

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

LCB File No. R049-13

June 5, 2014

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

AUTHORITY: §1, NRS 116A.400.

A REGULATION relating to community managers; prohibiting a management agreement from providing for the compensation of a community manager or his or her employer based on the fines imposed against or collected from units' owners or tenants or guests of units' owners; and providing other matters properly relating thereto.

Legislative Counsel's Digest

Existing law and existing regulations require the management agreement entered into by a homeowners' association and a community manager to set forth a payment schedule and a schedule of all fees, costs, expenses and charges to be imposed by the community manager. (NRS 116A.620; NAC 116A.325) Existing law authorizes the Commission for Common-Interest Communities and Condominium Hotels to adopt additional standards of practice for community managers. (NRS 116A.400)

Existing law prohibits the community manager of a common-interest community from soliciting or accepting any form of compensation that is based, in whole or in part, on: (1) the number or amount of fines imposed against or collected from units' owners or tenants or guests of units' owners for violations of the governing documents of the common-interest community; or (2) any percentage or proportion of those fines. (NRS 116.31185) This regulation prohibits the management agreement from providing for the payment of compensation in violation of this provision. This regulation further prohibits the management agreement from providing for the payment of compensation to a community manager or his or her employer based on any percentage or proportion of the late charges which have been imposed but not collected for the late payment of fines.

This regulation also: (1) requires the management agreement to include a provision requiring the community manager, or his or her employer, and the association to maintain certain insurance required by existing law; and (2) prohibits the management agreement from providing for the indemnification of the community manager or his or her employer for intentional misconduct, gross negligence or criminal misconduct.

Section 1. NAC 116A.325 is hereby amended to read as follows:

116A.325 1. A management agreement must:

(a) Be in writing and signed by all parties;

(b) Be entered into between the client and the community manager or the employer of the community manager if the community manager is acting on behalf of a corporation, partnership, limited partnership, limited-liability company or other entity;

(c) State the term of the management agreement;

(d) State the basic consideration for the services to be provided and the payment schedule;

(e) Include a complete schedule of all fees, costs, expenses and charges to be imposed by the community manager, whether direct or indirect, including, without limitation:

(1) The costs for any new association or start-up costs;

(2) The fees for special or nonroutine services such as the mailing of collection letters, the recording of liens and foreclosing of property;

(3) Reimbursable expenses;

(4) The fees for the sale or resale of a unit or for setting up the account of a new member;

and

(5) The portion of fees that are to be retained by the client and the portion to be retained by the community manager;

(f) *Not provide for the payment of any form of compensation, fee or other remuneration to the community manager or the employer of the community manager that is based, in whole or in part, on:*

(1) The number or amount of fines imposed against or collected from units' owners or tenants or guests of units' owners pursuant to NRS 116.31031 for violations of the governing documents of the association;

(2) Any percentage or proportion of those fines; or

(3) Any percentage or proportion of the late charges which have been imposed for the late payment of those fines but which have not been collected;

(g) State the identity and the legal status of the contracting parties;

~~(g)~~ *(h)* State any limitations on the liability of each contracting party, including any provisions for indemnification of the community manager;

~~(h)~~ *(i)* Include a statement of the scope of work of the community manager;

~~(i)~~ *(j)* State the spending limits of the community manager;

~~(j)~~ *(k)* Include provisions relating to the grounds and procedure for termination of the community manager;

~~(k)~~ *(l)* Identify the types and amounts of insurance coverage to be carried by each contracting party, including:

(1) ~~Whether~~ *A requirement that* the community manager ~~will~~ *or his or her employer* maintain *insurance covering liability for* errors ~~and~~ *or* omissions, ~~or~~ professional liability ~~insurance;~~ *or a surety bond to compensate for losses actionable pursuant to this chapter and chapter 116A of NRS in an amount of \$1,000,000 or more;*

(2) Which contracting party will maintain fidelity bond coverage;

(3) *A requirement that the client maintain crime insurance in accordance with NRS 116.3113;*

(4) Whether the association will maintain directors and officers liability coverage for the executive board; and

~~(4)~~ (5) Whether either contracting party must be named as an additional insured under any required insurance;

~~(m)~~ (m) Include provisions for dispute resolution;

~~(n)~~ (n) Acknowledge that all records and books of the client are the property of the client, with the exception of any proprietary information and software belonging to the community manager;

~~(o)~~ (o) State the physical location, including the street address, of the records of the client, which must be within 60 miles from the physical location of the common-interest community;

~~(p)~~ (p) State the frequency and extent of regular inspections of the common-interest community; and

~~(q)~~ (q) State the extent, if any, of the authority of the community manager to sign checks on behalf of the client in an operating account.

2. A management agreement may:

(a) Provide for mandatory binding arbitration;

(b) Provide for indemnification of the community manager *or his or her employer* in accordance with and subject to the *governing documents and the* appropriate provisions of title 7 of NRS ~~(h)~~, *except that indemnification may not be provided for intentional misconduct, gross negligence or criminal misconduct;* and

(c) Allow the provisions of the management agreement to apply month to month following the end of the term of the management agreement but the management agreement may not contain an automatic renewal of the management agreement.

3. Not later than 10 days after the effective date of a management agreement, the community manager shall provide each member of the executive board evidence of the existence of the required insurance which must include:

- (a) The names and addresses of all insurance companies;
- (b) The total amount of coverage; and
- (c) The amount of any deductible.

4. After signing a management agreement, the community manager shall provide a copy of the management agreement to each member of the executive board. Within 30 days after an election or appointment of a new member to the executive board, the community manager shall provide the new member with a copy of the management agreement.

5. Any changes to a management agreement must be initialed by the contracting parties. If there are any changes after the execution of a management agreement, those changes must be in writing and signed by the contracting parties.

6. Except as otherwise provided in a management agreement, upon the termination or assignment of a management agreement, the community manager shall, within 30 days after such termination or assignment, transfer possession of all books, records and other papers of the client to the succeeding community manager, or to the client if there is no succeeding community manager, regardless of any unpaid fees or charges to the community manager or management company.

7. Notwithstanding any provision in a management agreement to the contrary, a management agreement may be terminated by the client without penalty upon 30 days' notice following a violation by the community manager of any provision of this chapter or chapter 116 of NRS.