

LCB File No. R108-08

**PROPOSED REGULATION OF THE COMMISSION ON
COMMON-INTEREST COMMUNITIES AND
CONDOMINIUM HOTELS**

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

AUTHORITY: NRS 116.615

Chapter 116 of NAC is hereby amended by adding thereto the provisions set forth as sections 1 to 4, inclusive, of this regulation.

Sec. 1. 1. *The executive board of each association shall provide the Division with the name, physical address and telephone number of each board member as part of such association's registration pursuant to NRS 116.325(4)(e)(3). This information shall be confidential and utilized by the Division only for the purpose of notifying the association or any board member of actions or proceedings involving the association pursuant to NRS chapters 116, 116A or 38 or the regulations issued pursuant to such statutes.*

2. *Notice, in writing, on a form prescribed by the Division, must be submitted to the Division within 30 days of any change of the executive board's contact information or change of management.*

Sec. 2. 1. *Each association subject to the governing documents of a master association, which is required to pay the fees required pursuant to NRS 116.31155,*

Shall provide written notification to the master association, on a form prescribed by the Division, of the number of units then subject to the association no later than 30 days prior to the date the master is required to pay such fees. Notification may be sent by fax, email or United States mail.

Sec. 3. 1. *A declarant's obligation to deliver the audited financial statements required by subsection 2 of NRS 116.31038 may be satisfied by the declarant if, within 30 days after units' other than the declarant may elect a majority of the members of the executive board, the declarant delivers to the association:*

(a) All financial records necessary for the preparation of such audited financial statements; and

(b) The amount necessary to pay for the cost of the required audit to be completed no later than 210 days after units' owners other than the declarant may elect a majority of the members of the executive board.

Sec. 4. *A buyer's real estate licensee may be appointed by the unit's owner as his agent for the sole purpose of making the written request for a resale package under subsection 3 of NRS 116.4109. Such an appointment must be in writing and must provide that it is limited to*

making the request for the resale package. A copy of the appointment must be delivered to the association at the time of the written request under subsection 3 of NRS 116.4109.

NAC 116.100 is hereby amended to read as follows:

NAC 116.100 Application: Requirements; action by Division; burden of proof. (NRS 116.615, 116A.200, 116A.410)

1. A person who wishes to obtain a certificate must submit an application to the Division on a form prescribed by the Division.

2. Each applicant must, as part of his application and at his own expense:

(a) Arrange to have a complete set of his fingerprints taken by a law enforcement agency or other authorized entity acceptable to the Division; and

(b) Submit to the Division:

~~[(1) A completed fingerprint card and written permission authorizing the Division to submit the applicant's fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for a report on the applicant's background and to such other law enforcement agencies as the Division deems necessary; or]~~

~~[(2)]~~ (1) Written verification, on a form prescribed by the Division, stating that the fingerprints of the applicant were taken and directly forwarded electronically or by another means to the Central Repository and that the applicant has given written permission to the law enforcement agency or other authorized entity taking the fingerprints to submit the fingerprints to the Central Repository for submission to the Federal Bureau of Investigation for a report on the applicant's background and to such other law enforcement agencies as the Division deems necessary.

3. In addition to the requirements set forth in subsection 2, the applicant must submit to the Division:

(a) A photograph of the applicant, measuring approximately 2 inches by 2 inches, taken within the 2 years immediately preceding the date of the application;

(b) Payment of the fees charged by a local law enforcement agency pursuant to NAC 116.515 or, if the fingerprints of the applicant were taken and directly forwarded electronically or by another means to the Central Repository pursuant to subsection 2, evidence of such payment;

(c) The social security number of the applicant;

(d) A statement concerning whether the applicant has been convicted of, or entered a plea of guilty or nolo contendere to, forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or possessing for the purpose of sale any controlled substance or any crime involving moral turpitude;

(e) Documentation that the applicant possesses the education and experience required pursuant to NAC 116.120 and, if applicable, NAC 116.175;

(f) Documentation of the employment history of the applicant for the 10 years immediately preceding the date of the application, including, without limitation, letters of recommendation and affidavits of employment from common-interest communities or employers in other related areas;

(g) The statement described in NRS 116A.440;

(h) The fee required by NAC 116.505 for a certificate; and

(i) Such other pertinent information as the Division may require.

4. The Division shall act upon all applications for a certificate within 60 days after the date of receiving the completed application for a certificate.

5. If the Division determines that additional investigation of the applicant is necessary, the Division may extend the 60-day period and may make such additional investigation as is necessary or desirable before acting upon the application.

6. The burden of proof is on the applicant to establish to the satisfaction of the Division that he is qualified to receive a certificate.

NAC 116.300 is hereby amended to read as follows:

NAC 116.300 Responsibilities. (NRS 116.615, 116A.200, 116A.400) A community manager shall:

1. Comply with the lawful provisions of the governing documents of each client;
2. Maintain an inventory of all records of each client;
3. Keep informed of new developments in the management of a common-interest community through continuing education, including, without limitation, new developments in law, insurance coverage and accounting principles;
4. Advise a client to obtain advice from an expert relating to matters that are beyond the expertise of the community manager;
5. Under the direction of a client, uniformly enforce the provisions of the governing documents of the association;
6. At all times ensure that the financial transactions of a client are current, accurate and properly documented and that there are established policies and procedures surrounding the financial transactions that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;
7. Prepare or cause to be prepared interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of an association is fairly presented in accordance with the provisions of NAC 116.451 to 116.461, inclusive;
8. Make the financial records of an association available for inspection by the Division in accordance with the applicable laws of this State;
9. Cooperate with the Division in resolving complaints filed with the Division;
10. Upon written request, make the financial records of an association available to the units' owners during regular business hours for inspection at a reasonably convenient location which must be within 60 miles from the physical location of the common-interest community and provide copies of such records in accordance with the applicable laws of this State;
11. Deposit all money of an association that is in the possession or control of the community manager in a federally insured financial institution authorized to do business in this State;
12. Recommend in writing to each client that the association register with the Division, maintain its registration and file all papers with the Division and the Secretary of State as required by law;
13. Comply with the directions of a client, unless the directions conflict with the governing documents of the association, this chapter or other applicable laws of this State;
14. Recommend in writing to each client that the association be in compliance with all applicable federal, state and local laws and the governing documents of the association;

15. Obtain, when practicable, at least three bids for any capital improvement project for the association; ~~and~~

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

17. Advise the association whether the association's insurance coverages comply with the provisions of Chapter 116 and the governing documents applicable to the types and amounts of insurance the association is required to maintain; and

18. Ensure that manager or the association has commercially reasonable insurance or fidelity bonds to protect against loss of association funds.

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

NAC 116.351 is hereby amended to read as follows:

NAC 116.351 Allegations of misconduct; submission of complaint; investigation and report; action by Administrator; appeal. (NRS 116.615, 116A.200, 116A.400)

1. If a person who alleges that a community manager is guilty of misconduct sends the allegations of misconduct in writing to the community manager in an attempt to resolve the issue without filing a complaint with the Division, the community manager shall, in good faith, acknowledge and respond in writing to the person making the allegations within 12 working days after he receives the allegations.

2. A complaint about a community manager must:

(a) Be submitted to the Division on a form provided by the Division;

(b) Be signed by the person submitting the complaint; and

(c) Include, without limitation:

(1) The identity of the community manager who is alleged to have violated a provision of this chapter or chapter 116 of NRS, and the nature of the alleged violation;

(2) All evidence supporting the allegations, including, without limitation, as appropriate, corroborating statements by other persons or specific information as to persons who may be contacted to provide such corroboration;

(3) The name, address and telephone number of the person submitting the complaint;

(4) Documents that evidence an attempt by the person submitting the complaint to resolve the issue with the executive board or the community manager, including, without limitation, any written response of the executive board or the community manager to the allegations of the person submitting the complaint; and

(5) If filed by a tenant of a unit's owner, ratification of the complaint by the unit's owner without the use of a power of attorney by the tenant.

3. Upon receipt of a complaint that complies with subsection 2, the Division shall forward the complaint to an investigator. The investigator:

(a) Shall send a copy of the complaint to the community manager and the executive board of any association which relates to the subject of the complaint;

(b) Within 12 working days after the receipt of the allegations, shall attempt to obtain a response in writing from the person who is the subject of the complaint;

(c) May make such inquiries and investigation into matters relating to the allegations in the complaint as the investigator deems appropriate; and

(d) Shall submit to the Administrator a written report that summarizes the findings and conclusions of the investigator.

4. Upon review of the written report of the investigator, if the Administrator determines that grounds for disciplinary action against the community manager exist, the Administrator may take one or more of the following actions as he deems appropriate:

(a) Issue a letter of censure to the community manager who is the subject of the complaint;

(b) Levy an administrative fine of:

(1) For the first offense, ~~[\$500]~~ \$1,000; and

(2) For the second offense, ~~[\$1,000]~~ \$5,000;

(c) Require the community manager to obtain additional education relating to the management of a common-interest community;

(d) Refer the matter to the Commission;

(e) Refer the matter to the Real Estate Commission; or

(f) Refer the matter to the Attorney General of this State.

5. The Administrator may initiate an investigation, audit or inspection of the records of any community manager or any person who performs the duties of a community manager in this State.

6. Any action taken by the Administrator pursuant to subsection 4 may be appealed by the community manager upon written request to the Commission within 30 days after the Administrator takes such action.

7. As used in this section, "investigator" means a person whom the Division deems to be impartial and qualified with respect to the matter in a complaint and who is designated by the Division to investigate a complaint pursuant to this section.

NAC 116.400 is hereby amended to read as follows:

NAC 116.400 Members of executive board: Responsibilities. (NRS 116.3103, 116.615) In performing the duties set forth in NRS 116.3103, a member of an executive board shall:

1. Comply with all applicable federal, state and local laws and the governing documents of the association;

2. Uniformly enforce the provisions of the governing documents of the association;

3. Ensure that meetings of the executive board are held with such frequency as to properly and efficiently address the affairs of the association;

4. Keep informed of new developments in the management of a common-interest community through educational courses;

5. Ensure that the executive board obtains, when practicable, at least three bids from reputable service providers who possess the proper licensing for any service used by the association;

6. Ensure that the executive board consults with the appropriate professionals as necessary before making major decisions affecting the association;

7. Deposit all money of an association in a federally insured financial institution authorized to do business in this State; ~~[and]~~

8. Adequately disclose to the other members of the executive board any actual potential or perceived conflict of interest of such member with respect to any proposed executive board action and, if appropriate law, abstain from voting on such matter; and

~~[8.]~~ 9. If the association does not employ a community manager:

(a) Maintain an inventory of all records of the association;

(b) At all times ensure that the financial transactions of the association are current, accurate and properly documented and that there are established policies and procedures surrounding the

financial transactions that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;

(c) Prepare or cause to be prepared interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of the association is fairly presented in accordance with the provisions of NAC 116.451 to 116.461, inclusive;

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

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

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

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

(h) Ensure that the association complies with the provisions of Chapter 116 and the governing documents applicable to the types and amounts of insurance the association is required to maintain and that the association has commercially reasonable insurance of fidelity bonds to protect against loss of association funds.