

**ADOPTED REGULATION OF THE
REAL ESTATE DIVISION OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R153-06

Effective March 23, 2007

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

AUTHORITY: §§1-4, NRS 119A.170 and 119A.190.

A REGULATION relating to time shares; setting forth provisions governing the issuance, validity and limitations of a provisional sales agent's license issued by the Real Estate Division of the Department of Business and Industry; and providing other matters properly relating thereto.

Section 1. Chapter 119A of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. 1. *The Division will grant a provisional sales agent's license to an applicant who has submitted:*

(a) A complete application for a sales agent's license in compliance with NRS 119A.210 and NAC 119A.075 and 119A.077;

(b) A written statement of acknowledgement from the project broker who will employ the applicant that:

(1) The project broker has obtained a report on the background of the applicant from a licensed private investigator or other reputable source acceptable to the Division;

(2) The project broker is satisfied that the applicant has a reputation for honesty, trustworthiness and competence; and

(3) There is a written agreement between the project broker and the applicant in which the applicant states that he understands and agrees that his employment in a position as a provisional sales agent will be terminated if the Division denies his application; and

(c) A copy of the report described in subparagraph (1) of paragraph (b), which must demonstrate that the applicant has not been convicted of, or pleaded guilty or nolo contendere to, any crime that would be grounds for the Division to deny the application pursuant to NAC 119A.085.

2. The Division will issue a provisional license to the project broker for an applicant upon verifying the applicant's complete submission of all of the required items set forth in subsection 1.

Sec. 3. 1. *A provisional license granted to an applicant by the Division will expire automatically:*

(a) If the Division denies the applicant's application;

(b) Upon the issuance of a sales agent's license to the project broker for the applicant;

(c) If the Division denies the applicant an identification card or permit of any kind;

(d) If the applicant terminates employment with the project broker who provided the written statement of acknowledgment identified in section 2 of this regulation; or

(e) If the applicant's check for the fee for the application of an original license is returned for insufficient funds.

2. An applicant may not work for a new project broker without resubmitting a complete application for a sales agent's license in compliance with NRS 119A.210 and NAC 119A.075 and 119A.077 and section 2 of this regulation.

3. *Except as otherwise provided in this section, a provisional license expires 1 year after its date of issuance and may not be renewed.*

4. *Within 10 days after an applicant's employment is terminated, the project broker shall notify the Division of the termination and return the provisional license to the Division.*

5. *If the Division denies the applicant's application, the applicant:*

(a) *May request a hearing to contest the denial of the application pursuant to NAC 119A.090; and*

(b) *Shall not work as a provisional sales agent or in any other position that requires a provisional license while the decision on the appeal requested pursuant to paragraph (a) is pending.*

Sec. 4. 1. A provisional licensee shall not:

(a) *Conduct sales-related activities unless he is:*

(1) *Under the supervision of:*

(I) *His project broker; or*

(II) *A cooperating real estate broker designated by the project broker in accordance with subsection 3 of NAC 119A.100.*

(2) *At the principal place of business or a branch office of the project broker, or at the physical location of a time-share development.*

(b) *Collect personal information from a prospective purchaser or purchaser of a time share.*

2. *A project broker shall not grant to a provisional licensee:*

(a) *Access to a time-share lockbox; or*

(b) The ability to enter a private residence or a time-share unit that an unlicensed person otherwise would not have.

3. A project broker or a cooperating real estate broker designated by the project broker in accordance with subsection 3 of NAC 119A.100 shall:

(a) Supervise the provisional licensee employed by the project broker; and

(b) Review and approve in writing any contract prepared by the provisional licensee that relates to the sale of a time share.

4. A provisional licensee may receive a commission for the sale of a time share in which the provisional licensee is involved.

5. As used in this section:

(a) "Personal information" has the meaning ascribed to it in NRS 603A.040.

(b) "Provisional licensee" means an applicant who receives a provisional sales agent's license from the Division pursuant to section 2 of this regulation.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB FILE No. R153-06**

The Real Estate Division of the Department of Business and Industry submits the following statement. The Department adopted regulations assigned LCB File R153-06, which pertain to Chapter 119A of the Nevada Administrative Code, a regulation relating to time shares; setting forth provisions governing the issuance, validity and limitations of a provisional sales agent's license issued by the Real Estate Division of the Department of Business and Industry; and providing other matters properly relating thereto.

INFORMATIONAL STATEMENT

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Notice of the proposed regulations were posted on the Real Estate Division website and in various other public locations where both the public and other interested persons would have access to that information. The Division provided the proposed regulation changes to Scott Scherer, representing the American Resort Development Association (ARDA), the industry group representing timeshare developers. The Division conducted a public workshop in Las Vegas, with video-link to Carson City, on August 17, 2006. The Adoption hearing was conducted in Las Vegas on January 22, 2007. Public comment was solicited at both public meetings.

- 2. The number of persons who:**

	<u>CC</u>	<u>LV</u>
Attended 8/17/06 workshop:	3	10
Submitted written comment:	0	1
Attended 1/22/07 Adoption:	0	3
Submitted written comment:	0	0

- 3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

This proposed regulation change to create a temporary timeshare license was initiated by the industry (resort developers) who indicated their ability to do business in Nevada was harmed by the lengthy time period required to obtain a timeshare salesman's license in Nevada, due to the background investigation. The proposed regulation is a result of several meetings with developers and project brokers. Affected businesses were invited to comment in the public workshop and adoption hearing or in writing; a summary of the oral comments are attached hereto.

Interested persons were instructed that they could obtain a copy of the comment summaries by contacting Joanne Gierer, Legal Administrative Officer, at 702-486-4033 ext. 222.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

There were amendments made to the regulation based upon the public comments made at the workshop. The Legislative Counsel Bureau also made changes prior to adoption.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

Business which it is to regulate:

(1) Both adverse and beneficial effects:

Beneficial effects: Establishes provisions governing the issuance, validity and limitations of a temporary timeshare sales agent's license which will allow an individual who has completed submitted an application, paid the fee, completed the required pre-licensing education and passed the licensing examination to begin to sell timeshares under the supervision of the project broker or managing broker.

Adverse effects: No adverse effects are anticipated to the public by the adoption of this regulation if project brokers provide the proper supervision of the temporary licensees.

(2) Both immediate and long-term effects.

Immediate effects: Timeshare project brokers will have more timely access to increased workforce of temporary licensed timeshare sales agents who are awaiting full licensure after review of their background investigation reports.

Long-term effects: Temporary timeshare licensure will allow resort development in Nevada to grow with the demand for resort destination properties in the State.

Public:

(1) Both adverse and beneficial effects:

Beneficial effects: The public will benefit from background checks conducted by the developer on all new applicants by a licensed private investigator or other reputable source acceptable to the Division until the State and Federal criminal background reports are reviewed by the Division.

Adverse effects: There are no anticipated adverse effects to the public by the adoption of this regulation.

(2) Both immediate and long-term effects:

Immediate effects: The immediate effect is that the public will be assured that temporary sales agent licensees will be trustworthy and have a reputation for honesty.

Long-term effects: The long-term effect is the developer's background investigation will serve to protect the public until the State and Federal criminal background check has been reviewed by the Division.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The Division has addressed the need for additional staffing in the Licensing Section in the Administrative budget account, B/A 3823. Enhancement Unit E-325 creates a Central Services Section within the Licensing Section, which will handle mail processing and data entry, telephone calls to the Licensing Section, and processing of background investigation results. The creation of a temporary license will mean that when the State and Federal background investigation reports are received by the Division and reviewed, the Division must then issue a permanent license. At this time, there is no statutory authority to charge a \$20 duplicate license fee for the issuance of the non-temporary license.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There is no other state, federal or other governmental agency's regulations which the proposed regulations duplicate or overlap.

8. If the regulation includes provisions, which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

None.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The regulation does not provide for a new fee.