

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

LCB File No. R065-14

May 29, 2014

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

AUTHORITY: §§1-3 and 5-7, NRS 116.31031 and 116.615; §4, NRS 116.31031, 116.31085 and 116.615.

A REGULATION relating to common-interest communities; prescribing requirements for notice provided to a person against whom a fine for a violation will be imposed; prohibiting a governing board from imposing a fine in a manner not in accordance with the governing documents; providing procedures for conducting a hearing on an alleged violation; allowing a party to make a recording or request a transcript of a hearing on an alleged violation or arrange for an interpreter at a hearing on an alleged violation at his or her expense; authorizing a party aggrieved by the decision of an executive board or hearing committee to submit a claim to mediation or a program of dispute resolution maintained by the Real Estate Division of the Department of Business and Industry; and providing other matters properly relating thereto.

Legislative Counsel’s Digest

Existing law requires the executive board of a common-interest community to provide a unit’s owner and, if different, a person against whom a fine will be imposed with: (1) written notice containing certain information; and (2) a reasonable opportunity to cure an alleged violation or contest the alleged violation at a hearing before imposing a fine. (NRS 116.31031) **Section 2** of this regulation further specifies the required contents of the notice and prescribes the manner in which the executive board is required to provide such notice. **Section 3** of this regulation prohibits the executive board from imposing a fine: (1) in a manner inconsistent with the governing documents of the common-interest community; or (2) if the respondent cures the violation within a reasonable time.

Section 4 of this regulation: (1) requires each party at a hearing on an alleged violation to provide certain information to each other party; (2) authorizes the respondent to challenge a member of the executive board or hearing committee who is scheduled to conduct the hearing for bias, conflict of interest or any reason prescribed in chapter 116 of NRS or the governing documents of the common-interest community; (3) provides for the continuance of a hearing under certain conditions; and (4) requires a respondent who wishes for a hearing to be open to

make such a request not more than 5 days before the date of the hearing. **Section 5** of this regulation prescribes certain procedures for a hearing and provides that a party to a hearing is not liable for the fees and costs of any other party. **Section 6** of this regulation allows a party to make an audio or video recording of a hearing, request a transcript of a hearing and arrange for an interpreter at a hearing at the party's own expense. **Section 7** allows a party who is aggrieved by the decision of an executive board or hearing committee at a hearing on a violation to submit a claim for mediation or referral to a program for dispute resolution conducted by the Real Estate Division of the Department of Business and Industry.

Section 1. Chapter 116 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. 1. *The written notice required pursuant to paragraph (b) of subsection 4 of NRS 116.31031 must include, without limitation:*

- (a) The date, time and location of the hearing;*
- (b) The telephone number and mailing address of a person that the respondent may contact to request a continuance or change of the date or time of the hearing;*
- (c) A description, in plain language, of the alleged violation, including, without limitation, the text of the provision of the governing documents that the respondent allegedly violated and, if possible, a clear and detailed photograph of the alleged violation;*
- (d) The proposed action to cure the alleged violation and a reasonable time in which the respondent is required to do so;*
- (e) The amount of the fine;*
- (f) A statement advising the respondent of the provisions of sections 4 to 7, inclusive, of this regulation; and*
- (g) The names of the members of the executive board or hearing committee who will conduct the hearing.*

2. The executive board shall provide the notice required by paragraph (b) of subsection 4 of NRS 116.31031 to the respondent at least 30 days before the hearing by certified mail, return receipt requested, to the address of the unit and, if different, the:

(a) Mailing address specified by the unit's owner or, if none, the address to which the annual assessment is mailed; and

(b) Last known address of the respondent.

3. The 30-day period prescribed by subsection 2 begins on the next business day after the date on which the notice is deposited with the United States Postal Service, and does not include the day of the hearing. The executive board or hearing committee shall hold the hearing on or after the date on which the period ends, unless the respondent requests a continuance or a change of the date of the hearing.

4. Notice will be deemed adequate if the executive board has received a return receipt of delivery from the United States Postal Service.

5. In determining what constitutes a reasonable time in which the respondent is required to cure an alleged violation pursuant to paragraph (d) of subsection 1, the executive board shall consider the magnitude and seriousness of the alleged violation.

Sec. 3. *The executive board shall not impose any fine pursuant to NRS 116.31031:*

1. In a manner that is inconsistent with the governing documents.

2. If a respondent cures a violation in the time provided pursuant to paragraph (d) of subsection 1 of section 2 of this regulation.

Sec. 4. *1. Not less than 5 days before a hearing on an alleged violation conducted pursuant to NRS 116.31031, each party must provide to each other party:*

(a) A copy of all documents that are reasonably available to the party that the party reasonably anticipates will be used in support of his or her position; and

(b) A list of witnesses whom the party intends to call at the time of the hearing, which must include for each witness:

(1) The name of the witness;

(2) The company for whom the witness works and the title of the witness; and

(3) A brief summary of the expected testimony of the witness.

2. If the respondent intends to testify at a hearing pursuant to subsection 3 of section 5 of this regulation, the list of witnesses that the respondent is required to provide to each other party pursuant to subsection 1 is not required to include the respondent.

3. A respondent may challenge for bias, conflict of interest or any grounds prescribed in chapter 116 of NRS or the governing documents any member of the executive board or hearing committee who is scheduled to conduct the hearing. A challenge must be filed with the executive board not less than 5 days before the date of the hearing or not more than 3 days after receiving notice of the addition or replacement of a member of the hearing panel, whichever is later. The executive board:

(a) Shall grant one challenge as a matter of right; and

(b) May grant or deny any additional challenge after considering the merits of the challenge.

4. The executive board or hearing committee:

(a) Shall grant one continuance of a hearing of not more than 30 days at the request of the respondent; and

(b) May grant any additional continuances to which all parties agree.

5. A respondent may request in writing that an open hearing be conducted pursuant to subsection 4 of NRS 116.31085 not more than 5 days before the date of the hearing.

Sec. 5. 1. *A respondent may be represented at a hearing on an alleged violation conducted pursuant to NRS 116.31031 by any person of his or her choosing.*

2. At the hearing, each party may present witnesses and may cross-examine any opposing witness. Except as otherwise provided in subsection 3, a witness may not be present during the testimony of any other witness without the consent of all parties.

3. The respondent may be present for the entirety of the hearing and may testify in his or her own behalf and present such other evidence as may be beneficial to his or her cause.

4. Each party is entitled to present a closing statement.

5. The executive board or hearing committee shall arrive at a decision by a majority vote of the members of the executive board or hearing committee who conduct the hearing not more than 7 days after the close of the hearing. Notice of the decision must be mailed to all parties not more than 10 days after the vote and must include a statement advising the parties of the provisions of section 7 of this regulation.

6. A party may not be held liable for the fees and costs of any other party.

Sec. 6. 1. *A party may make an audio recording or video recording of a hearing on an alleged violation conducted pursuant to NRS 116.31031 at his or her own expense.*

2. A party may request a transcript of a hearing on an alleged violation conducted pursuant to NRS 116.31031 at his or her own expense. If both parties request a transcript of a hearing, the parties shall share the costs of producing the transcript.

3. A party who requires assistance in interpreting the English language during a hearing on an alleged violation conducted pursuant to NRS 116.31031 may arrange for an interpreter to attend the hearing at the expense of the party who requests the interpreter.

Sec. 7. A unit's owner and, if different, a person against whom a fine will be imposed who is aggrieved by the decision of the executive board or hearing committee at a hearing on an alleged violation conducted pursuant to NRS 116.31031 may submit the action to mediation or referral to a program of dispute resolution by filing a written claim with the Division pursuant to NRS 38.320. If such a claim is submitted, the executive board shall not impose any additional fine pursuant to subsection 7 of NRS 116.31031 while the claim is pending.