

LCB File No. R145-06

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

(This version replaces the initial agency draft posted on 6/14/06)

[Reserve Studies]

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

AUTHORITY: NRS 116 and 116A

Section 1. Chapter 116A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

Sec. 2. *Permitting of Reserve Study Specialists. A person shall not prepare a reserve study for an association, unless that person has been issued a permit by the Division as a reserve study specialist on a form to be prepared by the Division. A permit shall be effective for a period of [two/one] year[s].*

Sec. 3. *Exemption. A person who assists a permitted reserve study specialist in preparing a reserve study, signed by a registered reserve study specialist, need not obtain a permit as a reserve study specialist.*

Sec. 4. *Fees for Permit. The fee for obtaining a permit as a reserve study specialist shall be established annually by the Division, but may not exceed the sum of \$_____.00.*

Sec. 5. *List of Permitted Reserve Study Preparers. The Division shall maintain a list of all persons who have obtained a permit from the Division as reserve study specialists, and shall make that list available to the public.*

Sec. 6. *Qualifications of Reserve Study Specialist. A person shall not hold himself out in the state of Nevada as a reserve study specialist unless such person (a) has obtained a permit as a reserve study specialist from the Division. In order to obtain a permit as a reserve study specialist from the Division, a person shall provide evidence to the Division that he is qualified by education and experience to perform such studies either by (a)evidence of the issuance to him of a designation from a nationally recognized*

professional organization which provides educational courses and national accreditation of reserve study preparers or (b) evidence of other suitable education and experience.

Sec. 7. Contents of Reserve Study. *A reserve study must contain all of the following elements:*

- 1. A summary of the association's number of units;*
- 2. Association physical description (legal or physical narrative);*
- 3. General statement or opinion describing the association's current reserve fund status (good/fair/poor, adequate or inadequate. Percent Funded, etc.);*
- 4. General statement describing the methods and objectives utilized in computing or evaluating the association's Reserve Fund status (Percent Funded or otherwise);*
- 5. Fiscal Year (start and end) for which the Reserve Study is prepared;*
- 6. A projection of starting reserve cash balance (as-of above start date);*
- 7. A general statement describing the development or computation of the association's starting Reserve Fund balance;*
- 8. Recommended reserve contributions (minimum 20 years);*
- 9. Projected reserve expenses (minimum 20 years);*
- 10. Projected ending reserve fund balance (minimum of 20 years);*
- 11. A tabular listing of the components in the Reserve Study;*
- 12. A tabular listing of the component quantities or identifying descriptions;*
- 13. A tabular listing showing each component's Useful Life;*
- 14. A tabular listing showing each component's Remaining Useful Life, where $RUL=0$ =initial year;*
- 15. A tabular listing showing each component's Current Replacement Cost;*
- 16. A general statement describing the Methods (cash flow, component, etc.) and Goals (Full Funding, Threshold Funding, Baseline Funding) of the Funding Plan, using National Standard terminology;*
- 17. Identification of the source(s) utilized to obtain component repair or replacement cost estimates;*

18. *A clear description of which one of the three Reserve Study "Levels of Service" (i.e., Full, Update With-Site-Visit, Update No-Site-Visit) was performed; and*

19. *A clear statement of assumption used for Interest and inflation (whether zero or otherwise).*

Sec. 8. Reserve Study Required Disclosures. *A reserve study must contain all of the following disclosures:*

1. *General: Description of other involvement(s) with the association, which could result in actual or perceived conflicts of interest;*

2. *Physical Analysis: Description of how thorough the on-site observations were performed: representative sampling vs. all common areas, destructive testing or not, field measurements vs. drawing take-offs, etc.;*

3. *Personnel Credentials: State or organizational licenses or credentials carried by the individual responsible for Reserve Study preparation or oversight;*

4. *Completeness: Material issues which, if not disclosed, would cause a distortion of the association's situation;*

5. *Reliance on Client Data: Information provided by the official representative of the association regarding financial, physical, quantity, or historical issues will be deemed reliable by the consultant;*

6. *Scope: The Reserve Study will be a reflection of information provided to the consultant and assembled for the association's use, not for the purpose of performing an audit, quality/forensic analyses, or background checks of historical records;*

7. *Reserve Balance: The actual or projected total presented in the Reserve Study is based upon information provided and was not audited;*

8. *Component Quantities: For update reports only, disclosure that the client is considered to have deemed previously developed component quantities as accurate and reliable;*

9. *Disclosure of how the current work is reliant on the validity of prior Reserve Studies (Update reports only); and*

10. Reserve Projects: Information provided about reserve projects will be considered reliable. Any on-site inspection should not be considered a project audit or quality inspection.

Sec. 9. Conduct of Reserve Study Preparers. *A person who prepares a reserve study shall:*

1. Comply with current standards or practices as may be established from time to time by the Commission;

2. Not make any inaccurate or misleading representations or statements to a prospective client;

3. Undertake only those engagements the Reserve Specialist can reasonably expect to perform with professional competence;

4. Exercise due care and exhibit adequate planning and supervision;

5. Disclose in writing to the client any actual potential or perceived conflict of interest if the client may have dealings with another party in some way related to the Reserve Specialist; and

6. Not knowingly misrepresent facts to benefit the Reserve Specialist.

Sec. 10. Standards of Practice; A Reserve Study Specialist shall:

1. Comply with the relevant lawful provisions of the governing documents of each client;

2. Maintain an inventory of reserve study records of each client for six years;

3. Keep informed of new developments in the field of reserve studies through continuing education, including without limitation, new developments in law, reserve study preparation, methods of funding and other areas involved in the preparation of reserve studies;

4. At all times ensure that the information in the reserve study is complete based upon association input and reasonably available data from other industry sources; and

5. Cooperate with the Division in any investigative action in complying with the provisions of chapter 116, [Assembly Bill 431] and 116A of NRS;

Sec. 11. *Grounds for disciplinary action; criteria for unprofessional conduct and professional incompetence:*

1. *A reserve study specialist is subject to disciplinary action if the reserve specialist:*

(a) *Commits any of the following:*

(1) *Unprofessional conduct;*

(2) *Professional incompetence;*

(3) *Negligence or gross negligence;*

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

(b) *Has a permit or license that authorizes him to act as a reserve study specialist in another jurisdiction revoked or suspended.*

2. *A reserve study specialist commits an act of unprofessional conduct if the reserve specialist:*

(a) *Violates the provision of:*

(1) *An order of the Commission;*

(2) *An agreement with the Division; or*

(3) *This chapter or chapter 116 or [Assembly Bill 431] of NAC or chapters 116, 116A or [Assembly Bill 431] of NRS.*

(b) *Engages in deceitful, fraudulent or dishonest conduct, including, without limitation, knowingly communicating false, misleading or fraudulent information to a client;*

(c) *Registration contains a false statement of material fact;*

(d) *Fails to cooperate with the Division in the investigation of a complaint, including, without limitation, failure to produce any document, book or record after the Division requests the production of such document, book or record in the course of an investigation of a complaint;*

(e) *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 executive board, an officer of the association, a unit's owner, or a tenant of the common-interest community; or

(f) Exceeds the authority granted to him by the client.

3. A reserve study specialist commits an act of professional incompetence if, without limitation, the reserve specialist:

(a) Demonstrates a significant lack of ability, knowledge or fitness to perform a duty or obligation owed to the 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 reserve study specialist has committed unprofessional conduct or professional incompetence, the Commission and the Administrator may consider, without limitation, whether the reserve specialist has:

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

(b) Made reasonable efforts to acquire the knowledge of all pertinent facts concerning a client;

(c) Provided or attempted to provide to a client services for which he does not have the appropriate knowledge or experience;

(d) Complied with the disclosure requirement of Sec. 8 of this Regulation;

(e) Complied with any applicable governing documents, policies and procedures of the client relating to the reserve study;

(f) Kept informed of current statutes and regulations relating to common-interest communities;

(g) Acted in the best interest of the client;

(h) Ensured that a contract for services exist;

- (i) *Obtained all changes of contractual terms in writing and has ensured that such changes are signed or initialed by the parties concerned; and*
- (j) *Acquired knowledge of all material facts regarding the reserve study that are reasonably ascertainable and are of customary or express concern to a client and has conveyed that knowledge to the client.*

Sec. 12. Procedure for hearing complaints; Time for holding hearings; continuances; notices; evidence; answers; defaults:

1. *Except as otherwise provided in subsection 2, if the Administrator files a formal complaint with the Commission, the Commission or a hearing panel shall hold a hearing on the complaint not later than 90 days after the date that the complaint is filed.*

2. *The Commission or the hearing panel may continue the hearing upon its own motion or upon the written request of a party to the complaint, for good cause shown, including, without limitation, the existence of proceedings for mediation or arbitration or a civil action involving the facts that constitute the basis of the complaint.*

3. *The Division shall give the respondent written notice of the date, time and place of the hearing on the complaint at least 30 days before the date of the hearing. The notice must be:*

- (a) *Delivered personally to the respondent or mailed to the respondent by certified mail, return receipt requested, to his last known address.*
- (b) *Accompanied by:*
 - (1) *A copy of the complaint; and*
 - (2) *Copies of all communications, reports, affidavits and depositions in the possession of the Division that are relevant to the complaint.*

4. *At any hearing on the complaint, the Division may not present evidence that was obtained after the notice was given to the respondent pursuant to this section, unless the Division proves to the satisfaction of the Commission or the hearing panel that:*

- (a) *The evidence was not available, after diligent investigation by the Division, before such notice was given to the respondent; and*

(b) *The evidence was given or communicated to the respondent immediately after it was obtained by the Division.*

5. *The respondent must file an answer not later than 30 days after the date that notice of the complaint is delivered or mailed by the Division. The answer must:*

(a) *Contain an admission or a denial of the allegations contained in the complaint and any defenses upon which the respondent will rely; and*

(b) *Be delivered personally to the Division or mailed to the Division by certified mail, return receipt requested.*

6. *If the respondent does not file an answer within the time required by subsection 5, the Division may, after giving the respondent written notice of the default, request the Commission or the hearing panel to enter a finding of default against the respondent. The notice of the default must be delivered personally to the respondent or mailed to the respondent by certified mail, return receipt requested, to his last known address.*

Sec. 13. *It shall be the fiduciary responsibility of the executive board to insure that any institution holding association funds is either qualified to do business in Nevada or has agreed to be subject to subpoenas issued by the State of Nevada, its courts or any of its agencies and the institution has agreed to be subject to the jurisdiction of the state and federal courts in the State of Nevada with respect to any issue relating to a Nevada common-interest community which utilizes the institution's services.*

Sec. 14. *Pursuant to NRS 116.411(1) funds deposited in an escrow account for the purpose of purchasing or reserving a unit from a person required to deliver a public offering statement are deemed to be placed in escrow and held in this State when the escrow holder has:*

1. *The legal right to conduct business in this State; and*

2. *A resident agent in this State pursuant to NRS 14.020(1); and*

3. *Consented to the jurisdiction of the courts of this State either by:*

a) *Maintaining a physical presence in this State; or*

b) *Executing a written instrument containing such consent, with respect to any suit or claim, whether brought by the declarant or purchaser,*

relating to or arising in connection with such sale or the escrow agreement related thereto.

NAC 116.300 is hereby amended to read as follows:

NAC 116.300 Responsibilities. (NRS 116.615, 116.700) A community manager shall:

1. Comply with the lawful provisions of the governing documents of each client;
2. Maintain an inventory of all records of each client;
3. Keep informed of new developments in the management of a common-interest community through continuing education, including, without limitation, new developments in law, insurance coverage and accounting principles;
4. Advise a client to obtain advice from an expert relating to matters that are beyond the expertise of the community manager;
5. Under the direction of a client, uniformly enforce the provisions of the governing documents of the association;
6. At all times ensure that the financial transactions of a client are current, accurate and properly documented and that there are established policies and procedures surrounding the financial transactions that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;
7. Prepare or cause to be 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;
8. Make the financial records of an association available for inspection by the Division in accordance with the applicable laws of this State;

9. Cooperate with the Division in resolving complaints filed with the Division;
10. Upon written request, make the financial records of an association available to the units' owners during regular business hours for inspection at a reasonably convenient location which must be within 60 miles from the physical location of the common-interest community and shall provide copies of such records in accordance with the applicable laws of this State;
11. Deposit all money of an association that is in the possession or control of the community manager in a ~~federally insured~~ financial institution ~~authorized to do business in this State;~~ *whose accounts are federally insured;*
12. Recommend in writing to each client that the association register with the Division, maintain its registration and file all papers with the Division and the Secretary of State as required by law;
13. Comply with the directions of a client, unless the directions conflict with the governing documents of the association, this chapter or other applicable laws of this State;
14. Recommend in writing to each client that the association be in compliance with all applicable federal, state and local laws and the governing documents of the association;
15. Obtain, when practicable, at least three bids for any capital improvement project for the association; and
16. Fairly enforce the collection policies of a client and comply with all applicable federal, state and local laws relating to the collection of debt.

➔ As used in this section, "regular business hours" means Monday through Friday, 9 a.m. to 5 p.m., excluding state and federal holidays.

NAC 116.400 is hereby amended to read as follows:

NAC116.400 Members of executive board: Responsibilities. (NRS 116.3103, 116.615) In performing the duties set forth in NRS 116.3103, a member of an executive board shall:

1. Comply with all applicable federal, state and local laws and the governing documents of the association;
2. Uniformly enforce the provisions of the governing documents of the association;
3. Ensure that meetings of the executive board are held with such frequency as to properly and efficiently address the affairs of the association;
4. Keep informed of new developments in the management of a common-interest community through educational courses;
5. Ensure that the executive board obtains, when practicable, at least three bids from reputable service providers who possess the proper licensing for any service used by the association;
6. Ensure that the executive board consults with the appropriate professionals as necessary before making major decisions affecting the association;
7. Deposit all money of an association in a ~~federally insured~~ financial institution ~~authorized to do business in this State; and~~ *whose accounts are federally insured; and*
8. If the association does not employ a community manager:
 - (a) Maintain an inventory of all records of the association;
 - (b) At all times ensure that the financial transactions of the association are current, accurate and properly documented and that there are established policies and procedures surrounding the financial transactions that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;
 - (c) Prepare or cause to be 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 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;

(d) Make the financial records of the association available for inspection by the Division in accordance with the applicable laws of this State;

(e) Cooperate with the Division in resolving complaints filed with the Division;

(f) Upon written request, make the financial records of the association available to the units' owners during regular business hours for inspection at a reasonably convenient location which must be within 60 miles from the physical location of the common-interest community and shall provide copies of such records in accordance with the applicable laws of this State; and

(g) Fairly enforce the collection policies of the association and comply with all applicable federal, state and local laws relating to the collection of debt.