

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

LCB File No. R164-09

Effective May 5, 2011

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

AUTHORITY: §§1-4, NRS 116A.430.

A REGULATION relating to reserve study specialists; repealing certain requirements for the issuance of a permit to act as a reserve study specialist; establishing requirements for the registration of a reserve study specialist; revising certain provisions relating to the required qualifications of a reserve study specialist; and providing other matters properly relating thereto.

Section 1. NAC 116A.410 is hereby amended to read as follows:

116A.410 The Division shall maintain a list of all persons who have ~~[obtained a permit to act]~~ *registered with the Division* as a reserve study specialist ~~[from the Division]~~ and make the list available to the public.

Sec. 2. NAC 116A.415 is hereby amended to read as follows:

116A.415 1. To ~~[obtain or renew a permit to act]~~ *register with the Division* as a reserve study specialist, ~~[an applicant]~~ *a person* must submit:

(a) ~~[An application]~~ *A registration* on a form prescribed by the Division which includes ~~[information establishing that the applicant has the qualifications required pursuant to NAC 116A.420;]~~ *the name and business address of the person registering as a reserve study specialist;* and

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

2. A ~~permit to act~~ *registration* as a reserve study specialist ~~issued by the Division~~ expires 2 years after the date ~~of issuance~~ *on which the registration and fee required by subsection 1 are submitted to the Division*, unless ~~renewed~~ *the reserve study specialist submits to the Division another registration and fee required by subsection 1* before that date.

Sec. 3. NAC 116A.420 is hereby amended to read as follows:

116A.420 **1.** A person is qualified by training and experience to ~~obtain a permit to act~~ *register* as a reserve study specialist if ~~;~~

~~1. The~~ *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*

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

~~. [; and~~

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

2. ~~{The person:~~

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

~~—(b) Uses consultants and other persons with expertise having the knowledge and abilities set forth in subsection 1 to assist in preparing the reserve study.}]~~ *If the Division finds that a person who has submitted a registration to the Division is not qualified by training and experience to register as a reserve study specialist, the Division shall:*

(a) If the Division has not yet registered the person, refuse to register the person as a reserve study specialist.

(b) If the Division has registered the person, revoke the registration.

Sec. 4. NAC 116A.435 is hereby amended to read as follows:

116A.435 1. A reserve study specialist is subject to disciplinary action if the reserve study specialist:

(a) Commits any of the following:

(1) Unprofessional conduct;

(2) Professional incompetence;

(3) Negligence or gross negligence; or

(4) A felony or any offense involving moral turpitude; or

(b) Has ever had a permit, license or designation from a nationally recognized professional organization that authorizes him or her to act as a reserve study specialist in another jurisdiction revoked or suspended.

2. A reserve study specialist commits an act of unprofessional conduct if the reserve study specialist:

(a) Violates the provisions of:

(1) An order of the Commission;

(2) An agreement with the Division; or

(3) Chapter 116, 116A or 116B of NRS or any regulation adopted pursuant thereto;

(b) Engages in deceitful, fraudulent or dishonest conduct, including, without limitation, knowingly communicating false, misleading or fraudulent information to a client;

(c) ~~[Applies for a permit by submitting an application]~~ *Submits a registration* which contains a false statement of material fact;

(d) Fails to cooperate with the Division in the investigation of a complaint, including, without limitation, failure to produce any document, book or record in the possession or control of the reserve study specialist after the Division requests the production of such document, book or record in the course of investigating a complaint;

(e) Fails to perform impartially and consistently an activity that is lawful and properly authorized on behalf of a client or fails to perform a duty or obligation owed to a client because of the age, race, color, religion, national origin, disability, marital status, familial status, sex or ethnicity of any person, including, without limitation, a member of the executive board, an officer of the association, a unit's owner, a tenant of the common-interest community or a visitor of the common-interest community; or

(f) Exceeds the authority granted to him or her by the client.

3. A reserve study specialist commits an act of professional incompetence if, without limitation, the reserve study specialist:

(a) Demonstrates a significant lack of ability, knowledge or fitness to perform a duty or obligation owed to a client; or

(b) Fails to exercise reasonable skill and care with respect to a duty or obligation owed to a client.

4. In determining whether a reserve study specialist has committed unprofessional conduct or professional incompetence, the Commission and the Administrator may consider, without limitation, whether the reserve study specialist has:

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

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

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

(d) Complied with the disclosure requirements of NAC 116A.430;

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

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

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

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

and

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

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED
BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066
LCB FILE NO. R164-09**

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

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 two 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 Adoption: 12/07/10	7	25
Submitted written comments:	0	0
Attended Workshop: 12/8/09	4	23
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 public workshop and 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.

There were changes made to the regulation based upon public comment made at the December 8, 2009 workshop. These changes were incorporated into the final LCB Draft of proposed Regulation 164-09 and adopted on December 7, 2010.

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:

R164-09 repeals certain requirements for the issuance of a permit to act as a reserve study specialist. R145-09 originally required a person seeking to become a reserve study specialist to become certified in a course of training from a nationally recognized professional organization that provides education courses and national accreditation of reserve study specialists.

(b) Both immediate and long-term effects.

Same as in (a).

5. Public:

(a) Both adverse and beneficial effects:

R164-09 revises certain provisions relating to the required qualifications of a reserve study specialist.

(b) Both immediate and long-term effects:

If the Real Estate Division finds that a person who has submitted a registration to the Division is not qualified by training or experience to register as a reserve study specialist, the Division shall:

(a) Refuse to register the person if the Division has not yet registered the person; or

(b) If the Division has registered the person, revoke the registration.

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 to the Real Estate Division.

Regulation Workshop for LCB File No. R164-09 – NAC 116A

Sawyer Building
555 E. Washington, Suite 4412
Las Vegas, NV 89101

Video conferenced to:

Legislative Building
401 S. Carson St.
Room 2134
Carson City, NV 89701

Workshop started at 3:50 p.m.

Introduction of Commissioners in attendance:

Michael Buckley, Donna Toussaint, Gary Lein, Randolph Watkins, Marilyn Brainard, M. Favil West, Jeannie Redinger, and Senior Deputy Attorney General Nancy Savage acting as Commission Counsel.

Introduction of Las Vegas Division staff in attendance:

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

Division staff in Carson City: Christopher Cooke, Compliance Investigator.

Section 2:

Gail Anderson stated that the Division would like to leave \$250.00 in subsection 1(b).

Chairman Buckley stated that subsection 1(b) should state “cost of processing the registration” since there is no longer a permit necessary.

Section 3:

No comments.

Section 4:

Ms. Anderson commented that subsection (g) should be kept as a qualification for registration. Commissioner Brainard commented that the concern with subsection (g) is that there is not a curriculum course of training for reserve study preparers.

Ms. Clark asked the Commission for clarification on what the word “ability” means in subsections (b) through (e).

Commissioner Watkins stated that he agrees with Ms. Clark. Commissioner Watkins asked who would evaluate whether an applicant has the ability to do the functions listed in the regulation.

Jonathan Friedrich referred the Commission to the letter submitted by Paul Callaghan dated November 29, 2009. Mr. Friedrich stated that Mr. Callaghan is a registered reserve specialist. Mr. Friedrich commented on section 3. Mr. Friedrich asked if the list of registered reserve study preparers would be on the Division’s website, in the form of a hard copy or both.

Workshop concluded at 4:04 p.m.

LCB FILE No. R164-09

December 7, 2010

**Public Utilities Commission
9075 W, Diablo Drive
Room 250
Las Vegas, NV 89148**

Video conferenced to:

**Public Utilities Commission
1150 E. William Street
Carson City, NV 89701**

Adoption Hearing start time: 9:04 a.m.

Commissioners present in Las Vegas: Michael Buckley, Scott Sibley, Robert Schwenk, Marilyn Brainard, Favil West, Randy Watkins and Gary Lein.

Deonne Contine, Deputy Attorney General, served as Commission Counsel.

Real Estate Division Administrator, Gail Anderson, introduced Division staff in Las Vegas: Gail Anderson, Joanne Gierer, Teralyn Thompson, Susan Clark, Nick Haley, Lindsey Waite, and Sonya Meriweather.

Ms. Anderson introduced staff in Carson City: Christopher Cooke.

Ms. Anderson introduced Kimberly Arguello, Senior Deputy Attorney General, who is serving as Division Counsel.

Chairman Buckley conducted the R164-09 Adoption Hearing.

Section 1:

Las Vegas: No comment.

Carson City: No comment.

Section 2.

Las Vegas: No comment.

Carson City: No comment

Section 3.

Las Vegas: No comment.

Carson City: No comment.

Section 4.

Las Vegas: No comment.

Carson City: No comment.

Commissioner Comments:

Las Vegas: Commissioner Brainard asked if a new form has been developed for reserve study specialist?

Gail Anderson, stated that the Division will develop a form for the public to use.

Commissioner West moved to adopt R164-09 as written. Commissioner Watkins seconded. Unanimous decision to adopt R164-09 as written.

The R164-09 Adoption Hearing concluded at 9:13 a.m.