

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

LCB File No. R166-09

September 17, 2010

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

AUTHORITY: §§1-9, NRS 116A.200 and 116A.410.

A REGULATION relating to community managers; amending provisions pertaining to education of community managers; establishing provisions concerning audits of instructors and courses approved or funded by the Commission for Common-Interest Communities and Condominium Hotels; amending provisions concerning courses of continuing education for community managers; amending certain requirements imposed on sponsors of courses approved by the Commission; and providing other matters properly relating thereto.

Section 1. Chapter 116A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *The Commission may establish one or more education audit committees.*

2. The Commission will create and maintain a list of persons who have been approved by the Commission to serve on an education audit committee. A person is eligible to be included on the list if the person is a current or former member of the Commission or if the person:

(a) Is a resident of this State;

(b) Has resided in a common-interest community or condominium hotel or has been actively engaged in a business or profession related to common-interest communities or condominium hotels for not less than 3 years immediately preceding the date on which the person is approved by the Commission to serve on an education audit committee;

(c) Has served as a member of the executive board of the association of a common-interest community or condominium hotel or has professional experience related to common-interest communities or condominium hotels;

(d) Has knowledge of the laws and regulations governing members of the executive board of the association of a common-interest community or condominium hotel, has knowledge of the laws and regulations governing common-interest communities or condominium hotels or has knowledge concerning the preparation of financial reports or reserve studies;

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

(f) Has not been disciplined by the Commission or the Division acting on behalf of the Commission within the 5 years immediately preceding the date on which the person is approved by the Commission to serve on an education audit committee.

3. For each education audit committee established by the Commission, the Commission will:

(a) Determine the number of persons who will serve on the education audit committee;

(b) Select the members of the education audit committee from the list created and maintained pursuant to subsection 2; and

(c) Select one of the members of the education audit committee to be the chair of the committee.

4. Each member of an education audit committee established by the Commission pursuant to this section:

(a) Serves at the pleasure of the Commission and without compensation; and

(b) While engaged in the discharge of the official duties of a member of an education audit committee, is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

5. The Administrator may select an education audit committee established by the Commission to assist the Division with the review and audit of:

(a) An instructor approved by the Commission;

(b) A course of instruction designed to fulfill the educational requirements for the issuance of an original certificate which is approved or funded by the Commission; or

(c) A course for continuing education which is approved or funded by the Commission.

6. An education audit committee selected by the Administrator pursuant to subsection 5 shall prepare and provide to the Division an audit report for each instructor and course reviewed and audited by the education audit committee.

7. The Division and the Commission may use an audit report prepared by an education audit committee pursuant to subsection 6 to determine whether an instructor or sponsor of a course is satisfying the requirements of NAC 116A.175 to 116A.305, inclusive, and sections 2 and 3 of this regulation.

Sec. 3. 1. *In addition to the requirements of subsection 3 of NAC 116A.230, the Commission will grant credit for a course of continuing education only if the course:*

(a) Contains current information on the management of a common-interest community or an association of a condominium hotel that will improve the professional knowledge of a community manager and enable a community manager to give better service to the public; and

(b) Contains information that relates to pertinent Nevada laws and regulations.

2. The Commission considers courses in the following areas to be acceptable for continuing education:

(a) The ethics of managing a common-interest community or the association of a condominium hotel;

(b) Legislative issues concerning community managers and the management of a common-interest community or the association of a condominium hotel, including, without limitation, pending and recent legislation;

(c) The administration of laws and regulations concerning community managers and the management of a common-interest community or the association of a condominium hotel, including, without limitation, licensing and enforcement;

(d) Reserve studies;

(e) Insurance and risk management in common-interest communities and condominium hotels;

(f) Administering the office of a community manager, including, without limitation, personnel management and recordkeeping;

(g) Accounting, including, without limitation, the preparation and monitoring of budgets, the monitoring of expenditures and reserves and the use of financial statements;

(h) Inspecting a common-interest community or condominium hotel for the purposes of maintenance, planning or enforcing the governing documents;

(i) Federal laws pertinent to the management of a common-interest community or the association of a condominium hotel, including, without limitation, the Fair Housing Act, 42 U.S.C. §§ 3601 et seq., and the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.;

- (j) Health and safety issues in common-interest communities and condominium hotels;*
- (k) Issues pertaining to declarants and developers of common-interest communities and condominium hotels;*
- (l) Planning and zoning for land use and other local laws and regulations pertinent to common-interest communities and condominium hotels;*
- (m) The disclosures required in a transaction involving a unit in a common-interest community or condominium hotel;*
- (n) Parliamentary procedures;*
- (o) Interpersonal communications;*
- (p) Contracts, including, without limitation, the preparation of requests for proposals and the obtaining of bids;*
- (q) The enforcement of financial obligations, including, without limitation, liens and collections procedures; and*
- (r) The supervision of provisional community managers by supervising community managers.*

3. The following types of courses and activities will not be approved by the Commission for credit for continuing education:

- (a) A course designed only to prepare an applicant for a certificate for the examination required by NAC 116A.125.*
- (b) Courses designed to develop or improve clerical, office or business skills that are not related to the management of a common-interest community or the association of a condominium hotel, including, without limitation, courses in typing, shorthand, operation of*

business machines, the use of computers or computer software, improvement of memory or writing of letters and reports.

(c) A meeting for the promotion of a sale, a program of office training or other activity which is held as part of the general business of the holder of the certificate.

(d) A course for orientation of holders of a certificate, including, without limitation, a course for the orientation of holders of a certificate that is provided by local real estate boards or industry groups.

(e) A course on the development of instructors.

Sec. 4. NAC 116A.140 is hereby amended to read as follows:

116A.140 1. A certificate must be renewed biennially.

2. Except as otherwise provided by subsection 5, the Division shall renew a certificate if the applicant submits to the Division before the expiration of the certificate:

(a) A completed application on a form prescribed by the Division;

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

(c) The fee required by NAC 116A.515 for renewal; and

(d) Documentation of the successful completion by the applicant of at least 18 hours of continuing education in courses approved by the Commission within the 2 years immediately preceding the date on which the certificate expires. At least 3 hours of the continuing education must consist of instruction relating to this chapter, *chapter 116 of NAC* and ~~chapter~~ *chapters 116, 116A and 116B* of NRS ~~H~~, *with an emphasis on recent changes to those chapters.*

3. The renewal of a certificate is effective on the date on which the renewal is issued.

4. If the holder of a certificate fails to complete the required hours of continuing education or fails to file an application for the renewal of the certificate before it expires, the holder may not engage in the management of a common-interest community until the certificate is reinstated.

5. The Division may refuse to renew a certificate if:

(a) 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;

(b) The applicant fails to complete, sign and submit the statement required pursuant to NRS 116A.440;

(c) The Division receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional certificates and permits issued to the applicant; or

(d) The applicant has engaged in conduct which is grounds for disciplinary action pursuant to NAC 116A.355 and has been disciplined by the Division or Commission.

6. If the Division, after an application to renew a certificate in proper form has been filed, accompanied by the proper fees, refuses to renew the certificate, it shall give notice of this fact to the applicant within 15 days after the ruling, order or decision. The applicant may file a written request for a hearing before the Commission pursuant to the procedures set forth in NAC 116A.135.

7. If the Division refuses to renew a certificate because it receives a copy of a court order issued pursuant to NRS 425.540 that provides for the suspension of all professional certificates and permits issued to the applicant, the Division shall reinstate the certificate if the Division receives a letter issued by the district attorney or other public agency pursuant to NRS 425.550 to

the person whose certificate was suspended stating that the person has complied with the subpoena or warrant or has satisfied the arrearage pursuant to NRS 425.560.

Sec. 5. NAC 116A.230 is hereby amended to read as follows:

116A.230 1. ~~Am~~ *Except as otherwise provided in subsection 4, an* application for the approval of a course for continuing education must be submitted to the Division on a form provided by the Division for review and presentation to the Commission and must include the fee required by NAC 116A.515. ~~The~~ *If the Commission approves a course for continuing education, the* Commission's approval ~~of a course for continuing education~~ is effective for 1 year after the original approval or a renewal ~~;~~ *and the Commission will not grant more than:*

(a) Seven hours of credit for continuing education for a day of instruction in the course if the sponsor does not require a student to complete and pass a final examination to pass the course.

(b) Eight hours of credit for continuing education for a day of instruction in the course if the sponsor requires a student to complete and pass a final examination to pass the course.

2. The Commission may grant retroactive approval for a course for continuing education.

3. ~~The~~ *If an application for the approval of a course for continuing education is presented to the Commission pursuant to subsection 1, the* Commission will grant credit for ~~a~~ *the* course ~~for continuing education~~ only if:

(a) The course consists of at least 3 hours of distance education or instruction in a classroom.

(b) *The course satisfies the requirements of section 3 of this regulation.*

(c) For a course of instruction in a classroom, the sponsor of the course:

(1) Certifies the attendance of holders of a certificate who take the course for credit.

(2) Maintains for at least 4 years a record of attendance which contains the following information with respect to each holder of a certificate who has taken the course for credit:

(I) The name of the holder of a certificate in attendance and the number of his or her certificate.

(II) The title and number of the course.

(III) The hours of instruction attended and dates of attendance by the holder of a certificate.

(IV) A statement that the holder of a certificate has successfully completed the course, if applicable.

(3) Assures the Commission that an approved instructor will preside throughout the course.

~~(e)~~ (d) For a course of distance education, the sponsor of the course:

(1) Requires each student to:

(I) Take a closed-book final examination with a proctor present at a location designated by the sponsor in its application for approval filed with the Division and receive a score of at least 75 percent to pass the course;

(II) Prove his or her identity before he or she is allowed to take any examination;

(III) Complete an entire course to receive credit for taking the course; and

(IV) Complete each course within an established minimum and maximum time.

(2) Gives credit for only the number of hours for which the course has been approved by the Commission to a holder of a certificate who has completed the course.

(3) Publishes a policy for retaking an examination which a holder of a certificate failed.

(4) Maintains for at least 4 years a record of completion of the course which contains the following information with respect to each holder of a certificate who has taken the course for credit:

(I) The name of the holder of a certificate who completes the course and the number of his or her certificate.

(II) The title and number of the course.

(III) A statement that the holder of a certificate has successfully completed the course, which includes, without limitation, the date that the course was completed and the number of hours completed.

4. *The Administrator may grant credit for continuing education for a course offered by any university, school or community college which is a part of the Nevada System of Higher Education, or any other university or college bearing the same or an equivalent accreditation if:*

(a) The course provides instruction in the management of a common-interest community or the association of a condominium hotel or a subject directly related to the management of a common-interest community or the association of a condominium hotel;

(b) The university, school or college offers the course for university or college credit; and

(c) The sponsor of the course agrees to comply with paragraphs (a), (c) and (d) of subsection 3, subsection 5, NAC 116A.240 and 116A.250 and subsection 1 of NAC 116A.285.

5. If a course is approved, the sponsor shall provide a certified copy of the record of attendance or record of completion to the holder of a certificate upon his or her completion of the course. The Division shall accept the certified copy as proof of the attendance of the holder of a certificate or completion of the course by the holder of a certificate for the purpose of renewal or

reinstatement of his or her certificate. If the course is taken at a university or community college, the proof of attendance must be a certified transcript. The certified copy of the record of attendance or record of completion of a sponsor must contain the:

- (a) Name of the sponsor;
- (b) Name of the holder of a certificate and his or her certificate number;
- (c) Number of hours of credit for continuing education for which the course is approved;
- (d) Dates of instruction for a course of instruction in a classroom;
- (e) Date of completion of the course for a course of distance education;
- (f) Title of the course or seminar;
- (g) Number of the sponsor assigned by the Division and a statement that the course was approved by the Commission;
- (h) Signature of the person authorized to sign for the sponsor;
- (i) Grade received by the holder of a certificate or a statement of whether the holder of a certificate passed the class if an examination was given; and
- (j) Manner in which instruction for the course was delivered.

Sec. 6. NAC 116A.270 is hereby amended to read as follows:

116A.270 1. An instructor must have written approval from the Division before teaching an approved course.

2. An applicant for approval as an instructor must apply on a form prescribed by the Division.

3. The Division shall not, without the approval of the Commission, approve a person as an instructor if the person:

(a) Has been disciplined by the Commission or the Division acting on behalf of the

Commission:

(1) Within the immediately preceding 5 years; or

(2) More than one time; or

(b) Has been determined in an administrative or judicial proceeding to have violated any statute, rule, regulation or order pertaining to real estate in this or any other state.

4. A person may be approved as an instructor to teach an approved course relating to his or her principal occupation if:

(a) The person has:

(1) A bachelor's degree or a more advanced degree, plus at least 2 years of full-time experience, in the field in which he or she will be providing instruction;

(2) At least 75 hours of teaching experience in the field in which he or she will be providing instruction within the 3 years immediately preceding the date of his or her application for approval plus at least 3 years of full-time experience in that field;

(3) At least 6 years of full-time experience in the field in which he or she will be providing instruction; or

(4) Any combination of at least 6 years of college-level course work and full-time experience in the field in which he or she will be providing instruction;

(b) The person has a good reputation for honesty, integrity and trustworthiness; and

(c) The person submits to the Division satisfactory documentation of his or her qualifications and a resume outlining his or her experience, education and teaching experience in the field in which he or she will be providing instruction.

5. The Division shall periodically review and evaluate each approved instructor. *The Administrator may select an education audit committee established by the Commission pursuant to section 2 of this regulation to assist the Division with the review and evaluation of an approved instructor.*

Sec. 7. NAC 116A.280 is hereby amended to read as follows:

116A.280 1. The Administrator may withdraw the approval of an instructor who:

(a) Does an inadequate job of teaching the subject matter of a course as evidenced by student evaluations or an audit conducted by the Division ~~or~~ *or an education audit committee selected by the Administrator pursuant to section 2 of this regulation to assist the Division with the review and audit of the instructor or the course taught by the instructor;*

(b) Has been determined in any administrative or judicial proceeding to have violated any statute, rule, regulation or order pertaining to real estate;

(c) Has been convicted of, or entered a plea of guilty or nolo contendere to, any crime involving fraud, deceit, misrepresentation or moral turpitude; or

(d) Engages in inappropriate behavior in the classroom as evidenced by an audit conducted by the Division ~~or~~ *or an education audit committee selected by the Administrator pursuant to section 2 of this regulation to assist the Division with the review and audit of the instructor or the course taught by the instructor.*

2. Before withdrawing approval of the instructor of a course, the Administrator must notify the sponsor of the course of the Administrator's intent to withdraw approval of the instructor. The notice must include the specific reasons upon which the Administrator is basing the decision to withdraw the approval of the instructor. Not later than 30 days after the date on which a sponsor receives the notice, the sponsor may provide a written response to the Administrator that

clearly sets forth the reasons why the approval of the instructor should not be withdrawn and outlining any corrective measures that the sponsor will undertake. After the 30-day period has elapsed, the Administrator shall review the notice and any response submitted by the sponsor and shall:

- (a) Withdraw approval of the instructor;
- (b) Allow the instructor to remain approved if certain specific enumerated conditions are met;

or

- (c) Allow the continued approval of the instructor.

↪ If the Administrator decides to withdraw approval of the instructor, the withdrawal of approval of the instructor becomes effective upon the mailing of the decision of the Administrator to the sponsor of the course taught by the instructor by certified mail, return receipt requested, to the sponsor's last known business address.

3. If the Administrator withdraws approval of an instructor, the Division shall give credit to a student for completing the course if the student began the course before the sponsor received written notice of the withdrawal of approval of the instructor.

4. The sponsor may appeal the decision of the Administrator to withdraw approval of an instructor by filing an appeal with the Commission not later than 30 days after the date on which the withdrawal of the approval of the instructor becomes effective.

5. If the sponsor files a timely appeal, the Commission will, as soon as practicable, hold a hearing concerning the withdrawal of approval of the instructor at a regularly scheduled meeting and will:

- (a) Affirm the decision of the Administrator to withdraw approval of the instructor;

(b) Suspend approval of the instructor for a limited period and under such conditions as the Commission deems appropriate; or

(c) Reverse the decision of the Administrator to withdraw approval of the instructor.

Sec. 8. NAC 116A.285 is hereby amended to read as follows:

116A.285 1. The sponsor of an approved course:

(a) Shall not allow a holder of a certificate to pass the course by taking an examination without having the required attendance;

(b) Shall admit ~~authorized~~ :

(1) Authorized personnel of the Division to audit and evaluate the presentation of the course; *and*

(2) Each member of an education audit committee selected by the Administrator pursuant to section 2 of this regulation to assist the Division with the review and audit of the course.

(c) Shall notify the Division within 15 days after making any material change in the course; ~~and~~

(d) Shall not present a course for the main purpose of selling products or services and shall limit the announcement of products or services during the course to not more than 2 minutes ~~;~~; *and*

(e) If the course is a course of instruction in a classroom, shall provide notice of the course to the Division not later than 15 days before the course is offered.

2. The sponsor must apply for renewal on a form provided by the Division and describe on that form any changes in the course. An application for renewal must be filed at least 2 weeks

before the previous approval expires. If the sponsor does not timely file the application for renewal, the sponsor must apply for an original approval.

3. Each approved course and instructor is subject to review and audit by the Division ~~[]~~ *or an education audit committee selected by the Administrator pursuant to section 2 of this regulation to assist the Division with the review and audit of the course.* If the Division *or education audit committee* conducts such a review or audit, the sponsor shall make available to the Division *or education audit committee, whichever is applicable*, all records requested which are necessary to the review. *The Division may decide in its discretion whether to provide notice to the sponsor and instructor of a course of the review and audit of the course.*

4. ~~[The Division shall renew the approval of a course if the information concerning the course has been updated and there is no material change in the content of the course.~~

~~—5.]~~ Each of the following acts and conditions is a ground for the Commission to withdraw or refuse to renew its approval of a course:

- (a) The curriculum or instruction, as shown by evaluations or audits, is of poor quality.
- (b) The violation of any provision of this chapter relating to continuing education.
- (c) The course is not taught within the last period for which the course is approved.
- (d) The sponsor of the course has made a false statement or has presented any false information in connection with an application for the approval of the course, the renewal of such approval or the approval of the sponsor.
- (e) The sponsor of the course or any official or instructor employed by the sponsor has refused or failed to comply with any provision of this chapter, *chapter 116 of NAC* or chapter 116, *116A or 116B* of NRS.

(f) The sponsor of the course or any official or instructor employed by the sponsor has provided false or incorrect information in connection with any report the sponsor is required to submit to the Commission.

(g) The sponsor of the course has engaged in a pattern of consistently cancelling scheduled courses.

(h) The sponsor of the course has remitted to the ~~Commission~~ *Division* in payment for required fees a check which was dishonored by a bank.

(i) An instructor employed by the sponsor of an approved course fails to conduct approved courses in a manner that demonstrates possession of the teaching skills described in this chapter.

(j) A court of competent jurisdiction has found the sponsor of the approved course or any official or instructor employed by the sponsor to have violated, in connection with the offering of education courses, any applicable federal or state law or regulation:

(1) Prohibiting discrimination on the basis of disability;

(2) Requiring places of public accommodation to be in compliance with prescribed standards relating to accessibility; or

(3) Requiring that courses related to certification for professional or trade purposes be offered in a place and manner accessible to persons with disabilities.

(k) The sponsor of the course or any official or instructor employed by the sponsor has been disciplined by the Commission or any other occupational certification agency in this State or any other jurisdiction.

(l) The sponsor of the course or any official or instructor employed by the sponsor has collected money for an educational course but has refused or failed to provide the promised instruction.

~~[6.]~~ 5. A holder of a certificate who is the sponsor of an approved course is subject to disciplinary action pursuant to the provisions of this chapter for any dishonest, fraudulent or improper conduct by the holder of a certificate, or an instructor of the approved course employed by the holder of a certificate, in connection with activities related to the approved course.

~~[7.]~~ 6. As used in this section, “disability” means:

(a) A physical or mental impairment that substantially limits one or more of the major life activities of the person;

(b) A record of such an impairment; or

(c) Being regarded as having such an impairment.

Sec. 9. NAC 116A.300 is hereby amended to read as follows:

116A.300 1. Each approved course and each instructor of an approved course must be evaluated by students on a form prescribed by the Division and provided by the sponsor during every course offering.

2. The sponsor shall ~~f~~:

~~—(a) Arrange for the collection of the completed evaluations by a person other than the instructor of the approved course; and~~

~~—(b) Mail] *mail* or deliver copies of the completed evaluations to the Division within 10 working days after the last day of class for the course.~~