

SMALL BUSINESS IMPACT STATEMENT
REVISED January 30, 2015
NAC 116A
LCB R049-13

1. R049-13 Small Business Impact Statement pursuant to NRS 233B.0608:

(a) A description of the manner in which comment was solicited from affected small business, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

Proposed regulation #R049-13 impacts community managers licensed by the Real Estate Division pursuant to Chapter 116A. It also impacts homeowner association boards of directors by prohibiting a particular payment to a community manager. The regulation proposes changes to the management agreement to prohibit payment of any form of compensation to a community manager that is based on the number or amount of fines imposed against or collected from units' owner or tenants or guests of tenants. The proposed regulation requires that a community manager or his or her employer maintain liability insurance coverage for errors or omissions, professional liability or a surety bond in an amount of \$1,000,000 or more. The regulation would prohibit a management agreement from indemnifying a community manager for intentional misconduct, gross negligence or criminal misconduct.

The Commission for Common-Interest Communities and Condominiums Hotels (Commission) determined at their June 11-12, 2013 meeting to move forward with a regulation that would amend NAC 116A.325(1) regarding management agreements. The proposed change states that a management agreement may not provide for the payment of compensation to a community manager that is based in whole or in part on the number or amount of fines imposed against or collected from units' owners or tenants or guests of tenants.

A Small Business Impact Statement was initially posted on the Division's website February 10, 2014 along with a Notice of Workshop for February 26, 2014. The Commission considered public comment during the Workshop. No public comment has been submitted at the time of this revision July 23, 2014 on an impact to small business as a result of this proposed regulation.

Interested persons may obtain a copy of the Small Business Impact Statement or submit statements of impact to:

Teralyn Thompson, Administration Section Manager
Nevada Real Estate Division

2501 East Sahara Avenue
Las Vegas, NV 89104
tlthompson@red.state.nv.us
702-486-4036

(b) The manner in which the small business analysis was conducted for R049-13.

The Division posted on its web site the small business impact statement February 10, 2014. The Commission has discussed on their public agenda and sought public comment at meetings in June 2013, August 2013, and February 2014. The public was invited to provide public comment or submit written comment on any item on the agenda, including possible action by the Commission to propose a regulation to amend NAC 116A.325(1) regarding management agreements. The Commission sought comment during the February 26, 2014 Workshop on the proposed regulation including any small business impact from community managers, management companies, homeowner association boards and unit owners.

There has been no public input at this time on business impact as a result of this proposed regulation.

(c) The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation:

(1) Both adverse and beneficial effects:

(I) Adverse effects: Licensed community managers which had been receiving compensation or other remuneration based on the number or amount of fines imposed on units' owners will experience a reduction in the amount compensation or consideration they receive from a homeowner association. There will be a cost association with the requirement for a community manager or an employer of a community manager to maintain insurance covering liability for errors or omissions, professional liability or to carry a surety bond of \$1,000,000 or more.

(II) Beneficial effects: The prohibition of community managers from earning compensation tied to the number or amount of fines imposed against or collected from units' owners or tenants or guests of units' owners will ensure fair treatment of units' owners. The requirement for a community manager or employer of a community manager to carry insurance or bonding will protect homeowner associations and compensate for losses incurred by a licensee while performing duties under the management agreement. The practice of a management agreement crafted to indemnify a community manager even when found in violation of intentional misconduct, gross negligence or criminal

misconduct will end. The homeowner association should not bear the cost of these proven actions by a licensed community manager.

(2) Both direct and indirect effects.

(I) Direct effect: The direct effect of the proposed regulation which would cease a practice by community managers of receiving compensation or remuneration based upon the number or amount of fines imposed against or collected from units' owners or tenants or guests of units' owners will result in reduced revenue to association operating accounts for associations which have, in the past, followed the practice. Community managers pay would be reduced if they had been receiving compensation or remuneration based upon fines imposed. Homeowner associations will not incur losses through indemnification clauses in a management agreement with a community manager.

(II) Indirect effect: The indirect effect is to ensure fairness and consistency in the application of governing document rules and reduce potential self-serving conflicts by a community manager or a board.

(d) A description of the methods that the Real Estate Division considered to reduce the impact of the R049-13 on small businesses and a statement whether the Real Estate Division actually used any part of those methods.

The Real Estate Division first analyzes who will be impacted by the additional requirements or prohibitions. In this proposed regulation, a community manager or employing management company will incur additional cost of insurance or bonding. However, the public is protected by the additional protections afforded the owners in a homeowner association who use the services of a license community manager. The result of the proposed regulation of the Commission for Common-Interest Communities and Condominium Hotels is a positive effect in protecting associations from liabilities or losses incurred through misconduct, gross negligence or criminal misconduct of a community manager.

(e) The estimated cost to the agency for enforcement of the proposed regulation.

There is no additional cost to the agency for the implementation of R049-13.

(f) If R049-13 provides a new fee or increases an existing fee, the total annual amount the Real Estate Division expects to collect and the manner in which the money will be used.

R049-13 does not contain new fees or an increase in an existing fee.

(g) If R049-13 includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

R049-13 does not duplicate any existing federal, state or local standards regulating the same activity.

(h) The reasons for the conclusions of the Real Estate Division regarding the impact of R049-13 on small businesses.

Officials from the Real Estate Division have attended the public meetings of the Commission for Common-Interest Communities and Condominium Hotels and have listened to and observed the Commissioner's discussions and public comments. No comments have been submitted concerning small business impact to the Commission or Division.

I certify that, to the best of my knowledge or belief, the information contained in the Small Business Impact Statement for R049-13 was prepared properly and is accurate.

Joseph (JD) Decker, Administrator
Department of Business & Industry
Real Estate Division

NRS 233B.0608(3) Statement

1. Identify the methods used by the agency in determining the impact of the proposed regulation on a small business.

The Real Estate Division posted the Small Business Impact Statement on its web site to invite community manager licensees and constituents of the common-interest communities program to respond. Division staff is present at Nevada Commission for Common-Interest Communities and Condominium Hotels (Commission) meetings where public comment is received both under the Public Comment periods of the meetings as well as at noticed Workshops and Adoption of the proposed regulation changes.

The Commission sought comment during the August 27, 2013 and February 26, 2014 Noticed Workshops on the proposed regulation including any small business impact comments. Comments were invited for both Workshops. Comments are invited in writing to the Division until August 25, 2014 and at the Adoption Hearing August 27, 2014 regarding business impact from persons affected by the change in regulation.

No comments have been received as of July 24, 2014 on this proposed regulation concerning impact to small business.

The Division has prosecuted cases regarding deceitful, fraudulent or dishonest conduct. The Commission has agreed by adoption of this regulation that it is in the best interest of homeowner associations, many of which would be classified as a small business, to have this protection.

2. Identify the reasons for the conclusions of the agency concerning the impact of the proposed regulation on a small business.

The reasons for the conclusions of the agency concerning the impact of this regulation on small business are that no statement of concern has been submitted in writing or presented in testimony. The alternative to not adopting this regulation is that the law would not be clear on whether a community manager is allowed to receive compensation pursuant to their management agreement based in whole or in part on the amount of fines collected from unit owners. Furthermore, the practice of a community manager including broad indemnity language in their management agreement would not be prohibited. The Division has seen management agreements which include broad indemnification language and has prosecuted administrative cases against at least one licensee in which this claim was made. It is not in the best interest of owners in homeowner associations to bear this indemnification in instances of intentional misconduct, gross negligence or criminal misconduct.

I certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in this statement is accurate. (NRS 233B.0608(3))

Joseph (JD) Decker, Administrator
Department of Business & Industry
Real Estate Division