocks, masonry or similar building material, together with footings, pilasters, outriggers, grillwork, gates and other appurtenances, constructed around the perimeter of a residential subdivision with respect to which a final map has been recorded pursuant to NRS 278.360 to 278.460, inclusive, to protect the several tracts in the subdivision and their occupants from vandalism.*

*(d) "Governing body" has the meaning given that term in NRS 278.015.*

*(e) "Public trails, parks and open space" means trails, parks and open space which provide a substantial public benefit or which are required by the governing body for the primary use of the public, but shall not, in any event, include a private street or roadway, gated entry, swimming pool, gazebo, clubhouse, pond, tennis court, miniature golf course or frisbee golf course.*

*NAC 116. \_\_\_\_ "Facilities for flood control" means the following common elements in a planned community:*

*(a) Areas on an official plat that are designated as unsuitable for building;*

*(b) Areas required by the governing body to be designated as floodways, natural drainage or spillways; or*

*(c) Other areas that the governing body requires to be used for the purpose of collecting, facilitating, retaining or channeling storm water drainage of the residential property of the common-interest community.*

*NAC 116. \_\_\_\_ . "Rural residential agricultural community" means a planned community in which:*

*(a) The units are residential lots consisting of a minimum of one acre;*

*(b) The units are zoned for agricultural purposes by the county in which the community is located; and*

*(b) The governing documents of the association authorize the residents to farm or raise livestock on the units.*

*NAC 116. \_\_\_\_ . Applicability of NRS Chapter 116. The provisions of NRS Chapter 116 are applicable to a common interest community and the related association unless the division determines that the common interest community or association meets the criteria set forth in NRS 116.1201(2)(a), (b), (c), (d) or (e) or 116.1203.*

*NAC 116. \_\_\_\_ . Determination of Applicability. The determination of whether the provisions of NRS 116.1201(2)(a), (b), (c), (d) or (e) or 116.1203 apply to a common interest community or an association shall be as follows:*

*(a) The applicability of NRS 116.1201(a) and 116.1203 shall be determined by the division.*

*(b) The applicability of NRS 116.1201(b), (c), (d) and (e) shall be self determined, however, a declarant or an association may request a letter of determination from the division in accordance with these regulations.*

*NAC 116. \_\_\_\_ . Determination Letter. In order to receive a letter of determination from the division that a common interest community or an association meets the requirements of NRS 116.1201(2)(a), (b), (c), (d) or (e), a declarant or the association must:*

*(a) request a letter of determination from the division on a form specified by the division, which designates the statute, NRS 116.1201(2)(a), (b), (c), (d) or (e) or 116.1203, upon which the determination is requested;*

*(b) provide the division with the information and documents required for that determination; and*

*(c) pay to the division the division's required fee for the letter of determination.*

*NAC 116.\_\_\_\_ General Requirements. Any request for determination under NRS requires the following information and documents:*

*(a) A copy of the recorded map showing the number of each unit and each common element within the common interest community.*

*(b) The name, address and extent of the interest of each owner of the common interest community.*

*(c) Copies of the current declaration, articles of incorporation, bylaws, proposed budget and other governing documents of the community.*

*(d) A current preliminary report or equivalent document on the title of the subdivision.*

*(e) A description of other property which the declarant owns or in which he has an option to buy and which is adjacent to the community.*

*(f) The promotional name of the community.*

*(g) In the case of a landscape maintenance association or an association having facilities for flood control, evidence, including a copy of any zoning or subdivision or parcel map approval, which evidences the imposition by the governing body of the requirement of an association.*

*NAC 116.\_\_\_\_. Other Information. The division may request such other information as the administrator deems reasonable in order to make the determination that an association or common interest community falls within a category described in NRS 116.1201(2)(a), (b), (c), (d) or (e) or 116.1203.*

*NAC 116.\_\_\_\_. Limitation. An exemption pursuant to this chapter is not an exemption from the provisions of NRS [278.010 to 278.630,] inclusive. [Note: NRED BDR proposes to require the "exempt" associations not be completely exempt, and to pay fees to the division. This section should be revised to take into account which provisions of NRS 116 will/should apply, e.g., Parts I, VI and VII; certain requirements regarding resales; and, perhaps, a new statutory notice that incorporates sections 2, 3 and 7 of NRS 116.41095.]*

*NAC 116.\_\_\_\_ Appeal. [Add language similar to language in the 116 regulations regarding division disapproval of course or certificate, permitting appeal to commission.]*

Sec. 49. NAC 116 is hereby amended by adding thereto the following:

*“Adequately Funded Reserve Fund” shall mean sufficient funds to maintain the level of common elements that was originally intended by the developer and defined in a reserve study of all fully funded common area components, not maintained through the operating budget; without special assessments except for occurrences that are a result of catastrophic events.*

Sec. 50. NAC 116 is hereby amended by adding thereto the following:

*Reserve Study Disclosures – Reserve Study Provider*

*Unless the governing documents imposes more stringent standards, the reserve study provider shall the following disclosures regarding the reserve study:*

- 1. Any relationship, which could result in actual or perceived conflicts of interest.*
- 2. The method for determining the common area components based on:
  - a. actual field inspection of the common elements with representative sampling; or,*
  - b. an inventory and material information provided by the client; or*
  - c. a previous reserve study and the date of that study.**
- 3. Identify industry sources used for component life determination and repair, replacement and restoration pricing*
- 4. If available, identify if any guarantees, implied or otherwise are conditionally given with the costs or life expectancy predictions for any of the common area components.*
- 5. Identify if the provider of the reserve study is bonded.*
- 6. Identify the source of information regarding the initial reserve fund balance presented in the reserve study.*
- 7. Identify if a special assessment is anticipated during the time of the contracted reserve study and the next regularly scheduled reserve study.*
- 8. Identify background, training, qualifications and references that would categorize the reserve provider as being competent in the preparations of the study.*

*Reserve Budget Disclosures - Board (additional NAC change under Board Standards)*

*Unless the declaration imposes more stringent standards, the board shall annually prepare and distribute to all its members and the office of the ombudsman, the following disclosures regarding the reserve study in either the actual budget or the budget summary:*

*1. A summary of the association's reserves based upon the most recent review or study conducted pursuant to NAC Section \_\_\_\_\_,*

*a. The current estimated replacement cost, estimated remaining life, and estimated useful life of each common area component.*

*b. Reserve budget disclosure for fiscal year which the budget is prepared shall include but are not limited to:*

*i. The current amount of reserve funds in an account which are set aside to repair, replace, restore, or maintain common area components, and is separate from the operational fund*

*ii. An estimate of the total annual reserve assessments, (as allocated in NRS 116.2107,) to be collected in the projected fiscal year pro forma budget.*

*iii. The amount of monies in the current year operational fund, which may be transferred to the reserve fund to repair, replace, restore, or maintain common area components.*

*iv. An estimate of the amount of reserve funds necessary in the projected fiscal year pro forma budget, as determined by comparative bids or industry standards to complete the maintenance recommendation of the reserve study*

*c. If there is a difference between 1) the amount of the suggested in the reserve study as the monthly contribution per unit, and 2) the amount of the current and budget year, per unit monthly contribution, the board shall cause to be disclosed:*

*i. the reason for the difference*

*ii. how this difference will be resolved.*

*2. A statement as to whether the executive board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any common area component.*

*3. A general statement describing the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152, including disclosure of any other involvement with the association which could result in actual or perceived conflicts of interest.*

*4. A statement describing*

*a. The date of the most current reserve study; when the next (3 year) full study will be conducted, barring any catastrophic event that would necessitate a full study to be conducted earlier.*

*b. The procedures used for the estimation of the calculation and accumulation of those cash reserves to defray the future repair, replacement, or additions to common area components that the association is obligated to maintain, which are not maintained in the annual operational budget pursuant to NRS 116.3115 subparagraph (2).*

*c. Any conditional statements provided in the reserve study*

*d. Any conditional statements related to the reserves from the financial audit of the associations funds*

*e. Any maintenance established in the reserve study which the board has determined to defer and why the board has chosen to defer maintenance.*

*The summary of the association's reserves disclosed pursuant to NAC \_\_\_\_\_ shall not be admissible as evidence to the CCIC to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.*

Sec. 51. NAC 116.010 is hereby amended as follows:

NAC 116.010 Definitions. ~~[NRS 116.31139]~~ (NRS 116.705) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 116.013 to 116.060, inclusive, *and in chapter 116 of NRS* have the meanings ascribed to them in those sections.

Sec. 52. NAC 116.020 is hereby amended as follows:

**NAC 116.020 “Certificate” defined.** (~~[NRS 116.31139]~~ NRS 116.705) “Certificate” means a certificate for the management of a common-interest community issued to a person by the ~~[commission]~~ *division* pursuant to ~~[NRS 116.31139]~~ NRS 116.705, *which shall include a certificate issued to a supervising community manager and a provisional community manager.*



Sec. 53. NAC 116.025 is hereby amended as follows:

NAC 116.025 “Client” defined. ~~[(NRS 116.31139)]~~ *(NRS 116.705)* “Client” means the ~~[executive board of an]~~ association ~~[acting on behalf of a common-interest community that]~~ *whose executive board* has entered into a management agreement with a community manager.

Sec. 54. NAC 116.047 is hereby amended as follows:

NAC 116.047 “Management agreement” defined. ~~[(NRS 116.31139)]~~ *(NRS 116.705)* “Management agreement” means an agreement for the management of a common-interest community ~~[entered into pursuant to NAC 116.310] [.]~~, *but does not include an agreement for specific services, such as landscaping, legal or accounting services, if no other services are provided.*

Sec. 55. NAC 116.100 is hereby amended as follows:

NAC 116.100 Application: Contents; fees. ~~[(NRS 116.31139)]~~ *(NRS 116.705)*

1. A person who wishes to obtain a certificate, *including a certificate to become a provisional community manager or a supervising community manager*, must submit an application to the division on a form prescribed by the division. *Only a natural person will be issued a certificate.*

2. The application *shall include* ~~[must be accompanied by]:~~

(a) A photograph of the applicant measuring approximately 2 inches by 2 inches taken within the 2 years immediately preceding the date of the application;

(b) Two sets of fingerprint cards that have been completed by a recognized law enforcement agency;

(c) An executed Law Enforcement Record Form No. 3321-SA or equivalent authorization for the release of information contained in records of law enforcement;

(d) Written authorization for the division to submit the fingerprint cards to the central repository for Nevada records of criminal history for further submission to the Federal Bureau of Investigation and to receive reports regarding the criminal histories of the subjects of the fingerprint cards;

(e) Payment of the *required investigation* fees charged by any local agencies of law enforcement, the central repository for Nevada records of criminal history and the Federal

Bureau of Investigation for the handling of the fingerprint cards and issuance of the reports of criminal histories;

(f) The social security number of the applicant;

(g) A statement concerning 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;

(h) Documentation that the applicant possesses the education and experience required pursuant to NAC 116.120;

(i) Documentation of the employment history of the applicant, *both current and* for the 10 years immediately preceding the date of the application, including, without limitation, letters of recommendation and affidavits of employment from common-interest communities or employers in other related areas;

(j) The statement described in ~~[NAC 116.115]~~ *NRS 116.710*;

(k) ~~[A fee of \$75]~~ *the fee required by Section \_\_\_*; and

(l) Such other pertinent information as the division may require.

*3. The division shall act upon all applications for a certificate within 60 days from the date of receiving the completed application for a certificate.*

*4. If in the opinion of the division additional investigation of the applicant appears necessary, the division may extend the 60-day period and may make such additional investigation as is necessary or desirable before acting on the applicant's application.*

*5. The burden of proof is on the applicant to establish to the satisfaction of the division that he is qualified to receive a certificate.*

*6. The division, upon the discovery of any error in the issuance of a certificate, which is related to the qualification or fitness of the certificate holder, may invalidate the certificate. The division shall promptly notify the certificate holder, in writing, of the invalidation and the certificate holder shall surrender the certificate to the division within 20 days after notice is sent by the division. A certificate holder whose certificate is invalidated under this subsection and is surrendered within the time specified is entitled to a hearing as for a denial of application in accordance with the provisions of NAC 116.150.*

Sec. 56. NAC 116.110 is hereby amended as follows:

NAC 116.110 Minimum age requirements. ~~[(NRS 116.31139)]~~ ***NRS 116.705*** An application for a certificate will not be accepted from a person under the age of 17 years. A certificate will not be issued to a person under the age of 18 years.

Sec. 57. NAC 116.120 is hereby amended as follows:

NAC 116.120 Education and experience required for applicant. ~~[(NRS 116.31139)]~~ ***(NRS 116.705)***

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

(a) Have successfully completed at least ~~[24]~~ ***60*** 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:

(1) At least ~~[8]~~ ***20*** 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]~~ ***the following:***

(I) ***Not less than 2 hours relating to Federal law, including but not limited to [F]the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., Federal Fair Housing, Federal Fair Debt Collection, FCC and other laws applicable to common-interest communities;***

(II) ***Not less than 18 hours relating to*** The Uniform Common-Interest Ownership Act as set forth in chapter 116 of NRS ***and this chapter including [I]:***

***a. Learning how to read and use NRS and NAC 116;***

***b. Creating policies for implementation of rules and adopting resolutions;***

***c. Unit owner rights, board and manager responsibilities;***

***d. Board meetings, member meetings, election of directors, use of the secret ballot and use of proxies;***

~~[(III) The Nevada Fair Housing Law as set forth in chapter 118 of NRS;~~

~~[(IV) The Residential Landlord and Tenant Act as set forth in chapter 118A of NRS;~~

~~[(V) The disclosure of required information in real estate transactions;~~

~~[(VI) Defects in construction;~~

~~—————(VII) Alternative dispute resolution for claims relating to residential property within a common interest community as set forth in NRS 38.300 to 38.360, inclusive;~~

~~—————(VIII) Corporation law;~~

~~—————(IX) Industrial insurance; and~~

~~—————(X) Health and safety.]~~

(2) At least ~~[16]~~ **40** cumulative hours of instruction in the following subjects:

(I) *Basics of Community Management, which must include:* ~~[The maintenance of real property;]~~

*a. Understanding the legal basics of common-interest communities and the governing documents;*

*b. The management of facilities and use of experts;*

~~[(H)]~~ *c. Accounting, including, without limitation, preparation and monitoring of budgets* ~~[for revenues]~~, expenditures and reserves, *and use of financial statements;*

*d. contracts with the common-interest community, including obtaining bids and requests for proposals;*

*e. Parliamentary procedures, types and use; what is required by law and adoption of specific rules for the community;*

~~[(III) Governmental relations concerning issues that affect a common-interest community, including, without limitation, zoning and planning;~~

~~—————(IV) The management of facilities;~~

~~—————(V)]~~ *f The management of human resources including people skills, organization and communication;*

*g Inspection and planning for property maintenance;*

~~[(VI) Governing documents;]~~

~~[(VII)]~~ *h Risk management; and*

~~[(VIII)]~~ *i The types of insurance that must be maintained by a common-interest community pursuant to NRS 116.3113.*

*(II) Governmental Regulations that affect a common-interest community, including, without limitation, zoning and planning;*

*(III) Other Nevada laws such as*

*1. The Nevada Fair Housing Law as set forth in chapter 118 of NRS;*

*2. The Residential Landlord and Tenant Act as set forth in chapter 118A of NRS; chapters 113 and 40 regarding the following:*

*(a) the disclosure of required information in real estate transactions;*

*(b) defects in construction; and*

*(c) alternative dispute resolution for claims relating to residential property within a common-interest community as set forth in NRS 38.300 to 38.360, inclusive, and other laws applicable to common-interest communities;*

*3. Corporation law;*

*4. Industrial insurance;*

*5. Health and safety; and*

*6 Business ethics.*

~~[(b) Provide evidence that he has been engaged in the management of a common-interest community or has held a management position in a related area for:~~

~~—— (1) The 12 months immediately preceding the date of his application; or~~

~~—— (2) At least 2 of the 4 years immediately preceding the date of his application.]~~

2. An applicant may provide evidence of any other combination of education and experience that the division may deem to be equivalent to the requirements set forth in this section.

Sec. 58. NAC 116.130 is hereby amended as follows:

NAC 116.130 Examination. (NRS 116.31139)

1. Each applicant for *the issuance of an original* certificate must take an examination which has been approved by the division. ~~[(The division shall notify an applicant of the time and place of each examination not later than 30 days before the date scheduled for the examination.)]~~

2. To pass the examination, an applicant must receive a score of at least 75 percent on the examination.

3. An applicant who fails the examination may retake the examination.

*4. Each applicant must pay the fee required by Section 1.*

*5. Passing the examination creates no vested right in the applicant to hold a certificate.*

*6. The division will only accept results of an examination taken during the year immediately preceding the date of the application for a certificate.*

Sec. 59. NAC 116.140 is hereby amended as follows:

NAC 116.140 Denial of application ~~[-; refund of fee; credit for fee]. [(NRS 116.31139)]~~ **NRS 116.705**

1. The division shall deny an application for a certificate if:

- (a) The application is not in the proper form;
- (b) The application is not accompanied by the fees required by ~~[NAC 116.100]~~ **Section \_\_\_\_**;
- (c) The accompanying forms or documentation are incomplete or otherwise unsatisfactory;
- (d) The application contains a false **or misleading** statement;
- (e) Other deficiencies appear in the application;
- (f) An investigation fails to show affirmatively that the applicant possesses the necessary

qualifications;

(g) The applicant has willfully acted or attempted to act in violation of chapter 116, 119, 119A, 645 or 645A of NRS or the regulations adopted pursuant to those chapters or has willfully aided or abetted another person to act or attempt to act in violation of those chapters or regulations;

(h) The check **or other method of payment** used to pay the fee for the application for a certificate is not honored by the financial institution upon which it is drawn;

(i) The applicant has had a license, certificate or permit revoked in another state; **or**

(j) 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 ~~[-; or]~~.

(k) Any combination thereof.

2. ~~[Except as otherwise provided in subsections 3 and 4, t]~~ **T**he division shall not refund a fee for the application for a certificate.

~~[3. The division shall refund the portion of the fee that is attributable to the cost of the investigation if the investigation was not conducted by the Federal Bureau of Investigation.]~~

~~[4. If an applicant reapplies within 90 days after the denial of his application, the division shall give him credit for the fee that he paid with the original application.]~~

Sec. 60. NAC 116.150 is hereby amended as follows:

NAC 116.150 Notice by division of denial of application; request for hearing; hearing; written decision. ~~[(NRS 116.31139)]~~ *(NRS 116.705)*

1. If the division, after an application for a certificate in proper form has been filed, accompanied by the proper fees, denies an application, the division shall give notice of this fact to the applicant within 15 days after the ruling, order or decision.

2. Within 30 days after receipt of a notice of denial, an applicant may request, in writing, a hearing before the commission. The ~~[(president of the commission)]~~ *division* will set the matter for a hearing to be conducted ~~[within 90 days]~~ *at the next feasible meeting of the commission that falls within the requirements of chapter 241 of NRS* after receipt of the request of the applicant, if the request contains allegations which, if true, qualify the applicant for a certificate.

3. The hearing must be held at such time and place as the commission prescribes. At least 15 days before the date set for the hearing, the division shall notify the applicant and shall accompany the notification with an exact copy of any protest filed, together with copies of all communications, reports, affidavits or depositions in possession of the division relevant to the matter in question. Written notice of hearing may be served by delivery personally to the applicant, or by mailing it by certified mail to the last known address of the applicant.

4. The hearing may be held by the commission or a majority thereof, and a hearing must be held, if the applicant so wishes. A record of the proceedings, or any part thereof, must be made available to each party upon the payment to the division of the reasonable cost of transcription.

5. The commission will render a written decision on any appeal within 60 days after the final hearing and will notify the parties to the proceedings, in writing, of its ruling, order or decision within 15 days after it is made.

Sec. 61. NAC 116.160 is hereby amended as follows:

NAC 116.160 Renewal; ~~[(reinstatement);]~~ refusal to renew ~~[(or reinstate)].~~ ~~[(NRS 116.31139)]~~ *NRS 116.705*

1. A certificate must be renewed biennially.

2. Except as otherwise provided by subsection 6, the division shall renew a certificate if the applicant submits to the division at least 30 days before the expiration of his certificate:

(a) A completed application on a form prescribed by the division;

(b) The statement described in ~~[NAC 116.115]~~ *NRS 116.710*;

(c) ~~[A renewal fee of \$60]~~ *Payment of the fee required in Section \_\_\_*; and

(d) Documentation of the successful completion by the applicant of at least ~~[9]~~ *18* hours of continuing education in courses approved by the commission within the 2 years immediately preceding the date on which the certificate expires. At least 3 hours of the continuing education must consist of instruction relating to ~~[laws of this state that are applicable to the responsibilities and duties involved in the management of a common-interest community]~~ *chapter 116 of NRS and NAC*.

3. The renewal of a certificate is effective on the date on which the renewal of the certificate is issued.

4. If the holder of a certificate fails to complete the required hours of continuing education or fails to file an application for the renewal of his certificate before it expires, he may not engage in the management of a common-interest community until his certificate is reinstated.

~~[5. In addition to submitting the documents and fee set forth in subsection 2, an applicant who wishes to reinstate his certificate must submit to the division:~~

~~(a) Current fingerprint cards that have been completed by a recognized law enforcement agency;~~

~~(b) An executed Law Enforcement Record Form No. 3321-SA or equivalent authorization for the release of information contained in records of law enforcement;~~

~~(c) Written authorization for the division to submit the fingerprint cards to the central repository for Nevada records of criminal history for further submission to the Federal Bureau of Investigation and to receive reports regarding the criminal histories of the subjects of the fingerprint cards; and~~

~~(d) Payment of the fees charged by any local agencies of law enforcement, the central repository for Nevada records of criminal history and the Federal Bureau of Investigation for the handling of the fingerprint cards and issuance of the reports of criminal histories.]~~

6. The division may refuse to renew ~~[or reinstate]~~ a certificate 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 ~~NAC 116.115;~~

~~[(c) The division has received a formal complaint submitted in accordance with subsection 2 of NAC 116.320 that has not been resolved in favor of the applicant;]~~

(d) 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; or

(e) ~~[An investigation conducted by the division pursuant to NAC 116.320 reveals that t]~~ *The applicant has engaged in conduct which is grounds for disciplinary action pursuant to NAC 116.360 [within the 2 years immediately preceding the date on which the certificate expires] and has had disciplinary action imposed by the division or the commission.*

7. If the division, after an application to renew ~~[or reinstate]~~ a certificate in proper form has been filed, accompanied by the proper fees, refuses to renew ~~[or reinstate]~~ the certificate, it shall give notice of this fact to the applicant within 15 days after the ruling, order or decision. The applicant may file a written request for a hearing before the commission pursuant to the procedures set forth in ~~NAC 116.150.~~

8. If the division refuses to renew ~~[or reinstate]~~ a certificate 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 shall reinstate the certificate if the division receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to the person whose certificate was suspended stating that the person has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 62. NAC 116.200 is hereby amended as follows:

NAC 116.200 Approval of courses. (NRS 116.31139)

1. Any course designed to fulfill the educational requirements for the issuance or renewal of a certificate must *not be less than 3 hours in length and* be approved by the commission. The approval by the commission of such a course is effective for ~~[2-]1~~ year~~[s]~~ after the original approval or a reapproval.

2. An application for the original approval of such a course must be submitted to the division on a form prescribed by the division. The division shall assign a number to the sponsor of each course that it approves.

3. ~~The [A]~~ sponsor of an approved course must submit an application for reapproval to the division on a form prescribed by the division and attach to that form an updated outline for the course. An application for reapproval must be filed at least 2 weeks before the previous approval expires. If ~~the [a]~~ sponsor fails to submit an application for reapproval in a timely manner, the sponsor must apply for an original approval.

4. The division may audit an approved course to ensure that the course, instructor or sponsor continues to meet the requirements of this chapter.

*5. The Division may re-approve a course if no changes in the course have occurred since the course was approved or re-approved.*

~~[5.]~~ 6. The sponsor of a course approved by the commission shall require each student to complete an evaluation of the course on a form approved by the division. ~~[The sponsor shall retain the evaluations for 3 years after the date on which the course was provided and shall make the evaluations available for inspection by the division, upon its request, during regular business hours.]~~ *The sponsor shall cause all evaluations completed by the students to be submitted to the division, within 15 working days from the date the course was taught. The sponsor may copy the evaluations prior to submitting them to the Division. All evaluations shall be collected by a student in the class and placed in a sponsor-provided pre-addressed envelope which is sealed by the student and submitted to the Division.*

~~[6.]~~ 7. The commission may withdraw its approval of a course if it finds through an audit or evaluations completed by students in the course that:

(a) The quality of the curriculum or instruction is unsatisfactory; or

(b) Any of the provisions of this chapter governing courses designed to fulfill the educational requirements for the issuance or renewal of a certificate ~~[have]~~ *has* been violated.

~~[7.]~~ 8. If the ~~[commission denies or]~~ *administrator* withdraws approval of a course, the sponsor may file a written request for a hearing before the commission pursuant to the *following* procedures set forth ~~[in NAC 645.415.]~~ :

*a. If the administrator determines that an approved school or course no longer complies with the standards prescribed in this chapter, he shall withdraw the approval.*

*b. A school whose application for approval of a course is denied or withdrawn and which desires a hearing before the commission upon the matter must file a written request for the hearing within 20 calendar days after receiving the order of denial.*

*c. The commission will set the matter to be heard at the next feasible meeting of the commission that falls within the requirements of chapter 241 of NRS and may take one of the following actions:*

*(1) Affirm the decision of the Division to withdraw approval of the course;*

*(2) Suspend approval of the course for a limited period and under such conditions as the commission deems appropriate; or*

*(3) Reverse the decision of the division to withdraw approval of the course.*

*9. As used in this section, an “hour of instruction” means 50 minutes or more. One semester credit is equal to fifteen hours of instruction.*

*10. Any advertising, promotional brochure or form for registration for a course for continuing education must identify with prominence the course number assigned by the division which indicates approval by the commission and must contain in writing the policy of the sponsor concerning cancellation and refunds.*

Sec. 63. NAC 116.210 is hereby amended as follows:

NAC 116.210 Record of attendance. ~~[(NRS 116.31139)]~~ **NRS 116.705**

1. If the commission approves a course designed to fulfill the educational requirements for the issuance or renewal of a certificate, the sponsor of the course shall provide a certified copy of the record of attendance of a student to that student upon his successful completion of the course. The division shall accept the certified copy as proof of the attendance of the student for the purpose of obtaining or renewing a certificate.

2. The record of attendance of a student must contain the:

(a) Name of the sponsor;

(b) Name of the student and, if the student is the holder of a certificate, the number of his certificate;

(c) Number of hours of instruction *for which the course is approved;*

(d) Dates of instruction *for a course of instruction in a classroom;*

*(e) Date of completion of the course for a course of distance education;*

~~[(e)]~~ (f) Title of the course;

~~[(f)]~~ (g) Number assigned to the sponsor by the division and a statement that the course was approved by the commission;

~~[(g)]~~ **(h)** Grade received by the student or a statement of whether the student passed the course if an examination was given; ~~[and]~~

~~[(h)]~~ **(i)** Signature of the person authorized to sign for the sponsor~~[-]~~; **and**

**(j) mode of delivery.**

3. The sponsor shall maintain a record of the attendance of each student in a course for 5 years after his enrollment in the course and shall make such records available for inspection by the division, upon its request, during regular business hours.

Sec. 64. NAC 116.220 is hereby amended as follows:

NAC 116.220 Qualifications of instructors. ~~[(NRS 116.31139)]~~ **NRS 116.705** An instructor of a course that has been approved by the commission to fulfill the educational requirements for the issuance or renewal of a certificate must possess:

1. A good reputation for honesty, integrity and trustworthiness; and

2. At least one of the following qualifications, unless granted a special exception by the division:

(a) A bachelor's degree in the field in which the person is instructing or a directly related field.

(b) A license from this state or another state that authorizes the holder to teach the subject being offered.

(c) Five years of full-time experience, other than in a secretarial position, working in a job directly related to the subject taught.

(d) Three years of experience teaching a course in the management of a common-interest community or a directly related subject.

(e) A designation by a nationally recognized organization that has been approved by the division which would qualify the instructor to engage in the management of a common-interest community pursuant to the requirements of that organization.

***3. All instructor applicants must apply on a form prescribed by the Division.***

***4. All instructors must have written approval from the Division prior to teaching an approved course.***

*5. The Division shall not approve as an instructor, without the approval of the Commission, any person who has been disciplined by the Commission or the Division acting on behalf of the Commission:*

*i. Within the last 5 years; or*

*ii. More than 1 time.*

*6. The Division shall not approve as an instructor, without the approval of the Commission, any person who has been found guilty of violating any provision of the real estate license law or any rule, regulation or order of the licensing authority in any state.*

*7. All approved instructors shall be periodically reviewed and evaluated by the Division.*

*8. The Division shall rate the individual's qualifications in education, industry experience and teaching experience*

Sec. 65. NAC 116.230 is hereby amended as follows:

NAC 116.230 Credit for courses; final examination. ~~[(NRS 116.31139)]~~ **NRS 116.705**

1. A course that has been approved by the commission to fulfill the educational requirements for the issuance or renewal of a certificate may not be taken for credit more than once unless the material in the course has been changed or updated significantly, ***and may not be taken for credit more than once during any two consecutive periods for renewal of a certificate.***

2. A holder of a certificate may receive credit for a course only upon certification by the sponsor that the holder of the certificate has attended and completed at least 90 percent of the course.

3. The sponsor shall determine whether a final examination is required for the completion of a course.

Sec. 66. NAC 116.300 is hereby amended as follows:

NAC 116.300 Community managers: Duties. (NRS 116.31139) ***In addition to the standards found in NRS Chapter 116, [A] 1. In the performance of management of a common-interest community, a*** community manager shall:

~~[A]~~ ***(a.)*** Comply with the lawful provisions of the governing documents of each client;

~~[2. Not solicit or accept any form of compensation, gratuity or other remuneration which would improperly influence or would appear to a reasonable person to improperly influence the decision-making of the community manager or which would result or would appear to a reasonable person to result in a conflict of interest, and disclose in writing to the executive board any compensation, gratuity or other remuneration that is solicited or accepted in violation of this subsection;]~~

~~[3.]~~ (b) Maintain an inventory of all records of each client;

~~[4.]~~ (c) Keep informed of ~~[new developments]~~ *laws relating to common-interest communities through continuing education* in the management of a common-interest community, including, without limitation, new developments in ~~[legal and accounting principals of the management of a common-interest community]~~ *law, insurance coverage and accounting principles, including (GAAP) ;*

~~[5. Unless otherwise required or authorized by law or an authority with competent jurisdiction, not disclose confidential information relating to a client which includes, without limitation, the business affairs and records of the client;]~~

~~[6.]~~ (d) Advise an ~~[client]~~ *executive board* to obtain advice from an expert relating to matters that are beyond the expertise of the community manager;

~~[7.]~~ (e) Under the direction of the executive board of a client, uniformly enforce the provisions of the governing documents of the client;

~~[8.]~~ (f) At all times ensure that the ~~[records of]~~ financial transactions of a client are current and accurate and are properly ~~[identified]~~ *defined and that the internal controls surrounding the financial transactions are designed to provide reasonable assurance of the reliability of financial reporting, which includes the maintenance of accounting records, authorizations of receipts and disbursements, integrity of data used in business decisions, and facilitation of fraud detection and prevention; effectiveness and efficiency of operations and the safeguarding of assets which includes the segregation of duties and physical security; and compliance with applicable laws and regulations;*

~~[9.]~~ (g) Prepare or cause to be prepared *interim* financial statements ~~[in sufficient detail to]~~ *as described in Sec. \_\_\_\_ which will* allow the ~~[executive board]~~ *Executive Board, unit owners, and accountant or* ~~[and]~~ auditor ~~[of a client]~~ to determine ~~[the status of the accounts and financial operation of the client]~~ *that the financial position and results of operations of the*

*client are fairly presented in accordance with GAAP, or on another comprehensive basis of accounting, i.e. modified accrual or cash basis;*

*(h) Annually, cause to be prepared audited financial statements of the association as further described in Section \_\_\_\_.*

~~[10.]~~ *(i) Make the financial records of a client available for inspection by the division in accordance with the applicable laws of this state;*

~~[11.]~~ *(j) Cooperate with the division in resolving complaints filed with the division **including without limitation those filed pursuant to NRS 116.745 through NRS 116.795;***

~~[12.]~~ *(k) Make the financial records of a client available during regular business hours for inspection and provide copies of such records to a ~~[member of the client association]~~ **unit owner, upon written request at a reasonably convenient location in the county in which the client is physically located and otherwise** in accordance with applicable laws of this state;*

~~[13.]~~ *(l) Deposit all money of a client that is in the possession or control of the community manager in a federally insured financial institution authorized to do business in this state;*

~~[14. Not commingle money or other property of a client with the money or other property of another client or of the community manager and shall not use money or other property of a client for his own personal use;]~~

~~[15.]~~ *(m) Recommend in writing to each client that the client register with the division, maintain its registration and file all papers with the division and the secretary of state, as required by law;*

~~[16.]~~ *(n) Comply with the directions of the ~~[executive board of a]~~ client, unless such direction conflicts with **the governing documents of a client**, these regulations or other applicable laws of this state;*

~~[17.]~~ *(o) Recommend in writing to each client that the client be in compliance with all **applicable** federal, state and local laws and the governing documents of the client;*

~~[18. Not be a signor on a withdrawal from a reserve account of a client unless serving as a member of the executive board or as an officer of the client;]~~

~~[19.]~~ *(p) Obtain, when practicable, at least three bids for any capital improvement project of the client; ~~[and]~~*

~~[20. Not establish an attorney-client relationship with an attorney or law firm which represents an association which employs the community manager or with whom the association has a management agreement.]~~

*(q) If acting as a supervising community manager, supervise any provisional community managers that may be working under him; and*

*(r) recommend that the executive board hire a person qualified to conduct reserve study, that meets the qualifications in NAC 116.450.*

*(s) fairly enforce collection policies of the executive board and comply with all federal and state laws relating to the collection of debt.*

*2. A community manager shall not:*

*(a) Unless otherwise required or authorized by law or an authority with competent jurisdiction, disclose confidential information relating to a client which includes, without limitation, the business affairs and financial records of the client;*

*(b) Impede or attempt to impede any intervention or investigation of the division by:*

*(1) Failing to comply or delaying his compliance with a request by the division to provide documents;*

*(2) Supplying false or misleading information to an investigator, auditor or any other officer or agent of the division;*

*(3) Providing false, forged or altered documents; or*

*(4) Attempting to conceal any documents or facts relating to the business of the client;*

*(c) Commingle money or other property of a client with the money or other property of another client, another association or the community manager and shall not use money or other property of a client for his own personal use;*

*(d) Be a signor on a withdrawal from a reserve account of a client;*

*(e) Establish an attorney-client relationship with an attorney or law firm which represents the client employing the community manager if such relationship would violate the standards of professional practice applicable to attorneys at law or violate any provision of this chapter or NRS Chapter 116, with the exception of cases where the client owes the right of indemnification to the community manager;*

*(f) Provide or attempt to provide services concerning a type of property or service that is outside his field of experience or competence, without the assistance of a qualified person*



*unless the facts of such lack of experience or competence are fully disclosed to his client and not otherwise prohibited by law;*

*(g) Provide or attempt to provide specialized professional services concerning a type of property or service for which he is not properly licensed;*

*(h) Collect or attempt to collect a fine as an assessment, fee or other charge;*

*(i) Refuse to accept payment of any assessment fee or other charge due to the fact that there is an outstanding fine due; or*

*(j) Collect any fees or other charge from a client not specified in the management agreement.*

Sec. 67. NAC 116.310 is hereby amended as follows:

NAC 116.310 Community managers: Disclosure statements~~[- management agreements.]~~ [(NRS ~~116.311-116.313~~)] (NRS 116.705)

1. Before entering into a management agreement, a community manager shall disclose in writing to the *executive board of the* prospective client ~~his interest or prospective interest in~~ *any material and relevant facts, data or information which he knows, or which by the exercise of reasonable care and diligence he should have known which relate to performance of the management agreement and any matters which may affect his ability to comply with the provisions of this chapter or chapter 645 or NRS 116.* ~~the client.~~ Such disclosure must include, without limitation:

(a) Whether he expects to receive any direct or indirect compensation or profits from any person who will perform services ~~related to~~ *for* the client and, if so, the identity of the person;

(b) His affiliation with or financial interest in any person who furnishes *any goods or* services ~~related~~ to the client; *and*

~~(c) His interest in or financial arrangement with a person who provides maintenance or other services to the client; and~~

(d) His personal relationships with any ~~member of the client association~~ *unit owner* or any member of the executive board *or officer* of the client.

~~2. A management agreement must:~~

~~(a) Be in writing;~~

~~(b) Be entered into by the executive board, the community manager or the employer of the community manager if the community manager is acting on behalf of a corporation, partnership, limited partnership or limited liability company;~~

~~(c) State the term of the management agreement ;~~

~~(d) State the full dollar amount of the contract [and], the payment schedule;~~

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

~~(f) State any limitations on the liability of the community manager.~~

~~3. A management agreement may include, without limitation:~~

~~(a) A schedule of the costs of any new association or of any startup costs;~~

~~(b) A job description and statement of authority of the community manager;~~

~~(c) Spending limits of the community manager;~~

~~(d) Provisions relating to the grounds and procedure for termination of the community manager;~~

~~(e) Insurance disclosures;~~

~~(f) Provisions for dispute resolution;~~

~~(g) Statements that all records and books of client are property of the client;~~

~~(h) The physical location of the records of the client;~~

~~(i) The frequency and extent of regular inspections of the association property as mutually agreed upon by the community manager and the client;~~

~~(j) A schedule of fees to be charged for special or nonroutine services;~~

~~(k) A schedule of reimbursable expenses;~~

~~(l) The extent, if any, of the authority of the community manager to sign checks on behalf of the client in an operating account; and~~

~~(m) A schedule of fees to be charged by the community manager for resale transfer fees or other fees charged for setting up the account of a new member.~~

~~4. After signing a management agreement, the community manager shall send a copy of the management agreement to each director of the executive board of the common interest community that is the subject of the agreement.~~

~~5. Any changes to a management agreement must be in writing and must be signed or initialed by the parties to the agreement.~~

~~6. Unless otherwise agreed to in writing by the parties to the management agreement, within 30 days after the end of a management agreement, the community manager shall transfer possession of all books and records of the client to the succeeding community manager or to the association if there is no succeeding community manager.~~

Sec. 68. NAC 116.320 is hereby amended as follows:

NAC 116.320 Community managers: Allegations of misconduct; submission of complaint; investigation; report; disciplinary action by administrator; appeal. ~~[(NRS 116.31139)]~~ **NRS 116.700**

**\*Note to LCB drafter: it should be made clear here that the actions taken under this section must be pursuant to NRS 116.700 and not NRS 116.755**

1. If a person who alleges that a community manager is guilty of misconduct sends the allegations of misconduct in writing to the community manager in an attempt to resolve the issue without filing a complaint with the division, the community manager shall, in good faith, acknowledge and respond in writing to the person making the allegations within 12 working days after he receives the allegations.

2. A complaint about a community manager must:

(a) Be submitted to the division on a form provided by the division;

(b) Be signed by the person submitting the complaint; and

(c) Include, without limitation:

(1) The identity of the community manager who is alleged to have violated a provision of this chapter, chapter 645 of NAC or chapter 116 or 645 of NRS, and the nature of the alleged violation;

(2) All evidence supporting the allegations, including, without limitation, as appropriate, corroborating statements by other persons or specific information as to persons who may be contacted to provide such corroboration;

(3) The name, address and telephone number of the person submitting the complaint;

(4) Documents that evidence an attempt by the person submitting the complaint to resolve the issue with the executive board ~~[and]~~ **or** community manager, including, without limitation, any written response of the executive board or community manager to the allegations of the person submitting the complaint; and

(5) If filed by a tenant of a unit owner, ratification of the complaint by the unit owner without the use of a power of attorney by the tenant.

3. Upon receipt of a complaint that complies with subsection 2, the division shall forward the complaint to an investigator. The investigator:

(a) Shall send a copy of the complaint to the community manager and executive board of any association which relates to the subject of the complaint;

(b) Within 12 working days after the receipt of the allegations, shall attempt to obtain a response in writing from the person who is the subject of the complaint;

(c) May make such inquiries and investigation into matters relating to the allegations in the complaint, as the investigator deems appropriate; and

(d) Shall submit to the administrator a written report that summarizes the findings and conclusions of the investigator.

4. Upon review of the written report of the investigator, if the administrator determines that grounds for disciplinary action against the community manager exist, the administrator may take one *or more* of the following actions, as he deems appropriate:

(a) Issue a letter of censure to the community manager who is the subject of the complaint;

(b) Levy an administrative fine of:

(1) For the first offense, \$~~250~~ 500; and

(2) For the second ~~and each subsequent~~ offense, \$~~500~~ 1,000;

*(c) Require additional education;*

~~(e)~~ *(d)* Refer the matter to the commission;

~~(d)~~ *(e)* Refer the matter to ~~[an advisory committee]~~ *the real estate commission*; or

~~(e)~~ *(f)* Refer the matter to the attorney general of this state.

5. The administrator may initiate an investigation, audit or inspection of the records of any community manager or any person who performs the duties of a community manager in this state.

6. Any action taken by the administrator pursuant to subsection 4 may be appealed by the community manager upon written request to the commission within 30 days after the administrator takes such action.

7. As used in this section, “investigator” means a person whom the division deems to be impartial and qualified with respect to the matter in a complaint and who is designated by the division to investigate a complaint pursuant to this section.

Sec. 69. NAC 116.360 is hereby amended as follows:

NAC 116.360 Grounds for disciplinary action; criteria for unprofessional conduct and professional incompetence. (NRS 116.31139, 645.190, 645.6052)

1. A community manager is subject to disciplinary action if the community manager:

(a) Commits any of the following:

(1) Unprofessional conduct;

(2) Professional incompetence;

(3) Negligence or gross negligence; or

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

***(5) Fails to supervise a provisional community manager working under him as a supervising community manager; or***

(b) Has had a certificate, permit or license that authorizes him to act as a community manager in another jurisdiction revoked or suspended.

2. A community manager commits an act of unprofessional conduct if the community manager:

(a) Violates the provisions of:

(1) An order of the commission;

(2) An agreement with the division; or

(3) This chapter or chapter 116 of NRS;

(b) Fails to disclose to the executive board of a client any material fact or other information that he knows or, in the exercise of reasonable care or diligence, should have known, which concerns or relates to the common-interest community and which is of customary or express interest to the client;

(c) Engages in deceitful, fraudulent or dishonest conduct, including, without limitation, knowingly communicating false, ***misleading*** or fraudulent information to the executive board of a client;

(d) Before obtaining a certificate or permit, committed an act which was in fact unknown to the division at the time it issued the certificate ~~[or permit]~~ and which would have been grounds for denial of a certificate ~~[or permit]~~ had the division been aware of the conduct;

(e) Obtains a certificate ~~[or permit]~~ by fraud or deceit or by concealing a material fact from the division, including, without limitation, making a false statement of material fact on the application for the certificate ~~[or permit]~~;

(f) 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 community manager after the division requests the production of such document, book or record in the course of an investigation of a complaint

(g) 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 or ethnicity of any person, including, without limitation, a member of the client ~~[association]~~, a tenant of the common-interest community of the client, a visitor of the common-interest community of the client or a member of the executive board, *or officer* of the client; ~~[or]~~

(h) Fails to account for or remit money in his possession that belongs to another within a reasonable time of a request for an accounting or remittance of such money by the owner~~[.];~~ *or*

*(i) Exceeds the authority granted to him by the client.*

3. A community manager commits an act of professional incompetence if, without limitation, the community manager:

(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 community manager has committed unprofessional conduct or professional incompetence, the commission and the administrator may consider, without limitation, whether the community manager has:

(a) Done his utmost to protect the public against fraud, misrepresentation or unethical practices related to the business affairs of the client;

(b) Acquired the knowledge of all pertinent facts concerning a client;

(c) *Provided or ~~Attempted~~ attempted* to provide ~~specialized professional~~ services concerning a type of property or service that is outside his field of experience or competence without the assistance of a qualified authority unless the fact of his inexperience or incompetence is disclosed fully to the executive board of the client;

*(d) Provided or attempted to provide services concerning a type of property or service for which he is not properly licensed.*

~~(e)~~ (e) Complied with the disclosure requirement of subsection 1 of ~~[NAC 116.310]~~;

~~(e)~~ (f) Complied with the applicable governing documents, policies and procedures of the client;

~~(f)~~ (g) Kept informed of current statutes and regulations relating to common-interest communities and relating to other areas in which he attempts to provide guidance;

~~(g)~~ (h) Acted in the best interest of his client;

~~(h)~~ (i) Ensured that each management agreement is in writing and that each ~~director~~ *member* of the executive board of the client has received a copy of the *management* agreement;

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

~~(j)~~ (k) Acquired knowledge of all material facts that are reasonably ascertainable and are of customary or express concern to a client and has conveyed that knowledge to the client.

5. As used in this section:

(a) “Disability” means:

(1) A physical or mental impairment that substantially limits one or more of the major life activities of the person;

(2) A record of such an impairment; or

(3) Being regarded as having such an impairment.

(b) “Familial status” means the fact that a person:

(1) Lives with a child under the age of 19 years and has:

(I) Lawful custody of the child; or

(II) Written permission to live with the child from the person who has lawful custody of the child;

(2) Is pregnant; or

(3) Has begun a proceeding to adopt or otherwise obtain lawful custody of a child.

Sec. 70. NAC 116.370 is hereby amended as follows:

NAC 116.370 Disciplinary action by commission. ~~(NRS 116.31139)~~ **NRS 116.705**

1. If the administrator refers the matter to the commission and after conducting a hearing the commission finds that grounds for disciplinary action against the community manager exist, the commission may take one or more of the following actions:

- (a) Revoke or suspend the certificate or permit;
- (b) Refuse to renew or reinstate the certificate or permit;
- (c) Place the community manager on probation;
- (d) Issue a reprimand or censure to the community manager;
- (e) Impose a fine of not more than \$5,000 for each violation of a statute or regulation;
- (f) Require the community manager to pay restitution;
- (g) Require the community manager to pay the costs of the investigation and hearing;
- (h) Require the community manager to obtain additional education relating to the

management of common-interest communities; or

- (i) Take such other disciplinary action as the commission deems appropriate.

2. Unless the administrator determines otherwise and the person satisfies all the requirements for initial issuance of a certificate ~~for permit~~, the commission will not issue another certificate or permit to a person whose certificate ~~for permit~~ has been revoked for at least one year after the date of the revocation.

Sec. 71. NAC 116.390 is hereby amended as follows:

NAC 116.390 Public inspection of records. ~~(NRS 116.31139)~~ **NRS 116.615** Records kept in the office of the division under authority of this chapter are open to public inspection in the same manner as records are available for inspection pursuant to chapters 645 of NRS and NAC, except that the division may refuse to make public, unless ordered to do so by a court:

1. Examinations;
2. Files compiled by the division while investigating possible violations of chapter 116 ~~for 645~~ of NRS ~~;~~ **or** this chapter ~~for chapter 645 of NAC~~; ~~and~~

3. The criminal and financial records of community managers and of applicants for a certificate or permit ~~;~~ **and**



#### 4. Social security numbers.

*Copies of all records and papers in the office of the Division, certified and authenticated by the seal of the Division, must be received in evidence in all courts equally and with like effect as the originals.*

Sec. 72. NAC 116.450 is hereby amended as follows:

NAC 116.450 Qualifications of person to conduct study; consultants. (NRS 116.31152)

1. A person is qualified by training and experience to conduct a reserve study if the person proves to the satisfaction of the executive board that he has:

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

(b) ~~The~~ **Demonstrated** ability to evaluate *each item listed in the component inventory* ~~[components of the common elements]~~ with regard to normal and accelerated deterioration, *deferred maintenance*, remaining *years of* useful life, ~~[by year,]~~ and current cost to repair or replace;

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

(d) ~~The~~ **Demonstrated** ability to review *available improvement plans and specifications, including as-builts, 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* ~~[from such review];~~

(e) ~~The~~ **Demonstrated** ability to gather and analyze financial data, including, without limitation, monthly assessment fees per unit, current balance of reserves, interest rate anticipated on reserves, anticipated inflation and maximum *assessment* fee increases allowable; ~~[and]~~

(f) ~~The~~ **Verifiable** background and knowledge pertinent to all areas to be addressed by the reserve study and to all *common area major components of the association* ~~[components of the common elements to be addressed by the reserve study.]; and~~

(g) **Demonstrated ability in preparing reserve studies using the accepted methodologies as set forth in the Association of Independent Certified Public Accountants (AICPA), Audit and Accounting Guide, Common Interest Realty Associations (CIRA's) with Conforming Changes as of the most recent date.**

2. A person who *does not meet the qualifications set forth in subsection 1* may be ~~[is]~~ selected *by the executive board* to perform a reserve study *provided that person:* ~~[for the executive board may use consultants and other persons with expertise in the areas and components of the reserve study to assist in preparing the reserve study.]~~

*(a) maintains independence and does not have any conflicts of interest as described in NRS 116.31185;*

*(b) Prepares a reserve study that complies with the provisions set forth in Section \_\_\_\_.*

*(c) consults with, relies upon the expertise of, and receives written recommendations from:*

*(1) persons regarding financial matters who are either accountants or certified public accountants with the experience in auditing financial records of a common interest community;*

*(2) persons regarding all common area major components who meet the qualifications set forth in subsection 1 of this section, or hold the current license that is required pursuant to chapter 624 of NRS to install, construct or design the respective common area major components included in the reserve study.*

~~[3. As used in this section:~~

~~—(a) “Common elements” means the common elements of a common interest community.~~

~~—(b) “Component inventory” means a list of components of the common elements identified in a reserve study that may require repair or replacement.~~

~~—(c) “Reserve study” means a study required pursuant to NRS 116.31152 which projects the expenses of an association for the repair, replacement and restoration of the major components of the common elements and which establishes the reserves required to cover such expenses.]~~

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## TEXT OF REPEALED SECTIONS

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NAC 116.013 “Administrator” defined. (NRS 116.31139) “Administrator” means the administrator of the division.

NAC 116.017 “Advisory committee” defined. (NRS 116.31139) “Advisory committee” means an advisory committee established pursuant to NAC 116.330.

NAC 116.020 “Certificate” defined. (NRS 116.31139) “Certificate” means a certificate for the management of a common-interest community issued to a person by the commission pursuant to NRS 116.31139.

NAC 116.030 “Commission” defined. (NRS 116.31139) “Commission” means the real estate commission.

NAC 116.040 “Division” defined. (NRS 116.31139) “Division” means the real estate division of the department of business and industry.

NAC 116.043 “Executive board” defined. (NRS 116.31139) “Executive board” has the meaning ascribed to it in NRS 116.110345.

NAC 116.050 “Management of a common-interest community” defined. (NRS 116.31139) “Management of a common-interest community” means the physical, administrative or financial maintenance and management of a common-interest community, or the supervision of those activities for a fee, commission or other compensation or valuable consideration.

NAC 116.055 “Permit” defined. (NRS 116.31139) “Permit” means a permit to engage in property management issued pursuant to chapters 645 of NRS and NAC.

NAC 116.060 “Property management” defined. ~~(NRS 116.31139)~~ (NRS 116.705) “Property management” means the physical, administrative or financial maintenance and management of real property, or the supervision of those activities for a fee, commission or other compensation or valuable consideration.

NAC 116.115 Statement concerning payment of child support. (NRS 116.31139)

1. An applicant who applies for the issuance or renewal of a certificate shall submit to the division the statement prescribed by the welfare division of the department of human resources pursuant to NRS 425.520. The statement must be completed and signed by the applicant.

2. The applicant shall include the statement described in subsection 1 in:

(a) The application for a certificate or any other form that must be submitted for the issuance or renewal of a certificate; or

(b) A separate form prescribed by the division.

3. The division will not issue or renew a certificate pursuant to this chapter if the applicant:

(a) Fails to sign, complete or submit the statement described in subsection 1; or

(b) Indicates on the statement required pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order.

4. If an applicant indicates on the statement submitted pursuant to subsection 1 that he is subject to a court order for the support of a child and is not in compliance with the order or a plan approved by the district attorney or other public agency enforcing the order for the repayment of the amount owed pursuant to the order, the division shall advise the applicant to contact the district attorney or other public agency enforcing the order to determine the actions that the applicant may take to satisfy the arrearage.

NAC 116.330 Advisory committee: Establishment; qualifications and compensation of members. (NRS 116.31139)

1. The administrator may establish an advisory committee to assist the administrator in the review of a matter that is the subject of an investigation conducted pursuant to NAC 116.320 if the community manager who is the subject of the investigation agrees to participate in an informal review of the matter with an advisory committee.

2. If the administrator determines that an advisory committee should be formed, the administrator shall form the advisory committee in the same manner as an advisory committee is formed pursuant to NAC 645.490. The administrator shall only select persons to serve on an advisory committee who are determined by the administrator to be impartial and qualified with

respect to the matter which will be reviewed by the advisory committee. The commission will prescribe the education and experience qualifications of the members of an advisory committee and will review all applications and approve or disapprove the applicants.

3. A member of an advisory committee:

(a) Serves in the same capacity as; and

(b) Is entitled to per diem allowance and travel expenses to the same extent as, a member of an advisory committee established pursuant to NAC 645.490.

NAC 116.340 Recommendations for resolutions of complaints; rejection of recommendations.  
(NRS 116.31139)

1. An advisory committee which is established pursuant to NAC 116.330 shall:

(a) Review the written report submitted by an investigator pursuant to NAC 116.320 and any other information that is relevant to the matter to determine whether there is probable cause to show that the community manager who is the subject of the investigation has violated a provision of this chapter or chapter 116 of NRS;

(b) Hold an informal conference in accordance with NAC 116.350;

(c) Work with the community manager who is the subject of the investigation to attempt to arrive at a recommendation for resolution of the matter which is the subject of the investigation; and

(d) Submit a recommendation for resolution of the matter to the administrator.

2. If the administrator and the community manager who is the subject of the investigation accept the advisory committee's recommendation for resolution of the matter, the administrator shall enter into a written agreement with the community manager who is the subject of the investigation which must contain the terms of the resolution recommended by the advisory committee.

3. If disciplinary action is taken pursuant to this section against a community manager who is the subject of an investigation, the administrator shall file with the commission a written summary of the facts and disciplinary actions taken against the community manager.

4. If the administrator or the community manager who is the subject of the investigation do not accept the advisory committee's recommendation for resolution of the matter, the administrator shall:

- (a) Dismiss the matter which is the subject of the investigation;
- (b) Negotiate a resolution of the matter with the community manager who is the subject of the investigation, which may include, without limitation, assessing administrative sanctions pursuant to NAC 116.320; or
- (c) Schedule a hearing which must be conducted pursuant to NAC 116.380.

NAC 116.350 Informal conference. (NRS 116.31139)

1. If an advisory committee is established pursuant to NAC 116.330, the administrator shall schedule an informal conference between the advisory committee and the community manager who is the subject of the investigation. The administrator shall provide written notice of the time and place of the conference to:

- (a) Each member of the advisory committee;
- (b) The community manager who is the subject of the investigation; and
- (c) Each witness who has been requested to appear at the informal conference.

2. The advisory committee may request the attendance at an informal conference of any person whom the advisory committee believes to have information that is relevant to the matter.

3. When conducting an informal conference, an advisory committee:

- (a) May consider all evidence that it deems relevant to the investigation;
- (b) Shall rule on the admissibility of evidence;
- (c) Shall be the controlling authority with regard to the admissibility of evidence; and
- (d) Need not follow the rules of admissibility of evidence that a court must follow.

4. The chairman of an advisory committee shall file a written report with the administrator that explains the results of the informal conference within 30 days after the conclusion of the informal conference. The report is and must remain confidential.

NAC 116.380 Hearings. ~~{(NRS 116.31139)}~~

1. The commission will follow the procedures set forth in NRS 645.680 to 645.740, inclusive, and NAC 645.810 to 645.830, inclusive, when conducting a hearing on a complaint against a community manager.

2. As used in the provisions cited in subsection 1, for purposes of a hearing conducted pursuant to subsection 1:

- (a) “License” means a certificate or permit, as applicable; and
- (b) “Licensee” means a community manager.

NAC 116.800 Exemptions from certain provisions of NRS. (NRS 116.1201) For purposes of exemption from the provisions of chapter 116 of NRS pursuant to NRS 116.1201:

1. An association is exempt pursuant to subparagraph (1) of paragraph (a) of subsection 2 of NRS 116.1201 if the association has been created for the limited purpose of maintaining the landscape of uninhabited common-interest grounds within the community.

2. An association is exempt pursuant to subparagraph (2) of paragraph (a) of subsection 2 of NRS 116.1201 if the association is created for the limited purpose of maintaining:

- (a) Areas on an official plat that are designated as unsuitable for building;
- (b) Areas designated as floodways, natural drainage or spillways; or
- (c) Other areas that are used for the purpose of collecting, facilitating, retaining or channeling storm water drainage of the residential property of the common-interest community.

3. An association is exempt pursuant to subparagraph (3) of paragraph (a) of subsection 2 of NRS 116.1201 if:

- (a) The association has been created as a rural agricultural residential common-interest community;
- (b) The residential lots in the common-interest community are a minimum of one acre and are zoned for agricultural purposes by the county in which the community is located; and
- (c) The governing documents of the association authorize the residents to farm or raise livestock on the residential lots.