

LCB File No. R088-01

**PROPOSED REGULATION OF THE
NEVADA OFFICE OF THE TREASURER**

NOTICE OF INTENT TO ACT UPON A REGULATION

**Notice of Hearing for the Adoption of Allodial Title Regulations
of the State of Nevada Office of the Treasurer**

The State of Nevada Office of the Treasurer will hold a public hearing at 2:00 PM, on Tuesday, September 4, 2001, at the Legislative Building, 401 South Carson Street, Room 2144, Carson City, Nevada. Persons may observe the meeting and provide comment through a simultaneous videoconference at the Grant Sawyer State Office Building, 555 East Washington Avenue, Room 4406, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the Adoption of regulations that pertain to chapter 361 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation is to implement and establish the administrative framework for the Allodial Title Program, as required by Senate Bill 403.
2. The substance of the regulations is the creation of the administrative requirements allowing citizens to apply for, and receive a Certificate of Allodial Title.
3. There is no estimated economic effect of the regulation on the business community or the public. The Allodial Title Program is an optional program for interested Nevada citizens.
 - (a) It is not anticipated that there will be any adverse or beneficial effect, and
 - (b) There are no immediate or long-term effects.
4. There is no estimated additional cost to the agency for the enforcement of the proposed regulations.
5. No other entity has an Allodial Title Program so there are no regulations of a federal, state, or local government agency, which overlap or duplicate these Allodial Title Program regulations.
6. These regulations are not required by any federal law.
7. These are no federal regulations regulating these activities, so the Allodial Title regulations are not more stringent than federal requirements.
8. These proposed regulations do not establish a new fee or increase an existing fee.

Persons wishing to comment upon the proposed action of the State of Nevada Office of the Treasurer may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Office of the State Treasurer, 101 North Carson Street, Suite 4, Carson City, Nevada 89701. Written submissions must be received by the Office of the State Treasurer on or before August 24, 2001. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Office of the State Treasurer may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be Adopted will be available at the Office of the State Treasurer and in all counties in which the office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State Of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Legislative Building, 401 South Carson Street, Carson City
Capitol Press Corps, Basement, Capitol Building 101 North Carson Street, Carson City
Nevada State Library, 100 Stewart Street, Carson City
Blasdel Building, 209 East Musser Street, Carson City
City Hall, 201 North Carson Street, Carson City
On the Internet at <http://www.allodial.state.nv.us>

Notice of this meeting was FAXED for posting to the following Las Vegas locations:

Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas
Clark County Offices, 500 South Grand Central Parkway, Las Vegas

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the hearing. If special arrangements for the hearing are necessary, please notify in writing, Janice A. Wright at the State Treasurer's Office, 101 North Carson Street, Suite 4, Carson City, Nevada 89701, or call (775) 684-5778, as soon as possible. Provides for the implementation of a program for allodial title for Nevadans who own their property free and clear, without encumbrances.

LCB File No. R088-01

PROPOSED REGULATION FOR THE ALLODIAL TITLE PROGRAM

July 13, 2001

Explanation: Matter in italics is new; matter in brackets **[H]** is material to be omitted.

AUTHORITY: NRS 361.920.4

Section 1. Chapter 361 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 31 inclusive, of this regulation.

Section 2. As used in sections 2 to 31, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in NRS 361.900 to 361.920, inclusive, and sections 3 to 10, inclusive of this regulation have the meanings ascribed to them in those sections.

Section 3. “Contract” means an allodial title installment contract, consisting of the provisions of an application for allodial title and an agreement and schedule for installment payments provided by the state treasurer.

Section 4. “Program” means the program for allodial title established pursuant to chapter 361 of NRS and this chapter of the Nevada Administrative Code (NAC).

Section 5. “Titleholder” means the natural person, or persons, or family trust, who hold title, own, occupy a single-family residence, free and clear of all encumbrances, except any unpaid assessment for a public improvement.

Section 6. “Certificate” means a certificate of allodial title, which is evidence that the titleholder has qualified for allodial title. The state treasurer, on behalf of the titleholder, will make payment of future property taxes for the specific parcel, once the titleholder receives the certificate of allodial title, and as long as the titleholder continues to qualify for allodial title.

Section 7. “Single-family residence” means a single-family dwelling, which is not used for a commercial or investment purpose, but is used as the primary living quarters for the titleholder. An agricultural activity, such as a family ranch would qualify as a residence if the family lives in the primary residence.

Section 8. “Owns” means a natural person holding title as sole property, joint tenants or tenants in common, or a family trust with a limited life expectancy. Title held by a corporation, or a business, does not qualify for a certificate of allodial title, because of the on-going life and lack of an estimated life expectancy.

Section 9. “Encumbrance” means a mortgage, deed of trust, lease, rental agreement or tax encumbrance. For the allodial title program, an encumbrance does not include the normal

understanding of a claim, lien, charge or liability, including a judgement lien, mechanic's lien, security interest, easement or right of way.

Section 10. "Property tax" means the compulsory charge levied by a governmental unit to provide the revenues, which support the budgets, adopted by the elected governing boards. This is the combined property tax rate and is expressed as \$x.xx per \$100.00 of assessed valuation. In Nevada, the tax is levied on both personal and real property. For purposes of the allodial title program,, this would not include the tax levied on net proceeds of minerals, which is determined pursuant to NRS 362.140, or the gross gaming tax.

Section 11. The allodial title program will allow qualified titleholders to pay their property taxes for a period equal to the natural life of the titleholders listed on the application. This means the county treasurer will not send the titleholder a bill but will send the property tax bill to the state treasurer, who will pay the taxes from the deposited amount provided by the titleholder.

(a.) Sovereign title, which is held by the states, is absolute and encompasses, on the part of the sovereign authority, both ownership of the land and the right to govern the inhabitants. That is the historical meaning of allodial title.

(b.) This term, allodial title, is used in contradistinction to the term "fee simple absolute" which contemplates the highest title which may be privately held in the United States.

(c.) The United States imposes four public restrictions for the common good on the full bundle of rights. These four are: Taxation-the right to tax property for support of the government; Eminent Domain-the right to take the property for public use provided that just compensation is paid; Police Power-the right to regulate the use of property for the public welfare in areas of safety, health, morals, zoning, building codes, and traffic and sanitary regulations; and Escheat-the right to have property revert to the state for nonpayment of taxes or where there are no legal heirs of a decedent who dies intestate. The holder of fee simple absolute title is still subject to dispossession by the government for these four public limitations.

(d.) For the purposes of this program, the legislature has released future property tax liability of the State of Nevada and local governments to those who qualify and choose to pay their taxes through the allodial title program.

(e.) The state treasurer must ensure that the allodial title trust fund is efficiently and securely maintained. The state treasurer must avoid, as much as possible, the possibility of unequal collection of property taxes by properly determining the deposited amount.

Section 12. The state treasurer will determine the cost of the allodial title certificate:

(a.) So that the money paid, plus the interest or other income earned on that money would be adequate to pay all future property taxes for a period equal to the natural life of the titleholders.

(b.) The amount will be calculated using a tax rate of \$5.00 for each \$100 of assessed valuation, applied to the future estimated assessment of the property.

(c.) An actuarial calculation will be used to project the life expectancy, income of the trust fund, and changes in assessed valuation, including but not limited to the results of inflation, changes in value due to construction, remodeling or rebuilding of improvements.

(d.) The applicant will have the option of a lump sum cost or an installment cost. The applicant will also have the option of signing an agreement that the cost may be recalculated if improvements are made which increase the value at least 20 percent of the value of the real property. This agreement will result in a lower cost.

(e.) The applicant will also have the option of not signing the above-stated agreement, which will result in a higher cost.

(f.) The county assessor will submit completed applications to the state treasurer, who will calculate the actuarial cost of the certificate. If the homeowner has made one or more tax installment payments, the homeowner will be provided credit for any property tax payments which he has made and have been received by the county treasurer.

Section 13. The cost of the certificate of allodial title may be paid by the titleholder:

(a.) In one lump sum; or

(b.) In ten annual installments.

(c.) If the titleholder elects to pay in ten annual installments, he must complete an installment contract agreement with the State of Nevada

(d.) During the installment contract period, the titleholder will still be liable for payment of his property taxes until the final installment has been paid and the titleholder has received a certificate of allodial title. At that time, future property tax bills will be sent to the state treasurer, who will remit payment to the county treasurer.

(e.) If the titleholder elects to pay in ten annual installments, the State Treasurer would allow the titleholder to pay off the annual installments sooner.

Section 14. If a titleholder elects to pay in ten annual installments:

(a.) The state treasurer must reflect any change in the assessed valuation of the property since the date of the application, prior to payment of the final installment.

(b.) The state treasurer may calculate changing annual installment amounts, so that the final installment payment will not be extraordinarily high, making it more difficult for the titleholder to remit payment. A projected rate of change may be forecast so that each annual installment will reflect a small amount of the change and the final installment will not, as much as possible, reflect the total of all that change.

(c.) The installment contract statement will contain an explanation that the installment payments may be adjusted to reflect a change in the assessed valuation of the property since the date of the application. This gives the titleholder notice that the payments may be adjusted to consider this fact, in accordance with NRS 361.900(8).

Section 15. Once the lump sum or final installment has been paid:

(a.) The state treasurer will issue a certificate of allodial title for the dwelling, its appurtenances and the land on which it is located.

(b.) The state treasurer will also send a copy of the certificate of allodial title to the county assessor.

(c.) The county assessor will make a notation on the tax roll and collect no further taxes from the allodial titleholder for the property.

(d.) The county treasurer will send future property tax bills to the state treasurer, who will pay the property taxes, no more than 5 days from the date they are due, from the money in the account for each property.

(e.) The certificate of allodial title is evidence of allodial title and is valid as long as the titleholder qualifies and continues to own and live in the residence.

Section 16. The titleholder must notify the state treasurer, within 60 days, if any of the following occur:

- (a.) If a titleholder sells or transfers the property;*
- (b.) If a titleholder rents or leases the property;*
- (c.) If a titleholder converts the residence, appurtenances or land, to a commercial business;*
- (d.) If a titleholder moves or fails to live in the residence;*
- (e.) If a titleholder encumbers or applies for a mortgage or loan, using the property as collateral;*
- (f.) If an allodial titleholder is added or deleted;*
- (g.) If an allodial titleholder dies;*
- (h.) The state treasurer needs notification within 60 days, in order to conduct a review, because the titleholder may not qualify to continue the allodial title on the property, or a recalculation may need to be completed.*

Section 17. The addition or deletion of an allodial titleholder, where there is a transfer of interest other than to a joint tenant, is cause for a recalculation of the cost of the allodial title certificate, since that may change the actuarial assumptions. The new actuarial calculation will be performed in the same manner as the original actuarial calculation was completed, using the new data supplied by the titleholder and county assessor.

Section 18. If the titleholder elects to relinquish the allodial title certificate, or the state treasurer determines the titleholder no longer qualifies, the state treasurer shall prepare a refund.

- (a.) The amount of the refund will be determined by the state treasurer and will include the unused portion of the money and the estimated earnings in the allodial title trust fund for that specific property;*
- (b.) The state treasurer will subtract from the refund amount, any amount that was paid out for taxes for the specific property covered by the allodial title certificate, and any interest in excess of the original estimate;*
- (c.) The state treasurer shall subtract a pro rata share of any expenses incurred directly or indirectly related to the investment and administration of the allodial title program. Not more than 2% of the money in the fund will be used by the state treasurer to cover investment and administrative expenses, which shall be deducted annually.*
- (d.) Refunds must be requested in writing from the state treasurer, who will process the request within 90 days of receipt of the request.*
- (e.) The allodial title trust fund will provide refunds, but must be exempted from the execution statute. No lawful lien, or levy or attachment may be asserted by any party against the trust fund.*

Section 19. The allodial title certificate may be transferred to the heir of an allodial titleholder.

(a.) The heir, or other allodial titleholder, must notify the state treasurer within 60 days of the death of the allodial titleholder.

(b.) The state treasurer will review the information and determine what additional information is needed to process the transfer of the allodial title to the heir.

(c.) The heir may apply, within 60 days after taking possession of the single-family dwelling, to the county assessor for allodial title.

(d.) The state treasurer will prepare a recalculation of the cost of the allodial title certificate for the specific property and provide the lump sum and installment cost amounts to the heir, who has applied for allodial title.

Section 20. The allodial title program applies to surface rights of property and does not include mineral rights of property. The program was intended to protect families from losing family homes, not mining businesses, because of tax liens. Therefore, the program is restricted to the surface rights of residential properties.

Section 21. The allodial title program shall:

(a.) Provide for payment of property taxes, which includes the combined property tax rate, for allodial certificate holders.

(b.) The program will not provide for payment of any special assessments that are included on the property tax bill, such as assessments for television districts, street improvements, weed control districts and similar assessments.

(c.) The property tax that may be paid by the state treasurer is the compulsory charge levied by a governmental entity to support the budgets, as determined by the elected governing boards.

Section 22. The state treasurer will take into account the possibility of changing assessed valuations, and make the actuarial calculations of investment earnings and return, and estimated life expectancy, to determine the proper cost of the allodial title certificate.

Section 23. The addition or deletion of an allodial titleholder:

(a.) May require a recalculation by the state treasurer of the cost of the allodial title certificate, to reflect the actuarial assumptions of the life expectancy of the allodial titleholders, and the value of the specific property.

(b.) May be accomplished through completion of an application filed with the county treasurer to add or delete an allodial titleholder.

(c.) The county treasurer must then notify the state treasurer, who will recalculate the actuarial assumptions based on the change in titleholders and change in value.

(d.) The state treasurer will determine if any additional amount needs to be paid for the cost of the allodial title certificate for that property and notify the titleholders and the county treasurer.

(e.) A recalculation may not be needed if a deletion occurs solely through the death of the oldest titleholder, without transfer of that person's interest to a new person. This could be the case with joint tenants holding survivorship rights, which may not be considered a transfer. No interest passes on the joint tenant's death since the decedent's interest vanishes at death and the survivor's ownership of the whole continues without the decedent's participation.

Section 24. If a titleholder elects to pay by installments, the titleholder must:

(a.) Remit payments pursuant to the installment agreement on the dates and in the amounts set forth in the schedule for participation and payment provided to the titleholder by the state treasurer.

(b.) If a titleholder fails to remit a payment required by the installment agreement within 30 days of the due date, the titleholder shall be deemed to be in default of the contract.

(c.) Once deemed to be in default, the state treasurer may terminate the allodial title, prepare a refund in accordance with this chapter and remit that refund to the titleholder, within 90 days.

(d.) The titleholder may apply for allodial title in the future, in accordance with this chapter.

Section 25. If a titleholder fails to provide any information to the state treasurer relating to the application or installment agreement within a reasonable period, or 90 days at the latest, the state treasurer may deny the application. The titleholder is not prohibited from submitting another application in the future.

Section 26. If the state treasurer determines that a titleholder has fraudulently misrepresented or omitted any information relating to the application or installment agreement, the state treasurer may deny the application or cancel the certificate or installment contract agreement. The state treasurer may assess a penalty for fraud of 15%, of the cost of the allodial title certificate. The fraud penalty may be deducted from any potential refund due to the titleholder.

Section 27. An installment agreement may require the titleholder to pay:

(a.) If a check is returned for insufficient funds, a penalty of \$15.00.

(b.) If an annual remittance is not received within 15 days from the date due, a penalty of \$15.00.

(c.) If an annual installment payment is not received within 30 days from the date due, the contract will be deemed in default, and a refund will be prepared.

Section 28. If a titleholder elects to pay in one lump sum:

(a.) The titleholder must remit payment within 90 days of the state treasurer providing notice of the amount for lump sum.

(b.) If the amount is not received within that period, the state treasurer may need to recalculate the cost of the allodial title certificate.

Section 29. The allodial titleholder may be allowed to claim the property tax deduction:

(a.) In the year the tax is actually paid by the state treasurer from the trust fund in response to the county treasurer's notification. The state treasurer may not provide tax advice and it is recommended you consult your tax professional.

(b.) Each allodial title application shall list the first titleholder as the designee. That designee will receive an annual statement and Form 1099 from the state treasurer listing the tax amounts actually paid each year, and such other information relating to this program as deemed appropriate by the State Treasurer.

(c.) Since the allodial titleholder may receive a refund of unused moneys, including earnings, the payment of money to the state treasurer may not qualify as a payment of deductible real estate taxes.

Section 30. The general treatment of income:

(a.) Earned in a trust fund (as found in several rulings and court cases) is that it is the gross income of the person who ultimately receives the funds (and in this case that would be the allodial titleholder since the money is either paid for his benefit or refunded).

(b.) That income may be taxed to the allodial titleholder each year as earned in the program, because the allodial titleholder has an unqualified right to rescind or relinquish participation and receive the money.

(c.) The state treasurer will determine the proper share of income earned for each Allodial Title Certificate account, adjusted for the payments of taxes and any excess income deposited to the account for stabilization under NRS 361.920. This amount will be reported each year to the designee on Form 1099.

Section 31. Each county assessor has the authority to charge \$25.00 for processing the allodial title application. Some county assessors may choose not to assess that fee, so the applicant must check with their county assessor to determine if they must provide the \$25.00 processing fee with the application.