

LCB File No. R205-05

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

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

AUTHORITY: NRS 116.1201, 116.31152, 116.31185, 116.4109, 116.615, 116.670, 116.700, & 116.705.

Section 1. Chapter 116 of the NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

Sec. 2. *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 requirements:

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 NRS 116.31152; and

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

c. Interim financial statements shall be prepared using 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;

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

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

f. 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 executive board, a unit owner, or a certified public accountant affiliated with the community manager or a unit owner.

g. 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 Executive board if so stipulated by the association's governing documents.

h. 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.

i. As used herein, "Guide" means the publication referred to in NAC 116.410.

Sec. 3. "Financial Records" defined. *"Financial records" means the financial and other transaction records necessary to support the financial statements and other records of the association 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 records as deemed necessary by the association's accountants, auditors or the Division.

Sec. 4.

1. An association committee or workshop whose membership does not include a majority of the members of the executive board need not comply with NRS 116.31083 if it complies with the requirements of this Section.

2. Unless established by the governing documents, the committee or workshop must be established by the executive board pursuant to a meeting of the executive board in compliance with NRS 116.31083, at which the creation of the workshop or committee, including a clear statement of its purpose, is a separate agenda action item.

3. The purpose of the committee or workshop shall be limited to a single purpose, such as the production of a budget or evaluation of vendor bids.

4. Matters associated with the purpose of the committee or workshop may be discussed at meetings of the committee or workshop, however, any decision of the workshop or committee members must be limited to a recommendation to the executive board.

5. Every unit's owner in good standing who requests so in writing shall be permitted to attend all meetings of the workshop or committee, unless the subject matter of the workshop or committee concerns a matter that may be discussed in executive session. Observers may be precluded from speaking or participating at meetings of the committee or workshop, but, upon notifying all those in attendance, prior to doing so, may make audio recordings of the meeting.

6. The executive board shall make reasonable efforts to give notice to persons who have made a request as provided in subsection 4 of this Section, of committee or workshop meetings by e-mail, mail, telephone, oral notice in person, newsletter or other method of communication at least two days in advance of the meeting.

7. The executive board, at a meeting, may remove an observer from a committee or workshop notice list or meeting if the observer requests to be removed, the observer fails to attend three consecutive meetings or the observer is disruptive at any committee or workshop meeting. Except of an observer being disruptive, removal shall not be grounds for refusing to grant future observer status.

Sec. 5. The maximum amount of the fee that an association may charge for preparing the certificate required by NRS 116.4109(b) and (d) shall be \$160, unless the certificate is requested to be provided sooner than three business days, in which event, the association may charge an expedite fee not to exceed \$125. The provisions of this regulation do not prohibit the association from requiring a charge, other than a copying charge, for services or forms other than the certificate required by NRS 116.4109(b) and (d) or the copies required by NRS 116.4109(3).

Sec. 6. A limited purpose association shall comply with all of the provisions of NRS 116.4101 to 116.412.

Sec. 7. As used in NRS 116. 31185, gifts, incentives, gratuities, rewards or other items of value shall not include:

a. prepaid tuition, for approved classes for community managers, board members or homeowners or permission to attend an approved class without charge;

b. the reasonable cost or value of hot or cold non-alcoholic beverages provided at any approved class;

c. the reasonable cost or value of breakfast, lunch or snacks served during an approved class or immediately between morning and afternoon or evening sessions of the approved class on the same day;

d. the cost or value of free attendance at an approved event the sponsorship or underwriting the cost of which has been paid for, so long as the costs of sponsorship or underwriting are not limited to one association; or

e. the cost or value of attendance at, but not travel expenses, an approved event provided the costs are available to members of a group in general rather than a specific person, provided that, in any such case,

(a) the attendance at or participation in the approved class or approved event by any member of the executive board or officer of the association is disclosed to the executive board at least 15 days prior to the class or event, and is reasonably determined by the executive board to be related to the training or education of the participant as a member of the executive board or officer of the association;

(b) the attendance at or participation in the approved class or approved event is reasonably determined by the Division to be related to the training or education of the participant as a member of the executive board, officer of the association, community manager or employee of a community manager; and

(c) the member of the executive board, officer of the association, community manager or employee of a community manager annually files with the Division, on or before _____, on a form approved by the Division, a statement of all items which are intended to be excluded

from NRS 116.31185(2), (3) or (4) pursuant to this regulation. The annual filing required by this paragraph shall be a matter of public record.

Sec. 8. Approved class means [concept of local, approved by NRED or perhaps lesser for this purpose, e.g., ombudsman's class].

Sec. 9. Approved event means [concept of generally recognized, public invited, etc.]

Sec. 10. In no event may the aggregate amount, from all sources whatsoever, of any and all gifts, incentives, gratuities, rewards or other items of value received by a member of the executive board, officer of the association, community manager or employee of a community manager, together with the reasonable value of items intended to be excluded from NRS 116.31185(2), (3) or (4) pursuant to Sec 8 of this regulation in any calendar year ever exceed the sum of \$250.

Sec. 11. The provisions of sections ___ to ___ [above] do not permit the solicitation or acceptance of any form of compensation, gratuity or other remuneration by a member of the executive board, officer of the association, community manager or employee of a community manager in violation of NRS 116.31185(1) or (2).

Sec. 12. 1. Except as otherwise provided in this section, the Commission may not enter into a consent or settlement agreement with a person who has allegedly committed a violation of any provision of NRS chapter 116 which the Commission has the authority to enforce, any regulation adopted pursuant thereto or any order of the Commission, unless the Commission discusses and approves the terms of the agreement in a public meeting.

2. The Commission may enter into a consent or settlement agreement without complying with the provisions of subsection 1 if:

(a) The Commission posts notice in accordance with the requirements for notice for a meeting held pursuant to chapter 241 of NRS and the notice states that:

(1) The Commission intends to resolve the alleged violation by entering into a consent or settlement agreement with the person who allegedly committed the violation; and

(2) For the limited time set forth in the notice, any person may request that the Commission conduct a public meeting to discuss the terms of the consent or settlement agreement by submitting a written request for such a meeting to the Commission within the time prescribed in the notice; and

(b) At the expiration of the time prescribed in the notice, the Commission has not received any requests for a public meeting regarding the consent or settlement agreement.

3. If the Commission enters into a consent or settlement agreement that is subject to the provisions of this section, the agreement is a public record.

4. The provisions of this section do not apply to a consent or settlement agreement between the Commission and a licensee that provides for the licensee to enter a diversionary program for the treatment of alcohol, chemical or substance abuse or dependency.

Sec. 13. NAC 116.160 is hereby amended as follows:

1. A certificate must be renewed biennially.
2. Except as otherwise provided by subsection 5, 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 NRS 116.710;
 - (c) The fee required by NAC 116.505 for renewal; and

(d) Documentation of the successful completion by the applicant of at least 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 this chapter and chapter 116 of NRS.

3. The renewal of a certificate is effective on the date on which the renewal 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. The Division may refuse to renew a certificate if:

(a) The applicant has been convicted of, or entered a plea of guilty 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 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 engaged in conduct which is grounds for disciplinary action pursuant to NAC 116.360 and has been disciplined by the Division or Commission.

6. If the Division, after an application to renew a certificate in proper form has been filed, accompanied by the proper fees, refuses to renew 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.

7. If the Division refuses to renew 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. 14. NAC 116.169 is hereby amended as follows: ???

The Division, upon the discovery of any error in the issuance of a certificate which is related to the qualification or fitness of the holder thereof, may invalidate the certificate upon notice in writing to the holder. The holder shall surrender the certificate to the Division within 20 days after the notice is sent by the Division. A person whose certificate has been invalidated and surrendered pursuant to this section may request a hearing on the matter in the same manner as for the denial of an application pursuant to NAC 116.150.

Sec. 15. NAC 116.090 is hereby amended as follows:

For purposes of *determining the criteria of whether an association, a limited-purpose association or a common-interest community satisfies the requirements of a limited-purpose association pursuant to* ~~[exemption from]~~ the provisions of chapter 116 of NRS pursuant to NRS 116.1201:

1. An association is ~~[exempt]~~ *a limited purpose association* pursuant to subparagraph (1) of paragraph (a) of subsection ~~[2]~~ 6 of NRS 116.1201 if:

(a) The association has been created for the sole purpose of maintaining the common elements consisting of landscaping, public lighting, security walls or trails, parks and open space;

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

(c) The declaration expressly prohibits:

(1) The association, and not a unit's owner, from enforcing a use restriction against a unit's owner;

(2) The association from adopting any rules or regulations concerning the enforcement of a use restriction against a unit's owner; and

(3) The imposition of a fine or any other penalty against a unit's owner for a violation of a use restriction.

2. An association is ~~exempt~~ *a limited purpose association* pursuant to subparagraph (2) of paragraph (a) of subsection ~~2~~ 6 of NRS 116.1201 if the association is created for the sole purpose of maintaining:

(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.

3. An association is ~~exempt~~ *a limited purpose association* pursuant to subparagraph (3) of paragraph (a) of subsection ~~2~~ 6 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 1 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.

4. As used in this section:

(a) "Governing body" has the meaning ascribed to it in NRS 278.015.

(b) "Landscaping" has the meaning ascribed to it in NRS 278.4781.

(c) "Public lighting" has the meaning ascribed to it in NRS 278.4783.

(d) "Security wall" has the meaning ascribed to it in NRS 271.203.

(e) "Trails, parks and open space" means trails, parks and open space that provide a substantial public benefit or are required by the governing body for the primary use of the public. The term does not include a private street or roadway, gated entry, swimming pool, gazebo, clubhouse, pond, tennis court, miniature golf course or frisbee golf course.

(f) "Use restriction" means any provision of the governing documents of an association that restricts a unit's owner in the use of his unit.

Sec. 16. NAC 116.300(7) is hereby amended as follows:

(c) Prepare or cause to prepared interim and annual financial statements that will allow the Division, a client, the units' owners and the accountant or auditor to determine whether the financial position of a client is fairly presented in accordance with ~~generally accepted accounting principles as set forth in the Common Interest Realty Associations — AICPA Audit and Accounting Guide, as adopted by NAC 116.410~~ *the provisions of Sec. 2 of this regulation.*

Sec. 17. NAC 116.331 is hereby amended as follows:

1. A community manager shall give written notice to the Division of any change of name, address, *supervising community manager* or association within 10 business days after the change occurs and pay the appropriate fee required by NAC 116.505.
2. Failure to give notice as required by this section constitutes cause for the involuntary inactivation of the certificate.

Sec. 18. NAC 116.400(8)(c) is hereby amended as follows:

- (c) Prepare or cause to be prepared interim and annual financial statements that will allow the Division, ~~[a client,]~~ *the executive board*, the units' owners and the accountant or auditor to determine whether the financial position of the association is fairly presented in accordance with ~~[generally accepted accounting principles as set forth in the Common Interest Realty Associations—AICPA Audit and Accounting Guide, as adopted by NAC 116.410]~~ *the provisions of Sec. 2 of this regulation.*