

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

LCB File No. R145-06

November 30, 2007

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

AUTHORITY: §§1-5, NRS 116.615; §§6 and 7, NRS 116.31152 and 116.615; §§8-14 and 22, NRS 116A.200; §§15-21, NRS 116A.420 and 116A.430.

A REGULATION relating to common-interest communities; imposing certain fiduciary duties upon the executive board of an association; defining when money deposited in an escrow account is deemed to be held in this State for certain purposes; revising provisions relating to the deposit of an association's money in a financial institution; expanding the information that must be included in a reserve study; providing for the qualifications and requirements for obtaining or renewing a permit as a reserve study specialist; establishing certain duties and rules of conduct for reserve study specialists; establishing procedures for disciplinary proceedings against a reserve study specialist; and providing other matters properly relating thereto.

Section 1. Chapter 116 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *The executive board has a fiduciary duty to ensure that any institution which holds money of the association:*

- 1. Is authorized to do business in the State of Nevada; or*
- 2. Has consented to the jurisdiction of the courts of this State.*

Sec. 3. *For purposes of NRS 116.411, money deposited in an escrow account in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to subsection 3 of NRS 116.4102 is deemed to be held in this State if the escrow holder:*

- 1. Is authorized to do business in this State;*
- 2. Has appointed a resident agent pursuant to subsection 1 of NRS 14.020; and*
- 3. Has consented to the jurisdiction of the courts of this State by:*
 - (a) Maintaining a physical address in this State; or*
 - (b) Executing written consent to such jurisdiction over any lawsuit or claim, whether brought by or against the declarant or purchaser, relating to or arising from the sale of a unit or the related escrow agreement.*

Sec. 4. NAC 116.300 is hereby amended to read as follows:

116.300 *1.* A community manager shall:

- ~~{1.}~~ *(a)* Comply with the lawful provisions of the governing documents of each client;
- ~~{2.}~~ *(b)* Maintain an inventory of all records of each client;
- ~~{3.}~~ *(c)* 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.}~~ *(d)* Advise a client to obtain advice from an expert relating to matters that are beyond the expertise of the community manager;
- ~~{5.}~~ *(e)* Under the direction of a client, uniformly enforce the provisions of the governing documents of the association;
- ~~{6.}~~ *(f)* 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.}~~ (g) Prepare or cause to be prepared interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of an association is fairly presented in accordance with the provisions of NAC 116.451 to 116.461, inclusive;

~~{8.}~~ (h) Make the financial records of an association available for inspection by the Division in accordance with the applicable laws of this State;

~~{9.}~~ (i) Cooperate with the Division in resolving complaints filed with the Division;

~~{10.}~~ (j) 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 provide copies of such records in accordance with the applicable laws of this State;

~~{11.}~~ (k) 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}~~;

~~{12.}~~ *that is federally insured or insured by a private insurer approved pursuant to NRS 678.755;*

(l) 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.}~~ (m) 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.}~~ (n) 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.}~~ (o) Obtain, when practicable, at least three bids for any capital improvement project for the association; and

~~{16.}~~ (p) Fairly enforce the collection policies of a client and comply with all applicable federal, state and local laws relating to the collection of debt.

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

Sec. 5. NAC 116.400 is hereby amended to read as follows:

116.400 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]~~ *the* association in a ~~[federally insured]~~ financial institution ~~[authorized to do business in this State;]~~ *that is federally insured or insured by a private insurer approved pursuant to NRS 678.755;* 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, 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 the provisions of NAC 116.451 to 116.461, inclusive;

(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 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.

Sec. 6. NAC 116.425 is hereby amended to read as follows:

116.425 1. A reserve study must, in addition to the requirements set forth in NRS 116.31152, include:

(a) A copy of the component inventory from the previous reserve study if such copy was provided by the executive board to the person conducting the reserve study;

(b) A 30-year schedule which shows:

(1) The projected increase in assessments that will be required in any given year to provide an adequately funded reserve; ~~and~~

(2) The projected inflation and estimated interest income from the reserve fund; *and*

(3) The projected ending balance of the reserve fund;

(c) The names and credentials of any consultants and other persons with expertise used to assist in the preparation of the reserve study;

(d) Any written reports prepared by consultants and other persons with expertise;

(e) If there are any conflicting recommendations of the consultants or other persons with expertise while preparing the reserve study, a written explanation as to which recommendations are selected and the reasons for their selection;

(f) The number of units in the association;

(g) A general statement describing the current status of the reserve fund;

(h) A general statement describing the objectives of the reserve study and the methods used in computing and evaluating the current status of the reserve fund;

- (i) A statement of the beginning and the end of the fiscal year for which the reserve study is prepared;*
- (j) A projection of the initial balance of the reserve fund;*
- (k) A general statement describing the development or computation of the initial balance of the reserve fund;*
- (l) A tabular statement showing the remaining useful life of each major component of the common elements from the time of each component's initial installation;*
- (m) A general statement prepared in accordance with generally accepted accounting principles describing the objectives of the funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the common elements and the methods used in carrying out the funding plan, and discussing, where applicable:*
- (1) Cash flow;*
 - (2) Full funding;*
 - (3) Threshold funding; and*
 - (4) Baseline funding;*
- (n) A statement identifying the sources relied upon to obtain an estimate for the cost to repair, replace or restore a major component of the common elements;*
- (o) A detailed description of the type of reserve study that was performed and the level of service accorded to the reserve study, including whether the reserve study was:*
- (1) A full reserve study;*
 - (2) An update to a previous reserve study made pursuant to a visit to the site of the common-interest community; or*

(3) An update to a previous reserve study made without a visit to the site of the common-interest community;

(p) The disclosures set forth in NAC 116.430; and

~~(g)~~ (q) A statement, prominently displayed, which reads substantially as follows:

The projected life expectancy of the major components and the funding needs of the reserves of the association are based upon the association performing appropriate routine and preventative maintenance for each major component. Failure to perform such maintenance can negatively impact the remaining useful life of the major components and dramatically increase the funding needs of the reserves of the association.

2. As used in this section, “adequately funded reserve” means the funds sufficient to maintain the common elements:

(a) At the level described in the governing documents and in a reserve study; and

(b) Without using the funds from the operating budget or without special assessments, except for occurrences that are a result of unforeseen catastrophic events.

Sec. 7. NAC 116.430 is hereby amended to read as follows:

116.430 A person conducting a reserve study and any consultant assisting in the preparation of a reserve study shall include in the reserve study the following disclosures:

1. The background, training, qualifications and references that would qualify the person conducting or assisting in the preparation of the reserve study as competent to conduct or assist in the preparation of the reserve study . ~~(f)~~

2. Any relationship which could result in actual or perceived conflicts of interest . ~~(f)~~

3. Whether the person conducting or assisting in the preparation of the reserve study is bonded or has professional liability insurance . ~~{}~~
4. The method for determining the common area components based on:
 - (a) An actual field inspection of the common elements with representative sampling;
 - (b) An inventory and material information provided by the client; or
 - (c) A previous reserve study and the date of that study . ~~{}~~
5. Industry sources used for determining:
 - (a) The life of a major component; and
 - (b) The cost of repairing, replacing or restoring a major component . ~~{}~~
6. Any guarantees, express or implied, that are given with the predictions for the cost or life expectancy of any of the major components . ~~{}~~
7. The source of the information regarding the initial reserve fund balance presented in the reserve study . ~~{; and}~~
8. Whether a special assessment is anticipated during the time of the contracted reserve study.
9. *A statement, prominently displayed, which reads substantially as follows:*

Information provided to the preparer of a reserve study by an official representative of the association regarding financial, historical, physical, quantitative or reserve project issues will be deemed reliable by the preparer. A reserve study will be a reflection of information provided to the preparer of the reserve study. The total of actual or projected reserves required as presented in the reserve study is based upon information provided that was not audited.

A reserve study is not intended to be used to perform an audit, an analysis of quality, a forensic study or a background check of historical records. An on-site inspection conducted in conjunction with a reserve study should not be deemed to be a project audit or quality inspection.

10. Material issues which, if not disclosed, would cause the condition of the association to be misrepresented.

11. For updated reserve studies, a statement, prominently displayed, which reads substantially as follows:

Quantities of major components as reported in previous reserve studies are deemed to be accurate and reliable. The reserve study relies upon the validity of previous reserve studies.

Sec. 8. Chapter 116A of NAC is hereby amended by adding thereto the provisions set forth as sections 9 to 21, inclusive, of this regulation.

Sec. 9. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 10 to 14, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 10. *“Administrator” means the Real Estate Administrator.*

Sec. 11. *“Association” has the meaning ascribed to it in NRS 116.011.*

Sec. 12. *“Commission” means the Commission for Common-Interest Communities and Condominium Hotels created by NRS 116.600.*

Sec. 13. *“Division” means the Real Estate Division of the Department of Business and Industry.*

Sec. 14. *“Reserve study specialist” means a person who conducts a study of the reserves of an association pursuant to NRS 116.31152 or 116B.605.*

Sec. 15. *1. To obtain or renew a permit to act as a reserve study specialist, an applicant must submit:*

(a) An application on a form prescribed by the Division which includes information establishing that the applicant has the qualifications required pursuant to section 17 of this regulation; and

(b) A fee in an amount established by the Division to cover the administrative cost of issuing the permit, not to exceed \$250.

2. A permit to act as a reserve study specialist issued by the Division expires 2 years after the date of issuance unless renewed before that date.

Sec. 16. *The Division shall maintain a list of all persons who have obtained a permit to act as a reserve study specialist from the Division and make the list available to the public.*

Sec. 17. *A person is qualified by training and experience to obtain a permit to act as a reserve study specialist if:*

1. The person has:

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

(b) The ability to evaluate the items on the component inventory with regard to normal and accelerated deterioration, deferred maintenance, remaining years of useful life and the current cost to repair, replace or restore;

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

(d) The ability to review improvement plans and specifications, 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;

(e) The ability to gather and analyze financial data, including, without limitation, monthly assessment fees per unit, the current balance of reserves, the anticipated interest rate on reserves, and the anticipated inflation and maximum increases in assessment fees;

(f) The background and knowledge pertinent to all areas to be addressed by the reserve study; and

(g) Certification in a course of training from a nationally recognized professional organization that provides educational courses and national accreditation of reserve study specialists; or

2. The person:

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

(b) Uses consultants and other persons with expertise having the knowledge and abilities set forth in subsection 1 to assist in preparing the reserve study.

Sec. 18. 1. A reserve study specialist who prepares a reserve study shall:

(a) Comply with the applicable provisions of chapter 116, 116A or 116B of NRS or any regulations adopted pursuant thereto;

(b) Comply with the relevant lawful provisions of the governing documents of each client;

(c) Agree to perform only those reserve studies which the person can reasonably expect to perform with professional competence;

(d) Exercise due care and exhibit adequate planning and supervision of conduct relating to the performance of a reserve study;

(e) Disclose in writing to the client any actual, potential or perceived conflict of interest if the client has dealings with another person who:

(1) Has a financial interest in the business relationship between the reserve study specialist and the client; or

(2) Is an employee of or otherwise affiliated with the association;

(f) Maintain an inventory of reserve study records of each client for at least 6 years;

(g) Keep informed of new developments in the field of reserve studies through continuing education, including, without limitation, new developments in the law, methods of funding and other topics necessary for the proper preparation of reserve studies;

(h) Ensure that the information used to prepare a reserve study is complete based upon information provided by the client and from data reasonably available from industry sources; and

(i) Cooperate with the Division in any investigation conducted pursuant to the provisions of chapter 116, 116A or 116B of NRS or any regulations adopted pursuant thereto.

2. A reserve study specialist who prepares a reserve study shall not:

(a) Make inaccurate or misleading representations or statements to a prospective client; or

(b) Misrepresent facts for his own benefit.

Sec. 19. *Before entering into a contract to perform a reserve study, a reserve study specialist shall disclose in writing to the prospective client any material and relevant*

information that the reserve study specialist knows or should know relates to the performance of the contract for the reserve study, including, without limitation, any matters which may affect his ability to comply with the provisions of chapter 116, 116A or 116B of NRS or any regulations adopted pursuant thereto. Such disclosure must include, without limitation:

- 1. Whether he expects to receive any direct or indirect compensation or profits from any person who will perform services for the client and, if so, the identity of the person;*
- 2. His affiliation with or financial interest in any person who furnishes any goods or services to the association for which he will prepare the reserve study; and*
- 3. His personal relationship with any unit's owner, member of the executive board or officer of the association for which he will prepare the reserve study.*

Sec. 20. *1. A reserve study specialist is subject to disciplinary action if the reserve study specialist:*

(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*

(b) Has ever had a permit, license or designation from a nationally recognized professional organization 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 study specialist:

(a) Violates the provisions of:

- (1) An order of the Commission;*
 - (2) An agreement with the Division; or*
 - (3) Chapter 116, 116A or 116B of NRS or any regulation adopted pursuant thereto;*
 - (b) Engages in deceitful, fraudulent or dishonest conduct, including, without limitation, knowingly communicating false, misleading or fraudulent information to a client;*
 - (c) Applies for a permit by submitting an application which 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 in the possession or control of the reserve study specialist after the Division requests the production of such document, book or record in the course of investigating 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, a tenant of the common-interest community or a visitor 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 study specialist:*
- (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 reserve study specialist has committed unprofessional conduct or professional incompetence, the Commission and the Administrator may consider, without limitation, whether the reserve study specialist has:

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

(b) Made reasonable efforts to acquire knowledge of all pertinent facts concerning a client, including, without limitation, all material facts regarding the reserve study that are reasonably ascertainable and are of customary or express concern to the client, and conveyed that knowledge to the client;

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

(d) Complied with the disclosure requirements of section 19 of this regulation;

(e) Complied with the client's applicable governing documents, policies and procedures as they relate to a reserve study;

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

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

(h) Ensured that each agreement for services of the reserve study specialist was in writing; and

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

Sec. 21. *Any proceeding to hear a complaint filed against a reserve study specialist will be conducted in the same manner as set forth in NRS 116.770.*

Sec. 22. NAC 116.420 is hereby repealed.

TEXT OF REPEALED SECTION

116.420 Qualifications of person to conduct reserve study. (NRS 116.31152, 116.615)

A person is qualified by training and experience to conduct a reserve study if:

1. The person has:
 - (a) A good reputation for honesty, trustworthiness and integrity;
 - (b) The ability to evaluate the items on the component inventory with regard to normal and accelerated deterioration, deferred maintenance, remaining years of useful life and current cost to repair or replace;
 - (c) The ability to perform financial analysis, cost estimates and 30-year projections, as applicable;
 - (d) The ability to review improvement plans and specifications, 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;

(e) The 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 background and knowledge pertinent to all areas to be addressed by the reserve study;

or

2. The person:

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

(b) Uses consultants and other persons with expertise having the knowledge and abilities set forth in subsection 1 to assist in preparing the reserve study.