

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

LCB File No. R052-13

July 28, 2014

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

AUTHORITY: §§1 and 2, NRS 116.615; §§3 and 4, NRS 116A.200.

A REGULATION relating to common-interest communities; adopting provisions governing motions filed after the close of a hearing before the Commission for Common-Interest Communities and Condominium Hotels; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Commission for Common-Interest Communities and Condominium Hotels or a hearing panel appointed by the Commission to conduct hearings concerning violations of existing law governing common-interest communities, community managers and reserve study specialists. (NRS 116.665, 116.675, 116.770, 116A.200, 116A.300, 116A.400, 116A.420) Existing law further authorizes the Commission to adopt regulations to administer existing law governing common-interest communities, community managers and reserve study specialists. (NRS 116.615, 116A.200) This regulation provides that after the close of a hearing before the Commission, a party may file only a motion for a rehearing, a motion for reconsideration of the Commission’s final decision or, with leave of the Commission, any other motion requesting action or relief after the hearing. This regulation also establishes procedures for the filing and consideration of these motions.

Section 1. Chapter 116 of NAC is hereby amended by adding thereto a new section to read as follows:

1. After the close of a hearing before the Commission, a party may file only the following motions:

(a) A motion for rehearing.

(b) A motion for reconsideration of the final decision of the Commission.

(c) With leave of the Commission, any other motion requesting action or relief after the close of the hearing.

2. A motion for rehearing or reconsideration must be filed with the Commission, and a copy of the motion provided to all parties, not later than 15 days after the date on which the final decision of the Commission is served.

3. A motion for rehearing or reconsideration does not stay any decision of the Commission unless the Commission so orders.

4. A motion for rehearing or reconsideration must:

(a) State with particularity the point of law or fact which, in the opinion of the moving party, the Commission has overlooked or misconstrued, or the change of law or circumstances forming the basis of the motion; and

(b) Contain every argument in support of the motion that the moving party desires to present.

5. Oral argument in support of the motion is not permitted unless granted by the Commission.

6. A party who opposes a motion filed pursuant to this section may file an opposition to the motion within 7 days after the date on which the motion is served on that party.

7. The Commission may authorize the Chair of the Commission to rule on a motion filed pursuant to this section.

8. If:

(a) A motion for rehearing or reconsideration is filed;

(b) The Commission is not scheduled to meet before the effective date of the penalty; and

(c) The Commission has not authorized the Chair of the Commission to rule on the motion,

↳ the Division may stay enforcement of the decision for which a rehearing or reconsideration is requested. When determining whether to grant a stay, the Division shall determine whether the motion was timely filed and whether it alleges a cause or ground which may entitle the moving party to a rehearing or reconsideration of the decision.

9. A motion for rehearing or reconsideration may be based only on one of the following causes or grounds:

(a) Newly discovered or available evidence of a material nature which the moving party could not with reasonable diligence have discovered and produced at the original hearing before the Commission.

(b) Error in the hearing or in the decision that would be grounds for reversal of the decision.

(c) A change of substantive law.

(d) The need in the public interest for further consideration of the issues or evidence, or both.

10. The filing of a motion pursuant to this section does not stop the running of the 30-day period of appeal to the district court from the date of the decision of the Commission for the purpose of judicial review pursuant to chapter 233B of NRS.

11. If a rehearing is ordered pursuant to this section, the rehearing must be confined to the issues upon which the rehearing is ordered.

Sec. 2. NAC 116.630 is hereby amended to read as follows:

116.630 A party may not request a hearing before the Commission or a hearing panel , *or file a motion for rehearing before the Commission or for reconsideration of the final decision of the Commission*, if a civil action based upon the same claim has already been initiated in any court in this State or has already been submitted to mediation or arbitration pursuant to the provisions of NRS 38.300 to 38.360, inclusive.

Sec. 3. Chapter 116A of NAC is hereby amended by adding thereto a new section to read as follows:

1. After the close of a hearing before the Commission, a party may file only the following motions:

(a) A motion for rehearing.

(b) A motion for reconsideration of the final decision of the Commission.

(c) With leave of the Commission, any other motion requesting action or relief after the close of the hearing.

2. A motion for rehearing or reconsideration must be filed with the Commission, and a copy of the motion provided to all parties, not later than 15 days after the date on which the final decision of the Commission is served.

3. A motion for rehearing or reconsideration does not stay any decision of the Commission unless the Commission so orders.

4. A motion for rehearing or reconsideration must:

(a) State with particularity the point of law or fact which, in the opinion of the moving party, the Commission has overlooked or misconstrued, or the change of law or circumstances forming the basis of the motion; and

(b) Contain every argument in support of the motion that the moving party desires to present.

5. Oral argument in support of the motion is not permitted unless granted by the Commission.

6. A party who opposes a motion filed pursuant to this section may file an opposition to the motion within 7 days after the date on which the motion is served on that party.

7. The Commission may authorize the Chair of the Commission or any other officer of the Commission to rule on a motion filed pursuant to this section.

8. If:

(a) A motion for rehearing or reconsideration is filed;

(b) The Commission is not scheduled to meet before the effective date of the penalty; and

(c) The Commission has not authorized the Chair of the Commission or any other officer of the Commission to rule on the motion,

↳ the Division may stay enforcement of the decision for which a rehearing or reconsideration is requested. When determining whether to grant a stay, the Division shall determine whether the motion was timely filed and whether it alleges a cause or ground which may entitle the moving party to a rehearing or reconsideration of the decision.

9. A motion for rehearing or reconsideration may be based only on one of the following causes or grounds:

(a) Newly discovered or available evidence of a material nature which the moving party could not with reasonable diligence have discovered and produced at the original hearing before the Commission.

(b) Error in the hearing or in the decision that would be grounds for reversal of the decision.

(c) A change of substantive law.

(d) The need in the public interest for further consideration of the issues or evidence, or both.

10. The filing of a motion pursuant to this section does not stop the running of the 30-day period of appeal to the district court from the date of the decision of the Commission for the purpose of judicial review pursuant to chapter 233B of NRS.

11. If a rehearing is ordered pursuant to this section, the rehearing must be confined to the issues upon which the rehearing is ordered.

Sec. 4. NAC 116A.650 is hereby amended to read as follows:

116A.650 A party may not request a hearing before the Commission or a hearing panel , *or file a motion for rehearing before the Commission or for reconsideration of the final decision of the Commission*, if a civil action based upon the same claim has already been initiated in any court in this State or has already been submitted to mediation or arbitration pursuant to the provisions of NRS 38.300 to 38.360, inclusive.