

LCB File No. R142-06

**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

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

Sec. 2. *A hearing panel or panels consisting of one (1) or more Administrative Law Judges (“ALJs”) shall be designated to conduct hearings pursuant to the power and authority of the Common-Interest Communities Commission (the “Commission”). Matters will be assigned by the Division to the individual ALJs to preside over through final decisions. The term “panel” as used in this section refers to the panel from which ALJs are assigned and does not contemplate a panel of more than one ALJ to be involved in any matter, hearing or decision. Each ALJ shall have authority to exercise jurisdiction over the same parties, conduct hearings and engage in all activities in the place and stead of the Commission.*

Sec. 3. *For purposes of this Chapter, the “Administrative Law Judge” must be an attorney licensed to practice in the State of Nevada, in good standing with the bars in all jurisdictions in which he/she is licensed to practice.*

Sec. 4. 1. *Testimony before the ALJ will be taken only under oath or affirmation administered by the ALJ. Before giving testimony, each witness must swear or affirm that his testimony will be the truth, the whole truth and nothing but the truth.*

2. *If a transcript of a hearing before an ALJ is desired, the party desiring it must, request a copy of the transcript through the Division and pay for the transcript within 20 days of requesting a rehearing or serving notice of appeal.*

Sec. 5. *The designated panel of ALJs may, in their discretion, initiate rules and procedures to facilitate and expedite resolution and or decisions in the matters before them, which rules shall uniformly be applied and enforced by all ALJs on the panel. If addition rules or procedures are initiated, the parties who are involved in matters before the ALJs shall be provided with documentation describing such rules or procedures.*

Sec. 6. *An ALJ may upon his own determination or upon the request of a party hold a prehearing conference for the purpose of simplifying or clarifying issues, determining whether additional documentation or witnesses may be needed for the ALJ to have adequate information to make a decision, to obtain stipulations concerning facts or evidence to shorten the hearing, require an exchange of proposed exhibits and set deadlines for prehearing disclosures of documents and identities of witnesses the parties intend to call, determine a*

schedule for submissions of prehearing motions and responses, to discuss settlement or possible resolution, and any other matters which may expedite the orderly conduct and disposition of the matters before him.

Sec. 7. *The ALJ shall have the same authority that the Commission has to issue and enforce subpoenas.*

Sec. 8. *If a party fails to appear at the time and place set for a hearing, the ALJ may, in his discretion, dismiss the proceeding, with or without prejudice, or may continue the hearing to permit the party to attend.*

Sec. 9. *After the hearing, the ALJ shall prepare findings of fact and conclusions of law and his final decision on the issues presented to him for decision. Copies of the ALJ's findings of fact, conclusions of law and final decision shall be served upon each of the parties, members of the Commission and the Division, within 30 days after the conclusion of the hearing, or the receipt by the ALJ of any posthearing briefs or additional documents ordered to be provided by any of the parties.*

Sec. 10. *The Division, the Claimant, the Respondent, or their authorized representative may, within 30 days after the date of service of the findings of fact, conclusions of law and final decision of the ALJ, file a notice of appeal with the ALJ, which the ALJ shall, upon receipt, immediately provide to the Commission:*

- (a) A brief setting out the issues and basis for his appeal, and authorities supporting appellant's position; and*
- (b) Designation of parts of the record before the ALJ deemed relevant to the appeal.*

The party(ies) responding to the Appeal, may within 20 days of service of the Appellant's Brief, and designation of portions of the record, submit a responsive brief and designate any additional portions of the record deemed to be relevant.

- (1) An appeal of an ALJ decision to the Commission cannot be made where the sole issue before the ALJ involved an interpretation of governing documents. In such cases the ALJ's final decision shall state in bold lettering that it is not appealable to the Commission.*
- (2) Other than matters coming within the provisions of subsection (1) above, an appeal from a final decision of the ALJ must be based upon one or more grounds set forth in subsection 3 of NRS 233B.135.*
- (3) After receipt of the documentation from appellant and respondent set forth above, the appeal before the Commission will be set for oral argument at its next meeting scheduled in Northern or Southern Nevada, depending upon where the ALJ hearing took place. Unless extended by the Commission, oral argument of an appeal will be limited to ten (10) minutes per side. The Commission will not review or consider evidence which was not presented to the ALJ, unless it determines that good cause exists for the failure to submit such evidence at the time of hearing before the ALJ.*
- (4) The Commission will modify, reverse, or affirm the ALJ's final decision, or remand the matter to the ALJ, with instructions for further handling.*

Sec. 11. *Post or deposit some sort of cost bond or payment to insure costs of Respondent are covered.*

Sec. 12. *If the appellant does not prevail on appeal, the appellant will be responsible for paying all costs of the appeal incurred by the responding party(ies) as a result of the appeal.*

Sec. 13. *If transcripts are part of the record designated by either side to the Appeal, the Appellant will be responsible for obtaining, including paying for the portions designated and providing the transcripts to the Commission prior to oral argument. If the Commission determines that any portions of the transcripts of the proceedings before the ALJ, designated by a Respondent, were not reasonably relevant to the issues on appeal, or were designated in bad faith, Respondent will be required to reimburse Appellant for the costs of those portions of the transcript and, in addition, may be fined by the Commission.*

Sec. 14. *If the Commission determines that an appeal is frivolous, brought for the purposes of delaying implementation of the ALJ's final decision, brought solely for the purposes of harassment, or for any other bad faith reason, the Commission may impose fines pursuant to limits set forth in NRS 116.785.*