

**ADOPTED REGULATION OF THE  
COMMISSION FOR COMMON-INTEREST COMMUNITIES**

**LCB File No. R142-06**

Effective December 7, 2006

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

AUTHORITY: §§1-13, NRS 116.615 and 116.675.

A REGULATION relating to common-interest communities; providing for the appointment of hearing panels; providing for the procedures of a hearing; providing for the procedures for appealing the decisions of a hearing panel; providing for the procedures of a review hearing; providing for the distribution of costs for the transcription of a hearing; providing circumstances under which the Commission for Common-Interest Communities will not grant a hearing; and providing other matters properly relating thereto.

**Section 1.** Chapter 116 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 13, inclusive, of this regulation.

**Sec. 2. 1.** *A hearing panel appointed by the Commission has the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of this chapter or chapter 116 of NRS.*

*2. An independent hearing officer appointed to a hearing panel must be a licensed member, in good standing, of the State Bar of Nevada.*

**Sec. 3. 1.** *The Commission or a hearing panel may, upon its own motion or a motion made by a party of record, hold a prehearing conference to accomplish one or more of the following purposes:*

*(a) Formulate or simplify the issues involved in the hearing.*

- (b) Obtain admissions of fact or any stipulation of the parties.*
- (c) Arrange for the exchange of proposed exhibits or prepared expert testimony.*
- (d) Identify the witnesses and the subject matter of their expected testimony and limit the number of witnesses, if necessary.*
- (e) Rule on any pending prehearing motions or matters.*
- (f) Establish a schedule for the completion of discovery.*
- (g) Establish any other procedure that may expedite the orderly conduct and disposition of the proceedings or settlements thereof.*

*2. Notice of any prehearing conference must be provided to all parties of record. Unless otherwise ordered for good cause shown, the failure of a party of record to attend a prehearing conference constitutes a waiver of any objection to the agreements reached or rulings made at the conference.*

*3. The action taken and the agreements made at a prehearing conference:*

- (a) Must be made a part of the record.*
- (b) Control the course of subsequent proceedings unless modified at the hearing by the Commission or hearing panel.*
- (c) Are binding upon all parties of record and persons who subsequently become parties of record.*

*Sec. 4. In any hearing, the Commission or hearing panel may recess the hearing for a conference in order to discuss matters relating to the testimony about to be given by a witness or for any other purpose that may expedite the orderly conduct and disposition of the proceedings or settlements thereof. The Commission or hearing panel will state on the record the results of such a conference.*

**Sec. 5.** *After a hearing, the Commission or hearing panel will, within 30 days:*

- 1. Prepare findings of fact, conclusions of law and a final decision on the issues presented at the hearing; and*
- 2. Provide a copy of the findings of fact, conclusions of law and final decision to the Division, which will then serve the parties of record and the Commission.*

**Sec. 6.** *1. Pursuant to NRS 116.675, a final order of a hearing panel may be appealed and a review hearing held by the Commission. If a final order of a hearing panel is appealed, the order is stayed until the Commission issues its ruling, order or decision after the review hearing.*

*2. A written notice of appeal filed pursuant to NRS 116.675 must be accompanied by an appellant's brief which must describe the basis for the appeal, cite any supporting authorities and designate any part of the record which was before the hearing panel and is relevant to the appeal.*

*3. A respondent may file a respondent's brief within 20 days after service of the appellant's brief.*

*4. An appellant may then file a reply brief within 12 days after service of a respondent's brief. The reply brief may only respond to issues raised in a respondent's brief. Any issues raised for the first time which are contained in the reply brief will not be considered by the Commission.*

*5. The Division may file an amicus brief which describes the Division's position on any issue raised by a final order of a hearing panel. The Division's brief must be filed within 20 days after the filing of the appellant's brief.*

**Sec. 7. 1.** *After the date for the filing of a reply brief has passed, the Commission will set the matter for a review hearing to be conducted as soon as practicable.*

**2.** *The review hearing must be held at such time and place as the Commission prescribes. At least 15 days before the date set for the review hearing, the Commission will notify in writing each party of record of the date. Written notice of the review hearing may be served by delivery personally to each party or by mailing the notice by certified mail to the last known address of each party.*

**Sec. 8. 1.** *The Commission may, in the written notice described in section 7 of this regulation, provide for oral argument at the review hearing. The written notice must state whether the oral argument is limited to a particular issue or inquiry.*

**2.** *Unless extended by the Commission, an oral argument will be limited to 10 minutes.*

**3.** *The Commission may allow the Division to participate as an amicus party at oral argument.*

**Sec. 9. 1.** *The Commission will render a written decision on any appeal within 30 days after the review hearing and will notify the parties to the proceedings, in writing, of its ruling, order or decision within 15 days after it is made.*

**2.** *The Commission may affirm, reverse or modify a decision of the hearing panel.*

**Sec. 10. 1.** *If a final order of a hearing panel is not appealed to the Commission by a party and if:*

*(a) The Chairman determines that the Commission should review the final order; or*

*(b) A member of the Commission makes a written or oral request to the Chairman that the Commission review the final order,*

*↳ the Chairman of the Commission shall, not later than 7 days after the date that a final order may be appealed by a party pursuant to NRS 116.675, direct the Division to provide written notice to all parties that the Commission will review the final order at the next meeting of the Commission.*

*2. Any final order by a hearing panel which is under review by the Commission pursuant to this section is stayed until the Commission issues its ruling, order or decision.*

**Sec. 11.** *1. Except as otherwise provided in this section, a party which seeks a transcript of its hearing must pay the reasonable costs of transcription.*

*2. If the Commission determines that a transcript is reasonably necessary for a party for a review hearing, the Commission will pay the costs of transcription.*

**Sec. 12.** *A party may not request a hearing before the Commission or a hearing panel 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. 13.** *A party shall not request a review hearing for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.*

**NOTICE OF ADOPTION OF PROPOSED REGULATION  
LCB File No. R142-06**

The Commission for Common-Interest Communities adopted regulations assigned LCB File No. R142-06 which pertain to chapter 116 of the Nevada Administrative Code.

**INFORMATIONAL STATEMENT**

- 1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.**

Notice of the proposed regulations was posted on the Real Estate Division website and in various other public locations where both the public and other interested persons would have access to that information. The Division conducted a public workshop on August 22, 2006 in Carson City which was video conferenced to Las Vegas. Public comment was also solicited at the Adoption Hearing in Las Vegas on November 15, 2006. The Adoption Hearing was not video conferenced to Carson City.

**The number of persons who:**

	<u>CC</u>	<u>LV</u>
Attended workshop 8/22/06:	16	10
Submitted written comments	0	0
Attended public hearing 11/15/06	NA	26
Submitted written comments:	0	0

- 2. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.**

The public was invited to comment at the public workshop and hearing or in writing. Additionally, since March 2005 through November 15, 2006, the Commission has had a standing agenda item to discuss and review Chapter 116 of NAC in order to make recommendations for proposed changes, additions, and deletions. At each public meeting, the Commission considered possible changes to the Nevada Administrative Code for Chapter 116, solicited public comment, and formulated their proposals for changes.

Interested persons were instructed that they could obtain copies of comment summaries by contacting Joanne Gierer, Legal Administrative Officer, at 702-486-4033 ext. 222.

Minutes of the Commission's meetings are available on the Division website and by contacting Joanne Gierer, Legal Administrative Officer, at 702-486-4033, ext. 222.

3. **If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**

There were amendments made to the regulation based upon the public comments made at the November 15, 2006 Adoption Hearing.

4. **The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:**

**Business which it is to regulate:**

**(a) Both adverse and beneficial effects:**

Businesses regulated in chapter 116 of NAC consist of homeowner associations and community managers. These regulations may have an economic impact on each of these businesses in that they allow the Commission to appoint a hearing panel. The hearing panel has the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of chapter 116 of NRS.

**(b) Both immediate and long-term effects.**

Immediate effect on regulated businesses will be the knowledge that the Division has additional means of hearing disciplinary cases in a more timely manner and not just before the Common-Interest Communities Commission five or six times a year. The long-term effect should be more timely processing of complaints filed and ultimately more accountability and sound decision making within associations.

5. **Public:**

**(a) Both adverse and beneficial effects: and**

There are no known adverse economic effects for the public from these proposed regulations. The program is funded by the unit fees paid to the Office of the Ombudsman for Common-Interest Communities.

The beneficial effects are that the association and unit owners will be able to receive a resolution through a Decision and Order issued in a timely manner. There is benefit to both parties to the complaint in that there are no fees for the services of the hearing officer.

**(b) Both immediate and long-term effects:**

There are no known immediate economic effects for the public from these proposed regulations.

The long-term effects should be similar to the beneficial effects mentioned in the foregoing item.

**6. The estimated cost to the agency for enforcement of the adopted regulation.**

The Agency, in conjunction with and on behalf of the Commission for Common-Interest Communities, has processed contracts for five Administrative Law Judges to act as hearing officers. The program has been funded in the amount of \$150,000 for FY 07 from the reserve of the Common-Interest Communities budget (B/A 3820) through a Work Program approved by Interim Finance Committee.

**7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

None.

**8. If the regulation includes provisions, which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

None.

**9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

There a no new fees or increases in existing fees.