

Chapter 116 of NAC

LCB File No. T011-08

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

Filed with the Secretary of State on June 10, 2009

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

AUTHORITY: NRS 116.615(1-6); and NRS 116A.200(1-6)

Section 1. NAC 116.300 is hereby amended to read as follows:

NAC 116.300 1. A community manager shall:

- (a) Comply with the lawful provisions of the governing documents of each client;
- ~~(b) Maintain an inventory of all records of each client;~~
- ~~(b) (e)~~ 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;
- ~~(c) (d)~~ Advise a client to obtain advice from an expert relating to matters that are beyond the expertise of the community manager;
- ~~(d) (e)~~ Under the direction of a client, uniformly enforce the provisions of the governing documents of the association;
- ~~(e) (f)~~ At all times ensure that the financial transactions of a client are current, accurate and properly documented and that there are established policies and procedures ~~surrounding the financial transactions~~ that are designed to provide reasonable assurances in the reliability of the financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;
- ~~(f) (g)~~ Prepare or cause to be prepared interim and annual financial statements that will allow the Division, the executive board, the units' owners and the accountant or auditor to determine whether the financial position of an association is fairly presented in accordance with the provisions of NAC 116.451 to 116.461, inclusive;
- ~~(g) (h)~~ Make the financial records of an association available for inspection by the Division in accordance with the applicable laws of this State;
- ~~(h) (i)~~ Cooperate with the Division in resolving complaints filed with the Division;
- ~~(i) (j)~~ Upon written request, make the financial records of an association available to the units' owners during regular business hours *required* 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;

~~(j) [(k)] [Deposit all money of an association that is in the possession or control of the community manager in a financial institution that is federally insured or insured by a private insurer approved pursuant to NRS 678.755;] [Maintain association funds [shall be deposited] in a financial institution whose accounts are [federally] insured by the FDIC, SIPC or [insured by] a private insurer approved pursuant to NRS 678.755[;], or in government securities that are backed by the full faith and credit of the United States government.] Deposit all association funds in a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation (FDIC), National Credit Union Share Insurance Fund (NCUSIF), Securities Investor Protection Corporation (SIPC), or a private insurer approved pursuant to NRS 678.755, or in a government securities that are backed by the full faith and credit of the United States government.~~

(k) ~~[(h)]~~ 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;

(l) ~~[(m)]~~ Comply with the directions of a client, unless the directions conflict with the governing documents of the association, this chapter or other applicable laws of this State;

(m) ~~[(n)]~~ Recommend in writing to each client that the association be in compliance with all applicable federal, state and local laws and the governing documents of the association;

(n) ~~[(o)]~~ Obtain, when practicable, at least three bids for any capital improvement project for the association; and

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

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

Section 2: Section 17 of LCB File No. R145-06 is hereby amended to read as follows:

A person is qualified by training and experience to obtain a permit to act as a reserve study specialist if ~~[-]~~

~~—1. T] the person has:~~

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

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

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

(d) The ability to review improvement plans and specifications, maintenance histories, recorded plats and governing documents of the association in order to compile a complete component inventory and to consult with the executive board to ascertain and confirm that the component inventory is complete;

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

(f) The background and knowledge pertinent to all areas to be addressed by the reserve study ~~[- and]~~

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

~~{2.—The person:~~

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

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

**NOTICE OF ADOPTION OF TEMPORARY REGULATION
LCB File No. T011-08**

The Commission on Common-Interest Communities adopted temporary regulations assigned LCB File No. T011-08 which pertain to chapter 116 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
TEMPORARY FILE NO. T011-09
(Adopted May 12, 2009)**

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

Notice of the proposed regulations was posted on the Real Estate Division website and in various other public locations where both the public and other interested persons would have access to that information. The Division conducted public workshops on December 3, 2008, in Carson City, with video conferencing to Las Vegas and again on February 10, 2009, in Las Vegas, with video conferencing to Carson City. The Adoption Hearing was conducted in Las Vegas on May 12, 2009, with video conferencing to Carson City.

Public comment was solicited at the workshops and adoption hearing.

The number of persons who:

	<u>CC</u>	<u>LV</u>
Attended workshop 12/3/08:	2	29
Submitted written comments:		
Attended workshop 2/10/09:	2	14
Submitted written comments:		
Attended adoption hearing 5/12/09:	2	4
Submitted written comments:		

- 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 the public workshops and hearing or in writing. Additionally, since March 2005 through May 12, 2009, the Commission has had a standing agenda item to discuss and review Chapter 116 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 Chapter 116, 116A and 116B, and has solicited public comment, and formulated 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.

Amendments have been made to the temporary regulation based upon public comment made at the workshops.

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:

Adverse effects: None.

Beneficial effects: Defines the responsibilities of a community manager.
Mandates where funds of an association must be deposited.

(b) Both immediate and long-term effects:

Immediate effects: Same as (a).

Long-term effects: Same as (a)

5. Public:

(a) Both adverse and beneficial effects:

Adverse effects: None.

Beneficial effects: Members of a homeowner association will benefit from NAC 116.300 clearly indicating that deposits from their HOA must be placed in an institution insured by the FDIC.

(b) Both immediate and long-term effects:

Immediate effects: Same as (a).

Long-term effects: The long-term effects should be similar to the beneficial effects mentioned in foregoing item.

- 6. The estimated cost to the agency for enforcement of the adopted regulation.**
1. Cost of a review of the temporary regulation by the Legislative Counsel Bureau;
 2. Cost for the Division's compliance section to process and investigate a complaint listing non-compliance of NAC 116.300 as the reason for potential disciplinary action by the Division;
 3. Cost for the Attorney Generals Office to bring a disciplinary hearing before the Commission; and
 4. Cost for the Division to hold a Commission hearing.
- 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.**
- Not of which we are aware.
- 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.**
- No new fee proposed by this temporary regulation.