



STATE OF NEVADA
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February 14, 2014

Randolph Watkins, Chairman
Commission for Common-Interest Communities
and Condominium Hotels
Department of Business and Industry
Nevada Real Estate Division
2501 E. Sahara Avenue
Las Vegas, Nevada 89104

Dear Mr. Watkins:

You have requested an opinion from this office regarding the authority of the Commission for Common-Interest Communities and Condominium Hotels (Commission) to issue advisory opinions interpreting Nevada Revised Statutes (NRS) Chapter 116.

QUESTION

Does the Commission have authority under NRS 233B.120 to adopt their own advisory opinions concerning NRS Chapter 116, or does the more specific language of NRS 116.623 granting such authority to the Real Estate Division (Division) preclude the Commission from doing so?

ANALYSIS

NRS Chapter 233B is the Administrative Procedures Act (APA). NRS 233B.020 specifies the legislative intent for the APA as follows:

1. By this chapter, the Legislature intends to establish minimum procedural requirements for the regulation-making and adjudication procedure of all agencies of the Executive

Department of the State Government and for judicial review of both functions, except those agencies expressly exempted pursuant to the provisions of this chapter. This chapter confers no additional regulation-making authority upon any agency except to the extent provided in subsection 1 of NRS 233B.050.

2. The provisions of this chapter are intended to supplement statutes applicable to specific agencies. This chapter does not abrogate or limit additional requirements imposed on such agencies by statute or otherwise recognized by law.

The legislature, in enacting the APA, recognized that agencies may have more specific requirements as part of their own statutes and explicitly states that the APA is not meant to abrogate or limit more specific requirements included in agency statutes.

The APA recognizes that agencies have the authority to respond to petitions for declaratory orders and advisory opinions. Agencies are recognized as having the authority to opine on the applicability of statutes, regulations, and decisions of the agency. NRS 233B.120 provides:

Each agency shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability of any statutory provision, agency regulation or decision of the agency. Declaratory orders disposing of petitions in such cases shall have the same status as agency decisions. A copy of the declaratory order or advisory opinion shall be mailed to the petitioner.

NRS 233B.031 provides the following definition for the term "agency": "'Agency' means an agency, bureau, board, commission, department, division, officer or employee of the Executive Department of the State Government authorized by law to make regulations or to determine contested cases." Both the Commission and the Real Estate Division fall under the definition for the term "agency" provided in NRS 233B.031. NRS 233B.120 is a general statute that requires agencies to provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions.¹ It also requires that advisory opinions be mailed to the petitioner that requested the opinion.

NRS Chapter 116 is the Uniform Common-Interest Ownership Act. NRS 116.001. Unlike the APA, the Uniform Common-Interest Ownership Act provides

¹ Neither the Commission nor the Division have regulations regarding the filing and prompt disposition of petitions for declaratory orders and advisory opinions.

more specific requirements to the Division and the Commission regarding their respective duties and authority in administering the laws regulating Common-Interest Communities. The Uniform Common-Interest Ownership Act includes a specific statute addressing advisory opinions and declaratory orders. NRS 116.623 provides:

1. The Division shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability or interpretation of:
 - (a) Any provision of this chapter or chapter 116A or 116B of NRS;
 - (b) Any regulation adopted by the Commission, the Administrator or the Division; or
 - (c) Any decision of the Commission, the Administrator or the Division or any of its sections.
2. Declaratory orders disposing of petitions filed pursuant to this section have the same status as agency decisions.
3. A petition filed pursuant to this section must:
 - (a) Set forth the name and address of the petitioner; and
 - (b) Contain a clear and concise statement of the issues to be decided by the Division in its declaratory order or advisory opinion.
4. A petition filed pursuant to this section is submitted for consideration by the Division when it is filed with the Administrator.
5. The Division shall:
 - (a) Respond to a petition filed pursuant to this section within 60 days after the date on which the petition is submitted for consideration; and
 - (b) Upon issuing its declaratory order or advisory opinion, mail a copy of the declaratory order or advisory opinion to the petitioner.

NRS 116.623 imposes the specific duty on, and gives sole authority to, the Division, not the Commission, to respond to petitions for declaratory orders and advisory opinions. *See also, State Dep't of Bus. And Indus., Fin. Inst. Div. v. Nevada Ass'n Services, Inc. et. al.*, 128 Nev. ___, ___, 294 P.3d 1223, 1227 (Adv. Op. 34, Aug. 2, 2012). It is an accepted rule of statutory construction that a provision which specifically applies to a given situation will take precedence over one that applies only generally. *Anderson Family Assoc. v. Hugh Ricci, P.E.*, 124 Nev. 182, 187, 179 P.3d 1201, 1204 (2008).

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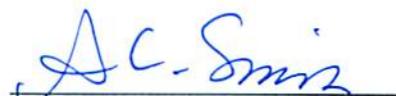
CONCLUSION

Pursuant to NRS 116.623, the Division, not the Commission, has the sole duty and authority to issue advisory opinions as to the applicability of any statutory provision, agency regulation, or decision related to the Uniform Common-Interest Ownership Act.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



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