

**PROPOSED REGULATION OF THE REAL ESTATE DIVISION OF THE
DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB FILE NO. R099-10

**ADR REGULATIONS NAC 38
DIVISION DRAFT 6/08/10**

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

AUTHORITY: NRS 38.360

Sec. 1. Chapter 38 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this regulation.

GENERAL PROVISIONS

Sec. 2. *Definitions. (NRS 38.207) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 38.____ to 38.____ inclusive, have the meanings ascribed to them in those sections.*

Sec. 3. *“Administrator” means the administrator of the Real Estate Division of the Department of Business and Industry.*

Sec. 4. *“Complaining Party” means a person who initiates the filing of a claim pursuant to NRS 38.300 through NRS 38.360.*

Sec. 5. *“Responding Party” means a person against whom a claim is filed pursuant to NRS 38.300 through NRS 38.360.*

Sec. 6. *Selection of Arbitrators and Mediators:*

- 1. Interested persons must submit to the Division a completed application and supporting documentation showing qualifications as set forth in Section ____.*
- 2. Applications shall be reviewed by an evaluation committee comprised of two Division staff appointed by the Administrator and one current or former member of the Commission for Common-Interest Communities and Condominium Hotels.*
- 3. The evaluation committee shall submit their recommendations to the Administrator who shall approve an applicant to be added to the panel of arbitrators based upon the qualifications of the applicant and the recommendation of the evaluation committee.*
- 4. The administrator shall compile a list of arbitrators who have been deemed to meet the qualifications and agree to the terms set forth in these regulations to serve on the panel of arbitrators.*

Sec. 7. *Qualifications of Arbitrators and Mediators:*

1. *The Division may approve an application of an individual to conduct mediation or arbitration pursuant to NRS 38.300 through NRS 38.360 who meets the following requirements:*
 - a. *Has a good reputation for honesty, trustworthiness and integrity and who offers proof of those qualifications satisfactory to the Division;*
 - b. *Has not made a false statement of material fact on his application;*
 - c. *Holds a law degree from an accredited college or university;*
 - d. *Has no grievances filed against them for misconduct of their fiduciary duties which has been upheld in the last five years;*
 - e. *Has not been nor is currently a party to any litigation with the State;*
 - f. *Is competent to perform mediation or arbitration of claims relating to residential property within common-interest communities as evidenced by:*
 - i. *Appointment by American Arbitrator Association; or*
 - ii. *Appointment by courts of Nevada; or*
 - iii. *Certificate of training for arbitration and mediation through a recognized training program.*
 - g. *Provides an attestation that he has read and understands the provisions of:*
 - i. *Nevada Revised Statutes 38.300 through 38.360 and related Nevada Administrative Code; and*
 - ii. *Nevada Revised Statutes Chapter 116, Chapter 116A and Chapter 116B and related Nevada Administrative Codes.*
2. *Supports satisfactory to the Division by experience in any areas of specialization or subject expertise relating to associations of residential unit owners within common-interest communities, including but not limited to:*
 - a. *Real estate Covenants, Conditions and Restrictions,*
 - b. *By-laws of common-interest community associations,*
 - c. *Budgeting, accounting principles and reserve studies,*
 - d. *Property liabilities, and/or*
 - e. *Construction.*
3. *Submits to the Division a list of fees charged, including but not limited to:*
 - a. *Hourly rate for arbitration services not to exceed \$150 per hour;*
 - b. *Per page copy fee not to exceed \$0.25 per page.*

Sec. 8. *Duties of Arbitrators:*

1. *Arbitrators are required to attend without compensation training offered by the Division, the Office of the Attorney General or a presenter approved by the Division at least every two years concerning substantive law and changes to Chapter 116, Chapter 116A, Chapter 116B, and NRS 38.*
2. *Within 5 days of a claim being assigned to an arbitrator, the arbitrator shall submit to the Division a copy of the informational statement relating to the arbitration of a claim pursuant to Senate Bill 182, Section 40 (2009 Legislative Session).*
3. *The arbitrator is responsible for providing both parties to a claim with detailed information for any work performed relating to the arbitration.*
4. *All binding and non-binding arbitrations are to be completed within 120 days after assignment to the arbitrator, unless all parties agree in writing to an extension in time.*

5. *If the arbitrator anticipates that the arbitration or mediation cannot be concluded within 20 hours of billable time, the arbitrator is required to provide written notification to the parties prior to starting the arbitration process outlining what is expected to take additional time and what that additional time is anticipated to be.*
5. *The parties must respond in writing to the arbitrator, with a copy to the Division, acknowledging their understanding of the additional anticipated costs involved over 20 hours.*
6. *An arbitrator may not withhold a decision for failure to pay arbitration fees. The arbitrator is required to use the method established by the court system for collection of costs related to the claim.*
7. *The arbitrator must provide the Division a notice of conclusion for any claim in which a decision was not rendered within 15 days of the determination that there would be no conclusion rendered by the arbitrator.*
8. *Each arbitrator is required to provide the Division a status report for all open claims quarterly on September 15th, December 15th, March 15th and June 15th.*

Sec. 9. Selection of Arbitrator and Mediator by Parties to the Claim:

1. *Parties may mutually agree upon an arbitrator or mediator from the list provided by the Division by communicating with each other and notifying the Division, in writing with both parties' signatures, within 10 business days of the filing with the Division.*
2. *If the parties cannot agree upon an arbitrator or mediator, the Administrator shall provide to each party to the claim:
 - (a) *A list of three qualified hearing officers; or*
 - (b) *A list of five qualified hearing officers.**
3. *If the Administrator provides a list of:
 - (a) *Three qualified hearing officers, each party may strike one name from the list; or*
 - (b) *Five qualified hearing officers, each party may strike two names from the list, and shall return the list with the remaining names to the Director not later than 10 days after receipt of the list.**
4. *Except as otherwise provided in subsection 6, each person whose name is struck from the list pursuant to subsection 3 is ineligible to serve as an arbitrator in that claim.*
5. *Except as otherwise provided in subsection 6, the Administrator shall select an arbitrator to hear the matter from among the persons whose names were not struck from the list pursuant to subsection 3.*
6. *If for any reason all of the arbitrators whose names were not struck from the list pursuant to subsection 3 are unqualified or otherwise unavailable to serve as an arbitrator for the hearing, the Administrator may provide a new list of arbitrators to the parties in the manner provided in section 3 or may select any qualified arbitrator who is available to serve as an arbitrator in the matter.*

Sec. 10. Withdrawal of Claim by Complaining Party:

1. *If the Complaining Party wishes to withdraw the claim, the Complaining Party shall notify in writing and send by Certified Mail, return receipt requested, their withdrawal of the claim to the Responding Party and the assigned arbitrator or mediator and shall by copy notify the Division of the withdrawal of the claim.*

2. *The assigned arbitrator shall cease any further work on the claim until notified by the Division regarding the status of the claim.*
3. *The Responding Party must submit, within 15 business days by Certified Mail, return receipt requested, to the Complaining Party and the arbitrator or mediator an itemized account of costs incurred through the date of notification of withdrawal of the claim.*
4. *The Complaining Party must repay the Responding Party and the arbitrator or mediator for all costs incurred through the date the notification of withdrawal was received by each party. Payment must be made within 30 days of receipt of itemized costs by the Complaining Party and the arbitrator or mediator.*
 - a. *Associated costs shall include:*
 - i. *The arbitrator's or mediator's time as substantiated by an itemized invoice;*
 - ii. *Costs of copies incurred and itemized;*
 - iii. *Any mailing costs incurred prior to the withdrawal which are substantiated by receipts; and*
 - iv. *Attorney fees incurred by the Responding Party, as a result of the filing, substantiated by an itemized invoice.*
 - b. *If the Responding Party fails to submit itemized invoices to the Complaining Party within 15 days of receiving notification of withdrawal of the claim, the Responding Party becomes responsible for any costs associated with the claim incurred by the Responding Party.*
 - c. *If the Complaining Party has not met the terms required for withdrawing the claim within 45 days of receipt by the Division of the intent to withdraw the claim, the claim shall not be considered withdrawn. The Division will notify all parties that the terms have not been met and the arbitration shall proceed.*
 - d. *A Complaining Party may file to withdraw a claim only once on a particular claim.*

Sec. 11. Fees

1. *Each party shall be responsible for one-half the cost of the arbitrator's or mediator's fees, except when the Complaining Party requests withdrawal of the claim.*
2. *The arbitrator may not award attorney fees to either party.*
3. *The fee which may be charged by an arbitrator or mediator may not exceed \$150 per hour.*
4. *Actual costs for copies and mailing may be itemized and billed in addition to the hourly fee charged.*

Sec. 12. The Administrator may take one or more of the following actions:

1. *Require an arbitrator or mediator to obtain additional education relating to arbitration or mediation;*
3. *Remove the arbitrator or mediator from the approved panel.*