



**STATE OF NEVADA**  
**DEPARTMENT OF BUSINESS AND INDUSTRY**  
**REAL ESTATE DIVISION**  
**ADVISORY OPINION**

Subject: Determining Whether Executive Board has Performed their Duty for Bids for Services “When Practicable”	Advisory No.	11-02
	Issued By:	Real Estate Division
	Amends/Supersedes	N/A
Reference(s): NAC 116.405 (8) (d)	Effective Date:	September 01, 2011

**QUESTION:**

What does the term “when practicable” mean as it applies to whether the executive board has performed their duty to obtain, when practicable, at least three bids from reputable service providers before purchasing any such service for use by the association?

**ANALYSIS OF THE ISSUE:**

NAC 116.405 says, “In determining whether a member of the executive board has performed his or her duties pursuant to NRS 116.3103, the Commission may consider whether the member of the executive board has...8(d): “Caused the association to:...***Obtain, when practicable, at least three bids from reputable service providers who possess the proper licensing before purchasing any such service for use by the association.***”

*Black’s Law Dictionary* defines *practicable* as, “that which may be done, practiced or accomplished; that which is performable, feasible, possible.”

“When practicable” is a qualifying description to the duty of an executive board to obtain at least three bids from reputable service providers before purchasing any such service for use by the association. The phrase “when practicable” is a statement that is not quantified to a specific time period or occurrence. It is a general application to the board’s responsibility to make decisions concerning the operation of the association.

“That which is performable, feasible, possible” is the standard to which the application of the term will be defined and measured.

The statements in this advisory opinion represent the views of the Division and its general interpretation of the provisions addressed. It is issued to assist those involved with common interest communities with questions that arise frequently. It is not a rule, regulation, or final legal determination. The facts in a specific case may result in a different outcome.

### **ADVISORY CONCLUSION:**

It is not possible to define or interpret further what “when practicable” means, as used in NAC 116.405 (8) (d), beyond the plain meaning of the language as defined by Black’s Law. The specific facts surrounding a board’s failure to obtain at least three bids from three reputable service providers before purchasing service for the association will be determined based upon the circumstances around the decision at the time the decision was made.

If a unit owner feels that the executive board has not complied with NAC 116.405 (8) (d) in the award of a contract or purchase of service with the association, an affidavit should be filed with the Office of the Ombudsman which sets forth documented facts concerning the award of a specific contract which the complainant alleges violates this law. The Division will investigate a fact specific complaint to determine whether there is substantiated evidence to allege that a board or board member has violated the law by not obtaining at least three bids. The Commission would determine whether the factual allegations constitute a violation of the duty of an executive board to obtain, when practicable, at least three bids from reputable service providers who possess the proper licensing before purchasing any such service for use by the association.

In short, a violation of “when practicable” in NAC 116.405 (8) (d) is going to be determined by a specific set of facts applied to the definition of “when practicable.”

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