

**ADOPTED REGULATION OF THE COMMISSION
FOR COMMON-INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS**

LCB File No. R186-07

Effective May 5, 2011

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

AUTHORITY: §§1-4 and 37, NRS 116.615; §§5-9, 11-13, 19, 24-31 and 36, NRS 116B.805; §§10, 14, 17, 18, 20, 21 and 23, NRS 116B.580 and 116B.805; §15, NRS 116B.580, 116B.585 and 116B.805; §§16 and 22, NRS 116B.585 and 116B.805; §§32-35, NRS 116B.785 and 116B.805.

A REGULATION relating to common-interest realty; providing standards of practice for members of an executive board of an association of a condominium hotel; requiring certain information to be included in reserve budgets; establishing reporting principles and practices of financial accounting for associations of condominium hotels; establishing provisions for the audit and review of financial statements for associations of condominium hotels; establishing provisions relating to reserve studies; establishing certain fees that a hotel unit owner may charge for the preparation of certain certificates; establishing provisions governing the receipt of gifts, rewards or other items of value by certain persons; requiring certain information to be disclosed in a public offering statement and resale package; requiring associations to include certain information in annual registration forms filed with the Real Estate Division of the Department of Business and Industry; making technical corrections relating to certain publications that have been adopted by reference by the Commission for Common-Interest Communities and Condominium Hotels; and providing other matters properly relating thereto.

Section 1. NAC 116.0437 is hereby amended to read as follows:

116.0437 “Guide” means the ~~[Common Interest Realty Associations—AICPA Audit and Accounting Guide,]~~ *Guide to Homeowners’ Associations and Other Common Interest Realty Associations*, as adopted by reference in NAC 116.410.

Sec. 2. NAC 116.410 is hereby amended to read as follows:

116.410 1. For purposes of providing recommended reporting principles and practices of financial accounting for common-interest communities, the Commission hereby adopts by reference the ~~[Common Interest Realty Associations—AICPA Audit and Accounting Guide, May 2004 edition.]~~ [Guide to Homeowners' Associations and Other Common Interest Realty Associations.](#) A copy of the publication may be obtained *for the price of \$222* from ~~[the American Institute of Certified Public Accountants, 1211 Avenue of the Americas, New York, New York 10036-8775, by telephone at (888) 777-7077 or at the Internet address—or <https://www.epa2biz.com/CS2000/Products/CPA2BIZ/Publications/Sub+1/Common+Interest+Realty+Associations+%97+AICPA+Audit+and+Accounting+Guide.htm>, at a price of \$47 for members and \$58.75 for nonmembers.]~~ [Practitioners Publishing Company, P.O. Box 966, Fort Worth, TX 76101-0966, by telephone at \(800\) 431-9025 or at the Internet address <http://ppc.thomson.com/SiteComposer2/Index.cfm?numProdClassID=201&txtFuse=dspShellProductDetail&numSiteID=2&numTaxonomyTypeID=29&numTaxonomyID=232>.](#)

2. If the publication adopted by reference in subsection 1 is revised, the Commission will review the revision to determine its suitability for this State. If the Commission determines that the revision is not suitable for this State, the Commission will hold a public hearing to review its determination and give notice of that hearing within 90 days after the date of the publication of the revision. If, after the hearing, the Commission does not revise its determination, the Commission will give notice that the revision is not suitable for this State within 90 days after the hearing. If the Commission does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.

Sec. 3. NAC 116.457 is hereby amended to read as follows:

116.457 1. The audited financial statement of an association must:

(a) Include a full presentation of accrual-basis accounting prepared in accordance with generally accepted accounting principles which includes, at a minimum:

(1) A balance sheet for the operating fund and reserve fund, presenting assets, liabilities and fund balances;

(2) A statement of revenues and expenses for the operating fund and reserve fund which presents information about all assessments, revenues and expenses;

(3) A statement of changes in fund balances which reconciles beginning and ending fund balances with results of operations;

(4) A statement of cash flows;

(5) Any note disclosures as required by the *Guide*; and

(6) The following unaudited supplementary information:

(I) Any reserve disclosures as required by the *Guide* and NRS 116.31152; and

(II) An accompanying schedule which compares details of the actual expenses of the association to the budgeted amounts of the association.

(b) Be prepared and completed not later than 210 days after the end of the fiscal year for the association.

(c) Be made available to the Division not later than 30 days after requested by the Division.

(d) Include on the annual registration form with the Division the following information:

(1) The amount of budgeted revenues;

(2) Whether the financial statements were audited or reviewed and, if so, the date on which the audit or review of the financial statements was completed; and

(3) Whether the audit opinion is qualified or unqualified or whether the review report is modified or unmodified.

2. An auditor performing the annual audit for an association must:

(a) Be a certified public accountant licensed pursuant to chapter 628 of NRS.

(b) Be independent of the association as set forth in ~~[Section 100, “Independence, Integrity, and Objectivity,” of the AICPA Code of Professional Conduct.]~~ the Guide.

Sec. 4. NAC 116.461 is hereby amended to read as follows:

116.461 1. The review of the financial statements of an association must be performed in accordance with the ~~[AICPA’s Statement on Standards for Accounting and Review Services as referenced in the]~~ Guide. The financial statements must include a full presentation of accrual-basis accounting prepared pursuant to subsection 1 of NAC 116.457. The supplementary information may be compiled or reviewed.

2. An auditor performing the annual review for an association must:

(a) Be a certified public accountant licensed pursuant to chapter 628 of NRS.

(b) Be independent of the association as set forth in ~~[Section 100, “Independence, Integrity, and Objectivity,” of the AICPA Code of Professional Conduct.]~~ the Guide.

Sec. 5. Chapter 116B of NAC is hereby amended by adding thereto the provisions set forth as sections 6 to 36, inclusive, of this regulation.

Sec. 6. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 7 and 8 of this regulation have the meanings ascribed to them in those sections.*

Sec. 7. *“Guide” means the Guide to Homeowners’ Associations and Other Common Interest Realty Associations, as adopted by reference in section 10 of this regulation.*

Sec. 8. *“Reserve study” means:*

1. For the major components of the common elements, the study required pursuant to paragraph (a) of subsection 1 of NRS 116B.605; or

2. For the major components of the shared components and the major components of the hotel unit, the study required pursuant to paragraph (a) of subsection 1 of NRS 116B.610.

Sec. 9. *In determining whether a member of the executive board has performed his or her duties pursuant to NRS 116B.425, the Commission may consider whether the member has:*

1. Acted outside the scope of the authority granted in the governing documents;

2. Acted for reasons of self-interest, gain, prejudice or revenge;

3. Committed an act or omission which amounts to incompetence, negligence or gross negligence;

4. Except as otherwise required by law or court order, disclosed confidential information relating to a unit's owner, a member of the executive board or an officer, employee or authorized agent of the association unless the disclosure is consented to by the person to whom the information relates;

5. Impeded or otherwise interfered with an investigation of the Division by:

(a) Failing to comply with a request by the Division to provide documents;

(b) Supplying false or misleading information to an investigator, auditor or any other officer or agent of the Division; or

(c) Concealing any facts or documents relating to the business of the association;

6. Read the governing documents of the association;

7. Kept informed of laws, regulations and developments relating to common-interest communities and condominium hotels;

8. *Cooperated with the Division in resolving complaints filed with the Division; and*

9. *Caused the association to:*

(a) *Comply with all applicable federal, state and local laws and regulations and the governing documents of the association;*

(b) *Uniformly enforce the governing documents of the association;*

(c) *Hold meetings of the executive board with such frequency as to properly and efficiently address the affairs of the association;*

(d) *Obtain, when practicable, at least three bids from reputable service providers who possess the proper licensing before purchasing any such service for use by the association;*

(e) *Consult with appropriate professionals as necessary before making any major decision affecting the association or the common elements;*

(f) *Deposit all funds for investment in government securities that are backed by the full faith and credit clause of the United States Constitution or in a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, the Securities Investor Protection Corporation or a private insurer approved pursuant to NRS 678.755;*

(g) *Maintain current, accurate and properly documented financial records;*

(h) *Establish policies and procedures for the disclosure of potential conflicts of interest and the appropriate manner by which to resolve such conflicts;*

(i) *Establish policies and procedures that are designed to provide reasonable assurances in the reliability of 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 making business decisions, facilitation of fraud*

detection and prevention and compliance with the applicable laws and regulations governing financial records;

(j) Prepare interim and annual financial statements that will allow the Division, the executive board, the residential unit owners and the accountant or auditor to determine whether the financial position of the association is fairly presented in accordance with the provisions of sections 14 to 18, inclusive, of this regulation;

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

(l) Cooperate with the Division in resolving complaints filed with the Division; and

(m) Adopt and fairly enforce the collection policies of the association.

Sec. 10. 1. *For purposes of providing recommended reporting principles and practices of financial accounting for associations for condominium hotels, the Commission hereby adopts by reference the Guide to Homeowners' Associations and Other Common Interest Realty Associations. A copy of the publication may be obtained for the price of \$222 from Practitioners Publishing Company, P.O. Box 966, Fort Worth, TX 76101-0966, by telephone at (800) 431-9025 or at the Internet address*

<http://ppc.thomson.com/SiteComposer2/Index.cfm?numProdClassID=201&txtFuse=dspShellProductDetail&numSiteID=2&numTaxonomyTypeID=29&numTaxonomyID=232>.

2. If the publication adopted by reference in subsection 1 is revised, the Commission will review the revision to determine its suitability for this State. If the Commission determines that the revision is not suitable for this State, the Commission will hold a public hearing to review its determination and give notice of that hearing within 90 days after the date of the publication of the revision. If, after the hearing, the Commission does not revise its

determination, the Commission will give notice that the revision is not suitable for this State within 90 days after the hearing. If the Commission does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.

Sec. 11. *An executive board shall, in addition to the requirements set forth in paragraph (b) of subsection 1 of NRS 116B.600, include in the budget to maintain the reserve:*

1. An estimate of the amount of reserve funds necessary in the projected fiscal year, based on comparative bids or industry standards, to complete the repairs, replacement or restoration of the major components of the common elements as recommended in the study of reserves conducted pursuant to NRS 116B.605; and

2. If the projected balance of the reserve account at the end of the budgeted fiscal year is less than the amount required to adequately fund the reserves on a reasonable basis at the end of the budgeted fiscal year, as determined by the study of reserves conducted pursuant to NRS 116B.605:

(a) The reason for the difference; and

(b) How this difference is proposed to be resolved by the executive board.

Sec. 12. *As used in NRS 116B.670, “regular working hours” means a period of at least 4 consecutive hours per week.*

Sec. 13. *The amount of the fee that an association is required to pay pursuant to NRS 116B.620 is \$3 for each residential unit in the association.*

Sec. 14. *The interim financial statements of an association must be prepared quarterly using fund accounting or a single-column presentation and must:*

1. Include, at a minimum:

- (a) A balance sheet, including operating and reserve funds, that indicates the assets, liabilities and fund balances or members' equity if a single-column format is used;*
- (b) A statement of revenues and expenses for all operating and reserve activities, presenting information about all revenues, including assessments, expenses, expenditures and reserve transfers;*
- (c) A schedule comparing the details of the actual reserve revenues and expenses of the association with the operating budget for the association;*
- (d) A schedule comparing the details of the actual reserve revenues and expenses associated with the major components of the common elements with the reserve budget for the major components of the common elements;*
- (e) Any changes in the fund balances to be presented on the statement of revenues and expenses if fund accounting is used; and*
- (f) A footnote which states that the association is in compliance with paragraph (b) of subsection 2 of NRS 116B.590 and that reserve funds have not been used for daily maintenance.*
- 2. Be prepared on a full accrual basis.*
- 3. Be prepared by, or the preparation of the interim financial statements must be supervised by, a person with accounting knowledge and experience in the preparation of financial statements.*
- 4. Be distributed at least quarterly, promptly upon completion, to the treasurer of the association, the community manager, each member of the executive board and, if requested in writing, to the hotel unit owner.*

Sec. 15. *The interim financial statements of an association subject to an audit or review pursuant to NRS 116B.585 must be presented using fund accounting and must include, at a minimum:*

1. An operating fund which reflects the accounting transactions surrounding the daily maintenance and service operations of the association; and

2. A reserve fund which reflects the accounting transactions pertaining to repair, replacement and restoration of the major components of the common elements as described in paragraph (b) of subsection 2 of NRS 116B.590.

Sec. 16. *1. The audited financial statement of an association must:*

(a) Be prepared in accordance with generally accepted accounting principles which includes, at a minimum:

(1) A balance sheet for the operating fund and reserve fund, presenting assets, liabilities and fund balances;

(2) A statement of revenues and expenses for the operating fund and reserve fund which presents information about all revenues and expenses;

(3) A statement of changes in fund balances which reconciles beginning and ending fund balances with results of operations;

(4) A statement of cash flows;

(5) Any note disclosures as required by the Guide; and

(6) The following unaudited supplementary information:

(I) Any reserve disclosures as required by the Guide and NRS 116B.605; and

(II) An accompanying schedule which compares details of the actual operating and reserve revenues and expenses of the association to the budgeted amounts of the association.

(b) Be prepared and completed not later than 210 days after the end of the fiscal year for the association.

2. The person performing the annual audit for an association must:

(a) Be a certified public accountant licensed pursuant to chapter 628 of NRS.

(b) Be independent of the association as set forth in the Guide.

Sec. 17. The financial statements of an association may provide for such other funds as the association deems appropriate to report the transactions of separate business activities, special assessments and contingency or other restricted funds.

Sec. 18. 1. The review of the financial statements of an association must be performed in accordance with the Guide. The financial statements must include a full presentation of accrual-basis accounting prepared pursuant to subsection 1 of section 16 of this regulation. The supplementary information may be compiled or reviewed.

2. The person performing the annual review for an association must:

(a) Be a certified public accountant licensed pursuant to chapter 628 of NRS.

(b) Be independent of the association as set forth in the Guide.

Sec. 19. Any action required to be taken by the hotel unit owner may be undertaken by the hotel unit owner's agent or employee or the operator of the condominium hotel.

Sec. 20. 1. The financial statements of the hotel unit owner must be prepared in accordance with generally accepted accounting principles.

2. Any budget for the hotel unit must be prepared on a full accrual basis.

3. The annual financial statements of a hotel unit owner must be audited.

Sec. 21. The interim financial statements of the hotel unit owner must be prepared in accordance with generally accepted accounting principles and must:

1. Include, at a minimum:

(a) A balance sheet which includes operating and reserve funds and which contains the assets, liabilities and fund balances or members' equity if a single-column format is used;

(b) A statement of revenues and expenses for all operating and reserve activities which presents information regarding all revenue, including assessments, expenses, expenditures and reserve transfers;

(c) A schedule:

(1) Comparing the details of the actual operating revenues and expenses of the hotel unit with the operating budget for the hotel unit and shared components; and

(2) Presenting the current year's actual operating revenues and expenses on a comparative basis with the previous year;

(d) A schedule comparing the details of the actual reserve revenues and expenses with the budget; and

(e) Any changes in the fund balances, which must be presented on the statement of revenues and expenses if fund accounting is used.

2. Be prepared by, or the preparation of the interim financial statements must be supervised by, a person with accounting knowledge and experience in the preparation of financial statements.

3. Be made available for inspection at a reasonably convenient location within the condominium hotel or the project of which the condominium hotel is a part during regular working hours upon request by residential unit owners.

Sec. 22. 1. The audited financial statements of the hotel unit owner must:

(a) Be prepared in accordance with generally accepted accounting principles and must include, at a minimum:

(1) A comparative balance sheet for the operating fund and reserve fund which presents assets, liabilities and fund balances;

(2) A comparative statement of revenues and expenses for the operating fund and reserve fund which presents information about all revenues and expenses;

(3) A comparative statement of changes in fund balances which reconciles beginning and ending fund balances with results of operations;

(4) A comparative statement of cash flows;

(5) Any note disclosures as may be required by the Guide; and

(6) The following unaudited supplementary information:

(I) Any disclosures regarding the reserves pursuant to NRS 116B.605 and as may be required by the Guide;

(II) An accompanying schedule which compares details of the actual operating revenues and expenses of the hotel unit owner against the budgeted amounts; and

(III) An accompanying schedule comparing the details of the actual reserve revenues and expenses of the hotel unit owner associated with the major components of the shared components or major components of the hotel unit against the budgeted expenses for the shared components or the applicable components of the hotel unit.

(b) Be prepared and completed not later than 210 days after the end of the fiscal year of the hotel unit.

(c) Be made available to the Division not later than 30 days after a request from the Division.

(d) Include on the annual registration form filed with the Division the following information:

(1) The amount of budgeted expenses, including both shared expenses and total expenses;

(2) The date on which the most recent audit of the financial statements was completed; and

(3) Whether the audit opinion is qualified or unqualified.

2. The person performing the annual audit for a hotel unit owner must:

(a) Be a certified public accountant licensed pursuant to chapter 628 of NRS.

(b) Be independent of the association as set forth in the Guide.

Sec. 23. *The financial statements of a hotel unit owner may provide for such other information as the hotel unit owner deems appropriate to report the transactions of separate business activities, special assessments, contingency or other restricted funds or any other reserve or separate account used for any purpose other than the repair, replacement or restoration of the major components of the shared components or the major components of the hotel unit.*

Sec. 24. *For purposes of NRS 116B.590 and 116B.595, “adequate reserves” means the funds sufficient to maintain the common elements and shared components:*

1. At the level described in the governing documents and in a reserve study; and

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

Sec. 25. 1. *For purposes of NRS 116B.610, a reduction in the useful life of each major component of the shared components and each major component of the hotel unit may be determined based upon local or other applicable industry standards.*

2. *In addition to the criteria set forth in subsection 1, a reserve study specialist may also consider reasonable business or operating concerns or objectives of the hotel unit owner in determining a reduction in the useful life of the shared components and each major component of the hotel unit. A reduction in the useful life based upon such concerns or objectives must be clearly noted in the reserve study or review of the reserve study by the hotel unit owner.*

3. *A reserve study must clearly disclose the basis for or the factors used by the reserve study specialist in determining the useful life or remaining useful life of each major component of the shared components and each major component of the hotel unit.*

Sec. 26. *As used in NRS 116B.815, “annual assessment” means both the per-unit assessments and the total budget revenues for the association.*

Sec. 27. 1. *Except as otherwise provided in subsections 2 and 3, a hotel unit owner may not charge more than \$160 for preparing the certificate required by subsection 3 of NRS 116B.760.*

2. *If a unit’s owner or the authorized agent of the unit’s owner requests that the certificate described in subsection 1 be provided sooner than 3 business days after the date of the request, the hotel unit owner may, in addition to the fee set forth in subsection 1, charge a fee not to exceed \$125 to expedite the preparation of the certificate.*

3. *In addition to the fees set forth in subsections 1 and 2, the hotel unit owner may charge a reasonable fee for additional copies or any other service.*

Sec. 28. *No member of an executive board or officer of an association shall receive, in the aggregate, any gift, incentive, gratuity, reward or other item of value pursuant to subsection 2 of NRS 116B.695 in any calendar year which exceeds the sum of \$100.*

Sec. 29. *No community manager or employee of the community manager shall receive, in the aggregate, any gift, incentive, gratuity, reward or other item of value pursuant to subsection 2 of NRS 116B.695 in any calendar year which exceeds the sum of \$500.*

Sec. 30. *1. As used in NRS 116B.695, the term “gifts, incentives, gratuities, rewards or other items of value” does not include:*

(a) Any prepaid tuition for an approved class within the State for members of an executive board, officers of an association, community managers or employees of the community manager;

(b) The cost or value of an approved class that is offered free of charge; and

(c) The cost or value of any breakfast, lunch, snack or hot or cold nonalcoholic beverage provided at an approved class or during the breaks of an approved class.

2. A member of the executive board or an officer of the association who attends or participates in an approved class must disclose his or her attendance or participation in the approved class to the executive board at the next meeting of the executive board after the date of the approved class.

3. As used in this section, “approved class” means a course which has been approved pursuant to the provisions of this chapter and which at all times satisfies the requirements of this chapter.

Sec. 31. *Nothing in sections 28, 29 and 30 of this regulation is to be construed as permitting a member of an executive board, an officer of an association, a community*

manager or an employee of the community manager to solicit or accept any form of compensation, gratuity or other remuneration in violation of the provisions of subsection 1 of NRS 116B.695.

Sec. 32. 1. *In addition to the information required by NRS 116B.735, a public offering statement must also contain the following information:*

(a) If a contract to manage the shared components and the hotel unit exists, the name of the hotel operator or management company that is a party to the contract and the terms of the contract; and

(b) A statement which reads substantially as follows:

Chapter 116B of NRS does not address or require the disclosure of information regarding the use of your unit as a transient rental. If you desire or intend to use your unit for transient rental purposes, you should be aware that, before the execution of a contract to purchase a unit, federal law severely limits the provision of any information regarding the use of your unit for transient rental purposes. In making a decision whether to use your unit for transient rental purposes after executing a contract to purchase the unit, you should carefully evaluate all information provided to you by a rental management company or the hotel operator or an agent of the hotel operator. As part of your review of such information, you should also consult with a competent professional such as an attorney or an accountant to assist you in your review and evaluation of the information provided by the rental management company or the hotel operator or his or her agent.

2. If the name of the hotel operator or management company and the terms of a contract are included pursuant to paragraph (a) of subsection 1, an additional statement providing that no guarantees, representations or warranties are made regarding the identity of the hotel operator or management company or the name of the condominium hotel may also be included.

Sec. 33. In addition to the information required by subsection 1 of NRS 116B.760, a unit's owner or the authorized agent of the unit's owner must also include with the resale package:

1. A statement informing the purchaser whether the unit to be sold is subject to any rental management agreement that is legally binding upon the purchaser after the purchase of the unit; and

2. If the unit to be sold is subject to a rental management agreement that is legally binding upon the purchaser after the purchase of the unit, a copy of the rental management agreement and any amendments or modifications.

Sec. 34. In addition to the information required by NRS 116B.735 and 116B.760, the public offering statement and resale package must also include, to the extent available:

1. A narrative description of all the shared components of the condominium hotel, together with any other portion of the hotel unit not otherwise characterized as shared components, for which the unit owners will be assessed a portion of the operation and maintenance expenses;

2. A schedule summarizing the representative charges, expenses or assessments a prospective buyer would be required to pay each month for each type of unit and any

disclaimer that is appropriate to present such information in a fair and complete manner, including at least a statement indicating that the information provided:

(a) Is only a projected estimate and the actual charges, expenses or assessments may vary from actual expenditures or in conjunction with actual operating conditions or as necessary to accommodate changed circumstances;

(b) Is only a categorical presentation and does not specify each charge, expense or assessment separately; and

(c) Does not provide for any additional adjustments to charges, expenses or assessments that may occur due to a transient rental program;

3. If completed, a copy of the most recent audited or reviewed financial statements;

4. If completed, a copy of the most recent reserve study for the major components of the shared components or the major components of the hotel unit;

5. Any supplemental disclosure statement form prepared by the Division; and

6. The following cautions or warnings in bold type and large font:

1. Are you aware of all charges, expenses and assessments for which you will be responsible as a residential unit owner, both on a monthly and annual basis?

2. Do you specifically understand your obligations with respect to: (1) shared expenses; (2) reserve requirements for the major components of the shared components and the major components of the hotel unit; and (3) the budget for the hotel unit and the association? Are you aware of the potential assessments or costs for which you may have to pay your proportionate share? Are you aware that the hotel unit owner has the

power to place a lien on your unit and foreclose for unpaid shared expenses or other charges?

3. Do you understand the relations and interactions among you and the association, other residential unit owners, the hotel unit owner, hotel operator or management company? Are you aware that the majority of the condominium hotel may be owned or controlled by the hotel unit owner and that you will be subject to obligations and costs which will be determined by the operation and business goals of the condominium hotel, and that these obligations and costs may change in the future? Are you aware that the role of the association in the governance and operation of the condominium hotel may be extremely limited?

Sec. 35. *The Division may prepare a supplemental disclosure statement form which encourages prospective buyers to be informed and which addresses matters that the Division has determined to be important to prospective purchasers.*

Sec. 36. *An association must include on the annual registration form filed with the Division the following information:*

- 1. The total amount of budgeted revenues and expenses of the association;*
- 2. Whether the financial statements of the association were audited or reviewed and, if so, the most recent fiscal year-end for which the audit or review was completed and accepted by the executive board; and*
- 3. Whether the audit opinion is qualified or unqualified or whether the review report is modified or unmodified.*

Sec. 37. NAC 116.015 and 116.072 are hereby repealed.

TEXT OF REPEALED SECTIONS

116.015 “Audited financial statement” defined. (NRS 116.615) “Audited financial statement” has the meaning ascribed to it in the Guide.

116.072 “Reviewed financial statement” defined. (NRS 116.615) “Reviewed financial statement” has the meaning ascribed to it in the Guide.

NOTICE OF ADOPTION OF REGULATION

The DEPARTMENT OF BUSINESS & INDUSTRY, REAL ESTATE DIVISION, Adopted regulations assigned LCB File No. R186-07, which pertain to Chapter 116B of the Nevada Administrative Code on December 7, 2010. A copy of the regulation as adopted is attached hereto.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
LCB FILE NO. R186-07**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 116B.

- 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 regulation was posted on the Real Estate Division website, at each State library and in various other public locations where both the public and other interested persons would have access to that information.

The Division conducted five public workshops and an adoption hearing, all of which were video conferenced to Las Vegas and Carson City. Public comment was solicited at each workshop and at the adoption hearing.

Number of persons who attended:

	<u>CC</u>	<u>LV</u>
Attended Workshop: 11/30/07	2	7
Submitted written comments:	0	0
Attended Workshop: 03/20/08	2	32
Submitted written comments:	0	0
Attended Workshop: 12/03/08	2	25
Submitted written comments:	0	0
Attended Workshop: 02/10/09	3	14
Submitted written comments:	0	0
Attended Workshop: 05/12/09	0	4
Submitted written comments:	0	0
Attended Adoption: 12/07/10	7	25
Submitted written comments	0	0

2. 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.

The public was invited to comment at each of the five public workshops and/or at the adoption hearing, or in writing. Additionally, since March 2005 through December 7, 2010, the Commission has had a standing agenda item each meeting to discuss and review Chapters 116, 116A and 116B of NAC in order to make recommendations for proposed changes, additions, and deletions. At each public meeting, the Commission has considered possible changes to the Nevada Administrative Code for Chapters 116, 116A and 116B and solicited public comment, to discuss and formulate their proposals for changes.

Interested persons were instructed that they could obtain copies of comment summaries by contacting Joanne Gierer, Legal Administrative Officer, at 702-486-4036.

Minutes of the Commission's meetings are available on the Division website and by contacting Joanne Gierer, Legal Administrative Officer, at 702-486-4036.

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

Changes were made to the regulation based upon public comment at all five workshops and at the December 7, 2010 Adoption Hearing.

4. 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:

(a) Both adverse and beneficial effects:

R186-07 is a result stemming from the passage of AB 431, during the 2007 Legislative Session. AB 431 established provisions governing condominium hotels and mirrored most of the legislation after NRS 116. The intent of this regulation is as follows:

A REGULATION relating to common-interest realty; providing standards of practice for members of an executive board of an association of a condominium hotel; requiring certain information to be included in reserve budgets; establishing reporting principles and practices of financial accounting for associations of condominium hotels; establishing provisions for the audit and review of financial statements for associations of condominium hotels; establishing provisions relating to reserve studies; establishing certain fees that a hotel unit owner may charge for the preparation of certain certificates; establishing provisions governing the receipt of gifts, rewards or other items of value by certain persons;

requiring certain information to be disclosed in a public offering statement and resale package; requiring associations to include certain information in annual registration forms filed with the Real Estate Division of the Department of Business and Industry; making technical corrections relating to certain publications that have been adopted by reference by the Commission for Common-Interest Communities and Condominium Hotels; and providing other matters properly relating thereto.

- (b) **Both immediate and long-term effects.**
Same as in (a).

5. **Public:**

- (a) **Both adverse and beneficial effects:**

The Real Estate Division does not foresee any adverse effects due to the passage of R186-07.

Beneficial effects are listed in item number 4(a).

- (b) **Both immediate and long-term effects:**
Same as in (a).

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

The agency currently has the appropriate number of staff to enforce this regulation at no additional cost.

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.**

None.

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.**

There are no new fees or increases in existing fees.

**COMMISSION FOR COMMON-INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS
R186-07 NAC 116B WORKSHOP**

11/30/07

Page 2-Members of executive board: Responsibilities

Chairman Buckley stated that at the end of section 8 the word “and” should be stricken and placed after section 9.

Sara Barry stated that in section 7 asked if the association’s funds are to be insured or the bank. Chairman Buckley stated that should change to the state ‘whose accounts are insured’.

Page 3-Responsibilities of executive board

Chairman Buckley stated that on page 3 in the first sentence the word “evidence” should be “evidenced” and that “fulfill” should be “fulfills”.

Chairman Buckley stated that on page 3 in the first section subsection 2 there should be a comma after the word association not a semi-colon.

Page 4-Availability of records of association

Chairman Buckley asked Ms. Shavinsky if there should be a reference to NRS 116B instead of NRS 116.31175. Ms. Shavinsky stated that Chairman Buckley was correct.

Sam McMullin stated that it is supposed to be NRS 116B.670

Page 8-Reviewed Financial Statements

Mandy Shavinsky stated that the first sentence in section 1 should end “in accordance with generally accepted accounting principles” and to delete the reference to AICPA’s Statement of Standards.

Mr. McMullin stated that there was a suggestion that this section be entirely deleted. Mr. McMullin stated that interim financial statements are not audited.

Page 8-Determination of Useful Life

Chairman Buckley stated that in section 2 to delete the word “to”.

Page 10-Transient Rental Disclosure

Ms. Shavinsky stated that Karen Dennison inquired as to whether the references to “the use of unit for transient rental purposes” should be changed to “management”.

Pate 11-Public Offering Statement

Mr. McMullin stated that the statutes cited in the first paragraph should state NRS 116B.142 should be NRS 116B.745 and NRS 116B.147 should be NRS 116B.760.

Public Comment

Jan Porter stated that on page 3 under MEMBERS OF THE EXECUTIVE BOARD: PROHIBITED ACTS section 4 the Commission might want to get an Attorney General's Opinion on this section in regards to the statute. Ms. Porter stated that she learned in a class that she took that if a person disclosed that they were not a member in good standing by virtue of not paying assessments and it was not disclosed could the other board members state of the ballot that the person is not in good standing. Ms. Porter stated that the A.G.O as to what the board should do if this is not disclosed.

**COMMISSION FOR COMMON-INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS WORKSHOP**

MARCH 20, 2008

**DEPARTMENT OF BUSINESS AND INDUSTRY
2501 E. SAHARA AVE.
2ND FLOOR CONFERENCE ROOM
LAS VEGAS, NEVADA 89104**

**VIDEO CONFERENCE TO:
DEPARTMENT OF BUSINESS AND INDUSTRY
788 FAIRVIEW DR.
CONFERENCE ROOM
CARSON CITY, NEVADA 89701**

WORKSHOP SUMMARY

MARCH 20, 2008

9:13 A.M.

Regulation workshop on proposed regulation known as LCB File No. R 186-07.

Introduction of Commissioners in attendance:

Michael Buckley, Shari O'Donnell, Marilyn Brainard, Jeannie Redinger, Senior Deputy Attorney General Nancy Savage as Commission Counsel

Introduction of Division staff in attendance:

Ann McDermott, Administrator; Lindsay Waite, Ombudsman; Bruce Alitt, Chief Compliance Investigator; Joanne Gierer, Legal Administrative Officer; Sonya Meriweather, Program Officer; Teralyn Thompson, Commission Coordinator; Nick Haley, Education and Information Officer; Susan Clark, Licensing Manager

In Carson City: Chris Cooke, Compliance Investigator

Sec. 1: No comment.

Sec. 2: No comment.

Sec. 3: No comment.

Sec. 4: No comment.

Sec. 5: No comment.

Sec. 6: No comment.

Sec. 7: Jonathan Friedrich – Las Vegas: **Section 7(3):** Seems very vague. Suggested adding a time frame, such as every 90 days. **Section 7(6):** This subsection also sounds very vague.

Jan Porter – Las Vegas: **Section 7(10)(f):** Suggested adding the word “approved” before the word “financial” in the first sentence.

Sec. 8: Jonathan Friedrich – Las Vegas: **Section 8(3):** Needs some teeth in it. Add something that would indicate that the individual shall be held personally liable to the association.

Sec. 9: No comment.

Sec. 10: Jonathan Friedrich – Las Vegas: **Section 10(1):** Suggests adding a time mechanism for soliciting bids.

Sec. 11: No comment.

Sec. 12: No comment.

Sec. 13: No comment.

Sec. 14: Jonathan Friedrich – Las Vegas: **Section 14:** Where it says the financial statements of an association subject to an audit, who is the audit subject to the Commission, the homeowner the State? Seems very vague.

Sec. 15: Sam McMullen – Las Vegas: **Section 15(1)(a)(6)(II):** Asked for a clarification regarding “An accompanying schedule” does it intend a categorical summary? Does level of detail mean categorical summary?

Sec. 16: No comment.

Sec. 17: No comment.

Sec. 18: No comment.

Sec. 19: No comment.

Sec. 20: Mandy Shavinsky – Las Vegas: **Section 20(3):** Doesn’t think that anyone has any objections to making the records available but if there is another management office on the premises of a very large mixed use project it would seem that there should be a reasonable amount of miles or some type of requirement that they be kept on site of whatever the project is. The condominium hotel itself maybe very limited and may be inconvenient for the hotel operator to keep the records onsite. The reference to condominium hotel should be changed to reasonably convenient location within the condo hotel or perhaps the overall project where the condominium hotel is located or is part of.

Jan Porter – Las Vegas High Rise & Condominium Association: The Association agrees with the comments brought forth by Ms. Shavinsky. **Section 20(1)(b):** In line with what Mr. McMullen stated, would like to see the word “detail” replaced with “categorical summary.”

Jonathan Friedrich – Las Vegas: **Section 20(3):** Add “and at no charge to the owner” at the of the sentence.

Sam McMullen – Las Vegas: Mr. McMullen state that he has been grappling over the interim financial statement thing. Generally, in 16 regulations there is are reference to and some kind of delineation of interim financial statements. Thinks it might be worth noting that this section probably has the greatest application in the context of a condominium hotel with respect to the statutory inclusion added to make sure that in the context of an annual meeting for the association there would be a presentation from hotel the unit owner about where they were at that time. In fact, those two may not match. The annual meeting may not necessarily match the schedule for the preparation and finalization of either the fiscal year for the hotel unit owner or the preparation of documents. A requirement was added that whatever the status was at the time, would be adequately displayed because at least at the annual meeting there would be, even if that was 6 months off, it would be where you were in the year and it would be an interim report of where you are at..

Sec. 21: Jan Porter – Las Vegas High Rise & Condominium Association: **Sec. 21(2)(3):** Ms. Porter stated that she agrees with Mr. McMullen’s language change in subsection 2 and also use the same change in subsection 3, the word “detail” replaced with “categorical summary.”

Sec. 22: Jonathan Friedrich – Las Vegas: Would it be appropriate to ask the association how many bank accounts they have?

Sec. 23: Jonathan Friedrich – Las Vegas: Has a lot of trouble with the words “adequate reserves.” It should be defined as 50%, 75%, 80%, very, very, vague and has been the subject of some litigation on his part with his homeowners association.

Sec. 24: No comment.

Sec. 25: No comment.

Sec. 26: Jonathan Friedrich – Las Vegas: **Section 26(1):** Fee of \$160 sounds excessive. **Section 26(2):** Fee of \$125 sounds excessive.

Jan Porter – Las Vegas High Rise & Condominium Association: Would you please entertain the thought of adding the following language from subsection 2 “or his authorized agent” to subsection 1 after the words “a hotel unit owner.”

Sec. 27: No comment.

Sec. 28: No comment.

Sec. 29: No comment.

Sec. 30: No comment.

Sec. 31: No comment.

Sec. 32: Jonathan Friedrich – Las Vegas: Add “at no charge to the purchaser.”

Sec. 33: No comment.

Sec. 34: Jonathan Friedrich – Las Vegas: Applauds this section and would like to see it taken one step further by having the developer or management company prepare a video which explains to the prospective buyer what their obligations and responsibilities are, rather than just handing them a piece of paper, that they don’t bother to read, until problems start thereafter.

General comments:

Workshop adjourned on March 20, 2008 at 10:20 a.m.

3-L) Discussion and possible action on proposed changes, additions and deletions to NAC 116, 116A and LCB File No. R186-07; including review of public comments from regulation workshop held March 20, 2008.

Chairman Buckley stated that written comments will be accepted until April 3, 2008, on the regulation and can be mailed or emailed to Terilyn Thompson.

Page 3

Chairman Buckley stated that Jon Friedrich commented that the language in sections 7(3) and 7(6) is vague but it is the existing language in NRS 116 and it makes sense to keep the language the same.

Commissioner O’Donnell stated that subsection 10 begins with “If the association does not employ a community manager” but has a number of things that the board is required to do whether they have professional management or not. Commissioner O’Donnell asked if this was sufficiently addressed anywhere else.

Ms. Savage stated that it is addressed in NRS 116A which pertains to community managers.

Chairman Buckley asked why the duties are not the obligation of all boards.

Commissioner O'Donnell stated that subsection 10 should begin "Whether or not the board employs a community manager, the board must" so that it puts the onus on the board in either case.

Chairman Buckley suggested language that states "The board must do these duties, however if the board employs a community manager, the board has satisfied its obligation if these duties have been delegated to the community manager." Chairman Buckley stated that all of the items in subsection 10(a) through (g) are duties of the board but there is an acknowledgement that these are duties that would be done through a manager if there was one.

Page 4

Commissioner Brainard agreed with Mr. McMullen's comment regarding adding 'approved' before financial records in section 7(f).

Chairman Buckley read the definition of financial records from page 2 and stated that there is a difference between financial records and financial statements. Chairman Buckley stated that since it is not a financial statement do not have to be approved.

Commissioner Brainard stated that it should state "financial records that have been accepted by the board".

Chairman Buckley asked Ms. Savage to check the Nevada Revised Statute because the Commission might already be locked into that language based on what the statute already states. Chairman Buckley asked, from a policy point of view, what type of records should be available.

Ms. Waite stated that issues regarding record requests are usually resolved once they get to the conference with her.

Mr. Alitt read NRS 116.3118(2) and stated that certain associations do not want to make their records available but once the Division steps in the homeowner is usually satisfied.

Ms. Waite stated that parts of the statute that allow an hourly or per copy charge are helpful because it limits the extent of request.

Chairman Buckley stated that it does not need to be changed because it is only dealing with records and not statements that require approval.

Chairman Buckley stated that page 4 of the CCICCH Proposed Regulation hand out added a requirement about insurance. Chairman Buckley requested that Ms. Savage make a note that after Section 7(g), there is language in the Commission's proposed regulations that deals with the obligation of the board to make sure that the association has appropriate insurance.

Page 5

Mr. Alitt stated that section 9(1) should end with “May 2007 edition” because the fees, telephone number and website address is subject to change.

Chairman Buckley stated that the Legislative Counsel Bureau required having that information added. Chairman Buckley stated to strike “within 90 days after the date of the publication of the revision” from section 9(2).

Chairman Buckley stated that Mr. Friedrich’s comment regarding a person being personally liable if there is incompetence, negligence or gross negligence is already addressed in the NRS which states “if the Commission finds in a hearing that it is willful then there is personal liability”.

Page 7

Chairman Buckley stated that Mr. Friedrich thought that section 14 was vague. Chairman Buckley stated that the statute is clear in regards to what types of associations must have audited financials based on the amount of the budget.

Page 8

Leave “details of” in the regulation.

Page 9

Chairman Buckley stated that section 15(d) should be a separate section that states “The annual registration form must include:”

Chairman Buckley stated that in section 15(2) the term “association” is used but page 3 section 7(4) states “an association for a condominium hotel”. Chairman Buckley stated that the terminology should be consistent throughout the regulation.

Page 10

Sam McMullen stated that NRS 116.520(12) states where interim financial statements would be used.

Chairman Buckley read NRS 116.520(12) and stated that NRS 116B.685 is the statute that references financial books and records for the hotel unit. Chairman Buckley stated that there would need to be a regulation that states where and how they are used.

Page 11

Chairman Buckley stated that Mandy Shavinsky’s comment on section 20(3) which suggested adding “within the condominium hotel or the project of which the condominium hotel is a part” should be added.

Sec. 20: Mandy Shavinsky – Las Vegas: **Section 20(3):** Doesn’t think that anyone has any objections to making the records available but if there is another management office on the premises of a very large mixed use project it would seem that there should be a reasonable amount of miles or some type of requirement that they be kept on site of whatever the project is. The condominium hotel itself maybe very limited and may be inconvenient for

the hotel operator to keep the records onsite. The reference to condominium hotel should be changed to reasonably convenient location within the condominium hotel or perhaps the overall project where the condominium hotel is located or is part of.

Chairman Buckley answered Mr. Friedrich's comments and stated that the Commission will deal with what the statute says regarding the availability of the records. Chairman Buckley stated that the Commission would need to look at how and where the records come into NRS 116B.

Chairman Buckley read section 21(1)(a)(3) and asked Mr. McMullen what that section meant.

Mr. McMullen stated that it is probably incorrect to use the terms "applicable components". Mr. McMullen stated that the word "applicable" is replacing the word "major". Mr. McMullen stated that the words "major components" should be added back in.

Chairman Buckley read "which the major components of the shared components or major components of the hotel unit". Chairman Buckley stated that these are the statutory terms from NRS 116B.160 and NRS 116B.165.

Chairman Buckley stated that section 21(1)(d) dealt with the registration form not the audit and should have its own section.

Page 12

Chairman Buckley stated that Mr. Friedrich inquired about the bank accounts in section 22. Chairman Buckley stated that the statute deals with the records that have to be made available and some accounts might be strictly dealing with the hotel unit. Chairman Buckley stated that he would rather use the term "financial records" since it is already in the statute.

Chairman Buckley stated that adequate reserves is used in the statute and section 23 offers a safe harbor because it is impossible to define adequate reserves.

Chairman Buckley asked Ms. Savage if reserve study specialist is a defined term in section 24. Chairman Buckley stated that it should be brought to the Legislative Counsel Bureau's regulation drafter's attention that the term "reserve study specialist" needs to be defined.

Page 13

Chairman Buckley responded to Mr. Friedrich's comment regarding section 26 by stating that the dollar amounts are the same numbers that were used and derived from a public hearing a couple of years ago. Chairman Buckley stated that there was public input that reached the consensus that \$160.00 was an appropriate amount with the expedite fee. Chairman Buckley stated that "certificate" is the same term used in the statute.

Chairman Buckley stated that Jan Porter suggested adding "a hotel unit owner or his agent" to section 26. Chairman Buckley stated that he hesitates to make that change because the language is the same as Chapter 116.

Page 15

Chairman Buckley read the statement in section 31(1)(b) and asked Mr. McMullen if the CC&Rs will specifically address the use of the unit for transient rental purposes.

Mr. McMullen stated that he had discussed this with Mandy Shavinsky and the statement is disclosure prevention. Mr. McMullen stated that they felt that the statement should be understandable, readable and should alert people. Mr. McMullen stated that the statement is to inform people that if someone is not giving them this information it is because there are federal laws preventing them. Mr. McMullen stated that it does not limit any reference in the CC&Rs as to how the unit can be used.

Commissioner O'Donnell asked if the hotel operator is prohibited from discussing the frequency that owners can anticipate their unit being rented or the revenue that will be generated.

Mr. McMullen stated that it is broader than that and securities law state that there should not be information available from the person selling the unit regarding the rental program. Mr. McMullen stated that a buyer has to make a separate investment decision.

Chairman Buckley asked Mr. McMullen to talk to Ms. Shavinsky about a specific reference to NRS 116B as to what the term "herein" means.

Page 16

Chairman Buckley asked Mr. McMullen to look at section 32(1). Chairman Buckley stated that this section requires the unit owner to include a statement on whether the unit is subject to a management agreement that is legally binding upon the purchaser. Chairman Buckley stated that the purchaser would not know if the agreement is legally binding and that "legally" should be removed.

Mr. McMullen agreed with Chairman Buckley.

Page 17

Commissioner Brainard suggested changing the word "may" in section 34 to "shall". A lengthy discussion ensued.

Ms. Savage suggested keeping it as "may".

Chairman Buckley stated that section 5 should list the cautions from subsections 1-3 from section 34. Chairman Buckley stated that there will be a new section 33(6) which will be what subsection 5 stated before the language "Any supplemental disclosure statement form prepared by the Division". Chairman Buckley stated that section 34 should state "The Division may prepare a supplemental disclosure statement form encouraging prospective buyers to be informed and which addresses matters that the Division has determined to be important to prospective buyers."

Commission discussed a document that was available to the public entitled "Proposed CCICCH Regulations" that was drafted by Chairman Buckley on January 24, 2008.

Chairman Buckley stated that after the legislative session the Commission came up with a number of proposed regulations that would address some of the concerns that the legislature was trying to address.

Page 1

Chairman Buckley stated that the first section was missing his comment which said that no new audit is necessary if already done. Declarant should pay for the cost of the ancillary audit and the cost to go back to do prior audits if not previously done.

Chairman Buckley stated that the second section #3 addresses the problem that the Division has notifying board members that a complaint has been filed because the Division does not have record of current board members.

Ms. Meriweather agreed with Chairman Buckley. Ms. Meriweather stated that the Division would also like board members to give the Division their physical addresses and telephone numbers. Ms. Meriweather stated that board members usually list the address and telephone number of the management company.

Mr. Alitt stated that board member's addresses and phone numbers would be confidential.

Ms. Meriweather stated that she had language to add to the regulations regarding the addresses and telephone numbers of current board members.

Page 2

Chairman Buckley stated that there is nothing else for the Commission to do with the first section except refer it to the Real Estate Commission to review.

Page 3

Chairman Buckley stated that in the second section #17 the word "ensure" should be changed to reflect that the manager should advise the association whether the applicable types and amounts of insurance that the association maintains comply with the governing documents and NRS 116.

Chairman Buckley stated that the word "ensure" in section #18 is satisfactory.

Commissioner Brainard stated that in the second section #8 there should be a comma after the word "actual".

Chairman Buckley requested that Ms. Gierer prepare these regulations to be sent to the Legislative Counsel Bureau.

Ms. Meriweather stated that with the change in the law, master associations are required to pay the unit fees conveyed for the sub-associations. Ms. Meriweather stated that the Division is finding a discrepancy in what master associations are paying and what sub-associations are recording on the annual registration forms. Ms. Meriweather stated that master associations are supposed to submit the fees and sub-associations are supposed to submit the registration form but the numbers are not matching. Ms. Meriweather stated that sub-associations should be obligated

to master associations to report the amount of units there are so that master associations can pay for the correct amount of units. Ms. Meriweather stated that the Division send master associations remittance forms 45 days before the due date and request that sub-associations let the master associations know how many units it has by the 10th day of the month in which the payment is due.

Commissioner Brainard asked why the Division was getting involved as long as the master associations pay the total amount that is due.

Ms. Meriweather stated that master associations are saying that they do not know how many units' sub-associations have. Ms. Meriweather stated that the Division will have a new process where master associations will be penalized for sub-associations lack of information.

Chairman Buckley asked Ms. Gierer to put Ms. Meriweather's proposed change with the other regulations going to the Legislative Counsel Bureau.

Ms. McDermott stated that the Division is developing the ability to process online license renewal transactions. Ms. McDermott stated that in order to carry out this function the Division would need to be able to obtain electronic fingerprints to eliminate paper submissions. Ms. McDermott stated that some regulations would need to be adopted for this requirement. Ms. McDermott stated that there would need to be a regulation for continuing education providers to provide electronic submissions of people who have attended classes.

Chairman Buckley asked Ms. McDermott to prepare the regulations and give them to Ms. Gierer so that they can be sent to the Legislative Counsel Bureau.

Ms. Gierer stated that she had a proposed regulation regarding administrative sanctions in NAC 116.351. Ms. Gierer stated that the Division would like to raise the fine amounts for the first and second offense. Ms. Gierer asked if NAC 116.351(4)(e) is correct regarding if a sanction has not been paid or education has not been completed, would the matter be referred to the Commission for Common-Interest Communities and Condominium Hotels or would it be referred to the Real Estate Commission. Ms. Gierer stated that if the matter would not go to the Real Estate Commission NAC 116.351(4)(f) would need to be removed. Ms. Gierer stated that the first offense is \$500.00, the second offense is \$1,000.00 and there are a number of repeat offenders.

Ms. McDermott stated that the Division purposed to make the first offense a maximum of \$1,000.00 and the second offense \$2,500.00 to \$5,000.00.

Chairman Buckley stated that it should be deferred to the Division.

Commissioner Redinger stated that the Division should be stricter on supervising community managers.

Chairman Buckley stated that he agreed with \$1,000.00 or \$5,000.00 knowing that it will be up to the Division to decide the amount of a fine and that it can be appealed to the Commission.

Ms. Gierer stated that the Division would like the continuing education providers to require identification when a licensee takes a course for education.

The Commission agreed that picture identification should be required.

**COMMISSION FOR COMMON-INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS WORKSHOP**

R186-07 (NAC 116B) PUBLIC WORKSHOP

LAS VEGAS
BRADLEY BUILDING
2501 E. SAHARA AVENUE
2ND FLOOR CONFERENCE ROOM
LAS VEGAS, NV 89104

Video-Conferenced to:

CARSON CITY
DEPT. OF BUSINESS & INDUSTRY
788 FAIRVIEW DRIVE
HEARING ROOM
CARSON CITY, NV 89701

December 3, 2008

1:37 p.m.

SUMMARY OF PUBLIC COMMENT

Introduction Of the Commissioners In Attendance:

Michael Buckley, Marilyn Brainard, Randolph Watkins, Gary Lein and Jeannie Redinger. Nancy Savage, Senior Deputy Attorney General, served as Commission Counsel.

Introduction Of the Division Staff In Attendance in Las Vegas:

Ann McDermott, Bruce Alitt, Joanne Gierer, Linda Pierson, Sonya Meriweather, Lindsey Waite and Nick Haley.

Introduction Of the Division Staff In Attendance in Carson City:

Chris Cooke.

Chairman Buckley explained the Workshop procedures and conducted the Workshop.

Sections 1 & 2:

No comment.

Sections 3 and 4:

Sam McMullen with Snell and Wilmer stated that he thought that 'financial books and records' were for the hotel unit owner. Mr. McMullen stated that it may be worth making that differential because there are two financial records definitions.

Sections 5 & 6:

No comment.

Section 7:

Bob Robey with Sun City Summerlin Community Association stated that this language regarding investing money has to be so tight that people have to put it in insured funds. Mr. Robey stated that if he buys a condominium hotel, he does not know where the money is being placed.

Jonathan Friedrich read page 2 subsection 3 and stated that the language is very vague. Mr. Friedrich asked if that would mean once a month, once every six months and suggested that it state every 90 days. Mr. Friedrich stated that on page 3 subsection 10(a), should have a period of time like a year, two years, five years or ten years.

Jim Melsek commented on page 2 subsection 9 regarding disclosure of potential conflict of interest. Mr. Melsek stated that on the meeting room table he saw the Candidacy Biography Statement and assumed it has some reference to that section. Mr. Melsek stated that speaking from an association that did have a conflict of interest issue which caused embarrassment to some people because they didn't know, something like this is outstanding to include as a clear affirmative step for potential candidates.

Nancy Savage stated that she had discussed with the Commission that this section in NRS 116B and NRS 116.400 or NRS 116.405 relates back to the board members fiduciary obligation to the association. Ms. Savage stated that on behalf of the Division and the Attorney General's Office she has expressed some concerns that it is a little broader and seems to add duties that may not fall within the scope of what is described as fiduciary obligations. Ms. Savage proposed that the introductory language will be something to the effect "In determining whether a board member has met their fiduciary obligation consideration should be given to whether the board member has: Complied with all applicable federal state and local laws". Ms. Savage stated that the first words in the subsections should be changed to past tense and it would probably address everyone's concerns.

Section 8:

Nancy Savage commented on subsection 5(a) and stated that during the course of an investigation the Division sends letters requesting information as well as documents. Ms. Savage suggested that the section be broadened to state "Failing to comply with a request by the Division to provide information or documents."

Section 9:

Ms. McDermott stated that she is not sure what LCB has as far as the internet screen site but perhaps it can be cut off and say at a price determined by AICPA.

Ms. Savage stated that she is not familiar with any other regulation where they require the internet address. Ms. Savage stated that she will make a note to look into it but doesn't think it is required.

Section 10:

No comment.

Section 11:

No comment.

Section 12:

Jon Friedrich asked what if there is retail space in a facility and would a fee have to be paid?

Section 13:

No comment.

Section 14:

No comment.

Section 15:

No comment.

Section 16:

No comment.

Section 17:

No comment.

Section 18:

No comment.

Section 19:

No comment.

Section 20:

Jon Friedrich commented on subsection 3 and asked to add at the end “at no cost to them”.

Sam McMullen commented that he is involved in this through the legislation and otherwise as it relates to the creation of Chapter 116B. Mr. McMullen stated that sections 18-26 will relate only to restrictions or requirements of the hotel unit owner in general. Mr. McMullen stated that he is assuming that when this makes it into the regulations that they will be broken out so that it won't confuse people. Mr. McMullen stated that in the 18-26 in the original drafts are all things that related to the hotel unit owner's obligations, requirements and responsibilities.

Mr. McMullen stated that the interim financial statement standards for the association which have to go back to pages 4 and 5 section 13. Mr. McMullen stated that the interim financial statement focus on the obligations of the association in section 13 which in a lot of ways is common elements and things that the association has responsibility for. Mr. McMullen stated that in section 20 you have to give a full presentation of all the financials of the hotel unit

operator or the condominium hotel which can basically be a huge business operation and it might be worthwhile by either tracking 13 in a lot of ways what it does is it says that the things that the unit owners would want to know about should be in more detail. Mr. McMullen stated that it could be extremely broad and probably a wonderful bunch of information but may not be necessarily as useful for unit owners.

Chairman Buckley stated that the financial statements for the association are spelled out but this one says ‘the condominium hotel’ and there is a different layout of the requirements but it doesn’t say the hotel unit owner or what it is.

Section 21:

Mr. McMullen commented that subsection 2(a) would be directly appropriated and would be shared expenses. Mr. McMullen stated that there may be some other additional information that would make these things much more meaningful if someone thought that that should be a supplemental comment that they also have to provide. Mr. McMullen stated that at least on 2, it would be the details of the actual shared expense with the expenses budget.

Section 22:

No comment.

Section 23:

Mr. McMullen commented that NRS 116B.590 and 595 talks about the different reserves that relate to shared components and you might want some clarity.

Jan Porter read subsection 1 and suggested that the “and” be changed to “or.”

Section 24:

No comment.

Section 25:

No comment.

Section 26:

Jan Porter stated that this section needs clarification. Ms. Porter stated that the hotel unit owner may do some of this but some of this is the manager. Ms. Porter stated that when she looks at NRS 116B.760 it appears that the hotel unit owner would be capable of providing (a), (d) and (e) which is a copy of this chapter of the declaration and any other plagues, plans, bylaws, rules or regulations of the association and the hotel unit owner and the information statement required by NRS 116.765. Mr. Porter stated that (b) would be the responsibility of the manager and it’s kind of like a master associations sub association type relationship. Ms. Porter stated that (b) states that statements setting forth the amount of the monthly assessments for common expense and any unpaid assessments of any kind currently due from the seller’s unit owner. Ms. Porter stated that is clearly the association manager responsibility as is (c), a copy of the current operating budget of the association and the current year to date financial statement for the association which must include a summary. Ms. Porter stated that she thinks a little clarification and

division of responsibility between what the hotel unit owner can provide and what the manager can provide may need to help the situation.

Section 27:

No comment.

Section 28:

No comment.

Section 29:

No comment.

Section 30:

No comment.

Section 31:

No comment.

Section 32:

Sam McMullen stated that in subsection 1 the Commission took out the determination that an individual had made that is legally binding or not as a condition to trying to turning it over. Mr. McMullen stated that it is also in subsection 2. Mr. McMullen stated that it might be subject to a rental management agreement. Mr. McMullen stated that it should only relate to resell because if you look up above it is not supposed to be subject to any rental management agreement.

Section 33:

Jon Friedrich stated that the City Center Complex where a common element might be considered that monorail. Mr. Friedrich asked if that meant that a unit owner there is going to be responsible for the maintenance of that facility.

Section 34:

No comment.

Section 35:

No comment.

The Workshop concluded at 3:21 p.m.

WORKSHOP SUMMARY FOR R186-07

**Bradley Building
Real Estate Division
2501 E. Sahara Avenue
2nd Floor Conference Room
Las Vegas, NV 89104**

Video to Carson City, Nevada

**Dept. of Business & Industry
Real Estate Division
788 Fairview Drive
Hearing Room
Carson City, NV 89701**

**Feb. 10, 2009
Workshop started at 1:30 p.m.**

Sections 1 – 6:

No comments.

Section 7:

Richard Layton, president of Peccole Ranch, asked if there was a reason that federally insured credit unions were excluded. Mr. Layton stated that federally insured credit unions are fully insured by the NCUA Shared Insurance fund up to the same limits as the FDIC insurance. Commissioner Lein stated that NRS 678 is the statute that deals with credit unions.

Sections 8 & 9:

No comments.

Section 10:

Commissioner Watkins stated that at the end of subsection 2 there is an extra comma. John Walter, volunteer member of Pine Tree Ranch HOA, asked a question about subsection 1. Mr. Walter asked if the board is going to be required to get bids of comparative studies done for their reserve funds and how often would that have to be done. Mr. Walter stated that he knows that a reserve study needs to be done every 5 years but subsection 1 is almost requiring them to get bids of comparative studies for the components in addition to the reserve study.

Chairman Buckley stated that this applies to an association in a hotel condominium and he would have to look in NRS 116 and not NRS 116B for the answer to his question.

Section 12 – 14:

No comments.

Section 15:

Richard Layton commented on subsection 1(a) regarding generally accepted accounting principles. Mr. Layton stated that the NSCPA has changed the language in auditor's reports to say "United States Generally Accepted Accounting Principles" because there are accounting principles for various countries.

Sections 17 – 19:

No comments.

Section 20:

Richard Layton stated that the NSCPA has changed the language in auditor's reports to say "United States Generally Accepted Accounting Principles" because there are accounting principles for various countries.

Section 21:

Richard Layton stated that the NSCPA has changed the language in auditor's reports to say "United States Generally Accepted Accounting Principles" because there are accounting principles for various countries.

Section 22:

Richard Layton stated that the NSCPA has changed the language in auditor's reports to say "United States Generally Accepted Accounting Principles" because there are accounting principles for various countries.

Sections 23 – 35:

No comments.

Workshop concluded at 2:15 p.m.

**LCB FILE No. R186-07
WORKSHOP**

May 12, 2009

**Real Estate Division
788 Fairview Drive
Conference Room
Carson City, NV 89701**

Video conferenced to:

**Real Estate Division
2501 E. Sahara Avenue
Conference Room
Las Vegas, NV 89104**

In Carson City: Michael Buckley, Marilyn Brainard and Jeannie Redinger. Commission Counsel, Deputy Attorney General, Deonne Contine.

Staff: Gail Anderson, Chris Cooke, Nick Haley, Lindsay Waite,

In Las Vegas: Gary Lein and Randy Watkins.

Staff: Teralyn Thompson, Joanne Gierer, Bruce Alitt, Vicki Broadbent and Sonya Meriweather. Division Counsel, Sr. Deputy Attorney General, Nancy Savage.

R186-07 Workshop began at 1:00 p.m.

**Sec. 1. N/C
Sec. 2. N/C
Sec. 3. N/C
Sec. 4. N/C
Sec. 5. N/C
Sec. 6. N/C
Sec. 7. N/C
Sec. 8. N/C
Sec. 9. N/C
Sec. 10. N/C
Sec. 11. N/C
Sec. 12. N/C
Sec. 13. N/C
Sec. 14. N/C**

Sec. 15. N/C
Sec. 16. N/C
Sec. 17. N/C
Sec. 18. N/C
Sec. 19. N/C
Sec. 20. N/C
Sec. 21. N/C
Sec. 22. N/C
Sec. 23. N/C
Sec. 24. N/C
Sec. 25. N/C
Sec. 26. N/C
Sec. 27. N/C
Sec. 28. N/C
Sec. 29. N/C
Sec. 30. N/C
Sec. 31. N/C
Sec. 32. N/C
Sec. 33. N/C.

R186-07 workshop ended at 1:28 p.m.

Adoption Hearing for LCB File No. R186-07

Adoption Hearing began at 1:30 p.m. on December 7, 2010.

Introduction of Commissioners in attendance.

M. Favil West, Scott Sibley, Gary Lein, Michael Buckley, Randolph Watkins, Robert Schwenk, Marilyn Brainard, Deputy Attorney General Deonne Contine serving as Commission Counsel.

Introduction of Division staff in attendance.

In Las Vegas: Gail Anderson, Administrator; Lindsay Waite, Ombudsman; Susan Clark, Licensing Manager; Nicholas Haley, Education Officer; Sonya Meriweather, Program Officer; Joanne Gierer, Legal Administrative Officer; Teralyn Thompson, Commission Coordinator, Senior Deputy Attorney General Kimberly Arguello serving as Division Counsel.

In Carson City: Christopher Cooke, Compliance Investigator

Sections 1 and 2

No comment

Sections 3 and 4

No comment

Sections 5-8

No comment

Section 9

No comment

Section 10

No comment

Section 11

No comment

Sections 12 and 13

No comment

Section 14

No comment

Section 15

No comment

Section 16

Bob Robey commented. Mr. Robey asked what “a statement of cash flows” meant. Commissioner Lein stated that a statement of cash flows takes the beginning of the net income of the association and accounts for any changes to current assets and liabilities to come up with cash generated from operations. Commissioner Lein stated that any financing and investing activities would need to be taken into consideration. Commissioner Lein stated that an accrual basis number would come up with if the cash for the year increase or decrease.

Section 17

No comment

Section 18

No comment

Section 19

No comment

Section 20

No comment

Section 21

No comment

Section 22

No comment

Section 23

No comment

Section 24

No comment

Section 25

No comment

Section 26

No comment

Section 27

No comment

Sections 28-31

Yvonne Schuman with JSW Real Estate and Investment commented on section 29. Ms. Schuman stated that the language is not clear enough so that it could be read as five hundred dollars from one giver or five hundred dollars to the aggregate from total givers.

Section 32

No comment

Section 33

No comment

Section 34

No comment

Section 35

No comment

Section 36

No comment

Public comment closed

Commissioner Lein disclosed that he represents a hotel unit owner and conducts audits for the hotel condominium association and the audit for the shared components for a hotel unit owner.

Chairman Buckley stated that there is a change to the lead in language in Section 9. Chairman Buckley stated that the lead language for Section 9 should be the same as NAC 116.405. Chairman Buckley stated that since the regulations are the same, they should read the same.

Chairman Buckley stated that section 9(6) is not in NAC 116.405. Chairman Buckley stated that section 9(6) makes sense and it should be added to NAC 116.405.

Chairman Buckley stated that section 9(7) should state “and condominium hotels” at the end.

Commissioner Lein stated that section 9(9)(f) needs to be consistent with NRS 116.311395.

Chairman Buckley stated that LCB File No R135-09 was effective in August 2010. Chairman Buckley stated that section 11(2) should be consistent with LCB File No. R135-09.

Chairman Buckley stated that NAC 116.451 should be amended to be consistent with section 14. Chairman Buckley stated that NAC 116.453 should be amended to be consistent with section 15(2).

Chairman Buckley stated that section 24 refers to “adequate reserves” but NAC 116.425 refers to “adequately funded reserves”.

Chairman Buckley stated that his understanding of section 29 is the totality of all gifts.

Chairman Buckley stated that NAC 116.482(2) should be deleted.

Chairman Buckley stated that section 34(1)(a) should state “assessments may vary from estimated or projected expenditures” instead of “actual”.

Commissioner Brainard moved to adopt the regulation with the addition of the language “and condominium hotels” to the end of section 9(7), changing section 9(9)(f) to be consistent with NRS 116.311395, changing section 11(2) to be consistent with LCB File No. R135-09, changes to section 24 to change “adequate reserves” to “adequately funded reserves” to be consistent with NAC 116.425 and change to section 32(2)(a) to delete the word “charges”, delete the word “actual” and insert “estimated” or “projected”. The Commission request that NAC 116 and 116B be updated to conform to the most recent changes. Seconded by Commissioner West. Unanimous decision.

The adoption hearing ended at 2:47 p.m. on December 7, 2010.